

2023

## Jurisprudential and Legal Perspectives on the Protection of Rights and Freedoms in the 2021 Basic Statute of the Sultanate of Oman

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### Recommended Citation

Mhalla, M.; K. Hamid, A.; and Al-Riyami, A. (2023) "Jurisprudential and Legal Perspectives on the Protection of Rights and Freedoms in the 2021 Basic Statute of the Sultanate of Oman," *Information Sciences Letters*: Vol. 12 : Iss. 7 , PP -.

Available at: <https://digitalcommons.aaru.edu.jo/isl/vol12/iss7/5>

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# Jurisprudential and Legal Perspectives on the Protection of Rights and Freedoms in the 2021 Basic Statute of the Sultanate of Oman

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Received: 1 Mar. 2023, Revised: 2 May 2023, Accepted: 4 Jun. 2023.

Published online: 1 Jul. 2023

**Abstract:** In this paper, we examine the constitutional protection of economic rights and freedoms in the Basic Statute of the Sultanate of Oman. Through descriptive, analytical, and historical approaches, the study identifies the protection and mechanisms for attaining social justice according to the Basic Statute to achieve Oman's 2040 vision. The study concludes that courts must refrain from applying laws that violate the Basic Statute, and that weak guarantees of economic and social rights and freedoms hinder their protection and prevent the achievement of Oman Vision 2040. The study recommends spreading a culture of human rights and education on economic, social, and cultural rights, as well as adhering to international human rights conventions and covenants ratified by Oman.

**Keywords:** Constitutional Protection, Rights, Freedoms, Development, Justice, Basic Statute.

## 1 Introduction

Entering the era of modernity in contemporary history, like other countries in the region, the Sultanate of Oman had to make a radical change to build a modern state based on legal regulations that conformed to modern age demands. It was also important to work on the legal aspects away from religious references as well as the traditional tribal influence on state administration. An attempt to develop a written constitution was initiated by Sayyid Tariq bin Taimur Al Said (1921-1980, half-brother of Sultan Saeed bin Taimur (ruled: 1932-1970), aiming to establish a constitutional monarchy in Oman. According to Al-Kyumi, this was the first Omani constitutional attempt known as the constitution of Tariq in which he drafted a temporary constitution in 1967. However, the project was not implemented even after July 23 revolution and his Majesty Sultan Qaboos, may his soul rest in peace, assumed his position, creating what Al-Kyumi described as a "constitutional vacuum" that lasted nearly 26 years until the Basic Statute was issued by Royal Decree No. 101/96 [1].

The first amendments to the Basic Statute issued in 1996 were made on October 19, 2011, according to Royal Decree No. 99/2011, after the Arab Spring revolutions, which led to protests calling for economic, social, political and constitutional reforms [2]. These protests also called for the development of the Shura Council for the benefit of the country and citizens, and "involvement of all society members in the comprehensive development process to meet the requirements of the desired evolution" [3].

During the reign of Sultan Haitham bin Tariq (2020-present), the most prominent amendments were made to the Basic Statute of the State, where the new Basic Statute was issued by Sultan Decree No. 6/2021; the most prominent amendments in the new Basic Statute clearly defined the mechanism for the transfer of power and appointment of a Crown Prince and other updated articles. Al-Riyami considered the new amendments to come within the framework of "a renewed renaissance based on the principles of justice and equality, the promotion of rights and duties, and the preservation of public freedoms," [4], and to be in line with the developments of Oman's Vision 2040.

## Research Questions

The Arab constitutions included most of the human rights and freedoms stipulated in international conventions and norms in general, and the two International Covenants on Civil and Political Rights (ICCPR), and economic, social and cultural rights (ICESCR) in particular, but they differed in the level of rights guarantees provided by one constitution to another. This study deals with the constitutional protection of rights and freedoms as stated in the Basic Statute of the Sultanate of

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Oman. This study answers the following questions:

- What economic rights and freedoms are guaranteed by the Basic Statute of the Sultanate of Oman?
- What is the protection provided by the Basic Statute of Rights and Freedoms?
- How is social justice achieved according to the Basic Statute to achieve Oman's 2040 vision?

This research aims to answer the questions above in order to determine the reality of economic rights and freedoms in the Omani Basic Statute, as well as the guarantees provided by this Statute to achieve justice in pursuing development and ensuring justice.

The economic, social and cultural rights guaranteed in international human rights law include broad areas and essential aspects of human life such as the right to work in positive working conditions, the right to have an adequate standard of living, the right to have adequate physical and mental health, and the right to receive education and special assistance for family and children. These rights can be obtained by respecting the principle of equality before law and applying the law itself, as stated in the Basic Statute of the Sultanate of Oman.

## 2 Methodologies

The study relied on a descriptive and analytical approach to obtain rights and freedoms and the Basic Statute, using the legal approach to cover the explanatory texts of rights and freedoms and their impact on achieving development, as stated in the Basic Statute, and the historical approach to follow the basic evolution in the Sultanate of Oman.

This study is divided into three main sections. The first section traces the historical stages of the Basic Statute. The second section introduces economic and social rights, as expressed in international charters, declarations and covenants. The third section attempts to identify the reality of economic and social rights and their roles in achieving development, as stipulated in the Basic Statute. The fourth topic guarantees the protection of social and economic rights and freedoms under the Basic Statute.

## 3 Economic, social and cultural rights in international conventions, declarations and covenants

These rights can be defined as the rights necessary to ensure a decent life for human beings, such as providing health care, education, food, water, housing, work, social security, appropriate family life and participation in cultural life [5].

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These rights represented the foundation on which the Omani legislator started to deal with rights and freedoms, including economic, social and cultural rights, considering Omani's peculiarity in this respect. As stated in (Chapter Three) Rights and Freedoms of the Omani Basic Statute of 2021 [7]: Every citizen has the right to have an adequate standard of living for himself and his family: Article (14) in the economic principles of the Basic Statute obligates the state to "guarantee freedom of economic activity based on social justice, cooperation and a balance between public and private activities to achieve economic and social development, increase production, achieve prosperity for citizens, and raise their standard of living.

Social rights were stated in Article (15) of the Basic Statute (justice, equality and equal opportunities are the social principles and pillars of society guaranteed by the state).

The cultural principles of the state are represented in Article (16) of the Basic Statute as follows. Education is a right for every citizen, whose goal is to build the Omani character, preserve the national identity, root the scientific method in thinking, develop talent, encourage innovation, consolidate cultural and spiritual values, and establish concepts of citizenship, tolerance and harmony.

The Sultanate of Oman ranked 48th, while eight Arab countries ranked last, after 100 out of 189 countries in the 2018 Human Development Report issued by the United Nations Development Program, which measures the level of people's well-being, taking into account many factors, including the impact of countries' economic policies on people's quality of life, standard of living and education [7].

International human rights conventions include a set of control mechanisms to examine the extent to which state parties comply with their obligations in the field of promoting and protecting human rights.

Among the most important global instruments in the field of respect for human rights that came into international and regional treaties and in national constitutions around the world are examples of United Nations human rights treaties[8]:

- International Covenant on Economic, Social and Cultural Rights, 1966
- Convention on the Elimination of All Forms of Discrimination against Women, 1979
- Convention on the Rights of the Child 1989.

Examples of regional human rights treaties include:

- European Social Charter 1961.
- African Charter on Human and Peoples' Rights 1981.
- Additional Protocol to the American Convention on Human Rights relating to Economic, Social and Cultural Rights (San Salvador Protocol), 1988.

The United Nations: The Charter of the United Nations stipulates that the United Nations shall determine the highest standards of living, employment and conditions for economic progress and find solutions to international economic, social and health problems. The Universal Declaration of Human Rights issued in 1948 stipulated many economic, social and cultural rights as general principles, stating that every person has the right to receive social security; it is the duty of the state to provide citizens with economic, social and cultural rights in accordance with its organization and resources; and every person has the right to have an adequate standard of living, education and participation in cultural life.

The International Covenant on Economic, Social and Cultural Rights. The developments that the world has witnessed in the last century at all levels have prompted the United Nations to issue a convention on those rights, represented by the International Covenant on Economic, Social and Cultural Rights, which has become the primary source of states' commitment to these rights. The International Covenant on Civil and Political Rights, issued in 1966, also stipulated some economic and social rights [10], such as the right of individuals to form and join trade unions. In light of this, the United Nations decided to issue a separate international agreement on social, economic and cultural rights. This resulted in the International Covenant on Economic, Social and Cultural Rights, which included a set of rights and freedoms such as those presented in Table 1.

**Table 1: A set of rights and freedoms guaranteed by the (ICESCR 1966)**

United Nations: International Agreement	
Article number	Kind of rights
Articles 6 and 7	The right to form and join trade unions
Article 8	The right to strike
Article 9	The right to have security
Article 10	Family protection through maternal and childcare
Article 11	The right to get an adequate standard of living for all individuals and their families
Article 12	The right to reach the highest attainable standard of physical and mental health
Article 13	The right to get education and culture
Article 14	The education is free in its early stages
Article 15	Individuals have the right to participate in cultural life

These rights and freedoms contained in this covenant are no more than an appeal to the signatory states to do what they can to include these rights and freedoms in their constitutions so that their citizens can enjoy a decent standard of living in their countries. These two sets represent political and civil rights on the one hand, and economic and social rights, on the other hand, are considered human rights that must be taken into account in achieving respect for a basic pillar in international law and constitutions (National Law) alike.

Dr. Youssef Al-Buhairi argues that human rights constitute a single, indivisible body that does not accept hierarchy among its components, and that the division that prevailed for a while between personal and civil rights and freedoms on the one hand and economic and social rights and freedoms on the other, is a false division and no longer effective[11].

#### **4 The reality of economic and social rights in the Sultanate of Oman**

The year 1970 was considered a turning point in the modern history of the Sultanate of Oman. After the unification of the state, His Majesty Sultan Qaboos - may God have mercy on him - was able to build the foundations of a modern state that pays attention to human rights. Economic and social rights are considered the second generation of human rights stipulated in the International Bill of Human Rights, and they are among the rights stipulated in the Basic Statute of the State, similar to the Arab constitutions. The main objective of establishing economic and social rights is to achieve social justice,

insurance against sickness, poverty and inability to work; eliminate unemployment; and create decent work for individuals in their societies. These rights have been stipulated in the Basic Statute of the Sultanate of Oman since its establishment in 1996 in the economic principles of the second chapter and social principles in the third chapter [12].

The Basic Statute considers that social justice is the basis for freedom of economic activity that is guaranteed by the state to achieve economic and social development, increase production to guarantee the prosperity of citizens, raise their standard of living, achieve job opportunities, and eradicate poverty. Private property is guaranteed by the Basic Statute, as no one is prevented from disposing of his property except within the limits of the statute, and no one is dispossessed of his property except for the public interest in the cases specified in the statute, provided that the compensation is fair. The Basic Statute also prohibits the confiscation of funds, except for a court ruling [13].

As for social principles, the state guarantees justice, equality and equal opportunities for citizens, where the family is the basis of society, and the state must work on its cohesion, stability and consolidation of its values, in light of the equality between men and women guaranteed by statute. It also obliges the state to care for children, persons with disabilities, the youth and young adults. To achieve social justice, the state guarantees social insurance services and aid in cases of emergency, sickness, disability, and old age, in addition to providing citizens with health care, the provision of disease and epidemic prevention and treatment means, including the establishment of hospitals and clinics.

The Basic Statute guarantees the protection of workers and employers and regulates the relationship between them. According to it, every citizen has the right to practice the work he chooses for himself, and it is not permissible to impose any compulsory work on anyone except by virtue of an order and to perform public service and in return for a fair wage. Regarding public jobs, which are aimed at serving the community, citizens are equal in assuming public jobs. It is worth noting that all economic and social rights stipulated in the Omani Basic Statute are defined by law in terms of exceptions to them.

Although economic and social rights were stipulated in the Basic Statute, the Sultanate's accession to the International Covenant on Economic and Social Rights did not take place until 2020, while expressing reservations about the provisions of the two items related to the right to form unions and the right to strike for employees in government units[14].

## 5 Guarantees for the protection of social and economic rights and freedoms in the Basic Statute

Economic and social rights enshrined in the International Bill of Human Rights include the right to obtain adequate food, adequate housing, education, proper health, cultural participation, clean water and sanitation, social security, and work. They are rights that are inseparable from other human rights, as the Universal Declaration of Human Rights (1948) does not differentiate between them, but the tensions of the Cold War and the resulting negotiations produced two separate covenants: the first for civil and political rights and the second for economic and social rights. This distinction quickly vanished after the Cold War ended. The Vienna Declaration (1993) and later the 2030 Agenda for Sustainable Development renewed the principle of indivisibility of all human rights [15].

The internal legislation of states, most of which are constitutions, has provided protection for the basic rights of individuals, as constitutional texts have raised them to the ranks of constitutional rights that may not be violated, whether by legislative authority or executive authority:

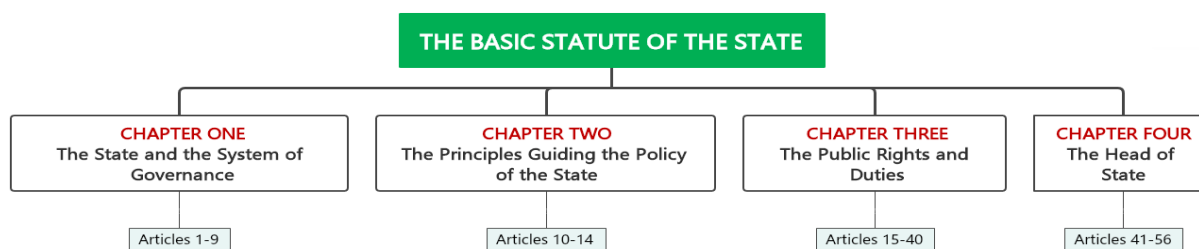
- i. **Declarations of Rights:** These are either special texts related to the rights and freedoms of the citizen in an independent document that has constitutional value, as is the case in France, or appear in the preamble to the constitution, as is the case of the Italian Constitution, or some constitutions may single out an entire chapter for these rights and freedoms, as in the Basic Statute of the state in the Sultanate of Oman. These texts are issued by bodies that hold constituent power, and they summarize what social and political regulations must be based on. They practically present all powers and capabilities that belong to individuals and the state should not deny them. In the previous sections, we explained international charters, declarations and covenants on the basis of which these rights were established.
- ii. **Rights guarantees:** They are different from declarations of rights in that they are the legal establishment of individual freedom, which would alert both legislative and executive authorities to the necessity of not violating them. They are texts or provisions related to the rights and freedoms of citizens and express either the role of the state in society or the political philosophy system of government in the country. It constitutes what French jurisprudence calls the social constitution, to distinguish it from the provisions relating to the organization and procedures for the functioning of constitutional institutions in the state, which this jurisprudence calls the political constitution. The content of texts or provisions related to rights and freedoms varies from one constitution to another, according to the applied political system. In this context, we find that despite the recognition of the provisions related to rights and freedoms of the legal value of constitutional rules in terms of form, a part of jurisprudence, headed by Rivero and George Fidel, differentiates between two types of rules or provisions contained in texts related to freedoms and rights [16].

- **Decisional or legal provisions or rules:** They are provisions that are specifically characterized, and therefore, they are immediately applicable; that is, individuals can invoke them before the ordinary and constitutional judiciary, without the need for the intervention of the ordinary legislator. It constitutes a restriction on the ordinary legislator, who does not have the right to contravene it under the penalty of unconstitutionality, for example: Paragraph 6 of Article 14 of the Basic Statute of the State which stipulates that “private property is safeguarded, and no one is prevented from disposing of his property except within the limits of the law, and that property is not expropriated from anyone except for the public benefit, and in the cases specified in the law, and in return for fair compensation”. Article 21 of the Basic Statute stipulates that “All citizens are equal before the law, and they are equal in rights and public duties.” These provisions can also be invoked. before court in the event of a violation.
- **Directive provisions or rules:** These are non-specific provisions that cannot be applied without the intervention of the ordinary legislator, as citizens cannot invoke them before the judiciary; therefore, they represent mere guiding rules or just a political or social program for governance. These provisions constitute a work program that the state or system of the government seeks to achieve. Citizens cannot resort to the judiciary invoking these provisions unless the legislator intervenes to put them into practice. The legislator’s obligation in this respect is a political or moral obligation with wide discretionary authority to intervene by enacting laws regulating its executive procedures. Any citizen has the right to invoke these laws before court. In all cases, the legislator is bound by the constitutional legal value of these provisions, so he cannot issue legislation that contradicts them, and the legislator’s commitment here is a negative legal obligation not to violate these provisions under the penalty of unconstitutionality.

In addition to declarative and directive provisions, some constitutions include what has been termed the economic and social principles of the state, which constitute directive provisions or rules. These are non-specific provisions that cannot be applied or invoked without the intervention of an ordinary legislator. In other words, they are merely directive rules or just political or social programs of governance, and the legislator’s commitment to them is a political or moral obligation. Nevertheless, their constitutional value makes the legislator abide by the constitutional value of these provisions, so he cannot issue legislation that contradicts them [16].

How did the Omani Basic Statute formulate guarantees of economic and social rights and freedoms? In what framework can they be classified?

The guarantees of economic and social rights and freedom were contained in the Basic Statute of the State in the Sultanate of Oman under the title Principles Guiding State Policy as an independent chapter, which is the second chapter of this system. It consists of four articles (Articles 10-14), and the second and third chapters are devoted to economic and social principles, respectively (see Figure 1).



**Fig. 1:** Layout of the basic statute of the state

Therefore, according to the initial perception, the provisions of economic rights and freedoms came into the Basic Statute of the Omani state in the form of principles that are classified within programmatic directive provisions. This is clear in the title of these principles as guiding principles of state policy.

In the following, we will expand on the analysis of the legal text in the Basic Statute and how it organized each of the six guarantees stipulated in the International Bill of Human Rights, which can be divided into two types:

**First: Guarantees that are not expressly stated in the Basic Statute of the State, including:**

- 1) **The right to adequate food:** The Basic Statute did not single out a clear and independent text guaranteeing this right, but it could be placed within the framework of guidelines for state policy related to achieving prosperity for citizens, raising their standard of living and eliminating poverty as indicated by the law (The Basic Statute of the State, 2021, art. 14). It can also be included within the social principles guaranteed by the state of justice, equality and equal opportunities among citizens (The Basic Statute of the State, 2021, art. 15).

- 2) The right to cultural participation: It came hidden behind the state's guarantee of freedom of intellectual creativity and the care of creators and its encouragement to advance the art and literature (The Basic Statute of the State, 2021, art. 16).
- 3) The right to adequate housing: It is also a right that is silent in the texts of the Basic Statute, and the constitutional text relies on its guarantee of the family, considering it the basis of society, and its basis is religion, morals, patriotism, and the state works on its cohesion, stability and consolidation of its values (The Basic Statute of the State, 2021, art. 15).
- 4) The right to water and sanitation services: There is no explicit and independent text guaranteeing it, but it can be included within the social principles in the environment that the state works to protect and its natural balance to achieve comprehensive and sustainable development for all generations and not harm them (The Basic Statute of the State, 2021, art. 15).

**Second: Guarantees that are clearly and explicitly stipulated in the Basic Statute of the State in independent texts are:**

- 1) The right to health: It is guaranteed in a clear and explicit text, in which the state guarantees health care for citizens, works to provide means of prevention and treatment of diseases and epidemics, and encourages them to establish hospitals and private treatment homes under their supervision, as indicated by the law (The Basic Statute of the State, 2021, art. 15).
- 2) The right to education: set within cultural principles and regulated in several clear and explicit paragraphs. It is right for every citizen and obligatory until the end of the basic education stage. The state encourages the establishment of private schools and institutes under its supervision (The Basic Statute of the State, 2021, Article 16).
- 3) The right to social security: It came in the form of a partial guarantee, first, through the state's guarantee for all citizens in the provision of social insurance services, and second, through the total guarantee of some citizens for whom the state provides aid in cases of emergency, illness, disability and old age, as indicated by the law (The Basic Statute of the State, 2021, art. 15).
- 4) The right to work: The Basic Statute assigned it an independent guarantee in its explicitly stipulating that work is a right and an honor, and every citizen has to practice the work he chooses for himself within the limits of the law (...) The state enacts laws that protect the worker and the employer, regulate the relationship between them and provide security conditions for occupational safety and health (The Basic Statute of the State, 2021, art. 15).

In all cases, the formulation of the provisions guaranteeing the previous economic and social rights and freedoms did not change their classification within the economic and social principles of the state, which constitute a kind of non-specific provisions or directive rules that cannot be applied or invoked without the intervention of the ordinary legislator, either explicitly by referring The Basic Statute to the legislator to be regulated "as prescribed by the law," or "within the limits of the law," or "according to the provisions of the law" formula. Therefore, they are merely directive rules or just a political or social program of governance, and the legislator's commitment to them is a political or moral obligation. However, this does not invalidate their constitutional value, which makes the legislator subject to the commitment to its constitutional legal value, preventing him from being able to issue legislation that contradicts it.

In addition, a mandatory guarantee of economic and social rights is not limited to the enactment of the constituent authority for its articles but extends to their protection. The question here is how to protect these articles since violating constitutional rules is not subject to the same penalty as violating legal rules in other branches of law? According to legal rules, the debtor must abide by his commitments through civil sanctions. In criminal law, a criminal sanction guarantees the protection of its provisions, meaning that the judiciary and public power constitute a guarantee for the application of legal rules in these branches of the law. In public law, particularly constitutional law, the guarantee of implementing the provisions of its articles is different, as the mandatory nature of constitutional law rules is not subject to the judiciary and public power when they are violated, as in other legal rules. A ruler who exceeds the powers specified in the constitution can be stopped by other public authorities under the supervision of citizens or public opinion. Montesquieu says, "Power should be a check to power. A government may be so constituted, as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits" [18]. The special nature of constitutional law requires ensuring that its rules are enforceable in the event of their violation in a different way from other legal rules. The coercive sanction to ensure the application of other legal rules is authoritarian coercion (judiciary and public powers). As for sanctions to ensure the application of constitutional rules, they are essentially political coercion (another authority or public opinion) [19].

In the application of the principle of legality, which is the essence of the state of law, which in turn is based on the principle of the gradation of legal rules, at the top of which come the constitutional rules. In addition to the previous guarantee, another guarantee is secured by the constitutional judiciary by monitoring the constitutionality of laws and the judiciary, in general, in the state. The Supreme Court represents the top of the judicial hierarchy in the Sultanate, and it

is the Constitutional Court, which settles “disputes related to the extent to which laws and regulations conform to the Basic Statute of the Sultanate of Oman and do not contradict its provisions”[20]. The principle of gradation of legal rules, which was explained in the fatwa issued by the Ministry of Justice for the year 2020 as follows: “The principle of gradation of legal rules, which is based on the subordination of the lower-ranking rule to the higher-ranked rule” [21].

The study examined the rights and freedoms specified in international conventions and norms, particularly focusing on the International Covenants on Civil and Political Rights (ICCPR) and their inclusion of economic and social rights and freedoms.

The level of legal guarantees for the protection of these rights was analyzed, as stated in the Basic Statute of the Sultanate of Oman.

The Sultanate of Oman joined the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2020.

Reservations were made by the Sultanate of Oman regarding the provisions related to the right to form trade unions and the right to strike for employees in government units when joining the ICESCR.

The inclusion of economic and social rights in the Omani Constitution took place in 1996 with the establishment of the Basic Statute of the State.

## 7 Discussions

The guarantees of economic and social rights and freedoms in the Basic Statute of the Sultanate of Oman are designed to preserve national identity while reinforcing cultural and spiritual values.

These guarantees are characterized as indeterminate programmatic directive provisions, requiring the intervention of the ordinary legislator for their application or invocation.

The Basic Statute does not explicitly provide for oversight of the constitutionality of laws and regulations.

The determination of the judicial authority responsible for adjudicating disputes regarding the conformity of laws with the Basic Statute is referred to within the law itself.

The Supreme Court has emerged as the constitutional court in Oman, responsible for resolving disputes regarding the extent of conformity of laws and regulations with the Basic Statute of the State and ensuring no violation of its provisions occurs.

## 8 Conclusions

The guarantees of economic and social rights and freedoms in the Basic Statute of the State are still weak and ambiguous with regard to many economic and social rights confirmed by the International Law of Human Rights, which, in turn, weakens their protection and prevents achieving the goals of Oman Vision 2040.

Depending on the fact that the principle of gradation in the rules is one of the principles approved by the fatwa issued by the Ministry of Justice in 2020, and on the basis of which the Basic Statute of the State is considered the highest of the rules, its provisions may not be violated. Moreover, all courts must refrain from applying laws that violate the Basic Statute of the State. The Supreme Court’s jurisdiction also decides on constitutional conformity.

## 9 Recommendations

Human rights institutions should play a role in spreading a culture of human rights in society and educating people about the concept of economic, social and cultural rights and their importance, which contributes to strengthening human rights thought in society and limiting violations of a particular group.

It is necessary to adhere to international human rights conventions and covenants ratified by the Sultanate of Oman, which have the force of law after their publication.

### *Acknowledgment:*

First and foremost, we would like to thank the research participants who generously shared their insights and experiences, without whom this study would not have been possible. Their valuable contributions have greatly enriched our understanding of the subject matter.

Furthermore, we would like to thank the academic community for their scholarly work in the field of human rights and the legal framework. Their research and publications have served as valuable references and sources of inspiration.



Our sincere appreciation goes to the relevant international organizations and conventions for their efforts in promoting and protecting human rights worldwide. Their work has laid the foundation for our study and provided the necessary framework for analysis.

Finally, we extend our heartfelt thanks to all those mentioned above and anyone else who has contributed in any way to the completion of this paper.

### Conflicts of Interest Statement

The authors certify that they have NO affiliations with or involvement in any organization or entity with any financial interest (such as honoraria; educational grants; participation in speakers' bureaus; membership, employment, consultancies, stock ownership, or other equity interest; and expert testimony or patent-licensing arrangements), or non-financial interest (such as personal or professional relationships, affiliations, knowledge or beliefs) in the subject matter or materials discussed in this manuscript.

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