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6 Impact of Culture on
Socio-Economic Development

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**The Promotion of the Restitution of
Cultural Properties in the Islamic World**
Submitted by the Kingdom of Saudi Arabia

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The civilizational and humanitarian significance of cultural properties extends beyond national interests, reflecting a shared identity and heritage. As living witnesses to the histories of nations and civilizations, cultural properties also hold value that contributes to national economies. This underscores the urgent need to combat illicit trafficking, which threatens many Islamic countries through theft, looting, or smuggling across borders.

The Kingdom of Saudi Arabia, committed to safeguarding cultural heritage, emphasizes the need for international and regional cooperation. The Kingdom recognizes ICESCO's efforts, particularly its legal studies addressing national and international mechanisms and challenges and solutions in combating illicit trafficking, legal aspects of ownership disputes, and the restitution of cultural assets to their countries of origin. These studies stress the importance of enhancing cooperation across the Islamic world to address the legal gaps. They also highlight the need for unified legal mechanisms, streamlined procedures, and stronger coordination to ensure the swift restitution of cultural properties.

Moreover, Saudi Arabia emphasizes the need for ICESCO Member States to collaborate in addressing these challenges and enhancing international cooperation. This requires enforcing relevant international treaties and agreements and exchanging expertise. The Kingdom acknowledges ICESCO's leadership in heritage protection and its ongoing support for initiatives in this area. Through its Strategy to Combat Illicit Trafficking in Cultural Property, ICESCO has advocated for the development of legal frameworks to address this issue, and played a central role in supporting research, fostering collaboration, and providing platforms for discussions on policies and measures for the restitution of cultural assets. Saudi Arabia's initiative to create a joint legal mechanism aims to assist countries in restoring their cultural heritage.



The trade in cultural property constitutes a significant portion of the global art market, with many transactions involving historical and cultural artifacts. However, this sector is plagued by illegal practices such as the forgery and illegal sale of cultural items. These activities present ongoing legal and ethical challenges, compounded by the lack of effective deterrent mechanisms.

This paper seeks to analyze methods used to forge cultural properties' origins and their impact on international and national laws concerning ownership. It also proposes establishing an advisory committee under the Conference of Ministers of Culture in the Islamic World to assist in restituting cultural assets. The paper will (1) outline the challenges of restituting cultural property, (2) propose the creation of an advisory committee, and (3) define its roles and responsibilities.





1. Challenges Facing the Restitution of Cultural Properties

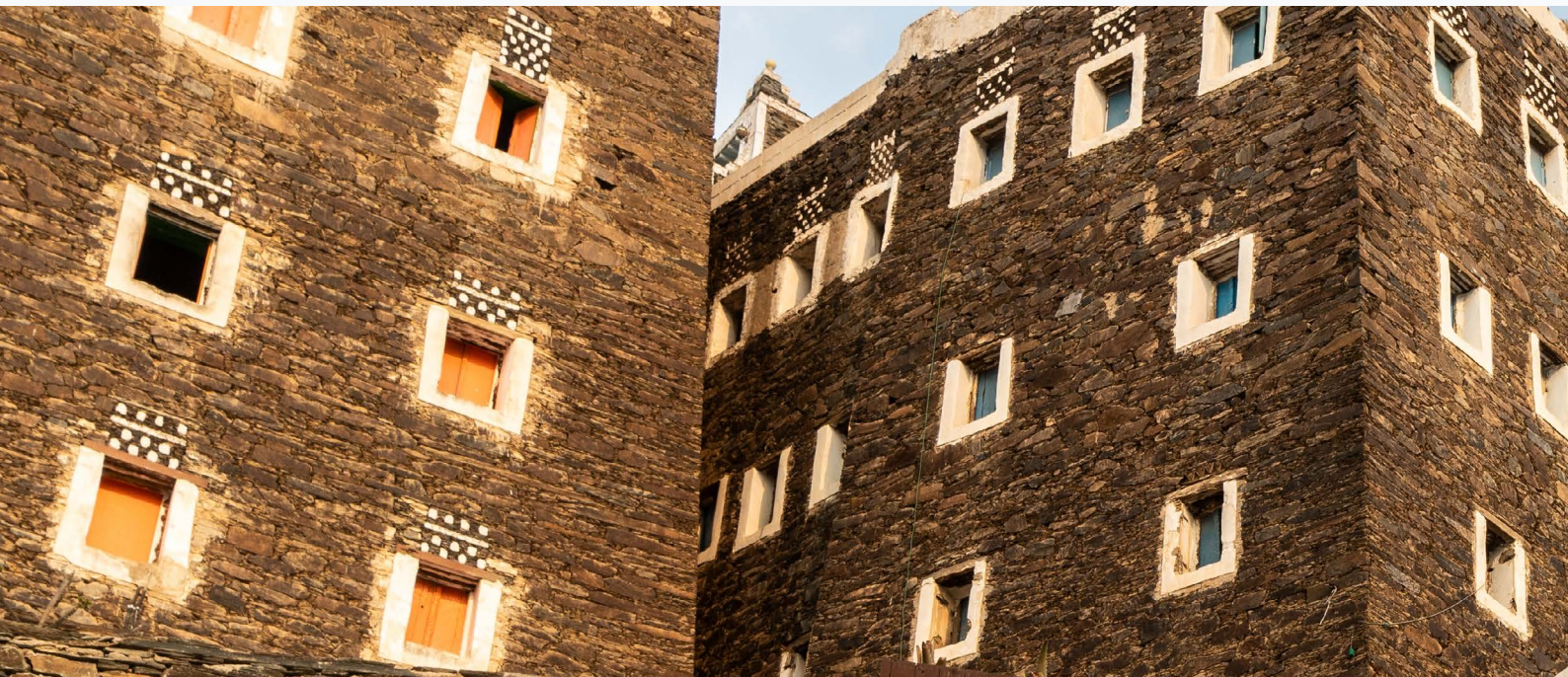
The restitution of cultural properties to their countries of origin encounters various challenges that can impede progress, whether these items were illicitly exported or smuggled in the past. These challenges span legal, economic, political, and social complexities.

Legal restitution efforts are complicated by differences in national legal systems. While some states assert their sovereign right to restitution by designating cultural property as part of their «national heritage,» others prioritize the principle of «bona fide acquisition,» leading to complex ownership disputes. In many cases, rightful acquisition claims create further obstacles to restitution. Moreover, countries seeking to recover their cultural artifacts must navigate foreign judicial systems with varying legal frameworks and procedures, often resulting in prolonged and complex litigation.

Moreover, cultural and historical differences create challenges, as countries define cultural property and heritage in various ways. Some base their definition on chronological criteria, while others emphasize historical, artistic, or cultural significance. Some countries view cultural property as essential to their national identity, while others consider it part of the shared human heritage. These differing views often lead to debates over the cultural value of disputed artifacts, complicating restitution efforts.

Furthermore, economic and financial challenges are major obstacles to the repatriation of cultural property. These efforts require significant funding, including costs for legal services, research, documentation, and secure transport. Additionally, owners may view these properties as valuable sources of revenue, either through museum exhibitions or sales on the international art market, which reduces their willingness to return them. As such, securing adequate funding and resources is a critical challenge in this process.

Political and diplomatic factors also complicate cultural property restitution, as these issues can intersect with international relations and political pressures. At times, restitution may be used as political leverage, hindering negotiations. Additionally, international tensions can disrupt cooperation between countries. Social and cultural challenges in the country of origin further complicate matters, as some nations struggle to provide adequate infrastructure for preserving returned artifacts. These countries may lack proper facilities and expertise for conservation. Moreover, insufficient awareness of the cultural significance of these assets may lead to resistance, especially when restitution incurs high financial costs.



The international opposition from cultural institutions and major museums often impedes restitution efforts. Museums holding disputed cultural property may resist its return due to its cultural and artistic value, as well as the financial interests involved and concerns about potential harm to their reputation. Additionally, the global art market can hinder restitution, with some market participants viewing cultural artifacts as valuable investments, opposing their return to their countries of origin.

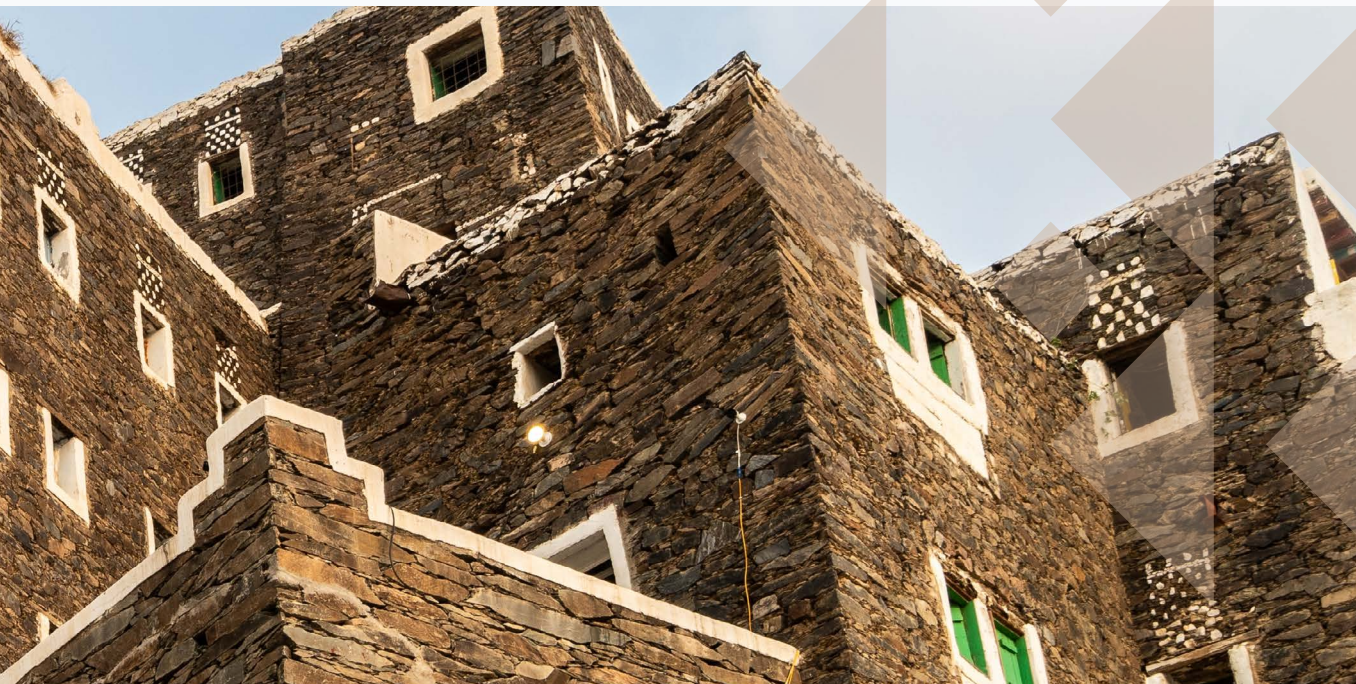
Lastly, challenges related to documentation and inventory can hinder the repatriation of cultural property. Proving original ownership is often complicated, especially when historical records or physical evidence are lacking. Document manipulation can further obstruct the process, as the history or acquisition of the object may be falsified, making it more difficult to establish legal ownership of these artifacts.

This brings us to the issue of forging cultural property sources, which complicates repatriation efforts. Methods of falsification include :

1. Fake certificates: Some traders use fraudulent certificates to falsely validate the ownership history of cultural properties. For example, an art dealer or collector might claim an item belonged to a historical family collection from colonial or aristocratic periods, leveraging the credibility of such claims to obscure its true origin. These unverifiable assertions manipulate market values and complicate the proof of original ownership, particularly when inventory and documentation are lacking in the country of origin.

2. Circular selling, also known as multi-broker sales, is a complex method of falsifying cultural property provenance. In this process, cultural items are purchased from a trader or art gallery, held for a period, then resold at auction with a provenance certificate claiming it belongs to an old private collection. The trader then repurchases the item





through intermediaries, bolstering its legitimacy and increasing its market value. While seemingly legal, this practice raises significant legal issues, especially when a country of origin seeks restitution.

3. Forgery of official documents, including shipping records, export permits, and ownership certificates, is a deceptive tactic in the illicit trade of cultural property. Fraudulent documents may falsely indicate lawful acquisition through private sales. In some cases, local lawyers or notaries authenticate these claims, lending them an appearance of legitimacy before national and international authorities.

4. The principle of bona fide acquisition presents a significant legal challenge:

This principle holds that an individual who acquires or possesses an item without knowledge or suspicion of its illicit origins may retain legitimate ownership, even if it infringes on the rights of others. In the context of cultural property, it implies that a buyer of a cultural artifact or artwork, unaware of its stolen or illicit status, could be legally protected. This issue is a subject of debate in international treaties and various national legal frameworks. However, ICESCO's study on Legislative Mechanisms for Combating Illicit Trafficking in Cultural Properties in the Islamic World revealed that some Member States' legal frameworks do not address this matter.

Legal frameworks at both national and international levels allow states and rightful owners to seek restitution of cultural property through judicial or arbitral mechanisms. However important, these avenues often prove ineffective due to their high financial costs. As a more practical alternative, international law provides less costly solutions, including negotiations, diplomatic channels, mediation, and conciliation. These approaches are endorsed by key legal instruments, such as Article 7 of the 1970 UNESCO Convention, Article 25 of the Convention on the Protection of the Underwater



Cultural Heritage, and Article 16 of the 1995 UNIDROIT Convention, which allows its Contracting States to facilitate the return of cultural objects through diplomatic or consular channels. Given diplomacy's central role in international cooperation and dispute resolution, this paper calls on the Conference of Ministers of Culture in the Islamic World to establish an advisory committee to support the repatriation and restitution of cultural property.

2. Advisory Committee on Cultural Property Restitution in the Islamic World

Following the 12th Conference of Ministers of Culture of the Islamic World in September 2023 in Doha, Qatar, which tasked the ICESCO General Directorate with preparing the Strategy to Combat the Illicit Trafficking of Cultural Property, and in light of the Conference's recognition of the seriousness of this issue and its call for collective action among ICESCO Member States, we stress the necessity of practical and effective steps moving forward.

The interim conclusions drawn by ICESCO from its studies and analyses on this matter highlight the need for urgent and comprehensive measures to enhance the repatriation of cultural property through multilateral cooperation. These efforts must be supported by all ICESCO Member States and focus on removing legal, economic, and social barriers that hinder the return of cultural properties to their countries of origin.

In this context, establishing an advisory committee to support the restitution of cultural property in the Islamic world is essential. This Committee will coordinate efforts among stakeholders, develop effective strategies to combat illicit trafficking, and provide technical assistance to Member States. It will also foster cooperation among relevant institutions and serve as a platform for sharing information and best practices to address common challenges.

3. Roles of the Advisory Committee on Cultural Property Restitution in the Islamic World

Establishing this Committee is a strategic step toward enhancing cooperation among Member States in combating illicit trafficking in cultural property. Its role goes beyond coordination and guidance to encompass various functions that strengthen the protection and restitution of cultural properties to their countries of origin. Key responsibilities include :



1. Coordinating Efforts :

The Committee would coordinate efforts among ICESCO Member States to establish a unified vision for the restitution of cultural property. Through this coordination, it shall identify common legal and technical mechanisms to address issues related to cultural property.

2. Proposing Legal and Regulatory Harmonization

The Committee would propose legal and regulatory mechanisms to harmonize national legislation with international conventions on cultural property protection.

3. Providing Advisory and Technical Support

The Committee shall offer technical and advisory assistance to Member States by facilitating access to experts and specialists in areas such as international heritage law, cultural property preservation and conservation.

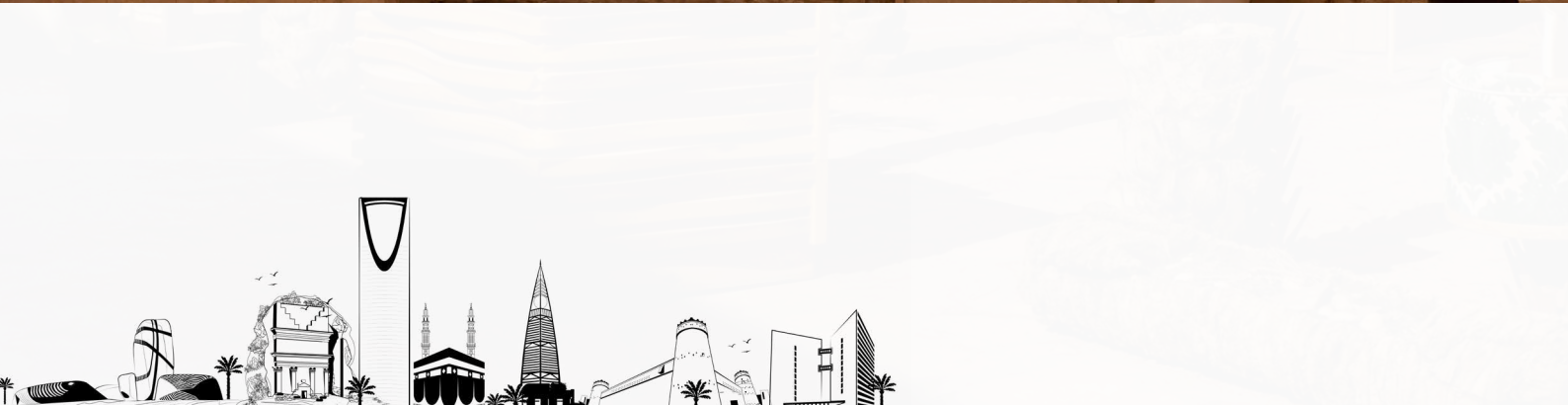
4. Monitoring and Assessing the Status of Cultural Property

The Committee shall establish a periodic monitoring mechanism to assess the state of cultural property in Member States. It would conduct ongoing evaluations of smuggled or illicitly trafficked cultural property, collect and analyze relevant data, and review protection laws and policies across different countries to identify gaps and obstacles.

5. Facilitating Restitution, Negotiations, and Mediation

The Committee would support negotiation processes between states seeking to return their cultural property from possessing states. This includes assisting in diplomatic discussions, promoting efforts to resolve disputes, and fostering an environment of trust between parties to facilitate successful restitution outcomes.







6. Preparing Periodic Reports and Reverting Recommendations to the Conference of Ministers of Culture in the Islamic World

The Committee shall prepare periodic reports on the status of cultural property in the Islamic world and provide strategic recommendations. These reports would inform national and regional policies and offer practical solutions for the implementation of strategies to combat illicit trafficking in cultural property.

7. Encouraging Bilateral Agreements

The Committee shall promote and encourage Member States to conclude bilateral agreements for regulating and coordinating the repatriation of cultural property. These agreements would include clear legal provisions for restituting artefacts. Hence, they must be respected in a way that respects the sovereignty of states and serves the interests of all parties involved.

8. Cooperating with International and Regional Organizations

The Committee shall work to strengthen cooperation with specialized international and regional organizations, such as UNESCO, Interpol, and others. This collaboration would facilitate the establishment of a broad international network to combat trafficking in cultural property and ensure coordination between the judicial systems of different countries.

9. Holding Awareness Campaigns

The Committee shall organize awareness campaigns across the Islamic world to highlight the importance of preserving cultural properties and the necessity of their restitution to their countries of origin. These campaigns would also aim to raise public awareness about the dangers associated with illicit trafficking in cultural property.



10. Strengthening Capacities

The Committee shall work to enhance the capacities of legal experts in cultural property restitution through specialized training on international heritage conventions and diplomatic negotiation techniques. It would also organize workshops for Member States to exchange best practices in restitution. Additionally, the Committee would strengthen technical expertise in digital documentation of antiquities using advanced technologies and train security personnel in investigative and enforcement methods to combat illicit trafficking.

11. Compiling Database of Stolen or Lost Cultural Property

The Committee shall work to establish a regional database of stolen or lost cultural goods, providing detailed records to aid in the identification and restitution of smuggled artifacts. This database would support information exchange among Member States, enhance coordination among relevant authorities, and strengthen cooperation with international organizations, including Interpol, to combat illicit trafficking and facilitate the lawful restitution of cultural property.

The establishment of this Committee represents a significant step in strengthening cooperation among ICESCO Member States to combat illicit trafficking in cultural property and support its restitution. It would serve as a platform for coordinating efforts, fostering collaboration with national and international entities, providing technical and legal support, and developing effective strategies for the repatriation and preservation of cultural heritage for future generations.







      
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