

# Big Promises, Small Gains: Domestic Effects of Human Rights Treaty Ratification in the Member States of the Gulf Cooperation Council

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### ABSTRACT

In recent years, the Gulf Cooperation Council (GCC) states have been increasingly willing to ratify United Nations human rights instruments. This article examines the underlying rationales for these ratifications and the limited range and drivers of subsequent domestic reforms post ratification. Drawing on both a quantitative analysis of engagement with the UN treaty bodies and Charter-based mechanisms in over 120 UN reports and qualitative interviews with over sixty-five government officials, members of civil society, National Human Rights Institutions, lawyers, and judges from all six states, this article argues that in the GCC states, UN human rights treaty ratification results from a desire to increase standing in the international community. Treaty ratification has limited effects driven by international socialization and cautious leadership preferences.

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## I. INTRODUCTION

The development of international human rights treaties has been the central multilateral effort of states in addressing human rights at the international level over the past sixty years.<sup>1</sup> It is a generally accepted axiom that ratification is the first step toward the implementation of international human rights law. The international community places particular emphasis on ratification of the ten core international human rights treaties.<sup>2</sup> Key human rights actors regularly report on and encourage treaty ratifications. Moreover, the issue is regularly raised by the various treaty bodies, special procedure mandate holders, and states taking part in Universal Periodic Review (UPR).<sup>3</sup>

Member states of the Gulf Cooperation Council (GCC)<sup>4</sup> have increasingly moved to ratify these core instruments, particularly since the end of the Cold War and the invasion of Kuwait in 1990. Despite these efforts, the domestic rationales and subsequent effects of treaty ratification in the GCC are under-studied and under-theorized.<sup>5</sup> While general sets of factors driving ratification and domestic effects have been explored in the literature globally, little is known about what drives ratification and implementation of human rights treaties in the GCC. More also needs to be understood about why domestic effects of ratification, including the patterns of reservations, vary across the GCC. This article cannot offer a comprehensive answer to all of these questions with respect to all six countries.<sup>6</sup> It aims, however, to offer

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1. *Multilateral Treaties Deposited with the Secretary-General, Human Rights*, UNITED NATIONS TREATY COLLECTION, available at <https://treaties.un.org/pages/participationstatus.aspx>.
  2. See *The Core International Human Rights Instruments and their Monitoring Bodies*, OFFICE OF HIGH COMMISSIONER FOR HUMAN RIGHTS, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx/>.
  3. See *Human Rights Bodies*, OFFICE OF HIGH COMMISSIONER FOR HUMAN RIGHTS, (28 Sept. 2015), available at <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>; *Universal Periodic Review*, OFFICE OF HIGH COMMISSIONER FOR HUMAN RIGHTS, (28 Sept. 2015), available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.
  4. The Gulf Cooperation Council or the "Cooperation Council for the Arab States of the Gulf" is an intergovernmental and regional body with permanent observer status at the United Nations. The six member states of the Gulf Cooperation Council, formed in 1981, include: Bahrain, Kuwait, the Sultanate of Oman, Qatar, the Kingdom of Saudi Arabia, and the United Arab Emirates. See *The Charter, THE COOPERATION COUNCIL FOR THE ARAB STATES OF THE GULF* (2012), available at <http://www.gcc-sg.org/eng/>.
  5. Based upon a search of ten well-known regional and human rights focused journals completed on 19 June 2014, 1,884 articles were found relating to the Gulf Cooperation Council states. Of these, only 122 articles were relevant to human rights and the majority of those concentrated only on state structure and political economy. Databases searched were: Arab Studies Quarterly, Arab Studies Journal, Middle East Quarterly, Middle East Journal, Human Rights Quarterly, International Journal of Human Rights, Human Rights Law Review, Middle East Law and Governance, International Journal of Middle East Studies, and Harvard Human Rights Yearbook.
  6. We also do not seek to address the domestic effects of human rights treaty ratification beyond the ten core treaties of the United Nations. Thus, the following were not considered: the International Labour Organisation Conventions, the Arab Charter on Human Rights, or other bodies of law related to human rights issues, such as international humanitarian law or international refugee law.



a broad overview of rationales for ratification. It also explores the extent and motives behind domestic effects of treaties. The article maps the main features of human rights treaty ratification in the region, and argues that human rights treaty ratification comes about due to GCC leaders' concerns to be seen as integrated into the international community. Additionally, small gains emerge after ratification as a combination of international socialization and GCC's leaders' cautious leadership preferences for domestic human rights reform. To support these claims, the article employs an original qualitative dataset based upon interviews carried out in the region with diplomats, policy makers, judges, lawyers, and human rights activists. It also uses a qualitative dataset comprised of coding GCC states' interaction with the UN human rights treaty mechanisms.<sup>7</sup>

The article begins by reviewing the existing literature and outlines a working framework of potential drivers for domestic and international action on human rights law in the GCC. Given the limited English-language scholarship on the constitutional jurisprudence of the GCC states, the second section provides a brief outline of the legal and political frameworks of the Gulf states as they pertain to human rights law. In the third section, the commitment of the GCC states to the UN human rights framework and mechanisms is assessed. In the fourth section, the limited domestic effects of human rights treaty ratification are surveyed. It is shown that while the GCC states' ratification of, and engagement with, UN human rights treaties has increased over recent decades, domestic effects of treaty ratification are limited, but also vary by country and issue area despite regime similarities. Secondary effects, such as institution building and further ratification, which

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7. Over sixty-five interviews were carried out with government officials, lawyers, judges, members of civil society, diplomats, and ambassadors based in the GCC countries between November 2012 and May 2014. We carried out this first-hand research in Qatar, Kuwait, and Oman. In addition to these interviews, we invited governmental and nongovernmental actors to two different sets of focus group-workshops along with in-depth one-on-one interviews with each of them. They attended from all six GCC states. Due to our commitment to our interviewees' requests for anonymity, we indicate all these interviews as having taken place in Qatar, and do not indicate which of the six GCC states the interviewee comes from in the footnote. The interview data we draw from, therefore, is far more balanced in terms of GCC representation than the footnotes would suggest. These were supplemented by interviews carried out with diplomats and human rights experts in Geneva and NGOs in London. All interviews are on file with the authors. The quantitative dataset consisted of an aggregation of every substantive recommendation made to the GCC states by the Treaty Bodies following state reporting; by the Special Rapporteurs; by Working Groups following visits to the states; and by other states through the UPR procedure. These recommendations were then grouped into one of four categories depending on the nature of the reform called for (legislative reforms, international or UN engagement measures, policy developments, and capacity building initiatives). Novel recommendations were distinguished from recommendations that substantively rehearsed existing recommendations so that longitudinal pressure could be assessed. Each of the legislative and international engagement recommendations were then followed up to identify positive delivery on the recommendation, provisional or partial commitment to delivery, or rejection of the recommendation (either by explicit statement or through contradictory action). The database was current as of April 2014.

have lower costs, are more widespread than primary effects, such as legislative changes and judicial application of UN human rights treaties. The article concludes by discussing exceptional areas of domestic legislative action (particularly in the area antitrafficking and in access to services for children of noncitizens and children of women citizens married to noncitizen fathers) and key drivers of limited human rights reform.

## II. RATIONLES BEHIND DECISIONS TO RATIFY AND SUBSEQUENT EFFECTS OF RATIFICATION

Over the past decade, the academic study of the rationales behind human rights ratification and their subsequent domestic effects has produced important theoretical knowledge in relation to a range of different countries, regions, and issue areas.<sup>8</sup> States ratify human rights treaties for a diverse number of reasons. On the one hand, ratification may reflect a sincere intent to give effect to the content of the treaty as an end in itself; while on the other hand, states may ratify human rights treaties insincerely. Treaty ratification may serve as a means to confirm, to boost, or to create other international or domestic benefits without a principled commitment to give effect to the treaties' content as a whole.<sup>9</sup> Empirically, it is hard to disentangle sincere and insincere motivations. Given that UN human rights treaties are complex legal texts with multiple provisions, states may have sincere intent with regard to some provisions at the time of ratification, while other may not.

A diverse range of international, regional, and domestic factors prompt leaders to sign and then to ratify a particular human rights treaty. Additionally, the presence of international pressures for human rights reforms, the existing domestic legal and political institutional structures, and the ability of domestic actors to operate within these structures may condition the type of domestic effects that human rights treaties subsequently have.<sup>10</sup> Thus, the original motivations for ratification may not, in themselves, dictate the

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8. See generally Ryan Goodman & Derek Jinks, *International Law and State Socialization: Conceptual, Empirical and Normative Challenges* 54 DUKE L. J. 983 (2005); James R. Vreeland, *Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture*, 62 INT'L ORG. 65 (2008); BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009); Christine Min Wotipka & Kiyoteru Tsutsui, *Global Human Rights and State Sovereignty: State Ratification of Human Rights Treaties, 1965–2001*, 23 SOC. F. 724 (2008); *THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE* (Thomas Risse-Kappen, Stephen C. Ropp, & Kathryn Sikkink eds., 2013).

9. Vreeland, *supra* note 8, at 70, 77–80; SIMMONS, *supra* note 8.

10. Jean Grugel & Enrique Peruzzotti, *The Domestic Politics of International Human Rights Law: Implementing the Convention on the Rights of the Child in Ecuador, Chile, and Argentina*, 34 HUM. RTS. Q. 178, 179–82 (2012).



domestic outcomes of treaty ratification. This may be the case both when original intent is sincere, insincere, or partially sincere. Sometimes ratification leads to negligible effects.<sup>11</sup> In other cases, ratification may produce intended or unintended consequences leading to important improvements in human rights developments on the ground.<sup>12</sup> Recent scholarship on domestic effects of UN treaty ratification suggests ratification effects are to be largely conditional on domestic opportunity structures.<sup>13</sup> UN human rights treaties have the most effect where there is strong and sustained elite leadership, civil society mobilization, and support by the domestic judiciary both during and after ratification.<sup>14</sup> In countries where these factors are not prevalent, human rights treaties are bound to have negligible post ratification effects.<sup>15</sup>

The insights of international relations scholarship are an important starting point for the empirical study of the GCC region. These theoretical insights, however, largely stem from comparative studies in other regions or larger datasets, and need to be contextualized to take into account the regional characteristics of the GCC states.<sup>16</sup> All GCC states are hereditary monarchies with rich natural resources and economic wealth. Religious figures and conservative civil society members dominate the constitutional and legal arrangements in GCC states. These states are also known for their ruling bargain arrangements formed on the basis of wealth transfers to citizens.<sup>17</sup> While the general wisdom of factors affecting treaty ratification are relevant, the *sui generis* characteristics of the GCC states help develop more nuanced factors to understand treaty ratification and its effects. From

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11. Goodman & Jinks, *supra* note 8, at 995.
  12. See HEATHER SMITH-CANNON, *INSINCERE COMMITMENTS: HUMAN RIGHTS TREATIES, ABUSIVE STATES AND CITIZEN ACTIVISM* (2012).
  13. See BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009); COURTNEY HILLEBRECHT, *DOMESTIC POLITICS AND INTERNATIONAL HUMAN RIGHTS TRIBUNALS: THE PROBLEM OF COMPLIANCE* (2014); DIA ANAGNOSTOU, *THE EUROPEAN COURT OF HUMAN RIGHTS: IMPLEMENTING STRASBOURG'S JUDGMENTS ON DOMESTIC POLICY* (2013).
  14. SIMMONS, *supra* note 8; *THE PERSISTENT POWER OF HUMAN RIGHTS*, *supra* note 8.
  15. Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalising World: The Paradox of Empty Promises*, 110 *AM. J. SOC.* 1373, 1384–86, 1398, 1405 (2005).
  16. See generally THE RENTIER STATE: NATION, STATE AND INTEGRATION IN THE ARAB WORLD 2 (Hazem Beblawi & Giacomo Luciani eds., 1987); Jill Crystal, *The Human Rights Movement in the Arab World*, 16 *HUM. RTS. Q.* 435 (1994); ROSEMARY SAID ZAHLAN, *THE MAKING OF THE MODERN GULF STATES* (1989); HAYA AL-MUGHNI, *WOMEN OF KUWAIT: THE POLITICS OF GENDER* (2001); Daniel Brumberg, *Democratization in the Arab World? The Trap of Liberalized Autocracy*, 13 *J. DEMOCRACY* 56 (2002); Daniel Brumberg, *Liberalization Versus Democracy: Understanding Arab Political Reform*, Carnegie Endowment for International Peace, Working Papers, 37 (2003); *ISLAM AND DEMOCRACY IN THE MIDDLE EAST* (Larry Jay Diamond, Marc F. Plattner & Daniel Brumberg eds., 2003); Jennifer Lambert, *Political Reform in Qatar: Participation, Legitimacy and Security*, 18 *MIDDLE E. POL'Y* 89 (2011); Raed A. Alhargan, *The Impact of the UN Human Rights System and Human Rights INGOs on the Saudi Government with Special Reference to the Spiral Model*, 16 *INT. J. HUM. RTS.* 598 (2012).
  17. Zahra R. Babar, *The Cost of Belonging: Citizenship Construction in the State of Qatar*, 68 *MIDDLE E. J.* 403, 405–11 (2014).



across these literatures, two sets of factors are distilled: one that conditions ratification and another that shapes domestic implementation of human rights treaties in the GCC.

### A. Commitment Factors

The first (referred to as “commitment factors”) consists of four political, domestic, and international factors that are mostly likely to influence a GCC state’s decision to consent to (and thus ratify) an international human rights instrument.<sup>18</sup>

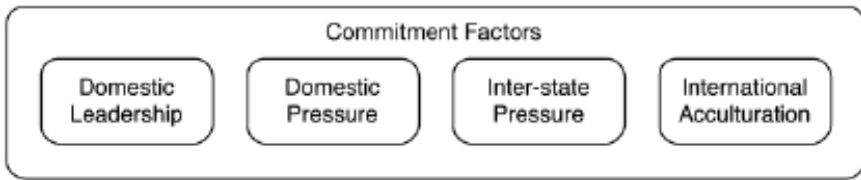


Figure 1. Commitment Factor Typography

1. *International pressure incentivizes human rights treaty ratification by external peer state pressure. Unilateral or multilateral pressure from other states in conjunction with their offers of tangible benefits (e.g. bilateral aid, trade or security agreements, support for UN resolutions or support for diplomatic initiatives) may lead to treaty ratification.*<sup>19</sup>

2. *International acculturation offers incentives to ratify because states seek to be identified or associated with the international community and see ratification as a means to obtain a modern or a legitimate state in the eyes of the international community.*<sup>20</sup> *Treaty ratification may also ensure that the state will not be regarded as an “outlier” state in the international community.*<sup>21</sup>

18. Since we are focusing on most likely factors, we exclude other factors such as the importation of domestic norms internationally.

19. See, e.g., Joel P. Trachtman, *Who Cares About International Human Rights? The Supply and Demand of International Human Rights Law*, 44 N.Y.U. J. INT’L L. & POL. 851 (2012); Uta Oberdörster, *Why Ratify? Lessons from Treaty Ratification Campaigns*, 61 VANDERBILT L. REV. 681 (2008).

20. For a full treatment of the logic of acculturation, see RYAN GOODMAN & DEREK JINKS, *SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW* (2013).

21. Interview, Qatar, (May 2013).

3. *Domestic political or societal factors refer to the existence, or absence, of demands from political or civil society forces. Ratification (or nonratification) of human rights treaties may emerge as domestic political concessions from local demands or as a means to respond to, to preempt, or to deflect domestic political or societal pressures.*<sup>22</sup>

4. *Domestic leadership preferences is a factor that links human rights treaty ratification with the domestic preferences of the ruling elites. A state-building and institutional-building program, or a decision by the ruler to lock-in preferences of future leaders to that program might be a leading factor in ratification decisions of hereditary rulers.*

## B. Domestic Effect Factors

The second set (referred to as “domestic effect factors”) is strongly influenced by global level political science literature. The literature emphasizes that strong elite leadership, civil society mobilization, and support from the domestic judiciary are important for the development of domestic rights.<sup>23</sup> It is important to apply these global theories with a deeper understanding of the regional context, as other regional studies of human rights domestic effects have also done.<sup>24</sup> In light of the combined political science literatures, eight factors have been identified that are important to the post ratification effects of UN rights treaties in the GCC.

1. *Interstate Pressure from allies may play an important role in getting a state to implement a particular human rights law or policy, especially if the pressure for change comes from a significant bilateral or a multilateral partner.*<sup>25</sup> *The absence of such pressure may hamper domestic effects.*

2. *International Socialization suggests that accepting international obligations brings with it continuing socialization effects to global human rights norms.*<sup>26</sup> *States exert effort into ratifying treaties as the*

22. See in particular, the concession model, Vreeland, *supra* note 8, at 70.

23. SIMMONS, *supra* note 8; THE PERSISTENT POWER OF HUMAN RIGHTS, *supra* note 8.

24. Grugel & Peruzotti, *supra* note 10, at 186–97; SIMMONS, *supra* note 8.

25. For example, the EU exerting pressure on Turkey to implement specific human rights policies stemming from human rights treaties. See Başak Çalı, *The Logics of Supranational Human Rights Litigation, Official Acknowledgement, and Human Rights Reform: The Southeast Turkey Cases Before the European Court of Human Rights, 1996–2006*, 35 L. & SOC. INQUIRY 311 (2010).

26. GOODMAN & JINKS, *SOCIALIZING STATES*, *supra* note 20.





rulers come to view these obligations as the appropriate form of conduct as a member of the international community.

3. *International nongovernmental pressure refers to the role of transnational advocacy networks in bringing about change in policy or law.*<sup>27</sup> Media-savvy and well-known International NGOs (INGOs), such as Amnesty International and Human Rights Watch, have increased their pressure on the GCC states after these states ratified treaties.<sup>28</sup> They issue regular reports on the GCC countries and follow individual cases. More pertinent to this study, INGOs submit shadow reports to the UPR and to treaty bodies, and feature in the interaction between the UN human rights system and GCC treaty reporting. States may respond to the pressures of INGOs to improve the international image of the country.<sup>29</sup>

4. *Regional acculturation refers to how regional dynamics matter in human rights law behavior.*<sup>30</sup> The literature on the GCC also points to the interconnectedness of governance in this region.<sup>31</sup> Regional acculturation may hamper and enable domestic effects of treaties in the GCC.

5. *Political economy emphasizes the economic incentives informing legal and political decisions with regard to domestic effects of human rights treaties. GCC states are often characterized as rentier states which elicit the support of their citizens through wealth transfer mechanisms and manage labor by way of the kafalah system.*<sup>32</sup> Human rights treaty recommendations challenge longstanding wealth transfer and privilege schemes. This hypothesis may explain lack of implementation on recommendations concerning the abolishment of the sponsorship system or allowing equal access to public services by noncitizens and limitations in citizenship laws.

27. See, e.g., the spiral model in Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practice: Introduction*, in *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE 1* (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink eds., 1999).

28. Interview, Amnesty International, London (March 2013); Interview, Human Rights Watch, London (March 2013).

29. *THE PERSISTENT POWER OF HUMAN RIGHTS*, *supra* note 8.

30. SIMMONS, *supra* note 8.

31. Anoushiravan Ehteshami, *Reform from Above: The Politics of Participation in the Oil Monarchies*, 79 INT'L AFF. 53, 55 (2003); Anoushiravan Ehteshami & Steven Wright, *Political Change in the Arab Oil Monarchies: From Liberalization to Enfranchisement*, 83 INT'L AFF. 913 (2007).

32. See SEAN FOLEY, *THE ARAB GULF STATES: BEYOND OIL AND ISLAM* 2010.





6. *Domestic leadership refers to leadership preferences of the ruling elite and the government. This hypothesis may explain the changes in human rights policy even when it lacks any bottom-up demand,<sup>33</sup> or the lagging of human rights change due to calculations from religious leaders, merchant families, or other powerful domestic groups.<sup>34</sup> The lack of clear domestic leadership would also explain slow progress in reforms and bureaucratic lack of interest in human rights change.*

7. *Domestic pressure refers to bottom-up influences affecting human rights policy. The theories on renter-states observe that human rights civil society is generally nascent or weak as political legitimacy is not reliant on their existence or activities.<sup>35</sup> However, civil society actors would still exist as government endorsed NGOs, and the state is aware of key economic and religious groups, the “Twitter youth,” and opposing voices. States would seek to be responsive to pressures from these diverse groups. Domestic pressure (or anticipated domestic pressure) may help explain both human rights reform as well as why reform lags even when the domestic leadership agrees with it.*

8. *Domestic law and Constitutional Rules may operate as structural constraints over the actions of political leaders and judges in the GCC by giving effect to UN human rights treaty recommendations particularly in the explicit recognition of Islamic Shari’a as a key source of constitutional law and legislation in all GCC states.<sup>36</sup>*

The overlap between the two sets of factors reflects the central importance of domestic drivers and interstate pressure to both ratification and implementation processes. In the following sections these quantitative and qualitative datasets are used to assess the relative impact of the various factors in ratification and subsequent effect. Before doing this, however, a brief overview of the domestic constitutional framework of the GCC states is provided.

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33. Mark Valerie, *Liberalization from Above: Political Reforms and Sultanism in Oman*, in CONSTITUTIONAL REFORM AND POLITICAL PARTICIPATION IN THE GULF 187 (Abdulhadi Khalaf & Giacomo Luciani eds., 2006).
  34. Steven Wright, *Generational Change and Elite-Driven Reforms in the Kingdom of Bahrain*, Durham Middle East Papers: Sir William Luce Publication Series 7 (2006), available at <http://dro.dur.ac.uk/456/1/Wright.pdf?DDD35>.
  35. Onn Winckler, *Labor and Liberalization: The Decline of Rentier System*, in POLITICAL LIBERALIZATION IN THE PERSIAN GULF 59 (Joshua Teitelbaum ed., 2009).
  36. Valerie, *supra* note 33.



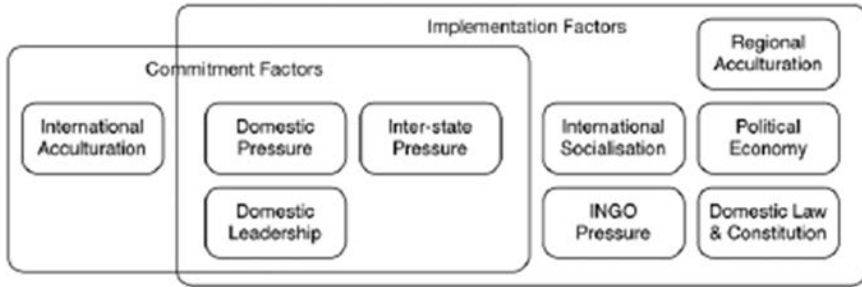


Figure 2. Commitment and Implementation Factor Typographies

### III. CONSTITUTIONAL, LEGISLATIVE, AND POLITICAL FRAMEWORKS OF THE GCC STATES AS CLOSED DUALIST SYSTEMS

After close analysis, the six GCC states exhibit important differences in their legal and political systems. However, despite differing sizes, populations, political trajectories, and domestic legal frameworks, these states also share important historical, cultural, and institutional commonalities which make the GCC inquiry an important one to pursue regarding treaty ratification.

All states, with the exception of Saudi Arabia, became independent between 1961 and 1971. The GCC states are new nation states and are generally “latecomers” to the UN human rights treaty system. Only Saudi Arabia was present at the time of the drafting and adoption of the Universal Declaration of Human Rights.<sup>37</sup> All six states are hereditary monarchies (though there is a broad variation in constitutional form between the strong parliamentary tradition of Kuwait’s constitutional monarchy and the federal monarchy of the UAE). All have shown a commitment to having some form of citizen representation<sup>38</sup> and all have adopted a written constitution or a

37. Saudi Arabia was one of the eight abstaining states at the General Assembly vote on the Universal Declaration of Human Rights. See Christina M. Cerna, *Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts*, 16 HUM. RTS. Q. 740, 742 (1994).

38. “Kuwait has held general elections since 1963 and National Council elections since 1990. Bahrain has held general elections since 1973. Qatar has held a number of Municipal Council elections since 1999. Saudi Arabia has held Municipal Council elections since 2005. The United Arab Emirates held parliamentary elections towards half the membership of the Federal National Council in 2006 and 2011. Oman has held three general elections since 2003 towards the membership of the Consultative Assembly of Oman.” BAŞAK ÇALI & NAZILA GHANEA, THE DOMESTIC EFFECTS OF INTERNATIONAL HUMAN RIGHTS TREATY RATIFICATION IN THE MEMBER STATES OF THE COOPERATION COUNCIL FOR THE ARAB STATES OF THE GULF (GCC) II (2014), available at <https://qatar.sfs.georgetown.edu/research/faculty-research/domestic-effects-international-human-rights-treaty-ratification-member>.

basic law since 1962.<sup>39</sup>

The six states together constitute: an area of approximately 2,500,000 square kilometers; a population of around forty-nine million people;<sup>40</sup> and “high income non-OECD states”<sup>41</sup> with a mean GDP per capita of \$33,300.<sup>42</sup> The migrant worker population is an absolute majority in Kuwait, Qatar, and United Arab Emirates.<sup>43</sup> About 40 percent of the total population in the GCC region is comprised of migrant workers, establishing the GCC as one of the top twenty receivers of immigrants in the world.<sup>44</sup>

The GCC was established in 1981. As the Secretariat General of the GCC outlines, the 1981 GCC Charter established the objectives of: coordination and integration towards unity between the GCC member states; strengthening relations; and formulating similar regulations, (including legislative and administrative affairs).<sup>45</sup> The GCC does not have a subregional human rights monitoring mechanism of its own, but the GCC states are all parties to the Arab League and the newly established human rights mechanisms under the Arab Charter.<sup>46</sup>

39. *Id.* These constitutions were adopted as follows:

Bahrain	May 1973, revised in February 2002
Kuwait	November 1962
Oman	November 1996
Qatar	June 2004
Saudi Arabia	March 1992
UAE	December 1971

40. The populations are:

Bahrain	1.344 million
Qatar	2.268 million
Kuwait	3.479 million
Oman	3.926 million
UAE	9.446 million
Saudi Arabia	29.37 million

World Bank Figures, available at <http://data.worldbank.org/region/ARB> (accessed 4 November 2015).

41. *Id.*

42. The GDPs are as follows:

Bahrain	\$28.9 billion
Oman	\$72.7 billion
Kuwait	\$160.9 billion
Qatar	\$173.5 billion
UAE	\$338.7 billion
Saudi Arabia	\$597.1 billion

GCC, Economic Data, available at <http://www.gcc-sg.org/eng/> (accessed 4 November 2015).

43. *Id.*

44. *United Nations Expert Group Meeting on International Migration and Development in the Arab Region: Arab Versus Asian Migrant Workers in the GCC Countries*, U.N. Doc. UN/POP/EGM/2006/02 (2006); United Nations Population Division, Migration Stock: The 2005 Revision (2005), available at <http://esa.un.org/migration>.

45. GCC, *Foundation and Objectives*, available at <http://www.gcc-sg.org/eng/index895b.html?action=Sec-Show&ID=3>.

46. Arab Charter on Human Rights came into force in 2008 Text available at <http://www1.umn.edu/humanrts/instree/loas2005.html>. The Arab Committee on Human Rights was established in 2009 to monitor compliance with the Charter.



In Kuwait, Bahrain, and Qatar, international treaties come into force once ratified and published in the official “gazette.”<sup>47</sup> Once “gazetted” international treaty provisions have legal force equivalent to national legislation.<sup>48</sup> However, each constitution makes clear that human rights treaties are part of a special category that are not self-executing and require the adoption of national legislation to become directly applicable under national law.<sup>49</sup> The provisions in all three constitutions indicate that treaties “concerning the . . . public or private rights of citizens only come into force when ‘made by a law.’”<sup>50</sup>

Oman formally offers the strongest legal status to international law and provides that treaties have the force of law once ratified.<sup>51</sup> The legal status of human rights treaties is unclear in the Saudi Arabian Basic Law where international agreements are put into effect through local legal integration. In Saudi Arabia, no treaty gains force as a result of royal decrees,<sup>52</sup> and gazetting is required to bring a treaty into force.<sup>53</sup> However, even once gazetted the legal effect of any treaty is moderated by the Qura’n and Shari’a law, which are described in the constitution as “the ultimate sources of reference for this Law and the other laws of the State.”<sup>54</sup>

In the UAE, only the Supreme Council of the Union, constituted of the leaders of each of the seven emirates,<sup>55</sup> has the authority to sign and to ratify international treaties that affect the UAE as a Union.<sup>56</sup> After the federal decision to ratify, it falls on the Government of each Emirate to integrate the treaty provisions into their local laws (though this is done with the supervision of the Union Council).<sup>57</sup>

The effect of all of the above is that all six states are functionally dualist legal systems for the purposes of human rights treaties, and that the domestic effects of UN human rights treaties are strongly in need of specific legislation giving effect to each provision of the UN human rights treaty in the domestic context. The dualist construction of the effects of international law

47. CONSTITUTION OF THE STATE OF KUWAIT (1962), art. 70; CONSTITUTION: STATE OF BAHRAIN, (1973), art. 37 (BAHR.); PERMANENT CONSTITUTION OF THE STATE OF QATAR, (2004), art. 68.

48. *Id.*

49. *Id.*

50. See KUWAIT CONST., art. 70.

51. THE BASIC STATUTE OF THE STATE [CONSTITUTION] (1996), art. 76 (OMAN). Our interviews with lawyers in Oman, however, indicate that in practice, despite the simple formal requirement of the Basic Statute, the judges follow a dualist interpretation of the effect of domestic treaties and do not give primacy to treaty law obligations that may run contrary to legislation or existing Islamic jurisprudence.

52. THE BASIC LAW OF GOVERNMENT [CONSTITUTION] (1992), art. 70 (SAUDI ARABIA).

53. *Id.* art. 71.

54. *Id.* art. 7.

55. U.A.E. CONST., art. 46.

56. *Id.* art. 47.

57. *Id.* art. 125.



in the domestic systems also suggests that there remain significant practical ambiguities on which individual state courts give force to treaties even after promulgated in relevant constitutional provisions. Interviews with judges and lawyers from Oman, Kuwait, and Qatar confirmed that even where incorporated into domestic law, treaty commitments do not enjoy the status and weight of *Qanoon*.<sup>58</sup>

Across the GCC, Islamic Shari'a is identified as a main source,<sup>59</sup> principle source,<sup>60</sup> or basis for legislation.<sup>61</sup> These strong legal references to Islamic Shari'a in the GCC member states mean that even when a UN human rights treaty is incorporated in the domestic legal system—the key implementers of the treaties—executive organs or legislative organs, may still have concerns about the legislation's compatibility with Islamic Shari'a. The presence of Shari'a courts or judges only trained in Shari'a law further offer a practical weight and significance to Shari'a law in interpreting legislation.

A number of the legal systems have seen recent initiatives oriented towards reform and codification in the fields of criminal law, civil law, commercial law, and private international law. Along with this substantive modernization, court systems in the GCC have undergone important reforms, especially since the 1990s, with a major theme in establishing specialized tribunals and quasijudicial administrative bodies alongside Shari'a courts.<sup>62</sup> In Kuwait, there are no Shari'a courts and all disputes are handled under the statutory court system.<sup>63</sup> In Bahrain, Qatar, Oman, and the UAE, Shari'a courts exist. However, these courts are earmarked only for personal status disputes between Muslims.<sup>64</sup> By contrast, in Saudi Arabia, the jurisdiction of

58. Interview, Qatar, (February 2013); Interview, Qatar (May 2013), Interview, Oman, Interview Kuwait (January 2014)

59. See KUWAIT CONST., art. 1; UAE CONST., art. 7.

60. See BHR. CONST. art. 2: "Islamic Shari'a is a main source of legislation."

61. See OMAN CONST., art.2.

62. Law No. 10 of 1996—amending some provisions of Decree Law No. 23 of 1990 governing the Judicial Authority, Bahraini Civil Code Decree Law No. 19 of 2001; Statute of the Bahraini Supreme Constitutional Court, Decree Law No. 17 of 2002, Omani Code of the judicial authority No. 90/1999; Code of administrative courts No. 91/1999; Code of criminal procedures No. 97/1999 with its amendment No. 91/1999; Code of civil and commercial procedures 29/2002 with its amendment No. 92/2005, the Qatari Emiri Decree Law No. 10 of 2003 Promulgating the Law on Judicial Authority, Saudi Arabia Royal Decree No. M/78 of 19th Ramadan 1428 Hejra corresponding to 1st October 2007 Gregorian on the Regulation of the Judiciary and the Board of Grievances.

63. AHMED ALY KHEDR, KUWAIT'S LEGAL SYSTEM AND LEGAL RESEARCH, GLOBALEX REPORT (2010), available at <http://www.nyulawglobal.org/GLOBALEX/Kuwait.html>.

64. AHMED ALY KHEDR & BASSAM ALNUAIMI, A GUIDE TO THE UNITED ARAB EMIRATES LEGAL SYSTEM, GLOBALEX REPORT (2010), available at [http://www.nyulawglobal.org/globalex/United\\_Arab\\_Emirates.html](http://www.nyulawglobal.org/globalex/United_Arab_Emirates.html); KHALIL MECHANTAF, LEGAL SYSTEM AND RESEARCH IN THE SULTANATE OF OMAN GLOBALEX REPORT (2010) available at <http://www.nyulawglobal.org/globalex/Oman.html>; AHMED ALY KHEDR, A GUIDE TO QATAR'S LEGAL SYSTEM GLOBALEX REPORT (2009), available at <http://www.nyulawglobal.org/globalex/Qatar.html>; KHALIL MECHANTAF, CONSTITUTIONAL LAW AND THE LEGAL SYSTEM OF THE KINGDOM OF BAHRAIN GLOBALEX REPORT (2010) available at <http://www.nyulawglobal.org/globalex/Bahrain.html>.



the Shari'a courts are much broader, covering all disputes relating to land, to family, to personal injury claims, and to criminal cases.<sup>65</sup>

There are two constitutional courts in the GCC region allowing individuals to litigate their constitutional rights in Kuwait and Bahrain. In both states, constitutional courts have strong judicial powers and laws no longer have the force of law once they are deemed unconstitutional. The Qatari constitutional court is outlined in the Constitution; however, is not yet operational.<sup>66</sup> In Oman, talks regarding the establishment of a constitutional court are ongoing.<sup>67</sup> The UAE Supreme Court also carries out constitutional review, but there is no access to individual petitioners.<sup>68</sup>

The Kuwaiti Constitutional Court, the oldest in the region,<sup>69</sup> exhibits some degree of willingness to give legal effect to human rights treaties. It came to international attention in 2000 when it rejected a plea by its disenfranchised women to enjoy the same political rights as their male counterparts and attain the right to vote.<sup>70</sup> Since the late 2000s, however, the court has taken gender equality issues more seriously and in 2009, it granted women the right to obtain their own passports without the consent of their husbands and guardians.<sup>71</sup> It also ruled that female lawmakers are not required to wear the hijab or traditional Muslim headscarf in Parliament.<sup>72</sup> More recently, in December 2013, the constitutional court dealt with the right to freedom of expression concerning a journalist's Twitter comments and found that Article 25 of the Criminal Code that criminalizes any expression that "objects to the rights and authorities of the emir or faults him" was constitutional.<sup>73</sup> Overall, the Kuwait constitutional court in the GCC is the best example of a functioning constitutional tribunal, and is recognized as such by regional elites. As one interviewee referring to the gender equality case stated, "The Kuwaiti Constitutional Court is not a theoretical court for us."<sup>74</sup> More promisingly still, there is some evidence that some of the decisions of the Kuwait

65. Umm-al-Qura No. 2592, 29 *Sha'ban* 1395 (5 Sept. 5 1975) arts. 5, 26. An independent administrative tribunal, the Saudi Board of Grievances, increasingly handles legal issues to which the state administration is not a party (including commercial disputes and enforcement of foreign judgments). Under forthcoming reforms, commercial cases may, however, be transferred to commercial courts within the formal Shari'a court structure.

66. Emiri Decree, No. 12/2008.

67. Interview, Oman (Feb. 2014).

68. The UAE Supreme Court has weak judicial powers and each Emirate is under a duty to re-legislate the laws that have been deemed unconstitutional by the Court. UAE CONST, art. 99.

69. The Kuwaiti Constitutional Court was established and put into effect through Law No. 14/1973.

70. Kuwaiti women gained the right to vote in 2005 under Law No. 17/2005.

71. Kuwaiti Constitutional Court Judgment of 22 Oct. 2009, available at <http://jurist.org/paperchase/2009/10/kuwait-constitutional-court-rules-women.php>.

72. Kuwaiti Constitutional Court Judgment of 28 Sept. 2009, available at <http://jurist.org/paperchase/2009/10/kuwait-constitutional-court-rules-women-28.php>.

73. Kuwaiti Constitutional Court Judgment of 2 Dec. 2013, available at <http://www.hrw.org/news/2013/12/11/kuwait-court-deals-blow-free-speech>.

74. Interview, Kuwait (Feb. 2014).



constitutional court granting gender equality might have had a trickle-down effect on administrative courts.<sup>75</sup>

In Bahrain, the constitutional court<sup>76</sup> can exercise *a priori* constitutional review of legislation only upon a request made by the King. *A posteriori* judicial review is exercised upon the request of the Prime Minister or the President of the Consultative Council or the President of the Council of Representatives; or upon an *ex proprio motu* request from any court, or upon a request of any of the parties to a case brought before any court.<sup>77</sup> In its early case law, the Bahraini constitutional court emphasized the importance of constitutions over legislation, argued for the exceptionality of expropriations in protection of individuals' property rights.<sup>78</sup> The 2012 Court, however, rejected a challenge to the constitutionality of provisions in the National Security Act without discussing the compatibility of the Act with the ICCPR commitments.<sup>79</sup>

### GCC Involvement with the UN Rights Framework

As of 2014, there have been thirty-three ratifications of the ten core UN human rights treaties by the GCC states.<sup>80</sup> All six of the states have ratified four treaties: The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), The Convention on the Rights of the Child (CRC), and The Convention on the Rights of Persons with Disabilities (CRPD). Three treaties have received no ratifications: The International Convention for the Protection of All Persons from Enforced Disappearance (CED), The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), and The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT OP).<sup>81</sup> However, as shown in Figure

75. In August 2011, a number of female applicants separately filed lawsuits at the administrative court, contending that the ministry's decision to consider only male applicants (for becoming a prosecutor) was unconstitutional. "The [Administrative] Court, in ruling for the plaintiffs, ordered the ministry to cancel its requirement that candidates be male. The court said that the decision violated the Kuwaiti constitution and international treaties that Kuwait has ratified." Another administrative court decision on 22 April 2012, cancelled a ministerial order barring women from entry-level jobs at the Justice Ministry. Human Rights Watch, *Kuwait: Court Victory for Women's Rights: Overturns Ministerial Decision Barring Women from Justice Jobs* (6 May 2012), available at <https://www.hrw.org/news/2012/05/06/kuwait-court-victory-womens-rights>.

76. Established by Decree Law No. 17/2002, pursuant to BAHR CONST, art. 106.

77. See Bahrain laws, *supra* note 62.

78. C/S/2/05 Judicial Year (3) [Constitutional Court], (Bahrain).

79. Bahraini Constitutional Court, Case no GA-1-2011, Judgment of 25 July 2012, available at <http://www.constitutional-court.org.bh/CCB/Pages-en/List.aspx?mid=3>.

80. See Figure 3. Data for this is compiled from the United Nations Treaty collection, *supra* note 1.

81. *Id.*





3, the GCC states are selective in their ratifications, with only two of the states ratifying the core instruments of the United Nations International Bill of Rights—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Additionally, the order of ratifications has not matched the order in which the instruments were initially drafted and implemented by the UN. Furthermore, GCC states regularly employ reservations to treaties, and have only accepted the right of individual petition in the CRPD.<sup>82</sup> This cautious and deliberate approach leaves open the question of how committed the GCC states are to the instruments they have chosen to ratify.

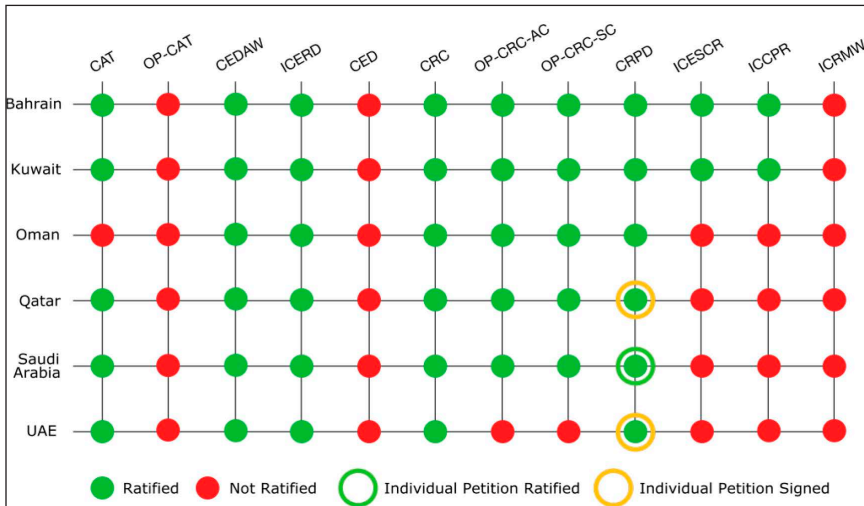


Figure 3. Ratification of “Core” UN Human Rights Instruments (and CRC OPs)

Looking across the GCC there are some commonalities in ratification timing and sequencing. In terms of timing, the first four states to ratify CAT did so in two and a half years. The three states to ratify the first two CRC OPs (Bahrain, Kuwait, and Oman) all did so within a month. In both instances these ratifications came several years after the UN General Assembly originally adopted the instruments. In relation to the most recent of the core UN treaties (CRPD), all six of the states ratified within seven years of the instrument’s passage, making this the fastest complete ratification by

82. Saudi Arabia acceded to CRPD Optional Protocol on individual petition on 24 June 2008, with Qatar and UAE each signing, without ratification, on 9 July 2007 and 12 Feb. 2008 respectively.

a significant margin (CEDAW took almost thirty years, ICERD thirty-seven years, and CRC just over seven years). In terms of sequencing and despite the instruments being promulgated twenty-four years apart, ICERD and CRC were the first two instruments to be ratified by all six of the GCC states (with half ratifying CRC first and half ICERD).

There are, however, also clear divergences. Only Bahrain and Kuwait have ratified the twin covenants that sit at the heart of the UN rights framework—the ICESCR and the ICCPR. ICERD ratifications took place across the 1960s (Kuwait), 1970s (Qatar and UAE), 1990s (Bahrain and Saudi) and 2000s (Oman).<sup>83</sup> Some states joined certain instruments long after others had, the UAE ratified CAT twelve years after all the other GCC states. There are also variations in periods of peak ratification between the individual states. As Figure 4 shows, for each of the states, other than the UAE, there has been a period of heightened ratification activity, with the majority of treaties ratified by each state in under a decade.

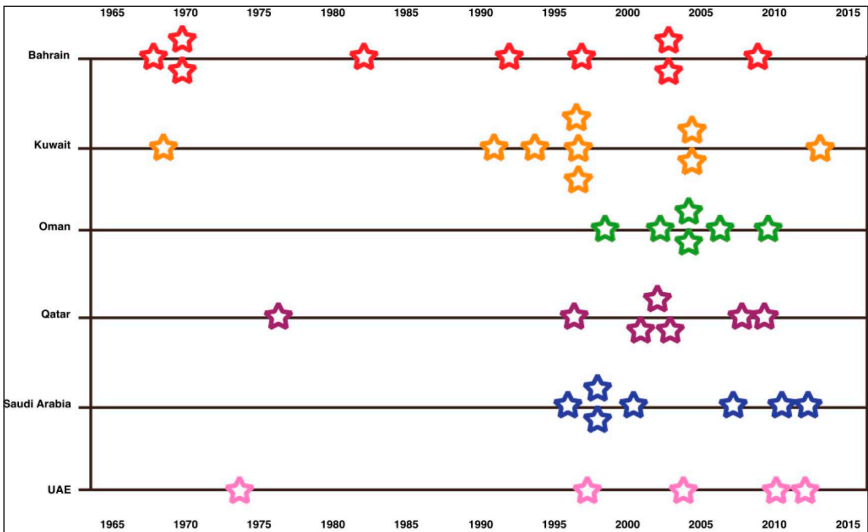


Figure 4. Timeline of ratifications of “Core” UN rights instruments and CRC OPs

83. CERD was ratified by Bahrain on 27 March 1990, Kuwait on 15 October 1968, Oman on 2 January 2003, Qatar on 22 July 1976, Saudi Arabia on 23 September 1997, and UAE on 20 June 1974.

These periods have little connection with domestic constitutional reform in the GCC countries. Considering the dates on which constitutions have been passed or amended, only Bahrain's 2002 constitution falls within (or close to) its period of ratification. Looking at alternative major international or domestic political events that may have helped precipitate ratifications, the clearest connection is in the case of Kuwait. Its period of peak ratification began in 1991, the same year that the country had been liberated by international coalition forces after the Iraqi invasion six months earlier. Saudi Arabia's first cluster of ratifications followed shortly after the first Gulf War and King Abdullah's (then Crown Prince Abdullah) assumption of power. In Bahrain, Sheikh Hamad Bin Khalifa's rise to power in 1999 saw the ratification of the ICESCR and the ICCPR alongside domestic political reforms under the National Action Charter—actions that came against a backdrop of demands from opposition forces. In Qatar, ratifications increased after Hamad bin Khalifa Al Thani's consolidation of power following his 1995 overthrow of his father. Oman amongst all the GCC states has remained a late ratifier of human rights treaties compared to the rest of the region. It is interesting considering it has had consistent leadership through Sultan Qaboos since 1970. After the Arab Spring there has been three ratifications across the GCC,<sup>84</sup> but no strong evidence of a connection was uncovered.

There is also little correlational evidence to suggest that recommendations by the UN treaty bodies to ratify additional instruments have been effective in precipitating ratifications. In total there have been just under seventy treaty body recommendations and twelve special rapporteur recommendations, and more than fifty recommendations from other states during the UPR process calling specifically for further ratifications.<sup>85</sup> The great majority of these recommendations have not been followed, however, and most ratifications have not been preceded by any recommendation calling for that ratification.<sup>86</sup> In the instances where ratification has followed a recommendation, only Bahrain's ratification of CEDAW and ICCPR, and Qatar's ratification of the first two optional protocols to CRC have occurred within a year of a relevant recommendation.<sup>87</sup> Looking to the states' own reports only Bahrain

84. CAT by UAE, CRPD by Kuwait and OP-CRC-AC by Saudi Arabia. ÇALI & GHANEA, *supra* note 38, at 32.

85. Original dataset covers all recommendations and is up to date until April 2014. ÇALI & GHANEA, *supra* note 37, at 32.

86. Seventeen have occurred without a recommendation, eleven have followed a recommendation but only two in the immediate years after the report. Başak Çali & Nazila Ghana, *supra* note 37 at 33.

87. Bahrain's ratification of CEDAW in June 2002 came three months after a recommendation from the Working Group on Arbitrary Detention in March 2002. Its ratification of ICCPR in September 2006 came six months after the ICERD treaty body's recommendation in March 2005. Qatar's ratification of the two CRC optional protocols in Dec 2001 (SC) and July 2002 (AC) came one month and seven months, respectively, after a recommendation by the Committee on the Rights of the Child in November 2001. ÇALI & GHANEA, *supra* note 38, at 34.



has drawn an explicit connection between a ratification recommendation and a subsequent ratification.<sup>88</sup>

Together, the data on timing and sequencing suggests that the GCC region is committed to children and those with disabilities, and to a lesser extent, the antiracism rights discourse—especially more so than in other areas such as women’s rights. The divergences in the timing and sequencing of data, however, also suggest that despite regional trends in action it is state-level or international system dynamics, rather than regional GCC-wide dynamics, that dominate the selection and timing of ratification decisions.

A partial explanation for the low impact of external pressure arising out of our interview data is the largely absent international pressure, be it multilateral or unilateral, in connection with UN rights treaties.<sup>89</sup> For example, the GCC’s key security partner, the United States, has ratified few UN human rights treaties. The GCC states are also not moved by calls for ratification coming from the UN mechanisms. Along the same lines, the GCC states generally do not have domestic human rights treaty ratification lobbies outside the government structures to exert pressure on decisions to ratify.

In light of this data, the GCC region’s decision to ratify treaties are primarily motivated, not by international pressure, but by international acculturation and domestic leadership preferences or, less commonly—as in the case of Bahrain, concessions to bottom-up domestic demands.

International acculturation emphasizes a desire to be a “member in good standing” in the international community of modern states and, in particular, a desire “not to be seen as an outcast” from the international community.<sup>90</sup> Selective UN human rights treaty ratification offers GCC states a way to confirm membership in the international community and the ability to fulfill the desire to belong—all at limited practical cost for domestic regimes. UN treaty ratification with reservations enables states to signal different messages to international and domestic audiences. In one interview from Kuwait we were told that ratification of the ICCPR and ICESCR “was our way of saying thank you to the international community after the invasion.”<sup>91</sup> In a different interview with a senior government official in Oman, the late ratifications of UN human rights treaties was explained on the basis that “Oman did not want to look too isolated from the rest.”<sup>92</sup> Further interviews with key stakeholders also emphasized this perceived, albeit intangible, benefit of selective human rights treaty ratification. Regardless of how selective and

88. *Second and Third Periodic Reports of States Parties due in 1999: Bahrain*, U.N. C.R.C., § 454, U.N. Doc. CRC/C/BHR/2-3 (2010).

89. Interview with GCC member state representatives, Qatar, (May 2013).

90. Interview, Qatar, (Feb. 2014).

91. Interview, Qatar, (May 2013). This was because the international community assisted in responding to the Iraqi invasion and ousting their forces from Kuwait through UN Security Council Resolutions 660, 662, 664, 665, 666, 667, 669, 670, 674, 677.

92. Interview, Oman, (Feb. 2014).



loaded with reservations, UN human rights treaty ratification is regarded as confirming legitimate statehood as well as avoiding the international isolation of the region.

In the cases of Qatar and Oman, alongside acculturation, strong domestic leadership preferences for ratifying human rights treaties appear to have developed out of a desire to use ratification to lend support to domestic state-building initiatives. In one interview in Qatar, the interviewee regarded the ratification of CRC and CEDAW as a green light from the Emir to provide policy guidance to domestic social policy institutions.<sup>93</sup> Ratification of human rights treaties were interpreted as part of the vision and the direction of the state bureaucracy.

By contrast, in Kuwait, the parliamentary system enjoys a veto power over government, alongside a more entrenched Constitution and more stable domestic institutions providing an alternate point of reference. Bahrain is also different where leadership preferences have been mediated by the effects of the opposition against the ruling leadership since the early 2000s. Ratification of human rights treaties, which correspond to calls for domestic political and social reform in Bahrain, are part of a framework of concessions offered by the ruling elites to opposition forces in addition to protecting the Bahraini state from international isolation.<sup>94</sup> Overall, the reasons for ratifying may be distilled into three categories as depicted in the table below, where the international acculturation is a common present feature whereas interstate pressure is a common “absent feature.”

<i>Strong Acculturation Strong Leadership preference</i>	<i>Strong Acculturation Weak Leadership Preference</i>	<i>Strong Acculturation Strong Concession to Domestic Pressure</i>
Qatar Oman	Kuwait Saudi Arabia UAE	Bahrain

Figure 5. Ratification Motivations of the GCC Member States

None of these motivational factors for ratification, however, offer a fully negative or an overly positive prospect for the subsequent implementation of human rights treaties in the region. This is because while international acculturation may sometimes be a first step toward a deeper socialization of human rights norms, it can also be a mere standalone act. Once states calculate that they have gained the intangible benefits from ratification,

93. Interview, Qatar (Feb. 2012).

94. Interview, Qatar (May 2013).

they may lose interest in implementing and realizing their treaty obligations. Domestic leadership preferences at the time of ratification, too, are not always stable or transferable to the realm of domestic implementation. Furthermore, GCC states' reservations to UN human rights treaties show they selectively ratify these treaties.

Excluding reservations that are related to the nonrecognition of Israel (which have been entered by Bahrain, Kuwait and the UAE), Figure 5 depicts the current number of reservations entered by the GCC states (according to number of subsections reserved). It also shows the balance between general reservations, which apply to the interpretation, implementation, and force of the instrument as a whole, and specific reservations, which seek to limit the application of a particular provision in the treaty.<sup>95</sup>

The GCC regions' reservations to UN human rights treaties reflect both domestic negotiations amongst key domestic constituents and the core political and legal sensitivities of the ruling elite in the GCC countries leading up to ratification of human rights treaties. Reservations also help to explain some of the limited domestic effects of UN human rights treaties after ratification. The presence of general reservations place significant obstacles in the way of delivering domestic effects of human rights treaties, both in terms of their traction as a tool for policy change and as a means for advancing changes in judicial practice. A general reservation makes the place and relevance of a UN human rights treaty unclear in domestic legal and political settings. General reservations may also inhibit domestic actors in adopting a proactive stance on human rights treaty implementation. Equally, reservations to treaty provisions setting out the full range of obligations for each human right in the treaty operate like general reservations. In the case of the GCC, reservations entered to Articles 2 of the ICCPR and the ICESCR by Kuwait and reservations entered to Article 2 of CEDAW by Bahrain, Qatar, and the UAE have this potential limiting effect.<sup>96</sup>

Of all the treaties, CEDAW has attracted the most reservations from the GCC as well as across the states.<sup>98</sup> All of the states have entered reservations against Article 9 (concerning the equal rights of women and men to acquire, change and retain nationality and in particular, equal rights of women with respect to the nationality of their children); Article 16(1) (concerning the equal rights of women in family life); and Article 16(2) (on child marriages, minimum age to marriage and compulsory registration of marriages). All states except Kuwait have reserved Article 15(4) (conceding the equal rights

95. General reservations in the GCC region subject the interpretation of UN human rights treaties as a whole to their compatibility with Islamic Shari'a.

96. ÇALI & GHANEA, *supra* note 38, at 40.

97. *Id.* at 44.

98. *Id.* at 40.

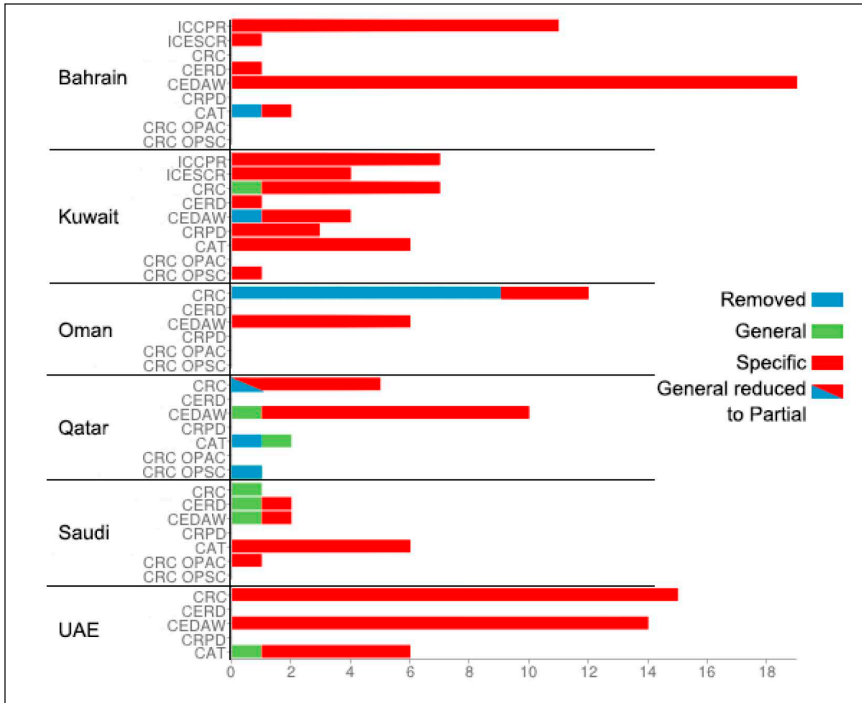


Figure 5. Status of Reservations to Core UN Rights Treaties<sup>97</sup>

of women to have the freedom to choose their residence and domicile).<sup>99</sup> CRC is second behind CEDAW regarding reservations; with Article 7 (the right of children to a nationality); Article 14 (children's right to freedom of thought, conscience and religion); and Article 21 (permission of an adoption system) attracting the most reservations. Saudi Arabia and Kuwait maintain general reservations to the entirety of CRC but, in sharp contrast, Bahrain has not entered any reservations in relation to the instrument.

These reservations, and in particular the general reservations, have been the subject of significant pressure from the treaty bodies. Saudi Arabia has been subject to particular criticism. The Committee on the Elimination of Racial Discrimination asserted that "[t]he broad and imprecise nature of [Saudi Arabia's] general reservation [to ICERD] raises concern as to its compatibility

99. Saudi Arabia does not have a reservation to this provision, but it has a general reservation to CEDAW. All reservation data for this is compiled from the United Nations Treaty collection, *supra* note 1.



with the object and purpose of the Convention.”<sup>100</sup> Similarly, the Special Rapporteur on Violence Against Women worried that the general reservation to CEDAW “does not clearly define the extent to which Saudi Arabia accepts its international obligations.”<sup>101</sup> The Committee on the Elimination of Discrimination Against Women stated that the reservation was “drawn so widely that it is contrary to the object and purpose of the Convention.”<sup>102</sup> The Committee on the Rights of the Child opined that it was “concerned that the broad and imprecise nature of the state party’s general reservation [against CRC] potentially negates many of the Convention’s provisions and raises concern as to its compatibility with the object and purpose of the Convention, as well as the overall implementation of the Convention.”<sup>103</sup> Similar complaints have been made regarding the state’s reservation to the CRC.<sup>104</sup>

Saudi Arabia’s practice of general reservations aside, the pattern of reservations to CEDAW and the CRC in the GCC region show that the ratifying states have concerns regarding how Shari’a law views nationality, equality in family life, and the adoption of children. Questions regarding a child’s right to nationality, regardless of the citizenship of the child’s father, are connected with concerns about the political economy of citizenship in the GCC. As one interviewee stated, “Nationality law is about money, not religion, as Shari’a does not have laws concerning nationality.”<sup>105</sup> Of particular significance in contrast to these reservations to CEDAW and CRC, is that no state in the GCC region has entered any reservations to the CRPD, which offer extensive rights to persons with disabilities, including equal rights in marriage and family life (Article 23), right to a nationality (Article 18), and equal rights of women with disabilities (Article 6). The apparent effect of this is that women and children with disabilities enjoy protections that they would otherwise be prevented from claiming because of the reservations entered into in the CEDAW and the CRC. Whether it would be possible to enforce such claims is, of course, a separate question.

The most interesting aspect of the GCC reservations is the occasional willingness by some of the states in the region to reconsider and lift reservations. Bahrain, Qatar, and Kuwait have all lifted reservations. Bahrain lifted

100. *Concluding Observations of the Committee on the Elimination of Racial Discrimination*, U.N. C.E.R.D., § 9, U.N. Doc. CERD/C/62/CO/8 (2003).

101. *Addendum: Mission to Saudi Arabia: Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. H.R.C., § 10, U.N. Doc. A/HRC/11/6/Add.3 (2009).

102. *Concluding Comments of the Committee on the Elimination of Discrimination Against Women*, U.N. C.E.D.A.W., §8–9, U.N. Doc. CEDAW/C/SAU/CO/2 (2008).

103. *Concluding Observations of the Committee on the Rights of the Child*, U.N. C.R.C., § 7, U.N. Doc. CRC/C/15/Add.148, (2001).

104. *Concluding Observations of the Committee on the Rights of the Child*, U.N. C.R.C., § 7, U.N. Doc. CRC/C/15/Add.148 21 (February 2001).

105. Interview, Qatar, (Feb. 2013).



its CAT reservation concerning the competencies of the Committee against Torture under Article 20.<sup>106</sup> Kuwait lifted its reservation to the voting rights of women, after a long political and constitutional battle for women's suffrage.<sup>107</sup> Oman has removed reservations to articles on adoption, transfer of nationality, separation of children from parents, and the rights of minorities or indigenous children to their culture, language, and religion. Qatar has gone further still in lifting multiple reservations from three separate treaties. These related to Optional Protocol to CRC on the sale of children, child prostitution, and child pornography (CP-CRC-SC), CRC,<sup>108</sup> and CAT. More significantly in the cases of CRC and CAT, Qatar lifted or qualified its general reservations. While each of these reservation removals followed a specific recommendation from the relevant treaty body, they were mostly after some delay. In the case of general reservations, there was a gap of more than five years between the recommendation and reservation change (the Committee on the Rights of the Child called for narrowing of reservations in November 2001),<sup>109</sup> with the change not coming until June 2008, and the Committee Against Torture called for removal of reservations in July 2006,<sup>110</sup> (with the change coming in March 2012). Only the call by the Committee on the Rights of the Child, while considering Qatar's first OP-CRC-AC report in October 2007<sup>111</sup> to remove reservations to OP-CRC-SC was followed closely by the requested change (the reservation was removed in June 2008).

Instead, the motivation for removal appears to have stemmed from the presence of human rights treaty champions within Qatar's domestic institutions who had disagreed with the entering of these general reservations in the first place.<sup>112</sup> The human rights treaty champions, aided by recommendations from the UN treaty bodies, therefore, succeeded in reopening the domestic bargain for remaining in the UN human rights treaties.<sup>113</sup> As one Qatari interviewee stated, "Once the CRC was ratified, we were able to show that important aspects of our culture and religion were not suddenly undermined as the conservatives have suggested at the time of ratification."<sup>114</sup>

106. Interview, UK, (July 2012).

107. Mary Ann Tétreault, *A State of Two Minds: State Cultures, Women and Politics in Kuwait*, 33 INT'L J. MIDDLE EAST STUD. 203 (2001).

108. *Concluding Observations of the Committee on the Rights of the Child*, U.N. C.R.C., U.N. Doc. CRC/C/OPAC/QAT/CO/1 (2007).

109. *Concluding Observations of the Committee on the Rights of the Child*, U.N. C.R.C., § 11, U.N. Doc. CRC/C/15/Add.163 (2001).

110. *Concluding Observations of the Committee Against Torture*, U.N. C.A.T., § 9, U.N. Doc. CAT/C/QAT/CO/1 (2006).

111. *Concluding Observations of the Committee on the Rights of the Child*, U.N. C.R.C., § 12, U.N. Doc. CRC/C/OPAC/QAT/CO/1 (2007).

112. Interview, Qatar, (Feb. 2012).

113. *Id.*

114. *Id.*



Overall, while there is core common political ground and regard to be integrated with the international system among the GCC states, alongside cultural and religious cohesion, commonalities in approach to UN rights treaties is not all that can be observed. The variety in political dynamics between GCC states have left the doors open for significant differences in the timing and motivations of UN human rights treaty ratification. Ratifications with broad reservations may lead to some cynicism regarding the strength of commitment of the various state administrations to the UN rights systems. However, the willingness in some instances to narrow reservations show that there is certainly some ongoing domestic consideration of the human rights treaties, and how they may interact with the domestic legal orders. In this regard, some of the GCC states appear to be more active in their engagement with the content of the instruments than other states outside of the region. In the next section, we assess the extent to which these international agreements have had any domestic effect.

#### IV. DOMESTIC EFFECTS OF HUMAN RIGHTS TREATY RATIFICATION IN THE GCC

In this section, we shall take “domestic effects” as a broad concept, covering a diverse set of influences including constitutional reform, legislative change, judicial application, institution building, civil society mobilization, and other policy initiatives. We categorize domestic effects into two types:

- “Primary effects” are domestic changes that take place through legislation and court decisions after ratifying a treaty
- “Secondary effects” involve increased socialization in the system, institution building, and civil society mobilization and activity which may then enable further primary changes in the long run.

As we discuss below, secondary effects that impose low costs on the leaders are more common than primary ones. In addition, primary effects are rare and constitute small gains. Of the eight factors identified above as leading to or hampering domestic effects of UN human rights treaties, the factors of international socialization and domestic leadership emerge as the most significant drivers for domestic secondary effects. With respect to primary effects, we identify domestic leadership preferences and interstate pressure as driving small gains, with political economy, domestic legal constitutional rules, and regional acculturation as hampering primary effects. Domestic pressures from affluent groups close to leadership circles play a limited, but still important role in furthering issue areas. INGO pressure (although important to increase the rise of ratifications), thus far has not been significant in domestic effects.



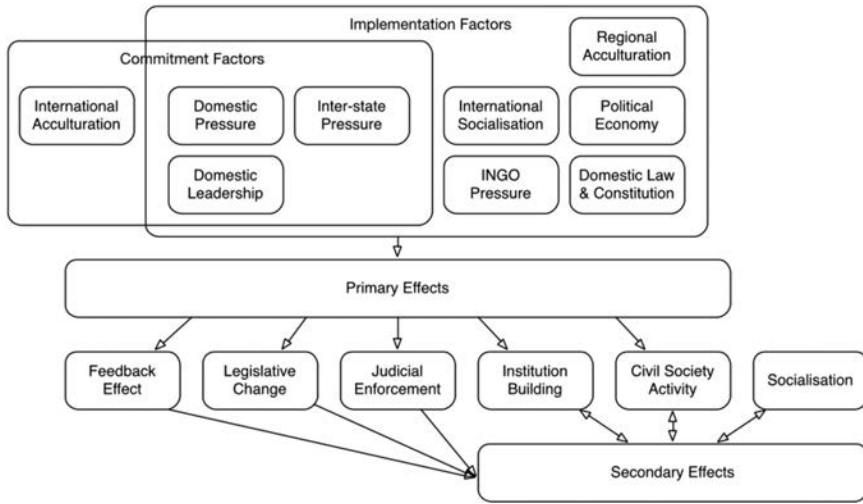


Figure 6. Factors and Effects Typography<sup>115</sup>

The foremost “secondary effect” of UN treaty ratification for GCC member states is the increase of ministries and bureaucracies that participate in the implementation debates, and therefore, become socialized into applying the human rights framework to domestic issue areas.<sup>116</sup> The scope of this secondary effect, however, is limited to actors that take a direct role in UN meetings, and primary effects in domestic policy depend on the will and leverage of this newly emerging “UN treaty body reporting bureaucracy.” In Qatar, for example, interviews suggest that the appointment of a member of the ruling Al-Thani family to lead the UN human rights reporting process has resulted in some primary effects, including the lifting of reservations.<sup>117</sup> Similarly, a human rights bureaucrat close to the ruler in another country stated, “When in Geneva, CRC asked us why we did not have free primary education. When we got back home, I pushed for this and succeeded.”<sup>118</sup>

A key secondary effect that has taken place in GCC states has been the creation of National Human Rights Institutions (NHRIs). Four GCC states have created NHRIs as follow ups to their engagement with the UN treaties and sustained calls for their establishment.<sup>119</sup> However, only Qatar’s National

115. *Id.*

116. *Id.*

117. Interview, Qatar (May, 2013).

118. Interview, Qatar, (May 2013).

119. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Chart of the Status of National Institutions, 28 January 2014, available at [http://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf).

Committee for Human Rights has been recognized as compatible with the Paris Principles.<sup>120</sup>

The Qatari National Human Rights Committee is the first NHRI in the region. It was founded in 2002 after a recommendation from the Committee on the Rights of the Child in November 2001. It was upgraded from reserved compatibility (A\* status) to full compatibility (A status) in October 2010. The Omani NHRI, the Oman National Human Rights Commission, was also recognized as partially compliant (B status) in November 2013. Bahrain founded its NHRI in late 2009,<sup>121</sup> and asserted its intention to make it Paris compliant in 2012, though it is still not compliant.<sup>122</sup> On the other hand, after over ten years in existence, Saudi Arabia's National Human Rights Commission has still not yet been submitted for accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.<sup>123</sup> Kuwait and the UAE do not have recognized NHRIs. However, Kuwait pledged to create one in its 2010 UPR submission and passed a Ministerial Decision in 2011 (No.77), establishing a committee to explore the creation of an NHRI. Other measures have occurred following recommendations by treaty bodies. For example, in 2007, Bahrain set up a Centre for Child Protection<sup>124</sup> and Kuwait established a "Higher Committee for Human Rights"<sup>125</sup> under a 2008 Ministerial Decree. Kuwait also made changes to include human rights education in school curricula after instituting a special committee to develop educational materials on human rights, democracy, and constitution law in 2000.<sup>126</sup>

Different domestic factors in the GCC region lead to the variation in the creation of NHRIs and their compatibility with the Paris Principles. In Kuwait, a key difficulty in passing a law on an NHRI has been the ongoing problems in the parliamentary regime, where vetoes in Parliament have been a persistent challenge over the past decade. As one interviewee put it, "There is neither a strong opposition nor a strong support of an NHRI, but if every time one group supports it, the other groups are sure to veto it."<sup>127</sup> In the UAE and Saudi Arabia, legal constraints manifest themselves in the struggle

120. *Id.* at 2.

121. Royal Order No. 16/2010 (25 Apr. 2010).

122. *Report of the Working Group on the Universal Periodic Review*, U.N. H.R.C., § 12, U.N. Doc. A/HRC/21/6/Add.1/Rev.1 (2012).

123. Sub-Committee on Accreditation of the International Coordinating Committee of NHRIs, *Chart of National Institutions* (July 2013), available at <http://www.ohchr.org/Documents/Issues/HRInicators/MetadataNHRIAccreditation.pdf>.

124. This was following a recommendation from the Committee on the Rights of the Child in 2002. On the activities of the Center available at <http://www.social.gov.bh/node/348>.

125. State of Kuwait Ministry of Justice, Higher Commission for Human Rights State of Kuwait, available at <https://www.moj.gov.kw/sites/en/HighHumanRights/Pages/Introduction.aspx>.

126. This was following a recommendation from the Committee on Elimination of Discrimination Against Women in 2004.

127. Interview, Kuwait, (Feb. 2014).



to create an independent institution outside of the governance regime.<sup>128</sup> The federal structure in the UAE makes this a particularly difficult undertaking. The legal and constitutional factors in Saudi Arabia are also coupled with the lack of a strong leadership preference for the creation of Paris Principle compliant institutions alongside lack of support for these institutions in the traditional constituents of the religious establishment. Human rights activist interviewees state that the Bahraini NHRI was established in reaction to opposition groups' demands for more political and public participation, in the early 2000s, as part of the concessions to the opposition forces.<sup>129</sup> In Qatar and Oman, on the other hand, human rights bureaucrats consider that the creation of the NHRIs and further attempts to improve them in terms of their independence were part of the leadership state-building programs of Emir Hamad bin Khalifa Al Thani and Sultan Qaboos respectively.<sup>130</sup>

While the creation of NHRIs does not necessarily create a deeper implementation of human rights treaties, NHRIs do have the potential for magnifying the voice of UN human rights treaties domestically. The Qatar National Human Rights Commission, for example, in its annual report, regularly mirrors the recommendations of UN human rights treaty bodies. The Commission calls for the ratification of the ICCPR and the ICESCR,<sup>131</sup> which specifically mirrors the recommendations of ICERD. The Commission also calls for the abolishment of the *kafalah* system of regulating migrant workers and for ratification of the ICRMW.<sup>132</sup> Interviews on the primary effects of NHRIs and other governmental human rights entities in the GCC countries point to the promotional functions of these entities—often in the form of organizing training seminars and workshops for governmental actors, civil society organizations, and the public at large.<sup>133</sup> The Qatar NHRI has a complaints mechanism where individual complaints received are raised with relevant governmental agencies. None of the other existing NHRIs provide legal representation of victims or take cases to court. They also do not openly condemn individual human rights violations or write reports on situations. Thus far, only one NHRI has submitted a report to the United Nations human rights mechanisms (Qatar's NHRI to CEDAW).<sup>134</sup> One group of interviewees from Bahrain, Qatar, and Oman also highlighted the legitimating functions of the establishment of NHRIs on existing government policies. They also suggested, however, that the “creation of NHRIs is not an end in itself, but must be a means to an end in the region.”<sup>135</sup>

128. Interviews, Qatar, (May 2013).

129. Interviews, Qatar (May 2013).

130. Interviews, Qatar (May 2013); Interview, Oman (Feb. 2014).

131. See THE QATAR NATIONAL HUMAN RIGHTS COMMISSION, ANNUAL REPORT (2005), available at <http://www.nhrc-qa.org/wp-content/uploads/2014/01/NHRC-Annual-Report-2005-A.pdf>.

132. *Id.*

133. Interview, Qatar (September 2014).

134. *Id.*

135. Interview, Qatar, (Feb. 2014).



In terms of primary legislative effects, the overall record of the GCC shows incremental domestic effects. In the GCC, legislative changes require the fullest support of the ruling regime, who also consider pressure from strong domestic constituencies with significant religious or economic power. Demands from the UN human rights treaty mechanisms for legislative reform have been a dominant call, encompassing all recommendations. However, in the vast majority of cases GCC states had silent or ambivalent responses to such demands (see Figure 8).

	<i>Legislative Reforms</i>	<i>International Engagement</i>	<i>Capacity Building</i>	<i>Policy Development</i>
Bahrain	42%	27%	16%	15%
Kuwait	54%	20%	9%	18%
Oman	37%	25%	19%	29%
Qatar	49%	15%	21%	21%
Saudi	44%	18%	7%	30%
UAE	33%	21%	23%	23%

Figure 7. Recommendations of the Treaty Bodies by State and Type<sup>136</sup>

Figure 8 below indicates the number of instances in which a legislative recommendation has been followed by legislative action, a negative response, a provisional step, or where no clear evidence of any response by the GCC states could be found. Between the states there are significant variations. Bahrain and Qatar have been most responsive to such recommendations with more than twice the number of equivocal (i.e. positive or negative) responses than Kuwait, Oman, Saudi Arabia, or the UAE (all of which have reacted to less than a quarter of recommendations for legislative reform). Qatar has also had the highest proportion of positive responses (>20 percent) and the highest proportion of positive or provisional actions (>40 percent). Bahrain also has over 40 percent positive or provisional actions but the highest proportion of negative responses (~20 percent, slightly ahead of Qatar). Among the less responsive states, the UAE has the highest proportion of negative responses compared with all active responses, and the fewest positive responses of any the states. Saudi Arabia and Kuwait have very similar numbers, both with less than 25 percent responsiveness but with more positive than negative actions.

Caution is needed for positive responses for two reasons. First, as with the above data, the figure demonstrates only that a particular measure was followed after a treaty body recommendation at some point. It does not demonstrate causation. Second, the legislation that is promoted as a positive response by the state may not be fit for this purpose. Regarding the possibility

136. *Id.*





	+	-	~	?
Bahrain	5	7	11	12
Kuwait	7	4	10	58
Oman	4	1	3	18
Qatar	16	11	13	25
Saudi	4	2	3	26
UAE	1	3	3	16

Figure 8. State Responses to Treaty Body Recommendations<sup>137</sup>

of causation, there are many instances of states putting forward new legislation in their national reports as fulfilling the treaty requirements, but only in a few cases are these legislative acts directly connected to previous treaty body recommendations.<sup>138</sup> Even where there are attributions to changes in legislation, they are mostly general and do not refer back to a specific recommendation. There are a very small number of counter-examples, such as Qatar's incorporation of the definition of torture from CAT.<sup>139</sup> In most cases, however, state reports have put forward legislation that, while in the broad area of the relevant Convention's purview, have no relationship to the actual recommendations contained in previous reports.<sup>140</sup>

Many of the legislative reform recommendations made to each of the GCC states have been shared across the states. All have received calls to pass legislation prohibiting gender and racial discrimination,<sup>141</sup> to provide equality in access to citizenship for children,<sup>142</sup> to review labor laws with a view to abolish the *kafalah* regime,<sup>143</sup> to review juvenile justice law,<sup>144</sup> and to repeal any laws that may justify corporal punishment.<sup>145</sup> Some treaty

137. *Id.*

138. We reach this conclusion by comparing the recommendations put forward by the human rights treaty bodies and responses or the lack of responses to such recommendations in subsequent state reports to the UN treaty monitoring bodies.

139. *Second Periodic Reports of States Parties due in 2008: Qatar*, U.N. C.A.T., §5.1.5, U.N. Doc. CAT/C/QAT/2 (2011).

140. For example Bahrain's second CRC state report cites twenty legislative enactments as having been made in response to the Committee's response to its first report (U.N. Doc. CRC/C/BHR/2-3). However, when compared, only one of these enactments responds to any of the recommendations in that response.

141. CEDAW November 2008 to Bahrain, CERD April 2000 to Bahrain, CERD August 1993 to Kuwait, CEDAW March 2004 to Kuwait; CERD April 2012 to Kuwait; CRC February 2001 to Saudi Arabia, CEDAW March 2007 to Saudi Arabia, CERD September 1993 to Qatar, CRC November 2001 to Oman, CRC June 2002 to the UAE.

142. CRC June 2002 to the UAE, CERD March 2005 to Bahrain, CRC June 2002 to Saudi Arabia.

143. ICESCR June 2004 to Kuwait; CEDAW November 2008 to Bahrain; CRC June 2002 to the UAE.

144. CRC June 2002 to the UAE; CRC June 2011 to Bahrain, CRC October 1998 to Kuwait.

145. CRC June 2002 to the UAE; CRC November 2001 to Qatar, CRC November 2001 to Oman, CRC June 2001 to Bahrain, CRC October 1998 to Kuwait, CRC February 2001 to Saudi Arabia.

bodies have also called for antitrafficking legislation in the GCC states and the UN Special Rapporteur on Trafficking repeated this recommendation.<sup>146</sup>

In areas where GCC states have received common recommendations, the only area where the GCC states, as a whole, have responded is through passing antitrafficking legislation; the United Arab Emirates in 2006,<sup>147</sup> Bahrain in 2008,<sup>148</sup> Oman<sup>149</sup> and Saudi Arabia<sup>150</sup> in 2009, Qatar in 2011,<sup>151</sup> and Kuwait in 2013.<sup>152</sup> Interview data shows that the leading factor in moving swiftly with regard to this legislative recommendation is the US bilateral pressure on the GCC states (a process given a public face in the US Department of State's annual Trafficking in Persons ranking of all countries in the world).

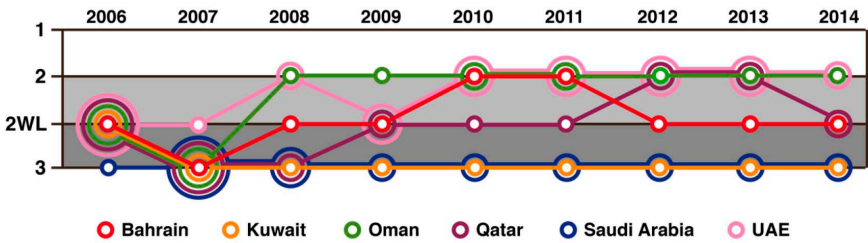


Figure 9. US TiP Rankings

Apart from the issue of trafficking, the GCC states have not taken legislative action in pressing areas of common concern in the fields of discrimination, the rights of noncitizens, and the rights of children. Furthermore, the GCC-level decision to coordinate laws concerning domestic workers has slowed down rather than facilitating the implementation of UN treaty body recommendations.

GCC countries openly rejected review of nationality laws allowing for women to pass their citizenship to their children. In Kuwait, Bahrain, and Qatar, there is a trend toward granting equal rights to services, such as ac-

146. CRC March 2006 to Saudi Arabia, CERD September 2009 to Saudi Arabia; CEDAW February 2010 to the UAE; Special Rapporteur on Trafficking Recommendation of April 2007 to Bahrain, Special Rapporteur on Trafficking Recommendation of April 2007 to Qatar, Special Rapporteur on Trafficking Recommendation of April 2007 to Oman.

147. U.A.E. Federal Act No. 51/2006.

148. Bahrain Act No.1/2008.

149. Omani Law No.15/2011.

150. Council of Ministers Decision No. 244/2009, Royal Decree M/40 ("Suppression of the Trafficking in Persons Act").

151. Qatar Law No.15/2011

152. See U.S. DEPT. OF STATE, 2013 TRAFFICKING IN PERSONS REPORT: KUWAIT (2013), available at <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215497.htm>.

cess to government subsidies for schooling, for children of female citizens married to noncitizens and allowing unmarried women to receive benefits in the form of interest free loans, which are earmarked as wedding gifts for married women.<sup>153</sup> Domestic pressure from women in prominent families, who are close to the ruling elites, best explains this “different status but equal access” small gains approach in GCC states. As one interviewee, a member of a prominent Qatari family explained, “It is very hard for the ruler to argue that my son is not to get free schooling because I’m married to a Saudi.”<sup>154</sup>

Small gains are harder to acquire in areas where the hampering effects of political economy and the presence of closed legal systems are prevalent. Calls for reform of labor laws are one such pocket of resistance. Despite the increased INGO pressure, in particular with respect to rights of domestic workers<sup>155</sup> in this field, no significant change has yet come about in the region. The *kafalah* system continues to hamper the enjoyment of economic, social, and civil rights of migrant workers. Migrant workers with low wages are vulnerable since they do not even enjoy freedom of movement due to exit visa laws. They cannot apply for family reunification as their incomes do not allow them to sponsor their spouses and children. In the GCC region, only Bahrain has passed reforms that provide workers with the right to change their employer without the employer’s consent,<sup>156</sup> but this is regarded by some as a tactic in the face of rising opposition from Shia citizens.<sup>157</sup> In Saudi Arabia and Qatar, there is also a requirement for an employer-issued exit visa.<sup>158</sup> Despite strong INGO pressure, the political economy of migration coupled with a lack of domestic pressure has led to lagging reforms. Political economy further plays an important role in GCC states that do not respond to recommendations to extend citizenship to stateless persons and to recognize and grant legal status to refugees.

The closed legal and constitutional frameworks outlined in Section II hamper primary effects of UN human rights treaties in a number of ways. First, the legal culture makes decision makers more reluctant to codify con-

153. See Kuwait Act No.21/2000; See also Bahrain Act No.35/2009.

154. Interview, Qatar, (Feb. 2012).

155. See Human Rights Watch, *I Already Bought you: Abuse and Exploitation of Female Migrant Workers in the United Arab Emirates*, 22 Oct. 2014, available at <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united>; Amnesty International, “My Sleep Is My Break:” *Exploitation Of Migrant Domestic Workers In Qatar*, 23 Apr. 2014, available at <http://www.amnestyusa.org/research/reports/my-sleep-is-my-break-exploitation-of-migrant-domestic-workers-in-qatar>; International Trade Union Confederation, *Facilitating Exploitation: A Review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries*, 17 Nov. 2014, available at <http://www.ituc-csi.org/gcc-legal-and-policy-brief?lang=en>.

156. Bahrain Decision No.79/2009; Kuwait Act No.6/2010

157. Interview, Qatar, (May 2013).

158. U.S. DEPT. OF STATE, QATAR: INVESTMENT CLIMATE STATEMENT (2015), available at <http://www.state.gov/documents/organization/241921.pdf>.



cepts such as racial or gender discrimination on the grounds that no specific legislation is needed to give effect to nondiscrimination under Shari'a legal culture.<sup>159</sup> Second, calls to end corporal punishment or other inhuman and degrading treatment face objections since some Shari'a law interpretations approach sentencing<sup>160</sup> and father's rights and duties in a family differently.<sup>161</sup> In the field of family law, recommendations face similar obstacles. Recommendations concerning changes to laws with regard to the marriage age for women, repealing guardianship laws for women, and allowing equality of access to women in marriage and divorce laws largely do not enjoy the support of the GCC countries.<sup>162</sup>

The inaction of the courts reflects these limitations with little evidence of active use of UN human rights treaties. There is scant awareness of UN human rights treaties as legal authorities applicable in judicial proceedings. The lawyers interviewed across the GCC states did not regard the UN human rights treaties as a litigation tool to defend the rights of their clients. On the contrary, one prominent lawyer said, "[i]n order to protect the rights of my client, it would be wiser not to make references to the UN human rights treaties."<sup>163</sup> When government officials across the GCC were interviewed, their responses were that there were no legal obstacles to using UN human rights treaties in domestic courts. Despite this, the judicial perception was to the contrary with one interviewee explaining: "if you want me to use UN human rights standards, then there must be legislation telling me exactly what to do. It is not my job to turn treaties into law it is the job of the government."<sup>164</sup> The lack of references to the binding or persuasive authority of human rights treaties in the case law of the GCC courts supports the stronghold of dualism as the dominant approach to UN treaties among the judiciary.<sup>165</sup> In effect, the dualist paradigm is so strong that even

159. *Seventh Periodic Reports of States Parties due in 2003 Addendum: Bahrain*, U.N. C.E.R.D., U.N. Doc. CERD/C/443/Add.1, (2004).

160. In March 2009, Saudi Arabia rejected the recommendation to take all necessary steps to end corporal punishment, including flogging, and other forms of cruel punishment for persons convicted of crimes committed by those under eighteen. This recommendation was previously made by the CRC in February 2001.

161. For example, the UAE Penal Code of 2010 created a right to chastise one's children or wife.

162. See, e.g., *Report of the Working Group on the Universal Periodic Review: Qatar/Addendum*, U.N. H.R.C., § 15 U.N. Doc. A/HRC/14/2/Add.1 (2010), where Qatar stated that repealing guardianship laws was incompatible with Shari'a, and did not support recommendations to review family code and law on nationality to ensure gender equality in divorce and nationality.

163. Interview, Qatar, (Feb. 2013).

164. Interview, Qatar, (Feb. 2014).

165. Despite repeated calls for examples of case-law giving legal effect to UN treaties, only Kuwait has provided such references. This was relayed through interviews with judges and lawyers in the region, as well as representatives of National Human Rights Institutions. We have also not been referred to any examples.



UN treaties incorporated into domestic law through royal decrees do not get traction in the courts.

Domestic civil society actors and national human rights institutions might be expected to close this gap, but restrictive association laws and administrative frameworks have severely limited this. In the GCC countries, local human rights organizations are restricted in number and constrained in their activities<sup>166</sup> or exist only underground.<sup>167</sup> How individual states allow for civil society organizations, therefore, significantly influences the space for civil society action around UN human rights treaties.

As a consequence, each of the GCC states received formal recommendations asking for liberalization or removal of legislative restrictions on NGOs. Bahrain has had at least four such recommendations from four different sources<sup>168</sup> but, notwithstanding this, passed a 2013 draft law on civil society organizations seeking to further control and restrict civil society in Bahrain. The ICCPR asked Kuwait to create a new, and more independent, NHRI due to the existing Human Rights Commission being part of the Ministry of the Interior.<sup>169</sup> This request has been repeated on eight separate occasions.<sup>170</sup> Oman was asked to revise its registration procedures for NGOs during the 2010 UPR round (leading to a commitment to consider amending its Law on National Associations).<sup>171</sup> In November 2001, the Committee on the Rights of the Child asked Qatar to ensure that its NGO regulation conformed with international standards on freedom of association.<sup>172</sup> Saudi Arabia was asked to permit domestic NGO formation in the area of human rights, which it

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166. In GCC countries, association laws are vague allowing for refusal to register organizations, interference with the internal management of organizations, and suspending or dissolving organizations with relative ease. On the legal framework and practices in the two countries that have ratified the ICCPR, Bahrain and Kuwait, see INTERNATIONAL FEDERATION OF HUMAN RIGHTS, *FREEDOM OF ASSOCIATION REPORT ON BAHRAIN, KUWAIT AND YEMEN*, 31 March 2009, available at <https://www.fidh.org/en/region/north-africa-middle-east/gulf-regional-issues/Freedom-of-Association-Report-on>.
167. For example, the first ever shadow report to CEDAW by a domestic organization from Qatar was submitted by an anonymous group who called themselves “A Group of Concerned Citizens” in the official submission to the CEDAW Committee. See INDEPENDENT GROUP OF CONCERNED CITIZENS, *QATAR SHADOW REPORT*, available at [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT\\_CEDAW\\_NGO\\_QAT\\_16177\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT_CEDAW_NGO_QAT_16177_E.pdf).
168. ICERD in March 2005, CAT in June 2005, CRC in June 2011, and through UPR in July 2012.
169. *Concluding Observations of the Human Rights Committee*, U.N. H.R.C., U.N. Doc. CCPR/CO/65/KWT (2000).
170. ICESCR in June 2004, OP-CRC-SC in February 2008 (both requesting also Paris compliance), UPR in June 2010, CAT in June 2011, CEDAW in November 2011, ICCPR in November 2011, ICERD in April 2012, and ICESCR in December 2013.
171. Oman Royal Decree No.14/2000; *National Report Submitted in Accordance with Paragraph 15 (a) of the Annex to Working Group on the Universal Periodic Review*, U.N. H.R.C. Res.5/1, § 113, U.N. Doc. A/HRC/WG.6/10/OMN/1, (Nov. 18 2010).
172. *Concluding Observations of the Committee on the Rights of the Child*, U.N. C.R.C., § 17(b), U.N. Doc. CRC/C/15/Add.163, (2001).



has now allowed since 2003, and to allow access for external INGOs.<sup>173</sup> UAE has been asked to repeal laws limiting the freedom of expression of NGOs and to bring NGO law into line with international best practice.<sup>174</sup>

Interviews with members of civil society further highlight that there are challenges to getting registered as an NGO, and also challenges to switching from a “charitable effort” NGO to a “rights advocacy and campaigning” NGO.<sup>175</sup> In other words, while those who wish to advocate for human rights face legal restrictions, those organizations that already have some presence, such as women’s or lawyers’ associations, but do not maintain an active interest in UN human rights treaties do not have the same restrictions.

In spite of these legal restrictions, a small number of NGOs have still managed to participate and engage with the UN. In Figure 10, participation through the proxy measure of shadow reporting to the UPR procedure is assessed. This shows that the vast majority of reports are either international in origin (83 percent) or partly international in production (a further 7 percent) with only 10 percent originating locally. In terms of interstate differences, Qatar has had no local reporting in its first UPR round, Saudi Arabia only had local reporting within joint submissions in its first round, and UAE, despite having had one local report in 2009, had none in 2012.

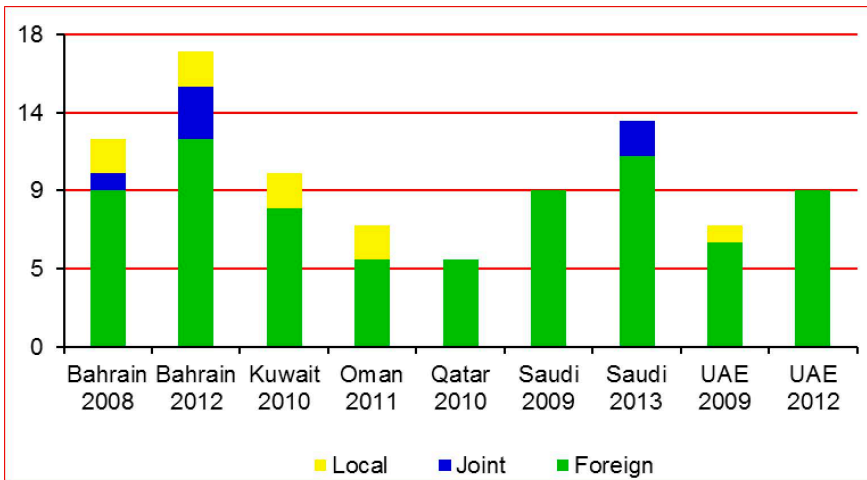


Figure 10. NGO UPR Shadow Reporting

173. *Report of the Working on the Universal Periodic Review*, U.N. H.R.C., U.N. Doc. A/HRC/11/23, (2009).

174. *Report of the Working on the Universal Periodic Review*, U.N. H.R.C., U.N. Doc. A/HRC/10/75 (2009); *Report of the Working on the Universal Periodic Review*, U.N. H.R.C., U.N. Doc. A/HRC/23/13, (2013).

175. Interview, Qatar, (Feb. 2012); Interview, Oman, (Feb. 2013).

Looking across the full scope of domestic effects, elite preference is a critical precursor to meaningful domestic reform and other channels, such as public opinion, civil society pressure or international advocacy, which are either restricted in their impact or restricted in their scope. The potential for judicial elaboration or application of UN rights norms are hampered by low awareness of, or ambiguity surrounding, the roles of treaties within domestic constitutional and legal orders. The main and small success stories result from overlaps between cautious leadership preferences with reform recommendations, combined with bilateral pressure, in the form of the United States involvement in antitrafficking.

## V. CONCLUDING THOUGHTS

This Article responds to the fact that GCC member states have been part of an important trend toward ratification of UN human rights treaties, a trend that had never before been studied closely. The study has shown that there are variations in the GCC region with regard to decisions to enter into UN human rights treaties and the extent of the subsequent secondary and primary domestic effects of human rights treaty ratification.

The trend for increased ratifications of UN human rights treaties, in particular, the recent (and quick) GCC-wide ratification of the CRPD, show that the GCC states consider UN human rights treaty ratification an important aspect of integrating into the international system and view remaining outside of the human rights system as costly for their standing in the international community. As the GCC countries are resource-wealthy states with no dependency on international financial support or aid this finding is significant. Granted, treaty ratification is selective both with regard to the treaties ratified and with regard to reservations entered at the time of ratification. The trend, however, is towards increased ratification of UN human rights treaties with fewer reservations.

Our findings confirm that the UN human rights treaties do not have extensive effects on institutions, legislative changes, and judicial decisions in the GCC region post ratification. The ongoing state building and modernization reforms in the GCC are often cautious and ambivalent toward human rights reform recommendations put forward by UN treaty bodies. Small gains in human rights reform have thus been in areas where there is overlap between leadership preferences and UN treaty body recommendations—often driven by human rights bureaucrats with a concern for the rules, bilateral pressures, or pressures from prominent domestic actors. Factors impeding human rights reforms, such as: legal and constitutional frameworks, political economy concerns, and strong conservative societal pressures, however, are more prevalent than factors facilitating them in a diverse range of human



rights areas. Due to their wealth, GCC states are also not too responsive to international pressures for domestic change. Domestic effects, thus, come in small steps. They largely depend on persistent human rights champions in governmental ministries and national human rights institutions. In the GCC region, advocates and researchers of human rights would benefit from studying which issue areas are more likely to allow for small gains. In particular, small gains may prove to be an effective strategy for the institutionalization of UN human rights treaties in the long run.

Despite these limited primary effects, our study finds that the GCC states are more open to responding to UN recommendations through further ratification of UN human rights treaties and by way of creating human rights national institutions and human rights bureaucracies. While such institutions attract skepticism from human rights activists as window dressing, and lacking the adequate means and powers to be the voice of human rights law in the GCC, they also enable human rights law to penetrate into the meeting room of state authorities. Whether this new generation of GCC human rights bureaucrats will pave the way for further human rights reform, as envisaged by UN human rights treaties, remains to be seen.



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