

A stylized graphic of a flame or leaf, composed of several overlapping, curved shapes in shades of blue and yellow, positioned on the left side of the cover.

From Ratification to Implementation: UN Human Rights Treaties and the GCC

Workshop Series Report

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20 June 2013

***This report was made possible by NPRP grant # 5-804-5-123 from the Qatar National Research Fund (a member of Qatar Foundation). The statements made herein are solely the responsibility of the authors.**

This report is based on the 'From ratification to implementation: UN Human Rights Treaties and the GCC' workshops held in Doha, Qatar in May 2013. The workshops were organised by a research team of academics from the University College London, the University of Oxford, Qatar University, and Georgetown University Qatar as part of a two-year research project funded by the Qatar National Research Fund National Priorities Research Programme Grant No. 5-804-5-123: The Domestic Effects of International Human Rights Treaty Ratification in the Member States of the Co-operation Council for the Gulf (GCC). We gratefully acknowledge the collaboration and support of the United Nations Training and Documentation Centre for South-West Asia and the Arab Region in organising the workshops.

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Executive Summary

The processes of ratification of human rights treaties in the GCC states have generally been top-down rather than bottom up. Traditionally the decision making power has been concentrated in the ministries of foreign affairs with little input from other ministries, departments or members of civil society or other non-government actors¹. This led to treaties being ratified with little prior preparation regarding the harmonisation of treaties with domestic legislation, or the training of civil servants and the judiciary. This trend is gradually being reversed, with many other governmental actors – and occasionally civil society actors – participating in the processes of ratification.

Reasons underlying ratification of human rights treaties are diverse across countries and across treaty issue areas. Discussions, however, reveal that international motives have been more dominant than domestic motives in the GCC region.

Reservations to human rights treaties, in particular prior to the 2000s, were decided by a small number of experts from foreign affairs ministries. This increased the risk of cautious or unnecessary reservations. Due to the proliferation of state institutions in the GCC countries in recent decades, the lifting of reservations is harder than formulating them, but a trend is underway of continuously revisiting the necessity of reservations.

Civil society actors in GCC states start their implementation work at a significant disadvantage due to (a) their lack of input into the processes of ratification, (b) their lack of input into the formulation of reservations, (c) the prevalence of conflicting domestic laws with human rights treaty provisions, and (d) a general lack of human rights awareness amongst the government, judges and the public.

The political commitment of GCC states to *ratify* a human rights treaty does not necessarily match with their commitment to *implement* the treaty. At times governments (a) seek to contain implementation efforts by way of general reservations or by presenting treaties as international documents rather than domestic policy documents, (b) change their minds with regard to implementation after they ratify the treaty due to domestic circumstances, and/or (c) lack the institutional capacity to implement treaty provisions effectively. Individually or taken together, these lead to a major gap between the ratification and implementation of human rights treaties.

The GCC states do not have a GCC-level policy with regard to ratification, reservations or implementation. The adoption of a joint policy to ratify the Convention on the Rights of the Child (CRC) in the 1990s is an exception to this. Civil society organisations in the GCC are also not coordinated and operate in a piecemeal fashion both across the GCC and within individual states.

¹ This report shall use the shorthand 'civil society' for all non-governmental actors, whether registered as NGOs or otherwise.

Introduction

Over the last decade and across member states of the GCC, there has been an increase in the ratification of United Nations (UN) human rights treaties, the reviewing of existing reservations, the building of national human rights institutions and the creation of other human rights institutions. GCC member states have accepted numerous Universal Periodic Review (UPR) recommendations, a number in fact concerning the ratification of further UN human rights treaties.

Despite the numerical increase in the ratification of human rights treaties in the GCC (see appendix A) a number of significant issues regarding the ratification and implementation practices remain.



First, there is the practice of selective ratification of human rights treaties. Two out of six members of the GCC (Bahrain on 20/9/06 and Kuwait on 21/5/96) have ratified the International Covenant on Civil and Political Rights (ICCPR) and the same two states (Bahrain on 27/9/07 and Kuwait on 21/5/96) have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition, pledges have been made at UPR sessions by other GCC states, including Qatar and Oman, to consider their ratification. However, no GCC member state has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).

Second, no GCC member state has accepted the right to individual petition provided by any of the UN treaties they have ratified. The Saudi ratification (24/6/08) and the Qatari and UAE signatures (Qatar signed on 9/9/07 and the UAE signed 12/2/08 but neither have yet ratified) to the Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD-OP) which came into force in 2008 is an exception to this. This Saudi ratification serves as the first acceptance of individual petition by a GCC member state.

Third, GCC member states have entered general and specific reservations that subject the ratified treaties or their individual provisions to Islamic Sharia law. There is a trend developing in some states concerning reservation review strategies, but little is known about them.

Fourth, the implementation of human rights treaties in the GCC region is piecemeal. The UN Treaty Body mechanisms and the UPR reviews show that the gaps in terms of the compatibility of legislation with human rights treaties continue and there is a significant absence of judicial practices with regard to UN human rights treaties. The factors that facilitate and hinder implementation, however, need to be better understood both from the perspective of policy makers and members of the civil society in order to improve the pace and scope of the implementation of these treaties.

In the light of these observations, a research team composed of academics from University College London, the University of Oxford, Qatar University, and Georgetown University Qatar organised two workshops within the terms of a research project funded by the Qatar National Research Fund National Priorities Research Programme Grant No.5-804-5-123.

The From ratification to implementation: UN Human Rights Treaties and the GCC Workshop Series brought together members of the civil society sector, national human rights institutions and governmental representatives specialising in human rights treaties from the Gulf Co-operation Council Member States in two workshops in May 2013. As noted by the representatives from the United Nations, this was the first initiative bringing together experts from all sectors of society from all GCC countries on this topic, enabling a high-level knowledge exchange generating comparative insights.

Ratification Processes in the GCC Member States

A key finding that emerged from the knowledge exchange seminars was that the UN Human Rights treaty ratification processes in the GCC member states predominantly followed a top-down model.

The practices were top-down in two senses. First, the members of the civil society sector were not involved in ratification campaigns, nor were they consulted by way of a regular procedure prior to the ratification of human rights treaties. As one participant put it “one would hear about ratification of a human rights treaty in the newspaper” after the ratification had already taken place. One participant commented “the demand is not from the people”, although another participant said that the government “tried to gauge public opinion through traditional means.” A further observer stated, “they [civil society] didn’t call for CEDAW because they don’t know about it”. It was suggested, however, that the Arab Spring has lent impetus to the process of enhancing the scope of treaty ratification. The consideration is that ratification may strengthen the enjoyment of a number of rights and satisfy the growing political demands of the citizenry and civil society. As one participant stated “There has been more interest in the law since the Arab Spring, more people are getting involved in human rights”. It was held by some participants that human rights provided a societal tool and mechanism and that “if you don’t have such tools and mechanisms you will have protests or revolution”.

Second, practices were top-down in the sense that the ministry of foreign affairs took the lead in the ratification of human rights treaties without the extensive knowledge or involvement of other ministries in the state apparatus.

The top-down practices of ratification characterised as state-driven and, more specifically, foreign ministry-driven, have important implications in terms of the preparedness of the domestic laws, regulations, policies and judiciary in the implementation of human rights treaties post-ratification.

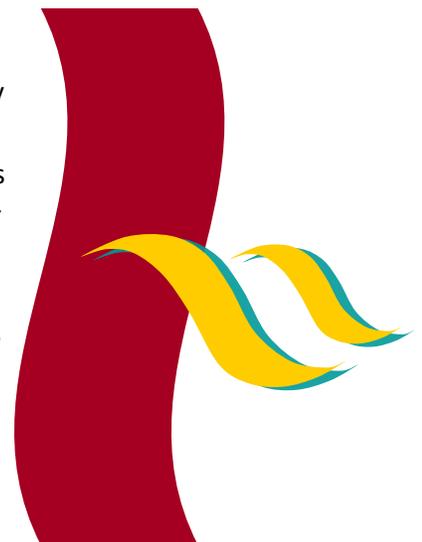
The general model that appears to have been dominant in the GCC can be understood as a ‘ratify now, implement later’ model, attesting a wide gap between treaty ratification and implementation. It highlights a gap between those who decide to ratify human rights treaties and those who have to bring about the necessary changes in domestic policy.

The GCC region is not a unique example of such a model. The idea that ratification is the first step of implementation is a model also at work in other parts of the world, including in the Americas, Central Asia and Europe. It is however, not promising of the enjoyment of human rights treaty provisions at the domestic level immediately after ratification. As will be seen below, there is evidence that this pattern is starting to change in some GCC states.

Participants identified two exceptions to the state and foreign ministry-driven model. The first was the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Kuwait, where it was noted that there was an active campaign by women’s rights groups to ratify CEDAW and that the government’s ratification decision, in part, responded to this domestic push. As participants explained, “after 1990 it was clear that civil society wanted ratification of CEDAW but also the country wanted to polish its image so these two factors came together”. Secondly, in the case of Qatar, participants raised the importance of governmental human rights champions located outside the Ministry of Foreign Affairs pushing for the ratification of UN human rights treaties. It was argued that the ratification of CEDAW and the CRPD in Qatar largely resulted from the concerted advocacy of the Supreme Council for Family Affairs under the leadership of H. H. Sheikha Moza.

Participants pointed to both the lack of capacity within the civil society sector and the difficulty of having regular consultations with government representatives as obstacles in the push for the ratification of human rights treaties domestically. The role of UPR – an inter-governmental review process – on the other hand, was highlighted as playing a significant role in further GCC ratifications of human rights treaties since 2008. The demand by other UN member states for the ratification of UN human rights treaties in the GCC has been identified as a key driver for recent ratifications. The placement of the ratification of the ICCPR and ICESCR in the ratification agenda of Oman and Qatar, as well as the ratification of the Convention Against Torture (CAT) by the UAE in 2012 (on 19/9/12), was attributed to this factor.

Participants noted that whilst the model of ‘ratify now, implement later’ has been prevalent in early ratifications from the 1960s through to the 1990s, there were indications that this model is no longer in use since the 2000s. This is largely attributed to the proliferation of a large number of institutions in the governmental apparatus of the GCC, including National Human Rights Institutions (NHRIs). Whilst the foreign ministry-led model is still at work, in the case of Qatar for example, the Supreme Council of Family Affairs, created in 1998, has been identified as the central agency in ratification decisions for CEDAW and CRPD (Qatar ratified CRC on 3/4/95 but CEDAW on 29/4/09 and CRPD on 13/5/08). The NHRIs, too, are involved in calling for ratification of human rights treaties and participate in discussions regarding ratification. The discussion suggested that the foreign ministries are no longer the sole authority, but are still operating as a coordination agency in ratification processes. One participant observed that because of this wider consultation “ratification is likely to become slower but more effective...before, ratification could happen very quickly, but people couldn’t access it”.



Rationales for Ratification of Human Rights Treaties

The rationales for ratification of human rights treaties in the GCC region are diverse. Whilst participants have predominantly identified international motives for ratification, in some countries domestic motives with respect to some treaties were also raised. International motives included being a good citizen of the international system, integration into the international community and a particular Gulf phenomenon identified by some participants, prominent perhaps in Qatar and Bahrain, of the urge of “being the first at everything”.

International Motives

In discussions, participants identified a diverse number of justifications regarding the ratification of UN human rights treaties for international reasons. Two important findings emerged from the discussions. First, there was a general understanding that UN human rights treaties signalled better integration with the international system as a whole, but that underlying reasons for why GCC states aim for further international integration varied.

In Kuwait, for example, ratifications of human rights treaties post-dating the invasion of Kuwait by Iraq in 1990 (this notably includes the ICCPR and the ICESCR) were attributed to Kuwait “saying thank you to the international community” for its liberation as well as Kuwait’s concerns with consolidating their international standing and sovereignty by being a “fully integrated member of the UN international system”. Indeed in the aftermath of the invasion, Kuwait ratified both the ICCPR and the ICESCR. In Oman, too, participants attributed the purpose of better integration within the international community as an underlying rationale for ratifying some human rights treaties. Participants from Qatar also highlighted this importance of international integration and being a good international citizen in their case as well.

Participants from Bahrain mentioned that ratifying human rights treaties also offers an effective tool for deflecting international criticism during difficult domestic times. For example, some participants attributed the Bahraini ratification of the ICCPR and the ICESCR in 2006-2007 to this particular logic.

Domestic Motives

Qatari participants also highlighted that ratification may be grounded in domestic motives as well as international ones. For example, the ratification of CRC, CEDAW and the CRPD were explained as good

policy tools pushing for domestic change in the country. It was highlighted that the ratification of UN treaties can help focus policy initiatives at the domestic level and empower progressive government agencies against more traditional or conservative groups.

Participants from Kuwait further emphasised the domestic openness of a country to ratify international human rights treaties as a factor. It was highlighted that the greater experience of Kuwaiti society with constitutional rights makes domestic and judicial players more receptive to ratification of human rights treaties.

Types of Treaties and Rationales for Ratification

An important finding that emerged from the discussions was the diversity of domestic rationales for ratifying *particular* ‘types’ of treaties. Participants confirmed the general assumption that the GCC countries were more willing to ratify human rights treaties that are regarded as addressing ‘social issues’. It was highlighted that it is always easier to ratify treaties that address the rights of children, women and persons with disabilities rather than ratifying treaties that concern civil and political rights in the region. This is generally explained by the alignment of principles of compassion and charity towards weaker members of the community in Islam and their bearing towards the CRC, CEDAW and CRPD.

Despite the differences in the perceptions of UN treaties, however, it has been noted that the rationales for the ratification of so-called ‘soft treaties’ do not necessarily match the subsequent effects of their implementation. This is particularly due to the large number of reservations entered into the so-called ‘soft treaties’, indicating that rather than committing to these treaties as a whole, GCC states have often sought to align their commitment to UN treaties with their *domestic* visions of protection for women, children and the disabled. Kuwait, for example, was the first GCC state to ratify CEDAW in 1994. This ratification, however, came with a general reservation to CEDAW subjecting the full treaty to Islamic Sharia in terms of implementation.

The ratification process of one of the youngest UN treaties, the CRPD, is an exception to this trend, especially in the case of Qatar. Qatar was actively involved in the drafting of the CRPD by way of sending delegations, especially from the Supreme Council of Family Affairs, to the drafting meetings of the CRPD. This early specialised agency level involvement had a number of consequences. First, it sped up the ratification of the treaty as a large number of agencies were involved in drafting and came out in strong support of ratification. Second, and perhaps more significantly, the treaty was adopted without any

reservations. Lastly, the Supreme Council of Family Affairs was involved in bringing the domestic legislation in line with the CRPD even *before* the ratification took place.²

The GCC states tend to view the ratification of the ICCPR and the ICESCR as one package, though there is no legal reality to this. There is no country that has ratified one treaty but not the other (Bahrain and Kuwait have ratified both). The ratification of both treaties sends a very strong signal, in particular to international audiences. The ongoing debates on this matter in Oman and Qatar show that states are viewing the twin covenants both in terms of their international and domestic benefits and costs.

States that have not ratified the twin covenants (i.e. ICCPR and ICESCR) not only refrain from doing so for political reasons, but also due to the enhancement and proliferation of domestic institutional structures that review ratification decisions. The bureaucratic loops that a treaty now has to pass through, and the multiplicity of actors involved, has slowed down decision making about new ratifications. One participant referred to this as “a good delay”. Wider consultations on the question of ratifying the twin covenants in Oman, for example, led to the conclusion that consideration of ratification should be “slowed down, not because they are not important but because some of its provisions are in conflict with the local laws, so we need to study them in depth to see how we could amend our provisions.” In the case of Oman, participants also pointed to the difficulty of ratification of the twin covenants due to the lack of a single agency or ministry that would be responsible for implementing these treaties. In contrast, treaties concerning women, children and the disabled neatly fall within the purview of the Ministry of Social Affairs and this clear responsibility makes the decision to ratify more straightforward.

Whilst all GCC states have ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the ratification histories and underlying rationales are very diverse. Kuwait ratified the CERD as early as 1968 but the Omani ratification took place only in 2003. The 1960s and 1970s ratifications of the CERD are better understood as the rise of the anti-apartheid movement at the United Nations and the positioning of the Arab world in that movement. The later ratifications may be explained by CERD being considered one of the ‘soft issue’ treaties that brings international benefits without high domestic costs.

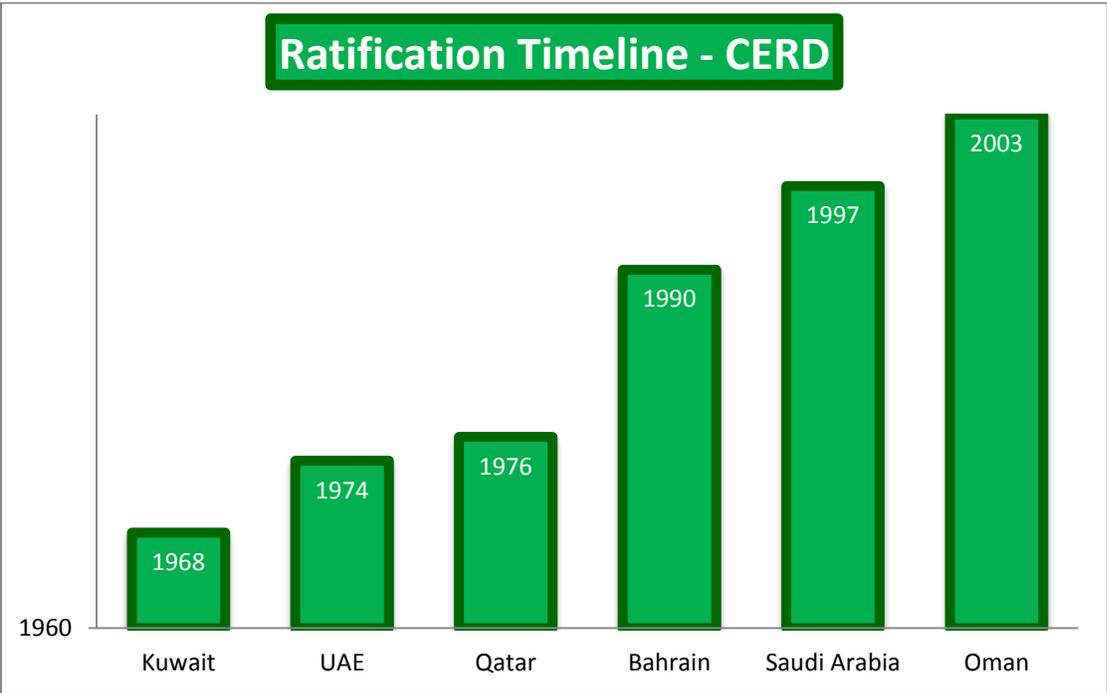
None of the GCC states have ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC). Participants referred to strong domestic and political economy reasons for the non-ratification of this treaty. Given that GCC countries depend heavily on migrant workers, a treaty granting strong protections to migrant workers was identified as an area of low elite and societal interest. Several participants also added “we do not consider them migrant

² The Disability Law that fully incorporates the CRPD was completed by the Supreme Council of Family Affairs in 2011 and is awaiting the approval of the Cabinet.

workers we consider them temporary workers whose rights fall short of those of migrant workers”. That the MWC has historically attracted low levels of ratification internationally, especially from migrant receiving countries, also indicates that the ratification of the MWC is not a strong signal of international integration.

Ratification Actors and Motives for Ratification

Finally, in trying to identify the motive for ratification, one commentator asserted that this could be accomplished by examining the institution that took the lead in the decision to ratify. It was observed that it was more likely for the motives for ratification to be domestic if the push to ratify came from ministries other than the foreign affairs ministry. As one participant put it “if all decisions are taken by Ministry of Foreign Affairs we know the motive is about the image of the state, if it is the Ministry of Social Affairs, it is for women, and labour and children and it is likely also for domestic motives”.



Formulation and Lifting of Reservations to UN Human Rights Treaties

GCC states have a number of reservations to UN Human Rights Treaties. These reservations either constitute general reservations to the treaty as a whole or specific reservations to particular provisions. Whilst some participants agreed that blanket reservations constituted a larger obstacle to implement human rights treaties, others disagreed. One explained general reservations as follows “Blanket reservations allows the understanding you want it to be read throughout the treaty”. Another participant, however, highlighted that a country like Saudi Arabia does not have much choice but to enter a general reservation: “Maybe there is a particularity in Saudi Arabia because of twin holy places... If Saudi Arabia took action in contradiction with Sharia maybe the whole Muslim world would rise up against this action.” General reservations, therefore, were formulated as a necessary step for opening up Saudi Arabia to international human rights treaties.

There are new trends of GCC states *not* entering reservations to human rights treaties. Bahrain has no reservations to the CRC and all GCC states that ratified the CRPD (all states except Kuwait) have not entered any reservations. One participant said, “We were there and actively participated in the drafting of the CRPD. There was no need for reservations”. Another highlighted that “Muslim states were not adequately represented in the drafting of the human rights treaties in 1960s and 1970s. That is why they reserve so much”.

The discussion on reservations also focused on the main concerns of GCC states vis a vis the substantive provisions of human rights treaties. One participant observed that there were two main reasons for reservations, “the sovereignty issues and the religion issues”. Another governmental participant, however, was critical and said “sometimes we are fearful of the treaties and exert too much effort in reserving”.

A key finding from the discussions on reservations was that the formulation of reservations had been adopted as a trend in the region until the ratification of the CRPD. As one participant commented “Sometimes ministries introduce reservations just to be on the safe side”. This is both linked to the central role foreign affairs ministries enjoyed in making key decisions concerning ratification, especially in the early years of ratification practices, and the influence of Islamic Sharia over the regulation of issues relating to women and children for example. Reservations were easy to enter due to the lack of involvement of civil society actors questioning the necessity of these reservations and the decision-makers were cautious as to avoid receiving a domestic backlash from conservative elites.

With the proliferation of agencies that take part in the ratification decisions at the governmental levels, there is an increased involvement of multiple agencies in the formulation (or the negotiation of the formulation) of the reservations to human rights treaties. Participants highlighted that multi-stakeholder involvement in the formulation of reservations has advantages as well as disadvantages. Whilst the conservative ministries may push for more reservations, the progressive ones may encourage more specific or limited ones.

Strategies of Revising and Lifting Reservations

The well-trodden path of entering reservations has now been joined by a more recent GCC trend of the reformulation or the lifting of reservations to human rights treaties. To date, Kuwait, Bahrain, Qatar and Oman have either lifted or reformulated reservations. In the case of Kuwait, the lifting of a reservation concerning the women's right to vote came in the aftermath of a long domestic battle over this particular issue. In the case of Oman and Qatar, the reformulation of reservations followed the recommendations of treaty monitoring bodies. In particular, Qatar lifted a general reservation to the CRC enhancing the chances of this treaty's domestic implementation. The Qatari Ministry of Foreign Affairs has also declared a 'reservation review strategy' for all human rights treaties and announced the lifting of a reservation to CAT in their most recent report to the UN Committee against Torture.

This trend shows that there is responsiveness from national actors to the calls for lifting or specifying reservations, bearing in mind the object and the purpose of human rights treaties. The further active involvement of agencies other than foreign affairs ministries in ratification decisions may enable the governmental human rights champions to revisit reservations to human rights treaties, thereby making the question of reservations part of a dynamic policy field. Governmental actors committed to revisiting the question of reservations can have leverage in limiting the scope of reservations or lifting them. As one participant observed, "We withdrew all our reservations in 2010 because with the change of society and decision making ideas we found that there were no remaining conflicts".

Factors that Facilitate or Hinder Implementation

Participants identified a range of factors that facilitate or hinder the implementation of human rights treaties. A key finding was that the distribution of such factors differed across countries and across treaty issue areas. Below we lay out factors that were debated and identify the treaties that were thought to be impacted most by these factors.

Political Will to Implement

The political will to domestically implement an international legal obligation was discussed as an important implementation factor. Having said this, actors viewed political will as a dynamic factor that is subject to change based on different treaty issues areas and different time frames. In particular, participants distinguished between three manifestations of the lack of political will.

First, the participants identified that in some GCC countries the lack of political will to domestically implement may not stem from the point of ratification of a human rights treaty. Since human rights treaty ratification may result from its recognition as an international signal to show support or solidarity with an issue, rather than as a tool of domestic policy, the willingness to implement may have received insufficient attention at the time of ratification. This point was raised with regard to the early ratifications of human rights treaties at a time when the domestic governmental institutions did not have strong agencies to deal with human rights issues as a matter of domestic concern.

Second, participants identified that political will may be present at the point of ratification, but this may later decline due to domestic political circumstances. This point was raised with regard to the ratification of CAT by Bahrain in 1999, when the country was reported to have had a strong focus on eradicating torture. There were reports, however, that suggested that torture has become systematic in recent years due to changing political circumstances domestically.

Thirdly, participants discussed the existence of a partial will to implement some human rights treaties or some human rights provisions. Examples given by participants regarding this 'pick and choose' approach related to CEDAW and CRC implementation in a number of GCC countries. Examples included provisions that relate to the right to marriage and equal access to citizenship law by children of GCC women married to a non-citizen. The 'pick and chose' and partial will is evident here as all GCC states seem to lack the political will to fully implement such provisions. In contrast, participants observed that the implementation of the CRPD generally enjoyed more 'total' political support than other treaties because

it is held that “what we already have in our cultures and societies goes much further”. As one participant observed “effectiveness [in the implementation of human rights treaties] depends on the issue at hand, the culture of the society, and how religion is looking at that issue.”

Domestic Institutional Obstacles to Implementation

Institutional obstacles to the implementation of human rights treaties were raised by participants and concerned (1) constitutional arrangements, (2) domestic legal systems and the lack of: (3) a clear implementation strategy, (4) coordinated action amongst government agencies, (5) human rights implementation champions amongst those in government ranks, (6) expertise and capacity and (7) independent domestic oversight of implementation.

Firstly, the constitutional obstacles often figured in the context of Kuwait and with the jamming of all political initiatives appear due to the long-standing contestation between the government and the parliament. This contestation was regarded as a unique feature of the Kuwaiti political structure.

A second obstacle concerned the lack of a consolidated domestic legal system that includes a clear hierarchy between constitutional provisions and domestic laws, as well as well-established procedures of judicial review. As one participant emphasised, “There is a gap between the basic law (i.e. the constitution) and the national law, not only between treaty law and national law”. The challenge of human rights treaty implementation therefore arises within this broader challenge of giving effect to law in society.

A third point raised in this regard was the lack of an overall institutional strategy to implement human rights treaties. This concerned situations where once the human rights treaty came back home, no actor or agency took full ownership of the treaty. Government representatives were in overall agreement that there has been unprecedented domestic human rights institutional building in the GCC region, particularly since the early 2000s. There are very mixed models of institution building at present. Kuwait, for example, was the first country to set up a human rights bureau within the Ministry of Justice in 1993. Qatar was the first country to have established a national human rights institution (NHRI) based on the Paris Principles in 2002. All of the participants from the government agencies noted the establishment of inter-ministerial committees to address UPR recommendations and UN human rights treaty body recommendations. These show that, at the level of governmental engagement with UN human rights treaties, the GCC states have multiple layers of human rights institutions.

The fourth discussion on the effectiveness of this multi-layered governance of human rights issues had a mixed reception from the participants. The non-governmental actors perceived domestic institutions as

not providing access to civil society. The governmental actors raised the question of “too many meetings, too many committees”. An important finding that emerged from the discussion was that the institutional proliferation of domestic agencies focusing on human rights treaty issues have also slowed down ratification and implementation efforts. One participant raised the problem of too many stakeholders in human rights treaty ratification and implementation decisions as not always being good news. These new institutions, especially inter-ministerial committees, also allow for less human rights friendly voices within the government to have their say and, even when there is strong will (or vision) from the leaders to implement human rights treaties, the implementation initiatives can be jammed, delayed and rejected by more conservative or cautious middle-level decision-makers.

These discussions have opened up inter-ministerial dynamics within GCC states, with different ministries sometimes having very different perspectives on human rights. Participants, however, also raised the importance of the personal attributes of ministers. Some ministers were cited as single handedly advancing human rights due to their own vision and preparedness to take risks to champion a cause. Fifthly, therefore, the role of ‘human rights implementation champions’ can hardly be over-stated. High level decision-making required human rights champions at the ministerial level who also had the ear of the Sultan, King or the Emir.

Sixthly, participants from Oman and Qatar also raised the problem of “so called middle management government ranks” (implementation bureaucrats working within the ministries), and their hesitation to fully implement human rights provisions and the lack of staff with capacity and determination to push implementation strategies forward. The ongoing implementation of human rights treaties requires knowledge, institutional capacity and initiative not only at the decision making level but also at the level of mid-level decision-makers. This has meant that even in areas where the political will is strong at the highest levels, human rights implementation initiatives can be stalled by actors who are hesitant to take the necessary initiative to implement. Progressive leadership, therefore, faces the difficulty of ensuring this will is translated into action through intermediaries.

A common issue that was shared by a wide number of participants was the lack of capacity in the public administration ranks to implement the human rights treaties particularly with regard to means of raising the awareness of the public on human rights issues.

Lastly, participants also discussed the lack of NHRIs or the lack of the leverage of NHRIs to push for implementation of human rights treaties. Whilst the Qatari NHRI has ‘A’ status, the Omani and Bahraini NHRIs do not. Kuwait³, Saudi Arabia and the UAE have governmental agencies in the field of human rights which are not yet fully compliant with the Paris Principles.

³ Discussions on an A status Kuwaiti NHRI are now underway.

In addition to the domestic impediments outlined above, three further areas required special consideration at the domestic level: judicial protection, the role of civil society and public awareness of human rights.

Domestic Judicial Protection of Human Rights

A number of actions from the non-government sector and NHRIs raised the lack of domestic judicial protection of human rights. It is a well-known fact in the GCC region that GCC judiciaries lack an active role in human rights protection, especially with specific reference to ratified human rights treaties. GCC countries therefore find it difficult to refer to judicial case law in their reports to the UN human rights treaty body mechanisms. From participants across the GCC only one case law example was provided from Kuwait.⁴

Participants approached the question of lack of judicial contribution to implementation from three perspectives. First, the lack of judicial protection of human rights was attributed to the general lack of knowledge amongst judges concerning UN human rights treaties. A member from one NHRI highlighted this problem saying that “I would very much doubt that judges even have a copy of the Convention on the Rights of the Child”. Second, the more difficult problem of unwillingness of domestic judges to refer to international human rights law was raised. There was general consensus that judges in the GCC prefer to decide based on domestic law rather than international human rights law, even though the latter is domesticated by the decree of the highest authority. “This is a mind-set problem”, said one participant. It is about changing the judicial culture. It was only in the case of Kuwait that participants were able to refer to case law that took into account the ICCPR and CEDAW alongside the Kuwaiti Constitution of 1962. In Oman, on the other hand, one participant indicated that there are examples of courts using other international treaties to set aside domestic law, but that this has not yet happened in the case of human rights treaties.

Participants further discussed the issue of reservations based on Islamic Sharia and whether this disincentives judges’ application of international human rights law. The views were mixed on this. Whilst some viewed the Sharia reservations having a ‘chilling effect’ others have indicated that Sharia is dynamic and the rules that are based on traditions and customs are bound to change, as well as the judges’ awareness of dynamic interpretation of Sharia. Some held that the dynamism of Sharia meant that Sharia reservations to human rights treaties did not need to stand in the way of judicial application of human rights law. Judges, through dynamic interpretation, could restrict the scope of such

⁴ This, of course, does not mean that there are no other examples. It, however, shows lack of awareness regarding domestic case-law on international human rights law.

reservations. There was a lack of studies that capture the judicial attitudes towards international human rights law to see which argument has more currency amongst judges and in which jurisdictions.

Some participants held that “states always use religion to protect their regulations”. Such states considered that “human rights was against their belief, although socially it is good for them, they cannot accept it”. Other participants observed that in some of the states and on some human rights issues there was a preparedness to “understand the moderate way of Islam” which provided a “readiness for human rights”. One factor here was the constitutional system where there was a constitutional monarchy. An effective constitution meant that the “red lines” in society concerned “not only Sharia but also the constitution. So people know that other things can govern them and not only Sharia”.

One participant further touched upon the problem of what he termed as the “double bliss and curse” of the monist approaches to international human rights treaties in the GCC. As he put it, “It is at once good and bad that international law has the same rank as domestic law. It is good, as it can be directly employed. It is bad, as subsequent laws can overrule the treaty and judges prefer to apply their own laws rather than treaties.” This highlighted the importance of having domestic laws that are compatible with the purposes of international human rights law to have more mileage with the judges.

Third, participants raised the question of the lack of capacity in civil society to carry out strategic litigation to advance the application of international human rights treaties. This is explained both by the lack of capacity of civil society to carry out such litigation and by the lack of responsiveness of judges to human rights law points. This further relied on the independence of the judiciary. Some participants emphasised that judges *could* use their own discretion and positions and refer to international human rights law. “We need to change the mindset of lawyers and judges. Judges have an important role to play regarding the implementation of international human rights treaty obligations at the grassroots.”

Civil Society Input into Implementation

Members of society as well as NHRIs noted the general lack of civil society input into domestic implementation of international human rights commitments as an obstacle. The lack of input arose for three key reasons. First, there is the basic difficulty of access to governmental actors by non-governmental actors. Second, the defensive – and at times punitive – view that the government authorities took towards civil society actors. Third, the lack of capacity within the civil society sector itself to monitor and push for the domestic implementation of international human right treaties.

The discussion on the first point focused on the top-down culture in the GCC countries and the governments’ resolve in some instances to control the pace and extensiveness of domestic human rights reform. It was mentioned that in most cases the government is not interested in consulting civil society actors and that most governmental meetings are invitation-only events where the government hand-

picks participants. One participant insisted that the UPR reports that had been submitted should therefore be considered “governmental reports and not national reports”.

Additionally, a large part of the discussion focused on the difficulties of establishing independent NGOs in the GCC and the lack of either laws governing associations and/or the difficulty of registering organisations under such laws. There is, therefore, a general suspicion towards advocacy and campaigning by civil society, and such actions are considered to directly challenge the governments’ decisions. Concerns about the safety of human rights defenders, either as individuals or members of ‘unwanted’ NGOs, were also raised. Too often, advocacy and campaigning were automatically considered “a national security problem” which would necessarily lead to instability. “We choose stability, respect of Allah, the Prophet and the Emir”.

Where such civil society actors were operating, there was then the concern that they were “divided not united on human rights”, separated by sectarian political concerns, human rights issue areas, or due to other factors.

Finally, the discussion focused on the lack of capacity amongst civil society actors to push for implementation. Speakers pointed to the prevalence of government-supported (GONGOs) or government-friendly organisations and their more lenient attitude in mapping the state of human rights implementation and perhaps under-playing difficulties and challenges. There was also a discussion on the prevalence of charitable associations and organisations that focus mostly on service provision in the GCC and their lack of receptivity to rights-based advocacy domestically.

In most GCC states, there was an overall lack of civil society actors bodies that could be consulted on international human rights matters, that could engage effectively in national consultations on UPR, could submit civil society reports for UPR or shadow reports for human rights treaty bodies. Only governmental NGOs (GONGOs) appeared to have had the luxury of such continued focus thus far. It was argued that many of these groups “don’t think strategically, things are not planned, they are merely short-term and responsive in their activities”. One participant asserted that such actors are in “a state of hibernation ... this is a catastrophe”.

A self-critical example was given regarding civil society actors in Kuwait. Whilst they pushed for years to get women into parliament, once they were in parliament “there was no other vision or plan”. This was compounded by the lack of interest by the press in covering domestic human rights matters. Civil society participants realised that this lack of capacity meant that they did not contribute to exerting the necessary pressure for governments not to “get away with” delayed reporting to international human rights treaty bodies, the general lack of response by GCC states to the questionnaires of the Special Procedures and so on. There was optimism that this was changing and that the UPR had lent an impetus to civil society in a few states to “come a long way in recent years”, organising in a more concerted and unified way for ongoing engagement with international human rights processes.

Public Awareness and Human Rights

This final argument suggested that public opinion in GCC countries has not been pro-human rights or has been somewhat unaware or indifferent to human rights issues. An example was given of how people would come to one GCC NHRI and attempt to lodge human rights complaints about their receipt of traffic fines!

No participant, however, referred to any public opinion data on human rights issues. The lack of public support was often supported by the prevalence of strong religious, cultural or traditional ways of life amongst the citizenry, or the economic costs of implementation of human rights treaties, especially those that pertain to migrant worker rights. Participants from civil society reported that it was not only men that contested the right of GCC women to carry their citizenship to their children. Many women also objected, making existing efforts even harder in this field. As one participant observed “the decision about human rights treaty ratification goes from the ministry to cabinet and then it will be raised with His Majesty. The demand is not from the people.” However, there were suggestions that this is changing. “The Arab Spring, protests, more study of law... every day things are improving, consciousness of human rights is changing. The whole picture is a dynamic and positive one. ... if civil society was united, the government would always respond positively to human rights requests”.



Common GCC Policy on UN Human Rights Treaties?

The GCC does not have a policy that seeks to harmonise human rights ratification or implementation practices at the UN level. The GCC Human Rights Bureau was only established in 2011 and it is in the process of building its staff capacity and is currently focused on internal training for its staff members.

It has been suggested that the one time the GCC countries – at the level of foreign ministries – coordinated UN human rights treaty action was concerning the ratification of the CRC. All GCC states ratified the CRC between 1991 and 1997 and participants stated that the reservations to the CRC were also coordinated between the GCC states. Apart from this treaty, the states follow individual paths with regard to the ratification of human rights treaties. The ratification of the CRPD in all states (Kuwait’s ratification is soon to be published in the National Gazette) shows that the GCC countries may also converge on ratification without formal efforts to coordinate.

When asked about whether GCC member states looked at each other in terms what treaties they ratify most participants suggested either that all states had individual pathways to ratification or that the international influence was not limited to the GCC as such. General trends amongst all states to ratify human rights treaties, encouragement to ratify from multilateral forums such as UPR, as well as trends in other Arab or Muslim countries have all been put forward as triggers for consideration of ratification. This suggests that the Kuwaiti and Bahraini ratifications of the twin covenants will not, on their own, play a significant role in whether other GCC countries will sometime in the future ratify these treaties. It was stated, for example, that Oman is “on a good train towards ratification” since UPR.



The mixed influence of trends in other Muslim countries became more apparent when discussions focused on reservations to human rights treaties based on Sharia. Whilst some states have entered general reservations to human rights treaties based on Sharia, others have made more limited reservations to individual provisions based on personal status laws or adoption laws. It has also been suggested that the trends that concern the lifting or reformulating of reservations in the Muslim world have had varied levels of affect in the GCC. Whilst for some countries the practices of reformulation of reservations in other parts of the world, for example Morocco, was encouraging for human rights champions in government ministries, in other countries, government representatives stated that advocating for lifting general reservations, even if discussed in closed meetings, did not find support.

Conclusions

The From ratification to implementation: UN Human Rights Treaties and the GCC Workshop Series engaged in detail with both the processes of GCC human rights treaty ratifications and challenges with regard to future ratification and implementation.

The discussions with members of civil society, national human rights institutions and governmental representatives have shown that the GCC engagement with UN human rights treaties both feature similarities with other parts of the world and exhibit unique features both at the GCC level and at the individual state-level.

With regard to similarities with international trends, the early ratifications of human rights treaties show that the GCC states ratified international human rights treaties largely with international motivations in mind and as ‘international gestures’. This finding lends further evidence to the importance of UN treaties as signals of international integration.

A unique finding from the workshops was the domestic determinants of reservations to human rights treaties. Whilst the common wisdom on broad reservations to human rights treaties is that they provide evidence of cynical ratification, the discussions from the workshops show that reservations are largely utilised to offset the reactions of domestic veto-players in the GCC. In the GCC, such veto-players are predominantly made up of conservative elements within the elite. This has suggested that – even blanket reservations – do not in and of itself signal a ‘no will to implement human rights treaties’ position, and that implementation of human rights treaties itself is dynamic and subject to negotiation amongst competing forces within the state.

Across the GCC, there was an overall pattern of developing institutional capacity to allow for domestic implementation of human rights treaties. The human rights institutions, however, have limited agenda setting and policy change powers. In contrast, most of the participants highlighted the significant role of respected government ministers or other highly positioned human rights champion (who is not afraid to push on such matters) as a key determinant of policy change.



The general lack of judicial oversight on human rights policy further attests to the importance of executive-driven initiatives to give effect to human rights laws, confirming once again the importance of ministers and human rights champions. The role of civil society actors was increasingly recognised as a pertinent one to the domestic effects of UN human rights treaty ratification in the region. Civil society actors, however, face obstacles in gaining a stronger voice in the ratification and implementation processes.

Participants of the workshops ended the discussions with reflections on the contribution of the UN human rights machinery to the implementation of human rights in the GCC region. There was a call for the UN to play a larger role. In particular, governmental participants highlighted that ‘name and shame’ strategies often cause backlash in the region and that the UN should be more an ‘enabler’ rather than an ‘enforcer’ in the region.

Appendix A: Ratification of Human Rights Treaties in the GCC

	ICCPR <i>None to ICCPR OP1</i>	ICESCR <i>None to ICESCR OP</i>	CRC	CERD	CEDAW <i>None to CEDAW OP</i>	CRPD	CAT <i>None to CAT OP</i>	<i>None to MWC, CED</i>
Bahrain	20/9/06	27/9/07	13/2/92	27/3/90	18/6/02	22/11/11	6/3/98	
Kuwait	21/5/96	21/5/96	21/10/91	15/10/68	2/9/94		8/3/96	
Oman			9/12/96	1/1/03	7/2/06	6/1/09		
Qatar			3/4/95	22/7/76	29/4/09	13/5/08	11/1/00	
Saudi Arabia			26/1/96	23/9/97	7/9/00	19/3/10	23/9/97	
UAE			3/1/97	20/6/74	6/10/04	24/6/08	19/9/12	