

# 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)

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## **Abstract**

This report comparatively examines the record of ratification of UN human rights treaties by the member states of the Gulf Cooperation Council (GCC) and the domestic effects of treaty ratification. It does so by relying on an original quantitative dataset of GCC engagement with the UN Treaty bodies and Charter-based mechanisms and an original dataset of interviews with government officials, members of civil society, National Human Rights Institutions, lawyers and judges from all six states. The report offers a first cut analysis of the rationales for human rights treaty ratification in the region and factors that aid or hamper the domestic effects of human rights treaty ratification.

The report finds that the GCC states' ratification of, and engagement with, UN human rights treaties have increased overall, but that domestic effects of human rights treaty ratification vary across countries and across issue areas. Secondary effects, namely feedback effects and institution building, are more widespread than primary effects, namely legislative changes and judicial application of UN human rights treaties. In the GCC, the most notable legislative effects have been in the area of measures to combat trafficking and in access to services for the children of non-citizens and of female citizens.

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## List of Abbreviations

CAT	The Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment
OP-CAT	Optional Protocol to CAT
CED	International Convention for the Protection of all Persons from Enforced Disappearance
CEDAW	The Convention on the Elimination of All Forms of Discrimination Against Women
OP-CEDAW	Optional Protocol to CEDAW
Core UN HR	Treaties Umbrella term for CAT, OP-CAT, CED, CEDAW, CRC, CRPD, ICCPR, ICERD, ICESCR, and ICRMW
CRC	Convention of the Rights of the Child
CRC OPs	OP-CRC-AC and OP-CRC-SC
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
CRPD	The Convention on the Rights of Persons with Disabilities
CRPD-OP	Optional Protocol to CRPD
GCC	Cooperation Council for the Arab States of the Gulf or Gulf Cooperation Council
HR	Human Rights
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC)
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OPI	First Optional Protocol to ICCPR

ICCPR-OP2	Second Optional Protocol to ICCPR
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organisation
INGO	International Non-Governmental Organisation
NHRI	National Human Rights Institution
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
OP	Optional Protocol
TB	United Nations Treaty Body/Treaty Bodies
UN	United Nations
UPR	Universal Periodic Review

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## 1. 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 60 years. Since the first United Nations human rights treaty opened for ratification in 1965, the number of international human rights treaties has increased significantly, leading in turn to ratifications of these treaties by states. These treaties cover civil, political, economic, social and cultural rights, as well as the rights of the child, women, persons with disabilities and migrant workers (ICCPR, ICESCR, CRC, CEDAW, CRPD and ICRMW). There are also special treaties focusing on torture (CAT and OP-CAT), racial discrimination and on the prohibition of enforced disappearances (ICERD and CED). Treaty ratification renders the provisions of the relevant human rights instrument legally binding, hence playing a significant role in promoting the universality of human rights and triggering international legal duties to give effect to human rights domestically.

The international community, through the United Nations, has put a lot of emphasis on urging all states to ratify the ten core international human rights treaties.<sup>1</sup> Ratifications are regularly reported on. Treaty ratifications are encouraged by key human rights actors and the issue is regularly raised when states report on their human rights record within the United Nations Human Rights Machinery.

It is a generally accepted axiom that ratification is the *first* step towards the implementation of international human rights law. This is due to the fact that ratification of human rights treaties open the door for effective implementation of human rights law by offering both international and domestic legal, political and social frameworks for engaging with the implementation of human rights law. At the international level, states start to engage with UN human rights treaty monitoring bodies. At the domestic level, ratifications trigger debates on compatibility of domestic legal frameworks with UN human rights treaties. They offer an opportunity structure for domestic institutional reform alongside interactions between state officials on the realisation of human rights law on the ground. Ratifications further enable international engagement of local civil society actors with the United Nations mechanisms. Despite this world-level socialisation<sup>2</sup> towards ratification of human rights treaties and efforts to 'bring

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<sup>1</sup> See Office of High Commissioner for Human Rights, The core international human rights instruments and their monitoring bodies, <http://www.ohchr.org/EG/ProfessionalInterest/Pages/CoreInstruments.aspx> (accessed July 2014)

<sup>2</sup> Simmons (2009)

them back home’, both the ratification records of UN human rights treaties and their domestic effects in the aftermath of ratification is uneven. Whilst some treaties have attracted almost universal ratification, for example the CRC, others have not. Aftermath effects of ratification also vary across treaties and across issue areas even within the same treaty.

Member States of the Gulf Cooperation Council<sup>3</sup> have been an important part of the trend towards ratification of international human rights treaties, in particular since the 1990s. The processes leading to ratification and the domestic effects of these treaties within each jurisdiction, however, have been under-documented and under-studied. There is limited understanding of the GCC region compared to other regions of the world and whether broader theories on human rights treaty commitment and implementation apply to the countries of the GCC. In addition, there has been limited understanding concerning the variations in human rights treaty commitment and effects, and the underlying factors for these variations. The objective of our two-year academic study funded by the Qatar National Research Fund was to take stock of the ratification practices and post-ratification effects of UN human rights treaties in the GCC.

Our research project offers a ‘first cut’ comparative analysis of the region. With this aim the research team undertook an analysis of the ratification record and effects of the UN human rights treaties in the member states of the GCC at the domestic level. The research has been carried out both by studying the record of engagement of each of the GCC member states with the UN human rights treaty bodies and their recommendations, and the effects of this engagement and concrete recommendations at the domestic level of GCC member states.<sup>4</sup> We reviewed 120 UN official documents addressing the human rights situation

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<sup>3</sup> 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 [www.un.org/en/members/intergovorg.shtml](http://www.un.org/en/members/intergovorg.shtml) (last accessed July 2014). The six member states of the Gulf Cooperation Council, formed in 1981, are: Bahrain, Kuwait, the Sultanate of Oman, Qatar, the Kingdom of Saudi Arabia, the United Arab Emirates. This paper uses the terms ‘member state of the GCC’, ‘GCC member states’, ‘GCC states’, and ‘GCC region’ interchangeably.

<sup>4</sup> This dataset consisted of an aggregation of every substantive recommendation made to the GCC states by the Treaty Bodies following state reporting; by the special Mandate Holders, and 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/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 is up to date until April 2014.

in the GCC. Within the context of the latter, the research team carried out extensive interviews with government officials, diplomats, members of National Human Rights Institutions, lawyers, judges and civil society actors in the GCC—with the objective of accessing a range of governmental and non-governmental perspectives on the domestic effects of UN human rights ratification.<sup>5</sup> We also held two workshops bringing together government, NHRI and civil society members from all GCC countries in Qatar.<sup>6</sup>

It is important to clarify at the outset what we do *not* aim to cover in this research. In this study we do not analyse the domestic effects of human rights treaty ratification beyond the ten core treaties of the United Nations. The GCC states have a range of human rights treaty obligations drawing from a range of international and regional human rights treaties as well as from customary international law. The commitments that we will *not* be addressing in this research include those under the International Labour Organisation conventions and protocols,<sup>7</sup> the Arab Charter on Human Rights<sup>8</sup> and international humanitarian law. Whilst we recognise that UN human rights treaties are part of this broader web of legal commitments, our focus here is solely on the UN human rights treaties. We also do not analyse the effectiveness of the domestic effects of human rights treaties on the ground—that is, the study does not cover whether the measures taken to implement human rights treaties on the ground, such as legislative changes, are indeed effective to create the desired effects. This report *does not* offer a human rights assessment of the GCC member states, or critique the relevance of UN human rights treaties for the GCC.

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<sup>5</sup> With this aim, 50 interviews were carried out with government officials, lawyers, judges and members of civil society and 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 non-governmental actors to 2 different sets of focus group/workshops along with in-depth one-to-one interviews with each of them. They attended from all 6 GCC states. Due to our commitment to our interviewees' request for anonymity, we indicate all these interviews as having taken place in Qatar, and don't indicate which of the 6 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 seem to 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 authors. They lasted between one hour and two hours. All interviews have been carried out under the protocol of anonymity. Interviewees agreed to be quoted as part of our study on the basis of non-attribution of quotes. The research protocol received IRB approval and approval of ethics committees at the University of Oxford, Georgetown University School of Foreign Service in Doha, University College London and Koç University.

<sup>6</sup> The Workshop Summary Report can be accessed at: <http://qatar.sfs.georgetown.edu/research/fundedprojects/qnrf/nprp/current/gcchumanrights> (last accessed July 2014)

<sup>7</sup> International Labour Organisation, Conventions and Recommendations, <http://ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (last accessed July 2014)

<sup>8</sup> The (League of Arab States) Arab Charter on Human Rights is monitored by the Arab Human Rights Committee, [http://www.lasportal.org/wps/portal/las\\_en\\_humanrights/hompage/](http://www.lasportal.org/wps/portal/las_en_humanrights/hompage/) (last accessed July 2014)

We hope that this study—the first ever treatment of the GCC region’s engagement with the UN human rights treaties—will lead to further studies that delve into the relationship between UN human rights treaties, their impact and domestic effectiveness with regard to the everyday life of citizens and residents in GCC member states.

This report sets out the key findings of this study. In what follows we first start with a review of theories and rationales offered in the general academic literature for human rights treaty ratification and pathways for domestic effects in the aftermath of ratification. In the third section we offer an analysis of the legal and political framework of the GCC countries. The fourth section focuses on patterns and rationales for ratification of human rights treaties in each GCC member state. The fifth section sets out the kinds of domestic effects observed in the GCC states in the aftermath of human rights treaty ratification. We conclude by making a series of recommendations with regard to ensuring better implementation of human rights treaties in the GCC states.

## 2. Understanding the rationales for Human Rights Treaty ratification and domestic effects of human rights treaties in the GCC

Over the past decade, the academic study of the rationales for, and domestic effects of, human rights treaty ratification has produced important theoretical knowledge, understanding of different countries, regions and different human rights issue areas.<sup>9</sup> We know that states ratify human rights treaties for a diverse number of reasons, culminating in either a sincere intent to give effect to the treaties or the intent to use human rights treaties to confirm, boost or create other international or domestic benefits.<sup>10</sup> Whilst a diverse range of international, regional and domestic factors prompt leaders to sign and ratify a particular human rights treaty, the existing domestic legal and political institutional structures and the ability of domestic actors to operate within these structures, condition the type of domestic effects that human rights treaties subsequently have.<sup>11</sup> That is, the state motivation for ratification does not, in itself, dictate the domestic outcomes of treaty ratification. Sometimes ratification leads to negligible effects.<sup>12</sup> In other cases, ratification produces intended as well as unintended consequences leading to important headways in human rights developments on the ground.<sup>13</sup> UN human rights treaties are regarded to have the most effect when there is a strong 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 present, the conventional view is that human rights treaties are bound to have negligible post-ratification effects.<sup>15</sup>

Despite the rising trend in the ratification of human rights treaties in this region after the end of Cold War and the invasion of Kuwait in 1990, the domestic effects of treaty ratification in the GCC member states is understudied

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<sup>9</sup> Goodman, Ryan and Derek Jinks (2005) Vreeland, J. R. (2008); Simmons, B. A. (2009); Wotipka, C. M., & Tsutsui, K. (2008). Risse, T., Risse-Kappen, T., Ropp, S. C., & Sikkink, K. (Eds.). (2013).

<sup>10</sup> Vreeland (2008); Simmons (2009)

<sup>11</sup> Grugel and Peruzotti (2012)

<sup>12</sup> Goodman and Jinks (2013)

<sup>13</sup> Smith-Cannoy (2012)

<sup>14</sup> Simmons (2009); Risse et al (2013)

<sup>15</sup> Hafner-Burton and Tsutsui (2005)

and under-theorised.<sup>16</sup> Whilst general sets of factors driving ratification and domestic effects have been explored in the literature, we know very little about what drives implementation of human rights treaties in the GCC and why domestic effects of ratification, including the patterns of reservations, vary across the GCC.

The literature of international relations and law on the domestic effects of human rights treaties, and the literature on the legal and political dynamics of the GCC, offer important starting points for identifying and categorising potential international, domestic, political, economic and legal factors that are relevant to understanding the rationales for ratification and domestic effects of UN human rights treaties in the GCC states.<sup>17</sup>

We distill two sets of factors that condition ratification and domestic effects of human rights treaties. This can be drawn from the world-level literature and the area studies literature and applied to the GCC:

(a) Political and legal, domestic and international factors that condition a GCC state's decision to ratify (consent to) international human rights law (also known as *commitment factors*)

(b) Political and legal, domestic and international factors that condition the post-ratification effects of UN human rights treaties (also known as compliance or *implementation factors*)

With respect to (a), the factors that inform the ratification of human rights treaties (or lack of ratification), we organise possible ratification motivations that may be at stake in the GCC under four distinct sets of factors.

**International pressure** is an incentive to ratify human rights treaties. It is believed that unilateral or multilateral pressure from other states with the offer of tangible benefits (e.g. aid, trade agreements, support for UN level resolutions) may lead to treaty ratification.

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<sup>16</sup> Out of a search of 10 well-known regional and human rights focused journals completed on June 19, 2014, 1,884 articles were found relating to the Gulf Cooperation Council states. Of these hits, only 122 articles were relevant to human rights, with most writing found on the UAE, Qatar, Bahrain, Saudi Arabia, Oman, or Kuwait focused 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.

<sup>17</sup> Luciani and Beblawi (1987); Crystal (1995); Al-Mughni 2001; Brumberg (2010), Lambert (2011); Alhargan (2011); Kamrava (2013)

**International acculturation** offers incentives because states seek to be identified or associated with the international community and see ratification of UN human rights treaties as a means to be considered a ‘modern’ state in the eyes of the international community.

**Domestic political or societal factors** are the existence, or absence, of demands from opposition or civil society forces. Ratification (or non-ratification) of human rights treaties may emerge as concessions to such bottom-up demands or as a means to preempt them.

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



**Figure 1: Commitment Factor Typography**

With respect to (b), the factors that might explain the varying domestic effects of human rights treaties **after they are ratified**, we now turn to another academic source. Having accessed the political science literature on the states’ decision to ratify and in order to provide the initial framework for our study, we need more regional information to now address post-ratification effects. As mentioned, the world-level literature emphasizes strong elite leadership, civil society mobilization and support by the domestic judiciary for UN human rights treaties both during and after ratification<sup>18</sup> as being key. This literature also suggests that there will be negligible post-ratification effects<sup>19</sup> if these are absent. However, we need to inform these theories with a deeper understanding of the regional context, as other regional studies of human rights domestic effects have done.<sup>20</sup> What does the area studies literature on the GCC states suggest as additional considerations? We distill eight factors taking our lead

<sup>18</sup> Simmons (2009); Risse et al (2013)

<sup>19</sup> Hafner-Burton and Tsutsui (2005)

<sup>20</sup> Grugel and Peruzotti (2012), Simmons (2009)

from GCC studies alongside the theories on human rights effects. These eight factors act as pointers for the analysis that is to follow.

**Inter-state Pressure** may play an important role in getting a state to implement a particular human rights law or policy, if the pressure for the change comes from a significant bilateral or multilateral partner.

**International Socialisation** suggests that accepting international obligations brings with it socialisation effects. States exert effort into ratifying treaties as the elites view these obligations as the appropriate form of conduct for membership in the international community.

**International non-governmental pressure** refers to the role of transnational advocacy networks in bringing about change in policy or law. Media-savvy and well-known INGOs, such as Amnesty International and Human Rights Watch, have increased their pressure on the GCC states post-ratification. They issue regular reports on the GCC countries and follow individual cases. More pertinently to this study, INGOs submit shadow reports to the UPR and to treaty bodies, and therefore feature in the interaction between the UN human rights system and GCC treaty reporting. States respond to the recommendations of INGOs in order to improve the international image of the country.<sup>21</sup>

**Regional acculturation:** New research on human rights implementation suggests that regional dynamics matter in human rights behaviour. The literature on the GCC also points to the interconnectedness of governance in this region.<sup>22</sup> Regional acculturation may both hamper and enable domestic effects of treaties in the GCC.

**Political economy** emphasises the economic incentives informing legal and political decisions with regard to domestic effects of human rights treaties. GCC states are often characterised as rentier states who elicit the support of their citizens through wealth transfer mechanisms and manage labour by way of the *kafalah* system.<sup>23</sup> Human rights treaty recommendations, at times, challenge longstanding wealth transfer and privilege schemes. This hypothesis may explain the lack of implementation of recommendations concerning the abolishment of the sponsorship system, allowing equal access to public services by non-citizens and citizenship laws.

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<sup>21</sup> Risse et al 1999; Risse et al (2013)

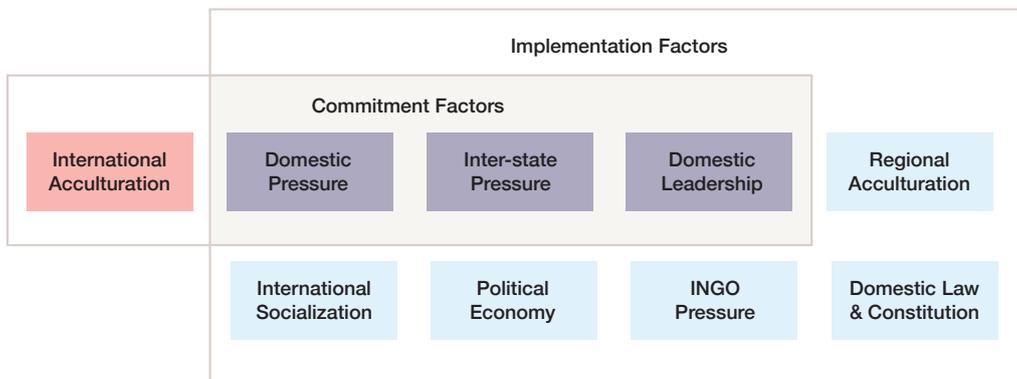
<sup>22</sup> Ehteshami, A., and S. Wright, (2007)

<sup>23</sup> Crystal, J., (2009)

**Domestic leadership** is made up of 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>24</sup>, or lagging of human rights change due to calculations from religious leaders, merchant families or other powerful domestic groups.<sup>25</sup> The lack of clear domestic leadership would also explain slow progress in reforms and bureaucratic lack of interest in human rights change.

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

Finally, **Domestic law and Constitutional Rules** may operate as structural constraints over the actions of political leaders and judges in the GCC in giving effect to UN human rights treaty recommendations.<sup>26</sup>



**Figure 2: Implementation and Commitment Factor Typography**

In what follows we turn to the analysis of GCC domestic legal systems in further detail.

<sup>24</sup> Valeri, M., (2006)  
<sup>25</sup> Wright, S., (2006)  
<sup>26</sup> Khalaf, A. and G. Luciani, (2006)

### 3. The GCC Region: Legal and Political Framework

#### 3.1 Why the GCC

The six GCC states exhibit important differences in their legal and political systems. Despite differing sizes, populations, political trajectories and domestic legal frameworks the states also share some important historical, cultural and institutional commonalities that make the GCC-wide inquiry a fruitful one to pursue with respect to treaty ratification effects.

GCC states are new to the nation-state system with the exception of Oman and Saudi Arabia. Five of the GCC states declared their independence in the decade between 1961 and 1971. As such, they largely joined the UN human rights system some decades into its development. Only Saudi Arabia was present at the time of the drafting and adoption of the Universal Declaration of Human Rights. It should be noted, however, that Saudi Arabia was one of 8 abstaining states. The six states decided to establish the Gulf Cooperation Council in 1981, a decade after the independence of the UAE, Qatar and Bahrain. As the Secretariat General of the GCC outlines, the 1981 GCC Charter set out the objectives of coordination and integration towards unity between the GCC member states, strengthening relations between the states and formulating similar regulations, including in relation to legislative and administrative affairs.<sup>27</sup>

All six member states are monarchies. Kuwait possesses the strongest constitutional monarchy and parliamentary tradition. The United Arab Emirates is the only federal monarchy.

The six member states together comprise an area of approximately 2,500,000 kilometers squared and together have a population of around 49 million

#### POPULATIONS

Bahrain	1.332 million
Qatar	2.169 million
Kuwait	3.369 million
Sultanate of Oman	3.632 million
UAE	9.346 million
Saudi Arabia	28.83 million

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<sup>27</sup> GCC, Foundation and Objectives, <http://www.gcc-sg.org/eng/index895b.html?action=Sec-Show&ID=3> (accessed July 2014)

people, with the most populated state having more than 24 times the population of the member state with the lowest population.<sup>28</sup> Roughly 40% of the overall population of the GCC is composed of migrant workers.

### GDPs

Bahrain	\$32.79 billion
Sultanate of Oman	\$80.57 billion
Kuwait	\$183.2 billion
Qatar	\$202.5 billion
UAE	\$383.8 billion
Saudi Arabia	\$745.3 billion

The GCC states each have GDPs as set out below<sup>29</sup> and the mean GDP per capita is \$33,3000.<sup>30</sup>

### CONSTITUTIONS

Kuwait	November 1962
UAE	December 1971
Saudi Arabia	March 1992
Sultanate of Oman	November 1996
Bahrain	May 1973 & February 2002
Qatar	June 2004

With the emergence of constitutional systems, a tide began in the GCC towards consultative and electoral systems of various forms throughout the region. 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.

<sup>28</sup> World Bank Figures, <http://data.worldbank.org/region/ARB> (accessed July 2014)

<sup>29</sup> World Bank Figures, <http://data.worldbank.org/region/ARB> (accessed July 2014) All are categorized by the World Bank as “high income non-OECD” states.

<sup>30</sup> GCC, Economic Data, <http://www.gcc-sg.org/eng/> (accessed July 2014)

Despite GCC states having variation in populations, size, incomes, and constitutional emergence there is a regional awareness that effects political receptivity to human rights law. Our interview data suggested that although GCC member states operate independently in treaty ratification and implementation, they are highly aware of the ratification and implementation approaches and patterns of neighbouring GCC states. There is a regional convergence on matters of political and legal governance. The attitude of “if Saudi Arabia has made that change, then why don’t we”<sup>31</sup> is a very real one.

## **3.2 Law Making and Court Systems**

International law is incorporated in two ways into domestic legal systems. In monist states, international law is automatically incorporated in national or domestic law. This implies that the provisions of UN human rights treaties, once ratified, can be directly applied by a national judge and directly invoked by all within the jurisdiction of the state (not only citizens) in just the same way as national law. It also implies that a judge can declare national law invalid if it contradicts provisions in ratified UN human rights treaties because the latter has priority. In dualist states, a separate act of incorporation is required for international treaty ratification to bring provisions into domestic law. In the GCC the dualist trend is far more dominant than the monist trend. Below we examine the status enjoyed by international treaties in each of the GCC states.

### **3.2.1 Bahrain**

According to article 37 of the Constitution of Bahrain, international treaties are to be concluded by the King who then informs the Consultative Council and the Chamber of Deputies of these treaties. International treaties come into force once ratified and published in the official gazette. Once ‘gazetted’ international treaty provisions have legal force equivalent to national legislation. However, article 37 outlines that human rights treaties are amongst those treaties that are not self-executing and require the adoption of national legislation to become directly applicable under national law.

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<sup>31</sup> Interview, Qatar, May 2013.

### 3.2.2 Qatar

The constitution of Qatar (article 68) states that: “The Emir shall conclude treaties and agreements by decree and refer them to the Shura Council, accompanied by appropriate explanatory memos. The treaty or agreement shall have the power of law after ratification and publication in the Official Gazette. However, reconciliation treaties and those that pertain to the territory of the State, relate to the right of sovereignty or to the public or private rights of the citizen, or involve an amendment to the laws of the State, shall come into force when the same are issued as a law”.<sup>32</sup>

This constitutional article highlights two methods by which an international treaty may be integrated into Qatar’s local law structure. The first method is direct ratification and publication in the official gazette. The second method would be through publishing the treaty as a new domestic law. The second method applies to treaties that “relate to the public or private rights of citizens”; this description applies to international human rights treaties. Therefore, international human rights treaties are integrated into local laws *only after* the treaty body has been signed, ratified, published in the official gazette and then published again as law through Emiri decree.<sup>33</sup>

### 3.2.3 Saudi Arabia

In Saudi Arabia, all international agreements are put into effect through local legal integration. Having the “international treaties... approved and amended by Royal Decrees” (article 70)<sup>34</sup> does not necessarily mean putting the laws of the treaties into effect. Article 71 of the basic law explicitly states that “Laws shall be published in the Official Gazette, and implemented effective from the date of publication, unless another date is specified”. The mere approval of treaties does not constitute them being integrated into law. The Saudi Basic

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<sup>32</sup> Constitution of Qatar, Article 68 of the Permanent constitution of the State of Qatar states: “The emir signs and concludes all treaties through Emiri decree and then reports it to the Shura council with all relevant announcements. All treaties relating to matters of peace, regions of the states, rights of authority and rule, private and public rights of citizens or state law have to be issued by law [Emiri decree] in order for them to be executed/take effect.” (09/06/2005)

<sup>33</sup> Constitution of Qatar, Article 24 of the Amended Temporary Basic/Main System of year 1972 (the de facto constitution until 2005, now void) states: “The emir signs and concludes all treaties through Emiri decree and then reports it to the Shura council with all relevant announcements. The treaty gains legal force after its ratification and publication in the official gazette. And there can be no secret conditions that contradict the declared conditions of the treaty.” (1/1/1972)

<sup>34</sup> Saudi Basic Law, Article 70: Laws, international agreements, treaties and concessions shall be approved and amended by Royal Decrees.

Law specifically states that the “Government in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunna of the Prophet (PBUH), which are the ultimate sources of reference for this Law and the other laws of the State”.<sup>35</sup> This constitutional provision essentially allows Shari’a Law to supersede all other forms of law in Saudi Arabia. The primacy of Shari’a law in domestic law renders the status of incorporated treaty law within the domestic legal hierarchy highly unclear.

### 3.2.4 Kuwait

In Kuwait international treaty provisions are incorporated into the local law *only after* ratification and publication in the official gazette through decree. The Constitution, requires the Emir to transmit treaties that he has concluded by decree “immediately to the National Assembly”. The treaty has the force of law “after it is signed, ratified, and published in the Official Gazette”.<sup>36</sup> According to Article 71(1), “However, treaties ... concerning the ... public or private rights of citizens ... and treaties entailing additional expenditure not provided for in the budget, or involving amendment of the laws of Kuwait; shall come into force only when made by a law.”

### 3.2.5 United Arab Emirates

The UAE constitutes a federal union of seven Emirates and, as such, has the most complex legal structure. Only the Supreme Council of the Union<sup>37</sup> has

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<sup>35</sup> Saudi Basic Law, Article 7: Government in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunna of the Prophet (PBUH), which are the ultimate sources of reference for this Law and the other laws of the State.

<sup>36</sup> Kuwaiti Constitution, Article 70 [Treaties]: The Amir concludes treaties by decree and transmits them immediately to the National Assembly with the appropriate statement. A treaty has the force of law after it is signed, ratified, and published in the Official Gazette.

1. However, treaties of peace and alliance; treaties concerning the territory of the State, its natural resources or sovereign rights, or public or private rights of citizens; treaties of commerce, navigation, and residence; and treaties entailing additional expenditure not provided for in the budget, or involving amendment of the laws of Kuwait; shall come into force only when made by a law.
2. In no case may treaties include secret provisions contradicting those declared.  
See also the identical language in Article 71 [Emergency Decrees]

<sup>37</sup> UAE Constitution, Article 46: The Supreme Council of the Union shall be the highest authority in the Union. It shall consist of the Rulers of all the Emirates composing the Union, or of those who deputise for the Rulers in their Emirates in the event of their absence or if they have been excused from attending. Each Emirate shall have a single vote in the deliberations of the Council.

the authority to sign and ratify international treaties<sup>38</sup> that affect the UAE as a Union. Ratification alone does not integrate the international treaty into local laws. The Government of each Emirate is responsible for integrating international treaty provisions into their local laws, though this is done with the supervision of the Union Council. There is the onus on each Emirate to pursue such a track, as article 125 states that each Emirate “shall undertake the appropriate measures to implement the laws promulgated by the Union and the treaties and international agreements concluded by the Union”.<sup>39</sup> As article 124 states “Before the conclusion of any treaty or international agreement which may affect the status of any one of the Emirates, the competent Union authorities shall consult that Emirate in advance. In the event of a dispute, the matter shall be submitted to the Union Supreme Court for ruling.” Although the treaty formally comes into force, it is not entirely clear if the treaty gains legal force following the ratification or following the implementation by the government of each emirate.

### 3.2.6 Oman

Oman offers the strongest legal status to international law in recognizing that they have the force of law as they are ratified. The constitution states “Treaties and agreements shall not have the force of Law except after their ratification.”<sup>40</sup> However the country does have an official gazette in which general laws are published and only take effect after their publication. It is not clear if this applies to international treaties as well. The constitution also grants the Sultan authority for: “Signing of international conventions and treaties according

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<sup>38</sup> UAE Constitution, Article 47: The Supreme Council of the Union shall exercise the following matters: Ratification of treaties and international agreements. Such ratification shall be accomplished by decree.

<sup>39</sup> UAE Constitution, Article 125: The Governments of the Emirates shall undertake the appropriate measures to implement the laws promulgated by the Union and the treaties and international agreements concluded by the Union, including the promulgation of the local laws, regulations, decisions and orders necessary for such implementation. The Union authorities shall supervise the implementation by Emirate’s Governments of the Union laws, decisions. Treaties, agreements and Union judgments. The competent administrative and judicial authorities in the Emirates should forward to the Union authorities all possible assistance in this connection.

<sup>40</sup> Omani Constitution, Article 76: Treaties and agreements shall not have the force of Law except after their ratification. In no case shall treaties and agreements have secret terms contradicting their declared ones.

to the provisions of the Law or authorizing their signature and promulgating Decrees ratifying the same.”<sup>41</sup>

As seen above, all but the Omani system are primarily dualist legal systems requiring specific incorporation into domestic law before international treaties gain domestic effect. Our interview data shows that dualism dominates the legal culture of all the GCC member states and the fact that a treaty incorporation is more recent than an old law does not impact its application. Interviews we carried out in Oman, Kuwait and Qatar with judges and lawyers confirmed that even when incorporated into domestic law, treaty commitments do not enjoy the status and weight of *Qanoon*.

### 3.3 Sources of Law and Judicial Systems in the GCC

GCC laws identify Islamic Shari’a as a main source,<sup>42</sup> principle source<sup>43</sup> or basis for legislation.<sup>44</sup> In Saudi Arabia, Islamic Shari’a is the basis for all government action and the only source of law specified in the constitution for application by the courts.<sup>45</sup> Alongside Islamic Shari’a, Napoleonic civil and criminal law, commercial law influenced by Anglo-Saxon common law traditions as well as local traditions and customs are all employed to some extent as sources of law.<sup>46</sup> In this respect, sources of law in the GCC countries have parallels with other leading hybrid legal traditions in the broader Arab region, most significantly the Egyptian legal tradition.

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<sup>41</sup> Omani Constitution, Article 77: Whatever is stipulated by applicable laws, regulations, decrees, orders and decisions in force at the time when this Basic Statute comes into effect, shall remain in force provided that they are not in conflict with any of its provisions. Article 42: His Majesty the Sultan discharges the following functions: Signing international conventions and treaties according to the provisions of the Law or authorizing their signature and promulgating Decrees ratifying the same.

<sup>42</sup> Article 2 of the Kuwaiti Constitution, Article 1 of the Permanent Constitution of the State of the Qatar and Article 7 of the Constitution of the United Arab Emirates.

<sup>43</sup> See, Article 2 of the Constitution of Bahrain states: ‘Islamic Sharia is a principle source of legislation’.

<sup>44</sup> Article 2 of the Basic Law of the Sultanate of Oman.

<sup>45</sup> Articles 8, 26 and 48 Saudi Arabia Basic Law of Governance

<sup>46</sup> This is mainly resourced from the Egyptian system which itself is derived from the French Napoleonic code, local tradition and custom and English common law.

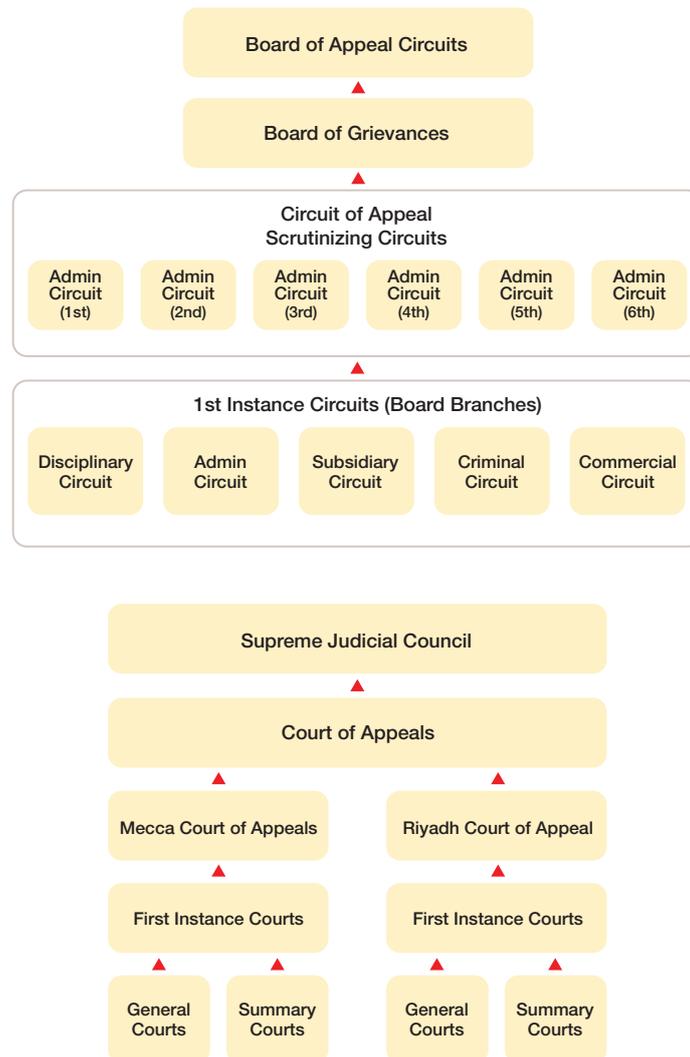
Of all the sources of law, written law in the form of legislation is of primary hierarchical importance. For example, Article 1 of the Bahrain Civil Code<sup>47</sup> stipulates that the primary source of law is legislation, and that in cases where legislation is silent on a given matter, judges may rule on the basis of custom, and that if customary rules prove unavailable, judges may resort to the most appropriate juristic opinions of Islamic Shari'a in light of the realities of the country. If Islamic Shari'a is proved silent on the matter, then judges may rule on the bases of natural law and equity. In our interviews, judges and lawyers emphasised legislation as the centrepiece of adjudication and took a more circumspect view regarding the use of constitutional texts or international treaties as primary sources for adjudication.<sup>48</sup>

Initiatives oriented towards legal system reform and codification in the fields of criminal law, civil law, commercial law and private international law and settlement of financial disputes with regard to foreign companies have been an ongoing trend in GCC state legal systems. This is reflected in the continuous creation of codes on substantive law and procedure where there has not previously been any, as well as in the restructuring of court systems.

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<sup>47</sup> Promulgated pursuant to Decree Law No. 19 of 2001.

<sup>48</sup> Interviews in Qatar, Kuwait and Oman between February 2012 and March 2012. It has, however, been noted that in cases involving drug offences or commercial and corporate matters, international treaties and decisions of other domestic courts may be given more due regard by the judges.



**Figure 3: Old and New Saudi Arabian Court Systems**

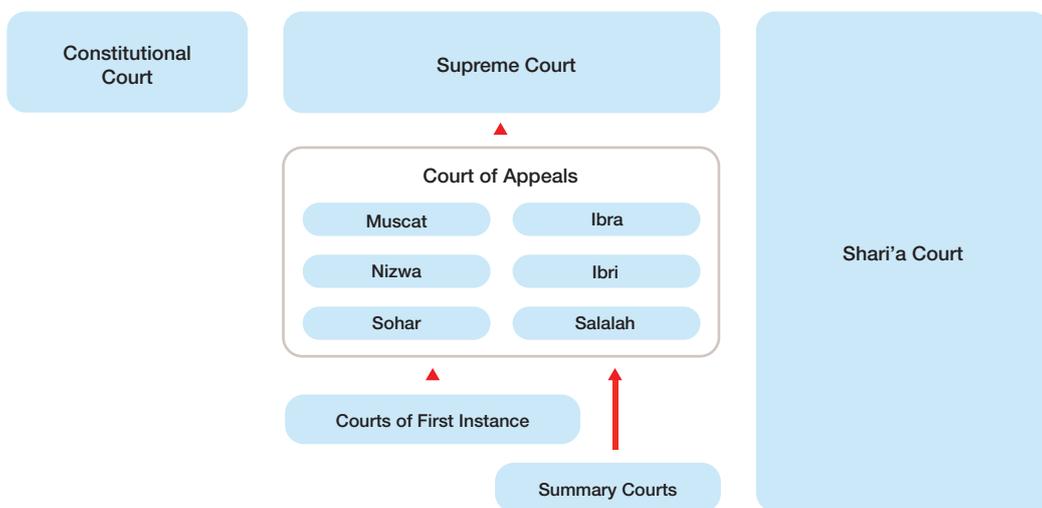
All GCC Court systems have undergone important reforms since the 1990s. The character of the reforms also have an ongoing nature with current discussions or laws regarding the setting up of new judicial institutions being underway in in some of the countries, particularly Saudi Arabia, Qatar and Oman. In the region, the legal system of Kuwait is the oldest with its establishment dating back to the 1970s. The Law governing the Judicial Authority, however,<sup>49</sup> has been amended since, most notably in 1996.<sup>50</sup> In Oman, the current court

<sup>49</sup> Kuwaiti Decree Law No. 23 of 1990

<sup>50</sup> Law No. 10 of 1996—amending some provisions of Decree Law No. 23 of 1990

system was created in 1999, in Bahrain, the Bahraini Civil code was revised in 2001, and in Qatar, the legal system saw an important revision in 2003.<sup>51</sup>

Alongside these changes, there are also trends in the GCC region to establish specialised tribunals and administrative bodies with judicial functions. In Qatar, for example, the Leasing specialist Tribunal Committee has, since 2008 exercised jurisdiction over all rental disputes (residential and commercial), taking a central role in the day-to-day business of companies and residents.<sup>52</sup>



**Figure 4: Oman Court System**

<sup>51</sup> Cf the Omani Code of the judicial authority n°90/1999; Code of administrative courts n°91/1999; Code of criminal procedures n°97/1999 with its amendment n°91/1999; Code of civil and commercial procedures 29/2002 with its amendment n°92/2005 and Cf. the Qatari Emiri Decree Law no. 10 of 2003 Promulgating the Law on Judicial Authority.

<sup>52</sup> Qatari Lease Law (no. 4 of 2008)

In Saudi Arabia, the current court system set up by the Law of the Judiciary, adopted in 1975 and reconfirmed in 1992 by the Basic Law of Governance, is currently undergoing a major reform (see Figure 3).<sup>53</sup> A Royal Decree was issued in 2007 promulgating a modern system of courts, and incorporating a multiple-judge system and regular appeals to operate in the cities of Mecca, Medina, and Jeddah. Since 2007, several Royal Orders have also been issued to revise the various aspects of the Shari'a Courts.<sup>54</sup> The judicial reforms in all GCC jurisdictions are characterised by an attempt to balance core concerns. On the one hand, they seek to ensure the states' adaptability to emerging needs, in particular in the fields of corporate law, economic law, arbitration, finance law, conflict of laws and labour law. On the other hand, the GCC states seek to preserve their religious and cultural values and reflect this in their sources of legal doctrine and the organisation of their domestic courts.<sup>55</sup>

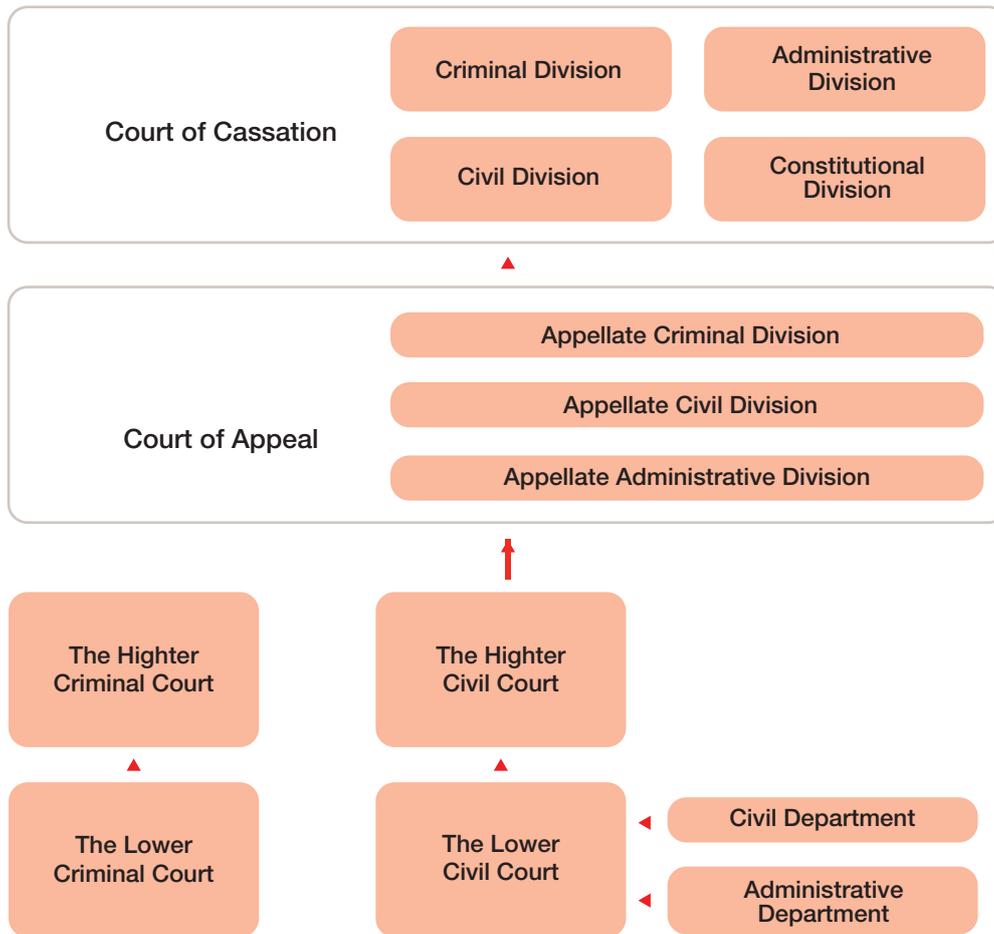
The judicial systems in the GCC reflect the concerns to balance these needs. There is an increase in the codified legislative grounding of courts and in specialised courts with specific mandates. The GCC court systems remain hybrid systems. A mixture of Islamic Shari'a Courts alongside statutory civil, criminal and commercial courts are maintained in most jurisdictions.

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<sup>53</sup> Enacted under Royal Decree No. M/78 of 19th Ramadan 1428 Hejra corresponding to 1st October 2007

<sup>54</sup> In 1960, the jurisdiction of the court system extended to the entire country between. A unification of the national judicial system was determined. See Royal Decree No. 19746 (22/9/1379H, Mar. 20, 1960).

<sup>55</sup> See, e.g., Abdullah M. al-Zahrani, *Ta'rikh al-Qada' Wa-Al-Qudah Fi al-Ahd al-Sa'udi*, 1344H-1416H [History of Judges and Judicial System in Saudi Arabia] 44-72 (1418H, 1997/1998); Frank E. Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (2000), at 87-93; Ahmed A. al-Ghadyan, *The Judiciary in Saudi Arabia*, Vol. 13, No. 3 Arab L. Q. 236 (1998).



**Figure 5: Qatar Court System**

Islamic Shari'a courts have exclusive jurisdiction on all matters relating to personal status laws for Muslims, covering family law, the rights of women and children, inheritance, divorce, marriage and adoption. The civil courts cover civil, criminal and administrative law cases alongside personal status laws relating to non-Muslims. The court systems in the GCC have followed the broader practice of instituting lower courts alongside higher courts and appellate courts.

The hybrid systems of courts have been evolving over time in the GCC region, where the Shari'a Courts' jurisdictions have been gradually narrowed down in favour of the establishment of non-Shari'a courts applying legislation.<sup>56</sup> This trend is most clear in the cases of Kuwait, Bahrain, Oman, Qatar and

<sup>56</sup> See for example, According to Article 4 of the 2003 Judicial Authority Law of Qatar (No. 10).

the UAE. In the case of Kuwait, there are no Shari'a Courts. All courts come under the statutory court system and while Shari'a remains a primary source of law, it is applied to personal status disputes of Muslims within the civil court structure. In the case of Bahrain, personal status disputes between Muslims are within the exclusive jurisdiction of Shari'a Courts. All other matters, including matters relating to estates have, however, been transferred to the jurisdiction of Civil Courts.<sup>57</sup> Whilst the legislation would refer to Shari'a as a source of law, in the case of non-Shari'a courts legislation is the primary source of law. In addition, Civil Courts hear and decide on all civil and commercial cases where disputed and cases concerning the personal status of non-Muslims. The earmarking of Shari'a Courts just for personal status disputes is also present in Qatar, Oman and the UAE.

The only exception to this trend in the GCC is Saudi Arabia, where the jurisdiction of the Shari'a Courts is much broader, covering all disputes relating to land, family, personal injury claims, and criminal cases. Shari'a Courts, in principle, have jurisdiction over all disputes and crimes except those explicitly exempted from their jurisdiction by law.<sup>58</sup> Having said this, an independent body of institutions also exists in the Saudi Arabian legal system. The Board of Grievances is an example of this. Although Article 1 of the law constituting the Board of Grievances states that the Board is an independent administrative judicial board, it has been authorized to decide cases and disputes to which the administration is not a party. It is authorized to temporarily adjudicate criminal, and commercial disputes, and to have sole authority over the enforcement of foreign judgments and foreign arbitration decisions. It covers disputes in which the government is a party; disputes involving unethical business practice subject to statutory provisions; disciplinary actions against civil servants; and,

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<sup>57</sup> 'Islamic Sharia courts, being earlier in existence, were the only judicial bodies until the first civil courts were established in 16 February 1922.' See: Ministry of Justice and Islamic Affairs, A Study on the Legal and Judicial System of the Kingdom of Bahrain (July 2011), p 2

<sup>58</sup> The Law of the Judiciary, Royal Decree No. M/64, art. 26 (14/7/1395H/Jul. 23, 1975), O.G. Umm al-Qura No. 2592 (29/8/1395H, Sep. 5, 1975), art. 5 & 26.

the execution of foreign judgments. Under the judicial reforms, the commercial jurisdiction of the Board of Grievances will be transferred to commercial courts within the Shari'a Courts structure.<sup>59</sup>

Alongside ordinary civil courts, there are also extraordinary courts with special powers or courts that employ special proceedings. In Bahrain, the Bahrain Defense Force Military Courts and the Military Courts of the Ministry of Interior were established pursuant to article 105 of the Constitution of Bahrain exercising jurisdiction over "military crimes" that are committed by members of the Bahrain Defense Force, the National Guard and the Public Security Forces. These courts may not exercise jurisdiction over non-military personnel except when Martial Law is enforced.<sup>60</sup> In Kuwait, according to the provisions of Article 164 of the Constitution, the jurisdiction of Military tribunals is restricted, save when martial law is in force, to military crimes committed by staff of the armed and the security forces within the limitations specified by the law. There are also a number of courts with specialized jurisdictions in Kuwait. Law No. 26 of 1969 established the Court of State Security, which is authorized to try cases related to the internal and external security of the state and judgments made by this court cannot be appealed. In Oman, Article 62 of the Constitution includes special provisions regarding the jurisdiction of Military Courts and the enactment of Martial Laws, providing that such jurisdiction of Military Courts shall be restricted to military crimes committed by members of the Armed and Security Forces and shall only extend to others in the case of a martial law within the limits laid down by that Law (article 62). The enactment of a Martial Law leads to suspending the provisions of the Constitution and all the rights and principles laid down therein (article 73).

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<sup>59</sup> Currently, other administrative bodies also carry out judicial functions. The Banking Disputes Commission of the Saudi Arabian Monetary Agency; The Commission for the Settlement of Negotiable Instruments Disputes, which operates as part of the Ministry of Commerce and Industry structure) deciding on involving cheques, promissory notes and bills of exchange; The Commission for the Settlement of Labor and Employment Disputes; The Committee for Adjudication of Insurance-Related Disputes and Violations of the Saudi Arabian Monetary Agency Insurance, taking up disputes and claims to which insurers have become subrogated; and the Environmental Claims Committee, which operates under the Presidency of Meteorology and Environmental Protection are the notable examples.

<sup>60</sup> Article 35 of the Military Penal Code No. 34 of 2002 describes the divisions of the Military Courts in four levels: the Special Military Courts, the Lower Military Courts, the Higher Military Courts, and the Supreme Military Appellate Court, which represents the highest Military Court in Bahrain.

### 3.4 GCC Constitutional Courts, their Powers and Right to Individual Petition

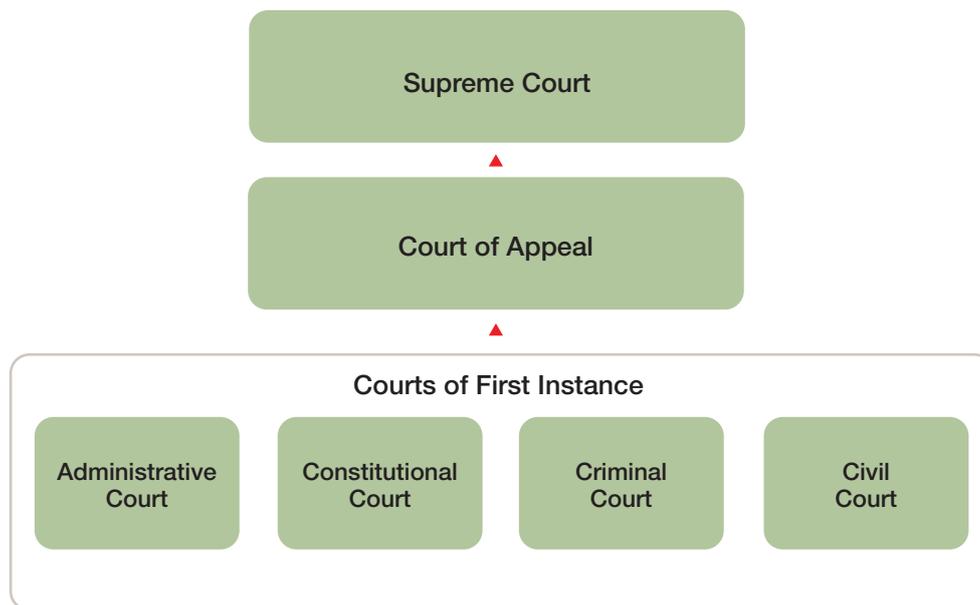
There are three Constitutional Courts in the GCC region with a right to individual petition, in Kuwait, Bahrain and Qatar. The Qatari Constitutional Court is not yet operational.<sup>61</sup> In Oman, talks regarding the establishment of a Constitutional Court are ongoing. The UAE Supreme Court also carries out constitutional review, but there is no access to individual petitioners. In Saudi Arabia, there is not a constitutional court structure akin to other countries in the region. In Kuwait and Bahrain, the Constitutional Courts have strong judicial powers and laws that are deemed unconstitutional no longer have the effect of the force of law. The UAE Supreme Court has weak judicial powers. Each Emirate is under a duty to re-legislate the laws that have been deemed unconstitutional by the Court.

The Kuwaiti Constitutional Court is the oldest of these institutions in the region. The constitutional court in Kuwait is also regarded as by far one of the most effective courts in the GCC. The Kuwaiti Constitutional Court was established and put into effect through Law 14 of 1973 and has delivered a stream of cases interpreting the Constitutional rights enshrined in the Constitution. The Kuwaiti Constitutional Court came under much international attention in 2000 when it rejected a plea by the Emirate's disenfranchised women to enjoy the same political rights as their male counterparts and the right to vote. The Kuwaiti Constitutional Court did not find equal voting rights as constitutional in this judgment.<sup>62</sup> In the late 2000s, however, the case law of the Kuwaiti Constitutional Court has taken gender equality more seriously. In 2009, it granted women the right to obtain their own passports without the consent of their husbands and guardians. In the same year, The Kuwaiti Constitutional Court ruled that female lawmakers are not required to wear the hijab (the traditional Muslim headscarf) in Parliament. More recently in December 2013, the Constitutional Court dealt with the right to freedom of expression concerning a journalist's Twitter comments. The Court, however, rejected a challenge to article 25 of the penal code, which sets prison sentences of up to five years for anyone who publicly "objects to the rights and authorities of the emir or faults him."

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<sup>61</sup> Emiri decree (12) 2008

<sup>62</sup> Kuwaiti Women gained the right to vote in 2005 with Law Number 17 of 2005.



**Figure 6: Kuwait Court System**

In sum, as one of our interviewees indicated, “the Kuwaiti Constitutional Court is not a theoretical court for us”.<sup>63</sup> It seems likely that the Kuwaiti Constitutional Court will continue to play the role of entrenching human rights in the coming years. There is some evidence that some of the decisions of the Kuwait Constitutional Court have had a trickle down effect at the level of administrative courts. 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. It is reported that the trend has been supported by another administrative court decision on April 22, 2012, cancelling a ministerial order barring women from entry-level jobs at the Justice Ministry.

In Bahrain, the Constitutional Court is a younger institution established by Decree Law No. 17 of 2002, pursuant to article 106 of the 2002 Constitution. Following the entry into force of the 2002 Bahraini Constitution, the Supreme Constitutional Court was established to review the constitutionality of legislation. The Supreme Constitutional Court can exercise *a priori* constitutional

<sup>63</sup> Interview, Kuwait, February 2014.

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.

In its early case law, the Bahraini Constitutional Court emphasised the importance of the Constitution over ordinary legislation and argued for the exceptionality of expropriations in protection of individuals property rights.<sup>64</sup> In a landmark case reviewing the constitutionality of Section 157 of the Penal Code the Constitutional Court indicated that "...the provisions of the Constitution sanctified the doctrines of justice, liberty and equality. Regulation or delimitation shall not derogate from their essence. Restrictions on liberties must be positively specified so that the vital bounds of exercising constitutional rights and liberties may not be overstepped" and in the light of this declared Section 157 unconstitutional. In 2012, on the other hand, the Constitutional Court rejected a challenge to the constitutionality of provisions in the National Safety Act, attracting criticisms.

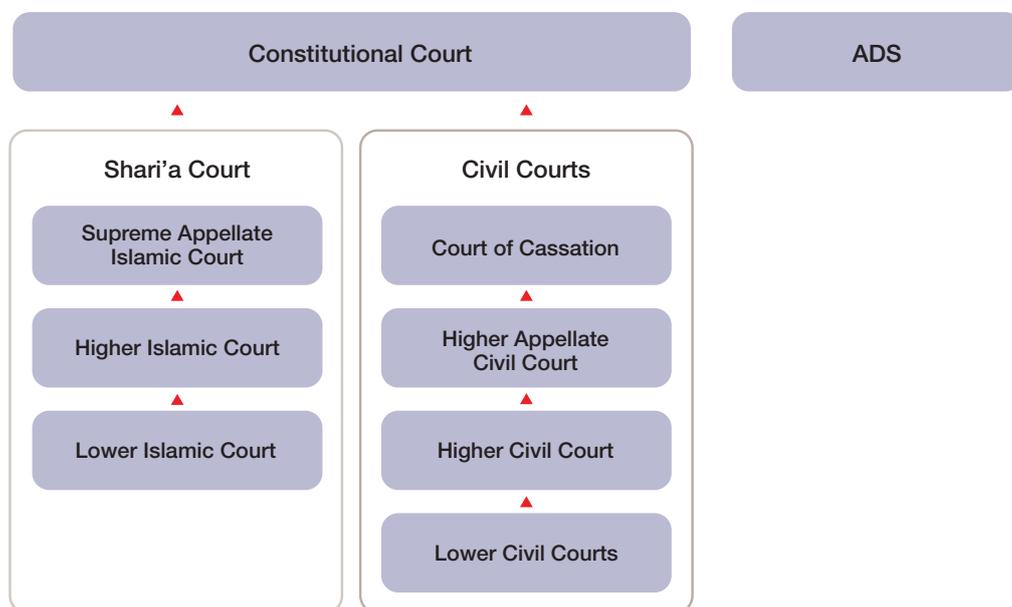


Figure 7: Bahrain Court System

<sup>64</sup> C/S/2/05 Judicial Year (3) Bahrain Constitutional Court

The UAE Supreme Court under Article 99 of the Constitution has jurisdiction in disputes between member Emirates in the Union, or between any one or more Emirates and the Union Government. It is empowered to examine the constitutionality of Union laws if they are challenged by one or more of the Emirates on the grounds of violating the Constitution of the Union.<sup>65</sup> Domestic courts in the country can also refer questions regarding the constitutionality of legislation during a pending case before it.

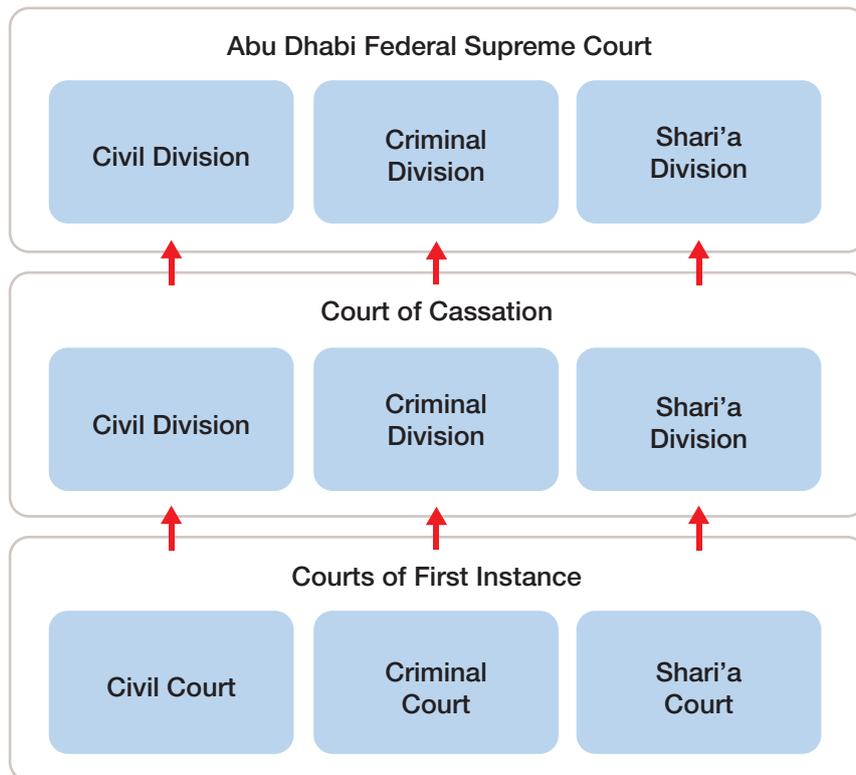


Figure 8: UAE Federal Court System

<sup>65</sup> Dubai and Ras-Al-Khaimah do not fall under this federalist court structure.

## 4. Commitment to Human Rights Treaties in the GCC Region

Commitment to human rights treaties in the GCC has increased steadily since the first ratification of a UN rights instrument in October 1968<sup>66</sup> and well before the GCC was founded in 1981. The GCC states have at once been quick to ratify core human rights treaties and slow to demonstrate commitment to the obligations under these treaties in the domestic space. The GCC states are best categorised as belonging to the group of states which we may call ‘selective ratifiers’. Selective ratification takes place in two ways. First, the GCC states do not ratify UN human rights treaties following the chronological order in which these treaties have been adopted by the UN. Second, selective ratification is present, as four out of six GCC states have not ratified the International Bill of Rights, that is, the twin covenants—the ICCPR and the ICESCR. In addition, none of the GCC member states have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMRW) or the International Convention for the Protection of all Persons from Enforced Disappearances (CED).

A common feature of GCC ratifications is the presence of reservations, both in relation to specific provisions of the texts and also as general limitations that impose interpretative qualifications or broad exceptions that apply to the treaties as a whole. In this section we present ratification trends of UN human rights treaties in the GCC, explore the reservation practices of the GCC member states, and explain the factors that lead to the ratification and reservation choices in this region.

### 4.1 Ratification of Human Rights Treaties in the GCC Region

As of mid-2014, there have been thirty-three ratifications of the ten core UN human rights treaties by the GCC states. Four treaties have been ratified by all six of the states (CEDAW, ICERD, CRC, and CRPD) whilst three have received no ratifications at all (CED, ICRMW, and the CAT-OP). Only in connection with CRPD have any of the states accepted the right of individual petition.<sup>67</sup> Figure 9 below shows ratifications of these ten core instruments and the first two CRC optional protocols.

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<sup>66</sup> The ratification of CERD by Kuwait on 15 October 1968.

<sup>67</sup> 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 February 2008 respectively.

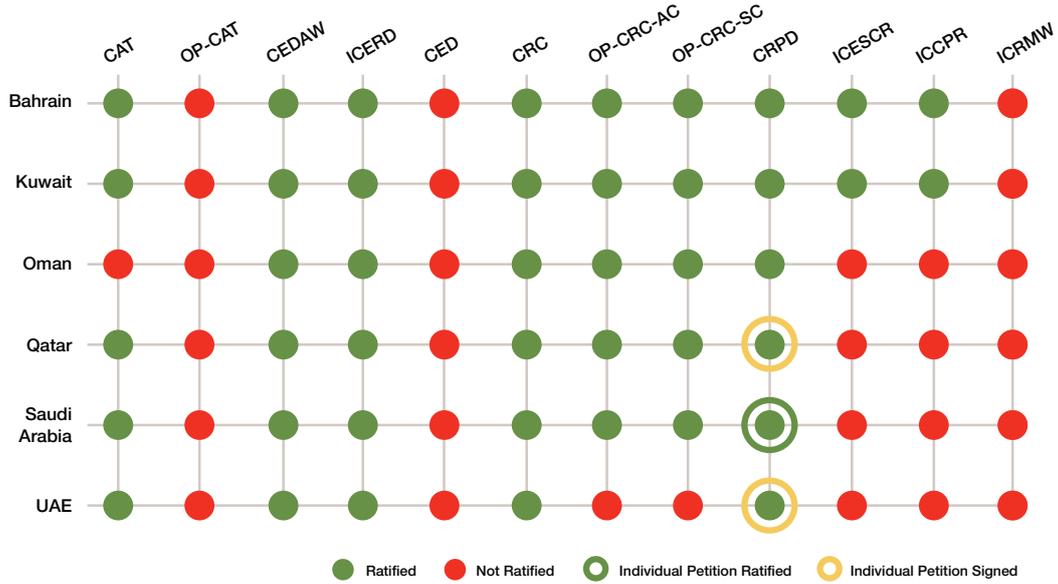


Figure 9: Ratification of 'Core' UN Human Rights Instruments (and CRC OPs)

The states have also undertaken 32 ratifications of the eight ILO Fundamental Conventions regarding rights at work, six ratifications of ILO Priority Governance conventions relating to the functioning of the international labour standards system, and 27 further ratifications of non-priority ILO conventions. shows the ratifications of the key ILO Conventions. Amongst the additional ratifications Kuwait has the most at ten, followed by Saudi Arabia with nine, Bahrain with four, and UAE with two. Neither Qatar nor Oman has ratified any additional conventions beyond those shown below.

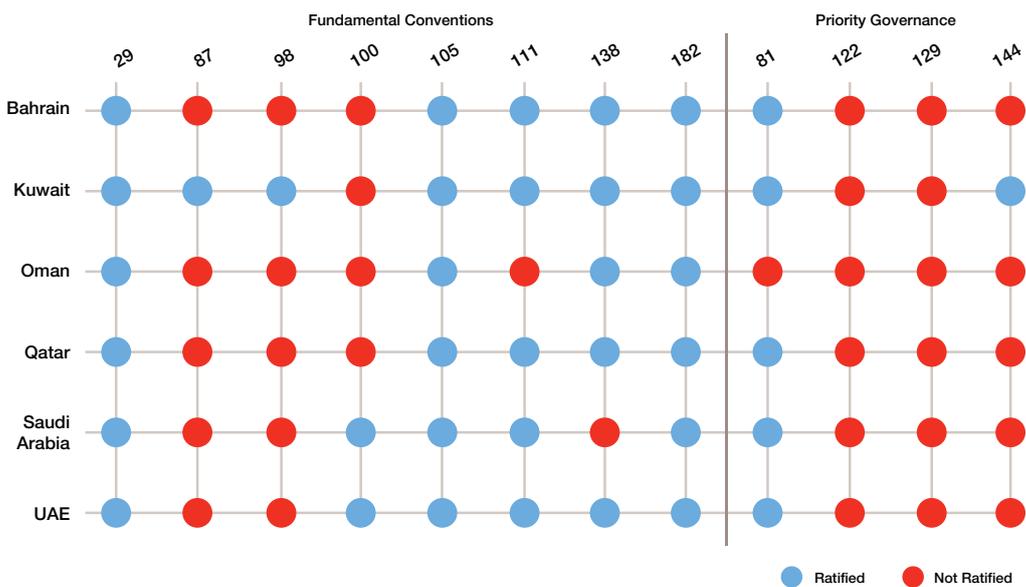


Figure 10: ILO Treaty Ratifications

### 4.1.1 Patterns of Ratification

Both in timing and sequencing, there are some clear commonalities across the GCC countries. In terms of sequencing, despite being separated by 24 years in their adoption by the UN, 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 ratifying ICERD first).

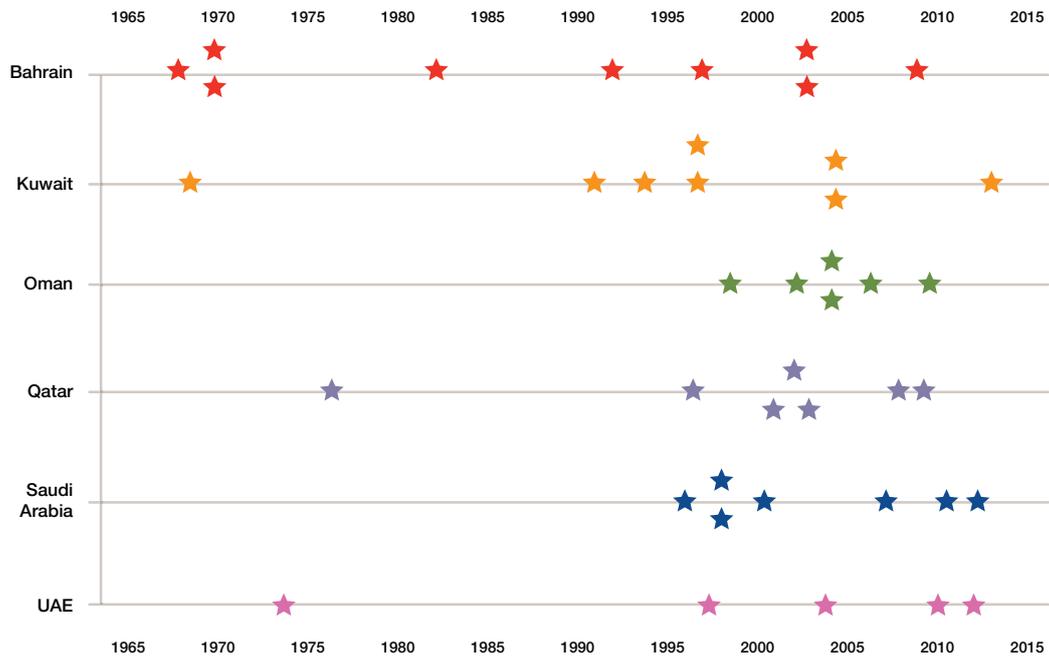
In terms of timing, the first four states to ratify CAT did so in two and a half years and the three states to ratify the first two CRC OPs (Bahrain, Kuwait, and Oman) all did so within a month. In both instances these ratifications came a number of years after the instruments had originally been passed. In relation to the most recent of the core UN treaties (CRPD), however, all six of the states ratified within seven years of the instrument's passage, making this the fastest complete ratification by a significant margin (CEDAW took almost 30 years, ICERD 37 years, and CRC just over seven years).

There are also clear divergences in terms of the ratification record. Only Bahrain and Kuwait have ratified the twin Covenants that sit at the heart of the UN rights framework. ICERD ratifications took place across the 1960s (Kuwait), 1970s (Qatar and UAE), 1990s (Bahrain and Saudi) and 2000s (Oman).<sup>68</sup> Some states have joined certain instruments only long after the rest (e.g. UAE ratifying CAT 12 years after the flurry of ratifications by the rest of the GCC). There are also significant variations in periods of peak ratification between the individual states.

The timing and sequencing data shows that the GCC, as a region, has found commitment to the rights of persons with disabilities and the rights of the child (CRPD and CRC) quicker to facilitate as a matter of a ratification process than women's rights and elimination of racial discrimination (CEDAW and ICERD). The divergences in the timing and sequencing of data, however, also shows that state-level or international dynamics, rather than regional GCC-wide dynamics, explain the choice and timing of ratification of human rights treaties in the GCC.

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<sup>68</sup> CERD being ratified by Bahrain on 27 March 1990, Kuwait on 15 October 1968, Oman on 1 January 2003, Qatar on 22 July 1976, Saudi on 23 September 1997, and UAE on 20 June 1974.



**Figure 11: Timeline of ratifications of ‘Core’ UN rights instruments and CRC OPs**

As Figure 11 indicates, other than for the UAE, there has been a period of heightened ratification activity, with a majority of the instruments acceded to by each state ratified in under a decade. Bahrain’s ratifications mostly occurred between 1998 and 2007 (six out of nine ratifications), Kuwait’s between 1991 and 1996 (five out of nine), Oman between 2003 and 2009 (five out of six), Qatar between 2000 and 2009 (five out of seven), and Saudi having two clusters, one between 1996 and 2000 (four out of seven) and then the second between 2010 and 2011 (the other three out of seven).

These periods have some, albeit limited, connection with domestic constitutional reform in the GCC counties. Considering the dates on which constitutions have been passed or amended<sup>69</sup> only Bahrain’s 2002 constitution falls within (or close to) its period of ratification of UN human rights treaties.

Looking at other major international and domestic political events, the clearest connection is in the case of Kuwait whose 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 shortly tailed the first Gulf War and followed immedi-

<sup>69</sup> Bahrain in 1973 and 2002, Kuwait in 1962, Oman in 1996 (with modification in 2011), Qatar in 2013, Saudi Arabia in 1992, and UAE in 1971 (entrenched in 1996).

ately on from King Abdullah's (then Crown Prince Abdullah's) assumption of responsibility for the running of the state. In Bahrain, Sheikh Hamad Bin Khalifa's coming to power in 1999 saw the ratification of the twin Covenants alongside domestic political reforms under the National Action Charter, amid demands from the opposition. In Qatar, ratifications increased after Sheikh Hamad bin Khalifa Al Thani's consolidation of power following in 1995. 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 to observe this along the fact that it has had a consistent leadership through the reign of Sultan Qaboos since 1970.

Post-'Arab Spring' there have been three ratifications throughout the GCC, but no strong evidence of a connection.<sup>70</sup> A possible link with UPR cycles will be addressed below.

#### **4.1.2 From Recommendations to Ratifications**

Against the backdrop of the selective approach to ratification adopted by the GCC states, the various Treaty Bodies have frequently called upon the GCC states to make further ratifications, remove reservations, or otherwise engage more directly with the UN human rights system. Additionally states have made a significant number of ratification recommendations to the GCC states through the UPR process. In total there have, to date, been more than 50 such UPR recommendations,<sup>71</sup> just under 70 Treaty Body recommendations<sup>72</sup> and 12 Special Rapporteur recommendations<sup>73</sup> calling specifically for further ratifications. 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.

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<sup>70</sup> CAT by UAE, CRPD by Kuwait and CRC OP AC by Saudi Arabia.

<sup>71</sup> Original dataset covers all UPR recommendations up to date until April 2014.

<sup>72</sup> Original dataset of recommendations on file with authors, update up until April 2014.

<sup>73</sup> Original dataset on file with authors, up to date until April 2014.

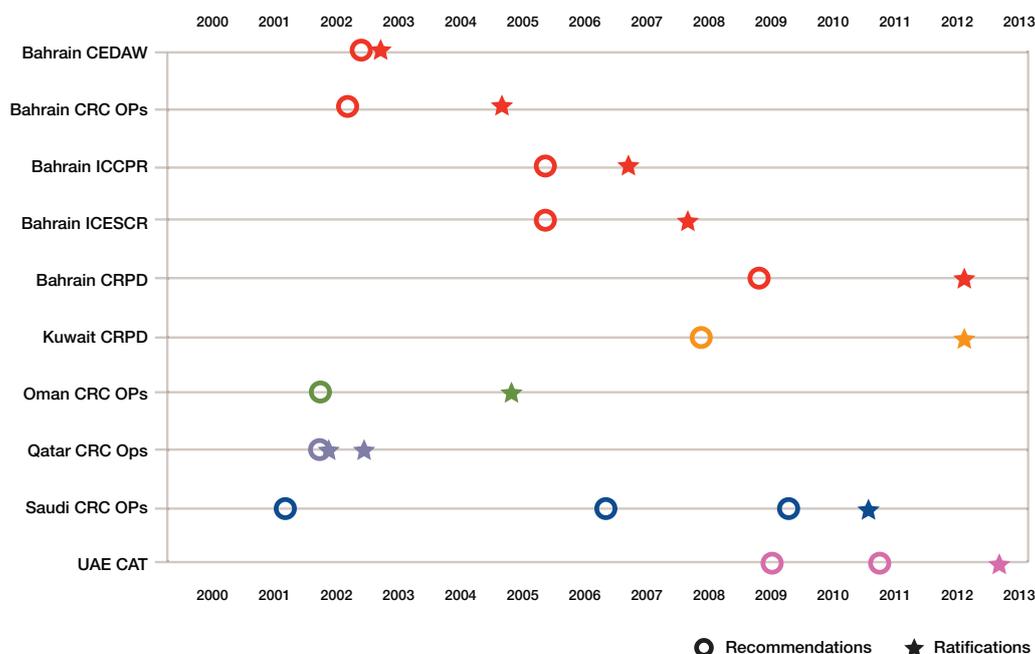
	Bahrain	Kuwait	Oman	Qatar	Saudi	UAE
CAT	0	0	3	0	0	2
CAT OP	3	1	1	0	2	1
CEDAW	1	0	0	0	0	0
OP-CEDAW	3	2	1	1	4	1
ICRMW	1	5	5	5	5	5
CED	3	1	0	3	0	4
CRC OP1/2	1	0	1	1	3	3
CRC OP3	0	0	0	0	1	0
CRPD	1	1	0	0	0	0
CRPD-OP	1	1	0	0	0	0
ICCPR	1	0	3	3	4	4
ICCPR-OP1	2	2	1	0	0	0
ICCPR-OP2	0	0	1	0	1	0
ICESCR	1	0	1	3	4	4
ICESCR-OP	0	3	1	0	0	0
Refugees	0	7	1	3	1	2

**Figure 12: Combined Treaty Body and UPR Recommendations to Ratify**

Figure 12 indicates the number of recommendations made to ratify each instrument with green squares indicating ratification following those recommendations, yellow squares indicating ratifications that have occurred without any recommendation, and blank squares indicating no ratification. Compared with the 17 ratifications that have occurred with no recommendation, only 11 have occurred following recommendations. Even extensive pressure, such as seen in connection with ICRMW (in connection with which 26 ratification recommendations have been made across the GCC states), has failed to trigger ratification of some outstanding instruments and most ratifications following a recommendation come after only one recommendation rather than multiple requests. The only clear exception to this trend is Bahrain, who has ratified six instruments after recommendations.

Of course a ratification following a recommendation does not in itself imply causation, and if such causation is present one would expect either temporal

proximity, explicit connection between the recommendation and ratification in subsequent reporting, or both of the above. Looking at such temporal proximity Figure 13 shows a timeline of the instances where ratifications have followed recommendations.



**Figure 13: Timeline of Ratifications Following Recommendations**

Looking at the data in Figure 13 there are only a few candidates for a significant and direct causation between specific external pressure and internal reform. Bahrain’s ratification of CEDAW in June 2002 came only 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, and Qatar’s ratification of the two CRC OPs in December 2001 (SC) and July 2002 (AC) came one month and seven months, respectively, after a recommendation by the CRC treaty body in November 2001. There are other potential candidates for causation but little evidence that specific external pressure through UN monitoring mechanisms has a significant positive impact on ratification behaviour (particularly UPR input, which has only been present in three cases where ratification has followed)<sup>74</sup>.

<sup>74</sup> These UPR recommendations being to Kuwait to ratify CRPD in June 2010, to Saudi Arabia to ratify the CRC OPs in March 2009, and to UAE to ratify CAT in January 2009.

Looking to the state's own reports, only Bahrain has drawn an explicit connection between a ratification recommendation and a subsequent ratification. This came in Bahrain's 2nd/3rd report to the CRC treaty body<sup>75</sup>, submitted in March 2010. In it the Bahraini Government identified Act No. 2004/19 as implementing the recommendation from the concluding observations of the Committee on the Rights of the Child to Bahrain's first report that Bahrain ratify the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict.<sup>76</sup> Beyond these cases there are no other instances of a state flagging ratification of an instrument as being related to a treaty body recommendation. The closest any of the other states come is in the case of Qatar, which also noted its ratification of the CRC OPs in its second CRC submission, following a ratification recommendation in the Concluding Observations of its first submission. However, Qatar flagged this move under a list of "measures taken to bring domestic legislation into full conformity with the principles and provisions of the Convention" and made no reference to the Committee's recommendation to ratify.<sup>77</sup> Instead the ratification was included in a list with ILO Conventions No.182 (the Convention on the Prohibition and Elimination of the Worst Forms of Child Labour) and No. 29 (concerning Forced or Compulsory Labour), even though there had been no call to ratify these instruments and, in fact, the CRC had already commended Qatar on its ratification of Convention No.182 in its concluding observations on the state's first report.

Overall then, the evidence for significant efficacy of treaty body ratification recommendations is weak. Cases of positive responses are the rare exception. References to ratification in state reports are normally generalized and repetitive, emphasizing the full spread of measures adopted rather than focusing on the recommendations made in the previous report, or even restricting the report to measures taken within the period of time since the previous report.

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<sup>75</sup> Bahrain, Second and third periodic reports of States parties due in 1999 CRC/C/BHR/2-3 24 March 2010 Para 454

<sup>76</sup> Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Bahrain CRC/C/15/Add.175 11 Mar 2002 Para 49

<sup>77</sup> CRC/C/QAT/2 16 December 2008 Para 16 and heading of Section I.B

### 4.1.3 Why ratify?

The data above helps us see which treaties the GCC countries have favoured but leaves open, however, many questions with regard to why ratifications have taken place at certain times and to what extent motivations behind ratification condition the GCC states' willingness to give domestic effect to UN human rights treaties. In this section we fill in some of the gaps in the above factual outline with interview data collected through our fieldwork in the GCC.

A key finding that has come out of the interview data that confirms the time and sequencing analysis is that international pressure for ratification decisions, be it multilateral or unilateral pressure, is perceived as being absent in this region. The GCC states do not face any ratification pressure from their trade or security partners. Indeed the key security partner of GCC states, the United States of America, has a very limited ratification of UN treaties itself. The GCC states are also not moved by calls for ratification coming from the UN mechanisms and do not attach any tangible benefits to responding to these calls. 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 the light of this, we find that the ratification decisions in the GCC region are primarily motivated by international acculturation at times combined with domestic leadership preferences or domestic pressures.

International acculturation emphasises 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 or too isolated” from the community of states. Selective UN human rights treaty ratification offers a means to confirm membership in the international community and, as we shall discuss in the next section, the ability of states to enter reservations into human rights treaties also mean that the desire to belong can be fulfilled at a limited cost for domestic regimes. UN treaty ratification with reservations enable states to signal different messages to international and domestic audiences. In one interview from Kuwait for example, when asked about Kuwait's ratification of the ICCPR and ICESCR, we were told that “this was our way of saying thank you to the international community after the invasion.”<sup>78</sup> In another interview, this time with a government official in Oman about late ratifications in Oman,

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<sup>78</sup> 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 and 677.

the response was that “Oman did not want to look too isolated from the rest.”<sup>79</sup> Indeed, interviews with key stakeholders repeated the value of the intangible benefit of selective human rights treaty ratification. UN human rights treaty ratification, however selective and with however many reservations, is regarded as confirming legitimate statehood and avoiding international isolation.

Alongside acculturation, in the case of Qatar and Oman, we found that the reasons for ratifying human rights treaties were also down to strong domestic leadership preferences in that the ruling elite regard ratification of human rights treaties as supporting their state-building models domestically. In other words, at the highest level of rule, ratifications also appear as the personal choice and preference of the ruling elite. In one interview in Qatar, the interviewee regarded the ratification of CRC and CEDAW as a “green light” from the Emir to reform domestic institutions. The ratification of human rights treaties was interpreted as part of the vision and the direction of the state bureaucracy. In Kuwait, we did not find evidence of strong leadership preferences for signing human rights treaties. This is frequently explained by the parliamentary system that enjoys a veto power over government; alongside the perception of a more entrenched Constitution and domestic institutions offering a stable point of reference in Kuwait. In Bahrain, leadership preferences have been mediated by the effects of the strong opposition against the ruling elite since the early 2000s. Ratification of human rights treaties may, therefore, be considered as part of a framework of concessions offered by the ruling elites to the opposition and acts for legitimating the state in the eyes of the international community.

<p><b>Strong Acculturation Strong Leadership Preference</b></p> <hr/> <p><b>Qatar Oman</b></p>	<p><b>Strong Acculturation Weak Leadership Preference</b></p> <hr/> <p><b>Kuwait Saudi Arabia UAE</b></p>	<p><b>Strong Acculturation Strong Domestic Pressure</b></p> <hr/> <p><b>Bahrain</b></p>
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Our qualitative data confirms our descriptive data. The GCC rationales for the ratification of human rights treaties share both similarities and differences with the literature regarding ratification. There are similarities particularly regard-

<sup>79</sup> Interview, Oman, February 2014.

ing the importance of international acculturation in the region, and there are differences particularly in light of the absence or presence of strong domestic leadership preferences for ratification.

Neither international acculturation nor domestic leadership preferences as a reason to ratify human rights treaties offer a fully negative or an overly positive prospect for the subsequent implementation of human rights treaties. This is because whilst international acculturation may sometimes be a first step towards a deeper socialisation of human rights norms, it can also be just a stand-alone act. Once states calculate that they have gained the intangible benefit through ratification of the human rights treaty concerned, they may lose interest in the treaty life in practice. That leads to a lack of detailed attention to its implementation and realisation. Domestic leadership preferences by the ruling elite, too, are not always stable. They may be subject to change, or the leaders themselves may change. In the next part of the report we probe more into the relationship between ratification and domestic effects.

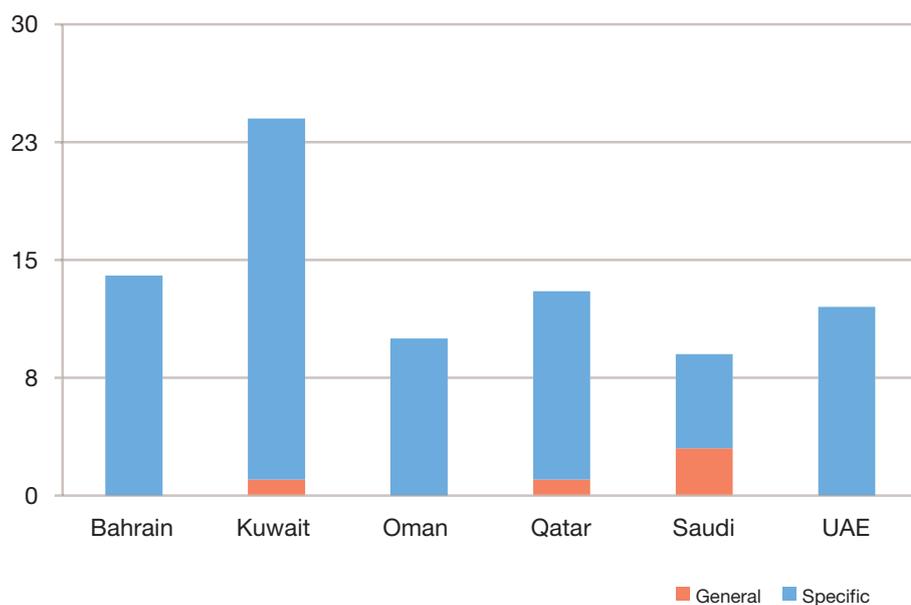
## **4.2 Reservations to Human Rights Treaties in the GCC Region**

The GCC states have made significant use of reservations at the time of ratification of UN human rights treaties. Reservations to UN human rights treaties are governed by international law and a reservation is defined as a “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State”<sup>80</sup> Excluding reservations that are related to the non-recognition of Israel (which have been entered by Bahrain, Kuwait and the UAE), Figure 14 depicts the current number of reservations entered by the GCC states and the balance between general reservations, which apply to the interpretation, implementation and force of the instrument as a whole, and specific reservations, which seek only to delimit or caveat the application of a particular provision or provisions without further impact as regards the rest of the treaty.<sup>81</sup>

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<sup>80</sup> Article 2(i)(d) of the Vienna Convention on the Law of Treaties 1969 UNTS 1155 p.331

<sup>81</sup> General reservations in the GCC region subject the interpretation of UN Human Rights Treaties as a whole to their compatibility with Islamic Shari’a.

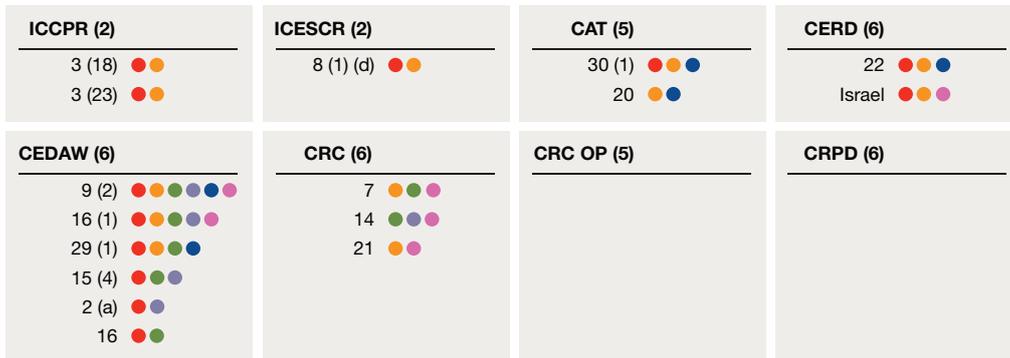


**Figure 14: Reservation Tallies by State**

The picture is relatively similar across the five states with the only exceptions being Kuwait, which has the greatest number of ratifications but also the greatest number of reservations (with four entered in connection with each of the twin Covenants, which only Kuwait and Bahrain have ratified, as well as a general reservation to the CRC) and Saudi Arabia, which, has three general reservations that curtail the potential scope of the domestic effects of the CRC, the ICERD and the CEDAW as a whole.

Figure 15<sup>82</sup> indicates the article numbers of each treaty where more than one state has entered a reservation (the number in brackets after each instrument indicates the total number of articles in the instrument that are subject to specific reservations by at least one GCC state).

<sup>82</sup> The Israel reservation is separated out as a common general reservation stating that ratification of the instrument does not imply any acceptance of the existence of the state of Israel.



**Figure 15: Articles with Multiple State Reservations**

Reservations to UN human rights treaties in the GCC region both reflect the domestic negotiations amongst key constituents and the core sensitivities of the ruling elite in the GCC countries leading up to ratification of human rights treaties and explains some of the limited domestic effects of UN human rights treaties after ratification. The presence of general reservations, in particular, places 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. This is because a general reservation makes the place and relevance of a UN human rights treaty unclear in the domestic legal and political settings and inhibits 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 rights 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.

Of all the treaties the GCC member states have ratified, CEDAW has attracted the most reservations across the region followed by the CRC. In the case of CEDAW, the following have attracted reservations from *all* GCC states:

- 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(2) on child marriages, minimum age to marriage and compulsory registration of marriages.

Additionally the following have seen reservations from a *majority* of the states:

- Article 16(1) concerning the equal rights of women in family life;<sup>83</sup> and
- Article 15(4) conceding the equal rights of women to have the freedom to choose their residence and domicile.<sup>84</sup>

With respect to the CRC, right of children to a nationality (Article 7), children's right to freedom of thought, conscience and religion (Article 14) and permission of an adoption system (Article 21) have attracted the most reservations. Both Saudi Arabia and Kuwait maintain general reservations to the CRC. Unlike the rest of the GCC countries, however, Bahrain has no reservations to the CRC.

The reliance of the GCC states on reservations has been a cause of concern for the UN Treaty Bodies. Whilst UN Treaty Bodies have regularly called for narrowing reservations, they have also raised fundamental criticisms in relation to general reservations. Saudi Arabia's general reservation to ICERD stated that "[t]he broad and imprecise nature of the State party's general reservation raises concern as to its compatibility with the object and purpose of the Convention".<sup>85</sup> Regarding the general reservation to CEDAW, the Special Rapporteur on Violence Against Women expressed concern that Saudi's general reservation to CEDAW "does not clearly define the extent to which Saudi Arabia accepts its international obligations"<sup>86</sup> and 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>87</sup> Similarly 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

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<sup>83</sup> Reservations placed by all except Saudi Arabia, which has a general reservation to CEDAW.

<sup>84</sup> Reservations having been placed Bahrain, Kuwait, Oman and Qatar

<sup>85</sup> Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination CERD/C/62/CO/8 2 June 2003 Para 9

<sup>86</sup> Yakin Ertürk, Report of the Special Rapporteur on violence against women, its causes and consequences (Addendum: Mission to Saudi Arabia) A/HRC/11/6/Add.3 14 April 2009 Para 10

<sup>87</sup> Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women CEDAW/C/SAU/CO/2 8 April 2008 Paras 8-9

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>88</sup> Similarly the UN Special Procedures mandate holders and other states through UPR have called for the narrowing or removal of reservations.

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 to uphold Islamic Shari’a laws specifically on nationality, marriage and adoption. Questions regarding a child’s right to nationality, regardless of the citizenship of the father, is also infused with concerns with regard to 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>89</sup>

Of particular significance 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). This indicates that women and children with disabilities cannot be subject to the reservations entered into the CEDAW and the CRC.

#### **4.2.1 Lifting of Reservations**

There has been an interesting trend (albeit a limited one) in the GCC region to re-consider and lift reservations to the UN human rights treaties. Thus far, reservation lifting or narrowing of reservations practices have been carried out by Bahrain, Qatar and Kuwait. Considering the limited practice across the UN in lifting existing reservations, this is an important trend. There have been four such removals: by Bahrain in connection with CAT in August 1998, by Kuwait in connection with CEDAW in December 2005 concerning the women’s right to vote, and by Qatar in connection with the CRC in 2009 and CAT in March 2012. The breakdown of reservations (tabulated on the basis of the number of provisions covered by reservations in each instrument) and changes made are illustrated in Figure 16.

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<sup>88</sup> Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child CRC/C/15/Add.148 21 February 2001 Para 7

<sup>89</sup> Interview, Qatar, February 2013.

Reservations removed from CAT by Bahrain concern the competencies of the Committee against Torture to initiate a secret inquiry. Bahrain lifted this reservation in responding to calls from the UN Human Rights Mechanism. Kuwait lifted its reservation to the voting rights of women, after a long political and constitutional battle in Kuwait for women's voting rights reflecting the domestic pressure and leadership preferences as informing the decision to lift this reservation.

The case of Qatar stands out with regard to the practice of lifting reservations, as Qatar lifted multiple reservations from three separate treaties. These related to OP-CRC-SC, CRC<sup>90</sup> and CAT. More significantly in the case of CRC and CAT, Qatar lifted its general reservations by qualifying and limiting them. Each reservation removal followed a specific recommendation from the relevant treaty body. 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>91</sup> with the change not coming until June 2008 and the Committee Against Torture called for removal of reservations in July 2006,<sup>92</sup> with the change coming in March 2012). Only the call by the Committee on the Rights of the Child, whilst considering Qatar's first OP-CRC-AC report in October 2007,<sup>93</sup> to remove reservations to OP-CRC-SC, was closely followed by the requested change (the reservation being removed in June 2008).

Why has Qatar taken the most significant steps in this regard by lifting its general reservations concerning the provisions of the CRC and the CAT? The explanation for this lies in the presence of human rights treaty champions within Qatar's domestic institutions who disagreed with the entering of these general reservations to the treaties in the first place. The human rights treaty champions, aided by recommendations from the UN treaty bodies, therefore have succeeded in re-opening the domestic bargain for remaining in the UN human rights treaties.<sup>94</sup>

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<sup>90</sup> Noted in Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Qatar CRC/C/OPAC/QAT/CO/1

<sup>91</sup> Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Qatar CRC/C/15/Add.163 November 2001 Para 11

<sup>92</sup> Committee against Torture, Conclusions and recommendations of the Committee against Torture CAT/C/QAT/CO/1 25 July 2006 Para 9

<sup>93</sup> Committee on the Rights of the Child, Concluding observations: QATAR CRC/C/OPAC/QAT/CO/1 17 October 2007 Para 12

<sup>94</sup> Interview, Qatar, February 2012.

Even though the rest of GCC states have also had received Treaty Body recommendations, for example, Bahrain has had two recommendations, Kuwait nine, Oman four, Qatar one further, Saudi Arabia four, and UAE six Treaty Body Recommendations, none of these have been followed by changes to the relevant reservations.

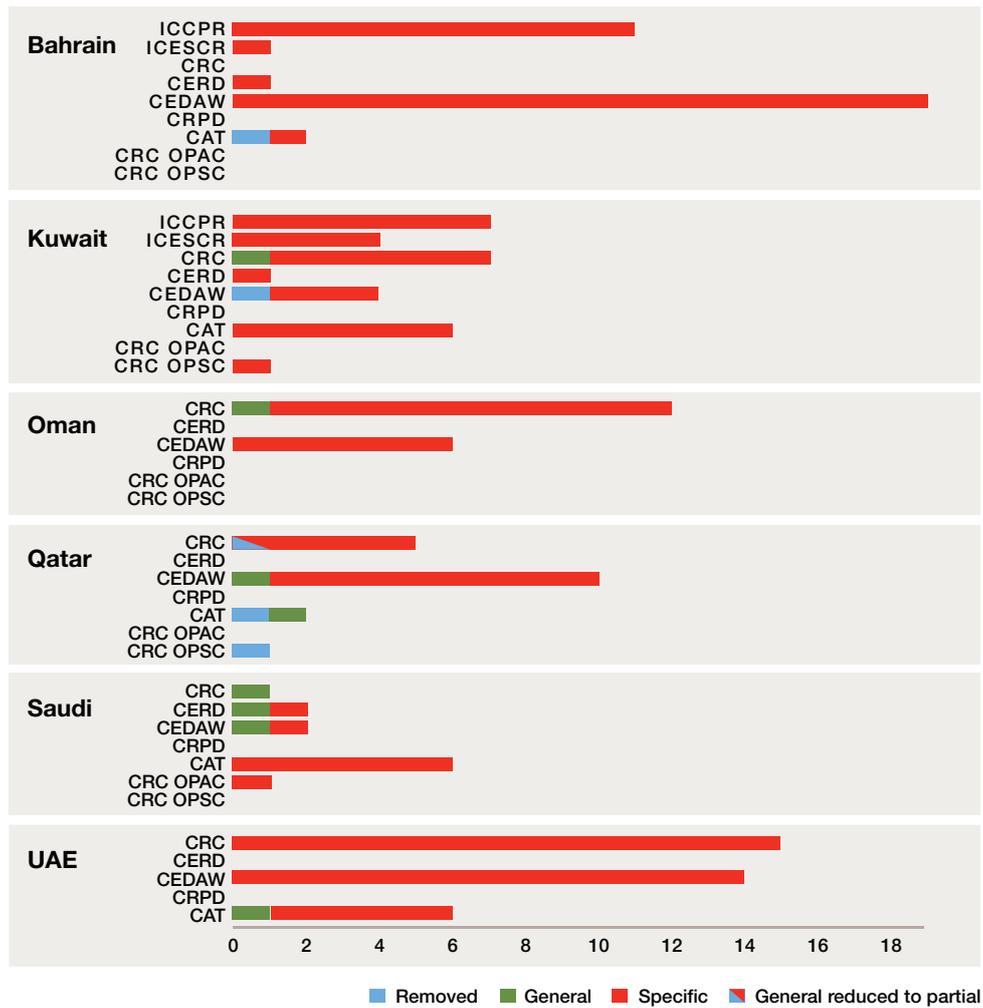


Figure 16: State Reservations by Instrument

### 4.3 Reporting Practices

Besides the short term act of ratification and the occasional process of reviewing reservations, the main ongoing interaction with the UN human rights systems is a state's engagement with the UN treaty bodies through regular reporting. State reporting provides a valuable and quantifiable insight into long-term commitment to human rights treaties. Whilst delays are a common feature of reporting in all states and not just the GCC, rendering the identification of absolute trends difficult, a comparison between the states and between instruments still provides a valuable insight into the states' attitudes towards their obligations once the 'afterglow of ratification' has faded.

Overall, the GCC states have submitted 78 reports as of mid-2014. Of these, 71 were overdue at the time of submission and seven were submitted on time or early. In mid-2014 there were 18 reports overdue. Figure 8 shows the breakdown of reports submitted late, early and overdue amongst the six states.

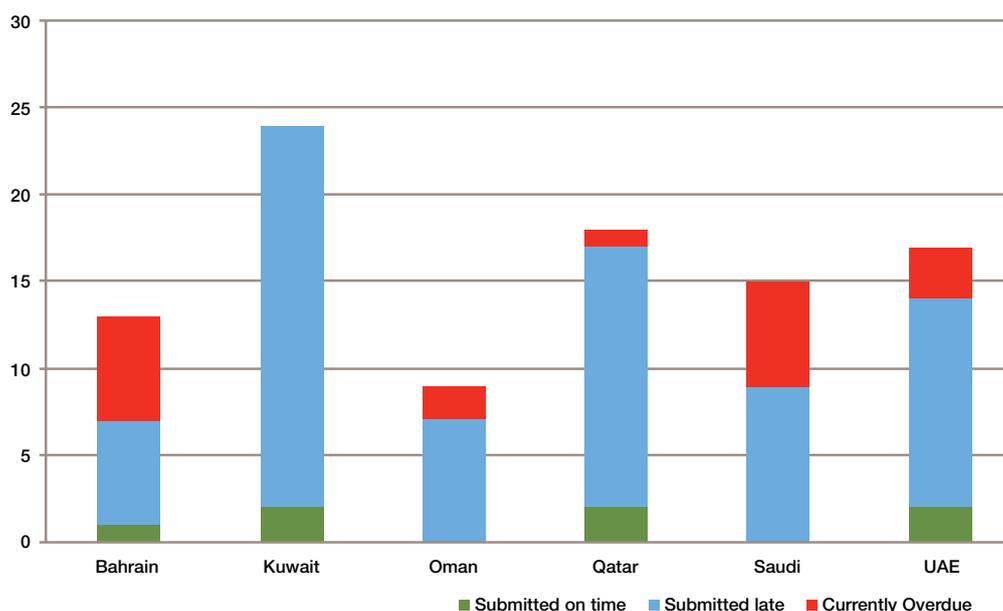


Figure 17: Punctuality in Reporting

In Figure 17 we can see that as well as having submitted the most reports, Kuwait is alone in having no outstanding reports. By contrast Bahrain has almost as many reports overdue as it has every submitted. The mean delay amongst all submitted reports is 2.4 years with a variation in average delay between 1.7 years (Oman) and 5.1 years (UAE)—see Figure 18.

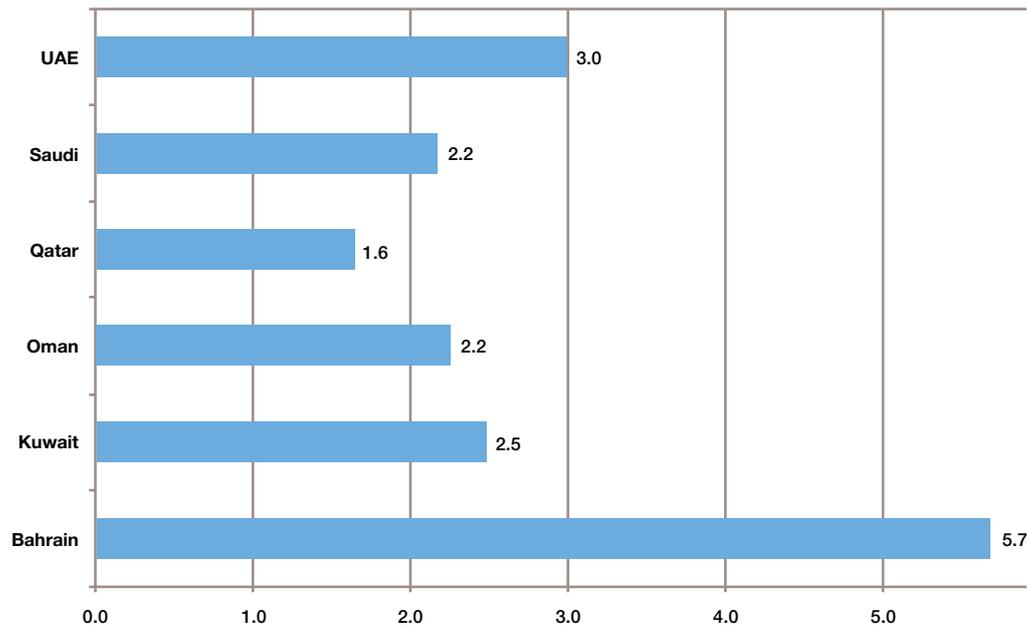


Figure 18: Mean delay in reporting by state

Whilst the variation in reporting frequency between the different treaties makes direct comparison between instruments difficult, it is still useful to compare different state approaches to different instruments. Bahrain is the slowest overall, albeit not the worst performer for CAT or CRC. The CRC OPs have noticeably better figures than any of the other instruments and CERD has very good figures given the short cycle length and the relatively long period of ratification for a number of the states.

TB (typical frequency)	Bahrain	Kuwait	Oman	Qatar	Saudi	UAE
CAT (4 year)	6.6	0.5		1.8	7.0	0.9
CEDAW (4 year)	2.2	4.8	2.6	1.5	3.1	1.6
ICERD (2 year)	5.4	1.9	3.1	1.6	3.6	2.3
CRC (5 year)	5.7	7.2	0.7	5.1	1.4	5.0
CRC OPs (5 year)	7.7	0.3	1.0	0.9	1.3	
CRPD (4 year)			3.4	2.0	3.9	0.8
ICCPR (4 year)	6.5	3.0				
ICESCR (5 year)	4.7	2.5				

**Figure 19: Mean delay in reporting by instrument and state**

One important point not caught in this data is that the reported delays in the UN official figures underestimate an overall tardiness due to treaty body adjustments to reporting timelines. This occurs where state reports are sufficiently late that the next report is almost due (or, if its due date has already passed, where the report submitted was not expressed as a combined report).<sup>95</sup> The most extreme illustration of the impact this has on the above data can be seen in relation to Qatar's 2nd CAT submission in 2011. Superficially, the 2nd Qatar CAT report appears to have been submitted a year early according to the UN statistics. However, the CAT Committee set a 2012 deadline only after Qatar submitted its first report five years late in 2005. If Qatar had stuck to its original reporting schedule, its first report would have been submitted in 2000, its second in 2005 and its third in 2010, a year before the 'early' 2nd report was delivered.

As such another point of comparison is how many timetable resets each state has required to date, and in connection with which instruments. This data provides an insight into the state's willingness to fall badly behind on its reporting obligations (which absent any major external factors, would appear to point to a lack of commitment to the instruments content).

<sup>95</sup> Again it must be noted that this is a feature of reporting that is not unique to the GCC and is broadly seen amongst other states and regions.

<b>Bahrain</b>	<b>Kuwait</b>	<b>Oman</b>	<b>Qatar</b>	<b>Saudi</b>	<b>UAE</b>
4	9	3	4	4	4
2000 CRC	1997 CAT	2005 ICERD	2001 ICERD	2001 CAT	1995 ICERD
2003 ICERD	1998 ICCPR	2005 CRC	2005 CAT	2003 ICERD	2008 CEDAW
2009 CRC	2002 CEDAW	2009 CEDAW	2008 CRC	2003 CRC	2008 ICERD
2010 CAT	2002 ICESCR		2011 ICERD	2007 CEDAW	2012 CRC
	2009 ICCPR				
	2010 CEDAW				
	2010 ICERD				
	2010 CRC				
	2010 ICESCR				

**Figure 20: Timetable resets required by each state**

Figure 20 details all of the timetable resets that have been required by the GCC states. Notably Kuwait has required more than twice as many as any other state, and these have come across a broad range of instruments, particularly around 2009-10 (helping to explain the absence of currently overdue reports). The most frequent committee to have to order a reset is the Committee on the Elimination of Racial Discrimination (eight occasions, though this will have been exacerbated by the, shorter, two year cycle for ICERD reporting), followed by CRC with seven, CEDAW with five, CAT with four, and the twin covenants with the fewest (three between them, presumably reflecting their limited ratification).

Overall this data shows that the different states have adopted differing approaches to their reporting obligations over the years following ratification. The trend however has been towards greater delay with Kuwait, the most prolific reporter, following small delays with a recent raft of resets. Similarly Qatar, which has submitted the second most reports, followed a series of timely reports to the Committee on the Elimination of Racial Discrimination up to 1992 (all under a year delayed) with a seven-year silence to 1999 (when it submitted its first CRC report, two and a half years late). Since then Qatar's CAT, CERD and CRC reports have all been over 3 years late, with most over five years delayed. Oman has had fewer reports overall (flowing from its having the fewest treaty ratifications and having only been reporting since 1999) but that reporting has one of the clearest trends with increasing delay over time. Most constant have been Saudi Arabia and the UAE who have both had a broad range of delays and no obvious trend of change.

#### 4.4 Intra-GCC Recommendations

The final measure of GCC commitment to international engagement with the UN human rights treaties comes through engagement with UPR. UPR provides a particular insight in that it is the only instance in which states are procedurally compelled to offer an explicit opinion, albeit without commitment, regarding its attitude towards a range of human rights propositions (as expressed through other states recommendations). As with the other data set out above, one must bear in mind a couple of caveats when interpreting this data. Not all recommendations are equal, many recommendations are duplicates, and there is significant scope for disingenuous statements of support. For these reasons it is questionable to directly compare the proportions of positive and negative responses of different states. One can however still note other interesting trends by looking at the data as a whole.

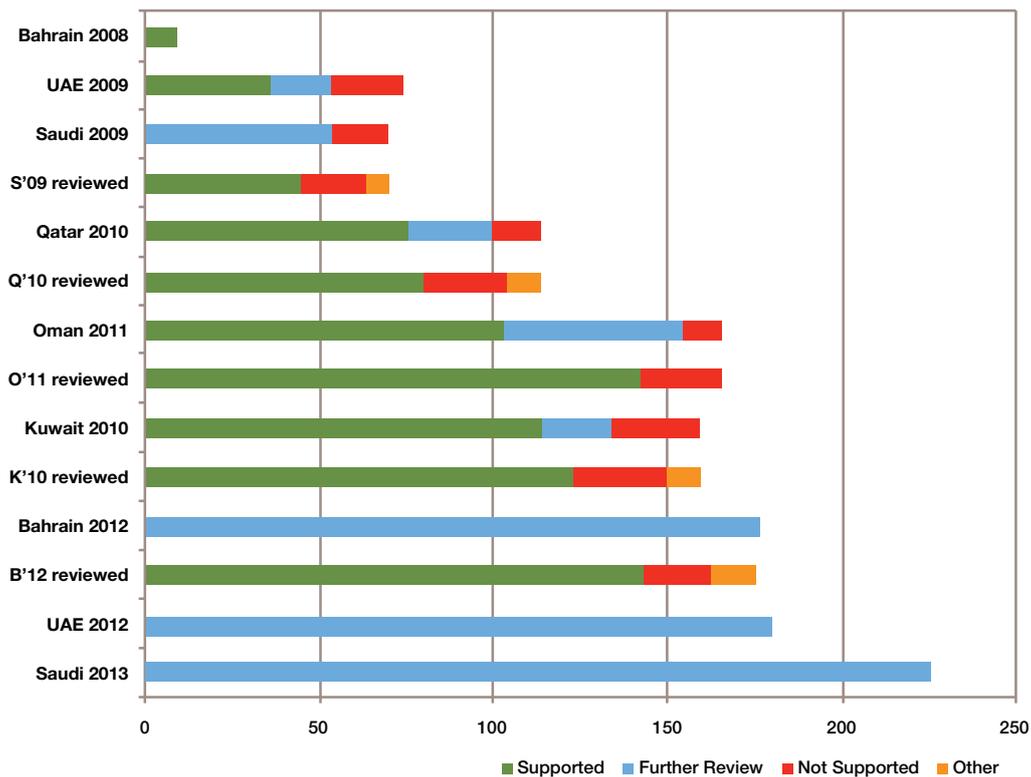


Figure 21: State responses to UPR recommendations at time of report and after consideration

Figure 21 shows the responses of each of the states to each of the UPR rounds to date. One general trend, albeit rooted in decisions of external states rather than practice in the GCC, is towards a greater number of recommendations being made to the states. A second trend that is rooted in GCC practice is towards reserving judgment regarding a state's attitude towards an increasing proportion of the recommendations pending further review. This review does not seem to be linked with a greater subsequent rejection of recommendations and may suggest a growth in domestic scrutiny of recommendations.

Another aspect of GCC state involvement in the UPR is in relation to recommendations made intra-GCC. Figure 13 shows the number of recommendations submitted by GCC states during the UPR rounds of other GCC members. It is notable that Bahrain, Kuwait, Qatar, Saudi Arabia, and UAE have all engaged in every round they were eligible to, leaving only Oman, who did not engage until 2012.

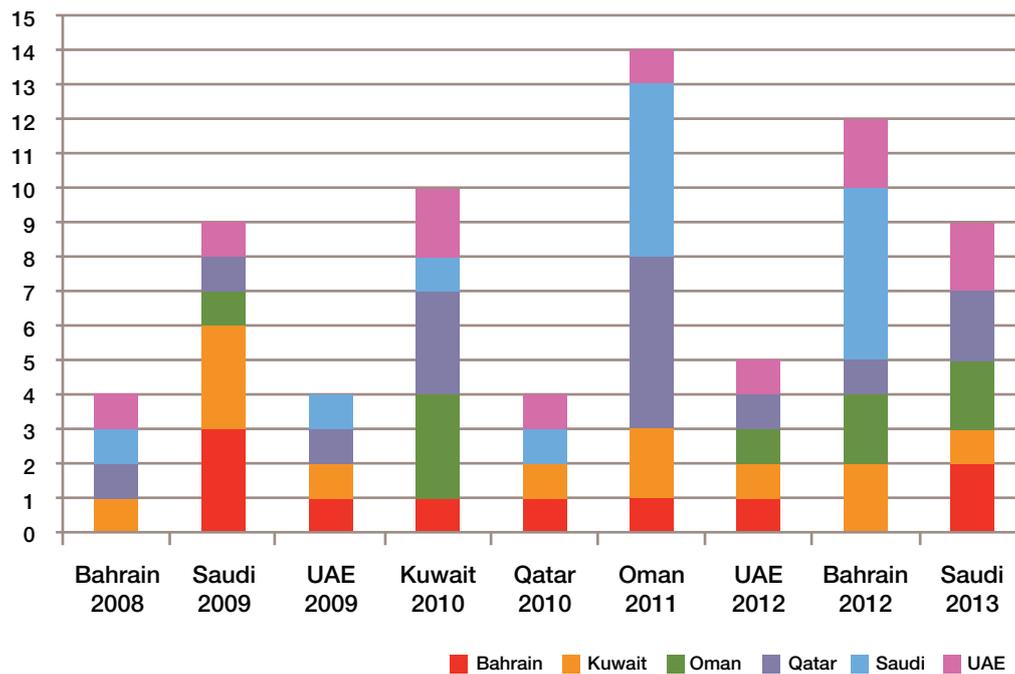


Figure 22: Intra-GCC Recommendation Tallies by UPR round

Analysing the proportion of recommendations by the kind of object specified and distinguished between specific recommendations (those identifying a clearly discernible action) and vague recommendations (those whose object is hard to define, measure, or confirm) gives the breakdown in Figure 22. This analysis shows that the majority of recommendations are policy suggestions and that two-thirds of these are weak in nature. There are, however, a significant number of strong suggestions of which five are legislative and two are related to international engagement. On a state comparison level this analysis shows that, whilst Saudi is the most prolific in its submission of recommendations, only two of its recommendations are specific and none are oriented at domestic legal reform or further development of international human rights obligations. By contrast Oman has the fewest recommendations overall (having joined in only latterly) but has the highest proportion of strong recommendations.

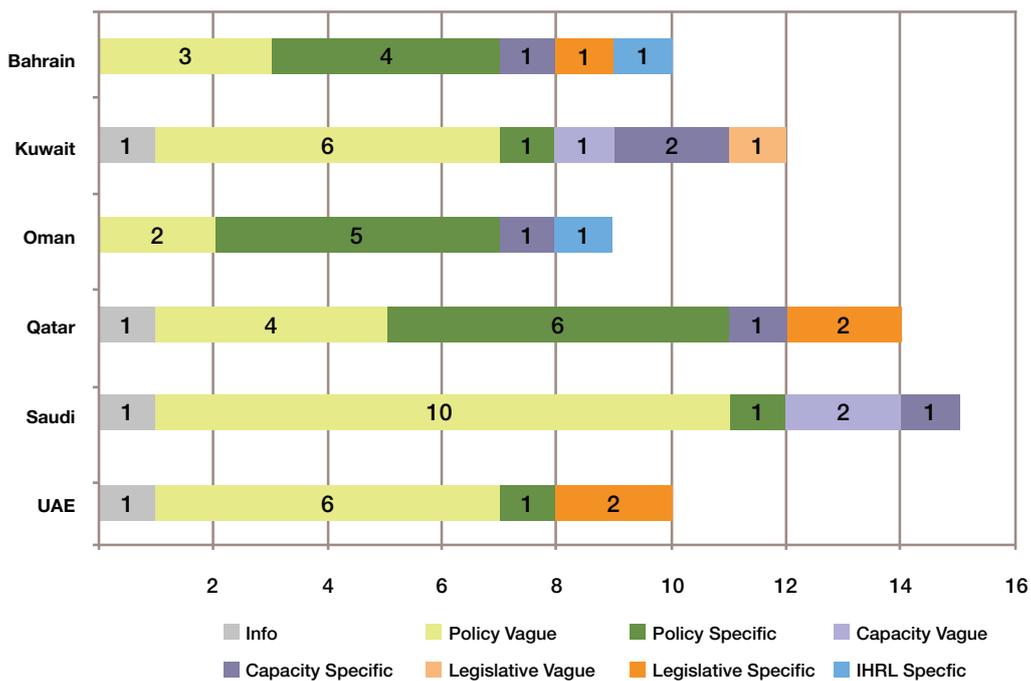


Figure 23: Types of Intra-GCC Recommendation made during UPR procedure

Amongst these recommendations, there are forceful suggestions across a range of topics. On international measures, these include recommendations regarding establishing an NHRI (Bahrain to UAE<sup>96</sup> and, citing the Paris Principles, Qatar to Kuwait<sup>97</sup>), considering further UN treaty ratifications (Oman to Kuwait)<sup>98</sup> and enhancing cooperation with the OHCHR (Kuwait to Oman).<sup>99</sup> Regarding legislative measures, there are calls to amend or repeal restrictive law on publications (Qatar to UAE),<sup>100</sup> pass legislation to protect civil society autonomy (Bahrain to Saudi)<sup>101</sup> and draw up implementing legislation to give domestic force to anti-trafficking measures under the convention against transnational organized crime (UAE to Kuwait).<sup>102</sup> The capacity building recommendations measures suggested include providing HR training to police and military actors (Saudi Arabia to Oman)<sup>103</sup>, providing resources to civil society human rights NGOs (UAE to Oman)<sup>104</sup> and protecting migrant worker rights by providing accessible means for redress (Bahrain to Saudi).<sup>105</sup>

Whilst making recommendations does not demonstrate a substantial commitment to the UN instruments it does demonstrate, amongst those states making strong recommendations, not just an awareness of the key human rights issues in the GCC, or a familiarity with the terms of human rights discourse, but a deliberate orientation towards taking an active role with the UN rights system. In the next section, we will examine how far this international engagement is reflected domestically.

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<sup>96</sup> Report of the Working Group on the Universal Periodic Review: United Arab Emirates A/HRC/23/13 21 March 2013 Para 128.44

<sup>97</sup> Report of the Working Group on the Universal Periodic Review: Kuwait A/HRC/15/15 16 June 2010 Para 79.13

<sup>98</sup> *ibid* Para 79.5

<sup>99</sup> Report of the Working Group on the Universal Periodic Review: Oman A/HRC/17/7 24 March 2011 Paras 89.27 and 89.28

<sup>100</sup> Report of the Working Group on the Universal Periodic Review: United Arab Emirates A/HRC/10/75 12 January 2009 Para 91.1

<sup>101</sup> Report of the Working Group on the Universal Periodic Review: Saudi Arabia A/HRC/11/23 4 March 2009 Para 87.35

<sup>102</sup> Report of the Working Group on the Universal Periodic Review: Kuwait A/HRC/15/15 16 June 2010 Para 79.60

<sup>103</sup> Report of the Working Group on the Universal Periodic Review: Oman A/HRC/17/7 24 March 2011 Para 89.93

<sup>104</sup> Report of the Working Group on the Universal Periodic Review: United Arab Emirates A/HRC/23/13 21 March 2013 Para 128.172

<sup>105</sup> Report of the Working Group on the Universal Periodic Review: Saudi Arabia A/HRC/25/3 26 December 2013 Para 138.212

## 5. Domestic effects of Human Rights Treaties

In this section we present the domestic effects of human rights treaties that have been documented in the GCC region and discuss the factors that explain the variation in these effects.

We define ‘domestic effects’ as a broad concept, including a diverse set of effects ranging from legal implementation to legislative change and from institution building and civil society mobilisation to feedback effects, i.e. increased propensity to participate in the UN human rights treaty mechanisms in relation to existing participation. In this respect, domestic effects of human rights treaties are wider than their legal implementation in the strictest sense. Domestic effects of human rights treaties do not imply a strict causation isolating the ratified treaty as the single cause of change in the domestic settings. Human rights treaty ratification offers a focal point of policy change when combined with underlying political or legal rationales. In this respect, domestic effects also come in two forms: primary and secondary domestic effects.

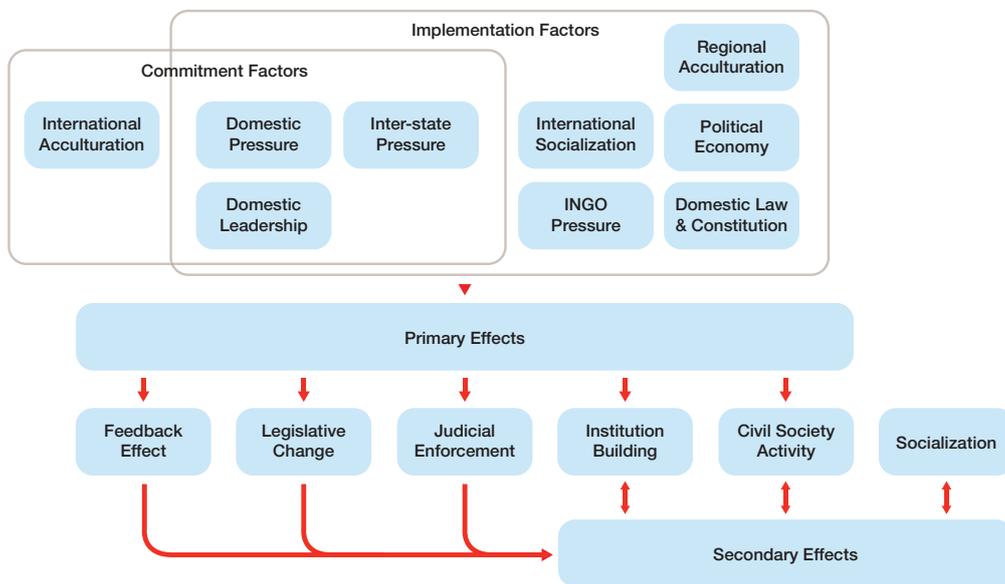
**Primary effects** are changes that take place in legislation and court decisions in the domestic setting in the aftermath of treaty ratification.

**Secondary effects** are increased socialisation in the system, institution building and increase civil society activity, which may then enable further primary changes in the long run.

In the GCC region, we identify five types of domestic effects of UN human rights treaties. These effects are observed in varying degrees in each of the six GCC member states. They also vary in terms of the issue areas of human rights treaties in each country. These effects are:

- 1) feedback effect,
- 2) domestic institution-building geared towards human rights promotion and protection,
- 3) domestic legislative changes following on from recommendations from UN Treaty Bodies,
- 4) judicial enforcement of UN human rights treaties and
- 5) domestic civil society advocacy on human rights law.

Of all these effects, we find secondary effects, namely in the form of feedback effect and institution building as more prevalent compared, in particular, to primary effects in the form of legislative harmonisation with UN treaties, enforcement through courts and the secondary effect of civil society action. Of the eight factors we identify as leading to or hampering domestic effects of UN human rights treaties, the factors of international socialisation, domestic leadership and bilateral pressure appear as the most salient factors driving domestic effects of UN human rights treaties. Political economy, domestic legal constitutional rules and domestic pressure are the three most salient factors hampering domestic effects of human rights treaties. In the following subsections we consider each effect and explore the evidence for and against its impact in turn.



**Figure 24: Typology of Factors and Effects**

## 5.1 Feedback Effect

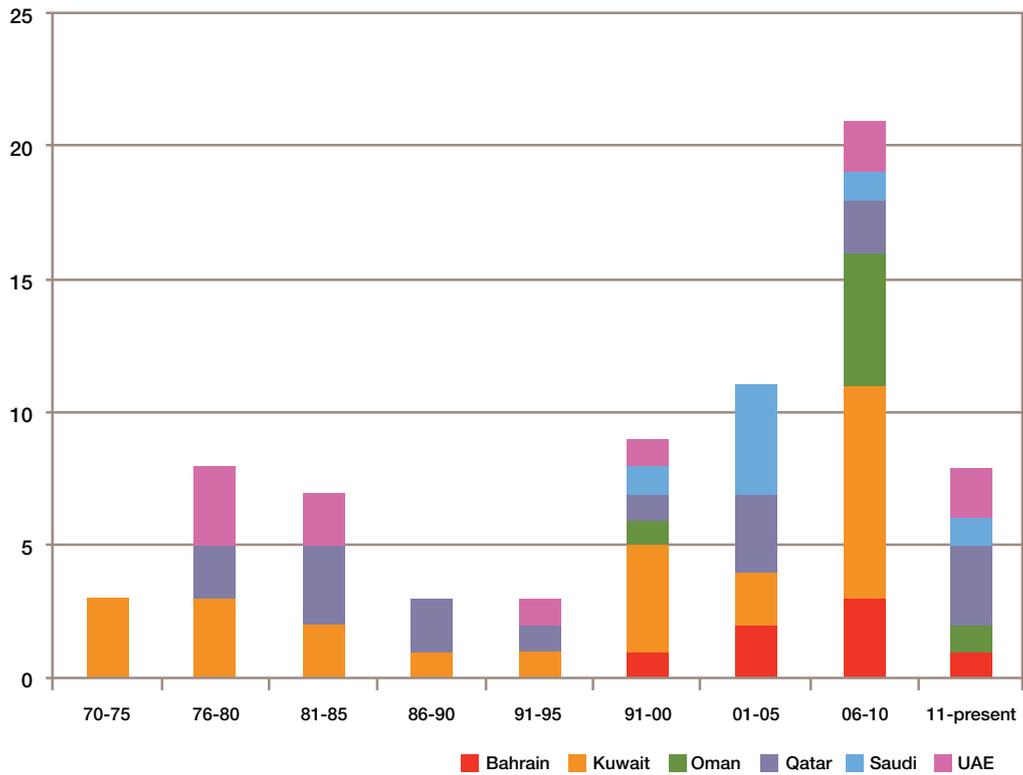
Ratification of a UN treaty leads to interaction between its treaty body and the state regarding the concrete application of the treaty in the domestic context. Through their ratification of a number of human rights treaties, the GCC states have become a part of this continuous dialogue about the gap between treaty norms and domestic interpretation and have engaged in a dialogue with a wide range of international actors. As demonstrated above, alongside concrete recommendations for implementation, UN Treaty Bodies consistently make suggestions for further ratifications of treaties and optional protocols, and UN Special Rapporteurs also make use of the ratified treaties and the recommendations made by treaty bodies. The Universal Periodic Review, too, asks GCC states to follow up on the treaty body recommendations. These processes taken as a whole lead to a continuous engagement with UN human rights treaties, as interpreted by the Treaty monitoring bodies. This, in turn, opens the door for greater socialisation of the state actors with UN human rights standards and to raising awareness about the application of human rights law. As one interviewee from Qatar put it “Human rights is new in this region. Ratification of UN treaties has been instrumental in getting our bureaucracies to understand what human rights are about.”<sup>106</sup> Interviews from other countries in the GCC further echoed this, indicating that treaty body recommendations offer a concrete place to start to talk about human rights. Feedback effect, therefore, offers a space for increased and contextual interaction with what may at the time of ratification be abstract and general commitments to one treaty.

One illustration of this effect in the GCC is treaty body reporting. Figure 25 shows that the number of reports submitted across the GCC region has increased over time, albeit with a significant drop during the final stages of the Cold War and the first Gulf War.<sup>107</sup> Feedback effects through reporting, however, are not even. For the states who have ratified most treaty body reports (Bahrain and Kuwait), there has been a very substantial increase in reporting, and thus increased contextual engagement with the treaty bodies. By contrast for UAE, which has ratified least, there is a marginal decrease in engagement.

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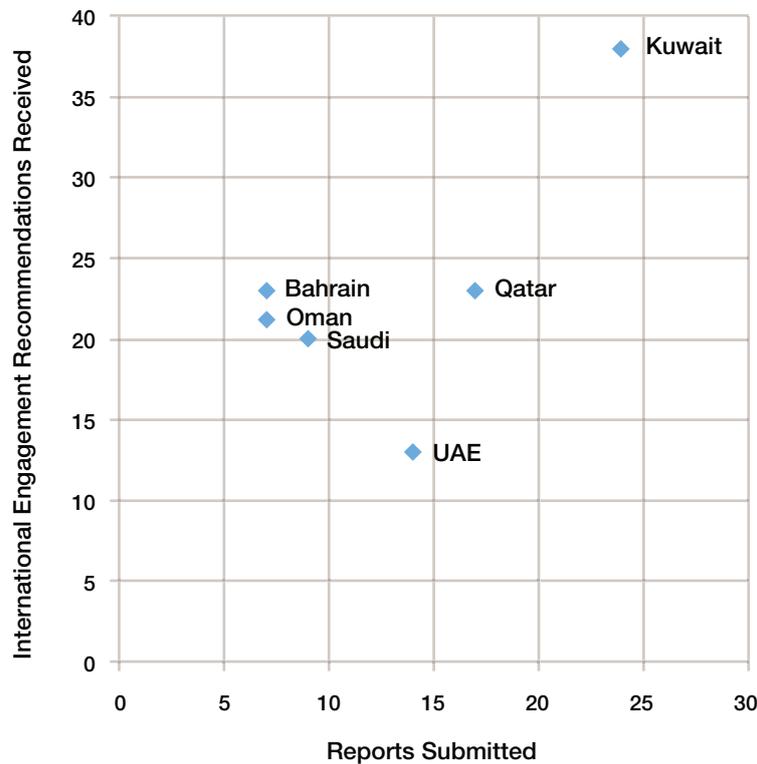
<sup>106</sup> Interview, Qatar, February 2014.

<sup>107</sup> It should be noted that the most recent category represents only half the years contained in the other categories and so does not demonstrate a significant fall-off.



**Figure 25: Reports Submitted in each 5-year period**

The positive relationship between report submission and receipt of further recommendations regarding international engagement, even where the state already has ratified more instruments, can be seen in Figure 26. In combination Figures 25 and 26 support the hypothesis that an increase in ratification amongst GCC states is likely to lead to an increase in further engagement.



**Figure 26: Recommendations regarding international engagement against number of reports submitted**

Feedback effects of human rights treaty ratification, however, have limited traction for the primary effects of human rights treaty ratification. This is because the actors that engage with the UN Treaty monitoring Bodies are a limited sub-set of ministerial experts across the governments in the GCC. Relevant ministry departments, socialised into human rights law implementation, require the support of other constituent forces in order to give effect to the specific recommendations of treaty bodies. This is particularly the case if these recommendations require legislative or judicial change. Feedback effects, however, also have the potential of creating or assisting human rights treaty champions in domestic ministerial structures. Given the small size of the GCC states (with the exception of Saudi Arabia), sustained international engagement on more technical and less political issues are promoted by feedback effects. The lifting of the reservations on CAT by Bahrain in 1998, and by Qatar in 2012, are attributable to these feedback effects. As one interviewee in Qatar stated “every time we went to Geneva, we were asked about the CAT reservation. We agreed that this did not serve a particular purpose so pushed for its change in

the end”.<sup>108</sup> An interviewee from Saudi Arabia stated “When in Geneva, the CRC asked us why we did not have free primary education. When we got back home, we pushed for this”.<sup>109</sup> The question remains, however, how far the more extensive recommendations that focus on the realisation of the human rights treaties on the ground might feed into broader domestic effects that create an environment in which human rights are recognized and safeguarded.

## 5.2 Institution Building

Capacity building recommendations constitute, on average, 16% of Treaty Body recommendations to each state with a range from 7% for Saudi Arabia to 23% for UAE (as per Figure 27). These recommendations include the training of officials, establishment of domestic agencies, creation of monitoring and administrative complaints mechanisms, and either the creation of an NHRI or undertaking efforts to ensure that the NHRI is compatible with the Principles relating to the Status of National Institutions (The Paris Principles)<sup>110</sup>.

	Legislative Reforms	Int. Engagement	Capacity Building	Policy Change
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 27: Typology, and Proportions, of TB Recommendations across the GCC states**

<sup>108</sup> Interview, Qatar, February 2014

<sup>109</sup> Interview, Qatar, May 2013.

<sup>110</sup> Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993. See also, chart of the status of National Human Rights Institutions, International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, <http://nhri.ohchr.org/EN/Contact/NHRIs/Documents/Chart%20of%20the%20Status%20of%20NHRIs%20%2823%20May%202014%29.pdf> (last accessed July 2014)

In the GCC, we would expect domestic institution building to be a likely domestic effect of a human rights treaty to take place. This is because the GCC states do not face significant resource constraints unlike many other parts of the world. A key institution building push common to all human rights treaty bodies (and the UN in general), is the creation of NHRIs. The UN regards NHRIs as a fourth pillar for the domestic protection and promotion of human rights alongside legislatures, judiciaries and governments. The Paris Principles require a national human rights institution to be legally, politically and financially independent from the state apparatus and be proactive in protecting and promoting international human rights law.

In the aftermath of their engagement with the UN treaties, four of the GCC states now have NHRIs. Only one, Qatar's National Human Rights Committee, has been recognized as Paris Principle-compatible. The Qatari National Human Rights Committee is the first national human rights institution in the region. It was founded in 2002 after a recommendation from the Committee on the Rights of the Child in November 2001, being 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>111</sup>, and asserted its intention to make it Paris compliant in 2012, though it is still not compliant to date.<sup>112</sup> On the other hand Saudi Arabia's 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 after over 10 years in existence. Kuwait and the UAE have not established an NHRI to date, though 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 one.

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<sup>111</sup> On 25 April 2010 under Royal Order No. 16/2010

<sup>112</sup> Bahrain April 2010 under Royal Order No. 16/2 a recommendation that its NHRI be Paris compatible and noted that His Majesty King Hamad Bin Isa Al Khalifa had issued Royal Order 28/2012, amending provisions of Royal Decree 46/2009 on the establishment of the National Human Rights Institution (NHRI), as an independent entity compliant with the Paris Principles. Working Group on the Universal Periodic Review, Report of the Working Group on the Universal Periodic Review A/HRC/21/6/Add.1/Rev.1 12 October 2012 Para 12

The variation in the creation of NHRIs and their compatibility with the Paris Principles are attributed to different factors in the GCC region. In Kuwait, a key difficulty in passing a law on an NHRI has been the ongoing problems in the parliamentary regime of Kuwait, where veto playing in the Parliament has been a persistent challenge over the past decade. As one interviewee put it “there is neither a strong opposition nor a strong support for an NHRI, but every time one group supports it the other groups are sure to veto it”.<sup>113</sup> In the UAE and Saudi Arabia, legal constraints manifest themselves in the difficulty of creating an independent institution outside of the governance regime.<sup>114</sup> The federal structure in the UAE makes this a particularly difficult undertaking. The legal and constitutional factors in the latter 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. In Bahrain, the creation of the NHRI was part of the concessions that King Hamad bin Isa Al-Khalifa initiated in early 2000s in relation to the demands for more political and public participation. In Qatar and Oman, on the other hand, the creation of the NHRIs and further attempts to upgrade them in terms of their independence were part of the leadership state building programmes of Sheikh Hamad bin Khalifa Al Thani and Sultan Qaboos respectively.

Similar to the feedback effects, the creation of NHRIs do not necessarily create a deeper implementation of human rights treaties. NHRIs, however, have the potential of domesticating the feedback effects of UN human rights treaties. The Qatar National Human Rights Committee, for example, in its annual reports regularly mirrors the recommendations of UN human rights treaty bodies. They call for the ratification of the ICCPR and the ICESCR<sup>115</sup>, mirror

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<sup>113</sup> Interview 7, Kuwait,

<sup>114</sup> Interviews, Qatar, May 2013. The UAE has stated that “The UAE has accepted the Council’s recommendation to establish a national human rights institution and the role of the Federal National Council in human rights protection has been enhanced through the establishment of a permanent committee on human rights. The Ministry of the Interior has also created a specialised committee on human rights that aims to increase awareness of human rights’ standards within law enforcement agencies.” [http://www.uaeinteract.com/government/human\\_rights.asp](http://www.uaeinteract.com/government/human_rights.asp) (last accessed, July 2014)

<sup>115</sup> See 2005 annual report of the Qatar National Human Rights Committee, section 4, part 1, p. 50, recommendation 1 (from the Arabic), <http://www.nhrc-qa.org/wp-content/uploads/2014/01/NHRC-Annual-Report-2005-A.pdf> (last accessed July 2014)

specifically the recommendations of ICERD and call for the abolishment of the *kafalah* system of regulating migrant workers and for ratification of the ICRMW.<sup>116</sup>

	2005	2010
<b>Bahrain</b>		Not registered
<b>Kuwait</b>		No NHRI
<b>Oman</b>		Not registered
<b>Qatar</b>	Not registered (B)	A+ A
<b>Saudi Arabia</b>	Not registered	
<b>UAE</b>		No NHRI

**Figure 28: NHRI establishment timeline**

Other measures have also been taken following recommendations by the Treaty Bodies. For example Bahrain set up a Centre for Child Protection in 2007<sup>117</sup> and Kuwait established a ‘Higher Committee for Human Rights’ under a 2008 Ministerial Decree. Kuwait also made changes to include HR education in school curricula after instituting a special committee to develop educational materials on human rights, democracy and constitution law in 2000.<sup>118</sup>

Interviews we carried out on the primary effects of NHRIs and other governmental human rights entities in the GCC countries, point to the largely ‘promotion’ functions of these entities, often in the form of organising training seminars and workshops for governmental actors, civil society organisations and the public at large. The Qatar NHRI has a complaints mechanism where individual complaints received can be raised with relevant governmental agencies. None of the other existing NHRIs carry out work with regard to legal representation of victims or take cases to court. They also do not openly

116 See 2005 annual report of the Qatar National Human Rights Committee, section 4, part 1, p. 50, recommendation 3 (from the Arabic), <http://www.nhrc-qa.org/wp-content/uploads/2014/01/NHRC-Annual-Report-2005-A.pdf> (last accessed July 2014)

117 Following a recommendation from the Committee on the Rights of the Child in 2002.

118 Following a recommendation from the Committee on Elimination of Discrimination Against Women in 2004.

condemn individual human rights violations or write reports on situations. Thus far, only one NHRI report has been submitted to the UN human rights mechanisms as an independent report alongside government submissions. This was submitted by the Qatari NHRI to CEDAW (dated February 2014),<sup>119</sup> CAT (dated October 2012) and CERD (dated December 2011). One group of interviewees from Bahrain, Qatar and Oman also highlighted the ‘legitimizing functions’ of the establishment of NHRIs on existing government policies. It has been suggested that the “creation of NHRIs is not an end, but must be a means to an end in the region.”<sup>120</sup>

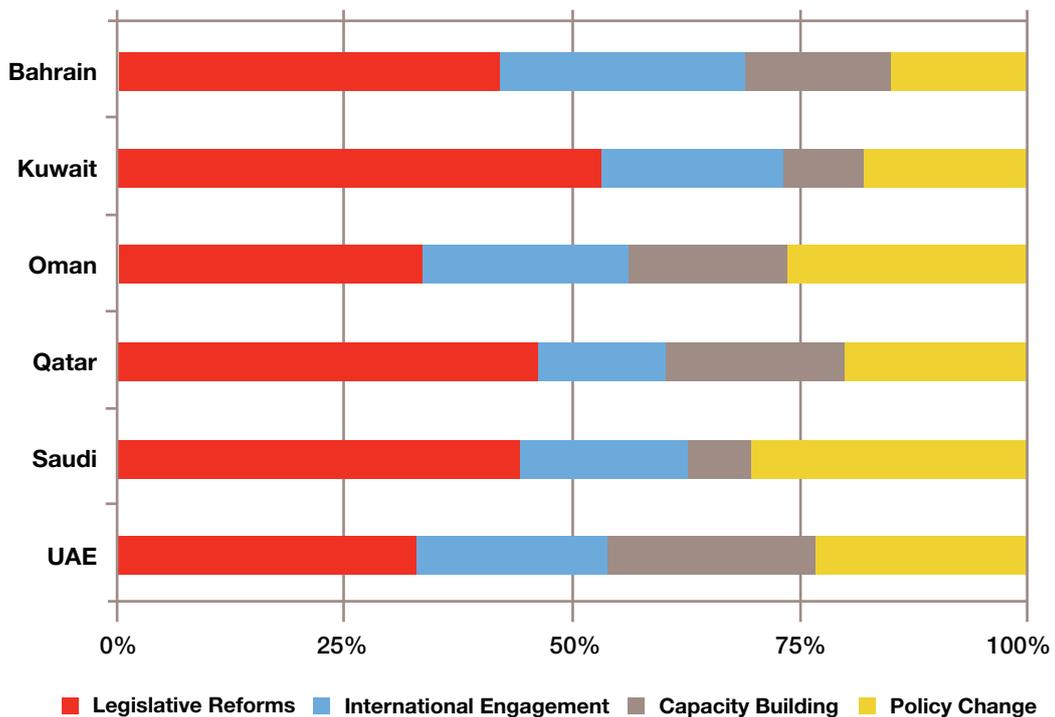
### 5.3 Legislative Changes

Legislative changes are the most tangible direct effects of human rights treaty ratification. Legislative changes in the GCC require the fullest support of the ruling elites and must not be strongly objected to by strong domestic constituencies that hold veto powers by virtue of their religious or economic power. As shown in Figure 27, the most common kind of recommendation from UN Treaty Bodies to the GCC states relates to legislative reforms (advocating for one or more specific, legislative additions, repeals, or amendments). This in particular, shows that at the time of ratification GCC states had not brought their domestic legislation in line with the treaties.

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<sup>119</sup> Qatar National Human Rights Committee, Report to CEDAW, February 2014, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT\\_CEDAW\\_NHS\\_QAT\\_I6146\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT_CEDAW_NHS_QAT_I6146_E.pdf) (last accessed July 2014)

<sup>120</sup> Interview, Qatar, February. 2014.



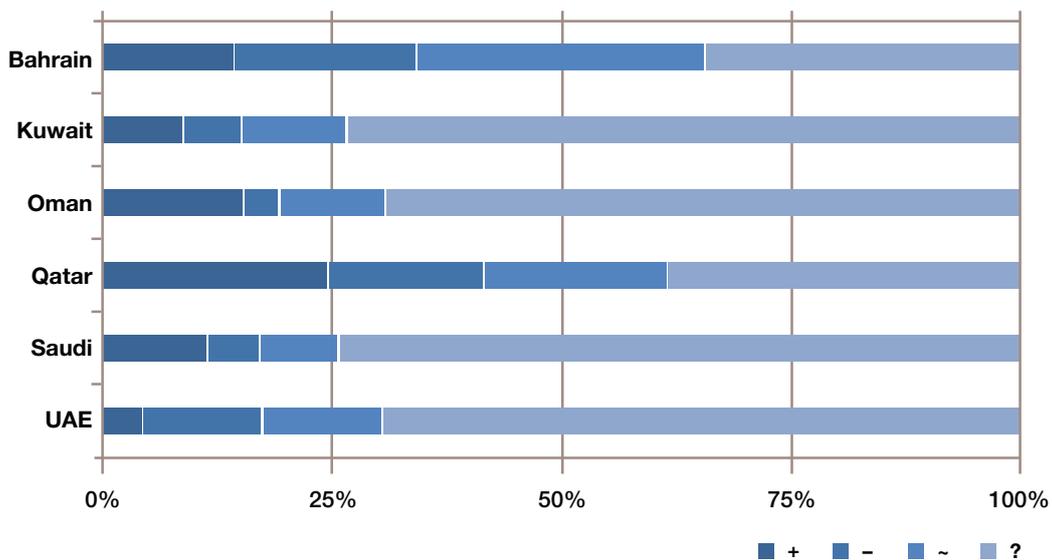
**Figure 29: Breakdown of recommendation types by state**

Figure 30 categorises the responses of each of the states to legislative recommendations into positive legislative steps (a concrete legislative action addressing the issue in question, though with no guarantee as to the efficacy of the measure), negative responses (explicit rejection of suggestions, or tacit rejection in the form of legislative steps that further undermine the right in question), provisional positive engagement (such as commitments to change or actions such as the consideration of draft legislation), and those instances where there is no available evidence of clear engagement, positive, negative, or provisional.

	+	-	~	?
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 30: State Responses to Legislative Treaty Body Recommendations**

Displayed as percentages of all of the recommendations received by each state, this data reveals significant variation between states. Bahrain and Qatar have been most responsive with more than twice the number of equivocal responses than Kuwait, Oman, Saudi Arabia or the UAE (all of which have reacted to less than a quarter of recommendations in any way). Qatar has also had the highest proportion of positive responses (>20%) and the highest proportion of positive or provisional actions (>40%). Bahrain also has over 40% positive or provisional actions but the highest proportion of negative responses (~20%, slightly more than Qatar). Amongst 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% responsiveness but with more positive than negative actions.



**Figure 31: Breakdown of recommendation types by state  
Expressed as Percentages**

Whilst Figure 31 suggests a significant number of success stories, one must be cautious for two reasons. Firstly, as with above data, the figure demonstrates correlation only and not causation and secondly, because the measures passed may not be fit for purpose. Regarding the possibility of causation there are many instances of states flagging legislation in their national reports as fulfilling the treaty requirements but only in a few cases are these legislative acts connected to previous treaty body recommendations. Even where there are

attributions, they are mostly general and do not highlight 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>121</sup> but, in most cases, state reports have flagged legislation that, whilst in the broad area of the relevant Convention's purview, have no relationship to the actual recommendations contained in previous reports.)

To give an example of the issue, in Bahrain's second CRC submission (March 2010) Bahrain cited numerous "specific measures taken in response to the concluding observations of the initial report with the Committee adopted on 1 February 2002".<sup>122</sup> Amongst the list of actions (many of which were unquantifiable policy or capacity building initiatives) the state flagged 20 substantive legislative enactments. When compared with the 2002 CRC report only one of these enactments directly relates to recommendations in that first report (with a second relating to a recommendation made by a different treaty body). The remaining 18 enactments were all arguably relevant to the treaty, and may have been furthered by its ratification, but they could not have come about in the manner suggested in the Bahrain report.

Regarding the quality of the legislation passed, in numerous instances reforms delivered after requests are themselves followed by further requests calling for proper implementation of the measures, or even further legislative reform to address the shortcomings of the first round of reforms. For example, Bahrain's first legislative Act of 2008 specifically addressed problems in the domestic law on trafficking, following a recommendation by the Special Rapporteur on Trafficking in April 2007 that called upon Bahrain to make its criminal law compatible with the Palermo Protocol by criminalising various trafficking offences. Notwithstanding this, later in 2008 Bahrain was questioned on why it had not implemented the Act and further recommendations were made calling for additional articles to be implemented, as the new law still did not fulfill all of the requirements Bahrain had undertaken under UN rights law.

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<sup>121</sup> Second periodic reports of States parties due in 2008 Qatar CAT/C/QAT/2 11 May 2011 Para 5.1.5

<sup>122</sup> CRC/C/BHR/2-3 Para 42

### 5.3.1 Legislative Changes and Domestic Effect Factors

Even though the UN human rights treaties differ in terms of the topics they cover, the UN human rights treaty bodies have consistently made a range of similar legislative amendment or legislative improvement recommendations to the GCC member states. Furthermore, these legislative recommendations have been echoed by other treaty monitoring organs, the Special Procedures of the United Nations and the UPR.

All GCC states have received treaty body recommendations to put in place laws that prohibit discrimination based on gender and race,<sup>123</sup> to review nationality legislation with the view of allowing equality between children when accessing citizenship,<sup>124</sup> to review labour laws<sup>125</sup> with a view to abolish the kafalah system, to review juvenile justice law<sup>126</sup> and to repeal any laws that may justify corporal punishment.<sup>127</sup> Some treaty bodies have also called for anti-trafficking legislation in the GCC states and this call has been also repeated by the UN Special Rapporteur on Trafficking.<sup>128</sup>

In these areas where GCC states have received common recommendations, the only area, where the GCC states as a whole responded is putting in place anti-trafficking legislation. United Arab Emirates in 2006,<sup>129</sup> Bahrain in 2008,<sup>130</sup> Oman<sup>131</sup> and Saudi Arabia<sup>132</sup> in 2009, Qatar in 2011<sup>133</sup> and Kuwait in 2013<sup>134</sup>. Our interview data shows that the leading factor in moving swiftly with regard to this recommendation is the US bilateral pressure on the GCC

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<sup>123</sup> 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

<sup>124</sup> CRC June 2002 to the UAE, CERD March 2005 to Bahrain, CRC June 2002 to Saudi Arabia

<sup>125</sup> ICESCR June 2004 to Kuwait; CEDAW November 2008 to Bahrain; CRC June 2002 to the UAE

<sup>126</sup> CRC June 2002 to the UAE; CRC June 2011 to Bahrain, CRC October 1998 to Kuwait,

<sup>127</sup> 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.

<sup>128</sup> 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.

<sup>129</sup> Federal Act No. 51 of 2006 of the UAE.

<sup>130</sup> Act No.1 of 2008 of Bahrain

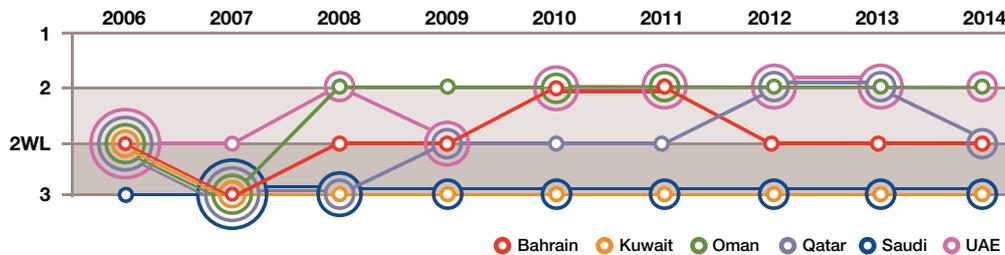
<sup>131</sup> Law no.15 of 2011 of Oman

<sup>132</sup> Council of Ministers Decision No. 244 of 13 July 2009 / Royal Decree number M/40 (“Suppression of the Trafficking in Persons Act”)

<sup>133</sup> Law no.15 of 2011

<sup>134</sup> Cf. <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215497.htm>

states as well as the annual ranking of US Department of State of all countries in the world with regard to their performance on preventing, investigating and prosecuting traffickers and offering protection to trafficking victims.<sup>135</sup>



**Figure 32: Trafficking in Persons Report Rankings**

Apart from this one issue area, the GCC countries exhibit differences in terms of following through on the recommendations of the UN treaty bodies. Whilst, reviewing of nationality laws have been openly rejected in the GCC countries, in Kuwait, Bahrain and Qatar, a trend towards granting equal right to access services for children of citizen mothers and non-citizen fathers as well as access to benefits for unmarried women is under way.<sup>136</sup> This different status, but equal access approach to gradually granting rights is best explained by domestic pressure from women in prominent families in the GCC, in particular from women who have married non-citizens and single women. As one interviewee told us “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>137</sup> Even if not strongly organised in the forms of formal pressure groups, we find that educated women

<sup>135</sup> The US State Department ranks all countries in the world under categories of Tier 1 (Countries whose governments fully comply with the Trafficking Victims Protection Act’s (TVPA) minimum standards), Tier 2 (Countries whose governments do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards), Tier 2 Watch List (Countries whose governments do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards and: a. The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c. The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year. and Tier 3 (Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.) In 2014, Oman and United Arab Emirates were ranked as Tier 2, Bahrain and Qatar were on the Tier 2 Watch List and Kuwait and Saudi Arabia were on Tier 3.

<sup>136</sup> Cf. Act.21 of 2000 of Kuwait and Act No.35 of 2009 of Bahrain.

<sup>137</sup> Interview, February 2012, Qatar.

in the Gulf, often coming from prominent families, who have access to informal lobbying channels and are at the forefront of the equality of access to services agenda.

The lack of influence of a diffused pressure group coupled with effects inhibiting factors of political economy and legal and constitutional rules, clearly hamper the traction of wide recommendations. At the top of the agenda is the reform of labour laws in the GCC, the abolishment of the kafalah system and extending full protection to domestic workers. In countries under study only Bahrain's reforms have enabled workers the right to change their employer without the employer's consent.<sup>138</sup> In the rest of the GCC the sponsors' consent is at the heart of all laws governing migrants. In Saudi Arabia and Qatar there is also a requirement of an exit visa. In the field of reforms to labour law there is strong evidence of INGO pressure. The political economy of migration coupled with a lack of domestic pressure, however, play a key role in lagging reforms. Political economy further plays an important role in GCC states rejecting recommendations to extend citizenship to stateless persons and to children born out of wedlock or born from non-citizen fathers.

In the GCC region, the legal and constitutional frameworks further undermine domestic effects of recommendations. Legal and constitutional frameworks operate in a number of ways to hamper the effects of UN human rights treaties. First, the legal culture may make the decision makers more reluctant to define in legislation concepts such as 'racial discrimination' or 'gender discrimination' on the grounds that no specific legislation is needed to give effect to non-discrimination.<sup>139</sup> Second, in the field of criminal law, calls to end corporal punishment or other inhuman and degrading treatment meet objections as Shari'a law interpretations may approach sentencing<sup>140</sup> and the father's rights and duties in a family differently.<sup>141</sup> In the field of family law too, recommendations face similar obstacles. Recommendations concerning changing laws with regard to the age of marriage for women, repealing guardianship laws

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<sup>138</sup> Decision No.79 of 2009 concerning kafalah reforms in Bahrain and Act.6 of 2010 concerning labour law reform in Kuwait.

<sup>139</sup> Bahrain State Report to CERD, September 2004.

<sup>140</sup> 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 18. This recommendation was previously made by the CRC in February 2001.

<sup>141</sup> For example, the UAE Penal Code of 2010 create right to 'chastise' children and wife.

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>142</sup>

#### **5.4 GCC Courts and Human Rights Law**

UN human rights treaty bodies regard the evidence of the use of UN human rights treaties in the forms of binding or persuasive authority, as an important aspect of the domestic effects of UN human rights treaties. The active engagement of the judiciary with the provisions of ratified UN human rights treaties points to judicial internalisation of human rights norms and constitutes evidence of the primary effect of treaties. With this in mind, UN Treaty Body recommendations have ample requests for clarification of the legal standing of UN human rights treaties in the domestic norm hierarchy and evidence of the use of human rights treaties in Courts and the consequences of such use.

In this research project, we have found scarce evidence of the active use of UN human rights treaties by domestic courts in the GCC region and scant awareness of UN human rights treaties as relevant legal authorities to be actively used in judicial proceedings. The lawyers we interviewed across the GCC states did not regard the UN human rights treaties as an active litigation tool to defend the rights of their clients. On the contrary, as one prominent lawyer told us “In order to protect the rights of my client, it would be wiser not to make references to the UN Human Rights Treaties.”<sup>143</sup> This is because the UN human rights treaties are either not known amongst the members of the judiciary, or even if they are known, they are not treated as enforceable legislation in court proceedings and would be negatively considered as a “foreign imposition”. When we queried this view with government officials across the GCC, their response was that there is no legal obstacle for UN human rights treaties to be used in domestic courts.

Whilst UN human rights treaties in all GCC countries except Saudi Arabia are adopted by a Decree which makes them part of domestic law, the judicial practice shows that in the GCC countries, this is not a strong enough signal for judges to use UN human rights treaties, in particular when they conflict with existing domestic legislation. Only in the Omani Constitution is there a clear provision for the higher status of UN human rights laws. The government of

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<sup>142</sup> See for example, UPR Addendum 2010 of Qatar, where Qatar stated that repealing guardianship laws are 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.

<sup>143</sup> Interview, Lawyer, Qatar, February 2013.

Oman stated, for example, in 2010, that “in the event of conflict, the provisions of the international treaties and conventions prevail as they rank higher than domestic laws” and that whilst the domestic constitution had precedence over domestic law, it was to be applied without prejudice to international treaty law.<sup>144</sup> The ambiguity regarding the status of UN human rights treaties or their mere equivalence to other law in Kuwait, Qatar, Bahrain and the UAE makes judges reluctant to use UN Treaties as domestic law. In the case of Saudi Arabia, it is doubtful whether UN human rights treaties have any domestic legal status. The Saudi Arabian officials simply refer to these treaties as “one of the fruits of human civilization”, without affording them any particular legal status or precedence.<sup>145</sup>

One judicial interviewee explained, “if you want me to use UN human rights, 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>146</sup> The lack of references to binding and persuasive authority of human rights treaties in the case law of the GCC courts support the stronghold of dualism as the dominant approach to UN treaties amongst the judiciary. In effect, the dualist paradigm is so strong that even UN treaties that have been incorporated into domestic law through royal decrees do not get traction in the courts.

## 5.5 Civil Society Action and Advocacy

Civil society ownership and promotion of UN human rights treaties is regarded as a crucial aspect of the implementation of UN human rights treaties in the long-term. Domestic civil society actors, alongside NHRIs, offer important channels for advocacy, awareness raising and accountability for the rights protected in the UN human rights treaties. In the case of the GCC, a central obstacle for domestic civil society action and advocacy for UN human rights treaties has been the restrictive association laws and administrative frameworks. In the GCC states, the local human rights organisations are limited in number or they are underground. How the individual states allow for civil society organisations, therefore, significantly influences the space for civil society action around UN human rights treaties.

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<sup>144</sup> Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 A/HRC/WG.6/10/OMN/1 18 November 2010 Para 23

<sup>145</sup> Committee Against Torture, Initial reports of States parties due in 1998—Addendum CAT/C/42/Add.2 20 September 2001 Para 4

<sup>146</sup> Interview, Judge, Qatar, February 2014.

As a consequence, each of the states of the GCC has 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 (ICERD in March 2005, CAT in June 2005, CRC in June 2011, and through UPR in July 2012). Notwithstanding this, a 2013 draft law on civil society organisations seeks to further control and restrict civil society in Bahrain, illustrating the limited impact of even repeated recommendations. Oman was asked to revise its registration procedures for NGOs during the 2010 UPR round,<sup>147</sup> leading to a commitment to consider amending its Law on National Associations.<sup>148</sup> Qatar was asked by the Committee on the Rights of the Child to ensure its NGO regulation conformed to international standards on freedom of association in November 2001.<sup>149</sup> Saudi Arabia was asked both to permit domestic NGO formation in the area of human rights, which it has now allowed since 2003, and to allow access for external INGOs.<sup>150</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>151</sup>

Our interviews with members of civil society further highlighted that alongside difficulties, in particular getting registered as an NGO in the GCC, there are also difficulties in switching from a logic of *charitable effort* to a logic of *rights advocacy and campaigning*.<sup>152</sup> In other words, whilst those who wish to advocate for human rights face legal restrictions, those organisations that already have some established presence, such as women's, writer's or lawyers' associations, do not maintain an active interest in UN human rights treaties.

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<sup>147</sup> National report submitted in accordance with paragraph 15 (a) of the annex to Working Group on the Universal Periodic Review, Human Rights Council resolution 5/1 A/HRC/WG.6/10/OMN/1 18 November 2010 Para 113

<sup>148</sup> As promulgated by Royal Decree 14/2000

<sup>149</sup> Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child CRC/C/15/Add.163 6 November 2001 para 17(b)

<sup>150</sup> Working Group on the Universal Periodic Review, Report of the Working on the Universal Periodic Review A/HRC/11/23 4 March 2009

<sup>151</sup> Working Group on the Universal Periodic Review, Report of the Working on the Universal Periodic Review A/HRC/10/75 12 January 2009 and Working Group on the Universal Periodic Review, Report of the Working on the Universal Periodic Review A/HRC/23/13 21 March 2013

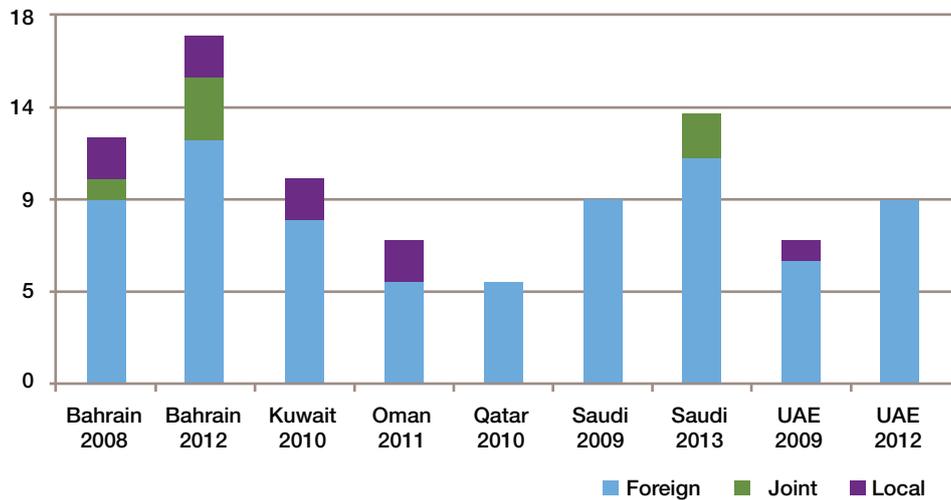
<sup>152</sup> Interview, Qatar, February 2012 and interview, Oman, February 2013.

Despite these obstacles, a small number of NGOs have still managed to participate in reporting to the UPR and addressed lagging implementation issues of human rights treaties. We focus on civil society participation in the UPR in the table below because this is the clearest measure of NGO interaction with the UN. Figure 14 gives the breakdown of the number of NGOs submitting stakeholder reports for each UPR cycle by type (international NGOs, local NGOs and joint submissions between local and international groups). It also identifies how many reports are submitted by ECOSOC consultative status holding NGOs.

UPR CYCLE	NGOs Reporting			Total Reports	
	INGOs	Joint INGO/ Local	Local NGO	ECOSOC Consultative Status	TOTAL
Bahrain 2008	9	1	2	9	12
Bahrain 2012	12	3	2	6	18
Kuwait 2010	8	0	2	5	10
Oman 2011	5	0	2	4	7
Qatar 2010	5	0	0	2	5
Saudi 2009	9	0	0	7	9
Saudi 2013	11	2	0	9	13
UAE 2009	6	0	1	3	7
UAE 2012	9	0	0	5	9

**Figure 33: Stakeholder Reporting Tallies**

Visualising this data as Figure 34 underlines the point that the vast majority of reports are either international in origin (83%) or partly international in production (7%) with only 10% wholly local.



**Figure 34: Shadow Reports Totals**

Additionally one can see that Qatar has had no local reporting, Saudi Arabia only has local reporting within joint submissions, and UAE, despite having had some local reporting in 2009 had declined this practice by 2012.

As the data shows, advocacy and active campaigning with regard to UN human rights law is predominantly carried out by INGOs (NGOs based outside the GCC region). These INGOs are composed of both international organisations with global advocacy programmes, but also specialised organisations focused on human rights protections in the Gulf. Limited engagement by domestic organisations, however, means that opportunities for domestic campaigns or more bottom-up strategies of awareness raising with regard to UN human rights treaties amongst the public at large is largely absent and these tasks are predominately carried out by governmental institutions, most notably the NHRIs.

## 6 Conclusion

This study was a response to the observation that GCC member states had been part of an important trend towards ratification of international human rights treaties, a trend that had never been studied before. The study has shown that there are important variations in the GCC region with regard to decisions to enter into UN human rights treaties and the domestic effects of human rights treaties. The trend for increased ratifications of UN human rights treaties, in particular, the GCC-wide ratification of the CRPD, show that the GCC states consider UN human rights treaties as part of their international engagement with the UN and as part of policy and institutional change domestically. In particular, when there are domestic human rights champions within the state bureaucracies, the ratification of human rights treaties have been recorded to make specific inroads into policy change and review.

Our findings, however, also show that the UN human rights treaties do not have extensive effects on institutions, legislative changes and judicial decisions. This is partly attributable to the on-going state building and modernisation processes in the GCC, where numerous domestic laws, and institutions are under review. Human rights treaties are also only considered as part of a larger picture of state building and consolidation in this region and there is a lack of support for particular human rights changes called for by ratified human rights treaties. Domestic effects are fragile at the ministerial levels and largely depend on persistent human rights champions. Domestic effects at the legislative level face opposition due to political economy calculations of changes (as in the case of revision of labour laws, including domestic migrant worker laws) or due to the lack of clarification as to how religious precepts and Shari'a law interact with UN treaty law commitments. The recent trend, in particular, in Qatar to lift general reservations based on Shari'a, however, show that there is scope for reopening domestic debates on reservations. At the level of the judiciary, clear and authoritative guidance from the highest courts in each country with regard to using UN human rights treaties as part of the horizon of legal interpretation is much needed.

## Recommendations

*To the member states of the GCC*

This study has suggested that first wave ‘international reporting’ and ‘institution building’ changes are needed to build up momentum for legalizing and internalizing human rights law in a meaningful way. This leads to the following recommendations:

- To build on the track record of actions taken with respect to combatting trafficking and access to services, towards legal protection for other human rights
- To clarify the status of international human rights treaty provisions in the domestic legal system
- To ensure deeper implementation of existing ratifications
- To regularly review the necessity of existing reservations
- To establish permanent inter-ministerial bodies focused on human rights to assist with regards to the above<sup>153</sup>
- To clarify meaningful access to human rights remedies in relation to all rights for all living in their jurisdiction
  - To empower NHRIs to assist in this regard
  - To revisit association laws with a view towards improving non-government actors that will help in promoting, protecting and ensuring legal access to human rights
- To build on the existing record with respect to a practice-oriented human rights education and public education in relation to human rights
- To hold:
  - needs focused, action-oriented targeted roundtables with judges with regard to existing human rights obligations
  - needs focused, action-oriented targeted roundtables with lawyers regarding existing human rights obligations

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<sup>153</sup> Please note paragraph 20 of General Assembly resolution A/RES/68/268 of 9 April 2014: “Recognizes that some States parties consider that they would benefit from improved coordination of reporting at the national level, and requests the Office of the High Commissioner to include among its technical assistance activities relevant assistance in this regard, at the request of a State party, based on best practices;”

- needs focused, action-oriented targeted roundtables between lawyers *and* NHRIs, human rights defenders *and* other civil society actors

*To the UN Treaty Body system*

- To encourage more shadow reporting for the state report from GCC states
- To go beyond recommending legal changes and to shift the focus to access to justice, enjoyment of rights and due process
- To pay closer attention to their own previous recommendations, to the recommendations put forward during UPR and to stakeholder contributions
- To systematically call for judicial application of human rights treaties and request and examine case law from the GCC

*To NHRIs in the GCC region*

- To support and take part in human rights litigation in order to entrench respect for human rights law in the judiciary
- To monitor judicial proceedings at all levels and report on them
- To carry out compatibility analyses of domestic law with human rights treaty obligations
- To carry out effectiveness analyses of new legislation, especially in the light of human rights treaty obligations, and to publically report on these— including to the UPR and to Treaty Bodies

*To judges and lawyers in the GCC region*

- To develop a pro bono human rights culture to assist in upholding international human rights obligations
- To consider referencing human rights treaty provisions where relevant and interpreting them in judgments
- To carry out exchanges and dialogues with constitutional and human rights lawyers in other regions
- To assist the building up of civil society

*To civil society in the GCC region*

- To aid in the promotion, protection and enjoyment of human rights of all, including non citizens
- To participate in any National Consultations held by the state in advance of its UPR reporting
- To consider sending shadow reports to UN treaty body committees and UPR and consider participation in these events in Geneva
- To hold public viewing sessions of their state's UN treaty body reporting and UPR presentation of National Report on the UN webcast, in order to generate domestic thinking about the advancement of human rights
- To consider collaborative projects with neighbouring or other international NGOs

*To the GCC*

- To promote the compatibility of GCC legal regimes with international human rights standards
- To hold legal roundtables towards this end and improve capacity building in this regard

*To other states*

- To incorporate exchanges and recommendations regarding human rights into broader relationships with GCC member states

*To academic—international and domestic*

- To carry out studies addressing human rights practice in GCC states
- To undertake further studies delving into the relationship between UN human rights treaties and their domestic impact and effectiveness with regard to the everyday life of citizens and residents of GCC member states

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