

## Women's Right to Transmit Nationality to their Children: Appraisal of the GCC States' Obligations under CEDAW

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### **Abstract**

*The GCC States: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates have affirmed their commitment to human rights when they ratified the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW). Stressing their commitment to such international human rights instrument in theory does not reflect their practice, especially where women face legal forms of discrimination, in particular, when they do not enjoy the same nationality rights as men, e.g. the right to pass nationality to their children. The GCC States attempted to evade such obligations by entering reservations to Article 9(2) of CEDAW, or in other words they put a spoke in the wheel. However, this study demonstrated that their reservations are inadmissible because they are incompatible with the provisions of the CEDAW. This study demonstrated that the GCC States reservations to Article 9(2) of CEDAW are incompatible with the object and purposes of both conventions, and therefore should be void.*

**Keywords:** *Women's Right, Nationality, Children, GCC States, CEDAW.*

### **INTRODUCTION**

This study attempts to answer the question of the obligations that CEDAW has imposed. Obligations discussed in this study are principally those concerning non-discrimination and the right to pass nationality to children that are articulated in Article 9(2) of CEDAW. The study then moves on to examine reservations of the GCC States towards the international treaty regarding women and their right to transmit their nationality. The focus will be on how such reservations have affected the implementation of CEDAW in each nation. This will lead the discussion to final stage, where the validity of the GCC States' reservations is examined.

To evaluate the validity of their reservations, this study uses rules that are fundamental to international law, but more extensively, it uses the interpretive rules of the Vienna Convention on the Law of Treaties 1969 (VCLT). The reasons for invoking and using the Vienna Convention in this study is that it is an instrument which is specifically designed to regulate international treaties, in terms of interpretation, operation, amendments, termination and so on. Moreover, the Vienna Convention is widely accepted as a binding treaty not only to those states who have acceded it, but also other states that have not yet ratified it, as many of its articles reflect customary international law. (*Hung. v. Slov.*, 1997 I.C.J.; Brownlie, 2012:583; Jonas and Saunders, 2010: 527).

However, before starting the discussion, there is a need to briefly locate international treaties within the parameters of the GCC States' legal systems. In other words, do the international treaties have any legal status in their national law? In fact, it is not difficult to discover that the constitutions of the GCC States have recognised the significance of international treaties. All the GCC States have at least one provision in their constitutions that prohibits breaching/invalidating/contradicting ratified international treaties. Furthermore, some of these constitutions instruct state authorities to respect and take appropriate steps to implement the treaties nationally, and regard them a part of the law of the country. The question arises therefore that if the constitutions of the GCC States must conform to the requirements of international law as contained in the treaty obligations, how is it possible for ordinary law i.e. nationality law, not to do so? Within these parameters, I want to explore the basis of the GCC States' obligations and the validity of their reservations to

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CEDAW towards mothers being able to transmit their nationality to their children. The starting point is identifying the obligations under Article 9(2) of CEDAW.

### **Obligations under Article 9(2) Of CEDAW**

CEDAW is an important instrument as it demonstrates a wide acceptance of principles among the international community. CEDAW for example, has been ratified by 189 states. CEDAW is concerned with women's rights and the requirement that they should not be the subject of discrimination, and specifically, Article 9(2) of CEDAW obligates States Parties to allow women to pass on their nationality to their children on an equal basis with men.

Children may acquire their fathers' nationality and therefore are not usually stateless. However, this situation is also problematic, because if the child resides with its mother in a GCC state, it can result in the child living in the state as a foreigner, and subject to the denial of rights of travel, and access to state benefits (Fisher, 2016:289). A study conducted by the UNHCR revealed that very few women are aware of the impact of marriage to a non-national, in particular on their rights to transmit their nationality to their children (UNHCR, 2024). In the words of United Nations High Commissioner for Refugees:

“Many stateless children are denied access to education and health care. They are particularly vulnerable to exploitation and abuse, including being trafficked, forced into hazardous labour and sexual exploitation, locked up alongside adults and deported. Addressing statelessness is a vital step towards ensuring that millions of children can escape the cycle of marginalization and claim their rights to build better futures” (UNHCR, 2012: 5).

There are areas such as ‘child custody, personal travel, freedom of movement, as well as child's rights pertaining to health, education, and child support in the country of the mother's nationality’, where a child's life become[s] difficult because of variation of nationality with their mothers (Freeman et al., 2012: 243).

Since adoption of CEDAW, the right of women not to be discriminated against on nationality matters and the right of children to nationality are still major concerns of the international community. The UN Human Rights Council notes in its Resolution titled: *The right to a nationality: women and children* that the international human rights instruments specify clear obligations that ‘the right of every child to acquire a nationality and not be arbitrarily deprived of his or her nationality’ (UNHRC, 2012), *inter alia*, Article 9(2) of the Convention on the Elimination of All Forms of Discrimination against Women.

Therefore, by adhering to CEDAW, States Parties are obliged to take all appropriate measures to review existing legislation and practice (Article 2(f) of CEDAW) in order to amend or abolish any valid laws that discriminate against women. Practically speaking, States Parties are obliged to ensure that every child acquires a nationality.

While CEDAW appreciated the efforts that each of the GCC States had achieved concerning the rights of women and children, however, they expressed concerns about nationality laws, which remained unchanged or in some cases increased the constraints on women instead of facilitating equality between men and women (OHCHR, ‘Conclusion Observations’). By reviewing periodic reports of these states it becomes noticeable that although all of them acceded to CEDAW, they did not translate their obligations into tangible results. As we will see, CEDAW Committees expressed strong concerns as to the performance of GCC states towards implementing each Convention. Observations and criticisms by CEDAW Committees suggest that the GCC States are not committed to fulfilling their obligations to Article 9(2) of CEDAW, as the nationality laws of these States continue to practice discrimination against women and deprive children of their mother's nationality.

Maintaining the *status quo* of nationality law raises a critical question appertaining to the reasons for the neglect of the GCC States to comply with convention obligations (George, 2019:57). There is a suggestion that these states are challenging their obligations to Article 9(2) of CEDAW, because when ratifying CEDAW, they made reservations. Entering reservations to avoid implementing these provisions leads authors like El-Masri to argue that ‘ratification of CEDAW did not bring any qualitative change because of

the weakness of this legal instrument *per se*, and because of the numerous reservations placed by the Arab MENA states on it' (El-Masri, 2012: 931). Linderfalk even warns that 'the effect of a treaty will be reduced to the point where the reason for having the treaty in the first place can seriously be put into question' (Linderfalk U, 2023: 430).

Nonetheless, before adopting the suggestion that the GCC States are not complying with obligations towards Article 9(2) of CEDAW, relating to granting children their mothers' nationality, there is a need to examine the basis for entering reservations by the GCC States and the validity of such reservations.

### **Reservations To Article 9(2) Of CEDAW**

The GCC States have entered reservations to Article 9(2) of CEDAW, but not all of them clarified the reasons behind their reservations. For example, states like Kuwait, Qatar and the United Arab Emirates mentioned the nature of their reservations, i.e. conflict with national law or that nationality is internal matter. Whereas Bahrain, Oman and Saudi Arabia, did not mention the reason for their reservations.

States	Reservations to Art 9(2) CEDAW
<i>Bahrain</i>	Nature of the reservation is not mentioned
<i>Kuwait</i>	Conflict to Nationality law
<i>Oman</i>	Nature of the reservation is not mentioned
<i>Qatar</i>	Conflict to Nationality law
<i>Saudi Arabia</i>	Nature of the reservation is not mentioned
<i>UAE</i>	Nationality an internal matter

**Table 1. Reservations of the GCC States to Art 9(2) CEDAW**

Table 1 summarises the situation of the GCC States towards Article 9(2) under examination. Analysing the results in Table 1, it seems that all reservations to Article 9(2) are to do with 'nationality law', not only in these States that have explicitly declared them, i.e. Kuwait Qatar and the United Arab Emirates, but also within those States that do not mention the nature of reasons behind their reservations. Take Bahrain for instance. It underlines the internal aspect of granting nationality, and its approach through patrilineal *jus sanguinis*. It justified its attitude as being consistent with most Arab and a number of foreign nationality laws. Bahrain stated in its report to the CEDAW Committee, that 'the Bahraini legislature recognises right of blood on the father's side, a position upheld by experts in private international law on the grounds that the said criterion constitutes a presumption of the affirmation of a feeling of national belonging and of the spiritual bond linking a person to the nation to which his forefathers belonged' (Third Periodic Report of States Parties' CEDAW/C/BHR/3/2011).

Similar to Bahrain, the nationality law of Oman appears to be the reason behind its reservation, as the Omani Government mentioned in its report to the CEDAW Committee that 'acquisition of nationality is regulated by national legislative rules' (Oman Initial Periodic Report of States Parties' CEDAW/C/OMN/1/2010:18). Likewise, Saudi Arabia declared in its report to CEDAW, that it is a 'matter falling within the internal authority of each state' (Saudi Arabia, 'Combined Initial and Second Periodic Reports of States Parties' CEDAW/C/SAU/2/2007:27). The report added clarification that the reason behind a reservation or a matter that it considers internal is 'to avoid dual nationality'.

Speaking generally, the tension between the two principles, i.e. human rights and state sovereignty to regulate its nationality rules, can be observed here. The perception of the GCC States is that nationality is a manifestation of state sovereignty instead of a matter of human rights. Whereas international human rights law, emphasises the precedence of human rights over the principle of state sovereignty. In short, nationality

as a right should be fundamental and state discretion on nationality matters is no longer acceptable in international law.

However, if we assume that States Parties are entitled to enter reservations to CEDAW, there remains a serious question as to whether their reservations are valid within the provisions of these two conventions. Indeed, examining the validity of such reservations is important to address the second question raised in this study, regarding the compatibility of the GCC States' reservations with the objects and the purposes of CEDAW.

### **Questions of The Validity Of The GCC States' Reservations**

While it is permissible to enter reservations under CEDAW, it is not permissible to make reservations that are incompatible with the object and purpose of the Convention, as set out in Articles 28(2) of CEDAW. Article 28(2) state that 'A reservation incompatible with the object and purpose of the present Convention shall not be permitted'. Article 28(2) of CEDAW is mainly a mirror of Article 19(c) of the VCLT (1969), which prohibits reservations that are incompatible with the object and purpose of the treaty. There were even suggestions, during the negotiations of CEDAW that Article 28(2) of CEDAW is unnecessary in light of existing Article 19(c) of the VCLT.

Article 19 of the VCLT sets out the criteria for formulating reservations, and says that 'A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

The reservation is prohibited by the treaty;

The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

In cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

CEDAW does not prohibit entering reservations or specify any provisions that are excluded from being reserved, hence, the criteria of (a) and (b) do not arise. The only criterion, (c), that does arise questions whether the GCC States' reservations to Article 9(2) CEDAW is 'compatible' with the object and purpose of the Convention.

To answer this question, it is important to have a prior understanding of the meaning of 'object and purpose' in the international sphere. The object and purpose of treaties is the key element in interpreting the treaty as a whole, as well as in determining the validity of reservations (Jonas and Saunders, 2010: 567). Judge Anzilotti in his Dissenting Opinion of Interpretation of the Convention of 1919 Concerning Employment of Women during the Night, defended the significance of the object and purpose of a treaty as a guidance in its interpretation when he stated:

I do not see how it is possible to say that an article of a convention is clear until the subject and aim of the convention have been ascertained.... Only when it is known what the Contracting Parties intended to do and the aim they had in view is it possible to say either that the natural meaning of terms used in a particular article corresponds with the real intention of the Parties, or that the natural meaning of the terms used falls short of or goes further than such intention (PCIJ Advisory Opinion, 1932:383).

Similarly, the ICJ in the *Case Concerning Rights of Nationals of the United States of American in Morocco (France v. United States, 1952:24)* declared explicitly that any interpretation beyond the scope of the object and purpose of the Convention is rejected.

Although extensive work has been done to define the phrase 'object and purpose', such a definition has not been reached (Linderfalk, 2023: 431). Scholars treat 'object' and 'purpose' differently, according to which school of thought is followed (Buffard and Zemanek, 1998:325). For example, in the typical English tradition, Jennings was in favour of what is called 'classical textual approach' and uses the phrase 'object and purpose' as a unit (Buffard and Zemanek, 1998: 323). He argues '... a treaty is an agreed, authoritative text, normally drafted with care in the choice of terms, and it is the resulting text that States elect to accept or not to

accept...’ (UNESCO, 1991). Therefore, the general rule of interpretation a treaty according to Article 31(1) of VCLT is ‘to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose’.

Buffard and Zemanek were in favour of the French doctrine that makes a distinction between the object and purpose of a treaty (Buffard and Zemanek, 1998:325). Interestingly, from the French point of view, the ‘object’ is the tool to achieve the ‘purpose’, and the purpose is, in turn, the ultimate result the treaty aims to achieve. The object, in their opinion, is always can be found in the treaty’s provisions, but the purpose may not be (Buffard and Zemanek, 1998:326). Buffard and Zemanek, developed a two-stage procedure as a method of identifying and interpreting the ‘object and purpose’ of a treaty. For them, this method requires the following two steps:

The first is forming an assumption of the object and purpose of a treaty by recourse to the prime indicators, such as the title and the preamble of a treaty, and occasionally one or more programmatic articles, and

The second is testing the assumption of the object and purpose that has been formed against the indicators of the text by using available authoritative material (Buffard and Zemanek, 1998:333).

Undoubtedly, there is logic in Buffard and Zemanek’s method of identifying the object and purpose of a treaty. This logic is located in the rationality of using the intrinsic parts of the treaty, i.e. the title and preamble, instead of using an external factor. It is from this angle, avoiding any external factors that might be unrelated to the issue, that they able to interpret the meaning. However, there is a large extent of subjectivity here, because their method requires a presumption of what might be the object and purpose, which varies from one person to another or from state to another. Therefore, it is appropriate here to suggest that in order to strengthen this two-stage approach, there is another dimension that should be taken in to account, and that is the views of States Parties, either from the preparatory work of the treaty or when they have an objection to reservations.

The intention of States Parties is a potential source of meaning and should be taken into consideration in the two-stage method to understand the precise meaning of the object and purpose of treaty. An objection to a reservation, for instance, may provide some guidance to interpretation as to its compatibility with the object and purpose of a treaty (OHCHR, 1994). The Guide to Practice on Reservations to Treaties issued on 2011 by the UN (International Law Commission) declares that in the case where a reservation excludes or modifies a provision of the treaty which, ‘according to the intention of the parties, is necessary... and resulting from their consent to the entry into force of the treaty...’ (ILC, 2011:494), the consequence is that ‘A contracting State...legitimately consider that being bound by one of the provisions in question without being able to benefit from one or more of the others constitutes “a contractual obligation it does not consider suitable”’. Therefore, within this two-stage method, plus the intention of States Parties, the GCC reservations to CEDAW and the CRC should be evaluated, and their compatibility to the Conventions should be examined.

### **Test of the Compatibility of CEDAW**

Applying the two-stage procedure to the GCC States’ reservations to Article 9(2) of CEDAW reveals that ‘the object and purpose’ is explicitly stipulated in the title, the preamble and even other operative articles. The title of the Convention obviously concerns the elimination of all kinds of discrimination against women. The Preamble contains seventeen paragraphs; most of them refer to equality of rights between men and women as an object and purpose of the CEDAW. For instance, the Preamble states that it is:

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations.

Moreover, Article 1 provides a definition of the main term of the Convention, ‘discrimination against women’. The main term ‘sheds light on the purpose. This Article opens by saying ‘For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex ...’. Additionally, to achieve the purpose of CEDAW, i.e. eliminate

discrimination against women, Article 2 sets forth objects to be undertaken by States Parties, e.g. to enshrine the principle of the equality in their national constitutions or other legislation, and to refrain from practicing discrimination against women at institutional level. Article 3 is known as the summary of the Convention. It summarises the object, 'States Parties shall take in all fields, ... all appropriate measures, including legislation, to ensure the full development and advancement of women...', and it determines the purpose, that is 'for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men'.

If the elimination of discrimination against women is the purpose of CEDAW, as is clearly stated above, achieving this purpose then is not possible unless states legally and practically embody this purpose in their laws by allowing women to pass nationality to their children on equal grounds as men. Furthermore, the GCC States made reservations to Article 9(2), as we have seen earlier, because it conflicts with national law, i.e. nationality law. Allowing national law to trump the object and purpose of CEDAW, 'elimination of discrimination against women', is not permissible (OHCHR, CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations under Article 41 of the Covenant, 1994).

Alongside understanding the object and purpose of CEDAW in the title, preamble and other operative provisions of the Convention, several States Parties objected to the GCC States' reservations. Their objections were mentioned in the Universal Periodic Review (UPR) which issued by (United Nation Human Rights Council) which involves a review of the human rights records of all UN Member States. According to UPR reservations that entered by the GCC States were incompatibility to the object and purpose of CEDAW.

**Table 2. State's objections to Reservations of the GCC States to Art 9(2) CEDAW. Universal Periodic Review |**

States under evaluation	States' observers	State's objections to reservations to Articles 9(2)
<i>Bahrain</i>	Austria	Articles 9(2) and 15(4), if put into practice, would inevitably result in discrimination against women on the basis of sex. This is contrary to the object and purpose of the Convention'.
<i>Kuwait</i>	Finland	invoking the provisions of its internal law, i.e. nationality law, by Kuwait, is not justified. if such reservations continue, it is 'clearly incompatible with the object and purpose of the Convention and therefore inadmissible under Article 28 paragraph 2, of the said Convention'.
<i>Oman</i>	Belgium	'concerns fundamental provisions of the Convention and is therefore incompatible with the object and purpose of that instrument' and therefore, it objected'.
<i>Qatar</i>	The Czech Republic	'if put into practice, would inevitably result in discrimination against women on the basis of sex, which is contrary to the object and purpose of the Convention'
<i>Saudi Arabia</i>	Denmark	Saudi Arabia's reservation to paragraph 2 of Article 9 of the Convention 'aims to exclude one obligation of non-discrimination which is the aim of the Convention and therefore renders this reservation contrary to the essence of the Convention',
<i>UAE</i>	France	'reservation to Article 9(2) and 'considers that these reservations were contrary to the object and purpose of the Convention and enters an objection thereto'.

#### OHCHR

As it shows from the Table.2, States which observing the GCC States based on the Universal Periodic Review reveal that reservations of the GCC States against Article 9(2) of CEDAW are incompatible with the object and purpose of CEDAW. This incompatibility is obvious where their nationality laws deny granting children their mother's nationality on an equal basis with men. All objecting States noted that reservations to Article 9(2) of CEDAW would inevitably result in discrimination against women and therefore were contrary to the essence or in other words the object and purpose of the Convention.

Therefore, reservations of the GCC States to Article 9(2) have to be considered void, based on the two-stage method. Consequently, the GCC States have an obligation to apply Article 9(2) in their jurisdiction by granting nationality to children of women nationals on an equal basis as men.

Notwithstanding this fact, even if CEDAW was silent in terms of restricting the reservations that were incompatible with the object and purpose of it, the test applies as a matter of general international law (J Redgwell, 1997:394). Article 19(c) of the VCLT adopted the test of compatibility and has been invoked by the

International Court of Justice in the Advisory Opinion in the remarkable case of the Convention on the Prevention and Punishment of the Crime of Genocide. The Court has tested reservations as to whether they were compatible with the object and purpose of the treaty. The ICJ entrenched the principle of compatibility of reservations with the convention and contended that a multilateral convention is result of collective consent, therefore, no state can 'frustrate or impair, by means of unilateral decisions or particular agreements, the purpose and *raison d'être* of the convention (*Case of Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion), [1951] ICJ).

Although the ICJ's interpretation was specifically in the light of objections that have already been made by other States to a reserving State, it nonetheless serves to illustrate that States Parties in the multilateral convention should not weaken the convention, unilaterally, by taking in to account all views that have formulated the convention. In other words, when the drafters of a convention reached a certain formulation, it means that it should be inadmissible to enter a reservation that might conflict with the object and the purpose that has been agreed on. The Court said that:

[I]t is the compatibility of a reservation with the object and purpose of the Convention that must furnish the criterion for the attitude of a State in making the reservation on accession as well as for the appraisal by a State in objecting to the reservation. Such is the rule of conduct which must guide every State in the appraisal which it must make, individually and from its own standpoint, of the admissibility of any reservation.

Therefore, to sum up, the GCC States have clear obligations stemming from Article 9(2) of CEDAW, to not discriminate against women with respect of transmitting nationality to their children. Implementing this Article domestically, is also obligatory according to Article 2 of CEDAW. In addition, through applying the two-stage method and the intention of States Parties, the compatibility of the reservations of the GCC was tested. It has been demonstrated that such reservations are not compatible with the object and purpose of the conventions, and therefore, inadmissible and should be void.

Consequently, because the GCC States have continued to practice a discriminatory attitude toward nationality laws by allowing nationality to be passed principally through the paternal line and thus denying a child the opportunity to enjoy its mother's nationality is contradiction with their obligations towards international convention i.e. CEDAW.

## **CONCLUSION**

This study has established three significant points concerning to the subject of this thesis 'children of national mothers and 'foreign' fathers' are vulnerable to becoming stateless. The analysis has affirmed the commitments and obligations of the GCC States to ratified international treaty i.e. CEDAW. In particular, this study has pointed out that these States are obliged to grant women an equal right as men relating to the nationality of their children, as specified in Article 9(2) of CEDAW, and to ensure that every child has a nationality.

The GCC States attempted to evade such obligations by entering reservations to Article 9(2) of CEDAW, or in other words they put a spoke in the wheel. However, this study showed that their reservations are inadmissible because they are incompatible with the provisions of the CEDAW. This study has tested the compatibility of such reservations by using the interpretive rules of the Vienna Convention on the Law of Treaties 1969 (VCLT), as well as the two-stage method of interpretation. This study demonstrated that the GCC States reservations to Article 9(2) of CEDAW are incompatible with the object and purposes of CEDAW, and therefore should be void. Therefore, maintaining the *status quo* of such discriminatory nationality laws, which deny women the right to pass their nationality to their children in certain circumstances is clearly in conflict with the GCC States' obligations towards CEDAW.

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