



INTERNATIONAL COURT OF JUSTICE

**INTERPRETATION AND APPLICATION OF THE
INTERNATIONAL CONVENTION ON THE ELIMINATION
OF ALL FORMS
OF RACIAL DISCRIMINATION**

(THE STATE OF QATAR *v.* THE UNITED ARAB EMIRATES)

**REQUEST
FOR THE INDICATION OF
PROVISIONAL MEASURES OF
PROTECTION**

11 June 2018

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I.

INTRODUCTION

1. I have the honor to refer to the Application filed with the Court on 11 June 2018, instituting proceedings on behalf of the State of Qatar (“*Qatar*”) against the United Arab Emirates (“*UAE*”) in respect of the interpretation and application of the International Convention on the Elimination of All Forms of Racial Discrimination (“*CERD*”) (the “*Application*”) and to submit, in accordance with Article 22 of the CERD, Article 41 of the Statute of the Court (the “*Statute*”), and Articles 73, 74 and 75 of the Rules of Court (the “*Rules*”), a Request that the Court indicate provisional measures. In light of the nature of the rights at issue, as well as the ongoing, severe, and irreparable prejudice being suffered, Qatar requests that the Court consider this Request as a matter of urgency.

2. The Application describes an ongoing, brutal campaign of sweeping measures imposed against Qataris by the UAE. For the past twelve months, the UAE has enacted and enforced measures that, *inter alia*: collectively expelled Qataris from the UAE and prevented their re-entry into the UAE; separated Qataris from their non-Qatari family members, including spouses and children; prevented Qatari students from seeking or continuing their education in the UAE; disrupted the medical care of Qataris being treated in the UAE; forced Qataris to abandon or otherwise interfered with their businesses and other property in the UAE; not only stifled freedom of opinion and expression by Qataris, but also created and exacerbated racial hostility against Qataris; and prevented and hindered Qataris from pursuing any effective legal remedy in the UAE. These actions target Qataris collectively on the basis of national origin, with the intention and result of

depriving them of basic human rights, constituting blatant violations of the UAE's obligations under the CERD.

3. Provisional measures are requested in this case to protect against further, irreparable harm to the rights of Qataris and their families under the CERD, which continue to be compromised with impunity. Qatar requests that the Court indicate provisional measures to protect and preserve these rights from any further harm and to prevent aggravation or extension of the dispute, pending the determination of the merits of the issues raised by the Application.

II.

JURISDICTION OF THE COURT

4. As set forth in the Application, the Court has jurisdiction over the dispute between Qatar and the UAE regarding the interpretation and application of the CERD described therein pursuant to its Statute and Rules and Article 22 of the CERD.¹ Neither party has entered a reservation to Article 22 of the CERD, which provides for the Court's jurisdiction in respect of such disputes.

III.

FACTS SUPPORTING THE REQUEST

5. The UAE enacted, and continues to enforce, unlawful measures targeting Qataris and their families on the express basis of their national origin or perceived "links" to Qatar (collectively, the "*Discriminatory Measures*").² The following summarizes this

¹ Application, § II.

² Facts detailing the nature and impact of the Discriminatory Measures are set forth in the Application and incorporated herein by reference.

factual background and provides an overview of the Discriminatory Measures' severe and ongoing impacts on fundamental human rights, which underline the need for the urgent relief sought by this Request.

6. On 5 June 2017 and thereafter, the UAE announced that it was severing all diplomatic and consular ties with Qatar and:

- expelled all Qataris within its borders, without exception, giving them just two weeks to leave;
- prohibited Qataris from entering into or passing through the UAE and ordered its citizens to leave Qatar or face severe civil penalties, including deprivation of their nationality and the imposition of criminal sanctions;
- closed the UAE airspace and seaports to Qatar and Qataris and prohibited all interstate transport;
- interfered with the rights of Qataris who own property in the UAE;
- prohibited by law any speech deemed to be in “support” of Qatar or opposed to the actions taken against Qatar on threat of severe financial penalty or up to fifteen years imprisonment; and
- shut down the local offices of Al Jazeera Media Network (“*Al Jazeera*”) and blocked the transmission of Al Jazeera and other Qatari stations and websites.³

7. The UAE's actions have caused significant harm to Qataris, compounded by the historically close ties between the people of both nations. The collective expulsion of Qataris from the UAE and the ban on travel between the two countries have

³ Application, ¶ 3.

resulted in numerous cases of forced separation of Qatari families, which continues to this day. As set forth in the Application, Qatari-Emirati families have been forced to separate or abandon their homes in order to comply with the UAE’s expulsion order.⁴ Some family members have traveled to third countries in order to be reunited with their families.⁵ Others tried to call emergency hotlines allegedly established by the UAE to assist affected families but were unable to get through even after “hours or days,” or were “asked for minimal details about their cases” and told that “they would receive a call back” that never came.⁶ Some individuals have reported that they were “too scared to call hot lines and register their presence, or their family’s presence ... for fear of reprisal.”⁷

8. The Discriminatory Measures have also resulted in severe and lasting harms to Qatari students, business and property owners, and others whose lives and livelihoods depended on access to the UAE. As the Office of the United Nations High Commissioner for Human Rights (“*OHCHR*”) reported, “financial transactions between Qatar and [the UAE] [were] suspended, preventing people from receiving salaries or pensions, [receiving] rents, paying bills, or supporting relatives.”⁸ Qataris were also forced to abandon businesses and personal property in the UAE—including “private residences, stock shares, financial assets and

⁴ Application, ¶¶ 3, 6-7, 29-35.

⁵ **Annex 6**, Amnesty International, “*Gulf / Qatar dispute: Human Dignity Trampled and Families Facing Uncertainty As Sinister Deadline Passes*” (19 June 2017).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ **Annex 16**, OHCHR Technical Mission to the State of Qatar, 17-24 November 2017, *Report on the Impact of the Gulf Crisis on Human Rights* (December 2017) (hereinafter “OHCHR Report”), ¶ 40.

livestock”⁹—and have not regained access to them. Qatari students who had been attending university programs or specialized training courses in the UAE were forced to leave the country immediately and were deprived of the right to pursue their studies, causing severe and enduring harm to their futures.¹⁰ A large number of these students have been unable to enroll in classes outside the UAE “due to the lack of transcripts, different credit systems or because their specialization is not available in Qatar.”¹¹ The UAE’s collective expulsion order and ban on entry by all Qataris also interfered with Qataris receiving medical treatment in the UAE; as a result, treatment was interrupted and some individuals have been denied access to necessary medical care.¹²

9. In addition, the UAE not only has refused to condemn racially motivated hate speech directed at Qatar or Qataris, but actively has incited and encouraged such hate speech. Indeed, the Discriminatory Measures, in and of themselves, reinforce prejudice against Qataris. The OHCHR recognized that the UAE’s “campaign was premeditated and organized to generate a general feeling of hostility and hatred towards Qatar” and “included accusations of Qatar’s support to terrorism, calls for a regime change or a *coup d’état*, attacks against leading figures and symbols of Qatar as well as appeals for attacks on, and murder of, Qataris.”¹³ The criminal sanctions imposed by the UAE penalize any person who “shows sympathy or any form of bias towards

⁹ *Ibid.* ¶ 39.

¹⁰ **Annex 10**, Human Rights Watch, “*Qatar: Isolation Causing Rights Abuses*” (12 July 2017).

¹¹ **Annex 16**, OHCHR Report, *supra* note 8, ¶ 53.

¹² *Ibid.* ¶¶ 43-44.

¹³ *Ibid.* ¶ 16 (referring to “1,120 press articles and some 600 anti-Qatar caricatures” published by the UAE as well as Saudi Arabia, Bahrain, and Egypt).

Qatar [...] whether it be through the means of social media, or any type of written, visual or verbal form.”¹⁴ These sanctions helped create and continue to contribute to an environment of hostility and anti-Qatar sentiment in the UAE and are among actions that the OHCHR described as a “defamation and hatred campaign.”¹⁵ In this atmosphere, Emirati citizens and others subject to the UAE’s jurisdiction fear they will be sanctioned if they “support” Qatar by, for example, acting as counsel to Qataris in legal cases, entering into business transactions with Qataris, speaking out against the Discriminatory Measures, or even engaging with Qatari family members.

10. As the OHCHR documented in December 2017, the harmful impacts of the Discriminatory Measures persist, and “are likely to durably affect the victims, particularly those having experienced family separation, loss of employment or who have been barred from access to their assets.”¹⁶ In the absence of any official revocation of the Discriminatory Measures, including the blanket expulsion order and order barring reentry, significant harm to the rights of Qataris persists. To this day, Qatari-Emirati

¹⁴ **Annex 3, Attorney General Warns Against Sympathy for Qatar or Objecting to the State’s Positions**, AL BAYAN ONLINE (7 June 2017) (certified translation); *see also Qatar sympathisers to face fine, jail*, GULF NEWS (7 June 2017), <https://gulfnews.com/news/uae/government/qatar-sympathisers-to-face-fine-jail-1.2039631>; *UAE bans expressions of sympathy towards Qatar – media*, REUTERS (7 June 2017), <https://www.reuters.com/article/gulf-qatar/uae-bans-expressions-of-sympathy-towards-qatar-media-idUSL8N1J40D2>; *UAE threatens 15 years in prison for expressions of ‘sympathy’ with Qatar*, COMMITTEE TO PROTECT JOURNALISTS (7 June 2017), <https://cpj.org/2017/06/uae-threatens-15-years-in-prison-for-expressions-o.php>; Sam Wilkin, *Support for Qatar Could Land You in Jail, U.A.E. Warns Residents*, BLOOMBERG (7 June 2017), <https://www.bloomberg.com/news/articles/2017-06-07/support-for-qatar-could-land-you-in-jail-u-a-e-warns-residents>.

¹⁵ Application, ¶ 34; **Annex 16**, OHCHR Report, *supra* note 8, ¶ 14.

¹⁶ *Ibid.* ¶ 64.

families remain apart or fear separation if they travel to the UAE, Qataris have been subject to mistreatment simply because they are Qataris, students have not been allowed to return to school, business owners have not returned to work or gained access to their companies, and Qataris remain unable to access their homes, personal property, or medical care in the UAE.¹⁷

11. As set forth in the Application, the UAE has resisted all requests by Qatar and the international community to negotiate a peaceful resolution to this dispute.¹⁸ Rather, it is clear that the UAE has no intention of ending the collective punishment of ordinary Qataris without full concession by the Qatari government to a number of unreasonable political demands, which UAE representatives have stated are non-negotiable.¹⁹ The negative effects of the Discriminatory Measures on the lives and well-being of Qataris grow more pronounced each day, and the atmosphere of hostility fostered by the UAE has caused continuing, significant harm to Qataris.

IV.

THE RIGHTS QATAR SEEKS TO PROTECT

12. The Court has “the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.”²⁰ As

¹⁷ **Annex 22**, National Human Rights Committee, “*Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar*” (June 2018) (hereinafter “NHRC Fifth Report”), p. 9.

¹⁸ Application, ¶¶ 13-19; **Annex 21**, Request for Negotiation, His Excellency Sultan Ben Saed Al-Marikhi, Qatar Minister of State for Foreign Affairs, to His Excellency Anwar Gargash, UAE Minister of State for Foreign Affairs, dated 25 April 2018, received via fax and registered mail on 1 May 2018.

¹⁹ Application, ¶¶ 13-19, 26, 28.

²⁰ Statute of the International Court of Justice, art. 41.

described in the Application, the implementation by the UAE of the Discriminatory Measures and its promotion of hateful anti-Qatar rhetoric violate the customary international law principle of nondiscrimination as well as the specific obligations enumerated in CERD Articles 2, 4, 5, 6, and 7.²¹ Qatar thus requests provisional measures to address ongoing violations under the CERD and protect against irreparable harm to the equal enjoyment of the following protected rights:

- a) The right not to be subject to racial discrimination, including protections against incitement to racial hatred;²²
- b) The right to marriage and choice of spouse;²³
- c) The right to freedom of opinion and expression;²⁴
- d) The right to public health and medical care;²⁵
- e) The right to education and training;²⁶
- f) The right to work;²⁷
- g) The right to own property;²⁸

²¹ Application, ¶¶ 53-64.

²² International Convention on the Elimination of All Forms of Racial Discrimination, 4 January 1969, 660 U.N.T.S. 195, arts. 2, 4.

²³ *Ibid.* art. 5(d)(iv).

²⁴ *Ibid.* art. 5(d)(viii).

²⁵ *Ibid.* art. 5(e)(iv).

²⁶ *Ibid.* art. 5(e)(v).

²⁷ *Ibid.* art. 5(e)(i).

²⁸ *Ibid.* art. 5(d)(v).

- h) The right to equal treatment before tribunals and all other organs administering justice;²⁹ and
- i) The right to effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination.³⁰

13. The indication of provisional measures does not require the Court “to establish the existence of breaches of CERD,” nor is the Court required or able to “make definitive findings of fact, nor finding of attribution.”³¹ A State party to the CERD may avail itself of such rights under the CERD in the context of a request for provisional measures “if it is plausible that the acts complained of constitute acts of racial discrimination under the Convention.”³² The Discriminatory Measures are not just plausible, but are irrefutable acts of racial discrimination under the CERD. While the application of a State’s obligation not to discriminate does not require uniformity of treatment regardless of circumstance, the mass and undifferentiated nature of the enforcement of the

²⁹ *Ibid.* art. 5(a).

³⁰ *Ibid.* art. 6. The rights and freedoms listed in Article 5 are not intended to be exhaustive, but rather indicative of the fundamental human rights guaranteed by the Charter of the United Nations, the Universal Declaration of Human Rights, and the core human rights treaties. Qatar reserves all rights to refer to human rights in other instruments or customary international law not explicitly enumerated in CERD Article 5.

³¹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, p. 353* (hereinafter “*Georgia v. Russian Federation*”), ¶ 141.

³² *Application of the International Convention for the Suppression of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Order of 19 April 2017, I.C.J.* (hereinafter “*Ukraine v. Russian Federation*”), ¶¶ 81-82. (“The Court observes that there is a correlation between respect for individual rights, the obligations of States parties under CERD and the right of States parties to seek compliance therewith.”).

Discriminatory Measures against Qataris renders the UAE's actions undeniably discriminatory, in violation of the CERD. By virtue of the UAE's own words, the Discriminatory Measures were enacted with *the express intention of targeting Qatar* and have been enforced collectively against Qataris *on the basis of their national origin*. They have been implemented without reference to the particular circumstances of the Qataris impacted and without a hearing or any other assessment on an individual basis. Qatar's claims therefore clearly fulfill the condition of plausibility.

V.

URGENCY AND IRREPARABLE HARM

14. The Court may indicate provisional measures “in order to ensure that irreparable prejudice shall not be caused to rights which are the subject of dispute in judicial proceedings.”³³ The “essential justification” for the indication of provisional measures “before [the Court] has reached a final decision on its competence and on the merits is that the action of one party ‘*pendente lite*’ causes or threatens a damage to the rights of the other, of such a nature that it would not be possible fully to restore those rights, or remedy the infringement thereof, simply by a judgment in its favour.”³⁴ Related to this justification, the power to indicate provisional measures “will be exercised only if there is urgency in the sense that there is a real risk that action prejudicial to the rights of either party might be taken before the Court has given its final decision.”³⁵

³³ *Georgia v. Russian Federation*, *supra* note 31, ¶ 118.

³⁴ *Aegean Sea Continental Shelf Case (Greece v. Turkey)*, *Request for Interim Measures of Protection*, Order of 11 September 1976, *Separate Opinion of President Jiménez de Aréchaga*, *I.C.J. Reports* 1976, p. 16.

³⁵ *Georgia v. Russian Federation*, *supra* note 31, ¶ 129 (citing, *inter alia*, *Passage through the Great Belt (Finland v. Denmark)*, *Provisional Measures*, Order of 29 July 1991, *I.C.J. Reports* 1991, p. 12, ¶ 23).

15. The Court previously has indicated provisional measures where rights under the CERD were threatened by acts of racial discrimination.³⁶ The Court has recognized in particular that “the political, civil, economic, social and cultural rights stipulated in Article 5 [of the] CERD are of such a nature that prejudice to them is capable of causing irreparable harm.”³⁷ Provisional measures have therefore been indicated in the context of disputes involving violations of these rights.³⁸ Where past violations have occurred, the Court has found provisional measures appropriate so long as it is “not inconceivable” that they might occur again.³⁹ The Court has also ordered provisional measures in circumstances that were “unstable and could rapidly change” due to “ongoing tension and the absence of an overall settlement to the conflict,” and where the affected population remained vulnerable to human rights violations.⁴⁰

16. There can be no doubt that the very rights of Qatar that are at issue in these proceedings are threatened with imminent and irreparable injury by the UAE. The UAE’s enforcement of the Discriminatory Measures remains ongoing and unrelenting, and Qataris remain subject to continued discrimination and harm to their health, families, education, and livelihoods, in violation of

³⁶ *Georgia v. Russian Federation*, *supra* note 31, ¶ 149.

³⁷ *Ukraine v. Russian Federation*, *supra* note 32, ¶ 96.

³⁸ *See ibid.* ¶ 106; *See also Georgia v. Russian Federation*, *supra* note 31, ¶ 149.

³⁹ *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Provisional Measures, Order of 7 December 2016*, *I.C.J. Reports 2016*, p. 1148, ¶ 89.

⁴⁰ *Georgia v. Russian Federation*, *supra* note 31, ¶ 143 (granting a request for provisional measures where the situation in Georgia was “unstable and could rapidly change” due to “ongoing tension and the absence of an overall settlement to the conflict in [the] region” and where “the ethnic Georgian population in the areas affected by the recent conflict remain[ed] vulnerable.”).

their rights under the CERD. The nature of the rights at issue and the severity of the UAE's violations are such that much of the damage suffered is, by definition, irreparable. As the OHCHR acknowledged, the "durable effect" of the continuing violations on the victims of family separation, for example, cannot be questioned.⁴¹ In its 5 June 2018 report, the NHRC confirmed that "these violations have continued for the entirety of the year" and that Qataris continue to submit claims of violations of the rights noted above to the NHRC.⁴² Likewise, on 5 June 2018, Amnesty International addressed the larger context of the crisis, reporting that "a year on, the situation has not improved. Residents of the region are still left facing uncertain futures: families are still waiting to be reunited with their loved ones; children are still waiting for their fathers to come home regularly; students are still waiting to continue their education; and pilgrims are still waiting to get access to the Holy Sites."⁴³

17. At the merits phase, the Court will adjudicate whether the UAE's actions in the form of the Discriminatory Measures violate the CERD. The UAE's Discriminatory Measures expressly are intended to be so painful to Qatar and its citizens that they force Qatar to submit to the UAE's unlawful demands in advance of the Court's decision. Absent action by the Court to protect the rights of Qatar and Qataris, there is imminent risk of irreparable harm to these rights before the Court has the opportunity to render its final decision on the questions for determination set forth in the Application.

⁴¹ **Annex 16**, OHCHR Report, *supra* note 8, ¶¶ 60, 64.

⁴² **Annex 22**, NHRC Fifth Report, *supra* note 17, p. 6.

⁴³ Amnesty International, "One Year since the Gulf Crisis, Families are Left Facing an Uncertain Future" (5 June 2018), <https://www.amnesty.org/en/latest/campaigns/2018/06/one-year-since-gulf-crisis-qatar-bahrain/>.

18. Nor can there be any question that the UAE's continued actions aggravate the dispute between the parties. As noted, the violations remain ongoing. As detailed above and in the Application, the UAE has resisted all attempts at negotiation and all calls by Qatar and the international community to terminate the Discriminatory Measures. Accordingly, the UAE has made clear that it will not voluntarily desist, and provisional measures thus are urgently required to compel the UAE to abide by its international obligations under the CERD.

VI.

THE MEASURES REQUESTED

19. On the basis of the facts set forth above and in the Application, and in order to prevent irreparable prejudice to the rights of Qatar and Qataris under the CERD, Qatar, in its own right and as *parens patriae* of its citizens, respectfully requests the Court as a matter of urgency to indicate the following provisional measures, which are clearly directly linked to the rights that form the subject matter of the dispute, pending its determination of this case on the merits:

- a) The UAE shall cease and desist from any and all conduct that could result, directly or indirectly, in any form of racial discrimination against Qatari individuals and entities by any organs, agents, persons, and entities exercising UAE governmental authority in its territory, or under its direction or control. In particular, the UAE shall immediately cease and desist from violations of the human rights of Qataris under the CERD, including by:
 - i. suspending operation of the collective expulsion of all Qataris from, and ban on entry into, the UAE on the basis of national origin;

- ii. taking all necessary steps to ensure that Qataris (or persons with links to Qatar) are not subjected to racial hatred or discrimination, including by condemning hate speech targeting Qataris, ceasing publication of anti-Qatar statements and caricatures, and refraining from any other incitement to racial discrimination against Qataris;
- iii. suspending the application of its Federal Decree-Law no. (5) of 2012, On Combatting Cybercrimes, to any person who “shows sympathy...towards Qatar” and any other domestic laws that (*de jure* or *de facto*) discriminate against Qataris;
- iv. taking the measures necessary to protect freedom of expression of Qataris in the UAE, including by suspending the UAE’s closure and blocking of transmissions by Qatari media outlets;
- v. ceasing and desisting from measures that, directly or indirectly, result in the separation of families that include a Qatari, and taking all necessary steps to ensure that families separated by the Discriminatory Measures are reunited (in the UAE, if that is the family’s preference);
- vi. ceasing and desisting from measures that, directly or indirectly, result in Qataris being unable to seek medical care in the UAE on the grounds of their national origin and taking all necessary steps to ensure that such care is provided;
- vii. ceasing and desisting from measures that, directly or indirectly, prevent Qatari students from receiving education or training from UAE institutions, and taking all necessary steps to ensure that students have access to their educational records;

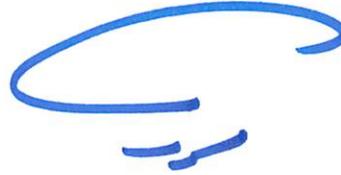
- viii. ceasing and desisting from measures that, directly or indirectly, prevent Qataris from accessing, enjoying, utilizing, or managing their property in the UAE, and taking all necessary steps to ensure that Qataris may authorize valid powers of attorney in the UAE, renew necessary business and worker licenses, and renew their leases; and
- ix. taking all necessary steps to ensure that Qataris are granted equal treatment before tribunals and other judicial organs in the UAE, including a mechanism to challenge any discriminatory measures.
- b) The UAE shall abstain from any measure that might aggravate, extend, or make more difficult resolution of this dispute; and
- c) The UAE shall abstain from any other measure that might prejudice the rights of Qatar in the dispute before the Court.

20. Qatar reserves the right to amend this Request and the measures sought.

21. Qatar respectfully asks that this Request be considered at the Court's earliest possible opportunity, including the scheduling of a hearing.

Respectfully submitted,

The Hague, 11 June 2018

A handwritten signature in blue ink, consisting of a large, sweeping loop followed by a few smaller, more defined strokes.

Dr. Mohammed Abdulaziz Al-
Khulaifi

Legal Advisor to His Excellency
Deputy Prime Minister and Minister
of Foreign Affairs

Agent of the State of Qatar