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)

MEMORIAL OF THE STATE OF QATAR

VOLUME I

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GLOSSARY OF ACRONYMS, ABBREVIATIONS AND DEFINED TERMS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AFC	Asian Football Confederation
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCC	Compensation Claims Committee
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
Draft Articles on Expulsion	International Law Commission Draft Articles on the Expulsion of Aliens
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GCC	Gulf Cooperation Council

GCC States	Member States of the GCC: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ILC Articles	International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts
NAPS	National ATM and POS Switch system
NHRC	Qatar National Human Rights Committee
NOTAM	Notice to Airmen
Order	Request for the Indication of Provisional Measures, Order of 23 July 2018
PoA	Power of Attorney
Qatar	The State of Qatar
Qatar Application	Application Instituting Proceedings of the State of Qatar dated 11 June 2018

Qatar RPM	Request for the Indication of Provisional Measures of Protection of the State of Qatar dated 11 June 2018
QNA	Qatar News Agency
UAE	The United Arab Emirates
UAE RPM	Request for the Indication of Provisional Measures to Preserve the United Arab Emirates' Procedural Rights and to Prevent Qatar from Aggravating or Extending the Dispute dated 22 March 2019
UAE PM Exhibit	Exhibits from Oral Proceedings on the Request for the Indication of Provisional Measures of Protection of the State of Qatar dated 11 June 2018
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
VCCR	Vienna Convention on Consular Relations
VCLT	Vienna Convention on the Law of Treaties

CHAPTER I
INTRODUCTION

Section I. Overview of the Case

1.1 The State of Qatar ("***Qatar***") and the United Arab Emirates ("***UAE***") are both parties to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (the "***CERD***")[1]. On 11 June 2018, Qatar instituted proceedings before the Court against the UAE under Article 22 of the CERD. On the same day, in view of the real and imminent risk of irreparable prejudice to its rights and the fundamental rights of Qataris, Qatar requested the indication of Provisional Measures of Protection. On 23 July 2018, the Court delivered its Order indicating provisional measures (the "***Order***"). Qatar now submits its Memorial pursuant to the Court's Order of 25 July 2018.

1.2 The CERD embodies a fundamental tenet of human rights law: that racial discrimination undermines the inherent dignity and equality of human beings. The Court has squarely stated that the right to equality constitutes a "binding customary norm"[2]. The CERD thus requires States parties to pursue "by all

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[1] *See* **Vol. III, Annex 92**, UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, *Treaty Series* (*UNTS*) vol. 660, p. 195 (hereinafter "CERD"). The CERD entered into force on 4 January 1969. Qatar acceded to the CERD on 22 July 1976; the UAE on 20 June 1974. *See* United Nations Treaty Collection, Status of Treaties, International Convention on the Elimination of All Forms of Racial Discrimination, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en.

[2] *See Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Advisory Opinion of 21 June 1971, Separate Opinion of Judge Ammoun, I.C.J. Reports 1971*, para. 6 ("One right which must certainly be considered a pre-existing binding customary norm which the Universal Declaration of Human Rights codified is the right to equality, which by common consent has ever since the remotest times been deemed inherent in human nature.").

appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races"[3], and to ensure that discrimination, including on the basis of national origin, does not interfere with the enjoyment of a broad array of rights and freedoms[4]. Among the wrongs that the CERD aims to prevent is collective punishment: the stripping away or practical denial of rights and privileges from a group of people defined not by their individual conduct, but by some group characteristic such as skin color, ethnicity, or, as in this case, national origin.

1.3 Notwithstanding its obligations under the CERD, in the early morning of 5 June 2017 in the holy month of Ramadan, without any prior warning, the UAE launched a comprehensive campaign of punitive measures, which in both purpose and effect targeted Qataris as a people on a discriminatory basis, in violation of the CERD.

1.4 Specifically, pursuant to a directive from the UAE's Ministry of Foreign Affairs (the "***5 June Directive***"), the UAE announced that it was immediately severing all diplomatic ties with Qatar, expelling Qatari diplomats and recalling its own diplomats within 48 hours.[5] In the same Directive, the UAE further enacted a series of measures to effect a policy and practice of collective punishment aimed at the Qatari people.

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3 **Vol. III, Annex 92**, CERD, Art. 2(1).

4 **Vol. III, Annex 92**, CERD, Art. 1(1).

5 **Vol. II, Annex 1**, UAE Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017).

1.5 *First*, in the Directive, the UAE ordered "Qatari residents and visitors" within the UAE to leave within 14 days for "precautionary security reasons" (the "***Expulsion Order***")[6]. The Expulsion Order provided no exceptions, did not allow consideration of individualized circumstances, and identified the sole basis for its coverage as the status of a person as "Qatari".

1.6 *Second*, the UAE simultaneously announced the closure of UAE airspace and seaports to "Qataris" within 24 hours and declared that all "Qatari nationals" would be barred from entering or transiting through the UAE (the "***Absolute Travel Ban***")[7]. Like the Expulsion Order, this ban on travel of Qataris in or through the UAE was absolute; there were no exceptions or consideration of individual circumstances. The UAE simultaneously banned UAE nationals from entering or staying in Qatar. While the UAE subsequently announced revisions to the Absolute Travel Ban—largely in the form of a security channel being paraded as a "humanitarian" "hotline" (the "***Modified Travel Ban***")—Qataris' entry into the UAE continues to be impeded on an arbitrary and discriminatory basis.

1.7 *Third*, in the days that followed the 5 June Directive, the UAE, separately, and at times surreptitiously, also enacted measures perpetuating, condoning, and encouraging anti-Qatari hate propaganda, while at the same time suppressing Qatari media and speech deemed to support Qatar. In particular, the UAE orchestrated and funded a coordinated anti-Qatari propaganda campaign on various media platforms to inspire prejudice against Qataris, just for being Qatari

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6 **Vol. II, Annex 1**, UAE Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017).

7 **Vol. II, Annex 1**, UAE Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017).

(the "***Anti-Qatari Incitement Campaign***"). Simultaneously, to stifle free expression, the UAE blocked Al Jazeera and other Qatari media outlets in UAE territory (the "***Block on Qatari Media***") and subjected conduct it deemed to be "sympathizing" with Qatar to substantial criminal penalties, including incarceration, under the UAE's existing cybercrime law (the "***Anti-Sympathy Law***").

1.8 These actions by the UAE (collectively, the "***Discriminatory Measures***") constitute clear violations of the protections against racial discrimination based on national origin in the CERD. They are as vicious in their disregard of fundamental human rights as they are transparent in their political motivation. The UAE made their punitive purpose clear from the outset, explicitly stating in the 5 June Directive that the measures are "based on the insistence of the State of Qatar to continue to undermine the security and stability of the region and its failure to honour international commitments and agreements"[8]. And the UAE has been equally unwavering before the Court, stating plainly that "the present crisis was caused by Qatar's own unlawful conduct"[9], which the UAE decided "could not remain without consequences"[10].

1.9 The method the UAE chose to attempt to coerce the Qatari Government—the collective punishment of the Qatari people—constitutes an impermissible purpose under the CERD, and, as intended, has had and continues to have severe consequences for the rights of individual Qataris. The UAE radically disrupted the

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8 **Vol. II, Annex 1**, UAE Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017).

9 CR 2018/13, p. 12, para. 8 (Alnowais).

10 CR 2018/15, p. 38, para. 10 (Shaw).

lives of Qataris, who, prior to the enactment of the Discriminatory Measures, led lives that were deeply intertwined with the UAE and Emiratis. As nationals of the Gulf Cooperation Council ("***GCC***"), Qataris and Emiratis moved freely between the UAE and Qatar, and within the UAE, Qataris enjoyed many of the same rights and benefits as Emiratis. As a result, many Qataris lived, worked, studied, and owned property in the UAE, some of them with ties going back decades. Mixed families of Qatari and Emirati origin were commonplace, and often spanned the two countries, with individuals travelling between them to work, go to school, manage property and businesses, and visit close relations. All of this changed abruptly and drastically following the imposition of the Discriminatory Measures.

1.10 By these Measures, the UAE violated both the letter and spirit of the CERD. Specifically, the UAE has violated and, in some instances continues to violate, the basic protections against racial discrimination set forth in the CERD, including Articles 2, 4, 5, 6, and 7 of the CERD.

1.11 *First*, by promulgating its Expulsion Order and Absolute Travel Ban, the UAE has engaged in the collective expulsion of all individuals from Qatar, solely on the basis of their national origin. Qataris living for years—sometimes decades—in the UAE learned overnight that they had only two weeks to leave the UAE and abandon the lives they had built there, leaving behind family, educational opportunities, and property. The Expulsion Order and Absolute Travel Ban collectively expelled Qataris on the basis of their national origin without the provision of basic due process, and thereby, constituted racial discrimination on the basis of national origin under Article 1(1) of the CERD and prohibited under Article 2(1), Article 5(a) and Article 6. In particular, the UAE's collective expulsion of Qataris violated the CERD in two ways: *first*, based on the UAE's discriminatory *purpose* of expelling all Qatari nationals as a group, evidenced on

the face of the Expulsion Order and Absolute Travel Ban; and *second*, based on the discriminatory *effect* of nullifying or impairing the fundamental human right of Qataris to due process.

1.12 This discrimination is not excused under Article 1(2) of the CERD, as the collective expulsion did not draw legitimate distinctions between citizens and non-citizens. Instead, it singled out one group of non-citizens by national origin for discriminatory treatment. Nor did the collective expulsion fall within a State's discretion to regulate matters relating to legal provisions governing citizenship or nationality under Article 1(3), since that provision expressly does not allow discrimination "against any particular nationality".

1.13 *Second*, as a result of the imposition of the Absolute Travel Ban and the UAE's continued maintenance of the Modified Travel Ban (in its various iterations), Qataris who were expelled, as well as Qataris who were not living in the UAE but nonetheless had significant aspects of their lives located in the UAE, were collectively cut off from immediate and extended family, education, work, and property in the UAE. To this day, under the Modified Travel Ban, Qataris' entry into the UAE continues to be implemented on an arbitrary and discriminatory basis. Thus, nearly two years later, the UAE's wrongful conduct impacting the fundamental rights of these Qataris is ongoing. Like the collective expulsion, each of the Absolute Travel Ban and Modified Travel Ban constituted and continues to constitute discrimination against Qataris on the basis of national origin under Article 1(1) in both purpose and effect, and likewise are not excused under Articles 1(2) or 1(3). The UAE's Absolute Travel Ban violated, and the Modified Travel Ban continues to violate, Articles 2(1), 5(d)(iv), 5(d)(v), 5(e)(i), 5(e)(v), 5(a), and 6 of the CERD, which set out specific instances of fundamental

rights secured by the prohibition on racial discrimination related to family life, education, property, and work.

1.14 *Third,* the UAE's Block on Qatari Media violates the prohibition in Article 5(d)(viii) on discriminatory interference with freedom of opinion and expression, rights that are "indispensable for the articulation of human rights"[11], as well as Articles 2(1) and 6 of the CERD.

1.15 *Fourth*, as a result of the UAE's Block on Qatari Media and the Anti-Qatari Incitement Campaign (including the Anti-Sympathy Law), anti-Qatari hate speech and abuse are becoming increasingly normalized, with the tragic result that any association with Qatar in the UAE is the subject of harassment, ridicule, and even violence. As the UAE becomes further entrenched in its position, its discriminatory treatment of Qataris and corresponding incitement of racial hatred against Qataris threatens to inflict lasting wounds of division. This conduct constitutes discrimination against Qataris on the basis of their national origin under Article 1(1), and violates Articles 4 and 7, as well as Articles 2(1) and 6 of the CERD.

1.16 *Finally,* the UAE stands in violation of the Court's order of provisional measures, which stands as an autonomous legal obligation separate and apart from the UAE's obligations under the CERD. The UAE persistently has denied its violations, relying upon a patently ineffective "hotline" mechanism as its means of "compliance", while continuing to promote discriminatory sentiment against

[11] **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35: Combating Racist Hate Speech*, document CERD/C/GC/35 (2013), para. 29.

Qatar and Qataris through its Anti-Qatari Incitement Campaign and restriction of Qatari expression.

1.17 Upon a finding and declaration of breach by the Court, Qatar will be entitled to specific remedies as a consequence of the UAE's violations of the CERD, including the obligations of the UAE to: cease its ongoing wrongful acts; make reparation for the injury resulting from its wrongful acts; and provide assurances and guarantees of non-repetition.

1.18 To date, the UAE's consistent response to its violations of the CERD has been outright denial. For example, at the oral hearings on Provisional Measures before the Court, the UAE maintained—wrongly—that "Qatari citizens were not expelled 'en masse' from the UAE, families are not separated, Qatari students remain studying in UAE universities in large numbers, Qatari-owned businesses and properties in the UAE remain in operation and under their owners' control, and Qatari citizens are able to travel to and from the United Arab Emirates."[12] The UAE's argument that nothing happened is entirely divorced from reality, as Qatar's evidence demonstrates. Not only have Qataris been forced to leave behind lives, families, work, property, and schools as a result of the UAE's targeted acts of discrimination, they have also been victims of the UAE's campaign of anti-Qatari propaganda, rhetoric, and incitement to violence, which the UAE has engineered to suppress and denigrate the character, heritage, personal stories, and ultimately, the dignity of Qataris. The struggle of Qataris since 5 June 2017 epitomizes the insidiousness of subjecting individuals to prejudice and

[12] CR 2018/15, p. 26, para. 1 (Buderi); *see also* CR 2018/15, p. 43, para. 2 (Alnowais) ("[the UAE's] dispute with Qatar has *no impact* on the rights of Qatari citizens") (emphasis added); CR 2018/13, p. 55, para. 98 (Olleson) ("*no* Qatari nationals were in fact expelled" from the UAE") (emphasis added).

intimidation on the basis of a characteristic attributable to a group—the very harm the CERD was designed to eradicate.

1.19 There can be no doubt that the UAE intended the very impact on Qatari individuals that the evidence Qatar submits demonstrates. In the same breath as the UAE attempted to disclaim the impacts of the Discriminatory Measures on individuals and families, the UAE acknowledged that they are *punitive* measures designed to coerce and pressure Qatar. The UAE even attempted to affirmatively rely on this point to justify its coercive actions, stating "[the] difficulties [faced by families] flow from Qatar's behavior and the responsibility for the circumstances as they are now must be placed firmly at the door of [Qatar]"[13]. This admission exposes the UAE's actions for what they truly are: the arbitrary and uncompromising use of State power in a manner calculated to adversely affect individuals, conducted without notice, without process, without regard for individual circumstances, and without any concern for the fundamental human rights of thousands of individuals, in order to achieve political gains.

1.20 There can also be no doubt that the Court is competent to resolve the dispute Qatar submits, which is a "dispute between two . . . States Parties", a dispute "with respect to the interpretation or application" of the CERD, and a dispute "which is not settled by negotiation or by the procedures expressly provided for in this Convention" under Article 22.

[13] CR 2018/15, p. 42, para. 27 (Shaw); *see also* CR 2018/13, p. 12, para. 8 (Alnowais) ("the present crisis was caused by Qatar's own unlawful conduct"); CR 2018/15, p. 38, para. 10 (Shaw) (citing "the blatant violation by Qatar of the Riyadh Agreements" as the "real reason for the instability and concern" and stating that "[s]uch actions by Qatar could not remain without consequences, as it had been informed").

1.21 The Court has previously held that Article 22's reference to "any dispute . . . not settled by negotiation or by the procedures expressly provided for in this Convention" creates preconditions to its jurisdiction, but has not ruled on whether they are alternative or cumulative[14]. Given Qatar's repeated attempts to negotiate with the UAE, and the UAE's blanket refusal to engage with Qatar, there is no doubt that Qatar has satisfied any precondition of negotiations that Article 22 may impose. This alone is sufficient to confer jurisdiction: requiring Qatar to satisfy *both* a precondition of negotiation *and* use of the CERD Article 11–13 procedures would be contrary to the ordinary meaning of Article 22 and the *travaux préparatoires*.

1.22 There is also no barrier to the admissibility of the claims presented, including because under generally recognized principles of international law, there is no need to exhaust domestic remedies in a case of systematic, generalized policies and practices in breach of the CERD such as this one.

1.23 Further, the Court has jurisdiction *ratione materiae*. Each of the acts complained of falls within Article 1(1)'s prohibition on discrimination on the basis of national origin, as they have both the purpose and effect of discriminating against Qataris. The dispute is thus "with respect to the interpretation or application" of the CERD. The UAE's attempt to argue otherwise during the provisional measures phase—on the basis that its actions are *categorically excluded* from the scope of the CERD's protections because they "appl[y] solely on the basis of an individual's present nationality"[15]—is flawed as a matter of

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[14] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 20.

[15] CR 2018/13, p. 39, para. 21 (Olleson).

both law and fact, and itself confirms that there is a dispute "with respect to the interpretation" of the CERD.

1.24 *First*, the UAE is wrong that Article 1(1) excludes discrimination on the basis of present nationality. To the contrary, "national origin" interpreted in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties ("***VCLT***") clearly encompasses nationality—including present nationality. This is evident from the context of Article 1 as a whole, and in particular the exception and preservation clauses of Article 1(2) and 1(3), respectively. Further, in interpreting human rights treaties in general, the Court has stressed the importance of giving effect to their specific object and purpose, which weighs heavily in favor of taking account of the CERD's overriding purpose to eliminate racial discrimination in all its forms, including based on a group feature such as nationality. To do otherwise would be both artificial and deeply troubling, as the dominant means of imposing racial discrimination against foreign persons today is by means of measures that turn on present nationality. An analysis of the *travaux préparatoires* of the CERD pursuant to Article 32 of the VCLT confirms that the CERD encompasses nationality-based discrimination.

1.25 *Second*, the UAE's attempt to frame the issue as solely one of "present nationality" ignores a critical dimension of the CERD, namely that it is not limited to the explicit purpose of challenged State conduct, but equally and explicitly concerns actions that have the "*effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms"[16]. In Qatar, as in other States of the Gulf, nationality follows a *jus sanguinis* model—meaning that nationality is conferred by parentage—and

[16] **Vol. III, Annex 92**, CERD, Art. 1(1).

naturalization is rare. The UAE's attempt to carve out "present" nationality is thus a distinction without a difference: the vast majority of Qatari nationals, including those affected by the measures, were *born* Qatari nationals and are Qatari in the sense of heritage—in other words, of Qatari "national origin" in the historical-cultural sense that the UAE acknowledged in its submissions to the Court on provisional measures would confer protection under the CERD. The discriminatory effects of the Measures on these individuals thus equally bring the UAE's acts within the scope of the CERD, regardless of whether "national origin" in Article 1(1) encompasses "present nationality".

1.26 Instead of fostering tolerance, the UAE is promoting fear and hostility. Instead of educating those within its territory against xenophobia and racial animus, it is encouraging it. The longer these policies and practices continue, the more prejudice against Qataris engendered by the UAE Government embeds itself into everyday life in the UAE. That is exactly what the CERD was put in place to prevent—indeed, to eradicate. Qatar thus seeks the Court's intervention to bring an end to the UAE's violations and to seek redress for the harms suffered.

Section II. Structure of the Memorial

1.27 Qatar's Memorial consists of six Chapters which follow this Introduction.

1.28 **Chapter II** provides the Court with a detailed recitation of the facts underlying Qatar's claims. This includes the context necessary for the Court to understand the present dispute (**Section I**), the Discriminatory Measures taken by the UAE against Qataris beginning on 5 June 2017 (**Section II**), the UAE's subsequent escalation of the crisis (**Section III**), and the international condemnation of the detrimental human rights impacts of those measures (**Section IV**).

1.29 **Chapter III** establishes the basis for the Court's jurisdiction and the admissibility of Qatar's claims. This includes a detailed assessment of two points challenged by the UAE during the Provisional Measures phase; namely, that the dispute falls within the scope *ratione materiae* of the CERD (**Section I**), and that Qatar has satisfied any necessary preconditions to the Court's jurisdiction pursuant to Article 22 of the CERD (**Section II**).

1.30 **Chapter IV** demonstrates that Qatar's claims before the Court are admissible and, in particular, that neither the local remedies rule (**Section I**) nor Qatar's resort to the CERD Committee Procedure (**Section II**) constitutes a bar to the admissibility of Qatar's claims.

1.31 **Chapter V** establishes the content of the UAE's obligations under the CERD and its violations of those obligations. These include the UAE's violation of Articles 2(1), 5(a), and 6 by collectively expelling Qataris from its territory (**Section I**); the discriminatory nullification and impairment of the enjoyment of

protected rights under Articles 5(d)(iv), 5(d)(v), 5(e)(i), 5(e)(v), and 5(a), through implementation of the Absolute Travel Ban and subsequently the Modified Travel Ban, including by interfering with the rights to family life, education and training, property, work, and the right to equal treatment before tribunals, constituting violations of Articles 2(1), 5 and 6 (**Section II**); its interference with freedom of opinion and expression on racially discriminatory lines in violation of Articles 2(1), 5(d)(viii) and 6 (**Section III**); and its violation of the CERD's protections against propagating and tolerating racially discriminatory propaganda, prejudice and ideas under Articles 2(1), 4, 6 and 7 (**Section IV**).

1.32 **Chapter VI** demonstrates that the UAE's violations are ongoing and in violation of the Court's Order of Provisional Measures dated 23 July 2018.

1.33 **Chapter VII** sets forth the relief sought by Qatar.

1.34 Finally, the Memorial concludes with Qatar's Submissions.

1.35 In presenting its evidence to the Court, Qatar has taken into account the Court's general approach to assessing the weight and probity of the evidence[17]. Qatar's Memorial draws from a wide range of evidentiary sources. Qatar submits independent third-party reporting, including from: organs of the United Nations and other respected international organizations; non-governmental organizations with a reputation as neutral and experienced human rights observers, such as Human Rights Watch and Amnesty International; and reputable news outlets. Qatar also submits primary source material, including contemporaneous

[17] *See, e.g., Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Merits, Judgment, I.C.J. Reports 2005*, paras. 57–58.

documents and statements issued by the UAE or its agents and instrumentalities, as well as material from Qatari government agencies and other Qatari institutions whose mandate includes the collection and maintenance of relevant information in the regular course of their activities.

1.36 Most importantly, Qatar submits 109 first-hand witness accounts of the Discriminatory Measures, detailing the detrimental impacts that the UAE's violations have had on the enjoyment of the fundamental rights guaranteed by the CERD. The first-hand claimant accounts were compiled by the Compensation Claims Committee ("***CCC***"), a body established by the State of Qatar after the imposition of the Discriminatory Measures[18]. The mandate of the CCC is to receive complaints from Qataris adversely affected by the Discriminatory Measures and investigate and verify the complaints, with an eye towards securing legal reparations. In order to implement this broad mandate, the CCC works in coordination with all relevant government ministries and conducts outreach to other Qatari entities and non-governmental organizations as necessary. The CCC is comprised of members of various ministries, including the Ministry of Foreign Affairs and Ministry of Justice[19]. The CCC also maintains a record of all complaints related to the Discriminatory Measures, including complaints initially submitted to the Qatar National Human Rights Committee ("***NHRC***") and the Qatar Chamber of Commerce.[20] As part of its claims process, the CCC has compiled verified complaints of 975 Qataris evidencing the measures taken by the UAE, as well as the resulting harm.

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[18] **Vol. II, Annex 56**, Letter from Amiri Diwan to HE Sheikh Abdullah bin Nasser bin Khalifa Al–Thani establishing the CCC (14 June 2017).

[19] **Vol. II, Annex 56**, Letter from Amiri Diwan to HE Sheikh Abdullah bin Nasser bin Khalifa Al–Thani establishing the CCC (14 June 2017).

[20] **Vol. XII, Annex 272**, Affidavit, State of Qatar Compensation Claims Committee.

1.37 Included with Qatar's Memorial are eleven additional volumes of Annexes, which include materials relied upon in the Memorial. The annexed materials are arranged in the following order: (*i*) UAE government documents, statements, and legislation, as well as local UAE news media documents demonstrating the enactment of the Discriminatory Measures (**Vol. II, Annexes 1–49**); (*ii*) Qatari government documents, statements, and legislation (**Vol. II, Annexes 50–69**); (*iii*) United Nations documents, including from the CERD Committee (**Vol. III, Annexes 70–101**); (*iv*) CERD Committee documents and proceedings (**Vol. IV, Annexes 102–122**); (*v*) documents from international organizations and non-governmental organizations (**Vol. IV, Annex 123**); (*vi*) documents, reports and statements from non-governmental organizations (**Vol. V, Annexes 124–143**); (*vii*) relevant excerpts from books, academic articles, and news articles (**Vol. V-VI, Annexes 144–153**); and (*viii*) other documents (**Vol. VI, Annexes 154–161**). The Annexes also include as **Vol. VI, Annex 162**, the Expert Report of Dr. J.E. Peterson, which addresses the socio-historical background of the Qatari people and their distinct national origin.

1.38 The Annexes relating to the evidence collected by the CCC are comprised of: (*i*) the 109 witness declarations, notarized by the Qatari Ministry of Justice and certified by the Qatari Ministry of Foreign Affairs (**Vols. VII–XII, Annexes 163–271**); (*ii*) an affidavit of the CCC including a summary of the 975 verified claims processed by the CCC in relation to the UAE's Discriminatory Measures (**Vol. XII, Annex 272**); and (*iii*) primary source statistics and data relating to the impacts of the Discriminatory Measures, including affidavits authenticating such data, as appropriate (**Vol. XII, Annexes 273–278**).

CHAPTER II
THE FACTS UNDERLYING QATAR'S CLAIMS

2.1 This Chapter sets forth the factual background to the dispute with a view to understanding the UAE's imposition of the Discriminatory Measures and the devastating impact such Measures have had upon the Qataris targeted. The sudden imposition of the Measures beginning on 5 June 2017 created chaos, which was augmented by the UAE's fomenting of a climate of hatred against Qatar and Qataris. Panicked Qataris scrambled to understand their new reality, in which they were expelled and then barred from access to a State that many had considered a home. The UAE's imposition of the Discriminatory Measures wreaked havoc upon the close economic and social ties between Qataris and Emiratis in one fell swoop, leaving Qatar to mitigate the damage caused as best it could.

2.2 The UAE, for its part, remains seemingly indifferent to the undeniable impact of the Discriminatory Measures upon the human rights of ordinary Qataris. It has spurned all of Qatar's attempts at negotiation, continuing to insist on a series of illegitimate demands that would vitiate Qatar's sovereignty as its non-negotiable conditions for ending the Measures.

2.3 This Chapter is organized as follows: **Section I** explains the broader context for the UAE's Discriminatory Measures, including the source of the UAE's animosity toward Qatar and the previously close ties between the two States. **Section II** describes the UAE's imposition of the Measures in breach of the CERD: namely, the 5 June Directive and Expulsion Order (**Part A**); the Absolute and Modified Travel Bans along with other restrictions on movement (**Part B**); and the UAE's attack on freedom of expression and incitement of Anti-Qatari sentiment, namely through the Anti-Sympathy Law, the Block on Qatari Media, and the Anti-Qatari Incitement Campaign (**Part C**).

2.4 **Section III** next explains the UAE's escalation of the crisis by conditioning the end of the Discriminatory Measures upon Qatar's acceptance of a series of unlawful and unwarranted demands designed to infringe Qatar's sovereignty.

2.5 Finally, **Section IV** provides an overview of the destructive impacts of the Discriminatory Measures and their condemnation by the international community.

Section I. The Context of the Dispute

2.6 Qatar and the UAE are both members of the GCC, an intergovernmental political and economic union established in 1981, which also includes Saudi Arabia, Bahrain, Kuwait, and Oman (together, the "***GCC States***")[21]. The GCC was founded on the common characteristics and Islamic faith that bind the six member States. The main objective of the GCC is to establish coordination among its member States in order to achieve unity between them and strengthen relations between their peoples[22]. Qatar and the UAE are also both parties to the GCC Economic Agreement,[23] as well as members of the GCC Customs Union[24], which have fostered their economic integration and interdependence. Prior to the

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[21] *See* Secretariat General of the Gulf Cooperation Council, *Member States*, http://www.gcc-sg.org/en-us/AboutGCC/MemberStates/Pages/Home.aspx.

[22] *See* Charter of the Gulf Cooperation Council, 25 May 1981, Preamble, Art. 4.

[23] *See* Economic Agreement Between the GCC States, 31 December 2001.

[24] *See generally* Secretariat General of the Gulf Cooperation Council, *The Customs Union: Practical procedures for the establishment of the GCC Customs Union*, http://www.gcc-sg.org/en-us/CooperationAndAchievements/Achievements/EconomicCooperation/TheCustomsUnion/Pages/Practicalproceduresfortheestab.aspx (noting implementation of Common Customs Law by all member states and establishment of GCC Customs Union).

imposition of the Discriminatory Measures, Qatar's bilateral trade relationship with the UAE was the largest, by value, of its relationships with any GCC country[25]. For example, Qatar delivers over two billion cubic feet of liquid natural gas ("***LNG***") to the UAE per day via the Dolphin Pipeline, and Qatar has made clear from the outset of the crisis its commitment to continue to do so despite the imposition of the Discriminatory Measures, given the serious disruption any gas stoppage would cause to the people of the UAE[26].

2.7 Generally speaking, the UAE and Saudi Arabia, as the two largest States in the GCC in terms of population and GDP[27], have historically pushed to direct a unified policy agenda of the GCC on their own terms. However, Qatar has maintained an independent foreign policy, guided by the touchstones of building relationships with international partners and the peaceful resolution of conflicts, even where this approach has put it at odds with its neighbors[28]. This has included

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[25] *See* Andrew Torchia & Tom Arnold, "Qatar and its neighbors may lose billions from diplomatic split", *Reuters* (5 June 2017), https://www.reuters.com/article/us-gulf-qatar-economy/qatar-and-its-neighbors-may-lose-billions-from-diplomatic-split-idUSKBN18W1MJ ("The UAE is Qatar's biggest trading partner from the GCC").

[26] *See, e.g.*, Tom Finn & Raina El Gamal, "Qatar has no plan to shut Dolphin gas pipeline to UAE despite rift: sources", *Reuters* (6 June 2017), https://www.reuters.com/article/us-gulf-qatar-gas/qatar-has-no-plan-to-shut-dolphin-gas-pipeline-to-uae-despite-rift-sources-idUSKBN18X1WA ("A shutdown of the Dolphin pipeline would cause major disruptions to the UAE's gas system").

[27] *See* International Monetary Fund, DataMapper: Population, https://www.imf.org/external/datamapper/LP@WEO/QAT/SAU/KWT/BHR/OMN/ARE; International Monetary Fund, DataMapper: GDP, Current Prices, https://www.imf.org/external/datamapper/NGDPD@WEO/QAT/SAU/KWT/BHR/OMN/ARE

[28] *See, e.g.*, Council on Foreign Relations, *A Conversation With Sheikh Mohammed bin Abdulrahman Al-Thani (30 November 2018)*, https://www.cfr.org/event/conversation-sheikh-mohammed-bin-abdulrahman-al-thani (video recording). In this regard, Qatar has worked to resolve disputes in Lebanon (2008), Yemen (2008-2010) and Darfur (2008-2010), as well as between Sudan and Chad (2009), and Djibouti and Eritrea (2010).

maintaining amicable relationships with States viewed as antagonists or competitors by the UAE such as Iran—with whom Qatar shares the world's largest natural gas field[29]—and Turkey[30].

2.8 Qatar has also—notwithstanding the stark opposition of the UAE—supported independent media in the region, as evidenced by the award-winning Al Jazeera network, which is based in Qatar. Funded in part by Qatar[31], Al Jazeera is widely recognized as the region's leading independent media outlet, and acknowledged for its editorial impartiality by independent third parties, including international non-governmental organizations devoted to freedom of expression and free media[32]. Al Jazeera has long been a source of tension between Qatar and

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29 Tom Finn, "Qatar restarts development of world's biggest gas field after 12-year freeze", *Reuters* (3 April 2017), https://www.reuters.com/article/us-qatar-gas-idUSKBN175181.

30 *See* Republic of Turkey Ministry of Foreign Affairs, *Bilateral Political Relations between Turkey and Qatar*, http://www.mfa.gov.tr/turkey-qatar-relations.en.mfa; Selin Girit, "Why is Turkey standing up for Qatar?", *BBC News* (14 June 2017), https://www.bbc.com/news/world-middle-east-40262713. Emirati officials often attempt to smear Qatar by linking it disparagingly to Iran or Turkey, and indeed the UAE has conditioned lifting the Discriminatory Measures upon Qatar cutting or downgrading ties with Iran and Turkey. *See infra* Chapter II, Section III.

31 Al Jazeera Satellite Network was established by in 1996 as a hybrid public-private entity with initial funding provided by HH Sheikh Hamad bin Khalifa Al-Thani in the form of a grant. *See* Law No. 1 of 1996 on the Establishment of the Al Jazeera Satellite Network, 8 February 1996, Art. 1, http://www.almeezan.qa/LawArticles.aspx?LawTreeSectionID=8584&LawID=2536&language=en.

32 *See* **Vol. V, Annex 126**, Reporters Without Borders, *Al Jazeera—collateral victim of diplomatic offensive against Qatar* (7 June 2017), https://rsf.org/en/news/al-jazeera-collateral-victim-diplomatic-offensive-against-qatar; *see also* UNESCO, *UNESCO and Al Jazeera to promote freedom of expression in the Arab World* (12 September 2010), http://www.unesco.org/new/en/media-services/singleview/news/unesco_and_al_jazeera_to_promote_freedom_of_expression_in_th/ (noting that UNESCO and Al Jazeera signed a Memorandum of Understanding to formalize the partnership to research freedom of expression in the Arab world and beyond, and quoting the UNESCO Director-General as stating, "as a leading source of news and information about the Arab world and beyond, Al Jazeera is well-positioned to uphold these principles [human rights and fundamental

the UAE, and the UAE has sought to silence and vilify the network by labeling it a conduit of "hate speech" and "pro-terrorist output", including before the Court[33]. These tensions culminated at the flashpoint of the award-winning coverage of the Arab Spring by Al Jazeera (English),[34] which provided a rare voice to opposition viewpoints in the region, and accordingly was viewed as a threat by the UAE and others[35].

2.9 Qatar's foreign policy independence and support for independent media have led to regional tensions between Qatar and the UAE (acting along with Saudi Arabia), including a brief severing of diplomatic ties in 2014. However, these previous disputes remained at the diplomatic level, and thus Qatar was able to diffuse them through diplomatic negotiations, in the interest of maintaining peace and stability in the closely-knit region.

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freedoms] in this region"); **Vol. V, Annex 131**, Article 19, *Qatar: Demands to close Al Jazeera endanger press freedom and access to information* (30 June 2017), https://www.article19.org/resources/qatar-demands-to-close-al-jazeera-endanger-press-free dom-and-access-to-information/ ("organisations like Al Jazeera . . . enable the free flow of information . . . and are key to enabling free expression across the region").

33 CR 2018/13, p. 14, para. 19 (Alnowais); *ibid.* p. 66, para. 39 (Shaw).

34 *See, e.g.*, Royal Television Society, *Television Journalism Awards 2012*, https://rts.org .uk/award/television-journalism-awards-2012.

35 *See* Amena Bakr, "Defiant Al Jazeera faces conservative backlash after Arab Spring", *Reuters* (2 July 2014), https://www.reuters.com/article/us-qatar-jazeera-media-idUSKB N0F70F120140702; **Vol. V, Annex 126,** *Reporters Without Borders, Al Jazeera - collateral victim of diplomatic offensive against Qatar* (7 June 2017), https://rsf.org/en/news/al-jazeera-collateral-victim-diplomatic-offensive-against-qatar ("[*Al Jazeera*] distinguished itself above all during its coverage of the Arab Spring but enraged many of the region's governments, which regard it as a Qatari foreign policy tool.").

Section II. The Imposition of the UAE's Discriminatory Measures

2.10 As noted above, the UAE's campaign has taken the form of a series of coordinated and interconnected measures against Qataris, which, separately and together, have had a serious impact on their fundamental rights. These principally include the collective expulsion of "Qatari residents and visitors" pursuant to the 5 June Directive (**Section II.A**), the absolute and modified travel bans against "Qatari nationals" and other restrictions on movement (**Section II.B**), and the promotion and encouragement of anti-Qatari hate speech and false information coupled with the suppression of Qatari media and speech contrary to the UAE's anti-Qatar narrative (**Section II.C**).

A. The 5 June Directive and Collective Expulsion of Qataris

2.11 At 4 a.m. in the morning of 5 June 2017[36], in the midst of the holy month of Ramadan, the UAE's Ministry of Foreign Affairs issued and broadcast a Directive proclaiming that the UAE:

> "affirms its complete commitment and support to the Gulf Cooperation Council and to the security and stability of the GCC States. Within this framework, and based on the insistence of the State of Qatar to continue to undermine the security and stability of the region and its failure to honour international commitments and agreements, it has been decided to take the following measures that are necessary for safeguarding the interests of the GCC

[36] In a story time-stamped 5 June 2017 at 4:00 a.m., Emirati news outlet *The National* stated that the directive had been "just released" by the UAE Ministry of Foreign Affairs. *See* "UAE Ministry of Foreign Affairs Statement on Qatar ties", *The National* (5 June 2017), https://www.thenational.ae/world/uae-ministry-of-foreign-affairs-statement-on-qatar-ties-1.637077.

States in general and those of the brotherly Qatari people in particular:

1-In support of the statements issued by the sisterly Kingdom of Bahrain and sisterly Kingdom of Saudi Arabia, the United Arab Emirates severs all relations with the State of Qatar, including breaking off diplomatic relations, and gives Qatari diplomats 48 hours to leave UAE.

2-Preventing Qatari nationals from entering the UAE or crossing its points of entry, giving Qatari residents and visitors in the UAE 14 days to leave the country for precautionary security reasons. The UAE nationals are likewise banned from traveling to or staying in Qatar or transiting through its territories.

3-Closure of UAE airspace and seaports for all Qataris in 24 hours and banning all Qatari means of transportation, coming to or leaving the UAE, from crossing, entering or leaving the UAE territories, and taking all legal measures in collaboration with friendly countries and international companies with regards to Qataris using the UAE airspace and territorial waters, from and to Qatar, for national security considerations.

The UAE is taking these decisive measures as a result of the Qatari authorities' failure to abide by the Riyadh Agreement on returning GCC diplomats to Doha and its Complementary Arrangement in 2014, and Qatar's continued support, funding and hosting of terror groups, primarily Islamic Brotherhood, and its sustained endeavours to promote the ideologies of Daesh and Al Qaeda across its direct and indirect media.

[. . .]

> While regretting the policies taken by the State of Qatar that sow seeds of sedition and discord among the region's countries, the UAE affirms its full respect and appreciation for the brotherly Qatari people on account of the profound historical, religious and fraternal ties and kin relations binding UAE and Qatari peoples."[37]

2.12 In addition to the severing of diplomatic and consular ties with Qatar, the 5 June Directive thus also enacted a broad series of measures against or affecting Qataris. Namely, it (*i*) ordered "Qatari residents and visitors in the UAE" to leave the country within 14 days for "precautionary security reasons"; (*ii*) enacted an unconditional travel and entry ban against "Qatari nationals"; (*iii*) banned "UAE nationals" from travel or entry into Qatar; and (*iv*) closed UAE airspace and seaports "for all Qataris" within 24 hours.

2.13 On the same day, Saudi Arabia and Bahrain took parallel measures, effectively leaving Qatar isolated and cut off by land, air and sea[38]. Qatar's only land border is with Saudi Arabia, and it is surrounded on all other sides by the Persian Gulf.

2.14 Immediately after the UAE Ministry of Foreign Affairs issued the 5 June Directive, official and unofficial media platforms began to widely publicize, discuss, and distribute the measures imposed against Qatar and Qataris. Much of this took place on social media, a highly effective means of disseminating

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[37] **Vol. II, Annex 1**, UAE Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017).

[38] Taimur Khan, "UAE and Saudi Arabia cut ties with Qatar and shut air, land and sea access", *The National* (5 June 2017), https://www.thenational.ae/world/uae-and-saudi-arabia-cut-ties-with-qatar-and-shut-air-land-and-sea-access-1.68221.

information in the region[39], and placed a particular emphasis on the UAE's order expelling Qataris from the country within 14 days.

2.15 For example, approximately two hours after issuance of the 5 June Directive, the Emirates News Agency, the official source for UAE state media, issued a tweet highlighting the expulsion order and the UAE's stated basis of "security and precautionary reasons", relaying the message that every Qatari was regarded as a threat to the "security" of the UAE[40]:

2.16 The 5 June Directive was also published on the website of the widely read Dubai-based online news source Al Arabiya, which highlighted the Directive's

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39 In recent years, the use of social media within the region "has increased tremendously", with 97% of Qataris and 92% of Emiratis enjoying internet access, amongst the highest rates of internet penetration in the Middle East. *See* University of Southern California, Center on Public Diplomacy Blog, *A Snapshot of How Foreign Ministers in the Gulf Use Twitter*, (2 May 2017), https://www.uscpublicdiplomacy.org/blog/snapshot-how-foreign-ministers-gulf-use-twitter.

40 **Vol. II, Annex 45,** Twitter Post, @wamnews (5 June 2017 at 5:57 a.m.) (with certified translation). The @wamnews account has over 451,000 followers, and the tweet was retweeted 1,391 times.

"warning" to Qatari citizens to leave the UAE within the next fortnight[41]. Emirati news channels similarly broadcast the 5 June Directive to the public at large on television. For example, the news anchor of Akhbar Al Emarat read out the full Directive on television, including the order for all Qataris to leave the UAE within 14 days[42]. State-owned media channel Abu Dhabi TV aired and featured similar coverage of the 5 June Directive throughout the day[43].

2.17 A popular Emirati news platform, "3meed_news", which has 1.2 million followers, similarly published the 5 June Directive on its Instagram account[44]. Like other media outlets, "3meed_news" highlighted the mandatory nature of the requirement that all Qataris leave, characterizing the 14 days as a "grace period" and reiterating the "security" rationale[45].

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41 *See* "UAE announces it is cutting all diplomatic ties with Qatar", *Al Arabiya* (5 June 2017), http://english.alarabiya.net/en/News/gulf/2017/06/05/UAE-announces-it-is-cutting-all-diplomatic-ties-with-Qatar-.html.

42 *See* **Vol. II, Annex 44**, "UAE News – The official statement of the UAE boycott of the State of Qatar", *Akhbar Al Emarat* (5 June 2017), https://www.youtube.com/watch?v=l8xf76fjk8U.

43 *See* **Vol. II, Annex 43**, "UAE cuts diplomatic ties with Qatar – Special Coverage", *Abu Dhabi TV* (5 June 2017), https://www.youtube.com/watch?v=1sGbP0DITIU.

44 *See* **Vol. II, Annex 49**, Instagram Post, @3meed_news (5 June 2017 at 7:47 a.m.) (with certified translation).

45 *See* **Vol. II, Annex 49**, Instagram Post, @3meed_news (5 June 2017 at 7:47 a.m.) (with certified translation); *see also, e.g.*, Fakhrul Islam, "Qatar crisis: The boycott decision and its aftermath", *Khaleej Times* (5 June 2018), https://www.khaleejtimes.com/region/qatar-crisis/qatar-crisis-the-boycott-decision-and-its-aftermath ("The UAE gives Qatari residents and visitors 14 days - starting from June 5 - to leave the country for precautionary security reasons.").

The United Arab Emirates has decided to prohibit Qatari citizens from entering or passing through the UAE. It is granting Qatari residents and visitors *a grace period of 14 days to leave for security and precautionary reasons*, and it forbids UAE citizens to travel to, reside in, or pass through Qatar

2.18 Qatari news media operating in the UAE also circulated news of the 5 June Directive. As discussed below, in the weeks leading up to the 5 June Directive, Al Jazeera Media Network detected a blocking of access to its satellite distribution website for users in the UAE[46]. However, on 5 June 2017, access to the website was apparently temporarily unblocked, allowing Qataris in the UAE to access information about the Expulsion Order from Al Jazeera[47].

2.19 The Expulsion Order continued to be prominently reported in local media coverage in the days that followed 5 June and leading up to the 19 June deadline[48]. For example, on 7 June 2017, Gulf News, an Emirati paper, published an article entitled, "Ways you might be affected by the Qatar situation", which publicized the 5 June Directive and provided guidance in response to frequently

46 *See* paras. 2.43, 5.144–5.145, below.

47 *See* para. 5.30, below; **Vol. XII, Annex 264**, DCL-181 Witness Declaration, Al Jazeera Media Network Representative, para. 8.

48 *See, e.g.*, "Latest: UAE among 4 Arab nations to sever ties with Qatar", *Khaleej Times* (6 June 2017) ("The UAE has given Qatari residents and visitors 14 days to leave the country"), https://www.khaleejtimes.com/region/saudi-arabia/Qatar-isolated-over-terror-ties.

posed questions[49]. For "Qatari national[s] living in the UAE", the response to the question "What do I do?" was simple and clear: "You have 14 days to leave, starting from Monday, June 5, 2017."[50]

2.20 Nothing about the terms of the UAE's 5 June Directive to leave was precatory. To the contrary, as the wide dissemination and consistent messaging of the Directive by the UAE Government demonstrated, Qataris had a very specific time period of 14 days to leave the UAE, the period was characterized as a "grace period" and the UAE had invoked "precautionary security reasons" to justify the Discriminatory Measures. As intended by the UAE, the Directive was crystal clear: Qataris *had* to leave the UAE or face the consequences for their liberty and safety, as well as that of their families and friends, should they contravene a directive issued by the UAE Government.

2.21 Accordingly, the UAE's sudden announcement of the 5 June Directive and its narrow 14-day window instilled widespread panic among Qataris in the UAE. The language of the 5 June Directive made it clear that the presence of Qataris in the UAE after 19 June, the end of the 14-day period would be seen as a threat to the UAE's security and leave them susceptible to abuse in the sense of police harassment, interrogation, arbitrary arrest, or detention without any respect for

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[49] *See* Paul Crompton & Aya Sadek, "Ways you might be affected by Qatar situation", *Gulf News* (7 June 2017), https://gulfnews.com/news/uae/general/ways-you-might-be-affected-by-qatar-situation-1.2039817.

[50] *See* Paul Crompton & Aya Sadek, "Ways you might be affected by Qatar situation", *Gulf News* (7 June 2017), https://gulfnews.com/news/uae/general/ways-you-might-be-affected-by-qatar-situation-1.2039817.

their rights[51]. Emiratis themselves advised their Qatari friends to leave the UAE within the 14-day period, because they feared for their safety, being versed in the potential consequences of ignoring a State diktat[52].

2.22 The panic of Qataris forced to leave was compounded by the knowledge that Qataris would no longer have a diplomatic presence in the UAE capable of protecting them[53]. After 5 June 2017, all Qatari diplomatic personnel left as ordered by the UAE, within the 48-hour period allowed for evacuation[54]. Qatari diplomats had to surrender their diplomatic IDs and papers and were forced to leave without even being able to shut off water or electricity in the Consulate building[55]. Many Qatari diplomats were forced to abandon valuable property,

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51 *See* **Vol. II, Annex 1**, UAE Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017) (referencing "precautionary security reasons").

52 *See, e.g*., **Vol. VII, Annex 180**, DCL-028, paras. 21–22, 24 ("My [Emirati] friends were also increasingly scared for me to stay in the country. . . . [they] knew that their ability to protect me [in the event that someone found out I was Qatari] was limited . . . based on the concerns of my parents, fiancé, and friends and the fact that the situation was not improving, it became clear to me that I needed to leave. . . . [My friends] drove me to the airport, but they were terrified of what their government might do to them for this kindness."); **Vol. XI, Annex 253**, DCL-168, para. 10 ("I contacted a close Emirati friend and business associate who was working in Dubai. I asked him what I was supposed to do about my company, . . . [redacted] . . . I remember his words – 'you have to go.'").

53 Before 5 June 2017, Qatar maintained both an Embassy in Abu Dhabi and a Consulate in Dubai.

54 *See* **Vol. VII, Annex 164**, DCL-002, para. 10. ("On the morning of 5 June 2017, the Director of the UAE Ministry of Foreign Affairs Office in Dubai . . . called the Qatari Consul in for a meeting. This was at around 9:30 a.m. . . . The UAE Director asked the Consul whether he had seen the news that morning, to which the Consul responded that he had seen the news and that he understood the order that Qatari diplomats in the UAE had 48 hours to leave the country . . . The Consul left the UAE later that day to return to Qatar.").

55 *See* **Vol. XI, Annex 246**, DCL-153, para.10 ("I was informed that . . . the members of the Qatari diplomatic delegation to the UAE must surrender their diplomatic IDs and papers").

including personal vehicles that had to be left on the Consulate premises[56]. They did not even have time to arrange for the shipping of sensitive government documents, and had to destroy them[57]. An official at the Qatari Consulate in Dubai described the chaos surrounding the UAE's announcement: "[t]he office was bedlam on 5 June 2017. . . . There were so many questions left unanswered. . . . Would we be able to keep paying salaries? Would the Consulate building be accessible? We simply did not know."[58]

2.23 Even as Qatari diplomats were evacuating, the Qatari Embassy and Consulate, fearing for the safety of Qataris in the UAE, reached out to Qataris through their Twitter accounts to warn them about the 5 June Directive:

> "Citizens of Qatar must leave the United Arab Emirates within 14 days in accordance with the statement issued by the competent Emirati authorities";
>
> "The competent authorities in the United Arab Emirates stated that all land, sea and air passages shall be closed before the traffic arriving from and departing to Qatar within 24 hours";
>
> If the citizens of Qatar cannot travel directly from the United Arab Emirates to Qatar, the Embassy

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[56] *See* **Vol. VII, Annex 164**, DCL-002, para. 24 ("My understanding is that the UAE authorities have not taken anything from the Consulate; but, it is only accessible on foot, no cars can go in or out and nothing is supposed to leave. Therefore, even though the cars that I stored at the Consulate are owned personally and are not consular property, I have not been able to retrieve them to this day.").

[57] *See* **Vol. VII, Annex 164**, DCL-002, para. 14.

[58] *See* **Vol. VII, Annex 164**, DCL-002, para. 14.

> advises them to travel through the State of Kuwait or the Sultanate of Oman";
>
> "If you wish to inquire about other issues, please contact the following number: [*phone number*]"[59].

2.24 Qatari diplomats reported that, once the 5 June Directive and other measures were announced, Qataris living in the UAE began frantically calling for advice as to what they should do to protect themselves[60]. Since all Qatari diplomats were forced to return to Qatar and the Consulate and Embassy were to be closed, Qatari officials told Qataris that they could not guarantee consular assistance in the UAE to ensure their safety[61]. In the words of one Qatari official,

> "My duty was to keep Qataris safe. After the UAE ordered Qataris to leave the UAE, the atmosphere within the UAE became hostile towards Qataris. The UAE's 5 June 2017 statement . . . was being broadcast widely by the Emirati media, in a tone and manner as if it was a threat of war against the Qatari people. I and other Qataris that I spoke to understood it in the same way—why else would they have asked Qataris to leave?"[62]

2.25 While the Qatari government has not been able to verify the precise number of Qataris remaining in the UAE, it appears that some Qataris did not flee

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[59] **Vol. II, Annex 52**, Twitter Posts, @qatarembassyUAE (5 June 2017) (with certified translation)

[60] *See* **Vol. VII, Annex 164**, DCL-002, paras. 13, 16–23.

[61] *See* **Vol. VII, Annex 164**, DCL-002, para. 18.

[62] **Vol. VII, Annex 164**, DCL-002, para. 15.

the UAE within the 14-day period allotted[63]. Qataris who were not among those able to leave the UAE immediately witnessed acts of harassment and violence against Qataris.[64] One Qatari reported hearing a constant barrage of anti-Qatari statements in public places[65]. Others reported that their cars, which had Qatari plates, had been vandalized or confiscated by the Emirati police[66]. A Qatari student was told by his friends who were attempting to arrange to leave the UAE

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63 For example, out of a total 975 complaints, two complaints were submitted on behalf of Qataris residing in the UAE at the time the complaint was made. *See* **Vol. XII, Annex 272**, Affidavit, State of Qatar Compensation Claims Committee, Exhibit B (Portion of CCC Claims Database related to the UAE).

64 *See, e.g.,* **Vol. X, Annex 243**, DCL-148, para. 1 ("As I was waiting, a group of Emiratis in traditional Emirati clothing made rude comments about my traditional Qatari clothing."); **Vol. VII, Annex 247**, DCL-161, para. 14 ("[Redacted] changed their attitudes immediately, and began sending [redacted] harassing messages in the hours following the UAE's announcement, bullying [redacted] because of [redacted] Qatari identity. One of the messages told [redacted] to pack [redacted] things and leave the UAE."); *see also* **Vol. VIII, Annex 187**, DCL-038, para. 12; **Vol. X, Annex 236**, DCL-139, para. 9; **Vol. XI, Annex 253**, DCL-168, para. 15.

65 *See* **Vol. VII, Annex 180**, DCL-028, para. 20. ("I would overhear a lot of anti-Qatar and anti-Qatari statements. People would swear at Qataris or make comments about the Emir of Qatar."); *see also* **Vol. XI, Annex 253**, DCL-168, para. 15 ("I was seated very close to a table of Emiratis, who were loudly saying terrible things about Qatar . . . I knew they recognized me as a Qatari because I was wearing my Qatari dress; they clearly wanted me to hear their conversation. I felt a great deal of hostility was being directed towards me simply because of my Qatari identity.").

66 *See* **Vol. VII, Annex 172**, DCL-013, para. 13 ("After the exam, I saw that my car, which had a Qatari license plate . . . was damaged. It looked like it had been hit by another car and then attacked by hand…I could tell by the damage that it had been caused deliberately, which made me feel very unsafe. I did not report this to the police, because I was not sure if it was safe for a Qatari to go to Emirati police, given the news and anti-Qatari climate that morning."); *ibid*, para. 32 ("One of my . . . friends in the UAE who used to park his car outside of his building told me that the police took away his car for no reason one or two months after the measures were imposed. The car had a Qatari license plate . . . . When he went to the police station to ask for his car back, the police officer told him to thank god that he was . . . not Qatari, because if he had been Qatari, he would never had given him the car back. The police officer then told my friend that it was mandatory to change the license plate to an Emirati one.").

that they had stopped wearing their traditional clothes: they were afraid and did not want to look Qatari[67].

B. The Travel Ban and Restrictions on Movement

2.26 In addition to the Expulsion Order, the 5 June Directive also established an unconditional ban on travel and entry of "Qatari nationals" in the UAE (the "***Absolute Travel Ban***"), as well as measures restricting Qataris and "Qatari means of transportation" from UAE airspace and seaports. It likewise restricted Emiratis from entering or transiting through Qatar. These actions were particularly significant in light of the previously existing ease of movement between Qatar and the UAE under the GCC framework. Prior to 5 June 2017, the volume of travel between the two countries was extremely high, with 321,088 Qatari entries into the UAE between January 2016 and 4 June 2017[68]. Emirati travel to Qatar was also frequent, with 188,927 entries by Emiratis into Qatar from January 2016 to May 2017[69].

2.27 Almost immediately after the announcement of the 5 June Directive, UAE agencies and authorities began taking additional steps to effectuate the Absolute Travel Ban. On 5 June 2017 at 8:37 a.m., several hours after issuance of the 5 June Directive, the UAE General Civil Aviation Authority issued a Notice to Airmen ("***NOTAM***") stating "ALL ACFT [AIRCRAFT] REGISTERED IN THE

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[67] **Vol. VII, Annex 172**, DCL-013, para. 31 ("My Qatari friends who remained in the UAE for a few days after 5 June almost completely stopped wearing the Qatari traditional outfit. They told me that they did not want to look Qatari because they were afraid. They were afraid of the Emirati police and authorities, but also of Emirati people.").

[68] **Vol. XII, Annex 276**, Affidavit, Airport Passports Department, State of Qatar Ministry of Interior.

[69] **Vol. XII, Annex 273**, Affidavit, State of Qatar Planning and Statistics Authority, para. 3.

STATE OF QATAR ARE NOT AUTHORIZED TO OVERFLY EMIRATES FIR [Flight Information Region] DEPART OR LAND AT UAE AERODROMES"[70]. On the same day, the Ministry of Interior's General Directorate of Residency and Foreign Affairs issued a circular stating that "according to a new regulation which will be in affect [sic] starting from today 05 June 2017 in all of United Arab Emirates borders (Sea Land and Airports) . . . Qatari nationals . . . [were prevented] . . . from entry through all the UAE Airports, land and seaports . . . [and] . . . UAE citizens . . . [were prevented from] . . . travel to Qatar or transit through its territory."[71] Etihad Airways, the flag carrier of the UAE, and Emirates, the largest UAE airline, likewise confirmed the ban on travel to Qatar, tweeting in the morning of 5 June 2017 that they were suspending all flights to and from Doha as of 6 June[72]:

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70 **Vol. II, Annex 3**, United Arab Emirates General Civil Aviation Authority, *NOTAM LYA7213* (5 June 2017).

71 **Vol. II, Annex 2**, United Arab Emirates Ministry of Interior, General Directorate of Residency & Foreigners Affairs - Dubai, *Ban on Travelers from and to Qatar* (5 June 2017) (with certified translation).

72 Twitter Post, @EtihadAirways (5 June 2017 at 10:05 a.m.), https://twitter.com/EtihadAirways/status/871608859416199169; Twitter Post, @emirates (5 June 2017 at 2:51 p.m.), https://twitter.com/emirates/status/871680809614409728.

2.28 Three days later, on 8 June, the UAE General Civil Aviation Authority announced on Twitter that it had closed the airspace for all air traffic to and from Doha[73]:

2.29 The UAE General Civil Aviation Authority subsequently confirmed on 13 June that it was "committed to its decision issued on [5 June 2017], banning all Qatari aviation companies and aircraft registered in the State of Qatar from landing at the State's airports or transiting its sovereign airspace"[74].

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[73] Twitter Post, @gcaauae (8 June 2017 at 10:00 a.m.), https://twitter.com/gcaauae/status/872694715933523969.

[74] "General Civil Aviation Authority bans aviation companies registered in UAE to operate direct and indirect flights to Qatar", *Emirates News Agency* (13 June 2017), http://wam.ae/en/details/1395302618767.

2.30 Similarly, immediately following the 5 June Directive, multiple UAE ports, including in Abu Dhabi, Fujairah, Sharjah, and Ras Al Khaimah, took measures in furtherance of the Directive's orders to restrict access to seaports and territorial waters.[75] On 11 June 2017, the UAE Federal Transport Authority unified this approach via a country-wide order issued to all ports and shipping agents carrying three stark prohibitions: (*i*) not to receive any Qatari-flagged vessel, or indeed any vessel owned by a Qatari company or individual; (*ii*) not to load or unload any cargo of Qatari origin in any port or water of the UAE; and (*iii*) not to allow ships to load any cargo of UAE origin bound for Qatar[76]. The individual port authorities quickly followed suit[77].

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75 *See, e.g.*, **Vol. II, Annex 4**, Chief Harbour Master, Abu Dhabi Ports, *Restriction to vessels and cargo Coming from / going to Qatari ports* (5 June 2017); **Vol. II, Annex 5**, Harbour Master, Port of Fujairah, *Entry Restrictions to Vessels Flying Qatar Flag, Vessels Destined to or Arrival from Qatar Ports* (5 June 2017); **Vol. II, Annex 6**, General Manager Ras Al Khaimah Ports, Saqr Port Authority, "*Restrictions for vessels flying Qatari flag and vessels loading for Qatar*" (6 June 2017); **Vol. II, Annex 7**, Director - Operations, Government of Sharjah Department of Seaports & Customs, *Restrictions to All Qatar Vessels and Cargoes* (6 June 2017); **Vol. II, Annex 8**, Harbour Master, RAK Ports, *Notice to Mariners No. 10* (7 June 2017); **Vol. II, Annex 9**, Abu Dhabi Petroleum Ports Authority, *Enforcement of Blockade with Qatar* (undated).

76 *See* **Vol. II, Annex 11**, United Arab Emirates Federal Transport Authority, *Circular No. 2/2/1023: Implementation Process of the decision related to Qatar sanctions* (11 June 2017).

77 *See, e.g.*, **Vol. II, Annex 12**, DP World, *Circular: Entry Restrictions to All Qatar Vessels and Cargoes - FTA* (11 June 2017) (implementing Federal Transport Authority Circular No. 2/2/1023 as operator of Jebel Ali Port, Mina Rashid Port, and Mina Al Hamriya Port); **Vol. II, Annex 12,** DP World, *Circular: Entry Restrictions to All Qatar Vessels and Cargoes - FTA* (11 June 2017); **Vol. II, Annex 14**, Chief Harbour Master, Abu Dhabi Ports, *Implementation Process of the Decision related to Qatar Sanctions* (12 June 2017); **Vol. II, Annex 15**, Harbour Master, Port of Fujairah, *Notice to Mariners No. 225: Implementation Process of the Decision Related to Qatar Sanctions* (12 June 2017); **Vol. II, Annex 21**, Dubai Maritime City Authority, *Circular MO/MSE/CO11/2017: Restriction to vessels and cargo coming from/going to Qatari ports* (6 July 2017). On 12 February 2019, the Abu Dhabi Ports authority appeared to amend its directive implementing the Federal Transport Authority Circular by lifting the restrictions on Qatari cargo, though Qatari-owned or -flagged vessels remained barred from Abu Dhabi ports. **Vol. II, Annex 32**, Chief Harbour Master, Abu

2.31 Further, as with the Expulsion Order, UAE State and other media broadly publicized the Absolute Travel Ban, in some cases providing additional information and context to the stark terms of the 5 June Directive. For example, on 7 June 2017, Emirates News Agency, the official state media source, issued a news bulletin that stated in full: "The United Arab Emirates authorities has [*sic*] announced that all travellers holding Qatari passports are currently prohibited from travelling to, or transiting through, the UAE. In addition, expatriates residing in Qatar and in possession of a Qatari Residence Visa shall not be eligible for Visa on Arrival in the UAE. This ruling applies to all airlines flying into the UAE."[78]

2.32 On 11 June 2017, faced with mounting pressure from international human rights organizations such as Amnesty International, and widespread media coverage and concern over the effects of the measures, as discussed below[79], the UAE announced that its President had "instructed the authorities concerned to take into consideration the humanitarian circumstances of Emirati-Qatari joint families . . . [I]n implementation of these directives, the Ministry of Interior has set up a telephone line (+9718002626) to receive such cases and take appropriate

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Dhabi Ports, *CHM Direction No. 02/2019: Update on Implementation Process of the Decision related to Qatar Sanctions* (12 February 2019). However, the UAE's Federal Land & Maritime Transport authority subsequently announced that its policy remained unchanged. *See* **Vol. II, Annex 33**, "Federal Land & Maritime Transport Authority: No change in boycott measures against Qatar at UAE sea ports", *Emirates News Agency* (21 February 2019), http://wam.ae/en/details/1395302741506.

78 "Qatari nationals and residents banned from travelling to or via UAE", *Emirates News Agency* (7 June 2017), http://wam.ae/en/details/1395302617983.

79 *See* Chapter II, Section IV, below; *see also, e.g.*, Margherita Stancati, "Qatar Crisis Takes Toll on Families Caught Between Countries", *Wall Street Journal* (8 June 2017), https://www.wsj.com/articles/qatar-crisis-takes-toll-on-families-caught-between-countries-1496958822.

measures to help them."[80] The UAE then announced a purported exception to the Absolute Travel Ban, for only a subset of Qataris affected, to allow for the entry, in certain undisclosed circumstances, of individuals in joint Emirati-Qatari families (the "***Modified Travel Ban***"). In practice, however, this modification had little effect, including due to its limited scope, as the UAE proposed no similar modification with respect to all other affected Qataris, meaning that Qataris who had, for example, studied or worked in the UAE still remained subject to an absolute ban on travel—even if they previously had lived in the UAE but were forced to leave by the Expulsion Order. In addition, the "hotline" was actually a security channel run by the Abu Dhabi Police and the lack of functionality of the telephone line, the failure to provide any transparency as to the method or criteria for granting entry, the haphazard and inconsistent decisions, and the general climate of uncertainty and fear amongst Qataris rendered the "hotline" not only ineffective but affirmatively arbitrary, as discussed in greater detail below.[81]

2.33 Due to the frequency and freedom of movement between the two countries prior to 5 June 2017, the impacts of the travel bans—both the original Absolute Travel Ban and the subsequent Modified Travel Ban—were immediate and severe. In particular, individual citizens of the two countries have historically maintained close ties, spurred by the historical and GCC framework of free movement across the borders. Prior to the Discriminatory Measures, thousands of

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[80] **Vol. II, Annex 13**, United Arab Emirates Ministry of Foreign Affairs, *President issues directives to address humanitarian cases of Emirati-Qatari joint families* (11 June 2017), https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/11-06-2017-UAE-Qatar.aspx#sthash.z7G6Rt1q.dpuf.

[81] *See* paras. 4.41-4.53, below; *see also* Christopher Davidson, "The Making of a Police State", *Foreign Policy* (14 Apr. 2011), https://foreignpolicy.com/2011/04/14/the-making-of-a-police-state-2/; **Vol. III, Annex 101**, OHCHR, *Press briefing note on United Arab Emirates* (4 January 2019).

Qataris lived, studied, worked, owned property, and traveled in the UAE,[82] with Emiratis doing the same in Qatar. Family ties likewise often cut across national boundaries, and as of June 2017, there were a reported 3,694 marriages between Qataris and Emiratis[83]. A total of 767 children with one Qatari and one Emirati parent were born in Qatar from January 2015 to January 2019 alone[84]. The UAE has also been a top choice for Qatari students seeking to study abroad, third only to the United Kingdom and the United States, with hundreds of Qataris pursuing university and post-graduate studies there every year prior to 5 June 2017[85].

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82 *See* Chapter V, below. *See, e.g.*, **Vol. IX, Annex 206**, DCL-079, para. 10 ("Traveling to the UAE was very easy: the process was very fast, we used to travel without delay and it was not expensive to travel . . . . We used to travel with only our ID cards and did not need our passports. At the Dubai and Sharjah airports, there was a line for 'GCC nationals' and a line for others."); **Vol. VIII, Annex 193**, DCL-048, para. 10 ("It was easy to travel to the UAE prior to June 5, 2017. The flight tickets were cheap . . . and I would stay at a hotel in Dubai. I also sometimes drove there. I would travel alone for business or with my family for weekends and vacation."); **Vol. IX, Annex 224**, DCL-108, para. 8 ("I travelled to Qatar often to see my family and for business . . . These trips were easy to make because I did not even need to book a flight; I would usually drive to Doha through Saudi Arabia.").

83 *See* **Vol. III, Annex 97**, Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates, document AU ARE 5/2017 (18 August 2017), pp. 1–2; **Vol. V, Annex 135**, National Human Rights Committee, *100 Days Under the Blockade: NHRC Third report on human rights violations caused by the blockade imposed on the state of Qatar* (30 August 2017), p. 19 (citing nearly 6,500 mixed marriages between Qataris and Emiratis, Saudis or Bahrainis as of June 2017).

84 *See* **Vol. XII, Annex 273**, Affidavit, State of Qatar Planning and Statistics Authority, para. 3.

85 *See* UNESCO, *Global Flow of Tertiary-Level Students*, http://uis.unesco.org/en/uis-student-flow (showing 389 Qataris studying in post-secondary institutions in the UAE in 2016); "Middle Eastern Students Abroad: In Numbers", *TopUniversities* (10 April 2015), https://www.topuniversities.com/blog/middle-eastern-students-abroad-numbers (reporting 434 Qataris studying at universities in the UAE in 2012, based on UNESCO data); **Vol. XII, Annex 273**, Affidavit, State of Qatar Planning and Statistics Authority, para. 3; **Vol. V, Annex 128**, National Human Rights Committee, *First Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar* (13 June 2017), http://www.nhrc-qa.org/wp-content/uploads/2017/06/First-Report-of-the-Qatar-National-Human-Rights-Committee.pdf, p. 9 (showing that as of June 2017, there were approximately 4,600 students from the UAE, Saudi Arabia and Bahrain studying in Qatari public schools).

Commercial ties were extensive as well, with about 4,200 Qatari companies operating in the UAE and 1,074 Emirati companies operating in Qatar as of May 2016[86].

2.34 The Modified Travel Ban remained in place unchanged until several weeks prior to the Court's Order of Provisional Measures, when, following questioning from the Court, the UAE issued another statement. In its 5 July 2018 statement—issued exactly one year and one month following the imposition of the measures—the UAE claimed that "[s]ince its announcement on June 5, 2017", it "has instituted a requirement for all Qatari citizens overseas to obtain prior permission for entry into the UAE. Permission may be granted for a limited-duration period, at the discretion of the UAE government". The statement further said it "confirm[ed] that Qatari citizens already resident in the UAE need not apply for permission to continue residence in the UAE. However, all Qatari citizens resident in the UAE are encouraged to obtain prior permission for re-entry into UAE territory. All applications for entry clearance may be made through the telephone hotline announced on June 11, 2017 (+9718002626)."[87]

2.35 Although presented as a clarification, the UAE's 5 July 2018 statement insisted that Qataris living in the UAE "need not apply for permission to continue residence", while at the same time providing that entry permits "may be granted for a *limited-duration period*" only. At some point following the 5 July 2018

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86 Qatar Ministry of Foreign Affairs, *Qatar - UAE Joint Higher Committee Holds Session* (2 May 2016), https://mofa.gov.qa/en/all-mofa-news/details/2016/05/02/qatar---uae-joint-higher-committee-holds-session.

87 **Vol. II, Annex 29**, United Arab Emirates, Ministry of Foreign Affairs, *An Official Statement by The UAE Ministry of Foreign Affairs and I nternational Cooperation* (5 July2018), https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/05-07-2018-UAE-Statement-of-MoFAIC.aspx.

statement, the UAE further appears to have established an online system, but only informed certain Qataris of its availability on an ad hoc basis[88]. None of these modifications have addressed the inherently arbitrary and discriminatory manner of application of these methods, nor relieved the impacts on Qataris[89].

C. The Attack on Freedom of Expression and Incitement of Anti-Qatari Sentiment

2.36 Simultaneously with the 5 June Directive, the UAE also took a series of actions designed to broadly suppress speech critical of its actions against Qataris; namely, by criminalizing expressions of "sympathy" for Qatar (***C.1***) and by blocking Qatari news media in the UAE (***C.2***). This allowed the UAE to pursue its anti-Qatar narrative unfettered, and the UAE openly pursued and encouraged anti-Qatari hate speech and propaganda, leading to the creation and perpetuation of a climate of fear and hostility against Qatar and Qataris (***C.3***).

1. The Criminalization of "Sympathizing" with Qatar

2.37 On 7 June 2017, the UAE took a further step in its discriminatory targeting of Qatar and its people by announcing that it would criminalize "sympathizing" with Qatar[90]. The UAE Ministry of Justice posted the following statement on its Twitter account[91]:

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88 *See* paras. 5.72–5.73, below.

89 *See* para. 5.80, below.

90 *See* **Vol. II, Annex 10**, Twitter Post, *@MOJ_UAE* (6 June 2017) (with certified translation) (official account of the UAE Ministry of Justice); **Vol. II, Annex 46**, "Attorney General Warns against Sympathy for Qatar or Objecting to the State's Positions", *Al-Bayan Online* (7 June 2017) https://www.albayan.ae/across-the-uae/news-and-reports/2017-06-07-1.2969979 (certified translation); "UAE bans expressions of sympathy towards Qatar –

The Attorney General of the State warns that any participation on social media, verbally or written, or by any other means, in expressions of any sympathy for the State of Qatar or any objection to the position of the UAE or other countries that have taken firm positions against the government of Qatar shall be subject to imprisonment from 3 to 15 years and a fine of not less than 500 thousand dirhams.

2.38 The Attorney General's statement was subsequently published in the government-owned Emirati newspapers *Al Bayan* and *Al Ittihad*, on 7 and 8 June 2017, respectively. The news agency UAE BARQ similarly publicized the statement to its 1.92 million followers on Twitter[92].

media", *Reuters* (7 June 2017), https://www.reuters.com/article/gulf-qatar/uae-bans-expressions-of-sympathy-towards-qatar-media-idUSL8N1J40D2; **Vol. V, Annex 127**, Committee to Protect Journalists, *UAE threatens 15 y ears in prison for expressions of 'sympathy' with Qatar* (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. Warn 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; *see also* **Vol. II, Annex 38**, United Arab Emirates Federal Decree-Law No. (5) of 2012 on Combating Cybercrimes (13 August 2012) (hereinafter "Federal Decree on Combating Cybercrimes").

91 **Vol. II, Annex 10**, Twitter Post, @MOJ_UAE (6 June 2017) (certified translation) (official account of the UAE Ministry of Justice).

92 *See* **Vol. II, Annex 47**, Twitter Post, @UAE_Barq (7 June 2017) (certified translation) ("The Attorney General warns against any participation, verbal or written, on social media websites or any other medium, that expresses any sympathy for the State of Qatar or opposition to the decisive stance that the UAE and other states have taken with decisive positions against the government of Qatar, under penalty of 3 to 15 years in prison and a fine of no less than AED 500,000.").

2.39 The criminalization of "sympathizing" had an immediate chilling effect on any potential domestic backlash to the Discriminatory Measures, and further alienated Qataris from their Emirati friends and family, who now feared uncertain punishment if they maintained the same relationship with or took steps to assist their Qatari brethren[93]. They were also well aware of the risks to friends and family and those who assist them, such as lawyers and educational authorities, and in many cases would not engage out of fear that such contact would put these individuals in danger[94].

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93 *See* **Vol. VII, Annex 170**, DCL-011, para. 22 ("I feel that a gap has opened up between my wife's Emirati family and me since 5 June 2017. I can tell that some members of our family have bad feelings towards me solely because I am Qatari and despite the fact that we used to be close."); **Vol. VIII, Annex 195**, DCL-053, para. 11 ("This situation has created a rift within my Emirati family."); **Vol. IX, Annex 206**, DCL-079, para. 29 ("However, when it was announced by the UAE Attorney General that Emiratis would be imprisoned or fined for showing sympathy to Qatar and Qataris, we stopped joking on our WhatsApp family group. Some of my cousins have removed me from social media. They told me that they feared getting in trouble because of their Qatari family."); **Vol. IX, Annex 218**, DCL-097, para. 17 ("We barely even speak with our Emirati family now. They only call us when they travel abroad from non-UAE numbers"); **Vol. VII, Annex 165**, DCL-004, para. 22; **Vol. VIII, Annex 186**, DCL-036, para. 33; **Vol. VIII, Annex 186**, DCL-037, paras. 13, 25; **Vol. VIII, Annex 189**, DCL-041, paras. 18–20; **Vol. IX Annex 204**, DCL-076, para. 23; **Vol. IX, Annex 207**, DCL-080, para. 28; **Vol. IX, Annex 208**, DCL-082, para. 30; **Vol. IX, Annex 209**, DCL-083, para. 29; **Vol. X, Annex 237**, DCL-140, para. 11; **Vol. XI, Annex 253**, DCL-168, para.25.

94 *See, e.g.*, **Vol. XI, Annex 256**, DCL-172, para. 16 ("I believe the registrar's office had realized that I was Qatari and therefore did not want to help me. In [redacted] I called the registration department again, and that time I was asked to pay a fee for my transcript. I therefore sent an [redacted] friend who is a graduate of [redacted] to the registration department to pay the fee on my behalf. However, when he tried to do so, he was told to visit the registration department's director, at which point I told him to stop helping me. I was worried that he could be punished under the UAE's law punishing sympathy with Qataris, and he agreed"); **Vol. IX, Annex 211**, DCL-086, para. 11 ("Before then I used to communicate regularly with my Emirati friends in the UAE, however we have not spoken to each other since. Given the risk of fines or imprisonment, I believe that my friends are too afraid to call me, and I do not want to get them into trouble by calling them. We do not even wish each other Eid Mubarak."); **Vol. VIII, Annex 194**, DCL-51, para. 13; **Vol. X, Annex 227**, DCL-113, para. 14.

2.40 And this threat was not idle: on 6 July 2017, the application of the cybercrimes law to "sympathizing" with Qatar claimed its first public victim[95]. An Emirati man, Ghanem Abdullah Mattar, disappeared, apparently arrested by UAE security forces hours after posting a series of videos on the popular social media site Snapchat, expressing his opinion that Emiratis should not vilify Qataris[96]. Following his disappearance, Amnesty International called for his immediate release, tweeting that if the grounds for his arrest were his peaceful remarks regarding the Gulf crisis, then he would be considered a prisoner of conscience[97].

2.41 Most recently, the UAE's brutal repression of any support for Qatar manifested during the 2019 Asian Cup, hosted in the UAE from 5 January to 1 February 2019. Ali Issa Ahmad, a British national, wore a Qatari football shirt to the Qatar-Iraq match on 22 January 2019, reportedly "not knowing that doing so in the UAE is an offence punishable with a large fine and an extended period of

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95 *See* "Fears grow for UAE citizen arrested after Snapchats 'sympathetic' to Qatar", *Middle East Eye* (11 July 2017), https://www.middleeasteye.net/news/uae-citizen-arrested-following-showing-sympathy-qatar-snapchat-1752665935; **Vol. V, Annex 142**, Amnesty International, *Report 2017/18: The State of the World's Human Rights* (2018), https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF ("In June, UAE's Attorney General announced that anyone expressing sympathy with Qatar could face up to 15 years' imprisonment and fines. In July, Ghanim Abdullay Matar was detained for a video he posted online in which he expressed sympathy towards the people of Qatar.").

96 In his videos, Mr. Mattar challenged his country's Discriminatory Measures by stating that Emiratis should "[s]top swearing and cursing. We have kinship ties with our people in Qatar", and concluding with a message of support for Qatar, saying: "[s]ome people lead and others are led. Here is Qatar proving that it will never be led. It leads its people but it nobody leads it." **Vol. VI, Annex 160**, Snapchat Video, Ghanem Abdullah Mattar (12 July 2017) (certified translation).

97 *See* **Vol. V, Annex 133**, Twitter Post, @AmnestyAR (10 July 2017 at 2:14 a.m.) (certified translation), https://twitter.com/AmnestyAR/status/884340023369375744.

imprisonment"[98]. Security officials confronted him after the match and followed him to his hotel in Dubai. The next morning they "forced him into the back of his car, handcuffed him, cut the shirt from him inflicting several knife wounds to his arm and chest, punched him in the face [knocking out a tooth] and put a plastic bag over his face"[99]. After receiving treatment at a hospital for his severe injuries, Mr. Ahmad was transferred to a police cell in Sharjah and was held there until his release on 12 February 2019, 21 days after the game he attended. Upon arriving back in the United Kingdom after his release, Mr. Ahmad said: "I thought 100% that I was going to die in the UAE"[100].

2. The Suppression of Qatari Media

2.42 At the same time that it sought to suppress individual voices of dissent, the UAE took even broader moves to block the expression of independent views that could provide a counterpoint to the UAE's state-controlled narrative regarding the imposition of the 5 June Directive and other measures. Beginning even before the issuance of the 5 June Directive, the UAE launched an assault on freedom of

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98 "British man detained in UAE after wearing Qatar football shirt to match", *The Guardian* (5 February 2019), https://www.theguardian.com/world/2019/feb/05/british-man-detained-in-uae-after-wearing-qatar-football-t-shirt-to-match.

99 Diane Taylor, "I was sure I'd die: UK football fan detained in UAE feared for his life", *The Guardian* (15 February 2019), https://www.theguardian.com/world/2019/feb/15/i-was-sure-i-would-die-ali-issa-ahmad-uk-football-fan-detained-in-uae-feared-for-his-life.

100 Diane Taylor, "I was sure I'd die: UK football fan detained in UAE feared for his life", *The Guardian* (15 February 2019), https://www.theguardian.com/world/2019/feb/15/i-was-sure-i-would-die-ali-issa-ahmad-uk-football-fan-detained-in-uae-feared-for-his-life. The UAE denies that Mr. Ahmad was tortured for supporting Qatar; instead, it has claimed, unbelievably, that his injuries were self-inflicted and that he admitted to wasting police time and making false statements. *Ibid.*

expression by blocking access to news websites and television stations operated by Qatari entities, including Al Jazeera[101].

2.43 As early as 24 May 2017, Al Jazeera reported that it began to detect interference with its digital distribution platforms for the UAE[102]. Al Jazeera has concluded that the UAE blocked access to its websites and news content on mobile applications—a significant part of its platform—beginning on that date[103]. Approximately six weeks later, the UAE openly took additional steps to sever traditional broadcasting. In particular, on 6 July 2017, the Abu Dhabi Department of Economic Development issued a circular prohibiting the broadcast and display of Qatari service supplier beIN Media Group's audio-visual channels beIN Sports French and beIN Sports Arabic, as well as audio-visual channels from Qatari service suppliers, including Al Jazeera, Qatar TV, Shaer Al-Rasul, Al Mujtama, and Al-Rayyan, in commercial establishments in the Emirate of Abu Dhabi[104]. The circular, pictured below, stipulates that legal action will be taken if commercial establishments do not comply. A 12 June 2018 letter from the UAE

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101 *See* **Vol. V, Annex 125**, Committee to Project Journalists, *Saudi Arabia, UAE, Bahrain block Qatari news websites* (25 May 2017), https://cpj.org/2017/05/saudi-arabia-uae-bahrain-block-qatari-news-website.php; *see also* "Blocked in Dubai: Qatar cartoon and soccer channels, *CNN Media* (8 June 2017), http://money.cnn.com/2017/06/08/media/uae-qatar-media-blocked/index.html.

102 **Vol. XII, Annex 264**, DCL-181 Witness Declaration, Al Jazeera Media Network Representative, para. 9.

103 **Vol. XII, Annex 264**, DCL-181 Witness Declaration, Al Jazeera Media Network Representative, para. 11.

104 *See* **Vol. II, Annex 20**, Abu Dhabi Department of Economic Development, *Circular prohibiting the broadcasting/playing of a num ber of satellite channels* (6 July 2017) (certified translation); **Vol. II, Annex 22**, Abu Dhabi Tourism and Culture Authority, *Circular No. (33) 2017* (26 July 2017); *see also* **Vol. II, Annex 17**, Sharjah Commerce and Tourism Development Authority, *Ban of bein* [*sic*] *Sports Channels Display* (15 June 2017).

National Media Council to the UAE Ministry of Economy confirmed that beIN channels on a "list" provided by the UAE National Media Council are "banned"[105].

Date: *07/06/*2017

Circular regarding banning the broadcasting/Turning on several TV channels

To all businesses in the Emirate of Abu Dhabi,

Peace and Mercy of God Be Upon You;

Department of Economic Development wishes to extend its sincere greetings and appreciation for your cooperation in serving the best interest of the Emirate.

It is hereby decided, in the public interest, to ban the broadcasting or turning on the following TV channels effective from the date hereof.

- Al Jazeera Media Network
  - Al Jazeera TV Channel
  - Al Jazeera Live Channel
  - Al Jazeera Live Egypt;
  - Al Jazeera English
  - Al Jazeera America Channel
  - Al Jazeera Documentary Channel
  - Al Jazeera Balkans Channel
  - Baraem TV station (for children)
  - G TV station
- Be In Sports TV
  - Be In Sports TV France
  - Be In Sports TV Arabic
- Shaaer Al Rasoul Channel
- Qatar TV
- Al Mujtamaa Channel
- Al Rayan TV Channel
- Premier Channel

Please note that all the necessary legal actions shall be taken against businesses which will be found in breach of the circular.

We appreciate your kind collaboration.

[Seal of Department of Economic Development, Abu Dhabi] [Signature]

105 *See* **Vol. II, Annex 28**, Letter from United Arab Emirates National Media Council to United Arab Emirates Ministry of Economics, *beIN Sports Receivers and Cards* (6 June 2018) (certified translation).

2.44 The UAE also has continued to block online access to Al Jazeera. The UAE blocked Al Jazeera's Snapchat channel entirely on 18 September 2017; traffic immediately plummeted from 350,000 daily views to zero[106]. The UAE also blocked access to other Qatari media online, the Peninsula, and the Qatari State News Agency, QNA[107].

3. The UAE's Campaign of Misinformation and Anti-Qatari Hate Speech

2.45 The UAE's attempts to silence support for Qatar and Qatari voices have been coupled with an affirmative campaign of anti-Qatari propaganda, which the UAE has created, encouraged, and condoned, including through a shadow campaign of misinformation and false news conducted by state-sponsored and promoted hate speech. The roots of this campaign pre-date the 5 June Directive, and indeed, served to foreground its acts to come.

2.46 In the weeks leading up to the UAE's well-orchestrated measures against Qataris, the UAE promoted an incendiary fake news story that attempted to paint the Qatari government as undermining its allies and supporting terrorist groups—a move that served to inflame hatred against Qataris and heighten tensions between Qatar and the UAE. Specifically, on 23 May 2017, cyber hackers posted a fake news story on the website of Qatar News Agency ("***QNA***"), falsely attributing to

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106 **Vol. XII, Annex 264**, DCL-181 Witness Declaration, Al Jazeera Media Network Representative, para. 11.

107 *See* **Vol. II, Annex 125**, Committee to Project Journalists, *Saudi Arabia, UAE, Bahrain block Qatari news websites* (25 May 2017), https://cpj.org/2017/05/saudi-arabia-uae-bahrain-block-qatari-news-website.php; "The Peninsula Qatar website blocked in UAE", *The Peninsula* (10 June 2017), https://thepeninsulaqatar.com/article/10/06/2017/The-Peninsula-Qatar-website-blocked-in-UAE; Ahmed Al Omran, "Gulf media unleashes war of words with Qatar", *Financial Times* (3 August 2017), https://www.ft.com/content/36f8ceca-76d2-11e7-90c0-90a9d1bc9691.

H.H. Sheikh Tamim Bin Hamad Al Thani, the Amir of the State of Qatar, incendiary statements that "criticized renewed tensions with Tehran, expressed understanding for Hezbollah and Hamas, and suggested U.S. President Donald Trump might not last long in power."[108] QNA and Qatar immediately and publicly confirmed that the QNA website had been hacked and that the statements attributed to H.H. the Amir were false, calling it a "shameful cybercrime" that was "instigated and perpetrated with malicious intent."[109] Independent third parties confirmed that the QNA website had been hacked, with intelligence sources from the United States and elsewhere attributing the hack to the UAE[110]. U.S. intelligence agencies reportedly confirmed that the day prior to the hack, senior members of the UAE government discussed the plan and its implementation.[111]

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[108] *See* William Maclean, "Gulf rift reopens as Qatar decries hacked comments by emir", *Reuters* (23 May 2017), https://www.reuters.com/article/us-qatar-cyber/gulf-rift-reopens-as-qatar-decries-hacked-comments-by-emir-idUSKBN18K02Z.

[109] *See* **Vol. II, Annex 51**, Qatar Ministry of Foreign Affairs, *An Official Source at the Ministry of Foreign Affairs: the Perpetrators of the Electronic Piracy against Qatar News Agency website will be prosecuted* (24 May 2017), https://mofa.gov.qa/en/all-mofa-news/details/2017/05/24/an-official-source-at-the-ministry-of-foreign-affairs-the-perpetrators-of-the-electronic-piracy-against-qatar-news-agency-website-will-be-prosecuted; **Vol. II, Annex 64**, Qatar Ministry of Foreign Affairs, *Foreign Minister: 'Qatar Will Address the Media Campaign Targeting It'* (25 May 2017), https://mofa.gov.qa/en/all-mofa-news/details/2017/05/25/foreign-minister-%27qatar-will-address-the-media-campaign-targeting-it%27; **Vol. II, Annex 60**, Letter from Mohammed bin Abdulrahman Al Thani, Minister of Foreign Affairs of State of Qatar, to Abdul Latif Bin Rashid Al-Ziyani, Secretary-General of GCC (7 August 2017).

[110] Karen DeYoung & Ellen Nakashima, "UAE orchestrated hacking of Qatari government sites, sparking regional upheaval, according to U.S. intelligence officials", *The Washington Post* (16 July 2017), https://www.washingtonpost.com/world/national-security/uae-hacked-qatari-government-sites-sparking-regional-upheaval-according-to-us-intelligence-officials/2017/07/16/00c46e54-698f-11e7-8eb5-cbccc2e7bfbf_story.html.

[111] Karen DeYoung & Ellen Nakashima, "UAE orchestrated hacking of Qatari government sites, sparking regional upheaval, according to U.S. intelligence officials", *The Washington Post* (16 July 2017), https://www.washingtonpost.com/world/national-security/uae-hacked-qatari-government-sites-sparking-regional-upheaval-according-to-us-intelligence-officials/2017/07/16/00c46e54-698f-11e7-8eb5-cbccc2e7bfbf_story.html.

Qatar's own investigation confirmed reports that the cyber hacking was perpetrated with assistance from individuals with connections to the UAE[112]. In particular, Qatar uncovered that the QNA website experienced an unusual and extraordinarly large surge in the number of visits originating from the UAE on 23 May 2017, just before and after the hack—demonstrating that individuals in the UAE were waiting for the false story to be planted so that they could immediately disseminate it[113].

2.47 The UAE Government's conduct in response to the hacking is telling: instead of following up on the international reports confirming the hack, addressing the situation with Qatar through diplomatic channels, or even taking the matter up at the GCC, the UAE—within hours—broadcast the false statements widely to foment hostility against Qatar in the run-up to imposing the Discriminatory Measures.

2.48 For example, on the same day as the cyberattack on 23 May 2017, Sky News Arabia, a media outlet co-owned by H.H. Sheikh Mansour bin Zayed Al Nahyan, the Deputy Prime Minister of the UAE and the brother of H.H. Crown Prince Sheikh Mohammed bin Zayed Al Nahyan, ran a report in which the news anchor repeated the false statements as if they were true, attributing them to a report published by QNA with no mention of the hack, despite the fact that QNA

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112 *See* Peter Salisbury, "The fake-news hack that nearly started a war this summer was designed for one man: Donald Trump", *Quartz* (20 October 2017), https://qz.com/1107023/the-inside-story-of-the-hack-that-nearly-started-another-middle-east-war/.

113 *See* Peter Salisbury, "The fake-news hack that nearly started a war this summer was designed for one man: Donald Trump", *Quartz* (20 October 2017), https://qz.com/1107023/the-inside-story-of-the-hack-that-nearly-started-another-middle-east-war/.

had already confirmed that its website had been hacked[114]. In the days that followed, high-ranking UAE officials, other prominent Emirati commentators, and local media sources continued to circulate the fake statements on social media, again dismissing Qatar's clear disavowal of the statements by alleging that the reports of the hack—including by independent, international sources—as "fake"[115]. A hashtag, #Tamim_Statements, was created on Twitter and then used to disseminate widely similar doctored news clips purporting to be from Qatar TV[116].

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114 **Vol. II, Annex 39**, Video, *Sky NEWS Arabia* (23 May 2017).

115 **Vol VI, Annex 161**, Compendium of Social Media Posts, Tweet by Dhahi Khalfan on 23 May 2017, Index No. 8 ("Qatar's preference for the Muslim Brotherhood and Iran over Saudi Arabia, the UAE, Kuwait, and Bahrain, is a political disaster!!!"); *ibid.*, Tweets by Ali Al-Noaimi, Index Nos. 60–61 ("There will be a lot of fake news to prove that #Tamim's statements are fake."). The day after the hack, on 24 May 2017, Sky NEWS Arabia once again broadcast the fake news by posting a video on its website purporting to be a clip from Qatari TV, but doctored to include a scrolling banner including the alleged statements. **Vol. II, Annex 39**, Video, "Watch the Emir of Qatar's Speech on Official Television", *Sky NEWS Arabia* (24 May 2017); *see also* **Vol. II, Annex 40**, Ahmad Ashour, "Analysts: Qatar Drives a Wedge in the Gulf and Arab Ranks", *Emirates Today* (25 May 2017), https://www.emaratalyoum.com/politics/news/2017-05-25-1.998540 ("the statements by the Emir of Qatar, Sheikh Tamim Bin Hamad Al Thani, which are critical of the positions taken by the GCC countries, 'are in line with Qatar's inclination towards supporting the Muslim Brotherhood and other terrorist groups' . . . [UAE political writers and analysts] considered that 'the allegation that the Qatar News Agency (QNA) was hacked is a lie that no one will fall for'"); **Vol. II, Annex 42**, "'A deluge of rage' strikes the emirate of treason and criminality", *Al-Youm7* (25 May 2017) ("Mohamad Al-Hamady, Editor-in-Chief of the Emirates Itihad Newspaper, considered that the declarations by the Emir of Qatar, Tamim Bin Hamad Al Thani, in which he challenged the Gulf and praised the Iranian role, are a break from the ranks and not the result of a break-in by hackers . . . [N]o Gulf Arab citizen can believe that statements published by the official news agency of Qatar are fabricated, and that the Agency's website was hacked."); **Vol. II, Annex 41**, "Tamim Isolates Qatar by Turning Against Enduring Gulf and Arab Principles", *Al-Khaleej* (25 May 2017); **Vol VI, Annex 161**, Compendium of Social Media Posts, Tweet by Majed al-Raeesi (prominent UAE political analyst), Index No. 62 (28 May 2017).

116 **Vol VI, Annex 161**, Compendium of Social Media Posts, Tweets by Ali Noaimi and Majed Taha, Index No. 60 (circulating video and stating "the Qatari TV broadcasts

2.49 The QNA hacking is but one example; a broad campaign of anti-Qatari hatred that the UAE has orchestrated and funded has proliferated since the onset of the Discriminatory Measures. In the wake of the 5 June Directive, a number of anti-Qatar websites appeared, spreading false news and misinformation about Qatar intended to be picked up and broadly circulated by social media users. Some of the most prolific of these anti-Qatar websites and accounts are directly linked to the UAE government.

2.50 For example, one such website, "Qatar Crisis News", was created by a United States-based public affairs firm registered as an "agent" of the UAE Government in the United States[117]. Several other similar websites list a UAE-based public affairs firm as their website subscriber and a UAE-based individual as their customer contact[118]. Similarly, in 2017, a British communications company revealed in its public disclosures that the UAE's National Media Council had paid it US$333,000 to launch a public relations campaign against Qatar on social media[119]. The contract reportedly required the creation of

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#Tamim_Statements in the news ticker in the bottom of the screen… was the Qatari TV hacked as well?").

117 **Vol. VI, Annex 159**, Government Communications Office for State of Qatar v. John Does 1-10 (Supreme Court of the State of New York, County of Kings): Documents obtained in U.S. proceedings, pp. 2, 9.

118 **Vol. VI, Annex 159**, Government Communications Office for State of Qatar v. John Does 1-10 (Supreme Court of the State of New York, County of Kings): Documents obtained in U.S. proceedings, pp. 15–30.

119 **Vol. VI, Annex 158**, United States Department of Justice, FARA Registration Unit, Exhibit A to SCL Social Limited Registration Statement Pursuant to the Foreign Agents Registration Act (6 October 2017), https://efile.fara.gov/docs/6473-Exhibit-AB-20171006-1.pdf, p. 9.

advertisements for social media sites like Facebook, Twitter, and YouTube that linked Qatar with terrorism using the hashtag #boycottqatar[120].

2.51 Against this backdrop, the UAE's campaign of anti-Qatari incitement flourished. The United Nations Office of the High Commissioner of Human Rights (the "***OHCHR***") described a "widespread defamation and hatred campaign against Qatar", with hundreds of anti-Qatar press articles and caricatures published in Emirati and other GCC media since June 2017[121]. This anti-Qatari propaganda campaign includes media attacks on Qatar by Emirati officials and other prominent Emiratis, as well as the establishment of fake news sites and social media accounts that disseminate false news accusing Qatar of support for terrorism and other nefarious behavior. Taken together, the UAE's campaign has resulted in a torrent of hateful and discriminatory posts against Qataris across social media platforms.

2.52 Qatar has created a compendium representing a small sample of the social media posts inciting hatred against Qatar and Qataris, appended to this Memorial as **Annex 161**.

2.53 Senior Emirati government officials have directly spearheaded the media campaign against Qatar, circulating incendiary and provocative attacks that have led to an outpouring of discriminatory sentiment against Qataris. The attacks run

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120 Julia Ainsley et al., "The Mueller effect: FARA filings soar in shadow of Manafort, Flynn probes," *NBC News* (18 January 2018), https://www.nbcnews.com/news/us-news/muellereffect-fara-filings-soar-shadow-manafort-flynn-probes-n838571.

121 **Vol. III, Annex 98**, OHCHR Technical Mission to the State of Qatar, *Report on the impact of the Gulf Crisis on hum an rights* (December 2017), http://nhrc-qa.org/wp-content/uploads/2018/01/OHCHR-TM-REPORT-ENGLISH.pdf, paras. 14, 15; *see, e.g.*, **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index No. 045.

the gamut from painting Qatar and Qataris as terrorist sympathizers, to directing degrading insults at the Qatari royal family and the Qatari people, to calling for violence against Qataris. Attacking the royal family—whose identity is deeply intertwined with that of the Qatari people and the Qatari State[122]—as a way of denigrating all Qataris appears to have become a weapon of choice for some prominent Emirati tweeters.

2.54 UAE Minister of State for Foreign Affairs H.E. Dr. Anwar Gargash, for example, is a prolific Twitter user with 935,000 followers, who frequently posts tweets spreading the false and inflammatory narratives that Qatar supports terrorism and promotes the interests of regional rivals Iran and Turkey above those of its GCC neighbors. Among others, Minister Gargash has tweeted support for #TheBlacklist, a hashtag created by an advisor to the Saudi royal court to "out" Qataris and others accused of "conspiracy" with Qatar against the UAE and other States. In support of this "movement", Minister Gargash described it as an "extremely important" way to expose individuals sympathetic to Qatar, adding that #TheBlacklist tweets "open the eyes to those who were tempted by money and sold out their countries"[123].

2.55 Similarly, Hamad Al Mazrouei, a high-ranking Emirati intelligence official and Crown Prince H.H. Mohammed bin Zayed Al Nahyan's right-hand man, who has over 260,000 Twitter followers, frequently tweets crude public insults lodged

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122 *See* paras. 3.97–3.100, below; *see also* **Vol. VI, Annex 162**, Expert Report of Dr. J. E. Peterson, paras. 21–22.

123 "Tweet names of Qatar sympathisers to 'blacklist': Saudi royal aide", *Middle East Eye* (18 August 2017), https://www.middleeasteye.net/news/saudi-royal-adviser-calls-names-add-blacklist-qatar-sympathisers-1564107564.

against the Qatari royal family and other hateful material[124]. H.E. Lieutenant General Dhahi Khalfan Tamim, Deputy Chairman of Police and General Security for the Emirate of Dubai, also frequently disseminates anti-Qatar rhetoric to his over 2.6 million followers, including violent statements such as ""[s]mashing the ego of Qatar has now become a national duty"[125], and calling for the bombing of Al Jazeera[126]. The UAE has neither responded to nor censured these officials, nor has it prosecuted them under its anti-hate speech laws.

2.56 The UAE's public attacks on Qatar have targeted and threatened not just the ruling family or the Qatari people, but the very existence of the Qatari State, calling for the annexation of Qatar to the UAE, Saudi Arabia, or Bahrain[127]. The UAE's desire to wipe Qatar off the map has even been manifested literally. On 19 January 2018, visitors to the Louvre Museum in Abu Dhabi pointed out that the museum's curators had exhibited a map of the region omitting Qatar. As the below picture of the map demonstrates, the peninsula of Qatar is entirely missing[128]. Following the controversy, the Louvre Museum in Abu Dhabi announced on 22 January 2018 that it had replaced the map, claiming that the

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124 *See* **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index Nos. 036–043.

125 **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index No. 015.

126 "Dubai security chief calls for bombing of Al Jazeera", *Al Jazeera* (25 November 2017), https://www.aljazeera.com/news/2017/11/dubai-security-chief-calls-bombing-al-jazeera-171125143439231.htmls.

127 *See, e.g.*, **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index Nos. 012, 019, 021.

128 Image Source: Twitter Post, @Gaith_Ab (19 January 2018 at 6:41 a.m.), https://twitter.com/Gaith_Ab/status/954365689841713152 (notation added to indicate location of Qatar); *see also* Elsie Dusting, "Qatar and Omani Border Absent in Louvre Abu Dhabi Map", *ArtAsiaPacific* (24 January 2018), http://artasiapacific.com/News/QatarAndOmaniBorderAbsentInLouvreAbuDhabiMap.

obliteration of an entire country was somehow merely an "oversight" that had been rectified[129].

2.57 The UAE has also publicized and encouraged support for an incendiary, alleged Saudi plan to dig a 60 kilometer long and 200 meter wide canal between it and Qatar, which would literally cut off Qatar and turn it into an island[130]. Both UAE Minister Gargash and UAE intelligence official Mazrouei tweeted in support of the canal[131].

2.58 The hateful messages spread by official UAE sources, and the proliferation of anti-Qatari messaging through UAE-funded "news" websites, have had a ripple effect across social media, encouraging waves of hatred from ordinary

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129 *See* "Louvre Abu Dhabi replaces Gulf map that omitted Qatar", *Daily Mail* (22 January 2018), https://www.dailymail.co.uk/wires/afp/article-5298515/Louvre-Abu-Dhabi-replaces-Gulf-map-omitted-Qatar.html.

130 "Saudi Arabia may dig canal to turn Qatar into an island", *The Guardian* (1 September 2018), https://www.theguardian.com/world/2018/sep/01/saudi-arabia-may-dig-canal-to-turn-qatar-into-an-island.

131 *See* **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index Nos. 040, 056.

individuals—including high-profile Emiratis—directed towards Qataris, including statements encouraging violence[132].

2.59 The UAE's campaign of incitement, coupled with the total silencing of any independent viewpoints, has only deepened as the UAE's Discriminatory Measures have extended into their second year. Most recently, during the semi-final match between the UAE and Qatar in Abu Dhabi, the booing of Emirati supporters inside the stadium drowned out Qatar's national anthem and turned to violence as the match progressed[133]. Video footage shows bottles and hard leather sandals raining down on Qatari players during the match[134]. Qataris were barred from attending to support their team in person; while almost 2,000 Qatari fans would have normally attended, stadiums were empty of Qataris given their inability to enter the UAE[135] and fear as to what would happen if they did: "This is hurting us emotionally . . . . But even if they actually allowed us to go, I wouldn't go to the UAE because we are just so scared of being in that place. It's

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132 **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index Nos. 011, 015, 033–035, 068–069.

133 *See* "Soccer-AFC to probe sandal throwing at Asian Cup semi-final", *Reuters* (30 January 2019), https://www.reuters.com/article/soccer-asiancup-qat-are/soccer-afc-to-probe-sandal-throwing-at-asian-cup-semi-final-idUKL3N1ZU4G7.

134 *See* **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index No. 051.

135 "Soccer-AFC to probe sandal throwing at Asian Cup semi-final", *Reuters* (30 January 2019), https://www.reuters.com/article/soccer-asiancup-qat-are/soccer-afc-to-probe-sandal-throwing-at-asian-cup-semi-final-idUKL3N1ZU4G7. Almost 2,000 Qatari fans would have ordinarily made the trip, according to a Qatar soccer federation spokesman. In contrast, this year Qatar had "almost none"; the Qatar cheering section was comprised of a small and motley collection of supporters from other countries. *See* Tariq Panja, "Qatar Cuts Through Tension and Defenders to Beat Saudi Arabia", *N.Y. Times* (17 January 2019), https://www.nytimes.com/2019/01/17/sports/saudi-arabia-qatar-asian-cup.html ("Almost no Qatari fans have traveled to the tournament amid the blockade…that has made travel extremely difficult—and entry into the UAE close to impossible.").

so dangerous for us"[136]. A five-member delegation of journalists from Qatar Sports Press Committee was also prevented from entering the UAE on the eve of the tournament[137]. In one incident following the final match, a group of Omani nationals carrying the Qatari flag were pursued by Abu Dhabi police, who seized and destroyed the flag[138].

2.60 Following these incidents, the Asian Football Confederation ("***AFC***") subsequently sanctioned the UAE Football Association with a fine of USD 150,000 for violations of the AFC's Disciplinary and Ethics Code and its Safety and Security Regulations.[139]

2.61 The UAE's incitement and perpetuation of this climate of racial hatred and xenophobia, and its silencing of both Qatari voices and any potentially dissenting voices, in addition to causing harm in their own right, have also exacerbated the effects of the UAE's other measures against Qataris, and made their impacts particularly devastating for Qataris and their families.

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136 Saba Aziz, "Qatar set for hostile crowd in Asian Cup semi-final against UAE", *Al Jazeera* (29 January 2019), https://www.aljazeera.com/news/2019/01/blockade-derby-qatar-uae-set-asian-cup-semi-final-190128112647794.html.

137 *See* "Qatar at Asian Cup: 'No need to mix politics with football'", *Al Jazeera* (7 January 2019), https://www.aljazeera.com/news/2019/01/qatar-asian-cup-mix-politics-football-19010 7084412575.html; "Qatar Sports Press panel slams UAE entry denial to delegation", *Gulf Times* (5 January 2019), https://www.gulf-times.com/story/618311/Qatar-Sports-Press-panel-slams-UAE-entry-denial-to.

138 *See* **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index No. 047.

139 *See* **Vol. V, Annex 143**, Asian Football Confederation (AFC), *AFC DEC issues USD $150,000 fine on UAE FA* (11 March 2019), http://www.the-afc.com/media/afc-dec-issues-usd-150-000-fine-on-uae-fa. The AFC also ordered the UAE to play one match without spectators. *Ibid*.

Section III. The UAE's Escalation of the Crisis and Qatar's Response

2.62 Since the imposition of the Discriminatory Measures, Qatar has worked to mitigate their detrimental impacts, has refused to retaliate in kind, and has continually held itself out as open to negotiation to resolve the dispute (and indeed has pursued attempts at negotiation through a variety of fora). Qatar's Minister of Foreign Affairs, H.E. Sheikh Mohammed bin Abdulrahman Al-Thani, publicly highlighted this policy of non-retaliation, stating: "we never reciprocate to the measures being taken against the Qatari people"[140]. The UAE, on the other hand, has rejected or denied the glaring human rights violations caused by its Discriminatory Measures, refused to engage constructively with Qatar, and instead conditioned resolution of the dispute on a series of unlawful and unreasonable demands that would essentially turn Qatar into a vassal state.

2.63 On 23 June 2017, the UAE escalated the crisis it had created by issuing a threat to maintain the Discriminatory Measures indefinitely if Qatar did not accede to a list of thirteen political demands (the "***Thirteen Demands***"). Given the termination of diplomatic relations, the Thirteen Demands were delivered to Qatar by Kuwait, and Qatar was given ten days to respond, subsequently extended by 48 hours at the request of H.H. the Emir of Kuwait.

2.64 The Thirteen Demands contemplate remarkable, unprecedented intrusions into Qatar's internal and external affairs and purport to dictate Qatar's military, political, social and economic policy, as well as its relations with third States. Specifically, the demands include:

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140 Council on Foreign Relations, *A Conversation with Sheikh Mohammed bin Abdulrahman Al-Thani* (30 November 2018), https://www.cfr.org/event/conversation-sheikh-mohammed-bin-abdulrahman-al-thani.

1. “Qatar must officially announce the reduction of diplomatic representation with Iran, and close all Iranian diplomatic missions in Qatar. Qatar must expel all Iranian Revolutionary Guard elements from Qatar and sever any military cooperation with Iran. Only the commercial exchange with Iran that is compliant with the US and international sanctions shall be allowed, on the condition that it does not endanger the security of the GCC member states. All military or intelligence cooperation with Iran must be severed.

2. Qatar must immediately shut down the Turkish military base that is currently being established, and cease all military cooperation with Turkey on Qatari soil.

3. Qatar must sever all relations with “terrorist, sectarian, and ideological groups”, especially the Muslim Brotherhood, Daesh, Qaeda, Fateh Al-Sham (previously known as Al-Nosra Front), and Lebanese Hezbollah. Qatar must officially designate such entities as terrorist groups, in accordance with the terrorism list announced by Saudi Arabia, Bahrain, the United Arab Emirates, and Egypt, and to update its list of such terrorist groups in line with any future list announced subsequently by the four states.

4. Cease all means of financing the individuals, groups, or organizations designated as terrorist by the Kingdom of Saudi Arabia, the United Emirates, Egypt, Bahrain, the United States of America, and other countries.

5. Extradite “terrorist personas”, fugitives, and wanted individuals from Saudi Arabia, the United Arab Emirates, Egypt, and Bahrain to

their original countries of origin, as well as freezing their assets and provide any required information about their accommodations, movements, and funds.

6. Shut down Al-Jazeera network and its affiliate broadcasting channels.

7. Stop meddling in the internal affairs of sovereign countries. Stop the naturalization of wanted citizens from Saudi Arabia, the United Arab Emirates, Egypt, and Bahrain. Withdraw the Qatari nationality from the current citizens who, by granting them the Qatari citizenship, violate the laws of these states.

8. Qatar must pay compensations for the lives lost and the other financial losses resulting from Qatar's policies in recent years. The amount shall be determined in coordination with Qatar.

9. Qatar must align with the Gulf states and the other Arab states military-wise, politically, socially, and economically in accordance with the agreement reached with the [2014 Riyadh Agreement].

10. Qatar must provide all personal details of opposition members supported by Qatar, and details of all the support offered to them by Qatar in the past. Qatar must cease all communications with the political opposition in Saudi Arabia, the United Arab Emirates, Egypt, and Bahrain. Qatar must hand over all the files that show information about Qatar's communication with opposition groups and the support it provides them.

11. Qatar must shut down all news platforms that it directly or indirectly funds, including "Arabi 21", "Rasd", "Al-Arabi Al-Jadid", "Mekameleen", "Middle East Eye", and others (just to name a few examples). In this regard, we mean all platforms funded by Qatar.

12. Accept all demands within 10 days from submitting them to Qatar, otherwise the list shall be deemed null and void.

13. Approve to be reviewed on [a] monthly basis during the first year after accepting the demands, then once every quarter during the second year and throughout the following ten years. Qatar's compliance shall be monitored annually."[141]

2.65 Following the issuance of the Thirteen Demands, on 5 July 2017 the UAE's Foreign Minister met his Saudi, Bahraini and Egyptian counterparts in Cairo to consult on their ongoing isolation of Qatar. In a joint statement, the foreign ministers attempted to further subjugate Qatar's sovereignty by insisting that the nation abide by six general principles (the "***Six Principles***"), in addition to the Thirteen Demands. The UAE and the other States made clear that the Six Principles were intended to supplement, not supplant, the original Thirteen Demands[142].

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[141] **Vol. II, Annex 18,** "Here is the Full List of Demands Requested from Qatar", *CNN Arabic* (24 June 2017), https://arabic.cnn.com/middle-east/2017/06/24/cnn-obtains-full-list-qatar-demands; *see also* Jack Moore, "Qatar Crisis: Here Are The 13 Things Saudi Arabia Has Demanded From Its Gulf Neighbor," *Newsweek* (23 June 2017), http://www.newsweek.com/qatar-crisis-here-are-13-things-saudi-arabia-has-demanded-gulf-state-628473.

[142] *See, e.g.*, "Boycotting quartet reaffirms its demands on Qatar", *The Economist Intelligence Unit* (3 August 2017), https://country.eiu.com/article.aspx?articleid=1345752318&Country=Qatar&topic= Politics&subtopic=Forecast&subsubtopic=International+relations&u=1&pid=1325726316&oid=1325726316&uid=1.

2.66 Those Six Principles were as follows:

1. "Commitment to combat extremism and terrorism in all its forms and to prevent their financing or the provision of safe havens;

2. Prohibiting all acts of incitement and all forms of expression which spread, incite, promote or justify hatred and violence;

3. Full commitment to Riyadh Agreement 2013 and the supplementary agreement and its executive mechanism for 2014 within the framework of the Gulf Cooperation Council (GCC) for Arab States;

4. Commitment to all the outcomes of the Arab-Islamic-US Summit held in Riyadh in May 2017;

5. To refrain from interfering in the internal affairs of States and from supporting illegal entities; [and]

6. The responsibility of all States of international community to confront all forms of extremism and terrorism as a threat to international peace and security.[143]

[143] **Vol. II, Annex 19**, Taimur Khan, "Arab countries' six principles for Qatar 'a measure to restart the negotiation process'", *The National* (19 July 2018), https://www.thenational.ae/world/gcc/arab-countries-six-principles-for-qatar-a-measure-to-restart-the-negotiation-process-1.610314.

2.67 The Ministers clearly signaled that the Thirteen Demands and the Six Principles were non-negotiable; Qatar must accept the demands as stated, or continue to suffer the consequences[144].

2.68 The content of these demands laid bare that the UAE's stated justifications for the Discriminatory Measures were pretextual, and an attempt to coerce Qatar into submitting to an extraordinary level of interference in its internal affairs and relinquish control over its foreign policy. Despite their frequent invocation, neither the so-called "Riyadh Agreements" nor the baseless allegations related to terrorism provide any basis for the UAE's current conduct. The Riyadh Agreements were a series of confidential agreements entered into in 2013 and 2014 between the GCC countries, which contain basic commitments to promote a policy of non-interference in the domestic affairs of the signatory nations[145]. In that sense, they effectively memorialized Qatar's existing policies: contrary to the UAE's unsupported and purposely inflammatory claims, Qatar is an active participant in the global fight against terrorism. Qatar is a party to numerous international and regional agreements relating to combatting terrorism[146]. Qatar

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144 **Vol. II, Annex 19**, Taimur Khan, "Arab countries' six principles for Qatar 'a measure to restart the negotiation process'", *The National* (19 July 2018), https://www.thenational.ae/world/gcc/arab-countries-six-principles-for-qatar-a-measure-to-restart-the-negotiation-process-1.610314.

145 *See* **UAE RPM, Annex 2**, First Riyadh Agreement, (23 and 24 November 2013); **UAE RPM, Annex 3**, Mechanism Implementing the Riyadh Agreement (17 April 2014); **UAE RPM, Annex 4**, Supplementary Riyadh Agreement (16 November 2014).

146 These include: Convention on Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963, 704 United Nations, *Treaty Series (UNTS)* 219 (accession on 6 August 1981); Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970, 860 *UNTS* 105 (accession on 26 August 1981); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971, 974 *UNTS* 177 (accession on 26 August 1981); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving Civil Aviation annexed to the Montreal Convention for the Suppression of

also provides significant support to the United States and coalition forces in combating terrorism in the region, including by hosting the Al Udeid Air Base, the biggest United States military facility in the Gulf region and the primary base of United States air operations against the Islamic State ("***ISIL***" or "***Daesh***").

2.69 Despite raising the Riyadh Agreements as a justification for its actions, the UAE never attempted to utilize the available conflict resolution mechanisms contained within the Riyadh Agreements themselves to resolve its allegations. Further, despite mounting evidence that the UAE was acting to undermine *Qatar's* sovereignty for years prior to the imposition of the Discriminatory Measures,

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Unlawful Acts against the Safety of Civil Aviation, 24 February 1988, 1589 *UNTS* 473 (accession on 17 June 2003); Convention on the Physical Protection of Nuclear Material, 3 March 1980, 1456 *UNTS* 101 (accession on 9 March 2004); International Convention for the Suppression of Acts of Nuclear Terrorism, 13 April 2005, A/59/766 (ratified 15 January 2014); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, 14 December 1973, 1035 *UNTS* 167 (accession on 3 March 1997); International Convention against the Taking of Hostages, 17 December 1979, 1316 *UNTS* 205 (accession on 11 September 2012); Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1 March 1991, 30 I.L.M. 721 (accession on 9 November 1998); International Convention for the Suppression of Terrorist Bombings, 15 December 1997, 2149 *UNTS* 284 (accession on 27 June 2008); International Convention for the Suppression of the Financing of Terrorism, 9 December 1999, U.N. Doc. A/RES/54/109 (accession on 27 July 2008); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 10 March 1988, 1678 *UNTS* 221 (accession on 18 September 2003); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 10 March 1988, 1678 *UNTS* 304 (accession on 18 September 2003); Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 14 October 2005, LEG/CONF. 15/21 (accession on 10 January 2013); Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 14 October 2005, LEG/CONF. 15/22 (accession on 10 January 2003). Regional antiterrorism agreements to which Qatar is a party include: Convention of the Organisation of the Islamic Conference on Combatting International Terrorism, 1 July 1999, Annex to Resolution No. 59/26-P; Arab Convention for the Suppression of Terrorism (ratification document issued 10 September 2003); GCC Cooperation Agreement on Combating Terrorism (ratified on 15 May 2008); Arab Convention Against Money Laundering and the Financing of Terrorism (ratification document issued on 8 April 2012); Security Agreement Between the GCC States of 2012 (ratification document issued on 8 July 2013).

Qatar continued to uphold both the Riyadh Agreements and its obligations under the GCC Charter. Indeed, in February 2017, Qatar's Minister of Foreign Affairs invited the UAE to discuss the Agreements, including the possibility that "it may be necessary that the GCC Member States take necessary measures to amend the GCC Charter in line with their aspirations"—to no avail.[147] The UAE did not respond—in any way, either publicly or through available diplomatic channels—before imposing the Discriminatory Measures.

2.70 Similarly, the UAE's focus on Qatar's foreign policy—and in particular, relations with Iran and Turkey—makes clear that the UAE's objective in imposing the measures is wholly political. And the UAE's demand that Qatar close Al Jazeera and other Qatari media outlets globally, as well as hand over "wanted individuals", comprised largely of political dissidents, as conditions for lifting the Measures, further illustrates that the UAE's motivations are far from legitimate. In this respect, it is particularly telling that high-level Emirati officials have linked the UAE's actions not to its stated pretext of "terrorism", but rather to Qatar's successful bid to host the 2022 FIFA World Cup. For example, on 8 October 2017, H.E. Lieutenant General Dhahi Khalfan Tamim—a very senior security official in the UAE—posted on Twitter that "If Qatar is deprived from hosting the World Cup, the crisis of Qatar will come to an end"[148].

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147 *See* **Vol. II, Annex 50**, Letter from Mohamed Bin Abdul Rahman Bin Jassim Al Thani, Minister of Foreign Affairs of State of Qatar, to Abdul Latif Bin Rashid Al-Ziyani, Secretary-General of GCC (19 February 2017) (with certified translation).

148 *See* **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index No. 009. This statement was followed by a tweet from UAE Minister of State for Foreign Affairs, H.E. Anwar Gargash, who wrote that Qatar should not be allowed to host the World Cup if it did not stop supporting terrorism and extremism. *See* **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index No. 002–003.

Section IV. The International Condemnation of the Discriminatory Measures

2.71 The UAE's Discriminatory Measures as a whole, and in particular the expulsion of Qataris from the UAE and the ban on travel between the two countries, have been widely condemned by the international community due to their detrimental impact on human rights. For example, Human Rights Watch reported that "[o]n June 5, 2017, Saudi Arabia, Bahrain, and the UAE cut off diplomatic relations with Qatar and ordered the expulsion of Qatari citizens and the return of their citizens from Qatar within 14 days. The three countries applied the travel restrictions suddenly, collectively, and without taking individual situations into account."[149] It found that Qatar's isolation by its neighbors "is precipitating serious human rights violations", including by "infringing on the right to free expression, separating families, interrupting medical care . . . interrupting education, and stranding migrant workers without food or water"[150].

2.72 Amnesty International condemned the Discriminatory Measures, noting that:

> "Thousands of people in the Gulf face the prospect of their lives being further disrupted and their families torn apart as new arbitrary measures announced by Saudi Arabia, Bahrain and the United Arab Emirates (UAE) in the context of their dispute with Qatar are due to come into force from today. . . . The three Gulf states had given their citizens the deadline of 19 June to leave Qatar and return to their respective countries or face fines and

149 **Vol. V, Annex 134**, Human Rights Watch, *Qatar: Isolation Causing Rights Abuses* (12 July 2017), https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses, p. 3.

150 **Vol. V, Annex 134**, Human Rights Watch, *Qatar: Isolation Causing Rights Abuses* (12 July 2017), https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses p. 3.

> other unspecified consequences. They had given Qatari nationals the same deadline to leave Bahrain, Saudi Arabia and the UAE and have refused entry to Qatari nationals since 5 June."[151]

2.73 James Lynch, Deputy Director of Amnesty International's Global Issues Programme, stated, "[t]he situation that people across the Gulf have been placed in shows utter contempt for human dignity. This arbitrary deadline has caused widespread uncertainty and dread amongst thousands of people who fear they will be separated from their loved ones"[152].

2.74 The United Nations High Commissioner for Human Rights Zeid Ra'ad Al Hussein stated shortly after the imposition of the Discriminatory Measures that he was "alarmed" by the possible human rights impact of the measures being adopted and their "potential to seriously disrupt the lives of thousands of women, children and men"[153]. The High Commissioner noted that his office was "receiving reports that specific individuals have already been summarily instructed to leave the country they are residing in, or have been ordered to return home by their own government. Among those likely to be badly affected are couples in mixed marriages and their children; people with jobs or businesses based in States other than that of their nationality; and students studying in another country."[154]

2.75 International human rights organizations have also decried the UAE's attacks on freedom of expression. Reporters Without Borders condemned the demand to close Al Jazeera as a "grave attack on press freedom and pluralism, and the right of access to information in the region"[155]. The United Nations Special

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[151] **Vol. V, Annex 129**, Amnesty International, *Gulf / Qatar dispute: Human dignity trampled and families facing uncertainty as sinister deadline passes* (19 June 2017), https://www.amnesty.org/en/latest/news/2017/06/gulf-qatar-dispute-human-dignity-trampled-and-families-facing-uncertainty-as-sinister-deadline-passes/, p. 1.

Rapporteur on freedom of opinion and expression has also stated that the UAE's draconian demand that Qatar close Al Jazeera was a "major blow to media pluralism" in the region[156].

2.76 On 18 August 2017, six United Nations Special Rapporteurs wrote jointly to the UAE to bring to its attention the "adverse situation and the violations of human rights of Qatari migrants in the United Arab Emirates . . . as a result of the United Arab Emirates government's decision to suspend ties with the State of Qatar, particularly their right to movement and residence, family unity, education, work, freedom of expression, health and the right to property, without discrimination on any basis" and explicitly referenced the CERD and specific

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152 **Vol. V, Annex 129**, Amnesty International, *Gulf / Qatar dispute: Human dignity trampled and families facing uncertainty as sinister deadline passes* (19 June 2017), p. 1, https://www.amnesty.org/en/latest/news/2017/06/gulf-qatar-dispute-human-dignity-trampled-and-families-facing-uncertainty-as-sinister-deadline-passes/.

153 **Vol. V, Annex 96**, OHCHR, *Qatar diplomatic crisis: Comment by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on i mpact on human rights* (14 June 2017), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=E.

154 **Vol. III, Annex 96**, OHCHR, *Qatar diplomatic crisis: Comment by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on i mpact on human rights* (14 June 2017), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=E.

155 **Vol. V, Annex 141**, Reporters Without Borders, *Unacceptable Call for Al Jazeera's Closure in Gulf Crisis* (28 June 2017), https://rsf.org/en/news/unacceptable-call-al-jazeeras-closure-gulf-crisis.

156 **Vol. III, Annex 95**, OHCHR, *Demand for Qatar to close Al-Jazeera "a major blow to media pluralism"- United Nations expert*, (28 June 2017) (hereinafter, "OHCHR Report"), https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=21808&LangID=E.

rights protected thereunder[157]. The joint communication further urged the UAE to take all necessary steps to respect the rights of persons affected[158]. In response, on 18 September 2017, the UAE stated it was "highly displeased" that the communication was issued as an urgent appeal and declined to address the asserted violations in any detail, stating only that it "continues to uphold" the CERD, and that it is "fully aware of its obligations and commitments in that regard"[159].

2.77 The OHCHR subsequently dispatched a Technical Mission to Qatar in November 2017, with a mandate to gather information on the Discriminatory Measures' detrimental impacts on human rights and to report recommendations back to the United Nations High Commissioner. The Technical Mission met with ministries and government institutions, the NHRC, and civil society representatives, including educators, journalists, and business people, as well as with representatives of the United Nations Educational, Scientific and Cultural Organization ("***UNESCO***")[160]. The Mission also interviewed about forty victims

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157 **Vol. III, Annex 97**, Joint Communication from Special Procedures Mandate Holders of the Human Rights Council to the United Arab Emirates, document AU ARE 5/2017 (18 August 2017) (hereinafter "Joint Communication of Special Procedures Mandate Holders"), pp. 1, 4.

158 **Vol. III, Annex 97**, Joint Communication from Special Procedures Mandate Holders, p. 7.

159 **Vol. II, Annex 23**, Reply of the Permanent Mission of the United Arab Emirates to the United Nations Office and Other International Organizations at Geneva to the Joint Communication from Special Procedures Mandate Holders of the Human Rights Council, HRC/NONE/2017/112 (18 September 2017), pp. 2, 3.

160 **Vol. III, Annex 98**, OHCHR Report, para. 5.

of the Discriminatory Measures, and reviewed "a large number of other cases, documents and data provided by various entities."[161]

2.78 The Technical Mission's Report described the first category of victims of the crisis as "Qatari individuals who were residing in [Saudi Arabia], UAE, Bahrain (and studying in Egypt), and were compelled to rapidly exit these countries, leaving behind their family, businesses, employment, property, or being forced to interrupt their studies."[162] The Report documented multiple negative human rights impacts resulting from the Discriminatory Measures, including restrictions on movement and communication, the separation of families, and interference with property, health, and education rights[163]. The Mission noted with concern the "potentially durable effect on the enjoyment of the human rights and fundamental freedoms of those affected", observing that "the majority of the measures were broad and non-targeted, making no distinction between the government of Qatar and its population"[164].

2.79 For its part, the UAE continues to violate the CERD and assert—without any legal basis—that such measures are justified, while at the same time ignoring or outright denying the existence of the ongoing human rights violations. For example, before embarking upon the Technical Mission, the Middle East and North Africa section of the OHCHR informed the UAE and expressed its

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161 **Vol. III, Annex 98**, OHCHR Report, para. 6.

162 **Vol. III, Annex 98**, OHCHR Report, para. 13.

163 *See* **Vol. III, Annex 98**, OHCHR Report, para. 13.

164 **Vol. III, Annex 98**, OHCHR Report, para. 61.

readiness to conduct a similar mission there[165]. But rather than engage with the OHCHR Technical Mission, the UAE has attempted to impugn the bona fides of the Mission and has attacked Qatar for "leaking" the Mission's Report[166]. In January 2018, the UAE, along with Saudi Arabia, Bahrain, and Egypt, issued a "joint statement" attacking the conclusions of the OHCHR Report, expressing "their denunciation of the report's methodological failure that included a misleading description of the political crisis", and taking the position that "the boycott . . . of Qatar is part of the exercise of their sovereign right to protect and defend their national security", without making any attempt to address the substantive violations raised in the Report[167]. The UAE's Permanent Representative to the United Nations in Geneva subsequently wrote to the United Nations High Commissioner for Human Rights, demanding that the OHCHR denounce or withdraw the Report[168]. The OHCHR has not done so.

2.80 The High Commissioner instead informed the UAE that his "[o]ffice has been very keen to constructively engage with all relevant stakeholders, including the UAE, to ensure that the potential human rights impacts of the crisis are properly considered and dealt with accordingly", and has expressed his "regret that my Office[']s] various communications, including requests to conduct a

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165 **Vol. III, Annex 98**, OHCHR Report, para. 3.

166 **Vol. IV, Annex 115**, *State of Qatar v. United Arab Emirates*, ICERD-ISC-2018/2, Response of the United Arab Emirates (7 August 2018), paras. 74–76.

167 **Vol. II, Annex 25**, "Joint Statement issued by four boycotting States denouncing report of UNHCHR's technical mission on its visit to Qatar", *Saudi Press Agency* (30 January 2018), https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=1715223.

168 *See* **Vol. II, Annex 27**, Letter from the Permanent Mission of the United Arab Emirates to the United Nations in Geneva, to the United Nations High Commissioner for Human Rights (16 May 2018), p.4.

similar mission to the UAE and other countries, went unanswered"[169]. He appealed to the UAE to "allow me to renew my Office['s] readiness to continue its constructive dialogue with the UAE on issues that relate to the potential human rights impacts of the Gulf crisis as well as future technical cooperation"[170], an appeal that, to Qatar's knowledge, remains unanswered.

2.81 Since the Court's indication of provisional measures, the United Nations and other rights monitors have continued to document the ongoing detrimental impacts of the Discriminatory Measures. In an August 2018 report, the United Nations Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights stated that he "continues to monitor the impact of the restrictive measures initiated in June 2017 by a group of countries targeting Qatar, *which remain in force*" and "continues to share the concerns expressed by the United Nations High Commissioner for Human Rights in June 2017 that the measures adopted are overly broad in scope and implementation, and agrees that they have the potential to seriously disrupt the lives of thousands of women, children and men, simply because they belong to one of the nationalities involved in the dispute"[171].

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169 **Vol. III, Annex 99**, Letter from the United Nations High Commissioner on Human Rights to the Permanent Mission of the United Arab Emirates to the United Nations (29 June 2018), p. 1.

170 **Vol. III, Annex 99**, Letter from the UN High Commissioner on Human Rights to the Permanent Mission of the United Arab Emirates to the United Nations (29 June 2018), p. 1.

171 United Nations Human Rights Council, *Report of the Special Rapporteur on the negative impact of unilateral coercive measures on t he enjoyment of human rights*, document A/HRC/39/54 (30 August 2018), p. 4 (emphasis added).

2.82 In sum, the UAE's conduct has shattered the lives of Qataris with ties in the UAE. The UAE has taken these actions with no legitimate justification and its disingenuous exhortation of national security concerns has been revealed as pretext. The UAE's conduct places it squarely in violation of the CERD and under the jurisdiction of the Court, as the following chapters will discuss.

CHAPTER III
JURISDICTION

3.1 As stated, the jurisdiction of the Court in the present case is based on Article 22 of the CERD. Article 22 provides that:

> "Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."[172]

3.2 Thus, in order for the Court to have jurisdiction, there must be a dispute between two States Parties to the CERD, the dispute must be "with respect to the interpretation or application of [the CERD]", and the dispute must not have been settled by negotiations or by the "procedures expressly provided" in the CERD.

3.3 It is not contested that both Qatar and the UAE are States Parties to the CERD, with no relevant reservations, understandings or declarations relevant to Article 22[173], and thus that the first condition is satisfied. With respect to the existence of a "dispute," the Court has previously defined a "dispute" as "a "'disagreement on a point of law or fact, a conflict of legal views or of interests' between parties"[174], and has held that "[a] dispute between States exists where

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[172] **Vol. III, Annex 92**, CERD, Art. 22.

[173] Qatar acceded to the CERD on 22 July 1976; the UAE on 20 June 1974.

[174] *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India), Jurisdiction and Admissibility, Judgment,*

they hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations."[175] In order for there to be a dispute, "the claim of one party must be 'positively opposed' by the other."[176] Whether a dispute exists "is a matter of substance, and not a question of form or procedure,"[177] which must be objectively determined by the Court based on the facts[178]. Here, there is clearly a dispute with respect to interpretation or application of the CERD[179].

3.4 In the following Chapter, Qatar will demonstrate that each of the remaining requirements to seize the Court's jurisdiction is met in this case. In

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I.C.J. Reports 2016, para. 34 (citing *Mavrommatis Palestine Concessions, Judgment No. 2., 1924, P.C.I.J., Series A, No. 2*, p.11).

[175] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Provisional Measures, Order, I.C.J. Reports 2018*, para. 18; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, *Provisional Measures, Order*, *I.C.J. Reports 2017*, para. 22.

[176] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Provisional Measures, Order, I.C.J. Reports 2018*, para. 18; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, *Provisional Measures, Order*, *I.C.J. Reports 2017*, para. 22.

[177] *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016*, para. 35.

[178] *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016*, para. 36.

[179] *See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Provisional Measures, Order, I.C.J. Reports 2018*, paras. 27–28.

particular, Qatar will demonstrate that: the UAE's discrimination against Qataris falls within the scope *ratione materiae* of the CERD, and thus the parties' "dispute" is with respect to the "interpretation or application" of the CERD (**Section I**); and the dispute "is not settled by negotiation or by the procedures expressly provided for" in Articles 11–13 of the CERD (**Section II**).

Section I. The UAE's Discrimination Against Qataris Falls Within the Scope *Ratione Materiae* of the CERD

3.5 During the provisional measures phase of the proceedings, the majority of the Court found that the acts Qatar complains of "are capable of falling within the scope of CERD *ratione materiae*", and thus found there was *prima facie* "a dispute between the Parties concerning the interpretation or application of the CERD."[180] At this stage of the proceedings, there is no reason to revise this *prima facie* conclusion, and the Court should conclude that Qatar's claims definitively fall within the CERD. The CERD's broad protective scope is designed to combat *all* forms of racial discrimination, including discrimination in both purpose and effect on the basis of national origin (***Section I.A***). The acts complained of by Qatar—including the collective expulsion of "Qatari residents and visitors" from Qatar, the Absolute and Modified Travel Bans targeted at "Qatari nationals," and the UAE's Anti-Sympathy Law and Qatari Media Block, coupled with the incitement of racist anti-Qatari hate speech as part of the Anti-Qatari Incitement Campaign—plainly fall within the CERD's scope, as they discriminate on the basis of national origin in both purpose and effect (***Section I.B***). Accordingly, the

[180] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Provisional Measures, Order, I.C.J. Reports 2018,* paras. 27–28.

dispute before the Court is plainly a dispute with respect to the interpretation or application of the CERD.

A. THE CERD'S PROTECTIVE SCOPE ENCOMPASSES ALL FORMS OF RACIAL DISCRIMINATION

3.6 The CERD is premised upon and embodies a fundamental tenet of human rights law: racial discrimination based on, among other grounds, national origin, undermines the inherent dignity and equality of human beings. The right to equality is captured in the foundational documents of the post-Second World War legal order—the Charter of the United Nations and the Universal Declaration of Human Rights—both of which are referred to in the preamble to the CERD. As Judge Ammoun explained in 1971:

> "One right which must certainly be considered a pre-existing binding customary norm which the Universal Declaration of Human Rights codified is the right to equality, which by common consent has ever since the remotest times been deemed inherent in human nature."[181]

3.7 The prohibition of racial discrimination as embodied in the CERD not only *prohibits* racial discrimination, it requires States parties to *eliminate* racial discrimination through an interwoven fabric of mutually-reinforcing obligations. To that end, and as the inclusion of "Elimination" in the title of the treaty makes clear, States parties "[r]esolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent

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[181] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Advisory Opinion of 21 June 1971, Separate Opinion of Judge Ammoun, I.C.J. Reports 1971*, para. 6(b).

and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and discrimination."[182]

3.8 Article 2 of the CERD sets out "the Convention's broadest portfolio of State 'undertakings' or obligations . . . on the basis of which racial discrimination is prohibited across a spectrum of human rights."[183] Pursuant to Article 2(1)(a),

> "[e]ach State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation."[184]

3.9 As such, Article 2(1) addresses racial discrimination by the State itself, and distils "the basic message that the State itself shall not discriminate, directly or indirectly."[185]

3.10 By its explicit terms, the CERD is a broad, progressive instrument, and its substantive obligations require the parties to refrain from and undertake to eliminate "racial discrimination *in all its forms*"[186]. The wrong that the CERD

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182 **Vol. III, Annex 92**, CERD, Preamble.

183 **Vol. V, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 160.

184 **Vol. III, Annex 92**, CERD, Art. 2(1).

185 **Vol. V, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 180.

186 **Vol. III, Annex 92**, CERD, Preamble.

aims to prevent is one of collective punishment—of denying individuals of rights and privileges simply because of, for example, their race, ethnicity, or national origin. To that end, Article 1(1)'s definition of "racial discrimination" provides:

> "racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or *national* or ethnic *origin* which has the *purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life"[187].

3.11 As already noted, the definition encompasses discrimination based on colour, descent, national origin, or ethnic origin "which has the purpose or effect" of impairing the enjoyment of human rights. As explained by Judge Crawford in *Ukraine v. Russian Federation*,

> "[T]he definition of 'racial discrimination' in Article 1 of CERD does not require that the restriction in question be based expressly on racial or other grounds enumerated in the definition; it is enough that it directly implicates such a group on one or more of these grounds. Moreover, whatever the stated purpose of the restriction, it may constitute racial discrimination if it has the 'effect' of impairing the enjoyment or exercise, on an equal footing, of the rights articulated in CERD."[188]

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187 **Vol. III, Annex 92**, CERD, Art. 1(1) (emphasis added).

188 *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, Declaration of Judge Crawford, I.C.J. Reports 2017*, para. 7.

3.12 The CERD Committee, the "independent body that was established specifically to supervise the application"[189] of the CERD and that "monitors implementation of the [CERD] by its States parties"[190], has similarly made clear that the CERD prohibits both "purposive or intentional discrimination and discrimination in effect"[191], and advised that "[i]n seeking to determine whether an action has an effect contrary to the Convention, [the Committee] will look to see whether an action has an . . . unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin."[192]

3.13 Further, the CERD Committee has stressed that the CERD applies not only to measures that are discriminatory on their face, but also "where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons"[193]. To this end, the CERD Committee has consistently recommended to States parties that they take steps to address indirect discrimination as well as direct[194].

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189 **Vol. III, Annex 92**, CERD, Art. 8(1) ("There shall be established a Committee on the Elimination of Racial Discrimination consisting of eighteen experts. . . ").

190 United Nations, *Committee on the Elimination of Racial Discrimination*, https://www.ohchr.org/en/hrbodies/cerd/pages/cerdindex.aspx.

191 **Vol. IV, Annex 112**, CERD Committee, *General Recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, document CERD/C/GC/32 (2009), para. 7.

192 **Vol. IV, Annex 105**, CERD Committee, *General Recommendation No. 14 on article 1, paragraph 1, of the Convention* contained in document A/48/18 (1993), para. 2.

193 CERD Committee, *Concluding observations on the fourth to sixth periodic reports of the United States of America*, document CERD/C/USA/CO/6 (8 May 2008), para 10.

194 *See, e.g.*, CERD Committee, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, document CERD/C/USA/CO/7–9 (25 September 2014), para. 5 (calling on United States government to "take concrete steps to

3.14 The CERD's protections thus are not limited to intentional or purposive discrimination, but also cover actions that have an unjustifiable disparate impact on a protected group. These aspects of Article 1(1) work in tandem to ensure that the CERD protects against "all forms" of racial discrimination, both in terms of the group targeted and the group impacted.

3.15 Inherent to Article 1(1) is a concept of legitimacy and proportionality: Article 1(1) defines discrimination not as *every* distinction but only those distinctions which have the *purpose or effect* of impairing the equal enjoyment of "human rights and fundamental freedoms". Thus, not every difference in treatment will engage a State's responsibility under the CERD. Indeed, the CERD Committee has noted that "[t]he term 'non-discrimination' does not signify the necessity of uniform treatment when there are significant differences in situation between one person or group and another, or, in other words, if there is an objective and reasonable justification for differential treatment."[195] Rather, "differential treatment will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim"[196].

. . . [p]rohibit racial discrimination in all its forms in federal and state legislation, including indirect discrimination . . . in accordance with article 1, paragraph 1, of the Convention"); *see also* **Vol. V, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), pp. 114–116.

[195] **Vol. IV, Annex 112**, CERD Committee, *General Recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, document CERD/C/GC/32 (2009), para 8.

[196] **Vol. IV, Annex 112**, CERD Committee, *General Recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All*

3.16 This approach to non-discrimination mirrors that under general international law and human rights law. Although varying in the precise manner of application, the concepts of legitimacy and proportionality are a key feature of non-discrimination in human rights law, including in the context of racial discrimination.

3.17 For example, the European Court of Human Rights ("***ECtHR***") takes the longstanding approach that "a distinction is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a *legitimate aim* or if there is not a *reasonable relationship of proportionality* between the means employed and the aim sought to be realised."[197]

3.18 The Inter-American Court of Human Rights ("***IACtHR***") has similarly noted that "not all differences in treatment are in themselves offensive to human dignity", taking the approach that distinctions will not constitute discrimination if "the difference in treatment has a legitimate purpose" and where "there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review."[198] Such aims must further not be "unreasonable,

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Forms Racial Discrimination, document CERD/C/GC/32 (2009), para 8 (internal quotations omitted).

197 ECtHR, *Marckx v. Belgium*, Application No. 6833/74, Judgment (Plenary) (13 June 1979), para. 33 (emphasis added) (internal quotations omitted) (citing *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*, Application Nos. 1474/62, 1677/62, 1769/63, 1994/63, 2126/64, Judgment (23 July 1968), para. 10).

198 IACtHR, *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03 (17 September 2003), paras. 89, 91; *see also* IACtHR, *Marcelino Hanríquez et al. v. Argentina*, Report No. 73/00, Case 11.784 (3 October 2000), para. 37 (stating that a "distinction" involves discrimination when "the treatment in analogous or similar situations is different; . . . the difference has no objective and reasonable justification; [and] the means employed are not reasonably proportional to the aim being sought.").

that is, they may not be arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind."[199]

3.19 United Nations human rights committees, including the Human Rights Committee, the Committee on Economic, Social, and Cultural Rights, and of course the CERD Committee itself, likewise distinguish between a permissible "distinction" and unlawful discrimination on the basis of legitimacy and proportionality[200]. This approach is also consistent with principles of non-discrimination under general international law[201].

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[199] IACtHR, *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03 (17 September 2003), para. 91.

[200] *See* Human Rights Committee, *General comment No. 18, Non-discrimination*, document HRI/GEN/1/Rev.9 (1989), para. 13 ("not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant"); Committee on Economic, Social and Cultural Rights, *General comment No. 20, Non-discrimination in economic, social and c ultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, document E/C.12/GC/20 (2009), para. 13 ("Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects."); *see also generally* J. Clifford, "Equality" in *Oxford Handbook of International Human Rights* (Oxford University Press, 2013); Y. Arai-Takahasi, "Proportionality" in *Oxford Handbook of International Human Rights* (Oxford University Press, 2013).

[201] *See, e.g.*, **Vol. V, Annex 147**, J. Crawford, *Brownlie's Principles of Public International Law* (Oxford University Press, 2012), p. 645 ("[A]ny distinction drawn must have an objective justification; the means adopted to establish different treatment must be proportionate to the justification for differentiation[.]"). Equally, while specific to the regional context of the ECHR, in *Belgian Linguistics* the ECtHR, interpreting Article 14 of the ECHR referred to the practice across "a large number of democratic States" as requiring distinguishing on this basis. *See* ECtHR, *Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium*, Application No. 1474/62; 1667/62; 1691/62; 1769/63;

3.20 In short, then, a State party's responsibility will be engaged under Article 2(1)(a) where it has effected a distinction, restriction or exclusion on the basis of, *inter alia*, national origin, that has nullified or impaired the recognition, enjoyment or exercise of an open-ended list of human rights and fundamental freedoms. Further, while not all distinctions are unlawful, differential treatment on the basis of national origin that is not applied pursuant to a legitimate aim, and proportional to the achievement of that aim, constitutes unlawful discrimination in violation of the CERD.

B. The Acts Complained of by Qatar Fall within the CERD's Protective Scope

3.21 As described below, each of the acts complained of by Qatar constitutes discrimination on the basis of national origin falling within the scope of CERD's prohibitions[202]. However, at the provisional measures phase, the UAE attempted to argue that the impacts of its measures were "based purely on the fact of [individual's] *current* Qatari nationality or citizenship," and thus categorically outside of CERD's protective scope, on the ground that "current nationality" or "present nationality" does not constitute a protected ground for discrimination

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1994/63; 2126/64, Judgment (23 July 1968), p. 31, para. 10 ("On this question the Court, following the principles which may be *extracted from the legal practice of a large number of democratic States,* holds that the principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in *relation to the aim and effects* of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 (art. 14) is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.") (emphasis added).

202 *See* Chap. V, below.

based on Article 1(1)'s use of the term "national origin"[203]. The UAE is wrong on this score—indeed, its constructs of "current" or "present" nationality do not appear anywhere in the CERD—and its argument cannot be reconciled with either the CERD's explicit text or the intent of its drafters. Both in fact demonstrate that "nationality"-based discrimination falls within Article 1(1), and provides no meaningful basis to carve out "present" nationality from that definition.

3.22 But the UAE is equally wrong in artificially construing its discriminatory acts as limited to "current nationality" or "present nationality". The term "Qatari" does not simply represent a "present nationality", but it reflects the identity of a group of individuals with shared heritage and historical and cultural ties to the same national community—in other words, that are of Qatari national origin, an identity that is distinct from other national communities in the region. And as detailed below, this is consistent with the statements of the UAE in its submissions to the Court on provisional measures and to the CERD Committee. Qatar, like other Gulf States, follows a *jus sanguinis* model of nationality, in which naturalization is extremely rare, and the overwhelming majority of persons with Qatari nationality are also "Qatari" in this sense of heritage or parentage, and their "original" nationality at birth and "present nationality" are one and the same.

3.23 The UAE's attempt to retroactively construe the purpose of its measures as targeting only individuals of "current" Qatari nationality is thus irrelevant and fundamentally flawed: even if that were the case, the acts complained of also unequivocally fall within the CERD because of their discriminatory effects on

[203] CR 2018/13, p. 38, para. 18 (Olleson) (emphasis added).

persons of Qatari origin[204]. Thus, as detailed in this Section, the UAE's Discriminatory Measures violate the CERD in at least two ways. *First*, the Expulsion Order and Travel Bans discriminate on their face against Qataris based on their nationality, in violation of the CERD's prohibition on national origin-based discrimination. The factual predicate for this violation is not in dispute: the UAE has affirmatively characterized its measures as targeted against Qatari nationals[205]. Moreover, the conclusion that "nationality"-based discrimination—including on the basis of what the UAE refers to as "present" or "current" nationality—falls under the CERD's prohibition of discrimination is fully warranted by the interpretation of the term "national origin" in accordance with Article 31 of the VCLT (***Part 1***). And were there any doubt on the point, it is readily dispelled by an examination of the *travaux préparatoires* of the CERD, in accordance with Article 32 of the VCLT.

3.24 *Second*, the UAE's Discriminatory Measures independently violate the CERD because they have an unjustifiable disparate impact on individuals of Qatari origin, in the sense of their heritage and culture (***Part 2***). While this discriminatory *effect* alone suffices to form the basis of the CERD violation, the

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[204] *See generally* Chap. III, Sec. I.B.2., below. It is also factually inaccurate, as the UAE's unlawful acts in fact directly target and impact upon Qataris of "current" nationality. As noted already, CERD's scope is not constrained by a State's own characterization of its discriminatory acts. Moreover, several of the acts complained of—namely, the Anti-Sympathy Law, Block on Qatari Media, and the Anti-Qatari Incitement Campaign—are entirely unrelated to the possession of "current" Qatari nationality. Rather, these measures are targeted at the Qatari community as a whole, and at individuals and entities due to their real or perceived membership in that community, irrespective of "current" nationality. As a consequence, the question whether the UAE's actions in these respects discriminate against Qataris on the basis of national origin does not depend on whether the term "national origin" under Article 1(1) encompasses nationality.

[205] CR 2018/13, p. 38, para. 18 (Olleson); *see also* CR 2018/13, p. 39, para. 21 (Olleson) (measures apply "solely on the basis of an individual's present nationality").

facts and circumstances here suggest that the UAE's discrimination, while characterized as based on "nationality", actually seeks to achieve the collective punishment of Qataris as a people.

1. The UAE's Measures Explicitly Targeting "Qatari Residents and Visitors" and "Qatari Nationals" Fall within CERD's Scope Ratione Materiae *Based on their Discriminatory Purpose*

3.25 As noted above, the Expulsion Order on its face is directly targeted at "Qatari residents and visitors" in the UAE, and the Absolute and Modified Travel Bans at "Qatari nationals." The UAE has conceded that these measures target Qataris on the basis of nationality, but has attempted to limit this to "present" nationality.[206] Even accepting this questionable limitation, the UAE's admission that its measures discriminate against Qataris on the basis of their "current Qatari nationality or citizenship" is alone sufficient for the Court to conclude that the Discriminatory Measures fall within the scope of its jurisdiction *ratione materiae*.

3.26 Article 31(1) of the VCLT provides: "A treaty shall 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*."[207] The CERD prohibits discrimination based on "national origin". The ordinary meaning of this term (***Part a***), read in its context (***Part b***) and in the light of the CERD's object and purpose (***Part c***), makes clear that nationality-based discrimination, including

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[206] CR 2018/13, p. 38, para. 18 (Olleson); *see also* CR 2018/13, p. 39, para. 21 (Olleson) (measures apply "solely on the basis of an individual's present nationality").

[207] Vienna Convention on the Law of Treaties, 1155 *UNTS* 331 (23 May 1969), Art. 31(1) (hereinafter "VCLT") (emphasis added).

based on a person's present nationality, falls within the CERD's prohibition on racial discrimination in Article 1(1).

3.27 Thus, based solely on its text, the CERD applies to discrimination on the basis of nationality, and the Court need not resort to supplementary means of interpretation to so decide. However, pursuant to Article 32 of the VCLT, the Court may also refer to "supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion"[208] in order to "confirm the meaning resulting from the application of [A]rticle 31."[209] The *travaux préparatoires* of the CERD and the circumstances under which it was concluded confirm that nationality is included within the scope of "national origin" in Article 1(1) (***Part d***).

(a) *Ordinary Meaning of the Term "National Origin"*

3.28 As stated above, Article 1(1) establishes a broad definition of "racial discrimination":

> "[A]ny distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

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208 VCLT, Art. 32.

209 VCLT, Art. 32.

3.29 The composite term "national origin" is not itself defined in the CERD, nor is it a term that has a specialized meaning among sociologists or ethnographers.[210] "National origin" is also generally undefined by the leading dictionaries, which instead separately define "national" and "origin".

3.30 The Oxford and the Cambridge Dictionaries define "national" as "[r]elating to or characteristic of a nation"[211] and "relating to or typical of a whole country and its people"[212]. "Nation," in turn, is defined by the Oxford and Cambridge Dictionaries, respectively, as "a large body of people united by common descent, history, culture, or language, inhabiting a particular state or territory,"[213] and a "country, especially when thought of as a large group of people living in one area with their own government, language, and traditions."[214] As to the term "origin", the Cambridge Dictionary explains that the term refers to "the country from which [a] person comes" ("[t]he population is of Indian or Pakistani origin")[215], whereas the Oxford Dictionary defines it as a "person's social background or ancestry" (giving as an example "a voice that betrays his Welsh

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210 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 2.

211 Oxford Dictionaries, Definition of "National", https://en.oxforddictionaries.com/definition/national.

212 Cambridge Dictionary, Definition of "National", https://dictionary.cambridge.org/dictionary/english/national.

213 Oxford Dictionaries, Definition of "Nation", https://en.oxforddictionaries.com/definition/nation.

214 Cambridge Dictionary, Definition of "Nation", https://dictionary.cambridge.org/dictionary/english/nation.

215 Cambridge Dictionary, Definition of "Origin", https://dictionary.cambridge.org/us/dictionary/english/origin.

origins")[216]. Taken together, these characteristics suggest that the ordinary meaning of "national origin" relates to the country or nation where a person is from, and where a person's ancestors were from.

3.31 The official French, Spanish, Chinese and Russian versions of Article 1(1) of the CERD, which refer to "l'origine nationale", "origen nacional", "原属国" (yuán shǔguó), and "национального происхождения" (natzionalnoye proiskhozhdeniye), are consistent with this understanding, as they also equate to the belonging of individuals or their ancestors to a given country or nation, without exclusion based on present nationality status. For example, the Larousse dictionary defines "origine" as the "social class, background, group, country of which someone comes from"[217] and "nationale" as "relating to a nation; which belongs to a nation, as opposed to international".[218] It further defines "nation" as "all human beings living on the same territory, sharing a community of origin, history, culture, traditions, sometimes language, and constituting a political community".[219] Similarly, the Real Academia Española dictionary defines

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[216] Oxford Dictionaries, Definition of "Origin", https://en.oxforddictionaries.com/definition/origin.

[217] Larousse Dictionnaires de Français, Definition of "Origine", ("classe sociale, milieu, groupe, pays dont quelqu'un est issu").

[218] Larousse Dictionnaires de Français, Definition of "Nationale", https://www.larousse.fr/dictionnaires/francais/national/53861?q=Nationale# ("relatif à une nation ; qui appartient à une nation, par opposition à international").

[219] Larousse Dictionnaires de Français, Definition of "Nation", https://www.larousse.fr/dictionnaires/francais/nation/53859?q=Nation#53503 ("[l'] ensemble des êtres humains vivant dans un même territoire, ayant une communauté d'origine, d'histoire, de culture, de traditions, parfois de langue, et constituant une communauté politique").

"nacional" as "belonging or relative to a nation"[220], and in turn defines "nación" as a "group of persons of a same origin who generally speak the same language and have a common tradition"[221]. "Origen" is defined as "homeland, country where a person was born or his/her family is originally from"[222]. The Xinhua Online dictionary defines "原" to mean "initial, beginning" or "original"[223], "属"(shǔ) to mean "be under, be subordinate to, belong to"[224] and "国" (guó) to mean "a government with land, people, and sovereignty."[225] Together, the term "原属国" translates as "country of origin", which encompasses both present and past belonging to a particular country. Finally, the Russian Ozhegov Dictionary defines "Национальный" (natzionalniy) as "characteristic of a particular nation, peculiar to [such nation] only"[226], and in turn defines "Нация" (natziya) as "a historically formed and settled community of people established in the process of formation of their territory, economical links, literature, cultural characteristics

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220 **Vol. VI, Annex 156**, Real Academia Española, Diccionario de la lengua española, Definition of "Nacional", https://dle.rae.es/?id=QBmYj6h ("perteneciente o relativo a una nación").

221 **Vol. VI, Annex 156**, Real Academia Española, Diccionario de la lengua española, Definition of "Nación", ("[c]onjunto de personas de un mismo origen y que generalmente hablan un mismo idioma y tienen una tradición común").

222 **Vol. VI, Annex 156**, Real Academia Española, Diccionario de la lengua española, Definition of "Origen", https://dle.rae.es/?id=RD4RJlJ ("patria, país donde alguien ha nacido o donde tuvo principio su família").

223 **Vol. VI, Annex 154**, Xinhua Online Dictionary, Definition of "原", http://xh.5156edu.com /html3/1901.html ("最初的，开始的"；"本来").

224 **Vol. VI, Annex 154**, Xinhua Online Dictionary, Definition of "属", http://xh.5156edu.com /html3/7437.html ("归属;隶属").

225 **Vol. VI, Annex 154**, Xinhua Online Dictionary, Definition of "国", http://xh.5156edu.com /html3/9910.html.("有土地、人民、主权的政体").

226 **Vol. VI, Annex 155**, Ozhegov Dictionary, Definition of "Национальный", http://www.ozhegov.com/words/17954.shtml ("Характерный для данной нации, свойственный именно ей").

and spiritual identity. Sometimes used as country or state"[227]. Ushakov's Dictionary defines "Происхождение" (proiskhozhdeniye) as "denoting a belonging to a certain nation or class by birth."[228]

3.32 The term "national origin" has also been analyzed as a composite term in the context of regional human rights regimes. For example, the European Court of Human Rights ("***ECtHR***") has found violations of Article 14 of the European Convention on Human Rights ("***ECHR***")—which like Article 1(1) of the CERD, prohibits discrimination on the basis of "national . . . origin" [229]—in cases where State authorities did not provide "any reasonable justification for the practice of excluding non-nationals . . . from entitlement to certain allowances *on the sole basis of their nationality*."[230]

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[227] **Vol. VI, Annex 155**, Ozhegov Dictionary, Definition of "Нация", http://slovari .299.ru/word.php?id=17956&sl=oj ("Исторически сложившаяся устойчивая общность людей, образующаяся в процессе формирования общности их территории, экономических связей, литературного языка, особенностей культуры и духовного облика. В некоторых сочетаниях: страна, государство").

[228] **Vol. VI, Annex 155**, Ushakov's Dictionary, Definition of "Происхождение", https://slovar.cc/rus/ushakov/441752.html ("Принадлежность по рождению к какому-либо сословию, нации или классу").

[229] *See* ECHR, Art. 14 ("The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, *national* or social *origin*, association with a national minority, property, birth or other status.") (emphasis added).

[230] *See* ECtHR, *Dhahbi v. Italy*, Application No. 17120/09, Judgment (Second Section) (8 April 2014), para. 50 (emphasis added) (citing ECtHR, *Niedzwiecki v. Germany*, Application No. 58453/00, Judgment (25 October 2005); ECtHR, *Okpisz v. Germany*, Application No. 59140/00, Judgment (25 October 2005); ECtHR, *Weller v. Hungary*, Application No. 44399/05, Judgment (31 March 2009); ECtHR, *Fawsie v. Greece*, Application No. 40080/07, Judgment (28 October 2010); ECtHR, *Saidoun v. Greece*, Application No. 40083/07, Judgment (28 October 2010)).

3.33 In *Rangelov v. Germany*, for example, the ECtHR assessed whether the applicant, a Bulgarian national, "ha[d] been treated differently . . . on the grounds of his national origin, *namely his Bulgarian nationality*", ultimately finding a violation of Article 14 on those grounds[231]. Similarly, in *Bah v. United Kingdom*, the ECtHR assessed whether the differential treatment claimed by the applicant, a Sierra Leonean national on behalf of her minor son, was based "on the nationality of her son, *which equates to 'national origin'* for the purposes of Article 14"[232]. Likewise, in *Kuric v. Slovenia*, the ECtHR determined that "the differential treatment complained of was based on the national origin of the persons concerned—as former SFRY citizens were treated differently from other foreigners."[233]

3.34 Likewise, the IACtHR found violations of multiple provisions of the American Convention on Human Rights "in relation to non-compliance with the obligation to respect the rights established in Article 1(1)", which prohibits discrimination on the basis of "national . . . origin"[234]—where the Dominican

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231 *See* ECtHR, *Rangelov v. Germany*, Application No. 5123/07, Judgment (Fifth Section) (22 March 2012) paras. 89, 105 (emphasis added).

232 ECtHR, *Bah v. United Kingdom*, Application No. 56328/07, Judgment (Fourth Section) (27 September 2011), para. 43 (emphasis added).

233 ECtHR, *Kuric v. Slovenia* Application No. 26828/06, Judgment (Grand Chamber) (16 June 2012), para. 394.

234 American Convention on Human Rights, Art. 1(1) ("The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, *national* or social *origin*, economic status, birth, or any other social condition.") (emphasis added).

Republic had expelled a number of Haitian nationals from the country.[235] The African Commission on Human and People's Rights has also found violations of Article 2 of the African Charter on Human and Peoples' Rights—which prohibits discrimination on the basis of "national or social origin," among others[236]—based on the targeting and expulsion of 13 Gambian nationals by the government of Angola.[237]

3.35 The ordinary meaning of "national origin" may thus be said to refer to the belonging of a person (or her or his ancestors) to a given country or nation, *i.e.*, a political community organized around a shared sense of history or culture. This includes such belonging: in a historical sense, *i.e.*, by ancestry or descent; in the sense of birth and provenance, *i.e.,* one's nationality at birth or the country from which one originates; as well as in a present or legal sense, *i.e.*, one's current nationality or national affiliation.

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235 IACtHR, *Case of Expelled Dominicans and Haitians v. Dominican Republic*, Judgment (August 28, 2014), para. 380; *see also ibid*. p. 126, n. 447 (noting that a number of the presumed victims were "of Haitian nationality").

236 African Charter on Human and People's Rights, Art. 2 ("Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, *national* and social *origin*, fortune, birth or any status.") (emphasis added).

237 ACmHPR, *Communication 292/04, Institute for Human Rights and Development in Africa / Angola* (22 May 2008), para. 79 ("'a state's right to expel individuals is not absolute and it is subject to certain restraints,' one of those restraints being a bar against discrimination based on national origin").

(b) *"National Origin" in Its Context*

3.36 The context of Article 1 as a whole further makes clear that "nationality" falls within the ordinary meaning of "national origin" as the term is used in Article 1(1) of the CERD.

3.37 Article 1(1) begins by providing the broad definition of "racial discrimination" provided above, which includes discrimination based on "national origin". As is evident from the plain text, this definition is far-reaching, encompassing discrimination on a variety of enumerated grounds, which overlap to create a latticework of protections designed to eliminate "all forms" of racial discrimination. Article 1(2) then creates an exception to this broad definition; namely, that:

> "[t]his Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens."

3.38 In other words, Article 1(2) carves out differences of treatment between citizens and non-citizens from Article 1(1)'s broad definition of racial discrimination. In so doing, the drafters of the CERD sought to ensure that differences of treatment between the citizens of a given State and all non-citizens of that State—which were and remain common practice when it comes to, for example, voting rights, access to high-ranking public positions, and other political rights—would not, on their own, amount to discrimination within the meaning of the CERD. However, Article 1(2) does not create any express permission for distinctions to be made between different categories of non-nationals on the basis

of nationality. Further, as an exception to the general definition of discrimination enumerated in Article 1(1), Article 1(2) "should be construed narrowly".[238]

3.39 Article 1(3) then provides that:

> "[n]othing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship, or naturalization, provided that such provisions do not discriminate against any particular nationality."

3.40 Like Article 1(2), Article 1(3) implicates the treatment of non-citizens, but in a different context. While Article 1(2) addresses distinctions *between* citizens and non-citizens, Article 1(3) addresses treatment which is inherently directed only at non-citizens; namely, it clarifies that Article 1(1) does not prohibit a State from dictating how individuals—necessarily non-citizens—acquire or lose its nationality and become its citizens. However, Article 1(3) then further clarifies that the State's regulatory freedom in this respect is not unrestricted: a State cannot discriminate "against any particular nationality" in doing so.

3.41 Articles 1(2) and 1(3) cannot be read as *excluding* nationality-based discrimination from the CERD's ambit by allowing distinctions to be made in the case of non-citizens, as the UAE argued during the provisional measures phase[239].

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238 **Vol. V, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016) p. 158 ("In terms intrinsic to the text, the technical point that exceptions to a principle should be construed narrowly is important: in functional terms, paragraph 2 of Article 1 is an exception to a wider principle. Further, the potentially restrictive provisions in 1(2) and 1(3) have been set against Article 5 (and other generalist provisions), with the latter generally treated as dominant.").

239 *See* CR 2018/13, pp. 40–41, para. 31 (Olleson) (stating that Article 1(2) "expressly qualifies and informs the definition in paragraph 1, and indeed, limits the scope of the Convention as a

In fact, the opposite is true: the inclusion of Articles 1(2) and 1(3) makes clear that nationality-based discrimination already falls within Article 1(1)'s protections. If it did not, neither of these two provisions would be necessary. Both Articles 1(2) and 1(3) arise from an assumption that discrimination based on "national origin" includes nationality-based discrimination, thus potentially implicating the treatment of non-nationals or non-citizens of a given State based solely on an individual's status as a non-national or non-citizen—and thus creating the need for Article 1(2)'s express exception, and for Article 1(3)'s clarification that States may continue to regulate how an individual attains status as a national or citizen.

3.42 The specific language used to introduce Article 1(3)—"[n]othing in this Convention may be interpreted as affecting . . ."—further demonstrates that nationality-based discrimination falls under Article 1(1). This language indicates that Article 1(3) as a whole operates as a "without prejudice" clause, which does not itself add to the definition of racial discrimination or identify additional prohibited types of conduct not already included in Article 1(1). As such, Article 1(3)'s explicit reference to nationality-based discrimination must be read as a *preservation* of an already existing prohibition, not as an additional basis for discrimination. It follows that in order for the prohibition on nationality-based discrimination to be preserved, it must already exist in Article 1(1).

3.43 Finally, Articles 1(2) and 1(3) remain subject to the general mandate of Article 1(1). As such, States must exercise their rights to distinguish between citizens and non-citizens and to dictate their internal laws relating to nationality,

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whole. Article 1, paragraph 2, expressly recognizes, and carves out from the scope of application of the Convention, the right of States to make distinctions between 'citizens and non-citizens', and therefore to accord differential treatment on the basis of present nationality.").

citizenship, and naturalization in a manner that is consistent with their overarching obligations under the CERD, as defined by Article 1(1).

3.44 This reading of the relationship between Articles 1(1), 1(2), and 1(3) has been repeatedly and clearly confirmed by the CERD Committee. The CERD Committee's purpose is to ensure that States parties give effect to the CERD, and it necessarily interprets the provisions of the CERD in pursuit of this purpose. As the UAE itself recognized in the provisional measures phase of the proceedings, the CERD Committee "was assigned the role of principal custodian of the Convention"[240]. The Court has previously recognized the specialized function of United Nations treaty bodies, stating in *Diallo* that:

> "Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the [ICCPR] on that of the Committee, it believes that it should *ascribe great weight* to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled"[241].

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[240] CR 2018/13, p. 21, para. 8(6) and p. 26, para. 20 (Pellet) (noting also that the Committee is "the organ that the authors of the Convention established as its guardian").

[241] *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, para. 66 (emphasis added); *see also Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012,* paras. 100–101; *Application of the Convention on t he Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 11 July 1996*, Separate Opinion of Judge Weeramantry, pp. 653–654; *see also Legal Consequences of the Construction of a Wall in the Occupied Palestinian*

3.45 The imperatives of achieving clarity and essential consistency of international law are equally significant here. In its General Recommendation XI, issued in 1993, the CERD Committee clearly described the relationship between the various clauses of Article 1:

> "Article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination. Article 1, paragraph 2, *excepts from this definition* actions by a State party which differentiate between citizens and non-citizens. Article 1, paragraph 3, qualifies article 1, paragraph 2, by declaring that, among non-citizens, States parties may not discriminate against any particular nationality."[242]

Territory, Advisory Opinion, I.C.J. Reports 2004, paras. 109–112; ECtHR, *Mamatkulov and Abdurasulovic v. Turkey*, Application Nos. 46827/99 and 46951/99, 2003-I, paras. 29–40 (citing decisions of the Human Rights Committee and the Committee against Torture); International Law Association (ILA), *Committee on Human Rights Law and Practice, Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies*, in International Law Association, Report of the Seventy-First Conference 621, 664 (2004) (noting that the Inter-American Court of Human Rights had "referred to the practice of the Human Rights Committee in [a number of] cases."); *ibid*. (noting that the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda "have drawn on treaty body jurisprudence [in the areas] of evidence and procedure"); **Vol. V, Annex 144**, M. Banton, *International Action Against Racial Discrimination* (Oxford University Press, 1996) (noting statement by a representative of the UN Office of Legal Affairs that the CERD Committee "was not a subsidiary body of the General Assembly but an autonomous treaty body . . . the right to give authoritative interpretations of the Convention, and the powers of the Committee thereunder, rested not with the General Assembly but, in the first instance, with CERD itself, as the body responsible for monitoring compliance with the Convention, and ultimately with States parties.").

242 **Vol. IV, Annex 104**, CERD Committee, *General Recommendation No. 11 on non-citizens*, document A/48/18 (1993), para. 1; *see also ibid*., para. 3 ("The Committee further affirms that article 1, paragraph 2, must not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in other instruments, especially the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.").

3.46 In General Recommendation 30, the Committee further elaborated on the relationship between Article 1(2) and Article 1(1):

> "Article 1, paragraph 2 must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights."[243]

3.47 Accordingly, there is no question that Article 1(2) allows States to differentiate between citizens and non-citizens. However, such distinctions are still subject to a general prohibition against discrimination, including discrimination based on national origin, in Article 1(1). As a result, a State may not single out a *particular group* of foreign nationals for discriminatory treatment, including on the basis of national origin. This interpretation has shaped the CERD Committee's evaluation of State party compliance with the CERD *for decades*, and it has thus repeatedly called on States parties to address instances of discrimination against non-citizens on the basis of their nationality.[244]

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243 **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens*, document CERD/C/64/Misc.11/rev.3 (2004), para. 2; *see also ibid*., para. 3 ("Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law[.]").

244 *See also* CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Australia*, document CERD/C/AUS/CO/15-17 (27 August 2010),

3.48 For example, in its 1998 concluding observations on Switzerland, the CERD Committee "express[ed] disquiet" at Switzerland's "three-circle-model" immigration policy of the time[245]. The three-circle-model was designed "around three categories of source countries":

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para. 24 (recommending that Australia "expedite the removal of the suspension on processing visa applications from asylum seekers from Afghanistan" and implement measures to standardize asylum assessment "regardless of country of origin", thus reiterating that the CERD does not allow for distinctions to be made on the basis of present nationality (in this case, Afghani)); CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Algeria*, document CERD/C/DZA/CO/20-21 (21 December 2017), para. 20 (noting the Committee's concern about the "situation of non-nationals", in particular sub-Saharan migrants, and recommending that the State party "[t]ake the necessary steps to ensure that migrants have effective access to their economic, social and cultural rights", "[p]revent racial discrimination against migrants" and "[p]rovide information regarding current laws on irregular migration[.]"); CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination*, *Pakistan*, document CERD/C/PAK/CO/21-23 (3 October 2016), paras. 37–38 (The Committee expressed concern at the "growing hostility and violence" towards Afghan nationals who had come to the country as refugees, and urged the State to "take effective measures to mitigate the intensified hostility towards Afghan refugees" and to "ensure their right to access employment, health-care services, education, water and sanitation and other public services"); CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination*, *Peru*, document CERD/C/PER/CO/22-23 (3 May 2018), paras. 36–37 (The Committee expressed concern about discrimination against "migrants, asylum seekers and refugees, in particular members of the Venezuelan population", and recommended that the State party "take the necessary action to ensure the protection of foreign nationals, a majority of whom are Venezuelan", including by removing barriers to health services, education and employment); CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination*, *Tajikistan*, document CERD/C/TJK/CO/6-8 (24 October 2012), para. 16 (The Committee expressed concern regarding Tajikistan's Family Code, which restricts the right of foreigners and stateless persons to marry Tajik women; the Committee recalled General Recommendation XXX and recommended that the State take into account its "duty to ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status" and "avoiding discrimination on ethnic or national ground"); *D.R. v. Australia*, Communication No. 42/2008, Opinion, document CERD/C/75/D/42/2008 (14 August 2009); *Benon Pjetri v. Switzerland*, Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 53/2013 (5 December 2016).

245 CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination*, *Switzerland*, document CERD/C/304/Add.44 (30 March 1998), para. 6.

> "The first circle, or inner circle, is made of EU and EFTA member countries with which the aim is to reach free mobility and abolish the status of the seasonal worker in the medium term. The second circle, or median circle, is made of countries economically and culturally close to Switzerland such as North America, Oceania, and Eastern Europe. . . . Finally, the third circle, or outer circle, is made of all other countries from which new immigrants can be accepted only under exceptional circumstances."[246]

3.49 The CERD Committee explained that its concerns over the three-circle-model stemmed from the fact that it "classifies foreigners *on the basis of their national origin*"—a term it clearly interpreted to include nationality.[247] The Committee considered "the conception and effect of this policy to be stigmatizing and discriminatory, and therefore contrary to the principles and provisions of the Convention."[248]

3.50 The CERD Committee also expressed concerns in its concluding observations to the Dominican Republic about "information received according to which migrants of Haitian origin" were subjected to collective deportations back to their country of nationality, Haiti. The Committee referred to its General

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246 D. M. Gross, *Immigration Policy and Foreign Population in Switzerland*, World Bank Policy Research Working Paper 3853 (2006); *see also* CERD Committee, *Initial reports, Switzerland*, document CERD/C/270/Add.1. (14 March 1997), para. 56 (In its report, Switzerland describes the "three-circle" model as a "restrictive policy towards the admission of foreigners to the increasingly specialized Swiss labour market").

247 CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Switzerland*, document CERD/C/304/Add.44 (30 March 1998), para. 6 (emphasis added).

248 CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Switzerland*, document CERD/C/304/Add.44 (30 March 1998), para. 6.

Recommendation 30 on non-citizens, and recommended that the Dominican Republic "ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or *national origin*"[249].

3.51 The CERD Committee has also criticized the United States' now-defunct National Security Entry-Exit Registration System, established in the wake of 9/11. The system required visitors to the United States who were nationals of certain countries to register with immigration officers upon arrival at a port of entry and undergo enhanced immigration processing including fingerprinting, photographing, and interrogation regarding their background[250]. The Committee, invoking CERD Article 2.1(c) and General Recommendation 30, called upon the United States to put an end to the program[251].

3.52 Again in 2012, the CERD Committee affirmed that nationality falls within the scope of Article 1(1) in concluding observations to Canada, wherein it expressed concerns about Bill C-11, The Balanced Refugee Act, which proposed to establish a list of "safe countries" and to expedite asylum requests for individuals arriving from these countries. The Committee recommended that Canada "take appropriate measures to ensure that procedural safeguards will be

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249 CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Dominican Republic*, document CERD/C/DOM/CO/12 (16 May 2008), para. 13 (emphasis added).

250 Rights Working Group, *The NSEERS Effect: A Decade of Racial Profiling, Fear, and Secrecy* (May 2012), https://pennstatelaw.psu.edu/_file/clinics/NSEERS_report.pdf.

251 CERD Committee *Concluding observations of the Committee on the Elimination of Racial Discrimination,* document CERD/C/USA/CO/6 (8 May 2008), para. 14.

guaranteed when addressing asylum requests of persons considered coming from 'safe countries', without any discrimination based on their national origin"[252].

3.53 As recently as September 2018, the Committee highlighted a problematic case of discrimination against non-nationals in its concluding observations to Japan. In that case, the Committee stated it was "concerned that Koreans who have lived for multiple generations in Japan remain foreign nationals" and that "many Korean women suffer multiple and intersecting forms of discrimination based on nationality and gender"[253]. Referring once more to its General Recommendation 30, the Committee recommended that Japan take steps to prevent discrimination against Koreans.

3.54 This approach is consistent with the treatment of entry restrictions under general international law, pursuant to which states, while maintaining broad latitude to control entry into their territory, are required to respect certain fundamental tenets of international human rights law, including their obligation not to engage in acts or practices of racial discrimination that in purpose or effect undermine fundamental human rights and freedoms. For example, in 1986, in its General Comment No. 15 to the ICCPR, the UNHRC noted that the ICCPR:

> "does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, *in certain circumstances an alien may enjoy the protection of*

[252] CERD Committee *Concluding observations of the Committee on the Elimination of Racial Discrimination,* document CERD/C/CAN/CO/19-20 (4 April 2012), para. 15.

[253] CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Japan*, document CERD/C/JPN/CO/10-11 (26 September 2018), para. 21.

> *the Covenant even in relation to entry or residence, for example when considerations of nondiscrimination, prohibition of inhuman treatment and respect for family life arise.*"[254]

3.55 Likewise, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has identified immigration regulations as liable to engage foundational principles of international human rights law, namely equality and non-discrimination. Differential treatment afforded to different groups, "for example between citizens and non-citizens or between different groups of non-citizens, are permissible only if they serve a *legitimate* objective and are *proportional* to the achievement of that objective."[255] On this basis, the UN Special Rapporteur has expressed concern about attempts by States to enact entry bans that disproportionately affect certain groups, stating that "[u]nder the . . . International Convention on the Elimination of all Forms of Racial Discrimination, *blanket* bans on specific nationalities and other immigration measures that exclude on the basis of . . . national origin are unlawful"[256].

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254 **Vol. III, Annex 93**, Human Rights Committee, *CCPR General Comment No. 15: The Position of Aliens Under the Covenant* (11 April 1986), para. 5 (emphasis added).

255 Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, document A/HRC/38/52 (25 April 2018), para. 16 (emphasis added).

256 Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, document A/HRC/38/52 (25 April 2018), para. 67 (emphasis added); *see also Donald J. Trump v. Hawaii*, Case No. 17-965 (2018), *Amici Curiae* Brief of International Law Scholars and Nongovernmental Organizations in Support of Respondents, p. 3, http://www.supremecourt.gov/DocketPDF/17/17-965/41737/20180330125852277_2018-03-30%20Amici%20Curiae%20Brief%20of%20International%20Law%20Scholars.pdf (the amicus brief was filed by eighty-one international law scholars and a dozen non-governmental organizations with expertise in civil rights law, immigration law or international human rights law; it describes a proposed

3.56 In the provisional measures phase of the proceedings, Judge Crawford noted that certain types of differentiation on the basis of nationality are reflected "in widespread State practice giving preferences to nationals of some countries over others in matters such as the rights to reside, entitlement to social security, university fees and many other things, in peace and during armed conflict"[257]. Other members of the Court concluded that, if nationality were a protected ground of discrimination, such preferences would be unlawful under the CERD, requiring that "with regard to the wide array of civil rights that are protected under CERD, all foreigners must be treated by the host State in the same way as nationals of the State who enjoy the most favourable treatment"[258].

3.57 But that conclusion does not flow necessarily from the inclusion of nationality-based discrimination. As noted above, inherent in Article 1(1)'s definition of discrimination is a concept of legitimacy and proportionality, as the CERD Committee has repeatedly affirmed. The types of positive preferences described above would thus in most cases be unlikely to give rise to a CERD

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ban on entry to the United States by individuals coming from particular countries as "a prohibited distinction in immigration policy based on national origin [that] violates the human right to freedom from discrimination based on national origin under the . . . International Convention on the Elimination of All Forms of Racial Discrimination, and customary international law."). The former UN High Commissioner for Human Rights, Mr. Zeid Ra'ad al-Hussein, took the same stance on the ban at issue in *Donald J. Trump v. Hawaii*, tweeting that "[d]iscrimination on nationality alone is forbidden under #humanrightslaw". **Vol. III, Annex 94**, Twitter Post, @UNHumanRights (30 January 2017 at 3:47 a.m.).

257 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Provisional Measures, Dissenting Opinion of Judge Crawford*, para. 1.

258 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Joint Declaration of Judges Tomka, Gaja, and Gevorgian*, para 4.

violation, provided that they were enacted in a fashion that was both legitimate and proportional. And indeed, the CERD Committee has not characterized such positive preferences based on nationality as necessarily violating the CERD[259].

3.58 The approach of the ECtHR, which similarly recognizes "nationality" as falling under the rubric of "national origin"-based discrimination, is instructive on this point. As discussed above, the ECtHR has interpreted ECHR Article 14's prohibition on national origin-based discrimination to include nationality-based discrimination. It has further held that, in assessing whether a distinction is legitimate and proportionate, "very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention"[260]. At the same time, however, the ECtHR has noted that distinctions between the treatment of non-nationals from European Community or European Union member states and other non-nationals may be justified by virtue of the "special legal order" between those States[261]. Nor does it view the prohibition on nationality-based discrimination as

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259 *See*, *e.g.*, *D.F. v. Australia*, Communication No. 39/2006 (2008), para. 4.1 (finding no CERD violation where limitations were imposed on New Zealanders' access to certain benefits based on their non-citizen status; New Zealanders who were in Australia on the date the changes were enacted or who fulfilled certain "transitional arrangements" continued to receive the benefits at issue, and the legislative changes did not "affect the ability of New Zealand nationals residing in Australia to have automatic access to other benefits such as employment services, health care, public housing and primary and secondary education."); *see also D.R. v. Australia*, Communication No. 42/2008, document A/64/18 (2009) (same).

260 *See* ECtHR, *Koua Pourrez v. France*, Application. No. 40892/98, Judgment (Second Section) (30 September 2003), para. 46.

261 *See* ECtHR, *Moustaquim v. Belgium*, Application. No. 12313/86, Judgment (Chamber) (18 February 1991), para. 49.

in conflict with a State's general right "to control the entry of aliens into its territory and their residence there"[262], though again, such right is not absolute[263].

3.59 Where a State implements policies that in either purpose or effect compromise the *fundamental human rights* of a particular group of non-citizens—for example, the collective expulsion of all nationals of a particular country—such policies are, by definition, neither legitimate nor proportional, and thus constitute prohibited discrimination under the CERD[264]. This is especially true of policies that have the purpose not only to *distinguish* between, but affirmatively to *discriminate against* individuals of a particular nationality—for example, as a means of retaliating against their country of origin.[265] For this reason, even to the extent that States may differentiate between particular nationalities in implementing visa or immigration policies—for example, pursuant to regional free-movement zones or other agreements—their ability to do so is not absolute, as detailed above.

3.60 The full context of Article 1 thus demonstrates that discrimination against a particular nationality falls within Article 1(1)'s definition of discrimination, and is further not removed from the scope of CERD's protection by Article 1(2)'s exception for distinctions between citizens and non-citizens.

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262 *See* ECtHR, *Taddeucci and McCall v. Italy*, Application No. 51362/09, Judgment (First Section) (30 June 2016), para. 55.

263 *See, e.g.*, ECtHR, *Moustaquim v. Belgium*, Application No. 12313/86, Judgment (Chamber) (18 February 1991), paras. 46–47.

264 *See* Chap. V, Sec. I.B., Sec. II, below.

265 *See* Chap. V, Sec. I.B., below.

(c) *"National Origin" in Light of Object and Purpose*

3.61 A reading of Article 1(1) that would allow for discrimination against a specific sub-group of non-nationals on the basis of their nationality would contradict the principle of universality of fundamental human rights that underlies the United Nations Charter and the Universal Declaration of Human Rights ("***UDHR***"), both of which are cited in the CERD's Preamble[266]. Indeed, the "architecture of international human rights law is built on the premise that all persons, by virtue of their essential humanity, should equally enjoy all human rights"[267]. To that end, the United Nations Charter "reaffirm[s] faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women and of nations large and small"[268]. Similarly, the UDHR recognizes that "[a]ll human beings are born free and equal in dignity and rights"[269] and grants to "[e]veryone"[270] all of the rights and freedoms it sets forth. These instruments shaped the drafting of the CERD and provide context for understanding its object and purpose.

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266 **Vol. V, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 140 ("The entitlements of 'everyone' or 'all persons' to enjoy human rights are set out in the core human rights texts from the [UDHR] onwards.").

267 **Vol. V, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 140; *see* **Vol. V, Annex 151**, D. Weissbrodt, *The Human Rights of Non-Citizens* (Oxford University Press, 2008), p. 34.

268 UN Charter, Preamble.

269 UDHR, Art. 1.

270 UDHR, Art. 2 ("Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.").

3.62 Permitting discrimination on the basis of nationality would also contradict the CERD's broad and prophylactic purpose of not only eliminating existing discrimination based on race, but also preventing it, by "adopt[ing] all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations", eliminating the "existence of racial barriers" as "repugnant to the ideals of any human society", and "prevent[ing] and combat[ing] racist doctrines and practices"[271]. It would also render the CERD underequipped in the contemporary protection of human rights, and require the CERD Committee to abandon its work against certain forms of racial discrimination that it has identified in its past reports.

3.63 In light of the CERD's object and purpose, any interpretation according to which discrimination based on nationality is permitted would be manifestly unreasonable and cannot be reconciled with the object and purpose of the CERD. As Professor Thornberry has explained,

> "A reading of 1(2) that rules out from the Convention any concern with non-citizens could be classified in [VCLT] terms as a 'manifestly absurd or unreasonable' reading of ICERD, and as not corresponding to its object and purpose. In light of the ambition expressed in the Convention to eliminate racial discrimination, and a human rights approach *pro homine* and *pro femina*, it is reasonable to prefer effective interpretations that protect the widest span of potential victims."[272]

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[271] **Vol. III, Annex 92**, CERD, Preamble.

[272] **Vol. V, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 158; *see also* B. Çali, "Specialized Rules of Treaty Interpretation: Human Rights" in D.B. Hollis (ed.) *The Oxford Guide to Treaties* (Oxford University Press, 2012), p. 538 ("Effectiveness is an

3.64 The UAE's suggested approach eviscerates the protections of the CERD, leading to absurd results directly contrary to its object and purpose. For example, such an interpretation would suggest that, prior to the break-up of the Soviet Union, discrimination in any given State against persons of Kazakh origin was impermissible, but not against those exact same persons once Kazakhstan secured Statehood (so long as the State framed the discrimination as based on nationality alone). Such an interpretation assigns the term "national origin" an arbitrary meaning—one that protects groups of persons, unless the discrimination against them is framed in terms of present nationality.

3.65 Instead, the CERD must account for the protective purpose of human rights treaties as a general matter. That this protective purpose must govern the interpretation of human rights treaties is now universally recognized by the ICJ and other courts created to monitor the application of regional instruments for the protection of human rights. The Court itself endorsed this approach in its 1958 Advisory Opinion on *Reservations to the Convention on Genocide*, where it stated that:

> "[t]he object and purpose of the Genocide Convention imply that it was the intention of the General Assembly and of the States which adopted it that as many States as possible should participate. The complete exclusion from the Convention of one or more States would not only restrict the scope of its application, but would detract from the authority of the moral and humanitarian principles which are

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overarching approach to human rights treaty interpretation . . . [O]ther more . . . specific interpretive principles developed in the context of each human rights treaty . . . all derive from the interpretive consensus that interpretations that are devoid of actual effect for human rights protections do not cohere with good faith interpretations of the wording and context of human rights treaties in the light of their object and purpose.").

> its basis. It is inconceivable that the contracting parties readily contemplated that an objection to a minor reservation should produce such a result. . . . The object and purpose of the Convention thus limit both the freedom of making reservations and that of objecting to them."[273]

3.66 Regional human rights courts have followed suit, holding in analogous contexts that "the object and purpose of the [European] Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards 'practical and effective'"[274].

3.67 These concerns are no less pressing when the application of a universal instrument for the protection of basic human rights such as the CERD is at stake; the requirement to make this instrument's safeguards "practical and effective" applies equally here. The CERD Committee itself emphasized that "[t]he

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[273] *Reservations to the Convention on Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 24; *see also Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, paras. 86, 114–115 (interpreting the Convention Against Torture); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.CJ. Reports 2004*, paras. 94–95 (interpreting the Fourth Geneva Convention); *ibid.*, paras. 108–109 (interpreting the ICCPR).

[274] ECtHR, *Soering v. the United Kingdom*, Application No. 14038/88, Judgment (7 July 1989), para. 87 (references omitted). Likewise, the Inter-American Court of Human Rights held that human rights conventions must be interpreted "to give it its full meaning and to enable the system for the protection of human rights entrusted to the Commission and the Court to attain its 'appropriate effects'". IACtHR, *Velásquez Rodriguez v. Honduras*, Preliminary Objections, Judgment, (26 June 1987), para. 30. The words "appropriate effects" are a reference to the following passage of the Permanent Court of International Justice's Order of August 1929 in the *Free Zones* case: "Whereas, in case of doubt, the clauses of a special agreement by which a dispute is referred to the Court must, if it does not involve doing violence to their terms, be construed in a manner enabling the clauses themselves to have appropriate effects." *Free Zones of Upper Savoy and the District of Gex, Order of 19 August 1929, P.C.I.J., Series A, No. 22*, p. 13.

Convention . . . is a living instrument that must be interpreted and applied taking into account the circumstances of contemporary society"[275]. Over the years, the CERD Committee has repeatedly affirmed the broad nature of the CERD's protections in interpreting Article 1(1), consistent with the drafters' aim of "avoid[ing] any *lacunae*"[276]. It has reiterated this in its most recent sessions, "impelling States to implement real solutions to racism, so that *all people*, regardless of their background, could fully exercise their human rights"[277]. In so doing, the CERD Committee has also consistently recognized the need to take into account contemporary forms of racial discrimination to ensure that the CERD remains effective. This includes with respect to discrimination against non-nationals, which the Committee has characterized as "one of the main sources of contemporary racism"[278].

3.68 These various elements therefore converge to confirm that the term "national origin" in Article 1(1) of the CERD encompasses nationality, including present nationality in line with the CERD's object and purpose of eliminating "all

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[275] **Vol. IV, Annex 112**, CERD Committee, *General Recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, document CERD/C/GC/32 (2009), *see also Stephen Hagan v. Australia*, Communication No. 26/2002, Opinion, document CERD/C/62/D/26/2002 (2003), para 7.3 ("the Convention, as a living instrument, must be interpreted and applied taking into the circumstances of contemporary society").

[276] **Vol. V, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 119 (emphasis added).

[277] CERD Committee, Ninety-Third Session, *Opening Statement of the Human Rights Council and Treaty Mechanisms Division*, document CERD/C/SR.2547 (2017), para. 2 (emphasis added).

[278] **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens*, document CERD/C/64/Misc.11/rev.3 (2004), Preamble.

forms" of racial discrimination. An interpretation of Article 1(1) as categorically excluding present nationality would undermine this object and purpose, leading to gaps in its comprehensive scope of protection and absurd results. This is particularly true given that, as noted above, discrimination against non-nationals is a particularly insidious form of contemporary racial discrimination, as the CERD Committee has explicitly recognized.

(d) *Supplementary Means of Interpretation Confirm That the CERD Applies to Discrimination on the Basis of Nationality*

3.69 Should the Court find that application of Article 31 of the VCLT leaves the meaning of "national origin" ambiguous or obscure, or leads to a result which is manifestly absurd or unreasonable, it may, pursuant to Article 32 of the VCLT, have recourse to the *travaux préparatoires* and the circumstances of the CERD's conclusion as supplementary means of interpretation. The *travaux préparatoires* of the CERD and the circumstances under which it was concluded confirm that nationality is included within the scope of "national origin" in Article 1(1).

3.70 At the hearing on provisional measures, the UAE referenced selectively excerpted statements by the drafters of the CERD, which the UAE argued showed that "'national origin' was not to be equated with 'nationality', and that the purpose of inclusion of the term was so as to preclude discrimination on the basis of historic national origin, rather than present nationality"[279]. Yet read in their full context, these statements do nothing of the sort. Instead, they demonstrate that at each stage of drafting, the delegates made clear that they viewed the ordinary

[279] CR 2018/13, p. 47, para. 56 (Olleson).

meaning of "national origin" as capable of encompassing nationality-based discrimination.

3.71 Indeed, it was this very fact that led to the main debate over the term—a debate overwhelmingly motivated not by a desire to exclude nationality-based discrimination, but rather by States' desires to maintain the ability to make legitimate distinctions between *citizens and no n-citizens* in the enjoyment of certain political rights. And in determining how to address these concerns, the CERD's drafters *rejected* the approach of excluding nationality-based discrimination from Article 1(1).

3.72 During the provisional measures hearing, the UAE highlighted statements by the drafters of the CERD that, it argued, made "clear that 'national origin' did not encompass citizenship"[280]. For example, the UAE pointed to the fact that an early draft of the convention prepared by the Commission on Human Rights' defined racial discrimination as:

> "any distinction, exclusion, restriction or preference based on race, colour, [national] or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. [In this paragraph the expression "national origin" does not cover the status of any person as a citizen of a given State]"[281].

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280 CR 2018/13, p. 46, para. 52 (Olleson).

281 CR 2018/13, p. 46, para. 51 (Olleson); *see* **Vol. III, Annex 91**, United Nations, *Official Records of the General Assembly, Twentieth Session, Draft International Convention on the*

3.73 In fact, this early draft suggests the opposite: the drafters of the CERD included the bracketed language in this text, and generally deliberated the "advisability of retaining the words 'national or' in paragraph 1" at this stage, *precisely because* they understood that "national origin" could encompass nationality or citizenship[282]. As the summary report of the Commission on Human Rights twentieth session debates explained, delegates had expressed the view that "inclusion of the words ['national origin'] in the operative part of the Convention was undesirable since their meaning and scope were so vague"[283]. Some delegates recognized that the term could be understood as inclusive of nationality, suggesting "that the difficulty arose out of the term 'national' in the English and French languages, since in those languages the word was not necessarily related to country of origin but referred to citizenship"[284].

3.74 This understanding persisted in the subsequent discussion of "nationality" and "national origin" during the General Assembly's twentieth session, during which the final text of the CERD was considered and unanimously adopted[285]. It

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Elimination of All Forms of Racial Discrimination, Report of the Third Committee, document A/6181 (18 December 1965) (brackets in original).

282 **Vol. III, Annex 77**, United Nations, *Official Records of the Economic and Social Council, Commission on Human Rights, Report on the Twentieth Session*, document E/3873, E/CN.4/874 (1964), pp. 24–25, para. 85.

283 **Vol. III, Annex 78**, United Nations, *Official Records of the Economic and Social Council, Commission on Human Rights, Twentieth Session*, document E/CN.4/SR.809 (14 May 1964), p. 5.

284 **Vol. III, Annex 77**, United Nations, *Official Records of the Economic and Social Council, Commission on Human Rights, Report on the Twentieth Session*, document E/3873, E/CN.4/874 (1964), p. 27, para. 100.

285 *See* **Vol. III, Annex 91**, United Nations, *Official Records of the General Assembly, Twentieth Session, Draft International Convention on the Elimination of All Forms of Racial Discrimination, Report of the Third Committee*, document A/6181 (18 December 1965).

is clear from these discussions that the delegates equally viewed the term "national origin" as capable of a broad scope of meanings, including encompassing nationality, based in varying experiences and contexts. For example, the Hungarian delegate, Mr. Beck, explained that the specific meaning of "national origin" was dependent on context and culture; he "had learnt from informal discussions with various delegations that the term 'national origin' was open to different interpretations, even among countries speaking the same language"[286]. Several other delegates expressed that the term could be interpreted variously as "nationality, in the sense of another mother tongue, different cultural traditions, and so forth"[287] or as referring to either "persons of foreign birth who had become nationals of their country of residence" or "foreign minorities within a State"[288] Some of the drafters of the CERD articulated clear differences between the two terms, while others used them interchangeably[289].

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286 **Vol. III, Annex 81**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1304 (14 October 1965), p. 85, para. 21.

287 **Vol. III, Annex 81**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1304 (14 October 1965), p. 85, para. 21.

288 **Vol. III, Annex 81**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1304 (14 October 1965), p. 84, para. 16.

289 *See*, *e.g.*, **Vol. III, Annex 81**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1304 (14 October 1965), p. 85, para. 23 (statement of the United States delegate that "[n]ational origin differed from nationality in that national origin related to the past—the previous nationality or geographical region of the individual or his ancestors—while nationality related to the present status); *c.f. ibid*., p. 84, para. 13 (statement of the Austrian delegate that "[f]or half a century the terms 'national origin' and 'nationality' had been widely used in literature and in international instruments as relating, not to persons who were citizens of or held passports issued by a given State, but to those having a certain culture, language and traditional way of life peculiar to a nation").

3.75 The fact that "national origin" on its face was understood as capable of encompassing nationality in the politico-legal sense of citizenship (what the UAE refers to as "current" nationality) is precisely why the delegates extensively debated the term's inclusion at each stage of drafting, motivated by the concern that the term would be interpreted to restrict States from making legitimate distinctions between citizens and non-citizens (*e.g.*, for the purpose of granting political rights typically reserved to citizens, such as voting). For example, during the debates of the Commission on Human Rights, the delegate from Lebanon argued that "[t]he convention should apply to nationals, non-nationals, and all ethnic groups, but it should not bind the parties to afford the same political rights to non-nationals as they normally granted to nationals."[290] Mr Gueye, the delegate from Senegal, similarly summarized the main point of contention during the General Assembly's twentieth session as follows:

> "the expression 'national origin' had given rise to controversy, apparently because some delegations feared that its use would confer on aliens living in a State equality of rights in areas, political or other, which under the laws of the State were reserved exclusively to nationals."[291]

3.76 There is thus little question that, from the perspective of the delegates, "national origin" was capable of encompassing "nationality." And indeed, the decision to include the term in the CERD's final text was made with full awareness and lengthy discussions of this fact.

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[290] **Vol. III, Annex 78**, United Nations, *Official Records of the Economic and Social Council*, *Commission on Human Rights*, *Twentieth Session*, document E/CN.4/SR.809 (14 May 1964), p. 5.

[291] **Vol. III, Annex 81**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1304 (14 October 1965), p. 84, para. 16.

3.77 The extensive debates over the meaning and scope of "national origin" and "nationality" make clear that the delegates' primary concern was not whether the categories *in general* should be considered a form of discrimination falling under the scope of the CERD. At the same time that the delegates struggled to define the full scope of the term "national origin", which clearly was understood as capable of encompassing nationality in the politico-legal sense, they recognized that the aim of the CERD was to prohibit discrimination in the enjoyment of fundamental rights to *all persons*. For this reason, the delegates broadly agreed that *some form* of the term "national origin" or "nationality" would be a necessary addition to the definition of "racial discrimination", because the terms captured a segment of the population that was both clearly at risk for discrimination and not adequately covered by the other characteristics mentioned in Article 1(1), such as "ethnic origin".[292]

3.78 Thus, the primary concern continued to be whether referencing these categories might prevent States from denying certain political rights and other benefits of citizenship to non-citizens. This concern is, indeed, explicitly reflected in the Human Rights Commission definition highlighted by the UAE and discussed above. It is also reflected in another excerpt of the *travaux* highlighted by the UAE during the provisional measures phase, namely, an amendment proposed by the United States and French delegates. This amendment "aimed at clarifying the meaning of the expression 'national origin' by specifying that there

[292] *See, e.g.*, **Vol. III, Annex 81**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1304 (14 October 1965), pp. 83-84, para 5 (Mr. Resich, delegate from Poland: "[t]he deletion of the word 'national' from the Convention would imply that the Committee rejected the principle that all persons should be protected from any type of racial discrimination"); *ibid.*, p. 84, para. 13 (Mr. Villgrattner, delegate from Austria: "[d]eletion of the word [national] might lead to uncertainty concerning the rights of certain groups and perhaps, eventually, to their denial.").

was nothing in that expression to prevent States from making a distinction between their treatment of their own citizens and nationals and their treatment of aliens."[293] As the French delegate explained, "[t]he word 'nationality' had a strict[ ] and . . . specific meaning in French legal terminology" and was "understood to cover all that concerned the rules governing the acquisition or loss of nationality and the rights derived there from."[294] The United States-France amendment, had it been adopted, would have resulted in a new Article 1(2) that provided:

> "In this Convention the expression 'national origin' does not mean 'nationality' or 'citizenship', and the Convention shall therefore not be applicable to distinctions, exclusions, restrictions, or preferences based on differences of nationality of [sic] citizenship"[295].

3.79 The Indian delegate, Mr. K. C. Pant, took a different approach: instead of altering the definition of "national origin," he proposed deleting the words "the right of everyone" in Article V, which would leave States "free to decide for themselves whether the same guarantees should be afforded to aliens and

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293 **Vol. III, Annex 80**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1299 (11 October 1965), p. 58, para. 10.

294 **Vol. III, Annex 80**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1299 (11 October 1965), p. 60, para. 37.

295 **Vol. III, Annex 91**,United Nations, *Official Records of the General Assembly*, *Twentieth Session, Draft International Convention on t he Elimination of All Forms of Racial Discrimination, Report of the Third Committee*, document A/6181 (18 December 1965), p. 12, para. 32 (citing United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/L.1212).

nationals."[296] He noted that "[m]any delegations had stressed and criticized the text's ambiguity on that point."[297]

3.80 However, *neither* the Indian delegate's amendment, nor the amendment of the United States and France delegates, *was adopted as proposed*. Instead, those amendments *were withdrawn in favor of* a compromise amendment that provided the final text of Articles 1(1)–1(3) of the CERD:

> "(1) In this Convention the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
>
> (2) This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party between citizens and non-citizens.
>
> (3) Nothing in the present Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such

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296 **Vol. III, Annex 80**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1299 (11 October 1965), p. 59, para. 30. The final text of Article 5 reads as follows: "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee *the right of everyone*, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of [certain enumerated rights]." **Vol. III, Annex 92**, CERD, Art. 5.

297 **Vol. III, Annex 80**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1299 (11 October 1965), p. 59, para. 30.

> provisions do not discriminate against any particular nationality."[298]

3.81 Thus, that the CERD's inclusion of "national origin" is meant to protect individuals from discrimination on the basis of nationality in the politico-legal sense is evident from the fact that the drafters of the CERD *definitively rejected* the approach of explicitly excluding nationality-based discrimination from Article 1(1)[299]. Instead of adopting the French and United States amendment to this effect, which would have narrowed the definition of "racial discrimination" in Article 1(1), the drafters dealt with the concern that citizens and non-citizens would be guaranteed the same rights through *express exceptions* outlined in Articles 1(2) and 1(3).

3.82 As explained by Miss Tabbara, the representative from Lebanon and one of the sponsors of the compromise amendment, "[t]he amendment made it clear that the Convention would not apply to non-citizens or effect nationality, citizenship or naturalization, provided that there was no discrimination against any

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298 **Vol. III, Annex 91**, United Nations, *Official Records of the General Assembly, Draft International Convention on the Elimination of All Forms of Racial Discrimination, Report of the Third Committee,* document A/6181 (18 December 1965), para. 37 (describing the compromise amendment put forward by Ghana, India, Kuwait, Lebanon, Mauritania, Morocco, Nigeria, Poland and Senegal, document A/C.3/L.1238); **Vol. III, Annex 92**, CERD, Arts. 1(1)–1(3).

299 *E.g.*, **Vol. III, Annex 81**, United Nations, *Official Records of the General Assembly*, *Twentieth Session*, *Third Committee*, document A/C.3/SR.1304 (14 October 1965), para. 6 (quoting Polish delegate's statement that the French and United States amendment went "too far").

particular nationality."[300] Articles 1(2) and 1(3) were therefore meant to narrow the very broad application of Article 1(1).

3.83 By adopting the compromise amendment and retaining the word "national" in the definition of "racial discrimination", the drafters of the CERD sought to maintain the primary goal of the Convention: to eliminate discrimination "in all its forms". And they did this in full recognition of the fact that the scope of "national origin" was not clearly delineated, and could be interpreted in different ways. In that sense, the inclusion of "national origin" in Article 1(1) of the CERD was meant to contribute to a definition of "racial discrimination" that was both broad and flexible enough to account for different regional contexts. This is fully in keeping with the drafters' desire to ensure that the CERD would be "a timeless one, applicable . . . to every kind of racial discrimination"[301]. As Miss King, the representative from Jamaica, explained, "[t]he Convention was intended to

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300 **Vol. III, Annex 83**, United Nations, *Official Records of the General Assembly*, *Twentieth Session*, *Third Committee*, document A/C.3/SR.1307 (18 October 1965), para. 1.

301 **Vol. III, Annex 84**, United Nations, *Official Records of the General Assembly*, *Twentieth Session*, *Third Committee*, document A/C.3/SR.1313 (21 October 1965), p. 121, para. 6. See also the declaration made by Mr. Saario in the Sub-Commission on Prevention of Discrimination and Protection of Minorities, when he stressed that the draft should also be general in scope "*in order to remain valid for the longest possible time*; care should therefore be taken not to mention phenomena limited to a particular area or to the present time." **Vol. III, Annex 73**, United Nations, *Official Records of the Economic and Social Council*, *Sixteenth Session*, document E/CN.4/Sub.2/SR.408 (5 February 1964), p. 5 (emphasis added). He later elaborated to observe that "once an international convention was adopted it became an integral part of international law; it should therefore state rules which were of lasting value". *Ibid*., p. 7.

condemn and provide against not only the present forms of racial discrimination but any future forms as well"[302].

3.84 Scholars have acknowledged, in the words of Professor Thornberry, a "fundamental ambiguity in 'national origin' and 'nationality'", as both terms were used to "refer not only to legal nationality or citizenship but also to a concept of community in a spectrum that includes ethnicity"[303]. What is clear from the *travaux* is that "national or ethnic origin", like the CERD's definition of racial discrimination more generally, should have the widest application possible.

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3.85 In conclusion, for the reasons described above, the CERD clearly encompasses discrimination against a particular group of non-nationals on the basis of their nationality, including present nationality, within Article 1(1)'s prohibition on discrimination based on "national origin". As such, the UAE's measures explicitly and intentionally discriminating against "Qatari nationals" and "Qatari residents and visitors"—in particular, the Expulsion Order as well as the Absolute and Modified Travel Bans—violate the CERD solely based on this discriminatory purpose[304].

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302 **Vol. III, Annex 84**, United Nations, *Official Records of the General Assembly*, *Twentieth Session*, *Third Committee, 1313th Meeting*, document A/C.3/SR.1313 (21 October 1965), p. 122, para. 13.

303 **Vol. V, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 125.

304 *See generally* Chap. V, Sec. I, below.

2. The Discriminatory Measures Fall Within the CERD's Scope Ratione Materiae *Based on Their Discriminatory Effect on Qataris*

3.86 As discussed above, the Expulsion Order and Absolute Travel Ban—executed against "Qatari residents and visitors" and "Qatari nationals," respectively—fall within the scope of the CERD even on the UAE's acknowledged basis of targeting Qataris on the basis of "current nationality." However, equally, the UAE's *ex post facto* attempt to characterize these measures as so limited is not only without basis, but also irrelevant to the Court's conclusion.

3.87 In Qatar, as in its Gulf neighbors, any attempt to carve out "current" Qatari nationals as a group wholly separate and distinct from individuals who were *born* with Qatari nationality is utterly artificial, as the former group is comprised almost entirely of the latter. And this group is itself largely comprised of individuals who are of "Qatari" origin in the historical-cultural sense of parentage or heritage—they were born Qatari, to Qatari parents, and have historical family ties to Qatar.

3.88 The UAE's targeting of "Qataris" and "Qatari nationals" pursuant to the Expulsion Order and the Absolute Travel Ban thus discriminate against persons of Qatari "national origin" in each of these senses, by disproportionately impacting their enjoyment of fundamental rights. Moreover, the UAE's Anti-Sympathy Law, Block on Qatari Media, and Anti-Qatari Incitement Campaign—which the UAE tellingly avoids in this context—is entirely unrelated to "current" nationality, but rather, directly targets Qatari identity.

3.89 That the CERD's definition of racial discrimination protects historical and cultural national groups like Qataris is evident from the CERD's text and the

circumstances surrounding its drafting. In particular, and as already discussed above, the prohibition of discrimination on the basis of "national origin" plainly encompasses discrimination based on an individual's affiliation with a particular national community in the historical-cultural sense of parentage or heritage (***Part a***), "Qataris" are members of one such national community under Article 1(1) (***Part b***), and the UAE's measures have the effect of discriminating against Qataris, in violation of the CERD (***Part c***).

(a) *The Term "National Origin" Includes a Person's Affiliation with a "Nation" in a Historical-Cultural Sense*

3.90 Discrimination against individuals based on membership in a community as defined by characteristics such as descent or ancestry, heritage, and shared cultural traditions falls within the scope of the CERD's definition of discrimination based on "national origin". As explained above in Section I.A.1(a), the ordinary meaning of "national origin" connotes the country or nation where a person is from, or where or a person's ancestors came from—in other words, a sense of belonging to a given country or nation. This sense of belonging could be in the present, based on current national affiliation, in the past, as in the sense of ancestry or historical or family ties, or based on one's country or nationality of birth. Indeed, the UAE has acknowledged this before the CERD Committee, arguing that "[f]or example, a person born in Canada to Canadian parents would be considered as having a Canadian national origin"[305].

[305] **Vol. IV, Annex 122**, *State of Qatar v. United Arab Emirates*, ICERD-ISC-2018/2, Comments on Qatar's Response on Issues of Jurisdiction and Admissibility (19 March 2019) (responding to **Vol. IV, Annex 121**, State of Qatar v. United Arab Emirates, ICERD-ISC-2018/2, Response of the State of Qatar (14 February 2019)).

3.91 Professor Thornberry has explained that, given their essentially broad scope, the two terms "national origin" and "ethnic origin" often function "as a yoked pair of workhorses, employed whenever issues of colour ('visible minorities') are not the most prominent markers of discrimination"[306]. The term "descent" in Article 1(1) is similarly related, and "overlap[s] with other terms in Article 1, especially where they include 'origin'"[307]. Like "national origin," for example, "descent" in ordinary terms refers to "a person's origin or nationality" or "transmission by inheritance"[308]. Descent is also commonly related to the terms "ancestry, extraction, family tree, genealogy, heredity, lineage, origin, and parentage"[309]. "Ethnic origin" likewise evokes historical-cultural connections, and "ethnicity" is ordinarily defined as the "state of belonging to a social group that has a common national or cultural tradition"[310] or a "group of people who have the same national, racial, or cultural origins"[311]. Together, these three separate but related terms—"descent, national or ethnic origin"—operate to ensure that the full

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306 **Vol. V, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 126

307 **Vol. VI, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 119.

308 **Vol. VI, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p.119.

309 **Vol. VI, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 119. As such, individuals of Qatari national origin in the historical-cultural sense may also be characterized as individuals of "Qatari descent," and protected under the CERD as such, as they are Qatari by parentage and lineage.

310 *Oxford Dictionaries*, Definition of "Ethnicity", https://en.oxforddictionaries.com/definition/ethnicity.

311 *Cambridge Dictionary*, Definition of "Ethnicity", https://dictionary.cambridge.org/dictionary/english/ethnicity.

range of an individual's national, cultural, historical and ancestral, and ethnographical affiliations will fall within the scope of the CERD's protections.

3.92 Further, as described above, the *travaux préparatoires* of the CERD, and the circumstances in which it was drafted, confirm that the term "national origin" refers to a range of characteristics that is inclusive of both nationality and historical-cultural affiliations with a people linked to a particular State[312]. Indeed, the drafters of the CERD made it clear that they intended the Convention to apply to *all* vulnerable groups that might be defined by such characteristics. It also was clear among the delegates that the term "national origin" was context- and culture-specific, and could contain within it both "nationality" and aspects of "national origin" tied to cultural heritage and descent. For example, the drafters of the CERD explained at varying points that "national origin" might cover "persons . . . having a certain culture, language and traditional way of life peculiar to a nation but who lived within another State"[313], "persons of foreign birth who had become nationals of their country of residence" or "foreign minorities within a State".

3.93 Thus, it is clear from the ordinary meaning and the *travaux* that a group of people defined by certain historical-cultural "national" affiliations—for example, a "mother tongue"[314], national traditions or beliefs[315], or ancestry tied to a

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312 *See* Chap. III, Sec. I.B.1., above.

313 **Vol. III, Annex 81**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1304 (14 October 1965), p. 84, para. 9; *ibid.*, p. 84, para. 13.

314 **Vol. III, Annex 81**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1304 (14 October 1965), p. 85, para. 21.

315 **Vol. III, Annex 74**, United Nations, *Official Records of the Economic and Social Council, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Sixteenth Session*, document E/CN.4/Sub.2/SR.411 (5 February 1964), p. 5.

particular geographical region[316]— was meant to fall within the scope of the CERD's protections. In practical terms, such a people might exist across different States, might exist as a minority group living within a State, or might be tied to a particular State, either presently or historically, including by nationality. The drafters retained the term "national origin" *not in spite of, but because of its expansive scope*, which could encompass the totality of these connections.

(b) *Qatari National Origin within the Meaning of CERD Article 1(1)*

3.94 "Qatari" is not simply a nationality—it is a national identity tied to membership in a longstanding historical-cultural community defined by shared heritage or descent, particular family or tribal affiliations, shared national traditions and culture, and geographic ties to the peninsula of Qatar. This community pre-dates the modern State of Qatar, but coalesced around the Qatari state following independence in 1972. It is distinct from other national communities, and easily recognizable to other peoples living in the Gulf region, based on, for example, dialect, traditional dress, family affiliations, and other factors. For example, as one Qatari declarant explained, "the traditional Qatari dress . . . is very distinct from the other GCC States so the fact that I am Qatari [is] easily recognizable."[317]

3.95 Other Qatari declarants explained that their accents would easily identify them as Qatari. One student stated, for example, that to avoid being targeted after

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316 **Vol. III, Annex 81**, United Nations, *Official Records of the General Assembly, Twentieth Session, Third Committee*, document A/C.3/SR.1304 (14 October 1965), p. 85, para. 23.

317 **Vol. VII, Annex 177**, DCL-024, para. 10; *see also* **Vol. IX, Annex 215**, DCL-092, para. 11 ("[M]y traditional Qatari dress would very distinctly identity me as a Qatari."); **Vol. VII, Annex 166**, DCL-005, para. 15 ("I recognized . . . other passengers on the flight as fellow Qataris because of the way they were dressed.").

5 June, "[w]hen out in public, I would change my accent so that people would not realize I was Qatari"[318]. Today, as with most States of the Gulf and as the UAE well knows, the vast majority of persons with Qatari nationality are in fact associated with this community—leaving nationality-based distinctions as an easy proxy for discrimination against Qataris in general.

3.96 Dr. J.E. Peterson, a historian and political analyst specializing in the Arabian Peninsula, describes the origins of this distinct Qatari community and its connections with the modern Qatari state, in the context of social organization and state formation in the Gulf region. Historically, the principal units of social organization in the Gulf were tribal, though there are also longstanding non-tribal communities in the region. The Qatari peninsula was home to a number of tribes of diverse origin, some of which contained nomadic elements, but many of which have long been settled in Qatar's territory, and "also constitute the great majority of Qataris today"[319].

3.97 Tribal leadership was vested in the "shaykh," who acted as both the "father" of the tribal community and as the representative of the community in external relations[320]. In the mid- to late-nineteenth century, Muhammad bin Thani, a prominent shaykh of the Al Thani tribe—of which the current Qatari Amir is a member—began to operate as de facto ruler of Qatar[321]. In 1868, the British

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318 **Vol. VII, Annex 180**, DCL-028, para. 20; *see also* **Vol. XI, Annex 253**, DCL-168, para. 17 ("I tried to avoid speaking in public, and, if I did, spoke more quietly, so that people were less likely to hear my Qatari accent.").

319 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 19; *see also* J.E. Peterson, "Tribes and Politics in Eastern Arabia," 31 *Middle East Journal* (1977) 3, pp. 297-312.

320 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 16.

321 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, paras. 15–16.

entered into a treaty with this shaykh, Muhammad bin Thani, as head of a distinct political entity[322], recognizing him as the primary local authority of Qatar and as representative of the Qatari people[323]. This resulted in an "affirmation of [the Al Thani's] legitimacy as rulers of a proto-state in Qatar in addition to their status as paramount shaykhs of the peninsula's tribes"[324]. And this authority became tied to the territory, rather than a particular tribal community, as they "gradually required the allegiance of everyone in their territory . . . while also acquiring responsibility for everyone resident in their domain."[325] In 1916, Muhammed bin Thani's son signed a treaty placing Qatar under British protection[326]. This formal treaty of protection, whereby Britain assumed responsibility for foreign affairs and defense, not only made Qatar a protected state within Britain's informal empire but also further solidified the rule of the Al Thani family as "supratribal leaders" over the proto-Qatari state[327].

3.98 The discovery of oil in the region in the 1950s led to major political, economic, and social changes in the Gulf region, which accelerated throughout the 1960s and 1970s. The influx of oil revenues strengthened the role of the State and

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322 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para 15; *see also* M. Gray, *Qatar: Politics and the Challenges of Development* (Lynne Rienner Publishers, 2013), p. 26.

323 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para 16; *see also* R. Said Zahlan, *The Making of the Modern Gulf States* (Routledge 1989), p. 84–85 .

324 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 16.

325 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 16.

326 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 15.

327 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 16.

spurred the formation of a citizenry connected to that State[328]. Indeed, the transition from a traditional leadership structure—in which the shaykh *cum* ruler was "father" of the community—to a more modern structure—in which the State provides benefits and opportunities—deepened the sense of an identity as a national of a particular State[329]. Thus, whereas "[i]n the past, identity in the Middle East was local and typically derived from tribe, place, and religion . . . since the twentieth century state citizenship has increasingly become the most important identity."[330]

3.99 By the 1970s, a sense of Qatari identity as the primary point of self-identification for the people crystallized and solidified around the formation of the modern independent Qatari State, and has continued to evolve over the course of the last forty years[331]. Today, there is a strong sense of Qatari identity, coalesced around membership in family, clan, tribe, and a connection to the modern Qatari State and its leaders[332]. Historians have explained that the "*Khalijis*"—people

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328 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para 17; *see also* L.G. Potter, "Society in the Persian Gulf: Before and After Oil", Center for International and Regional Studies, Georgetown University in Qatar (2017), pp. 21–22.

329 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para 23.

330 L. Potter, "Society in the Persian Gulf: Before and After Oil", Center for International and Regional Studies, Georgetown University in Qatar (2017), p. 23; *see also* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, paras. 17, 24.

331 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 23 ff.

332 The collective "Qatari" identity is expressed voluntarily by Qataris and is celebrated on Qatar National Day, an annual holiday that began in 2007 and which marks the founding of the State of Qatar and its first emir. As scholars have explained, Qatar's National Day "seeks to commemorate the ascendency of a levelling nationalism over the varied pre-statal social topography." On National Day, large tents are erected for each tribe, and celebrations include "performance[s] of tribal belonging" such as poetry readings and ceremonial performances. *See* A.M. Gardner & A. Alshawi, "Tribalism, Identity and Citizenship in Contemporary Qatar", 8:2 *Anthropology of the Middle East* (2013) 46, p. 54.

from the Gulf—now "share a similar lifestyle but not a common identity, except perhaps in the eyes of outsiders"[333]. As Dr. Peterson observes:

> "While Qatari national identity shares the Arab Muslim ethos with its Gulf neighbors, it is distinct, centered on these elements of shared Qatari heritage or descent, historical ties, and shared national myths. . . . [I]ndividuals considered to be of Qatari origin today are part of a community whose origins pre-date the nation-state era in the Gulf, and which over the last sixty years or so crystallized into a distinct Qatari national identity that is deeply connected to the modern Qatari state. As such, and as is the case throughout the region, Qatari national origin and nationality are closely intertwined."[334]

3.100 The existence of a Qatari people thus long pre-dates the modern independent State of Qatar. Qatari national identity has developed over the years in a unique political, historical and cultural context[335]. The modern Qatari identity is centered on these historical-cultural roots to the region, as well as to strong ties to the Qatari State and the Al Thanis[336].

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333 L. Potter, "Society in the Persian Gulf: Before and After Oil", Center for International and Regional Studies, Georgetown University in Qatar (2017); *see also* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, paras. 24–27.

334 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 30.

335 *See generally* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson.

336 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 22.

3.101 Social scientists have similarly described identity in the Gulf in terms of "a political system based on kinship, real or presumed"[337]. In the particular context of the Gulf, "the defining feature [of such systems] is not race, language or religion but citizenship conceived in terms of shared descent"[338]. This is reflected in nationality laws throughout the region, including Qatar's, which follow a *jus sanguinis* model to confer nationality through parentage, rather than birth in the territory, and which reflect an understanding of such historical-cultural ties[339]. Qatar's nationality law ties nationality to the historical Qatari community predating the state. Specifically, Qatari law recognizes as citizens individuals who are part of or descend from this historical community, namely "[t]hose residents of Qatar *who have been resident in the country since 1930* and who maintained regular legal residence in the country until the enforcement date of . . . Law No. 2 of 1961"[340]. It also recognizes other persons "proved to be of *Qatari descent*", as well as individuals "born to a Qatari father"[341].

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337 A. Longva, "Neither Autocracy Nor Democracy but Ethnocracy: Citizens, Expatriates and the Socio-Political System in Kuwait" in Dresch and Piscatori, eds., *Monarchies and Nations: Globalisation and Identity in the Arab States of the Gulf* (I.B. Tauris, 2005), p. 119.

338 A. Longva, "Neither Autocracy Nor Democracy but Ethnocracy: Citizens, Expatriates and the Socio-Political System in Kuwait" in Dresch and Piscatori, eds., *Monarchies and Nations: Globalisation and Identity in the Arab States of the Gulf* (I.B. Tauris, 2005), p. 119.

339 *See, e.g.*, P. Dresch, "Debates on Marriage and Nationality in the United Arab Emirates" in Paul Dresch and James Piscatori, eds., *Monarchies and Nations: Globalisation and Identity in the Arab States of the Gulf* (I.B. Tauris, 2005), p. 141 (describing Kuwait's nationality law, which set the pattern followed by other Gulf States and defined Kuwaitis as those who were normally resident in Kuwait before 1920).

340 **Vol. II, Annex 69**, Qatar Law No. 38 of 2005 on the acquisition of Qatari nationality 38/2005 (30 October 2005), Art. 1 (emphasis added).

341 **Vol. II, Annex 69**, Qatar Law No. 38 of 2005 on the acquisition of Qatari nationality 38/2005 (30 October 2005), Art. 1 (emphasis added).

3.102 These individuals constitute the vast majority of Qatari citizens, as Qatar's Nationality Law of 2005 provides for "naturalization" under only relatively limited circumstances, each of which requires strong ties to the state and its people. These circumstances include individuals who resided in Qatar for at least 25 years and have been granted nationality by Emiri decree, or wives of Qatari men in certain cases[342].

3.103 Qatari nationality in the politico-legal sense is generally thus restricted to individuals who are also members of the historical-cultural community of Qataris, in that it defines a Qatari for citizenship purposes as anyone normally resident in Qatar during the period of 1930 to 1961 and their descendants. As is typical in the Gulf region, the overlap between individuals possessing Qatari nationality and those of Qatari origin—defined by ancestry or historical geographic ties—is therefore significant. Indeed, this qualification embraces the great majority of Qatari nationals today[343].

3.104 During the provisional measures phase of the proceedings, the UAE argued that "given the geographical proximity, the common cultural and social background and the close ties and interconnectedness of the populations of Qatar and the UAE," that "any allegation of discrimination on the basis of *race* . . . would have been unsustainable."[344] Yet of course, CERD is not limited to discrimination based on "race" alone, and the close ties between Emiratis and Qataris do not alter the fact that Qataris have a distinct national identity as

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342 **Vol. II, Annex 69**, Qatar Law No. 38 of 2005 on the acquisition of Qatari nationality 38/2005 (30 October 2005), Arts. 2, 4, 5, 8.

343 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 27.

344 CR 2018/13, p. 39, paras. 23–24 (Olleson) (emphasis added).

Qataris, and that the Qatari population shares a distinct national origin. To read "national origin" as coterminous with "race" or "ethnic origin", as the UAE seems intent upon doing, would read the term out of Article 1(1) and deny an important aspect of CERD's protections.

3.105 Indeed, the existence of a distinct community of Qatari origin is explicitly recognized in the UAE's own nationality laws. In particular, Article 5 of the UAE's Federal Law No. (17) of 1972 concerning Nationality and Passports provides that:

> [t]he nationality of the State may be granted to…[a]n Arab individual from Omani, Qatari or Bahraini origin residing in the State on continuous and lawful basis for at least three years directly before the date of submitting [a] naturalization application.[345]

3.106 This reference to "Qatari origin" in the UAE's nationality law is clearly intended to refer to the historical-cultural community of Qataris.

(c) *The UAE's Measures Disproportionately Impact Qataris*

3.107 As discussed, the plain meaning of Article 1(1) makes clear that the CERD explicitly encompasses unlawful measures discriminatory in *either* purpose or effect, in line with CERD's general protective purpose of eliminating "*all forms*" of racial discrimination[346]. This comprehensive approach recognizes that

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345 **Vol. II, Annex 37**, United Arab Emirates: Federal Law No. (17) of 1972 on Citizenship and Passports (18 November 1972), Art. 5.

346 *See* Chap. III, Sec. I.A., above.

addressing discrimination *in effect* is essential to realizing CERD's object and purpose of eliminating *all* forms of racial discrimination.

3.108 As the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance explained in her April 2018 report:

> [T]he prohibition on racial discrimination in international human rights law aims at much more than a formal vision of equality. Equality in the international human rights framework is substantive . . . . [T]he Committee on the Elimination of Racial Discrimination clarifies that the prohibition of racial discrimination under the Convention cannot be interpreted restrictively. It not only aims to achieve formal equality before the law, but also substantive (de facto) equality in the enjoyment and exercise of human rights. The Committee emphasizes that the Convention applies to purposive or intentional discrimination as well as discrimination in effect and structural discrimination. . . . . The Special Rapporteur stresses that this substantive, non-formalistic approach to equality applies even in the context of citizenship, nationality and immigration laws and policies[347].

3.109 Thus, even if the distinctions drawn by the Expulsion Order and the Absolute and Modified Travel Bans against "Qatari residents and visitors" and "Qatari nationals" on their face can be characterized as based on "current" Qatari nationality as the UAE alleges—though this is by no means clear—the indisputable *effect* of these measures, and of the UAE's chosen demarcation, is a

[347] United Nations, *Official Records of the General Assembly*, *Human Rights Council*, *Thirty-eighth Session*, document A/HRC/38/52, paras. 18–19.

disproportionate impact on the rights of individuals who are Qatari by heritage, origin, or descent. These effects independently bring these measures within the jurisdiction *ratione materiae* of the CERD as discrimination based on national origin. Moreover, the Anti-Sympathy Law, the Block on Qatari Media, and the Anti-Qatari Incitement Campaign single out Qataris as a community—not based on "current" nationality, but as a distinguishable cultural national group—in both purpose and effect, and thus equally fall within CERD's protective scope.

3.110 Were the UAE simply allowed to evade responsibility by characterizing its actions as limited to "current" nationality—notwithstanding the clear discriminatory effects arising from that demarcation— it would create a clear lacuna in CERD's protective coverage that is at odds with the CERD's object and purpose. The UAE is well aware that nationality and citizenship in Qatar, as is the case throughout the Gulf region are correlated with, and in fact are often dependent upon, an individual having longstanding historical-cultural ties to the national community[348]. Article 1 of the CERD must be interpreted in light of this particular context. As a practical matter, "current" Qatari nationals—like the nationals of many other Gulf States—are not only Qataris by citizenship law, but are generally also "Qataris" in another sense, defined by shared heritage or lineage, particular family or tribal affiliations, geographical ties to what is now Qatar, and participation in national traditions and culture. The vast majority are also persons "originally" of Qatari nationality[349].

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348 *See* **Vol. VI, Annex 162**, Expert Report of Dr. J.E. Peterson, para. 27.

349 There can be little dispute that "original" nationality falls within the scope of the CERD. For example, Schwelb concludes that while there was "no clear agreement whether the term 'national origin' was to be understood in the political-legal or in the ethnographic sense", "for the practical purposes of the interpretation of the Convention," it covered both "distinctions .

3.111 The UAE's characterization of the Discriminatory Measures as limited to Qatari nationals solely in a "current nationality" sense thus masks the reality that the measures target and discriminate against "Qataris" as a historical-cultural community. Indeed, this experience is borne out in the testimony of individuals impacted, who clearly describe impacts that relate to cultural identification of being "Qatari" rather than related to possession of a Qatari passport.[350] Many Qataris residing in the UAE on 5 June 2017 described an intense fear of returning to the UAE after the imposition of the Discriminatory Measures, noting that they would be easily distinguishable from Emiratis based on their uniquely Qatari dress and accent.[351]

. . on the ground of *present or previous* 'nationality' in the ethnographical sense and on the ground of *previous* nationality in the 'politico-legal' sense of citizenship." E. Schwelb, "The International Convention on the Elimination of All Forms of Racial Discrimination", 15 *The International and Comparative Law Quarterly* (1966) 4, pp. 1006–1007. This suggests that, at a minimum, nationality-based discrimination against persons for whom "past" and "present" nationality are the same falls within the CERD.

350 Indeed, some individuals who are *not* Qatari nationals, but who identify as "Qatari" in a cultural sense due to longstanding residence in Qatar, reported impacts of the measures due to Emirati's perception of them as Qatari based on, *e.g.*, accent or dress. **Vol. IX, Annex 210,** DCL-084, para. 5, ("[T]he customs official . . . looked at my passport, and he commented on the fact that I was born in Qatar . . . It is because I was born in Qatar that they take me for interrogation in the security office."); **Vol. IX, Annex 223**, DCL-107, para. 10 ("The immigration officer . . . told me that I was "not welcome" in the UAE. I understood him to mean that Qataris were not welcome—and that he knew I am Qatari because I was dressed in the traditional Qatari thobe.").

351 *See, e.g.*, **Vol. IX, Annex 205**, DCL-078, paras. 11–12 ("[My family] asked me . . . to change my clothes—that is, to stop wearing Qatari dress—so that I wouldn't be readily identifiable as Qatari. . . . For the ten days that we stayed in the UAE after the announcement that Qataris had to leave . . . I stopped wearing Qatari dress, and wore jeans instead. I also stopped listening to Qatari music, like the theme song from Qatar's National Day celebrations"); **Vol. IX, Annex 206**, DCL-079, para. 17 ("I remember a video that [my mother's relative in the UAE] sent me after the UAE's measures started in which he was saying that, although he used to wear the Qatari dress, he would have to purchase an Emirati traditional thobe to avoid getting in trouble."); **Vol. VIII, Annex 191**, DCL-046, para. 20 ("I have a Qatari friend who . . . returned to Qatar sometime closer to the end of the 14-day period. Whilst in the UAE, he

3.112 By allegedly targeting "Qatari nationals," the UAE imposed measures that inevitably would affect persons of Qatari origin as a means of coercing the Qatari government and as a punishment for alleged wrongdoings.

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3.113 In conclusion, the UAE's Discriminatory Measures have adversely impacted a group of people defined by their Qatari heritage, ancestry or descent, and traditions and culture. That such a historical-cultural community falls within the scope of "national origin" as it is used in Article 1(1) of the CERD is indisputable. This interpretation is evident from the ordinary meaning of "national origin" in its context and in the light of the CERD's object and purpose, and is further supported by the *travaux* of the CERD. As a consequence, the discriminatory effects of the measures on individuals of Qatari national origin in this sense are alone sufficient to constitute violations under the CERD.

Section II. The Dispute "Is Not Settled" for the Purposes of Article 22

3.114 The second requirement for jurisdiction under Article 22 of the Convention is that the dispute "is not settled by negotiation or by the procedures expressly provided for in this Convention"[352]. This requirement is met in this case because Article 22 establishes alternative, not cumulative, requirements (**Section II.A**) and the negotiation requirement has been satisfied (**Section II.B**).

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chose not to wear the distinctive Qatari dress out of fear for his safety."); *see also* **Vol. VIII, Annex 192**, DCL-047, para. 16.

352 **Vol. II, Annex 92,** CERD, Art. 22.

A. ARTICLE 22 ESTABLISHES ALTERNATIVE, NOT CUMULATIVE, REQUIREMENTS

1. Article 22's Requirements Cannot Be Cumulative When Read in Light of the "Logic and Purpose" of CERD and in Context with its Other Provisions

3.115 Qatar notes as a preliminary matter that the phrase "is not settled by negotiation or by the procedures expressly provided for in this Convention" does not explicitly state preconditions that must be fulfilled before the seisin of the Court. Indeed, in its Order on provisional measures in *Georgia v. Russian Federation*, the Court observed that "the phrase … does not, in its plain meaning, suggest that formal negotiations in the framework of the Convention or recourse to the procedure referred to in Article 22 thereof constitute preconditions to be fulfilled before the seisin of the Court"[353].

3.116 Nevertheless, in its Judgment on Preliminary Objections in *Georgia v. Russian Federation*, the Court, by ten votes to six, interpreted the phrase to establish "preconditions to be fulfilled before the seisin of the Court"[354]. Qatar

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353 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order, I.C.J Reports 2008*, para. 144.

354 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 141. All six dissenting Members of the Court issued opinions disagreeing with this interpretation. Then-President Owada, Judges Simma, Abraham and Donoghue, and Judge *ad hoc* Gaja issued a joint dissenting opinion observing that: (a) interpreting Article 22 to impose preconditions "does not accord with the literal meaning of the text"; (b) the drafters' choice of the phrase "which is not settled" over "which cannot be settled" shows that Article 22 does not impose preconditions; and (c) the drafters were aware of, yet declined to adopt, other formulations that would have expressly imposed preconditions. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011*, paras. 14-38. In his own dissenting opinion, Judge Cançado Trindade noted that: (a) nothing in the Convention's preparatory works suggests that Article 22 was intended to impose preconditions; (b) interpreting Article 22 to impose preconditions

acknowledges the Court's decision on this point, which necessarily gave rise to a second question, namely, whether these preconditions are cumulative (that is, they both need to be satisfied) or alternative (that is, only one of them needs to be satisfied).

3.117 The Court did not have to decide this issue in *Georgia v. Russian Federation* because it concluded that Georgia had not satisfied either of the two requirements[355]. The Court also declined to decide the issue at the provisional measures stage in *Ukraine v. Russian Federation* and in this case, observing in its respective Orders on provisional measures that "it need not make a pronouncement on the issue at this stage of the proceedings"[356].

3.118 Although the Court itself has yet to decide the issue, 13 Judges of the Court, including five current Judges, have already expressed the view that the requirements are alternative, not cumulative. At the provisional measures phase of *Georgia v. Russian Federation*, all seven dissenting judges—Vice-President Al-

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does not take into account the nature and substance of the Convention as a core human rights treaty; and (c) Article 22 "is a statement of pure verification of facts, and nowhere is there a 'precondition' implied or suggested in its wording, and certainly not in its spirit". *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Dissenting Opinion of Judge Cançado Trindade, I.C.J. Reports 2011*, paras. 89-115.

355 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 187(2).

356 *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order, I.C.J. Reports 2017*, para. 60; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order*, para. 39.

Khasawneh and Judges Ranjeva, Shi, Koroma, Tomka, Bennouna and Skotnikov—issued a joint dissenting opinion in which they referred to the CERD procedures requirement as an "*alternative* precondition"[357]. At the preliminary objections phase of the same case, five dissenting judges—President Owada, Judges Simma, Abraham and Donoghue and Judge *ad hoc* Gaja—jointly stated the view that the two requirements are alternative, not cumulative[358]. The sixth dissenting judge—Judge Cançado Trindade—issued a separate dissenting opinion in which he also took the view that the two requirements are alternative[359].

3.119 By contrast, not a single judge, in either *Georgia v. Russian Federation*, *Ukraine v. Russian Federation*, or this case expressed the view that the two requirements are cumulative. Accordingly, even though the Court has yet to hold that the two requirements are alternative, there is unanimity among the Judges who have opined on this issue that they are indeed alternative.

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357 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Joint Dissenting Opinion of Vice-President Al-Khasawneh and J udges Ranjeva, Shi, Koroma, Tomka, Bennouna and Skotnikov, I.C.J. Reports 2008*, para. 17 (emphasis added).

358 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011*, paras. 39-47.

359 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, *Preliminary Objections, Dissenting Opinion of Judge Cançado Trindade, I.C.J. Reports 2011*, para. 116.

3.120 This is entirely unsurprising given the many reasons why the Article 22 requirements can only be read as alternative.[360]

3.121 As cogently explained by the five joint dissenting Judges at the preliminary objections phase in *Georgia v. Russian Federation*, in the context of Article 22, negotiation and the CERD procedures are "two different ways of doing the same thing, that is to say, seeking an agreement premised on the parties' ability to reconcile their positions"[361]. The Judges' reasoning in this respect is compelling and worth reproducing *in extenso*. They wrote:

> "In our opinion, the conclusive argument draws on the logic and purpose of the text under consideration. The point of this text cannot be to require a State to go through futile procedures solely for the purpose of delaying or impeding its access to the Court. The end sought is not purely one of form; if we look at it from the perspective taken by the Court, the rule has a reasonable aim, to reserve judicial settlement for those disputes which cannot be settled by an out-of-court means based on

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360 The appropriate framework of analysis is Articles 31 to 33 of the VCLT. However, as explained in the joint dissenting opinion of five Judges at the preliminary objections phase in *Georgia v. Russian Federation*, examining the "ordinary meaning" of the relevant terms of the treaty is of little assistance, since the word "or" in a negative clause has an inherently inconclusive meaning. *See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011*, para. 42. The context and the object and purpose, on the other hand, are conclusive in establishing the two requirements as alternative, not cumulative. This conclusion is confirmed by reference to the preparatory works, as explained below. *See* Section II.A.2, below.

361 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011*, para. 44.

agreement between the parties. Still, for this condition to be met, the applicant must have made the necessary efforts to attempt to settle the dispute, if it seems reasonably possible, by recourse to means enabling the parties to reach agreement, leaving the Court to act as the last resort.

If the text is understood in these terms, it becomes illogical to consider the two modes referred to in Article 22 as necessarily cumulative. Each mode ultimately depends on an understanding between the parties and their desire to seek a negotiated solution. This is obvious in the case of "negotiation" and it is equally true for the "procedures expressly provided for" in part II of CERD. The Committee established by the Convention has no power to impose a legally binding solution on the disputing States. It can only encourage the States to negotiate with each other (Art. 11); then, where there have been no negotiations or unsuccessful negotiations, it can appoint a conciliation commission to make recommendations (Art. 13) to be communicated to the parties, which then make known whether or not they accept them. Ultimately, a favourable out-come depends on the readiness of the parties to come to an agreement, in other words, on their willingness to negotiate.

Consequently, where a State has already tried, without success, to negotiate directly with another State against which it has grievances, it would be senseless to require it to follow the special procedures in Part II, unless a formalism inconsistent with the spirit of the text is to prevail. It would make even less sense to require a State which has unsuccessfully pursued the intricate procedure under part II to undertake direct negotiations destined to fail before seising the Court.

> In short, as direct negotiation and referral to the Committee are two different ways of doing the same thing, that is to say, seeking an agreement premised on the parties' ability to reconcile their positions, it is enough, even under the strict interpretation upheld in the Judgment, to entitle the applicant to come before the Court if one of these two modes has been pursued, for it would be highly unreasonable to require the applicant then to try the other."[362]

3.122 This final point bears emphasis. Article 22 deals with the settlement of disputes between States Parties with respect to the interpretation or application of CERD. The capacity of negotiations and the CERD procedures to achieve such settlement is entirely dependent on the parties' willingness and ability to compromise. If either mode has become futile in terms of such capacity, reading Article 22 to also require recourse to the other before seeking settlement of the dispute from the Court would be, in the words of the dissenting Judges, "illogical"[363], "senseless"[364], "highly unreasonable"[365], and "inconsistent with the spirit of the text" of the Convention[366].

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362 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011*, paras. 43-44.

363 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011*, para. 43.

364 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011*, para. 43.

365 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting*

3.123 To illustrate this, Qatar recalls that the CERD procedures can last a considerable period of time: at least six months if neither party elects to refer the matter again to the CERD Committee under Article 11(2) and potentially longer if one does. If the recalcitrant attitude of one of the parties has caused negotiations to become "futile or deadlocked", as is the case here,[367] requiring the parties to seek settlement of the dispute from the CERD procedures *before* having recourse to the Court for purposes of obtaining a legally binding resolution would unreasonably delay the vindication of rights under the Convention, which cannot have been the intention of the drafters of an instrument prohibiting any derogation from its provisions.

3.124 The Article 22 requirements cannot be deemed cumulative for the additional reason that if they were, the negotiation requirement would be rendered redundant and thereby deprived of *effet utile*. As the joint dissenting Judges at the preliminary objections phase in *Georgia v. Russian Federation* pointed out[368], negotiation constitutes an element of the CERD procedures. In particular, Article 11(2) provides that, after the initial communication and response have been exchanged, "[i]f the matter is not adjusted to the satisfaction of both parties, either

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Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011, para. 44.

366 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011*, para. 43.

367 *See generally* Chap. III, Sec. II.B, below.

368 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011*, para. 43.

by bilateral negotiations or by any other procedure open to them, … either State shall have the right to refer the matter again to the Committee"[369]. There would therefore be no reason to have a separate negotiation requirement if the two requirements were cumulative.

3.125 Finally, reading Article 22 to create cumulative requirements, such that the CERD Committee procedures must be exhausted before the seisin of the Court, would lead to the unreasonable result that some disputes subject to Article 22 could *never* be referred to the Court. This is because there are disputes "with respect to the interpretation or application of [CERD]"[370] that could not possibly be subject to the CERD procedures because they do not concern whether a State Party "is not giving effect to the provisions of this Convention"[371] (the only matters that may be submitted to the CERD Committee under Article 11(1)).

3.126 The principles of *pacta sunt servanda* and good faith require that the terms of a treaty have a *single consistent* meaning. It cannot be that the same words in the same treaty provision have a different meaning depending on the nature of the "dispute … with respect to the interpretation or application of th[e] Convention"[372]. Only a reading of the two requirements as alternative ensures consistency of meaning and thereby protects the Parties' expectations and the effectiveness of the provision as a whole.

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369 **Vol. III, Annex 92,** CERD, Art. 11(2) (emphasis added).

370 **Vol. III, Annex 92,** CERD, Art. 22.

371 **Vol. III, Annex 92,** CERD, Art. 11(1).

372 **Vol. III, Annex 92,** CERD, Art. 22.

2. The Preparatory Works of CERD Confirm that Article 22's Requirements are Alternative

3.127 The fact that the two requirements are alternative is confirmed by the *travaux préparatoires* of the Convention.

3.128 The language of Article 22 originates from the United Nations Secretary-General's working paper, dated 17 February 1964, presenting alternative options for the so-called "final clauses" of the Convention[373]. Clause VIII of the working paper concerned the settlement of disputes[374], and contained four options. The first three of the four options referred only to negotiation; the fourth included references to other peaceful means of dispute settlement[375].

3.129 The first option (labeled "Article 8-A"), which subsequently served as the basis for Article 22, provided:

> "Any dispute which may arise between any two or more Contracting States concerning the interpretation or application of this Convention, which is not settled by negotiation, shall at the

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373 **Vol. III, Annex 76,** United Nations Economic and Social Council, Commission on Human Rights, Twentieth Session, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Final Clauses: Working paper prepared by the Secretary-General*, document E/CN.4/L.679 (17 February 1964).

374 **Vol. III, Annex 76,** United Nations Economic and Social Council, Commission on Human Rights, Twentieth Session, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Final Clauses: Working paper prepared by the Secretary-General*, document E/CN.4/L.679 (17 February 1964), pp. 15-16.

375 **Vol. III, Annex 76,** United Nations Economic and Social Council, Commission on Human Rights, Twentieth Session, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Final Clauses: Working paper prepared by the Secretary-General*, document E/CN.4/L.679 (17 February 1964), pp. 15-16.

> request of any of the parties to the dispute be referred to the International Court of Justice unless they agree to another mode of settlement."[376]

3.130 Thus, the negotiation requirement was originally intended to be the only procedural precondition in Article 22.

3.131 On 15 October 1965, roughly two months before the adoption of the Convention, the Officers of the Third Committee for the General Assembly used the Secretary-General's working paper to propose the final clauses of the Convention[377]. For Clause VIII, they selected the first option (Article 8-A) presented by the Secretary-General, making only minor edits. Their Clause VIII provided:

> "Any dispute between two or more Contracting States over the interpretation or application of this Convention, which is not settled by negotiation, shall at the request of any of the parties to the dispute be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."[378]

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376 **Vol. III, Annex 76,** United Nations Economic and Social Council, Commission on Human Rights, Twentieth Session, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Final Clauses: Working paper prepared by the Secretary-General*, document E/CN.4/L.679 (17 February 1964), p. 15.

377 **Vol. III, Annex 82,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Suggestions for final clauses submitted by the Officers of the Third Committee*, document A/C.3/L.1237 (15 October 1965).

378 **Vol. III, Annex 82,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Suggestions for final clauses submitted by the Officers of the Third Committee*, document A/C.3/L.1237 (15 October 1965), p. 4.

3.132 The Officers of the Third Committee thus also intended negotiation to be the sole procedural requirement for recourse to the Court.

3.133 On 30 November 1965, just three weeks before the adoption of the Convention, Ghana, Mauritania, and the Philippines proposed an amendment to Clause VIII inserting the words "or by the procedures expressly provided for in this Convention"[379]. (This was known in the Third Committee as the "three-Power amendment"[380].)

3.134 Just over a week later, on 7 December 1965, the Chairman of the Third Committee invited the Committee to consider the three-Power amendment[381]. The remarks of the delegates show that it was not intended to effect a material change by adding a separate, mandatory procedural requirement to Article 22. The Ghanaian representative noted that the amendment was "self-explanatory", as it "simply referred to the procedures provided for in the Convention"[382]. The Belgian representative similarly added that the amendment "introduced a useful

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379 **Vol. III, Annex 89,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Ghana, Mauritania and Philippines: amendments to the suggestions for final clauses submitted by the officers of the Third Committee (A/C.3/L.1237)*, document A/C.3/L.1313 (30 November 1965).

380 *See, e.g.*, **Vol. III, Annex 90,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, 1367th Meeting, document A/C.3/SR.1367 (7 December 1965), p. 453, paras. 26, 29, 31.

381 **Vol. III, Annex 90,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, 1367th Meeting, document A/C.3/SR.1367 (7 December 1965), p. 453, para. 23.

382 **Vol. III, Annex 90,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, 1367th Meeting, document A/C.3/SR.1367 (7 December 1965), p. 453, para. 29.

clarification"[383]. Several other representatives expressed their support for the amendment in passing[384], after which it was adopted unanimously[385]. There was virtually no debate over the proposal, which shows that States did not understand it to introduce any significant changes to Clause VIII.

3.135 The treatment of the three-Power amendment stood in stark contrast with another proposed amendment to Clause VIII that was being considered at the same time. In particular, Poland proposed that the phrase at the request of "*any*" of the parties be changed to at the request of "*all*" of the parties[386]. The proposal sparked considerable debate, precisely because many States opposed this attempt to restrict access to the Court[387]. Poland's proposal was defeated. Had the three-Power amendment been similarly understood to restrict access to the Court (as a

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383 **Vol. III, Annex 90,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, 1367th Meeting, document A/C.3/SR.1367 (7 December 1965), p. 454, para. 40.

384 **Vol. III, Annex 90,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, 1367th Meeting, document A/C.3/SR.1367 (7 December 1965), p. 453, paras. 26 (Canada), p. 453, para. 31 (Colombia), p. 454, para. 39 (Italy).

385 **Vol. III, Annex 90,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, 1367th Meeting, document A/C.3/SR.1367(7 December 1965), p. 455.

386 **Vol. III, Annex 85,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Poland: amendments to the suggestions for final clauses submitted by the Officers of the Third Committee (A/C.3/L.1237)*, document A/C.3/L.1272 (1 November 1965) (emphasis added).

387 *See, e.g.*, **Vol. III, Annex 90,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, 1367th Meeting, document A/C.3/SR.1367 (7 December 1965), p. 453, paras. 24-25, 28 (Canada), p. 453, para. 31 (Colombia), pp. 453-454, para. 32 (USA), p. 454, para. 38 (France), p. 454, para. 39 (Italy).

cumulative interpretation would entail), it surely would have engendered similar opposition and debate.

3.136 After reviewing these *travaux*, the five joint dissenting Judges at the preliminary objections stage in *Georgia v. Russian Federation* reached the same conclusion. They wrote:

> "The clear impression … emerges that the three Powers' intent in proposing their amendment was not to impose a further condition resulting in more limited access to the Court than under the earlier text. There is nothing to indicate that the amendment was aimed at making resort to the special procedures under Part II mandatory where direct negotiations had failed. More likely, the amendment was intended to make clear that recourse to these special procedures figured among the possible avenues for negotiated settlement. That is why it was regarded by the delegates as merely a 'useful addition or clarification' and was easily adopted, not as a change in the text to make it more restrictive but as a natural, and almost self-evident, clarification."[388]

3.137 Analysis of the preparatory works therefore confirms the conclusion that the two Article 22 requirements are alternative, not cumulative.

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388 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Joint Dissenting Opinion of President Owada, Judges Simma, Abraham and Donoghue and Judge ad hoc Gaja, I.C.J. Reports 2011*, para. 47.

3. None of the UAE's Reasons Why Article 22's Requirements Should Be Read Cumulatively Has Merit

3.138 In the oral proceedings on provisional measures in this case, the UAE unconvincingly argued that the two requirements are cumulative. It began by acknowledging that the conjunction "or" can have an alternative or a cumulative meaning[389], but argued that it would not have made sense to use the conjunction "and" in Article 22[390]. The UAE was unable, however, to put forth *any* argument based on the text and/or the context of Article 22 for why the "or" in Article 22 has a cumulative rather than an alternative meaning. Instead, the UAE relied on four arguments divorced from the text, none of which has merit.

3.139 The UAE's first argument was based on a misreading of the *travaux*. The UAE argued that Article 22 "is the direct result of a proposal made by Mr. Ingles, the Philippine member of the Human Rights Sub-Commission"[391], pursuant to which negotiations and the CERD procedures were supposedly cumulative requirements[392]. The UAE was referring to Mr. Ingles's "proposed measures of implementation"[393], which were presented to the Sub-Commission on Prevention

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389 CR 2018/13, p.19, para. 8(2) (Pellet).

390 CR 2018/13, p. 20, para. 8(3) (Pellet).

391 CR 2018/13, p. 20, para. 8(4) (Pellet).

392 CR 2018/13, p. 20, para. 8(4) (Pellet) (quoting United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Sixteenth Session, *Summary Record of the 427th Meeting*, document E/CN.4/Sub.2/SR.427 (12 February 1964), p. 12).

393 **Vol. III, Annex 71,** United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Sixteenth Session, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Mr. Ingles: Proposed Measures of Implementation*, document E/CN.4/Sub.2/L.321 (17 January 1964).

of Discrimination and Protection of Minorities (a subsidiary body of the Commission on Human Rights, which in turn was a subsidiary body of the United Nations Economic and Social Council) on 12 February 1964[394].

3.140 The UAE's interpretation of Mr. Ingles's proposal is, however, wrong on multiple levels. As a preliminary matter, Article 22 was *not* the "direct result" of Mr. Ingles's proposal. Rather, as explained above[395], Article 22 originated from Article 8-A of the U.N. Secretary-General's working paper on the final clauses of the Convention (which became Part III of the Convention)[396]. Mr. Ingles's proposal, on the other hand, served as the basis for Part *II* of the Convention, including the CERD procedures in Articles 11 to 13[397].

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394 **Vol. III, Annex 79,** United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Sixteenth Session, *Summary Record of the Four Hundred and Twenty-Seventh Meeting* (28 January 1964), document E/CN.4/Sub.2/SR.427 (12 February 1964), pp. 11-13.

395 *See* paras. 3.128–3.131, above.

396 The UAE may have been confused because both Mr. Ingles's "proposed measures of implementation" and the United Nations Secretary-General's working paper were submitted to the Commission on Human Rights (and subsequently to the Third Committee of the General Assembly). *See infra*, n. 397.

397 Indeed, the reason why both documents were submitted to the Commission on Human Rights was precisely because they were considered to relate to different parts of the Convention. In January 1964, at its sixteenth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities submitted to the Commission on Human Rights the draft Convention it had prepared, and in addition: (*i*) with respect to the "final clauses", the Sub-Commission requested the Secretary-General to submit to the Commission a working paper presenting alternative forms for final clauses; and (*ii*) with respect to the "measures of implementation", the Sub-Commission incorporated the first article of Mr. Ingles's "proposed measures of implementation" into the draft Convention, and then separately transmitted the remaining articles to the Commission as a "preliminary draft". *See* **Vol. III, Annex 75,** United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Report of the Sixteenth Session of the Sub-Commission on Prevention of Discrimination and Protection of*

3.141 Even setting that critical point aside, the UAE is wrong that Mr. Ingles's proposal suggests that Article 22 creates cumulative, not alternative, requirements.

3.142 The UAE focuses on Article 17 of Mr. Ingles's "proposed measures of implementation". That provision reads:

> "The States Parties to this Convention agree that any State Party complained of or lodging a complaint may, if no solution has been reached within the terms of article 14, paragraph 1,[398] bring the case before the International Court of Justice after the report provided for in article 14, paragraph 3, has been drawn up."[399]

Minorities to the Commission on Human Rights (New York, 13 to 31 January 1964), document E/CN.4/873 (11 February 1964), paras. 115-122; **Vol. III, Annex 72,** United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Report of the Sixteenth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights (New York, 13 to 31 January 1964): Addendum*, document E/CN.4/Sub.2/L.345/Add.4 (30 January 1964), pp. 4-18.

[398] Article 14, paragraph 1, provided: "Subject to the provisions of article 12, the Committee, after obtaining all the information it thinks necessary, shall ascertain the facts, and make available its good offices to the States concerned with a view to an amicable solution of the matter on the basis of respect for the Convention". **Vol. III, Annex 71,** United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Sixteenth Session, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Mr. Ingles: Proposed Measures of Implementation*, document E/CN.4/Sub.2/L.321 (17 January 1964), p. 5.

[399] **Vol. III, Annex 71,** United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Sixteenth Session, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Mr. Ingles: Proposed Measures of Implementation*, document E/CN.4/Sub.2/L.321 (17 January 1964), p. 6.

3.143 The proposed Article 17 therefore applied only to complaints submitted to the CERD Committee whereby a State Party "considers that another State party is not giving effect to a provision of the Convention"[400]. The very next article of Mr. Ingles's "proposed measures of implementation", Article 18, made clear that this would not hamper direct recourse to the Court for disputes arising out of the interpretation or application of the Convention:

> "The provisions of this Convention *shall not prevent* the State Parties to the Convention from submitting to the International Court of Justice any dispute arising out of the interpretation or application of the Convention in a matter within the competence of the Committee; or from resorting to other procedures for settling the dispute, in accordance with general or special international agreements in force between them."[401]

3.144 This is confirmed by Mr. Ingles's own explanation of his "proposed measures of implementation", as recorded in the official summary record of the Sub-Commission. The UAE quoted the following excerpt from the summary record (mistakenly referring to it as the text of the proposal itself) before the Court at the provisional measures phase:

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[400] **Vol. III, Annex 71,** United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Sixteenth Session, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Mr. Ingles: Proposed Measures of Implementation*, document E/CN.4/Sub.2/L.321 (17 January 1964), p. 4.

[401] **Vol. III, Annex 71,** United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Sixteenth Session, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Mr. Ingles: Proposed Measures of Implementation*, document E/CN.4/Sub.2/L.321 (17 January 1964), p. 6 (emphasis added).

> "Under the proposed procedure, States Parties to the Convention should first refer complaints of failure to comply with that instrument to the State Party concerned; it is only when they are not satisfied with the explanation of the State Party concerned that they may refer their complaint to the Committee … The Committee, as its name implied, would ascertain the facts before attempting an amicable solution to the dispute … If the Committee failed to effect conciliation within the time allotted, either of the parties may take the dispute to the International Court."[402]

3.145 The UAE used the first ellipsis in the passage above to conceal the following sentence: "*Direct* appeal to the International Court of Justice … was also envisaged in his draft"[403]. This was a clear reference to Article 18 of Mr. Ingles's draft. It is therefore clear that Mr. Ingles himself considered that, under his proposal, a party's recourse to the Committee was not intended to hamper a "[d]irect appeal" to the Court for disputes arising out of the interpretation or application of the Convention like this case.

3.146 In any event, even if it could be said that Mr. Ingles intended any and all recourse to the Court to be conditioned on recourse to the CERD Committee (*quod non*), the fact would remain that his proposal was ultimately rejected by the

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[402] CR 2018/13, p. 20, para. 8(4) (Pellet) (quoting United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Sixteenth Session, *Summary Record of the Four Hundred and Twenty-Seventh Meeting (28 January 1964)*, document E/CN.4/Sub.2/SR.427 (12 February 1964), p. 12).

[403] **Vol. III, Annex 79,** United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Sixteenth Session, *Summary Record of the Four Hundred and Twenty-Seventh Meeting (28 January 1964)*, document E/CN.4/Sub.2/SR.427 (12 February 1964), p. 12 (emphasis added).

Third Committee of the U.N. General Assembly, to which it was transmitted next. In the deliberations in the Third Committee, the idea of compulsory recourse to the Court after the CERD Committee was not well received[404]. As a result, the Third Committee proceeded on the basis of a text submitted by Ghana, Mauritania and the Philippines[405], which borrowed aspects from Mr. Ingles's "proposed measures of implementation"[406]. The text notably kept a revised version of Article 18 (labeled as Article XIII), which provided:

> "The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to existing constitutional or other binding provisions of agencies related to the United Nations dealing with the settlement of disputes or complaints in the field of discrimination, and shall not prevent the States Parties to the Convention from resorting to other procedures for settling a

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404 *See, e.g.*, **Vol. III, Annex 86,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, 1344th Meeting (16 November 1965), document A/C.3/SR.1344, pp. 316-317; **Vol. III, Annex 87**, United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, 1345th Meeting, document A/C.3/SR.1345 (17 November 1965), p. 327.

405 **Vol. III, Annex 91,** United Nations, *Official Records of the General Assembly*, Twentieth Session, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Report of the Third Committee*, document A/6181 (18 December 1965), para. 6.

406 **Vol. III, Annex 88,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Ghana, Mauritius and Philippines: articles relating to measures of implementation to be added to the provisions of the draft International Convention on the Elimination of All Forms of Racial Discrimination adopted by the Commission on Human Rights (A/5921, annex)*, document A/C.3/L.1291 (18 November 1965).

> dispute in accordance with the general or special international agreements in force between them."[407]

3.147 This provision ultimately became Article 16 of CERD.

3.148 In conclusion, Article 17 of Mr. Ingles's "proposed measures of implementation" is of no assistance to the UAE because: (*i*) contrary to what the UAE alleged at the oral proceedings on provisional measures, Article 22 of CERD was not the "direct result" of Article 17 of Mr. Ingles's proposal; (*ii*) Mr. Ingles's "proposed measures of implementation" themselves provided for direct recourse to the Court for disputes arising out of the interpretation or application of the Convention; and (*iii*) Mr. Ingles's attempt to have recourse to the Court conditioned on recourse to the CERD Committee for certain matters was ultimately rejected by the Third Committee.

3.149 The UAE's second argument in support of its theory that Article 22 creates cumulative requirements was based on a misreading of the Court's Judgment on preliminary objections in *Georgia v. Russian Federation*. The UAE claimed that the Judgment "supports the argument that the two conditions are cumulative"[408]. It based this argument on the Court's observation that

> "at the time when CERD was being elaborated, the idea of submitting to the compulsory settlement of

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[407] **Vol. III, Annex 88,** United Nations, *Official Records of the General Assembly*, Twentieth Session, Third Committee, *Draft International Convention on the Elimination of All Forms of Racial Discrimination: Ghana, Mauritius and Philippines: articles relating to measures of implementation to be added to the provisions of the draft International Convention on the Elimination of All Forms of Racial Discrimination adopted by the Commission on Human Rights (A/5921, annex)*, document A/C.3/L.1291 (18 November 1965), p. 5.

[408] CR 2018/13, p. 21, para. 8(5) (Pellet).

> disputes by the Court was not readily acceptable to a number of States. Whilst States could make reservations to the compulsory dispute settlement provisions of the Convention, it is reasonable to assume that *additional limitations to resort to judicial settlement* in the form of prior negotiations and other settlement procedures without fixed time-limits *were provided for* with a view to facilitating wider acceptance of CERD by States."[409]

3.150 This statement shows only that the ten-Judge majority considered the preconditions to be "additional limitations to resort to judicial settlement". This observation was made in the context of examining the *travaux* for the purposes of supporting the majority's conclusion that Article 22 imposes preconditions to the seisin of the Court. It therefore cannot be read as an indication that the majority considered the requirements to be cumulative rather than alternative, particularly since the majority expressly *reserved* its opinion on that issue[410]. In this respect, it should be recalled that five of the ten Judges who made up the majority had also signed on to the joint dissenting opinion at the provisional measures stage, which expressed the view that the CERD procedures requirement was an "*alternative* precondition"[411].

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409 CR 2018/13, p. 20, para. 8(5) (Pellet) (quoting *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 147 (emphasis added by the UAE)).

410 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 183 ("considering the factual finding that neither of these two modes of dispute settlement was attempted by Georgia, the Court does not need to examine whether the two preconditions are cumulative or alternative").

411 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Joint Dissenting*

3.151 The UAE's third argument was that CERD "resembles some [other universal human rights treaties] which contain compromissory clauses that also make provision for a procedure of three steps—or more", citing first and foremost the Convention against Torture ("***CAT***")[412].

3.152 In fact, Article 22 of CERD is very different from the dispute settlement clause in CAT, Article 30(1) of which provides:

> "Any dispute between two or more States Parties concerning the interpretation or application of this Convention *which cannot be settled through negotiation* shall, at the request of one of them, be submitted to arbitration. *If* within six months from the date of the request for arbitration *the Parties are unable to agree on t he organization of the arbitration*, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court."[413]

3.153 This language is a good example of how procedural preconditions can be expressly stated as cumulative (and successive) requirements that must be satisfied before recourse may be had to the Court. Indeed, the Court interpreted

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Opinion of Vice-President Al-Khasawneh and J udges Ranjeva, Shi, Koroma, Tomka, Bennouna and Skotnikov, I.C.J. Reports 2008, para. 17 (emphasis added). The five judges from this joint dissenting opinion who were in the majority at the preliminary objections stage were Judges Tomka, Koroma, Al-Khasawneh, Bennouna, and Skotnikov.

412 CR 2018/13, p. 21, para. 8(6) & n. 33 (Pellet).

413 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (concluded 10 December 1984, entered into force 26 June 1987), 1465 UNTS 85, Art. 30(1) (emphasis added).

the requirements of negotiations and prior attempt to arbitrate in Article 30(1) of CAT as such in *Belgium v. Senegal*[414].

3.154 If anything, Article 30(1) of CAT thus provides an example of express cumulative dispute resolution requirements in an international human rights treaty, which stands in stark contrast to Article 22. Had the drafters intended to include a similar requirement in CERD, they could have used a formulation similar to that used in CAT; they did not. The UAE therefore cannot rely on Article 30(1) of CAT to advance its argument about Article 22 of CERD. In this respect Qatar notes that such requirements necessarily delay access to remedies for human rights violations. If they are to apply, they should be stated explicitly, as they are in CAT.

3.155 The UAE's fourth and final argument that the Article 22 procedural requirements are cumulative was that "the compulsory and successive character of the conditions set out in Article 22 is confirmed by the *Handbook on the Peaceful Settlement of Disputes between States*, published by the United Nations in 1992"[415]. The *Handbook* states:

> "the dispute settlement clauses of many multilateral treaties provide that disputes which cannot be settled by negotiation shall be submitted to another peaceful settlement procedure. Various patterns of *successive steps* can be found in practice …

[414] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, paras. 56-63.

[415] CR 2018/13, p. 22, para. 8(7) (Pellet).

> (e) Negotiation; procedures provided by the treaty; resort to ICJ (art. 22 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination)[.]"[416]

3.156 This argument is unavailing because the Introduction to the *Handbook* itself makes clear that it "is not a legal instrument"[417]. The Introduction also states: "Although drawn up on consultation with Member States, it does not represent the views of Member States"[418]. The *Handbook* is moreover general in its approach, rather than focused on CERD in particular. As a result, it does not constitute an authoritative interpretation of Article 22, and does not add anything to the UAE's argument.

3.157 The UAE has not put forth any credible argument that the two Article 22 requirements are cumulative. Rather, for the reasons discussed above, the only tenable view is that the two requirements are alternative.

B. The Negotiation Requirement Has Been Satisfied

3.158 The Court has explained the content of negotiation requirements like that stated in Article 22 of CERD on many occasions. In *Georgia v. Russian*

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[416] CR 2018/13, p. 21, para. 8(7) (Pellet) (quoting United Nations Office of Legal Affairs, Codification Division, *Handbook on the Peaceful Settlement of Disputes between States*, document OLA/COD/2394, UN Publication Sales No. E.92.V.7 (1992), para. 70 (emphasis added by the UAE)).

[417] United Nations Office of Legal Affairs, Codification Division, *Handbook on the Peaceful Settlement of Disputes between States*, document OLA/COD/2394, UN Publication Sales No. E.92.V.7 (1992), p. 1.

[418] United Nations Office of Legal Affairs, Codification Division, *Handbook on the Peaceful Settlement of Disputes between States*, document OLA/COD/2394, UN Publication Sales No. E.92.V.7 (1992), p. 1.

Federation, the Court held that such requirements call for "at the very least … a genuine *attempt* by one of the disputing parties to engage in discussions with the other disputing party, with a view to resolving the dispute"[419]. The Court added that where "negotiations are attempted *or* have commenced … the precondition of negotiation is met only when there has been a failure of negotiations, or when negotiations have become futile or deadlocked"[420].

3.159 Article 22 thus does not require that negotiations have actually taken place. As the Court stated, the requirement may be satisfied by a genuine *attempt* by one of the disputing parties to engage in discussions with the other disputing party with a view to resolving the dispute even if that attempt fails or becomes futile[421].

3.160 A negotiation requirement can also be discharged when a disputing party is confronted with an "immediate and total refusal" to negotiate on the other side. Such a blanket refusal plainly excludes any possibility for an amicable settlement.

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419 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 157 (emphasis added).

420 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 159 (emphasis added) (citing to *Mavrommatis Palestine Concessions (Greece v. Great Britain)*, Jurisdiction, Judgment, PCIJ Reports 1924, Series A, No. 2, p. 13; *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, pp. 345-346; *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, I.C.J. Reports 1980*, para. 51; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, I.C.J. Reports 1988*, para. 55).

421 "[W]hether negotiations ... have taken place, and whether they have failed or become futile or deadlocked, are essentially questions of fact 'for consideration in each case'". (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011,* para. 160 (quoting *Mavrommatis Palestine Concessions, Jurisdiction, Judgment, P.C.I.J. Reports 1924, Series A, No. 2*, p. 13)).

This was precisely the situation in *United States Diplomatic and Consular Staff in Tehran*. In that case, the Court held that the Iranian Government's "refusal … to enter into any discussion on the matter" despite the United States' protests was sufficient to discharge the negotiation requirement under Article XXI, paragraph 2 of the Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran[422]. Indeed, the Court's Judgment makes no mention of any attempts by the United States to negotiate after its efforts to make its views known to Iran were rebuffed[423].

3.161 This result makes perfect sense. A contrary rule would mean that one party to a dispute would always be able to frustrate the other's access to a dispute settlement mechanism conditioned on negotiations merely by refusing to engage with it.

3.162 In addition to making good practical sense, this result is also consistent with what is expected of States when they negotiate. In the *North Sea Continental Shelf* cases, the Court explained that:

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[422] *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, I.C.J. Reports 1980*, para. 51. Article XXI, paragraph 2 reads: "Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means". The text of this provision is reproduced in *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, I.C.J. Reports 1980*, para. 51. The Court does not differentiate between the requirement in Article XXI, paragraph 2 and other negotiation requirements found in treaties. *See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 133.

[423] *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, I.C.J. Reports 1980*, para. 47; *see also ibid*., para. 48.

> "parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; *they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it …*"[424]

3.163 If a State refuses even to come to the negotiation table, still less with the open mind that international law requires, there is obviously no chance for meaningful exchanges and no chance that the dispute can be resolved by negotiation.

3.164 As for the negotiation itself, the Court has made clear that it "has come to accept less formalism in what can be considered negotiations"[425]. In *Mavrommatis Palestine Concessions*, the Court's predecessor held:

> "Negotiations do not of necessity always presuppose a more or less lengthy series of notes and despatches; it may suffice that a discussion should have been commenced, and this discussion may have been very short; this will be the case if a dead lock is reached, or if finally a point is reached at which one of the Parties definitely declares himself unable, or refuses, to give way, and there can

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[424] *North Sea Continental Shelf (Germany/Denmark; Germany/Netherlands), Judgment, I.C.J. Reports 1969*, para. 85(a) (emphasis added).

[425] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 160.

> therefore be no doubt that the dispute cannot be settled by diplomatic negotiation."[426]

3.165 Finally, it is important to note that, in *Georgia v. Russian Federation*, the Court held that for the negotiation requirement to be satisfied:

> "it is *not* necessary that a State must expressly refer to a *specific* treaty in its exchanges with the other State to enable it later to invoke that instrument before the Court …. [T]he exchanges must refer to the *subject-matter of the treaty* with *sufficient clarity* to enable the State against which a claim is made to identify that there is, or may be, a *dispute with regard to that subject-matter*."[427]

3.166 In this case, Qatar plainly attempted—on multiple occasions—to negotiate with the UAE regarding the subject-matter of the dispute, but those attempts failed because the UAE at all times refused to negotiate with Qatar, including with respect to the Parties' dispute under CERD.

3.167 As recounted above[428], on 5 June 2017, the UAE announced, without prior notice, that it was "sever[ing] all relations with the State of Qatar, including breaking off diplomatic relations, and [was giving] Qatari diplomats 48 hours to

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426 *Mavrommatis Palestine Concessions (Greece v. Great Britain), Jurisdiction, Judgment, P.C.I.J. Reports 1924, Series A, No. 2*, p. 13. The Court continued: "But it is equally true that if the diplomatic negotiations between the Governments commence at the point where the previous discussions left off, it may well happen that the nature of the latter was such as to render superfluous renewed discussion of the opposing contentions in which the dispute originated. No general and absolute rule can be laid down in this respect. It is a matter for consideration in each case". *Ibid.*

427 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 30 (emphasis added).

428 *See* Chap. II, Section II.A, above.

leave the UAE"[429]. The UAE closed Qatar's embassy in Abu Dhabi and expelled Qatar's diplomats, and closed its own embassy in Doha and withdrew its diplomats. It simultaneously closed all air, sea and land routes between Qatar and the UAE.

3.168 The message from the UAE was clear from the outset: it had no interest in talking, let alone negotiating, with Qatar on any front, including with respect to the UAE's Discriminatory Measures.

3.169 That message was soon made explicit. Just two days after the imposition of the Discriminatory Measures, the Minister of State for Foreign Affairs of the UAE stated that there was "nothing to negotiate" with Qatar[430]. Then, as discussed above[431], on 22 June 2017, the UAE, along with Bahrain, Egypt and Saudi Arabia, issued the so-called Thirteen Demands[432]. These were considered an absolute precondition to any dialogue relating to the withdrawal of the Discriminatory Measures and included demands that Qatar "[c]urb diplomatic ties with Iran"; "shut down al-Jazeera and its affiliate stations"; "terminate the Turkish military presence in Qatar"; and "align itself with the other Gulf and Arab countries

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429 **Vol. II, Annex 1**, UAE Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017).

430 Jon Gambrell, "Emirati diplomat to AP: 'Nothing to negotiate' with Qatar", *Associated Press* (7 June 2017), https://apnews.com/3a69bad153e24102a4dd23a6111613ab.

431 *See* Chap. II, Sect. III, above.

432 "Arab states send Qatar 13 demands to end crisis, official says", *Reuters* (23 June 2017), https://www.reuters.com/article/gulf-qatar-demands/arab-states-send-qatar-13-demands-to-end-crisis-official-says-idUSL8N1JK07H; "Qatar crisis: What you need to know", *BBC* (19 July 2017), https://www.bbc.com/news/world-middle-east-40173757.

militarily, politically, socially and economically"[433]. Qatar was also instructed to "[a]gree to all the demands within 10 days", and "[c]onsent to monthly audits in the first year after agreeing to the demands, then once per quarter during the second year [and] [f]or the following 10 years, Qatar would be monitored annually for compliance."[434]

3.170 Qatar considered the Thirteen Demands to be patently unreasonable[435]. It was not alone. The Secretary of State of the United States publicly stated that the demands were "difficult to meet"[436] and urged the UAE and the other States to be "reasonable"[437]. The United Kingdom's Foreign Secretary similarly suggested that

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433 Patrick Wintour, "Qatar given 10 days to meet 13 sweeping demands by Saudi Arabia", *The Guardian* (23 June 2017), https://www.theguardian.com/world/2017/jun/23/close-al-jazeera-saudi-arabia-issues-qatar-with-13-demands-to-end-blockade.

434 Patrick Wintour, "Qatar given 10 days to meet 13 sweeping demands by Saudi Arabia", *The Guardian* (23 June 2017), https://www.theguardian.com/world/2017/jun/23/close-al-jazeera-saudi-arabia-issues-qatar-with-13-demands-to-end-blockade.

435 **Vol. II, Annex 57**, Qatar Ministry of Foreign Affairs, *Qatari, German Foreign Ministers: Dialogue Only Option to Resolve Crisis* (4 July 2017), https://www.mofa.gov.qa/en/all-mofa-news/details/2017/07/04/qatari-german-foreign-ministers-dialogue-only-option-to-resolve-crises.

436 "Qatar demands difficult to meet, says US", *BBC* (25 June 2017), https://www.bbc.com/news/world-middle-east-40399770.

437 "Qatar demands difficult to meet, says US", *BBC* (25 June 2017), https://www.bbc.com/news/world-middle-east-40399770.

the demands were not "realistic"[438]. And the German Foreign Ministry characterized them as "very provocative"[439].

3.171 On 27 June 2017, the Minister of Foreign Affairs of Saudi Arabia confirmed, on behalf of all four discriminating States, that the 13 Demands were "non-negotiable".[440] He added:

> "It's very simple. We made our point. We took our steps and it's up to the Qataris to amend their behaviour. Once they do, things will be worked out. But if they don't, they will remain isolated. … If Qatar wants to come back into the [Gulf Cooperation Council] pool, they know what they have to do."[441]

3.172 The same day, the UAE's Ambassador to the Russian Federation explained what would happen if Qatar did not capitulate to the Thirteen Demands within the ten days they gave it: "[W]e'd no longer be interested in bringing Qatar back into the Gulf and the Arab fold"[442].

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438 "Qatar demands difficult to meet, says US", *BBC* (25 June 2017), https://www.bbc.com/news/world-middle-east-40399770.

439 "Saudi demands from Qatar "very provocative": Germany", *Reuters* (26 June 2017), https://www.reuters.com/article/us-gulf-qatar-germany/saudi-demands-from-qatar-very-provocative-germany-idUSKBN19H2A3.

440 "Qatar condemns Saudi refusal to negotiate over demands", *BBC* (28 June 2017), https://www.bbc.com/news/world-middle-east-40428947.

441 "Qatar condemns Saudi refusal to negotiate over demands", *BBC* (28 June 2017), https://www.bbc.com/news/world-middle-east-40428947.

442 Frank Gardner, "Qatar facing indefinite isolation, UAE says", *BBC* (27 June 2017), https://www.bbc.com/news/world-middle-east-40419994.

3.173 The following day, the UAE's Minister of State for Foreign Affairs expressly reiterated what the Minister of Foreign Affairs of Saudi Arabia had said the day before: "Our demands on Qatar are non-negotiable"[443].

3.174 It is unclear to Qatar how the UAE can in good faith take the view that Qatar failed to discharge its obligation to negotiate when the UAE itself, after severing diplomatic relations, took the view that there was "nothing to negotiate" unless Qatar adhered to its demands, which themselves were "non-negotiable". *A fortiori*, just as it did in the *Hostages* case, the Court can find the negotiation requirement satisfied even without examining the details of Qatar's specific attempts to negotiate.

3.175 That said, the record shows that in spite of the severance of all diplomatic channels of communication and the UAE's refusal to negotiate short of Qatar's capitulation to its demands, Qatar repeatedly and publicly asserted its openness to dialogue and negotiation[444].

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443 Naser Al Wasmi, "UAE and Saudi put pressure on Qatar ahead of demands deadline", *The National* (28 June 2017), https://www.thenational.ae/world/uae-and-saudi-put-pressure-on-qatar-ahead-of-demands-deadline-1.92119.

444 **Vol. II, Annex 53**, Qatar Ministry of Foreign Affairs, *Foreign Minister 'Willing to Talk' to Resolve Diplomatic Crisis* (6 June 2017) https://www.mofa.gov.qa/en/all-mofa-news/details/2017/06/06/foreign-minister-qatar-'willing-to-talk'-to-resolve-diplomatic-crisis; **Vol. II, Annex 54**, Qatar Ministry of Foreign Affairs, *Foreign Minister: Qatar Committed to Approach of Dialogue in Resolving Differences with Neighboring Countries* (10 June 2017) https://www.mofa.gov.qa/en/all-mofa-news/details/2017/06/10/foreign-minister-qatar-committed-to-approach-of-dialogue-in-resolving-differences-with; **Vol. II, Annex 55**, Qatar Ministry of Foreign Affairs, *Foreign Minister: Qatar Focuses on Sol ving Humanitarian Problems of Illegal Siege* (12 June 2017) https://mofa.gov.qa/en/all-mofa-news/details/2017/06/12/foreign-minister-qatar-focuses-on-solving-humanitarian-problems-of-illegal-siege; "Qatar condemns Saudi refusal to negotiate over demands", *BBC* (28 June 2017), https://www.bbc.com/news/world-middle-east-40428947; **Vol. VI, Annex 152**, "Emir of Qatar calls for negotiations to ease Gulf boycott", *The Independent* (21 July 2017)

3.176 As one of many examples, on 22 July 2017, H.H. the Amir of Qatar delivered his first public address following the imposition of the Discriminatory Measures, in which he expressly stated that Qatar is "ready for dialogue and for reaching settlements on all contentious issues in this context"[445]. In response, the UAE's Minister of State for Foreign Affairs reiterated that the UAE would not engage in dialogue with Qatar until it acceded to the 13 Demands[446].

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https://www.independent.co.uk/news/world/emir-qatar-sheikh-tamim-bin-hamad-al-thani-saudi-arabia-egypt-united-arab-emirates-bahrain-blockade-a7854311.html; **Vol. II, Annex 58**, Qatar Ministry of Foreign Affairs, *Qatar Committed to Dialogue to Solve GCC Crisis-Ambassador to Austria* (25 July 2017) https://www.mofa.gov.qa/en/all-mofa-news/details/2017/07/26/qatar-committed-to-dialogue-to-solve-gcc-crisis---ambassador-to-austria; **Vol. II, Annex 59**, Qatar Ministry of Foreign Affairs, *Foreign Minister: No Response from Siege Countries to US Proposals on Crisis* (27 July 2017) https://www.mofa.gov.qa/en/all-mofa-news/details/2017/07/27/foreign-minister-no-response-from-siege-countries-to-us-proposals-on-the-crisis; **Vol. II, Annex 61**, Qatar Ministry of Foreign Affairs, *Foreign Minister Reiterates: Qatar Welcomes Any Effort Supports Kuwait Mediation to Resolve Gulf Crisis* (30 August 2017) https://www.mofa.gov.qa/en/all-mofa-news/details/2017/08/30/foreign-minister-reiterates-qatar-welcomes-any-effort-supports-kuwaiti-mediation-to-resolve-gulf-crisis; **Vol. II, Annex 63**, United Nations General Assembly, *General Debate at the 72nd Session: Address by HH Sheikh Tamim Bin Hamad Al Thani, Amir of the State of Qatar* (19 September 2017), https://gadebate.un.org/en/72/qatar (certified translation); "Tillerson Faults Saudi-Led Bloc for Failing to End Qatar Crisis" *Bloomberg* (19 October 2017) https://www.bloomberg.com/news/articles/2017-10-19/tillerson-faults-saudi-led-bloc-for-failing-to-end-qatar-crisis-j8yqqibp; **Vol. II, Annex 65**, Qatar Ministry of Foreign Affairs, *Foreign Minister: Qatar Sees Any GCC Meeting Golden Opportunity for Civilized Dialogue* (22 October 2017) https://www.mofa.gov.qa/en/all-mofa-news/details/2017/10/22/foreign-minister-qatar-sees-any-gcc-meeting-golden-opportunity-for-civilized-dialogue; **Vol. II, Annex 66**, Qatar Ministry of Foreign Affairs, *The Foreign Minister Stresses Qatar's Commitment to Resolving GCC Crisis* (18 November 2017) https://www.mofa.gov.qa/en/all-mofa-news/details/2017/11/18/the-foreign-minister-stresses-qatar's-commitment-to-resolving-gcc-crisis.

445 "Emir speech in full text: Qatar ready for dialogue but won't compromise on sovereignty", *The Peninsula* (22 July 2017), https://thepeninsulaqatar.com/article/22/07/2017/Emir-speech-in-full-text-Qatar-ready-for-dialogue-but-won%E2%80%99t-compromise-on-sovereignty.

446 "UAE minister: no dialogue with Qatar until it revises policies", *Reuters* (22 July 2017), https://www.reuters.com/article/us-gulf-qatar-emirates-idUSKBN1A70OK.

3.177 On 30 July 2017, the UAE, along with Saudi Arabia, Egypt, and Bahrain reaffirmed this position[447]. As stated by the Minister of Foreign Affairs of Saudi Arabia, "there is no negotiation over the 13 demands"[448].

3.178 On 11 September 2017, Qatar's Deputy Prime Minister and Minister of Foreign Affairs stated before the Human Rights Council that Qatar was ready to enter dialogue to settle the dispute over the Discriminatory Measures[449]. Then, on 19 September 2017, H.H. the Amir of Qatar spoke before the United Nations General Assembly, saying:

> "[W]e have taken an open attitude towards dialogue without dictation, and have expressed our readiness to resolve differences through compromises based on common undertakings. Resolving conflicts by peaceful means is actually one of the priorities of our foreign policy. From here, I renew the call for an unconditional dialogue based on mutual respect for sovereignty and I highly value the sincere and appreciated mediation that the State of Qatar has supported since the outbreak of the crisis, and which was initiated by my brother, His Highness Sheikh

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447 "Four Arab countries say they are ready for Qatar dialogue with conditions", *Reuters* (30 July 2017), *available at* https://www.reuters.com/article/us-gulf-qatar-meeting-idUSKBN1AF03T.

448 "Foreign Ministers of Saudi Arabia, Bahrain, UAE and Egypt: Measures taken against Qatar are sovereign, and we all are negatively impacted when terrorism and extremism become stronger", *MENAFN* (30 July 2017), http://webcache.googleusercontent.com/search?q=cache:fok0LkFJiVsJ:www.menafn.com/1095672454/Foreign-Ministers-of-Saudi-Arabia-Bahrain-UAE-and-Egypt-Measures-taken-against-Qatar-are-sovereign-and-we-all-are-negatively-impacted-when-terrorism-and-extremism-become-stronger%3Fsrc%3DRSS+&cd=1&hl=en&ct=clnk&gl=qa&lr=lang_en%7Clang_fr.

449 **Vol. II, Annex 62**, Permanent Mission of the State of Qatar to the United Nations Office in Geneva – Switzerland, *HE the Foreign Minister delivers a statement before the 36th Session of the Human Rights Council* (11 September 2017).

> Sabah Al-Ahmad Al-Jaber Al-Sabah, the Emir of the sisterly State of Kuwait. I also thank all the countries that have supported this mediation."[450]

3.179 Although the UAE could have exercised its right to reply to Qatar's address (as Qatar did with respect to the UAE's address[451]), the UAE remained silent[452].

3.180 The pattern continued at the annual GCC Summit in Kuwait in December 2017. GCC members typically send their Heads of State or Government to the Summit. Qatar therefore viewed it as a "golden opportunity" to negotiate with the UAE, as stated by the Qatari Foreign Minister at the time.[453] Expressly included on the list of subjects for talks was the "bad humanitarian situation … such as separation of families", the very subject-matter of the dispute now before the Court[454]. Kuwait too hoped that the Summit would give the leaders of Qatar and the UAE the opportunity to meet face-to-face[455].

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450 **Vol. II, Annex 63**, United Nations General Assembly, *General Debate at the 72nd Session: Address by HH Sheikh Tamim Bin Hamad Al Thani, Amir of the State of Qatar* (19 September 2017), https://gadebate.un.org/en/72/qatar (certified translation), p. 4.

451 *See* **Vol. II, Annex 63**, United Nations General Assembly, *General Debate at the 72nd Session: Address by HH Sheikh Tamim Bin Hamad Al Thani, Amir of the State of Qatar* (19 September 2017), https://gadebate.un.org/en/72/qatar (certified translation)

452 *See* **Vol. II, Annex 24**, United Nations General Assembly, *General Debate at the 72nd Session: Address by HH Sheikh Abdullah bin Zayed Al Nahyan, Minister for Foreign Affairs of the United Arab Emirates*, https://gadebate.un.org/en/72/united-arab-emirates.

453 **Vol. II, Annex 65**, Ministry of Foreign Affairs of Qatar, "Foreign Minister: Qatar Sees Any GCC Meeting Golden Opportunity for Civilized Dialogue" (22 October 2017), https://www.mofa.gov.qa/en/all-mofa-news/details/2017/10/22/foreign-minister-qatar-sees-any-gcc-meeting-golden-opportunity-for-civilized-dialogue.

454 **Vol. II, Annex 65**, Qatar Ministry of Foreign Affairs, *Foreign Minister: Qatar Sees Any GCC Meeting Golden Opportunity for Civilized Dialogue* (22 October 2017),

3.181 Qatar was again disappointed. H.H. the Amir of Qatar traveled to Kuwait to attend the Summit, which H.H. the Emir of Kuwait also attended[456]. But neither the UAE nor any of the other Quartet States sent their Heads of State[457]. Although the Summit was initially supposed to last two days, it was called to an end within hours. Qatar's overture was rebuffed and the "golden opportunity" was lost.

3.182 Subsequent efforts similarly failed to bear fruit and only served to illustrate the existence of deadlock. In February 2018, Qatar's Deputy Prime Minister and Minister for Foreign Affairs once again addressed the Human Rights Council, noting the many human rights violations against the Qatari people[458]. In response, the Permanent Representative of the UAE, while nominally acknowledging that the crisis "must be resolved within the framework of the existing Kuwaiti mediation efforts", stated that the UAE would "continue to

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https://www.mofa.gov.qa/en/all-mofa-news/details/2017/10/22/foreign-minister-qatar-sees-any-gcc-meeting-golden-opportunity-for-civilized-dialogue.

455 Ahmed Hagagy, "Gulf rulers boycotting Qatar skip annual summit", *Reuters* (5 December 2017), https://www.reuters.com/article/us-gulf-qatar-summit/gulf-rulers-boycotting-qatar-skip-annual-summit-idUSKBN1DZ15U.

456 Ahmed Hagagy, "Gulf rulers boycotting Qatar skip annual summit", *Reuters* (5 December 2017), https://www.reuters.com/article/us-gulf-qatar-summit/gulf-rulers-boycotting-qatar-skip-annual-summit-idUSKBN1DZ15U.

457 Ahmed Hagagy, "Gulf rulers boycotting Qatar skip annual summit", *Reuters* (5 December 2017), https://www.reuters.com/article/us-gulf-qatar-summit/gulf-rulers-boycotting-qatar-skip-annual-summit-idUSKBN1DZ15U.

458 **Vol. II, Annex 67**, Permanent Mission of the State of Qatar to the United Nations Office in Geneva – Switzerland, *Statement of HE Deputy Prime Minister of Foreigh Affairs ta the 37th Human Rights Council* (25 February 2018) http://geneva.mission.qa/en/news/detail/2018/02/28/statement-of-he-deputy-prime-minister-of-foreigh-affairs-ta-the-37th-human-rights-council .

exercise [its] sovereign right to boycott the Government of Qatar", showing once again that the UAE was not willing to reconsider its position[459].

3.183 In April 2018, there was an Arab League summit to which the Permanent Representative of Qatar traveled hoping to discuss *all* issues—obviously including the human rights issues—implicated in the Gulf crisis[460]. Even before his arrival, however, the UAE and other States involved decided that the crisis would *not* be on the agenda. To the contrary, they insisted that any solution would have to take place under the auspices of the GCC[461].

3.184 The irony will not be lost on the Court: at the Arab League Summit, the UAE insisted that the dispute be settled in the GCC; yet at the GCC Summit, the UAE refused even to attend.

3.185 Despite the UAE's unyielding intransigence, on 25 April 2018, Qatar took the step of formally requesting negotiations to address its grievances under CERD[462]. Qatar's Minister of State for Foreign Affairs sent to his counterpart in the UAE a communication that the transmittal letter described as an "invitation to

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459 **Vol. II, Annex 26**, "Arab Quartet responds to Qatar's remarks at the UN Human Rights Council", *Al Arabiya English* (28 February 2018).

460 *See* Nawal Sayed, "6 Arab leaders absent from 29th Summit, Syria not on table", *Egypt Today* (15 April 2018), https://www.egypttoday.com/Article/2/47919/6-Arab-leaders-absent-from-29th-Summit-Syria-not-on.

461 *See* "Saudi FM says Qatar crisis not on the table at Arab League Summit", *Baghdad Post* (13 April 2018), http://www.thebaghdadpost.com/en/story/26062/Saudi-FM-says-Qatar-crisis-not-on-the-table-at-Arab-League-summit.

462 **Vol. II, Annex 68**, Request for Negotiation from the Permanent Delegation of the State of Qatar to the United Nations in Geneva to the Emirati Minister of State for Foeign Affairs (25 April 2018) (certified translation).

negotiate"[463]. The Minister expressly referred to the specific provisions of the Convention implicated by the UAE's actions, and called on the UAE "to enter into negotiations in order to resolve these violations and the effects thereof"[464]. The UAE never even bothered to reply to Qatar's invitation.

3.186 At the hearing on provisional measures, the UAE attempted to dismiss all of the aforementioned events, with the exception of the invitation to negotiate, on the ostensible grounds that the attempted negotiations did not concern violations of CERD[465]. While it may be true that Qatar did not expressly invoke the Convention each and every time, the Court has, as explained above, made clear that that is not necessary to satisfy the negotiation requirement[466]. On multiple occasions, Qatar invoked the underlying subject-matter of the dispute.

3.187 Every step of the way, Qatar sought negotiations with the UAE without any preconditions on its part. And every step of the way, the UAE refused to talk on any issue. Its refusal to negotiate on any subject necessarily entailed a refusal to negotiate on the issues of discrimination under CERD. Moreover, as discussed above, there were occasions when Qatar specifically attempted to engage with the

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463 **Vol. II, Annex 68**, Request for Negotiation from the Permanent Delegation of the State of Qatar to the United Nations in Geneva to the Emirati Minister of State for Foeign Affairs (25 April 2018) (certified translation).

464 **Vol. II, Annex 68**, Request for Negotiation from the Permanent Delegation of the State of Qatar to the United Nations in Geneva to the Emirati Minister of State for Foeign Affairs (25 April 2018) (certified translation).

465 CR 2018/13, p. 23, para. 12 (Pellet).

466 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 30.

UAE on the human rights matters that are the subject of this case. Those efforts too met with refusal. Article 22 can require nothing more.

3.188 At the hearing on provisional measures, the UAE also tried to discredit Qatar's invitation to negotiate by arguing that it was not made in good faith. The UAE sought solace in the fact that Qatar had, on 8 March 2018, sent a communication to the CERD Committee under Article 11 of CERD and, on 11 June 2018, submitted its Application instituting proceedings before the Court without waiting for the outcome of the Article 11 procedure[467].

3.189 But these acts show only that Qatar was looking for any and all possible ways to settle the dispute. They cannot and do not in any way undermine the good faith character of the invitation to negotiate. Once again, Qatar cannot help but observe the irony of the UAE claiming that it was Qatar's invitation that was not made in good faith even as it has persistently refused to even consider negotiating with Qatar until all of its demands are met. Qatar, on the other hand, has repeatedly reiterated its openness for dialogue.

3.190 In light of Qatar's 25 April 2018 communication to the UAE, the Court stated in its Order on provisional measures that:

> "… the letter contained an offer by Qatar to negotiate with the UAE with regard to the latter's compliance with its substantive obligations under CERD. In the light of the foregoing, and given the fact that the UAE did not respond to that formal invitation to negotiate, the Court is of the view that the issues raised in the present case had not been

[467] CR 2018/13, pp. 24-25, para. 16 (Pellet); CR 2018/15, p. 14, para. 12 (Pellet).

> resolved by negotiations at the time of the filing of the Application."[468]

3.191 On this record, there can be no question that Qatar has genuinely attempted to negotiate with the UAE regarding the dispute before the Court. It repeatedly called for negotiations to address the violations in a wide variety of fora and the UAE has never responded, except to say that there is nothing to negotiate. The negotiation requirement under Article 22 is plainly satisfied.

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3.192 To conclude this section, the dispute "is not settled" for the purposes of Article 22 since the two requirements therein are alternative, and Qatar satisfied the negotiation requirement.

[468] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order, I.C.J. Reports 2008*, para. 38.

CHAPTER IV
QATAR'S CLAIMS ARE ADMISSIBLE

4.1 At the hearing on provisional measures, the UAE objected to the Court's competence to indicate provisional measures by alleging that (*i*) Qatar "ha[d] not shown and cannot show that domestic remedies were exhausted prior to the institution of proceedings"[469]; and (*ii*) the institution of proceedings was "incompatible with both the *electa una via* principle and the *lis pendens* exception, since the same claim ha[d] been submitted in turn to two organs by the same applicant against the same respondent"[470].

4.2 The Court rejected these arguments in its Order on Provisional Measures[471]. Because its determinations were without prejudice to the merits, however, the Order left "unaffected the right of the Governments of Qatar and the UAE to submit arguments", at a later date, in respect of "any questions relating to

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469 CR 2018/13, p. 28, para. 1 (Treves).

470 At the hearing on provisional measures, the UAE raised this objection to the Court's competence to indicate provisional measures in the context of discussing the Court's jurisdiction. *See* CR 2018/13, p. 19, para. 23 (Pellet). Qatar nonetheless submits that the objection in reality concerns the admissibility of Qatar's claims, as belatedly recognized by the UAE in the context of a similar objection raised before the CERD Committee. *See, e.g.,* **Vol. IV, Annex 118**, *State of Qatar v. United Arab Emirates,* ICERD-ISC-2018/2, Supplemental Response of the United Arab Emirates (29 November 2018), paras. 74–75 (framing its *lis pendens* and *electa una via* arguments as concerning the admissibility of Qatar's claims rather than the CERD Committee's jurisdiction over them).

471 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order*, *I.C.J. Reports 2018*, paras. 39, 42.

the admissibility of the Application"[472]. In the sections that follow, Qatar will show why the Court's conclusion stands.

Section I. THE LOCAL REMEDIES RULE DOES NOT BAR QATAR'S CLAIMS

4.3 At the hearing on provisional measures, the UAE argued that the local remedies rule bars Qatar's claims as a matter of general international law[473]. The UAE is mistaken. In fact, as explained below, the local remedies rule does not even apply to Qatar's claims (**Section I.A**). But even if it did, the UAE has failed to discharge its burden of proving that there are any effective and reasonably available remedies that have not been exhausted (**Section I.B**).

A. The Local Remedies Rule Does Not Apply to Qatar's Claims

4.4 The analytical starting point for determining whether the local remedies rule applies to Qatar's claims is the text of Article 22 of the CERD, the title of jurisdiction in this case.

4.5 Article 22 does not state that the local remedies rule applies to a "dispute between two or more States Parties with respect to the interpretation or application of this Convention"[474]. Qatar recognizes that this, by itself, is not determinative. In the *ELSI* case, a Chamber of the Court held that silence in a jurisdictional clause with respect to the local remedies rule does not, without more, render it

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[472] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order, I.C.J. Reports 2018*, para. 78.

[473] CR 2018/13, pp. 28–35, paras. 1–26 (Treves).

[474] **Vol. III, Annex 92**, CERD, Art. 22.

inapplicable. The Chamber held that it was "unable to accept that an important principle of customary international law should be held to have been tacitly dispensed with, in the absence of any words making clear an intention to do so"[475]. This case is different from *ELSI*, however. While no such words existed in the applicable treaty in that case, they do exist here.

4.6 Article 22's silence on the exhaustion issue stands in contrast to Articles 11(3) and 14(7), which expressly make the exhaustion of "all available domestic remedies" a condition of the CERD Committee's power to consider an inter-State or individual complaint. This is significant; the Court has previously held that the presence of a term in one part of a treaty, combined with its absence in another, suggests that the omission was intentional.

4.7 In the *Frontier Dispute* between Burkina Faso and Niger, for example, the Court noted that the instrument at issue twice specified that specific points along the boundary between Burkina Faso and Niger were to be connected by a "straight line"[476]. The Court considered that the use of this express language in two parts of the instrument was evidence that the same "straight line" requirement should *not* automatically be read into another part of the instrument that contained no such

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475 *Elettronica Sicula S.p.A. (ELSI) (United States v. Italy)*, *Judgment I.C.J. Reports 1989*,mpara. 50.

476 *Frontier Dispute (Burkina Faso/Niger)*, *Judgment*, *I.C.J. Reports 2013*, para. 88; *ibid.*, *Separate Opinion of Judge Ad Hoc Daudet*, *I.C.J. Reports 2013*, para. 116.

language[477]. In *Military and Paramilitary Activities*, the Court applied the same logic even when comparing the provisions of two *different* treaties[478].

4.8 Similar logic has been applied in numerous other cases by other international courts and tribunals[479]. It also applies here. The fact that Articles 11(3) and 14(7) expressly require that "all available domestic remedies" be exhausted while Article 22 does not, plainly suggests that no such requirement was intended for disputes falling within the scope of the latter provision.

4.9 In any event, even if the local remedies rule could be read into Article 22 (*quod non*), it still would not apply in the circumstances of this case for at least two reasons.

4.10 *First*, the UAE's Discriminatory Measures constitute a systematic, generalized policy and practice that has caused, and continues to cause, widespread violations of the CERD.[480] Under generally recognized principles of

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477 *Frontier Dispute (Burkina Faso/Niger)*, *Judgment*, *I.C.J. Reports 2013*, paras. 87–88.

478 *See, e.g., Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Judgment*, *I.C.J. Reports 1986*, para. 222.

479 *See, e.g., Provident Mutual Life Insurance Company and Others (United States) v. Germany (Life-Insurance Claims)*, Award of 18 September 1924, 7 United Nations, *Reports of International Arbitral Awards (RIAA)* 111 (1924); *Tokios Tokeles v. Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction (29 April 2014) (Weil, Bernardini, Price), para. 30; *Prosecutor v. Duško Tadič*, ICTY Case No. IT-94-1-A, Judgment (Appeals Chamber, 15 July, 1999), paras. 283–284, 305; World Trade Organization, European Communities and Its Member States – Tariff Treatment of Certain Information Technology Products, *Report of the Panel*, documents WT/DS375/R, WT/DS376/R, WT/DS377/R (16 August 2016), para. 7.517.

480 *See* para. 4.18, n. 496; para. 4.20, below.

international law, there is no need to exhaust local remedies in cases involving breaches of this nature.[481]

4.11 *Second*, Qatar is making claims in its own right that are interdependent with its claims brought on behalf of its nationals.[482] Qatar's claims are also preponderantly based on direct injury to it, not its nationals.[483] There is no need to exhaust domestic remedies in cases involving "mixed" claims of either kind.[484]

4.12 Each of these reasons confirms the conclusion that the local remedies rule does not apply in this case and is discussed in turn below.

1. The Local Remedies Rule Does Not Apply in Circumstances of Widespread Harm or Generalized State Policies and Practices

4.13 In no case, before any court or body in any jurisdiction, has the local remedies rule been applied in circumstances involving widespread and systematic harms like those before the Court. There is no reason why this case should be different.

4.14 To insist on an assessment of the availability and effectiveness of local remedies in cases of widespread and systematic harm would erect an insurmountable hurdle. Quite reasonably, the Court has only applied the local remedies rule when the claims involved a discrete number of easily identifiable

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[481] *See* paras. 4.13-4.20, below.

[482] *See* paras. 4.21-4.26, below.

[483] *See* paras. 4.27-4.30, below.

[484] *See* para. 4.31, below.

individuals[485]. By contrast, the local remedies rule has not been applied—and has repeatedly not even been mentioned by litigant States—in cases involving, in the words of counsel for the UAE at the hearing on provisional measures, "a high number of persons"[486].

4.15 Thus, in *Georgia v. Russian Federation*—a case also involving the CERD—Georgia argued that Russia had committed violations of the CERD against the entire "ethnic Georgian, Greek and Jewish populations in South Ossetia and Abkhazia"[487]. Yet even though Georgia had explicitly brought claims "*as parens patriae for its citizens*"[488], just like Qatar is doing in this case[489],

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485 *See, e.g., Interhandel case (Switzerland* v. *United States of America)*, *Judgment*, *I.C.J. Reports 1959*, p. 29 (finding that "*one interest, and o ne alone*, that of Interhandel […] induced the Swiss Government to institute international proceedings.") (emphasis added); *Elettronica Sicula S.p.A. (ELSI) (United States v. Italy)*, *Judgment, I.C.J. Reports 1989*, para. 52 (noting that "the matter which colours and pervades the United States claim as a whole, is the alleged damage to *Raytheon and Machlett* [two U.S. companies]") (emphasis added); *see also Ahmadou Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, *Preliminary Objections, Judgment, I.C.J. Reports 2007*, para. 35.

486 CR 2018/15, p. 18, para. 12 (Treves).

487 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, *Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 16.

488 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, *Preliminary Objections, Judgment, I.C.J. Reports 2011*, para. 16 (emphasis added).

489 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Application Instituting Proceedings, I.C.J. Reports 2018*, para. 65.

Russia did not even argue that Georgian citizens had failed to exhaust local remedies. Nor did the Court raise the issue *proprio motu*[490].

4.16 Similarly, in the *Case Concerning Armed Activities on the Territory of the Congo*, the Democratic Republic of the Congo accused Rwanda of "massive, serious and flagrant violations of human rights" under several treaties, including the CERD[491]. Admissibility and jurisdiction were vigorously contested. Yet neither the parties nor the Court raised the local remedies rule[492].

4.17 Human rights bodies similarly "attach different consequences to systematic breaches, *e.g.*, in terms of the *non-applicability of the rule of*

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490 The Court has made clear that it "must first take up, proprio motu, *any* preliminary question, whether of admissibility or of jurisdiction", that "*might* constitute a bar to any further examination of the merits of the Applicant's case". *See, e.g., United States Diplomatic and Consular Staff in Tehran (United State of America v. Islamic Republic of Iran)*, *Judgment, I.C.J. Reports 1980*, para. 33 (emphasis added).

491 *Armed Activities on t he Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, *Jurisdiction of the Court and Admissibility of the Application*, *I.C.J. Reports 2006*, para. 1.

492 *See generally Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, *Jurisdiction of the Court and Admissibility of the Application*, *I.C.J. Reports 2006*. Cases before the Court *not* involving the CERD but involving widespread violations of human rights recognized in other treaties confirm the inapplicability of the local remedies rule in the circumstances of this case. By way of just one example, in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Bosnia and Herzegovina alleged that Yugoslavia had violated numerous obligations "toward the People and state of Bosnia and Herzegovina". *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996*, para. 13. Yugoslavia did not argue that all of the "People" of Bosnia and Herzegovina needed to first exhaust local remedies before the State could raise claims under the Genocide Convention. *See generally, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 1996*. Nor did the Court require such showing.

exhaustion of local remedies"[493]. In *Republic of Ireland v. United Kingdom*, for example, the ECtHR noted:

> "A practice incompatible with the Convention consists of an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system … The concept of practice is of particular importance for the operation of the rule of exhaustion of domestic remedies … [I]n principle, *the rule does not apply where the applicant State complains of a practice as such, with the aim of preventing its continuation or recurrence, but does not ask the Commission or the Court to give a decision on each of the cases put forward as proof or illustrations of that practice*"[494].

4.18 Both the ECtHR and the now-defunct European Commission of Human Rights have applied this exception to the local remedies rule on multiple occasions[495], including in a case—analogous to this one—arising from "a

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493 Commentary to Art. 40, International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission* 2001, Vol. II (Part Two), p. 113 ("when reacting against breaches of international law, States have often stressed their systematic, gross or egregious nature. Similarly, international complaint procedures, for example in the field of human rights, attach different consequences to systematic breaches, e.g. in terms of the *non-applicability of the rule of exhaustion of local remedies.*") (emphasis added).

494 ECtHR, *Case of Ireland v. United Kingdom*, Application No. 5130/71, Judgment (18 January 1978), para. 159 (emphasis added).

495 *See, e.g.,* ECtHR, *Greece v. United Kingdom*, Application No. 176/56, Decision on Admissibility (2 June 1956) ("the provision of Article 26 concerning the exhaustion of domestic remedies according to the generally recognised rules of international law *does not apply* to the present application, the scope of which is to determine the compatibility with the Convention of … administrative practices in Cyprus") (emphasis added).

coordinated policy" of "expelling [foreign] nationals" from the territory of the respondent State[496].

4.19 The Inter-American Commission of Human Rights has similarly found the local remedies rule inapplicable "in cases in which the existence of a generalized practice is alleged", reasoning that "[t]he mechanisms established for examining isolated instances of alleged violations" are ill-suited "for responding effectively to cases where it is claimed that the alleged violations occur as part of a generalized practice"[497].

4.20 It cannot be disputed that the UAE's Discriminatory Measures complained of were undertaken as part of a policy ordered and coordinated at the highest levels of government. It also cannot be disputed that these Measures represent a generalized policy and practice that has affected all Qataris. Consistent with the

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496 ECtHR, *Case of Georgia v. Russian Federation (I),* Application No. 13255/07, Merits Judgment (3 July 2014), para. 159 ("Having regard to all those factors, the Court concludes that from October 2006 a coordinated policy of arresting, detaining and expelling Georgian nationals was put in place in the Russian Federation which amounted to an administrative practice for the purposes of Convention case-law. Accordingly, the objection raised by the respondent Government on grounds of non-exhaustion of domestic remedies must be dismissed."). *See generally ibid.*, paras. 111–159.

497 IACtHR, *Nicaragua v. Costa Rica*, Inter-State Case 1/06, Report N° 11/07 (8 March 2007), para. 260; *see also ibid.*, para. 258. As also explained by the former President of the Inter-American Court of Human Rights, and current Judge on the Court, Prof. Cançado Trindade, "[i]n cases concerning legislative measures and administrative practices the individual, having shown that such a practice exists, is *not* under the duty of exhausting local remedies". A.A. Cançado Trindade, "Exhaustion of Local Remedies in Relation to Legislative Measures and Administrative Practices — The European Experience", 18 *Malaya Law Review* (1976) 257, p. 278 (emphasis in original). *See also* **Vol. V, Annex 145**, A.A. Cançado Trindade, *"The Application of the Rule of Exhaustion of Local Remedies in International Law"* (Cambridge University Press, 1983), p. 181 ("in a case concerning a general prevailing situation in breach of the Convention, recourse need not be had to local remedies.").

jurisprudence of the Court and other international courts and tribunals, the local remedies rule simply does not apply in this case.

2. The Local Remedies Rule Does Not Apply in View of Qatar's Claims of Direct Injury to Its Own Interests under the CERD

4.21 In addition to its claims "*as parens patriae of its citizens*", Qatar brings before the Court claims of direct injury to its own interests under the CERD that are not subject to the local remedies rule[498]. Such claims for direct injury are both interdependent with, and preponderant over, Qatar's claims brought on behalf of its nationals. The local remedies rule does not apply to mixed claims of either kind.

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[498] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Application Instituting Proceedings, I.C.J. Reports 2018*, para. 65. It is axiomatic that the local remedies rule does not apply where a State "is not acting in the context of protection of one of its nationals". *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, *Judgment, I.C.J. Reports 2002*, pp. 17–18, para. 40; *see also Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Judgment, I.C.J. Reports 2005*, para. 330; *United States-United Kingdom Arbitration concerning Heathrow Airport User Charges (United States-United Kingdom)*, Award of 30 November 1992 (revised 18 June 1993), 24 *RIAA* 59 (1992) ("There is wide support for the view that a distinction is to be drawn between cases of diplomatic protection, on the one hand, and cases of direct injury where the State is protecting its own interests, on the other hand, and that the applicability of the rule of exhaustion is excluded in cases in the second category"); *The Ambatielos Claim (Greece, United Kingdom of Great Britain and Northern Ireland)*, Award of 6 March 1956, 12 *RIAA* 118 (1956) (defining the local remedies rule as a rule applicable in situations in which "an international action is brought *for injuries suffered by private individuals*") (emphasis added); International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries* (2006), document A/61/10, p. 71 ("Draft article 14 seeks to codify the rule of customary international law requiring the exhaustion of local remedies as a prerequisite *for the exercise of diplomatic protection*") (emphasis added); T. Meron, *The Incidence of the Rule of Exhaustion of Local Remedies*, 35 Year Book of International Law 83 (1959), p. 94.

4.22 Notwithstanding the UAE's suggestion to the contrary at the hearing on provisional measures,[499] Qatar, as a State Party to the CERD, has its *own* distinct interest in ensuring that the UAE upholds its obligations under the CERD[500]. For example, Qatar has the right to demand that the UAE "prohibit and … eliminate racial discrimination in all its forms"[501] "in the enjoyment by all persons of civil, political, economic, social and cultural rights and freedoms"[502]; and that the UAE not only declare incitement to racial discrimination an offence punishable by law[503], but also "effectively implement[]"[504] and "enforce[]" such prohibition[505].

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499 At the hearing on provisional measures, the UAE appeared to deny that it had caused Qatar direct injuries. *See* CR 2018/13, p. 28, paras. 2–3 (Treves). According to the UAE, Qatar's case was instead one of diplomatic protection and was inadmissible because local remedies had not been exhausted before Qatar filed its Application. *See ibid*, p. 30, para. 7.

500 As noted by one representative during negotiations of the CERD, "[e]veryone agreed that domestic remedies should be exhausted before a case was taken to the international level, but it should be borne in mind that one State might bring a complaint against another, *not with respect to the treatment of individuals or groups of individuals*, *but concerning failure to comply with certain provisions of the Convention*". United Nations, *Official Records of the General Assembly, Third Committee, Twentieth Session*, 1353rd Meeting, para. 54 (emphasis added).

501 **Vol. III, Annex 92**, CERD, Art. 2(1).

502 **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on Discrimination Against Non-Citizens*, document CERD/C/GC/30 (2004), Preamble (stating that Article 5 "requires States parties to prohibit and eliminate discrimination based on race, colour, descent, and national or ethnic origin in the enjoyment by all persons of civil, political, economic, social and cultural rights and freedoms"). The CERD Committee has further noted that "[w]henever a State imposes a restriction upon one of the rights listed in article 5 of the Convention which applies ostensibly to all within its jurisdiction, it must ensure that neither in purpose nor effect is the restriction incompatible with article 1 of the Convention as an integral part of international human rights standards". **Vol. IV, Annex 108**, CERD Committee, *General Recommendation No. 20 on Article 5 of the Convention*, document CERD/C/GC/20 (1996), para. 2.

503 **Vol. III, Annex 92**, CERD, Art. 4. The same applies to the "provision of any assistance to racist activities, including the financing thereof". *Ibid.* Furthermore, Article 4 requires that

4.23 That Qatar has claims in its own right is not only reflected in these and other obligations under the CERD, which the UAE's conduct has plainly breached and caused harm to Qatar distinct from any harm suffered by its nationals. It is also reflected in Qatar's interest in preventing *future* harm to its nationals[506]—a core objective of the CERD[507]. The local remedies rule only applies to claims

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the UAE "declare illegal and prohibit organizations, and also all other propaganda activities, which promote and incite racial discrimination". *Ibid.*

504 **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating Racist Hate Speech*, document CERD/C/GC/35 (2013), para. 17.

505 **Vol. IV, Annex 106**, CERD Committee, *General Recommendation No. 15 on Article 4 of the Convention*, document CERD/C/GC/15 (1993), para. 2 ("To satisfy these obligations, States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced.").

506 *See, e.g., Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Application Instituting Proceedings, I.C.J. Reports 2018*, para. 66 (requesting that the Court order the UAE to "take all steps necessary to comply with its obligations under CERD").

507 *See, e.g.,* **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combatting Racist Hate Speech*, document CERD/C/GC/30 (2013), para. 10 ("Article 4 comprises elements relating to speech and the organizational context for the production of speech, serves the functions of *prevention and deterrence*, and provides for sanctions when deterrence fails.") (emphasis added); **Vol. IV, Annex 103**, CERD Committee, *General Recommendation No. 7 Relating to the Implementation of Article 4*, document CERD/C/GC/7 (1985), Preamble. The preventative focus of the CERD is reflected, *inter alia*, in its reporting and training requirements. *See, e.g.,* **Vol. III, Annex 92**, CERD, Arts. 7, 9; **Vol. IV, Annex 104**, CERD Committee, *General Recommendation No. 11 on N on-Citizens*, document CERD/C/GC/11 (1993), para. 2; **Vol. IV, Annex 107**, CERD Committee, *General Recommendation No. 13 on the Training of Law Enforcement Officials in the Protection of Human Rights*, document CERD/C/GC/11 (1993), para. 2. Prevention of violations is also a key component of the Committee's use of early warning and urgent action procedures; *see, e.g.,* United Nations, *Official Records of the General Assembly, Forty-Eighth Session, Annex 3*, document A/48/18; United Nations, *Official Records of the General Assembly, Sixty-Second Session, Annex 3*, document A/62/18, paras. 1, 9. The Committee has also repeatedly reported to the General Assembly on "[p]revention of racial discrimination including early warning and urgent action procedures". *See e.g.,* United Nations, *Official Records of the General Assembly, Seventy-Second Session*, document A/72/18, pp. 6-10.

brought to protect individuals who have *already* been injured[508]. In contrast, it does not apply to disputes that are not "*confined to the past*", and relate to one State party's interest in "obtain[ing] a solution which will also relate to the interpretation and application of [the Treaty] *in the future*"[509].

4.24 In the present case, of course, as shown at the hearing on provisional measures and in this Memorial[510], harm is present and ongoing. Critically, as the Court held in *Avena and other Mexican Nationals*, in situations where "violations of the rights of [individuals] may entail a violation of the rights of [their national] State", and where "violations of the rights [of the national State] may entail a violation of the rights of the individual", there is an "interdependence of the rights

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[508] *See, e.g., Ambatielos Claim (Greece, United Kingdom of Great Britain and N orthern Ireland)*, Award of 6 March 1956, 12 *RIAA* 118 (1956) (the local remedies rule "means that the State against which an international action is brought for injuries *suffered* by private individuals has the right to resist such an action if the persons alleged to *have been injured* have not first exhausted all the remedies available to them under the municipal law of that State.") (emphasis added); *see also, , Interhandel case (Switzerland* v. *United States of America)*, *Judgment, I.C.J. Reports 1959*, p. 27; *Elettronica Sicula S.p.A. (ELSI) (United States v. Italy)*, *Judgment, I.C.J. Reports 1989*, p. 43, para. 52; International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission* 2001, Vol. II (Part Two), Article 14(1), p.59; *Draft Articles on Diplomatic Protection with commentaries (2006),* document A/61/10, p. 45 (stating that paragraph 14(3) of the Draft Articles "provides that the exhaustion of local remedies rule applies *only* to cases in which the Claimant State *has been injured* 'indirectly'") (emphasis added).

[509] *United States-United Kingdom Arbitration concerning Heathrow Airport User Charges (United States-United Kingdom)*, Award of 30 November 1992 (revised 18 June 1993), 24 *RIAA* 60 (1992), Vol. XXIV, para. 6.11 (emphasis added); *see also ibid.*, para. 6.19 (emphasizing that in line with the "general principles of international law underlying the local remedies rule", the rule did not apply to such disputes).

[510] *See, e.g.*, Chap. II, Sec. II.A, Chap. V, Sec. I (collective expulsion of Qataris); Chap. II, Sec. II.B, Chap. V, Sec. II (ban on Qatari entry into the UAE and restrictions on entry to and through Qatar by Emiratis); Chap. II, Sec. II.C.1, Chap. II, Sec. II.C.3, Chap. V, Sec. IV (propagation and incitement of anti-Qatari sentiment); Chap. II, Sec. II.C.2, Chap. V, Sec. III (interference with right to freedom of opinion and expression).

of the State and of individual rights" which precludes the applicability of the local remedies rule[511].

4.25 Such interdependence exists here: by violating the rights of Qatar as a State party to the CERD, the UAE has violated the rights of individual Qataris under the CERD. Conversely, by violating the rights of individual Qataris and by threatening to continue violating them into the future, the UAE has necessarily violated Qatar's own rights under the CERD. Indeed, in cases in which the CERD has been at issue, the Court has expressly found a "*correlation* between respect for *individual rights*, the obligations of States parties under CERD and the *right of States parties to seek compliance therewith*"[512].

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[511] In *Avena and other Mexican Nationals*, Mexico sought to protect its nationals on death row in the United States. It argued that it had "itself suffered, directly and through its nationals", injury as a result of the United States' failure to grant consular access to its nationals under Article 36(1) of the Vienna Convention on Consular Relations. *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 36, para. 40. The United States objected to the admissibility of Mexico's claims, arguing that Mexico had not exhausted local remedies before bringing its case. *Ibid.*, para. 38. The Court rejected the United States' argument, holding that

> "violations of the rights of the individual … may entail a violation of the rights of the sending State, and that violations of the rights of the latter may entail a violation of the rights of the individual. In these special circumstances of interdependence of the rights of the State and of individual rights, Mexico may, in submitting a claim in its own name, request the Court to rule on the violation of rights which it claims to have suffered both directly and through the violation of individual rights conferred on Mexican nationals .... *The duty to exhaust local remedies does not apply to such a request*."

Ibid., para. 40 (emphasis added).

[512] *See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Provisional Measures, Order, I.C.J. Reports 2008*, pp. 391–392, para. 126 (emphasis added); *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian*

4.26 At the hearing on provisional measures, the UAE argued that the Court's holding in *Avena* was limited to the specific context of Article 36 of the Vienna Convention on Consular Relations ("***VCCR***"), which according to the UAE sets forth "a *sui generis* régime that was described by [the] Court in the *LaGrand* case as 'an interrelated régime designed to facilitate the implementation of the system of consular protection'"[513]. This strained attempt to distinguish *Avena* fails. Nowhere in its Judgment did the Court limit the "special circumstances of interdependence of the rights of the State and of individual rights" to Article 36 of the VCCR. If the Court had wanted to limit the applicability of the rule it stated to the VCCR, it would have said so. It did not, and wisely so—circumstances of interdependence are by no means unique to Article 36 of the VCCR.

4.27 But even if it could be said that Qatar's claims in its own right are not interdependent with Qatar's claims as *parens patriae* on behalf of its nationals (*quod non*), the local remedies rule would still not bar the admissibility of Qatar's claims. Local remedies need not be exhausted where a claim is based "preponderantly on an injury to the State and not to a national"[514]. The injury to

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Federation), *Provisional Measures, Order*, *I.C.J. Reports 2017*, para. 81; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Provisional Measures, Order, I.C.J. Reports 2018*, para. 51.

513 CR 2018/15, pp. 17–18, para. 11 (Treves) (citing *LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, para. 74).

514 *See* C. F. Amerasinghe, *Diplomatic Protection* (Oxford University Press, 2008), p. 181. *See also, e.g.,* International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries (2006)*, document A/61/10, Article 14(11); *United States-United Kingdom Arbitration concerning Heathrow Airport User Charges (United States-United Kingdom)*, Award of 30 November 1992 (revised 18 June 1993), 24 *RIAA* 62, para. 6.18 ("Although examination of the nature of USG's claims and of the airlines' potential claims reveals that they overlap to a certain extent, at the same time they present significant differences; and taking the case as a whole and undivided into its constituent parts, the Tribunal is of the opinion that the predominant element is the direct interest of the US itself."); *Case Concerning the Air Service Agreement of 27 March 1946 Between the United States of*

Qatar's own interests inflicted by the UAE's measures preponderates here for at least three reasons.

4.28 *First*, as explained above, Qatar is entitled to protect its own interests under the CERD whether or not it also brings claims on behalf of its nationals[515]. Indeed, Qatar not only has its own interests based on the inter-State obligations entered into by the Parties, but it also has interests flowing from the fact that the prohibition of racial discrimination constitutes a *jus cogens* norm. As noted by the Court a few years after the adoption and entry into force of the CERD, the protection from racial discrimination forms part and parcel of the "principles and rules concerning the *basic* rights of the human person", which in turn give rise to obligations *erga omnes* that transcend the ambit of the CERD and in respect of which "all States can be held to have a legal interest in their protection"[516]. The prohibition of racial discrimination has since been recognized as a peremptory norm of international law, the breach of which cannot be justified under any

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America and France, Decision of 9 December 1978, 18 *RIAA* paras. 11, 29-30 (finding that, even though a private air carrier had allegedly been injured by a breach of rights under the Air Service Agreement, it was not required to exhaust local remedies before its State of nationality could bring an international claim).

515 *See* para. 4.22 & n. 501, above.

516 *Barcelona Traction, Light and P ower Company, Limited (Belgium* v. *Spain) (New Application: 1962), Second Phase, Judgment, I.C.J. Reports 1970*, paras. 33–35 (adding that "[o]bligations the performance of which is the subject of diplomatic protection are not of the same category") (emphasis added above). *See also Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, paras. 68–69.

circumstances, including the circumstances precluding wrongfulness accepted in general international law[517].

4.29 *Second*, the UAE itself has asserted that its "targeted measures are aimed at the Qatari government and not the Qatari people"[1518], and that "Qatar deliberately misrepresents the UAE's measures against the Qatari government as measures taken against the people of Qatar"[1519]. In fact, the UAE's measures extend beyond the Qatari government, even beyond the Qatari people, to include Qatari symbols and institutions, literally anything that can be associated to any degree with Qatar[1520]. As such, UAE cannot be heard to argue that the measures it claims were neither "aimed at" nor "taken against" the people of Qatar nonetheless give rise to claims "brought *preponderantly* on the basis of an injury"

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517 International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission* 2001, Vol. II (Part Two), Article 26, p. 85, paras. 5–6.

518 **Vol. IV, Annex 118**, *State of Qatar v. United Arab Emirates,* ICERD-ISC-2018/2, Supplemental Response of the United Arab Emirates (29 November 2018), para. 7.

519 **Vol. IV, Annex 118**, *State of Qatar v. United Arab Emirates,* ICERD-ISC-2018/2, Supplemental Response of the United Arab Emirates (29 November 2018), para. 11; *see also, e.g.,* CR 2018/13, p. 14, para. 18 (Alnowais) ("Qatar seeks to conflate the UAE's legitimate grievances with the Government of Qatar with opposition to persons of Qatari nationality"); CR 2018/2015, p.3, para. 4 (Pellet) ("the United Arab Emirates, together with a number of other States, has taken measures *against the State of Qatar*") (emphasis in original).

520 *See* "British man detained in UAE after wearing Qatar football shirt to match", *The Guardian* (5 February 2019), https://www.theguardian.com/world/2019/feb/05/british-man-detained-in-uae-after-wearing-qatar-football-t-shirt-to-match ("A British football fan has been arrested and detained in the United Arab Emirates after he wore a Qatar national team shirt to a match.").

to those very same people who suffered as a result of the UAE's violations of the CERD[521].

4.30 *Third,* Qatar's injury from the UAE's violations of the CERD encompasses injury suffered as a result of UAE's violations of the rights of individuals of Qatari origin who are not presently Qatari nationals. These violations relate to individuals who presently do not hold Qatari nationality but have suffered injury because of their Qatari heritage or past Qatari nationality[522]. Because a State may not exercise the right of diplomatic protection in respect of persons who are not its nationals[523], and no special circumstance justifying derogation from this rule applies in the present context[524], Qatar does not assert claims based thereon as *parens patriae* of its nationals. Qatar instead asserts such claims in its own right, which reinforces the preponderant nature of Qatar's direct injury.

4.31 For all of these reasons, Qatar's claim plainly passes what the ILC refers to as the "but for" test: "whether the claim comprising elements of both direct and indirect injury would have been brought were it not for the claim on behalf of the injured national"[525]. The answer here is clearly "yes". Qatar's own rights and

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521 International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries* (2006), document A/61/10, Art. 14(3).

522 *See* para. 3.30, above.

523 *See* International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries* (2006), document A/61/10, Art. 3, p. 29.

524 International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries* (2006), document A/61/10, Art. 8, p. 35.

525 See International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries*, document A/61/10, p. 46.

interests under the CERD, which transcend the field of diplomatic protection and indeed fall under the purview of a higher normative order, have been directly affected. As a result, Qatar has suffered injury which continues to this day. In such circumstances, it is impossible to construe Qatar's claims as having been brought "preponderantly on the basis of an injury to a national"[526]. The local remedies rule therefore does not apply.

B. The UAE Has Failed to Prove the Existence of Any Effective and Reasonably Available Remedies That Have Not Been Exhausted

4.32 Qatar explained above why the local remedies rule does not apply to its claims. But even if it did, it still would not bar them. The UAE cannot prove the existence of any effective and reasonably available remedies that have not been exhausted.

4.33 The ILC's Draft Articles on Diplomatic Protection state: "Local remedies do not need to be exhausted where" there are "no *reasonably available* local remedies to provide *effective* redress, or the local remedies provide no *reasonable possibility* of such redress"[527]. The Court has made clear that "[i]t is for the *respondent*" to prove "that there were *effective* remedies in its domestic legal system that were not exhausted"[528]. It is thus the *UAE*—not Qatar—that bears the

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[526] International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries*, document A/61/10, Art.e 14(3).

[527] International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries*, (2006), document A/61/10, Art. 15(a) (emphasis added).

[528] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007*, para. 44 (emphasis added).

burden of proving that local remedies exist, and also that those remedies are both *reasonably available* and *effective*[529].

4.34 As a substantive matter, the local remedies rule is "riddled with many far-reaching exceptions"[530]. Aside from the circumstances described above[531], local remedies need not be exhausted where, for example, "the local courts do not have the competence to grant an appropriate and adequate remedy to the alien"[532], or where "the respondent State does not have an adequate system of judicial

[529] At the hearing on provisional measures, the UAE did not appear to contest this, but instead made the distinct claim that "the burden to submit sufficient evidence that domestic remedies have been 'invoked or exhausted' falls on Qatar, the Applicant". CR 2018/13, p. 32, para. 14 (Treves). As such, the UAE does not appear to deny that it bears the initial burden of showing the *existence* of effective and reasonably available remedies in the first place.

[530] C.P.R. Romano, "The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures" in *International Courts and the Development of International Law* (T.M.C. Asser Press, 2013), p. 564.

[531] *See* paras. 4.14 and n. 488; 4.23 and n. 505, above.

[532] International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries* (2006) document A/61/10, p. 47; *see also, e.g., Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007*, para. 47; *The Ambatielos Claim (Greece, United Kingdom of Great Britain and Northern Ireland*), Award of 6 March 1956, 12 *RIAA* (1956); *Zentralrat Deutscher Sinti und Roma et al. v. Germany*, Communication No. 38/2006, Opinion, document CERD/C/72/D/38/2006 (2008), para. 7.3; *L.R. et al. v. Slovak Republic*, Communication No. 31/2003, Opinion, document CERD/C/66/D/31/2003 (2005), para. 9.2; *D.R. v. Australia*, Communication No. 42/2008, Opinion, document CERD/C/75/D/42/2008 (2009), paras. 6.4–6.5.

protection"[533]. Relatedly, it is "fundamental to the effectiveness of a remedy that its *independence* from the authority being complained against is observed"[534].

4.35 Moreover, the remedies encompassed by the rule include only "legal remedies"[535]. "[R]emedies of a judicial character, whether or not discharged by courts, are encompassed by the rule, whereas remedies based on the *discretionary* action of public organs are not"[536].

4.36 As a practical matter, the exercise of legal remedies "must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State"[537]. Such actions or omissions can include, for example, "the closure of

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533 International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries* (2006), document A/61/10, p. 47.

534 *L.R. et al. v. Slovak Republic*, Communication No. 31/2003, Opinion, document CERD/C/66/D/31/2003 (2005), para. 9.2 (emphasis added); *see also, e.g., Robert E. Brown (United States) v. Great Britain*, Arbitral Award of 23 November 1923, 7 *RIAA* 129 (1923).

535 *See, e.g.,* International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries* (2006), document A/61/10, Art. 14(2) ("'Local remedies' means *legal* remedies") (emphasis added); *see also, e.g.,* J. Crawford & T. Grant, "Exhaustion of Local Remedies" in *Max Planck Encyclopedia of Public International Law* (Oxford Public International Law, 2007) ("The rule is limited to legal remedies.").

536 J. Crawford & T. Grant, "Exhaustion of Local Remedies" in *Max Planck Encyclopedia of Public International Law* (Oxford Public International Law, 2007) (emphasis added); *see also, e.g., Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo*), *Preliminary Objections, Judgment, I.C.J. Reports 2007*, para. 47; International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries* (2006), document A/61/10, p. 45 ("The injured alien is, however, only required to exhaust such remedies which may result in a binding decision. *He is not required to approach the executive for relief in the exercise of its discretionary powers.*") (emphasis added); *Habassi v. Denmark*, Communication No. 10/1997, Opinion, document CERD/C/54/D/10/1997 (1999), para. 6.2.

537 ECtHR, *Case of İlhan v. Turkey*, Application No. 22277/93, Judgment on Merits and Just Satisfaction (27 June 2000), para. 97; *see also, e.g.,* IACtHR, *Case of Velásquez-Rodríguez v. Honduras*, Judgment (29 July 1988), Inter-American Court of Human Rights Series C, No., para. 68.

transport links between the two countries"[538]; difficulty in contacting the relevant authorities of the respondent State[539]; and a "widespread climate of discrimination"[540].

4.37 Credible fear of reprisal can also excuse the need to pursue a remedy[541]. Similarly, if individuals' "indigency or a general fear in the legal community to represent" them prevents them from "invoking the domestic remedies necessary to protect a right", they are "not required to exhaust such remedies"[542].

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538 ECtHR, *Case of Georgia v. Russian Federation (I),* Application No. 13255/07, Merits Judgment (3 July 2014), para. 156.

539 ECtHR, *Case of Georgia v. Russian Federation (I),* Application No. 13255/07, Merits Judgment (3 July 2014), para. 156.

540 IACtHR, *Nicaragua v. Costa Rica*, Inter-State Case 1/06, Report N° 11/07 (8 March 2007), para. 256; *see also id.*, para. 257.

541 *See, e.g.,* Human Rights Committee, *Irving Phillip v. Trinidad and Tobago*, Communication No. 594/1992, Views, document CCPR/C/64/D/594/1992 (1998), para. 6.4 ("In these circumstances, given the author's statement that he had not filed a complaint *because of his fears of the warders*, the Committee considered that it was not precluded by [the Optional Protocol's local remedies rule] from examining the complaint") (emphasis added); Human Rights Committee, *Avadanov v. Azerbaijan*, Communication No. 1633/2007, Views, document CCPR/C/100/D/1633/2007 (2010), para. 6.4. Fear of reprisal can also help explain "[t]he absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination in [a] country". **Vol. IV, Annex 110**, CERD Committee, *General Recommendation No. 31 on the Prevention of Racial Discriminations in the Administration and Functioning of the Criminal Justice System*, document CERD/C/GC/31 (2005) (para. 1(b)); *see also,* ECtHR, *Case of Georgia v. Russia (I),* Application No. 13255/07, Merits Judgment (3 July 2014), para. 154.

542 IACtHR, *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights)*, Advisory Opinion OC-11/90 (10 August 1990), Inter-American Court of Human Rights Series A, No. 11, para. 42; *see also, e.g.,* IACtHR, *Case of Velásquez-Rodríguez v. Honduras*, Judgment (29 July 1988), Inter-American Court of Human Rights Series C, No. 4, para. 80.

4.38 In short, the existence of reasonably available and effective remedies "must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness"[543]. As such, "the State that alleges non-exhaustion must indicate which domestic remedies should be exhausted and provide evidence of their effectiveness"[544], including in the form of "examples of the alleged remedy having been successfully utilized by persons in similar positions"[545].

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543 ECtHR, *Case of Vernillo v. France*, Application No. 11889/85, Judgment on Merits and Just Satisfaction (20 February 1991), para. 27. It again "falls to the respondent State to establish that these various conditions are satisfied"; *see also, e.g.,* IACtHR, *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights),* Advisory Opinion OC-11/90 (10 August 1990), Inter-American Court of Human Rights Series A, No. 11, para. 17; ECtHR, *Case of Georgia v. Russia (I),* Application No. 13255/07, Merits Judgment (3 July 2014), paras. 150–151; J. Crawford & T. Grant, "Exhaustion of Local Remedies" in *Max Planck Encyclopedia of Public International Law* (Oxford Public International Law), para. 19; Human Rights Committee, *Warsame v. Canada*, Communication No. 1959/2010, Views, document CCPR/C/102/D/1959/2010 (2011), para. 7.4.

544 IACtHR, *Nicaragua v. Costa Rica*, Inter-State Case 1/06, Report N° 11/07 (8 March 2007), para. 243 (emphasis added); *see also, e.g*., IACtHR, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Preliminary Objections, Judgment, Series C, No. 66 (1 February 2000), para. 53.

545 *See* C.P.R. Romano, "The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures" in *International Courts and t he Development of International Law* (T.N.C. Asser Press, 2013), p. 568 ("the European Court of Human Rights has specified that the State must not only satisfy the Court that the remedy was effective, available both in theory and practice at the relevant time, but also frequently asks the State to provide examples of the alleged remedy having been successfully utilized by persons in similar positions to that of the applicant.") (emphasis added above); *see also, e.g.,* ECtHR, *Kangasluoma v. Finland*, Application No. 48339/99, Judgment (20 January 2004), para. 48 ("Nor did the Government supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such relief. *This is in itself sufficient to demonstrate that the remedies referred to do not meet the standard of "effectiveness" for the purposes of Article 13* because, as the Court has already said … the required remedy must be effective both in law and in practice.") (emphasis added); ECtHR, *Case of Georgia v. Russia (I),* Application No. 13255/07, Merits Judgment (3 July 2014), para. 157.

4.39 At the hearing on provisional measures, the UAE failed to discharge this burden even on a *prima facie* basis. As the Court observed in its Order of 23 July 2018, "the UAE did not indicate *any* effective local remedies that were available to the Qataris that have not been exhausted"[546].

4.40 This finding is unsurprising. As explained below, none of the nominal remedies the UAE has pointed to is effective and reasonably available[547].

1. The "Hotline" Is Not a Legal Remedy

4.41 At the provisional measures phase, the Court rejected the UAE's suggestion that the so-called "hotline", through which Qatari nationals are allegedly able to apply for entry to the UAE, is a "remedy" for purposes of the local remedies rule[548].

4.42 There are at least five independently sufficient reasons to reject this claim now as well.

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546 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order, I.C.J. 2018*, para. 42.

547 At the hearing on provisional measures, the UAE expressly asserted that the "hotline" is a remedy for purposes of the exhaustion rule, and only arguably implicitly suggested that its courts are as well. *Compare, e.g.,* CR 2018/15, p. 18, para. 12 (Treves) ("May I only underscore that the mechanism of the hotline is more appropriate and expeditious than more traditional mechanisms, in situations that, as the one under consideration in the present case, involve a high number of persons") *with* CR 2018/15, p. 13, para. 15 (Alnowais) ("Qatari citizens can seek redress for any legal grievances through counsel of their choosing"). For the sake of caution and because the UAE argued that court remedies are available and effective in the proceedings before the CERD Committee, Qatar addresses both below.

548 CR 2018/15, p. 18, para. 12 (Treves); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Order of 23 July 2018*, paras. 65, 71.

4.43 *First*, the "hotline" is not a legal remedy and as such, it is not an exhaustible remedy. Indeed, the UAE has *itself* expressly stated that permission through the hotline may be granted "at the *discretion* of the UAE government"[549]. An injured alien is, however, "not required to approach the executive for relief in the exercise of its discretionary powers"[550], as the Court's decision in *Diallo* makes clear in the specific context of an alleged expulsion[551].

4.44 *Second*, the "hotline" is not a "remedy" at all for any of the measures Qatar challenges in these proceedings. Instead, the "hotline" forms part of the manner in which the UAE *implements* its discriminatory travel restrictions under the Modified Travel Ban, and is accordingly *itself* a component of the measures that violate the UAE's obligations under the CERD.[552] Needless to say, the "hotline" cannot be a "remedy" for itself. Much less can it be a remedy for the UAE's other unlawful measures.[553] At most, it could *mitigate* harm caused by the UAE's unlawful expulsion. But it cannot *remedy* past harms, restore the *status quo ante*, afford reparation, offer guarantees of non-repetition or adjudge or

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549 **Vol. II, Annex 29**, Ministry of Foreign Affairs & International Cooperation, *An Official Statement by the UAE Ministry of Foreign Affairs and International Cooperation* (5 July 2018), https://www.mofa.gov.ae/EN/TheMinistry/TheForeignMinisterWebsite/Pages/05-07-2018-UAE-Statement-of-MoFAIC.aspx (emphasis added).

550 International Law Commission, *Draft Articles on Diplomatic Protection, with commentaries* (2006), document A/61/10, p. 45.

551 *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, *Preliminary Objections, Judgment, I.C.J. Reports 2007*, para. 47.

552 At most, the "hotline" gives individuals an opportunity to apply for admission to the UAE. It does not give them the right to object to a decision not to admit them – much less to object to the discriminatory travel restrictions as a whole.

553 The "hotline" does not even purport to address, still less provide a remedy for, the UAE's Anti-Qatari Incitement and the Qatari Media Block.

declare breach[554]. The "hotline" is therefore not a remedy in any sense of the word.

4.45 *Third*, the "hotline" is a "police security channel"[555] run in a police State[556]. The channel, which was created prior to the imposition of the Discriminatory Measures, is "provided by [the] Abu Dhabi Police".[557] Its "service objectives" include "[c]onsolidating the concept of 'Security Is Everybody's Responsibility'"[558]. Indeed, the service provider gathers information helpful "in knowing the behaviours and conducts that indicate the commission of the crime"[559].

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554 *See, e.g.,* F. Capone, "Remedies" in *Max Planck Encyclopedia of Public International Law* (Oxford Public International Law), para. 17 ("The responsible State is also under an obligation to make reparation for the injury caused by the internationally wrongful act."); *ibid.*, para. 15 ("The State responsible for the commission of a wrongful act is under an obligation to cease the conduct and to offer appropriate assurances, normally given verbally, and guarantees of non-repetition, such as preventive measures to be taken to avoid repetition of the breach.").

555 **UAE PM Exhibit 3**, *Report of Abu Dhabi police on Hotline, Real Estate, Funds, Licenses and Immigration* (25 June 2018).

556 *See* para. 2.32, above; *see, e.g.,* C. Davidson, "The Making of a Police State" *Foreign Policy* (14 Apr. 2011), https://foreignpolicy.com/2011/04/14/the-making-of-a-police-state-2/; OHCHR, *Press briefing note on United Arab Emirates* (January 2019).

557 **UAE PM Exhibit 3**, *Report of Abu Dhabi police on Hotline, Real Estate, Funds, Licenses and Immigration* (25 June 2018); *see also* **Vol. IX, Annex 222**, DCL-105, para. 17 ("I called the hotline through WhatsApp, and the number displayed the logo of the Abu Dhabi police").

558 **UAE PM Exhibit 3**, *Report of Abu Dhabi police on Hotline, Real Estate, Funds, Licenses and Immigration* (25 June 2018).

559 **UAE PM Exhibit 3**, *Report of Abu Dhabi police on Hotline, Real Estate, Funds, Licenses and Immigration* (25 June 2018).

4.46 As such, and while the UAE claimed at the hearing on provisional measures that Qataris had "no fear", "[n]o trepidation", and "[n]o reluctance to contact the line"[560], the truth is to the contrary. Qataris' fears about contacting the "hotline", including their fear that it is merely a mechanism for identifying them and/or their families as targets in the UAE, are well-documented[561]. This fear is also well-founded: the UAE is monitoring Qataris who remain in the UAE, and those who maintain relationships with Qataris, closely, and subjects them to harassment at the hands of UAE security forces.[562] Indeed, some Qataris have been expressly warned by personal contacts in the Emirati security apparatus that contacting and sharing information with the hotline "was not safe".[563]

4.47 Given that the UAE ordered the expulsion of every Qatari from its territory and then criminalized expressions of sympathy towards Qatar, it is as absurd as it is offensive for the UAE to dismiss the legitimate fears of Qataris to expose themselves and their loved ones to a "police security channel" of this kind.

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560 CR 2018/15, p. 39, para. 13 (Shaw).

561 *See* **Vol. VII, Annex 171**, DCL-012, para. 11; **Vol. VIII, Annex 185**, DCL-036, para.18; **Vol. VIII, Annex 193**, DCL-048, para. 24 ("I once called the hotline and was asked to provide many personal details and documents. That just increased my fear"); **Vol. IX, Annex 218**, DCL-097, para. 18; *see also* **Vol. V, Annex 129**, Amnesty International, *Gulf / Qatar dispute: Human dignity trampled and families facing uncertainty as sinister deadline passes* (19 June 2017), https://www.amnesty.org/en/latest/news/2017/06/gulf-qatar-dispute-human-dignity-trampled-and-families-facing-uncertainty-as-sinister-deadline-passes/ ("Some affected families have told Amnesty International that they are too scared to call hot lines and register their presence, or their family's presence, in a 'rival' country for fear of reprisal."). As noted above, credible fear of reprisals can excuse the need to pursue a remedy. *See, e.g.,* Human Rights Committee, *Irving Phillip v. Trinidad and Tobago*, Communication No. 594/1992, Views, document CCPR/C/64/D/594/1992 (1998), para. 6.4; ECtHR, *Case of Georgia v. Russia (I)*, Application No. 13255/07, Merits Judgment (3 July 2014), para. 154. *See* nn. 620, 621, below.

562 *See, e.g.,* **Vol. VII, Annex 163**, DCL-001, para. 19.

563 **Vol. XI, Annex 262**, DCL-179, para. 12.

4.48 *Fourth*, even if the "hotline" could properly be considered a "remedy" for any of the discriminatory measures—and as explained above, it cannot—the hotline did not exist *at all* under the Absolute Travel Ban, and has been ineffective since the day it was established. The UAE's assertion at the hearing on provisional measures that the "hotline" has been "highly effective to address applications by Qatari nationals", and that "[i]n 2018 alone" there were "at least 1,390 applications", of which "1,378 … were accepted", and "a mere 12" rejected[564], is not only misleading; it is clearly and demonstrably false. Setting aside the obvious deficiencies in the evidence produced to prove the claim[565]—including the fact that the *majority* of these "1,390 applications" by "Qatari nationals" were actually reportedly submitted by *Emiratis* wishing to visit *Qatar*[566]—the reality is that applicants wanting to enter the UAE are very frequently unable to reach anyone through the UAE's hotline despite calling repeatedly[567]. Indeed, the UAE's own

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564 CR/2018/13, p. 34, para. 23 (Treves). *See also, e.g.,* CR/2018/15, p. 32, para. 19 (Buderi); CR/2018/13, p. 13, para. 13 (Alnowais); CR/2018/13, p. 55, para. 98 (Olleson); CR/2018/15, p. 42, para. 26 (Shaw).

565 The contents of the single exhibit cited in support of all of these claims appear to have been selectively curated from a larger document—not on the record—for use in these proceedings. *See generally* **UAE PM Exhibit 3**, *Report of Abu Dhabi police on Hotline, Real Estate, Funds, Licenses and Immigration* (25 June 2018), p. 4 (indicating that the original document sent by the Abu Dhabi police contained underlying documentary evidence for a much larger set of applications, including a number of rejected applications). Moreover, the document incorporates applications of Qataris *and Emiratis* to both enter *and exit* the country. *See, e.g., ibid.*, pp. 4, 24, 43. Finally, the exhibit contains only an extremely small number of documentary examples of Qataris allegedly being granted permission to enter the UAE, and is accordingly patently insufficient to corroborate the UAE's statistical claim. *See generally ibid.*

566 *See* **UAE PM Exhibit 3**, *Report of Abu Dhabi police on Hotline, Real Estate, Funds, Licenses and Immigration* (25 June 2018), p. 4 ("The number of UAE Nationals' requests to visit Qatar is (828 requests) since the beginning of 2018 AD.").

567 *See, e.g.*, para. 5.79, below (quoting **Vol. IX, Annex 206**, DCL-079) ; **Vol. VII, Annex 163**, DCL-001, para. 16; **Vol. VII, Annex 170**, DCL-011, para.16; **Vol. VII, Annex 184**, DCL-033, para. 18; **Vol. VIII, Annex 185**, DCL-036, paras. 12-13, 18, 21; **Vol. VIII, Annex 189**,

evidence indicates that the vast majority of calls go unanswered.[568] Further, of the Qataris who reported violations to the CCC and had attempted to use the hotline to travel to the UAE, many were not granted permission to travel to the UAE, either because their calls went unanswered or their application was never approved.[569]

4.49 By design, the system is entirely opaque. The UAE Ministry of Foreign Affairs has specified that "permissions will be granted ... at the discretion of the UAE government."[570] When Qataris have actually managed to apply, their applications have often not been approved without any explanation[571]. No

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DCL-041, para.13; **Vol. VIII, Annex 197**, DCL-058, paras.12, 22; **Vol. VIII, Annex 198**, DCL-066, para. 22; **Vol. X, Annex 226**, DCL-112, para. 14; **Vol. X, Annex 234**, DCL-135, para. 25; **Vol. X, Annex 239**, DCL-144, para. 22; **Vol. XI, Annex 257**, DCL-173, paras. 14-16; and **Vol. XII, Annex 271**, DCL-189, para. 9; *see also* **Vol. V, Annex 129**, Amnesty International, *Gulf/Qatar dispute: Human dignity trampled and families facing uncertainty as sinister deadline passes* (19 June 2017).

568 As Qatar noted at the hearing on provisional measures, "the UAE claims that the total number of incoming calls to the hotline from 11 June 2017 to 10 June 2018 reached 33,383, but that it received only 1,390 requests in 2018. Besides lacking any context, these figures also demonstrate the UAE's failure to mitigate. If 33,383 calls yield only 1,390 requests, as independent reports have found, calls go unanswered, and the security channel is ineffective." CR 2018/14, p. 36, para. 24 (Goldsmith).

569 *See, e.g.,* **Vol. VII, Annex 163**, DCL-001, para. 16; **Vol. VII, Annex 178**, DCL-025, para. 20; **Vol. VIII, Annex 185**, DCL-036, para. 22; **Vol. VIII, Annex 189**, DCL-041, para.13; **Vol. VIII, Annex 197**, DCL-058, paras.12, 22; **Vol. X, Annex 226**, DCL-112, para. 14; **Vol. X, Annex 234**, DCL-135, para. 25; **Vol. X, Annex 239**, DCL-144, para.23; **Vol. XII, Annex 271**, DCL-189, para. 9.

570 **Vol. II, Annex 29**, UAE Ministry of Foreign Affairs, *An official Statement by The UAE Ministry of Foreign Affairs and International Cooperation* (5 July 2018), https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/05-07-2018-UAE-Statement-of-MoFAIC.aspx#sthash.Ojk3aHhy.dpuf.

571 *See, e.g.,* **Vol. VII, Annex 165**, DCL-004, para. 20; **Vol. VII, Annex 178**, DCL-025, para. 20; **Vol. VIII, Annex 185**, DCL-036, para. 22; **Vol. IX, Annex 222**, DCL-105, para. 18; **Vol. X, Annex 231**, DCL-125, para. 7; **Vol. X, Annex 239**, DCL-144, para. 23 ("[T]he person from the hotline I talked to told me that my application had been rejected, without explaining why"); **Vol. XII, Annex 269**, DCL-187, para. 12; *see also, e.g.,* **Vol. III, Annex 96**,

information is made available to Qataris about the process afforded to callers, the criteria that will be applied to their requests for travel, the identity or authority of the ultimate decision-maker or even what will be done with their personal information after a determination is made[572]. Indeed, applications have sometimes not been approved even though other applications submitted with the *exact* same documents had previously been accepted on different occasions[573]. For example, a Qatari woman with family in the UAE reported that: "I have applied for admission to the UAE on eight occasions … My applications were not approved five times, and they were approved three times. I was often given no explanation when my application was not approved. On at least one occasion, an application was not approved even though [I] submitted … the exact same documents [that] had previously been accepted."[574] These facts highlight the discretionary, arbitrary and nontransparent nature of the mechanism and contradicts the UAE's suggestion

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OHCHR, Qatar diplomatic crisis: *Comment by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on impact on human rights* (14 June 2017) (noting that measures implemented to address dual nationality families "are not sufficiently effective to address all cases"); **Vol. V, Annex 134**, Human Rights Watch, *Qatar: Isolation Causing Rights Abuses* (12 July 2017), https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses ("[O]f the 12 Gulf nationals who said they tried to contact these hotlines, only two managed to get permission to go back and forth."); **Vol. V, Annex 129**, Amnesty International, *Gulf/Qatar dispute: Human dignity trampled and families facing uncertainty as sinister deadline passes* (19 June 2017), https://www.amnesty.org/en/latest/news/2017/06/gulf-qatar-dispute-human-dignity-trampled-and-families-facing-uncertainty-as-sinister-deadline-passes/. As such, even if the hotline *were* a remedy encompassed local remedies rule—and it clearly is not—it would be a remedy that has *already* been exhausted.

572 *See e.g.,* **Vol. VIII, Annex 185**, DCL-036, para. 13 ("[My wife] was not told how she would receive the travel permit . . . She received no information beyond the fact that her application was in process."); **Vol. X, Annex 234**, DCL-135, para. 25.

573 *See, e.g.,* **Vol. X, Annex 231**, DCL-125, para. 7; **Vol. X, Annex 239**, DCL-144, para. 24.

574 **Vol. X, Annex 231**, DCL-125, para. 7.

that Qataris are permitted to enter whenever there are no "national security or other legitimate concerns"[575].

4.50 Unsurprisingly, the alleged effectiveness of the hotline is not borne out by the UAE's allegation at the hearing on provisional measures that "entry and exit records for Qatari nationals since the start of the crisis reveals 8,442 movements"[576]. It will not escape the Court's notice that most of the "movements" recorded[577] actually show Qataris *exiting*, not entering, the UAE[578]. Nor will the Court fail to notice that the UAE provided no comparative set of data on the movements of Qataris during the period *before* the crisis. And in fact, a comparative picture reveals a steep decline—on the order of a *98% drop*—in the number of Qataris entering the UAE after the 5 June Directive, as compared to the one-year period prior to June 2017[579].

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575 CR/2018/13, p. 13, para. 13 (Alnowais). Qatar notes, moreover, that even many of those who have received approval to travel have nonetheless been refused entry onto planes run by Emirati airlines or been prohibited from flying by other authorities as a result of the UAE's discriminatory measures. *See, e.g.,* **Vol. VII, Annex 164**, DCL-004, para. 19; **Vol. X, Annex 231**, DCL-125, para. 12.

576 CR/2018/13, p. 64, para. 30 (Shaw).

577 Qatar notes that the exhibit actually only records 8,390 "movements," not 8,442. *See generally*, **UAE PM Exhibit 14**, *Immigration – Complete Entry-Exit Records*, (25 June 2018).

578 *See* para. 5.48, below (noting actual breakdown of Qatari movements). *See generally*, **UAE PM Exhibit 14**, *Immigration – Complete Entry-Exit Records* (25 June 2018). Qatar also notes that the UAE's data does not record the dates of each movement. *See generally*, *ibid.* This is obviously because including the dates would have revealed a mass exodus of Qataris from the UAE in the immediate aftermath of the 5 June 2017 expulsion.

579 *See* para. 5.48, below; **Vol. XII, Annex 277**, Affidavit of Youssef Abdullah Al-Kebesi, Chief of Operations, Ooredoo Qatar, p. 1 (providing comparative data on the "roaming" of Qatari SIM card holders in the UAE); *see also* **Vol. VII, Annex 179**, Affidavit of Hamad bin Abdullah Al Thani, Chief Executive Officer, Vodafone Qatar Co, Annex A (providing

4.51 In light of this data, it is no surprise that the UAE's next arguments—that the "[t]he number of Qataris in the UAE today is not substantially different than the number of Qataris who were present on 5 June 2017"[580], and that "the number of Qataris in the UAE as of mid-June [2018] is 2,194"[581]—also fail to prove its facially implausible claim about the "hotline's" supposed effectiveness. The first problem with these assertions is that the documents the UAE cites again do not substantiate them[582]. Even if these documents asserted the presence of 2,194 Qataris "in the UAE" as of mid-June 2018—and it is not at all clear that they do[583]—they tellingly provide no comprehensive set of comparative data on the number of Qataris in the UAE "*on 5 June 2017*"[584].

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detailed information on the calls, messages, and internet used by users of Vodafone Qatar while roaming in the UAE from January 2016 to December 2018, and showing a large and permanent drop in usage in June 2017).

580 CR/2018/13, p. 13, para. 14 (Alnowais).

581 CR/2018/13, p. 64, para. 27 (Shaw).

582 *See* CR/2018/13, p. 33, para. 18 (Treves) (citing excerpts from UAE Exhibits 11 and 13 in support of the proposition that "[t]he total number of Qataris in the UAE as of 5 June 2017 was only a few hundred more than the number of Qataris currently present in the UAE," and that "a number of the Qatari nationals that have left the UAE have re-entered the UAE upon obtaining prior permission from the UAE.").

583 UAE Exhibit 13 lists only dates of *entry* into the country. *See generally*, **UAE PM Exhibit 13,** *Immigration – Qataris in the UAE* (25 June 2018). **UAE PM Exhibit 11**, which appears to be a cover letter to UAE Exhibit 13, then states that UAE Exhibit 13 shows "the number of Qatari nationals who *have been in* the country", raising the question of whether any of those Qataris have since *left* the country. *See* **UAE PM Exhibit 11,** *Immigration - ID & Citizenship Authority Cover Letter Re Excel Immigration Stats* (25 June 2018) (emphasis added).

584 The same considerations apply to the UAE's claim that there are "some 694 Qatari students currently studying in the UAE." CR 2018/13, p. 32, para. 19 (Pellet). Even if these statistics were accurate—and the UAE's Exhibit 12 is patently insufficient to prove that they are—the UAE has provided no comparable data on the number of Qatari students in the UAE *before*

4.52 *Finally*, even if in spite of the above the "hotline" could be considered effective—which it cannot—it was established to handle requests for *family-related* visits, as the UAE itself made clear before the Court[585]. Indeed, at least as recently as May 2018, "hotline" representatives were still telling applicants that the "hotline" was only available for those seeking to visit "first degree" relatives,[586] making clear that it could not have been a "remedy" for anyone else. While subsequent to the Provisional Measures hearing the UAE has allegedly implemented an "online" system, this further modification likewise has not rendered it an effective remedy, as discussed below[587].

4.53 At the hearing on provisional measures, the UAE emphasized "that the mechanism of the hotline is more appropriate and expeditious than more

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the crisis. *See generally*, **UAE PM Exhibit 12** *Immigration – Student Entry Records* (25 June 2018).

585 *See* CR 2018/13, p. 66, para. 41 (Shaw) ("a Presidential Directive was issued on 6 June 2017 which instructed the authorities to take into account the humanitarian circumstances of such mixed families and in implementation a special telephone line was established to receive such cases and take appropriate action"). *See also, e.g.,* **UAE PM Exhibit 3**, *Report of Abu Dhabi police on Hotline, Real Estate, Funds, Licenses and Immigration* (25 June 2018), p. 4 ("in terms of taking into consideration the Humanitarian cases of the Emirati-Qatari joint families, in recognition of the brotherly Qatari people, the Ministry of Interior has set up a toll-free hotline (009718002626) to receive such humanitarian cases and take appropriate procedures to help them.").

586 **Vol. XI, Annex 257**, DCL-173, para. 16 ("The last time that I called was in May 2018. This time, the representative told me that they could not help me see my [redacted] in the UAE because my [redacted] are not 'first degree' relatives."); **Vol. VIII, Annex 201**, DCL-072, para. 23 ("The operator . . . informed me that I could not return to the UAE to continue my studies unless I had a family member in the first degree who lived in the country."); *see also, e.g.*, **Vol. VII, Annex 169**, DCL-010, para. 19; **Vol. VIII, Annex 198**, DCL-066, paras.21-22; **Vol. IX, Annex 204,** DCL-076, para. 14; **Vol. IX, Annex 211**, DCL-086, para.13; **Vol. IX, Annex 216,** DCL-093, para. 28; **Vol. IX, Annex 219**, DCL-098, para. 15; **Vol. X, Annex 234**, DCL-135, paras. 24-25; **Vol. X, Annex 239**, DCL-144, paras. 22, 25; **Vol. XI, Annex 258**, DCL-174, para. 15; **Vol. XI, Annex 260**, DCL-177, para. 16.

587 *See* paras. 5.72–5.74, below.

traditional mechanisms"[588]. The fact that the most "appropriate" mechanism is an admittedly discretionary—and demonstrably arbitrary, non-transparent, and ineffective—"police security channel"[589] speaks volumes to the nature of the other purported "remedies" available.

2. The UAE's Courts Are Neither Effective nor Reasonably Available

4.54 At the hearing on provisional measures, the UAE also implied that its courts offer available and effective remedies that could be pursued by Qatari nationals either in person or through powers of attorney[590].

4.55 Qatar observes first that the Court rejected this argument in its Order on Provisional Measures, in which it determined that after 5 June 2017, Qataris appear to have "been denied equal access to tribunals and other judicial organs in the UAE"[591]. The reality is even grimmer: hundreds of Qataris have been deeply aggrieved by the UAE's treatment of them[592], but know that its court remedies are neither "reasonably available" nor "effective"[593].

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588 CR 2018/15, p. 18, para. 12 (Treves).

589 *See* **UAE PM Exhibit 3**, *Report of Abu Dhabi police on Hotline, Real Estate, Funds, Licenses and Immigration* (25 June 2018), p. 8.

590 CR 2018/13, p. 33, para. 22 (Treves).

591 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order, I.C.J. 2018*, para. 68.

592 *See, e.g.,* **Vol. V, Annex 140** National Human Rights Committee, *Fifth General Report, Continuation of human rights violations: A Year of the blockade imposed on Qatar* (June 2018), p. 13; **Vol. V, Annex 132**, National Human Rights Committee, *Second Report Regarding the Human Rights Violations as a Result of the Blockade on the State of Qatar* (1 July 2017); **Vol. V, Annex 136**, National Human Rights Committee, *6 Months of*

4.56 To begin with, the UAE's justice system is deeply and demonstrably flawed, and has been so well before 5 June 2017. In a 2015 report on the UAE's judiciary, the UN Special Rapporteur on the independence of judges and lawyers noted, *inter alia*:

- that she was "especially concerned that the judicial system remains under the de facto control of the executive branch of government"[594];
- that "important pieces of legislation" contain "vague and broad definitions of criminal offences, in contravention of international human rights standards", and that such provisions "defy the principle of legality and open the door to arbitrary interpretation and abuse"[595];
- that she was told that "foreigners' lack of confidence in the justice system is such that many of them do not report crimes or abuses"[596];
- that it is "often impossible for vulnerable persons to seek remedies for abuses they suffer, which is a breach of the principle of equality before the courts"[597];

Violations, What Happens Now? The Fourth General Report on the Violations of Human Rights Arising from the Blockade on the State of Qatar (5 December 2017).

593 *See* International Law Commission, Draft Articles on Diplomatic Protection, with commentaries (2006), document A/61/10, Art. 15(a).

594 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 33.

595 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 29.

596 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 37.

- that she was "particularly concerned at reports of serious breaches of fair trial and due process guarantees, especially regarding, but not limited to, crimes related to State security"[598], and "that individuals accused of having committed crimes that jeopardize State security have extremely limited access to legal counsel"[599];

- that she was "alarmed at reports that some lawyers who take up cases related to State security have been harassed, threatened and had pressure exerted on them, including through constant surveillance, public campaigns of defamation, and the arbitrary deportation of non-national lawyers"[600];

- that "[i]mpunity surrounding such breaches of the independence of the legal profession has had a chilling effect on lawyers", and that it was reported to the Special Rapporteur "that it has become extremely difficult to secure a lawyer in State security-related cases", with

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597 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 63.

598 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 86; *see also, e.g.,* Report of the United Nations High Commissioner for Human Rights, document A/HRC/WG.6/29/ARE/2 (2017), para. 31 ("OHCHR stated that, under the pretext of national security, many activists had been prosecuted for allegations mainly related to a person's right to express his or her opinion and criticism of any public policy or institution.").

599 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 56.

600 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 79; *see also ibid.* (noting that the Special Rapporteur was "alarmed at the long list of obstacles that lawyers working on State security-related cases encountered on a daily basis while discharging their professional duties and representing their clients' interests."); *ibid.*, para. 86 (noting that the Special Rapporteur was "concerned about the harassment, pressure and threats to which some lawyers are subjected, in breach of their independence, especially when they take up cases related to State security crimes."); *ibid.*, para. 80 ("in at least one case, a lawyer was arrested when he was enquiring about the whereabouts of his clients at the State security prosecution branch.").

"[m]any lawyers refus[ing] such cases or drop[ping] them early on owing to the pressure placed on them"[601]; and

- that she "received credible information and evidence" that many individuals "were arrested without a warrant and taken to unofficial places of detention", and "were also subjected to torture or other forms of ill-treatment, including in order to extract confessions of guilt or testimonies against other detainees"[602].

4.57 In 2018, the United Nations High Commissioner for Human Rights reiterated the call on the UAE to "[e]nsure the separation of powers and strengthen the independence of the judiciary, which is under the control of the executive branch and the State security service"[603].

4.58 UAE courts are also widely perceived as biased against non-nationals. The same 2015 report on the UAE's judiciary by the UN Special Rapporteur on the independence of judges and lawyers notes that "[a]mong foreigners residing in the United Arab Emirates, there seems to be a perception that the domestic courts

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601 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 81.

602 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 52*; see also, e.g.,* **Vol. V, Annex 139**, Human Rights Watch, *UAE Continues to Flout International Law* (29 June 2018), https://www.hrw.org/news/2018/06/29/uae-continues-flout-international-law.

603 **Vol. III, Annex 100**, Letter from United Nations High Commissioner for Human Rights to the Minister of Foreign Affairs and International Cooperation of the United Arab Emirates (7 August 2018), Annex, p. 4; *see also, e.g.,* United Nations, *Report of the United Nations High Commissioner for Human Rights*, document A/HRC/WG.6/29/ARE/2 (2017), para. 31. *See also, e.g.,* **Vol. IV, Annex 114**, CERD Committee, *Concluding observations on the combined eighteenth to twenty-first periodic reports of the United Arab Emirates*, document CERD/C/ARE/CO/18-21 (13 September 2017), para. 15.

cannot be trusted, and more specifically that judges do not treat nationals in the same way as non-nationals"[604].

4.59 Moreover, the UAE is notorious for using the "pretext of national security" to prosecute individuals for "criticism of any public policy or institution"[605]. As already discussed, the institution of the Anti-Sympathy Law —itself an egregious example of incitement of racial hatred against Qataris[606]—has only made matters worse. And again, this new prohibition is not an idle threat: the UAE has already

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[604] *See* United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 37; *ibid*. (noting that she was "concerned at reported instances in which judges appear to have lacked impartiality and shown bias, especially with regard to non-nationals of the United Arab Emirates"); *ibid*. (adding that "[t]he Special Rapporteur was told that foreigners' lack of confidence in the justice system is such that many of them do not report crimes or abuses."); *see also, e.g.,* **Vol. IV, Annex 105**, CERD Committee, *General Recommendation No. 14 on article 1, paragraph 1, of the Convention*, contained in document A/48/18 (1993), para. 1; **Vol. IV, Annex 108**, CERD Committee, *General Recommendation No. 20 on ar ticle 5 of the Convention*, contained in document A/51/18 (1996), para. 3.

[605] United Nations, *Report of the United Nations High Commissioner for Human Rights*, document A/HRC/WG.6/29/ARE/2 (2017), para. 31. *See also, e.g.,* **Vol. V, Annex 142**, Amnesty International, *Report 2017/2018: The State of the World's Human Rights (2018),* https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF; **Vol. V, Annex 130**, Human Rights Watch, *Submission for the Universal Periodic Review of the United Arab Emirates* (29 June 2017), https://www.hrw.org/news/2017/06/29/submission-universal-periodic-review-united-arab-emirates ("In March 2017, the UAE detained Ahmed Mansoor, an award-winning human rights defender. He remains detained and is facing speech-related charges that include using social media websites to 'publish false information that harms national unity.' A coalition of 20 human rights organizations said Mansoor was the last remaining human rights defender in the UAE who had been able to criticize the authorities publicly."); **Vol. V, Annex 137**, Human Rights Watch, *World Report 2018 Country Summary: United Arab Emirates* (January 2018), https://www.hrw.org/world-report/2018/country-chapters/united-arab-emirates ("The UAE arbitrarily detains and forcibly disappears individuals who criticize authorities within the UAE's borders."); *ibid.* ("UAE authorities have launched a sustained assault on freedom of expression and association since 2011. UAE residents who have spoken about human rights issues are at serious risk of arbitrary detention, imprisonment, and torture").

[606] *See* para. 3.109, above.

harassed, arrested or punished individuals under it[607]—including for wearing a Qatar national team shirt to an Asian Cup football match hosted by the UAE[608].

4.60 There is every reason to believe a judiciary under the control of the very same executive that ordered the expulsion of Qataris and has criminalized "sympathy" towards Qatar would *not* be impartial towards Qataris,[609] all the more in circumstances the UAE says implicate State security, a setting in which concerns about fair trials and due process are particularly acute[610]. Given that a Qatari could face criminal prosecution for even "*objecting*" to the measures[1611], it is facially unreasonable for the UAE to nonetheless demand that Qataris not only do exactly that, but that they do so before the very same courts the United Nations High Commissioner for Human Rights has made clear are "under the *control of the executive branch and the State security service*"[612].

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607 *See* para. 2.40, above.

608 *See* para. 2.41, above.

609 The limited evidence available with respect to lawsuits unrelated to challenging the measures bears this out. *See, e.g.,* **Vol. XI, Annex 262**, DCL-179, para. 14; *see also* **Vol. X, Annex 232**, DCL-130, para. 18.

610 *See* para. 2.79, above; *see also* United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 86 ("The Special Rapporteur is particularly concerned at reports of serious breaches of fair trial and due process guarantees, especially regarding, but not limited to, crimes related to State security.").

611 "Attorney General Warns Against Sympathy for Qatar or Objecting to the State's Positions", *Al Bayan Online* (7 June 2017) (certified translation) (emphasis added); *see also* paras. 2.39–2.40, above.

612 **Vol. III, Annex 100**, Letter from United Nations High Commissioner for Human Rights to the Minister of Foreign Affairs and International Cooperation of the United Arab Emirates (7 August 2018), Annex, p. 4. The UAE's attempt at the hearing on provisional measures to argue that the anti-sympathy prohibition is "not a law" and is just a "statement" (CR 2018/13,

4.61 Several additional facts confirm that there are no "reasonably available" and "effective" remedies in the UAE to challenge the impugned measures.

4.62 *First,* even if a Qatari were willing, in spite of the above, to take the personal risk of bringing a claim, he would be unable to find a lawyer to represent him. Not only has it "become extremely difficult to secure a lawyer in State security-related cases"[613] in general but, as the Office of the High Commissioner made clear, lawyers are particularly "unlikely to defend Qataris", as "this would likely be interpreted as an expression of sympathy towards Qatar"[614]. Indeed, many Qataris have found it difficult to find lawyers willing to represent them even on matters *unrelated* to challenging the measures.[615] Unsurprisingly,

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p. 65, para. 35 (Shaw)) does not detract from the fact that the statement is based on existing legislation, and the threat of punishment for violating the prohibition is demonstrably real. *See* Chap. V, Sec. IV, below.

613 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to UAE*, document A/HRC/29/26/Add.2 (2015), para. 81 ("It was reported to the Special Rapporteur that it has become extremely difficult to secure a lawyer in State security-related cases.").

614 **Vol. III, Annex 98**, OHCHR Technical Mission to the State of Qatar, *Report on the impact of the Gulf Crisis on hum an rights* (December 2017), ttp://nhrc-qa.org/wp-content/uploads/2018/01/OHCHR-TM-REPORT-ENGLISH.pdf, para. 40.

615 *See, e.g.,***Vol. XI, Annex 257**, DCL-173, paras. 17-18; **Vol. VIII, Annex 193**, DCL-048, paras. 17–18; **Vol. IX, Annex 216**, DCL-093, paras. 30-33; **Vol. X, Annex 234**,,DCL-135, paras. 14-28; **Vol. X, Annex 241**, DCL-146, para. 32; **Vol. XI, Annex 245**, DCL-152, paras. 17–24; **Vol. X, Annex 235**, DCL-136, para. 9–11; *see also, e.g.,* **Vol. X, Annex 242**, DCL-147, paras. 21-23; **Vol. VII, Annex 165**, DCL-004, para. 13; National Human Rights Committee, *Gulf Crisis: Continuing human rights violations by the United Arab Emirates: Report on the non-compliance by the United Arab Emirates with the Order of the International Court of Justice* (23 January 2019), p. 11. Indeed, even *court-appointed* experts have been afraid of communicating with Qatari litigants by *video* in relation to proceedings *unrelated* to challenging the UAE's discriminatory measures; *see also* **Vol. XI, Annex 262**, DCL-179, para. 11. This is entirely unsurprising, given that even neighbors, close friends and family members are often afraid of associating with Qataris. *See, e.g.,* **Vol. X, Annex 234**, DCL-135, paras. 22, 25, 28; **Vol. IX, Annex 216**, DCL-093, paras. 31-11; **Vol. IX, Annex 206**, DCL-079, paras. 29-30; **Vol. VIII, Annex 193**, DCL-048, paras. 13, 21; **Vol. X, Annex**

communications between lawyers and the exceedingly small number of Qataris who have found representation have been seriously impacted, further undermining their ability to vindicate their rights.[616]

4.63 *Second,* UAE law is demonstrably inadequate to protect Qataris' rights under the CERD. Indeed, the UAE has previously made the extraordinary submission to the CERD Committee that because "daily life is untroubled by behaviours that are incompatible with noble values", it "does not need to enact legislation to deal with any violations of the Convention"[617]. The CERD Committee—which has repeatedly called on States parties to enact legislation, enforce it and monitor the results[618]—disagrees, having expressed concerns regarding the adequacy of UAE law literally *for decades*[619]. As recently as

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241, DCL-146, paras. 13, 17; **Vol. X, Annex 235**, DCL-136, paras. 10-11; **Vol. XII, Annex 266**, DCL-183, para. 16; **Vol. XI, Annex 253**, DCL-168, para. 25; **Vol. XI, Annex 255** DCL-171, para. 15; **Vol. VII, Annex 163**, DCL-001, para. 19; **Vol. VII, Annex 170**, DCL-011, para. 24; **Vol. VII, Annex 179**, DCL-027, para. 26; **Vol. IX, Annex 204**, DCL-076, para. 23; **Vol. VIII, Annex 191**, DCL-046, para. 24.

616 *See, e.g.,* **Vol. XI, Annex 262**, DCL-179, para. 11.

617 *See* **Vol. IV, Annex 111**, CERD Committee, *Reports Submitted by States Parties in Accordance with Article 9 of the Convention: United Arab Emirates, document CERD/C/ARE/12-17 (27 March 2009)*, para. 72.

618 *See, e.g.,* **Vol. IV, Annex 102**, CERD Committee, *General Recommendation No. 1 concerning States parties' Obligations*, contained in document A/87/18 (1972); **Vol. IV, Annex 103**, CERD Committee, *General Recommendation No. 7 r elating to the implementation of article 4*, contained in document A/40/18 (1985), para. 1; **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combatting racist hate speech*, document CERD/C/GC/35 (26 September 2013), paras. 13, 17; **Vol. IV, Annex 106**, CERD Committee, *General Recommendation No. 15 on ar ticle 4 of the Convention*, Forty-second session (1993), para. 2.

619 *See, e.g.,* **Vol. IV, Annex 114**, CERD Committee, CERD Committee, *Concluding observations on the combined eighteenth to twenty-first periodic reports of the United Arab Emirates*, document CERD/C/ARE/CO/18-21 (13 September 2017), paras. 10-11 ("The

September 2017, the Committee recommended that the UAE "enact legislation to bring its laws fully into line with the Convention"[620].

4.64 *Third*, even if all of these obstacles could somehow be overcome, the existing "remedies" are clearly not "reasonably available"[621]. To begin with, the courts were categorically inaccessible to those denied access under the Absolute or Modified Travel Bans. Moreover, setting aside the arbitrary and discretionary nature of the "hotline" through which Qataris are now expected to apply in order to travel to the UAE[622], the closure of transport links between the two countries—a fact found relevant to the applicability of the local remedies rule in at least one

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Committee is concerned that the definition of discrimination in the law is not fully in line with article 1 of the Convention, as the grounds of descent and national origin are missing."); United Nations, *Report of the Committee on the Elimination of Racial Discrimination*, document A/35/18 (1980), para. 105; United Nations, *Report of the Committee on t he Elimination of Racial Discrimination*, document A/39/18 (1984), para. 248; United Nations, *Report of the Committee on the Elimination of Racial Discrimination*, document A/43/18 (1988), para. 194; United Nations, *Report of the Committee on the Elimination of Racial Discrimination*, document A/50/18 (1998) para. 562. *See also, e.g., Jewish Community v. Norway*, Communication No. 30/2003, Opinion, document CERD/C/67/D/30/2003 (2005), para. 7.2.

620 **Vol. IV, Annex 114**, CERD Committee, *Concluding observations on t he combined eighteenth to twenty-first periodic reports of the United Arab Emirates*, document CERD/C/ARE/CO/18-21 (13 September 2017), para. 10; *see also,* **Vol. III, Annex 100**, Letter from United Nations High Commissioner for Human Rights to the Minister of Foreign Affairs and International Cooperation of the United Arab Emirates (7 August 2018), Annex, p. 1 (calling on the UAE to "[e]nact comprehensive anti-discrimination legislation, which prohibits discrimination on all grounds, including colour, language, political or other opinion, descent, national, ethnic or social origin … and is applied not only between citizens but also to non-citizens".).

621 International Law Commission*, Draft Articles on Diplomatic Protection, with commentaries* (2006), document A/61/10, Art. 15(a).

622 *See* paras. 4.49–4.51, above.

case involving large-scale expulsion in the past[623]—means that Qataris must first take a burdensome and expensive trip through a third country. They must then be willing to undertake the personal risk of entering the UAE, a country in which they do not feel safe[624] and cannot rely on their government to protect them[625].

4.65 The UAE's suggestion that Qataris outside the UAE can "grant a power of attorney to a lawyer practicing in the UAE"[626] does not assist it. The only two examples the UAE cited at the hearing on provisional measures were both allegedly granted by sophisticated Qatari businesses to handle matters entirely

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623 ECtHR, *Case of Georgia v. Russia (I),* Application No. 13255/07, Merits Judgment (3 July 2014), para. 156.

624 *See, e.g.,* **Vol. VII, Annex 182**, DCL-030, para. 11; **Vol. VIII, Annex 193**, DCL-048, para. 23; **Vol. IX, Annex 206**, DCL-079, para. 16; **Vol. IX, Annex 216**, DCL-093, paras. 26–27; **Vol. IX, Annex 220**, DCL-100, para. 21; **Vol. X, Annex 230**, DCL-124, para. 24; **Vol. X, Annex 234**, DCL-135, para. 24; **Vol. X, Annex 241**, DCL-146, para. 14; **Vol. X, Annex 235**, DCL-136, para. 9; **Vol. X, Annex 227**, DCL-113, para. 12; **Vol. X, Annex 240**, DCL-145, para. 18; **Vol. IX, Annex 213**, DCL-089, para. 10; **Vol. IX, Annex 218**, DCL-097, para. 18; **Vol. XI, Annex 252**, DCL-167, para. 18; **Vol. XII, Annex 266**, DCL-183, para. 14; **Vol. XI, Annex 260**, DCL-177, para. 16; **Vol. XII, Annex 269**, DCL-187, para. 13; **Vol. XII, Annex 268**, DCL-185, para. 12; **Vol. XII, Annex 270**, DCL-188, para. 11; DCL-144, para. 25; **Vol. I, Annex 163**, DCL-001, para. 18; **Vol. VII, Annex 164**, DCL-002, para. 37; **Vol. VII, Annex 170**, DCL-011, para. 21; **Vol. VIII, Annex 185**, DCL-036, para. 26; **Vol. IX, Annex 219**, DCL-098, para. 17; **Vol. IX, Annex 222**, DCL-105, para. 19; **Vol. VIII, Annex 194**, DCL-051, para. 10; **Vol. VIII, Annex 195**, DCL-053, para. 9; **Vol. VIII, Annex 196**, DCL-056, para. 29; **Vol. VII, Annex 166**, DCL-005, para. 17; **Vol. VII, Annex 175**, DCL-021, para. 21; **Vol. VIII, Annex 191**, DCL-046, para. 19; **Vol. IX, Annex 205**, DCL-078, para. 18.

625 *See, e.g.,* **Vol. VII, Annex 182**, DCL-030, para. 18; **Vol. VIII, Annex 193**, DCL-048, para. 22; **Vol. VII, Annex 165**, DCL-004, para. 14; **Vol. IX, Annex 224**, DCL-108, para. 20; **Vol. X, Annex 235**, DCL-136, para. 9; **Vol. IX, Annex 220**, DCL-100, para. 21; **Vol. X, Annex 225**, DCL-109, para. 18; **Vol. X, Annex 230**, DCL-124, para, 24; **Vol. VII, Annex 179,** DCL-027, para. 12; **Vol. IX, Annex 222**, DCL-105, para. 9; **Vol. VIII, Annex 194**, DCL-051, para. 10; **Vol. VIII, Annex 195**, DCL-053, para. 9; **Vol. VIII, Annex 196**, DCL-056, para. 29; **Vol. VII, Annex 175**, DCL-021, para. 21; **Vol. VIII, Annex 191**, DCL-046, para. 19.

626 CR 2018/13, p. 33, para. 22 (Treves).

unrelated to objecting to the UAE's Discriminatory Measures[627]. Equally important, individuals have the fundamental due process right to attend their own legal proceedings in person. And even if they did not, many Qataris simply do not know anyone trustworthy who would be willing to execute a power of attorney[628]. Moreover, many of those who do know someone, and who have made the expensive and difficult trip to a third country in an attempt to acquire a power of attorney[629], have been rejected *expressly because they were Qataris*[630]. To add insult to injury, even the very small number of Qataris who have actually received

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627 *See* CR 2018/13, p. 34, para. 22, n. 65 (Treves).

628 *See* **Vol. VIII, Annex 193**, DCL-048, para. 21 ("I initially thought about giving a POA to my Emirati lawyer, but that is not an option anymore, as he has not been responsive. I do not know anyone else who would accept a POA in the UAE at the moment, as my friend refused to help me."); **Vol. XI, Annex 258**, DCL-174, para. 11; **Vol. XII, Annex 266**, DCL-183, para. 15; **Vol. XI, Annex 260**, DCL-177, para. 12; **Vol. IX, Annex 212**, DCL-088, para. 14. Similarly, many of those who do know someone they trust have refrained from asking them to execute a power of attorney because they fear this could create problems or be a safety issue for the person involved. *See, e.g.*, **Vol. X, Annex 227**, DCL-113, para. 14. Experience shows that such concerns are fully justified. *See, e.g.,* **Vol. X, Annex 241**, DCL-146, paras. 27–31.

629 *See, e.g.,* **Vol. XI, Annex 260**, DCL-152, Muntajat Declaration, paras. 21–22, 25–26; **Vol. VII, Annex 182**, DCL-030, paras. 12–13; **Vol. IX, Annex 224**, DCL-108, para. 13; *see also, e.g.,* **Vol. XI, Annex 257**, DCL-173, para. 17.

630 *See, e.g.*, **Vol. VII, Annex 182**, DCL-030, para. 12 ("[T]he official working at the UAE Embassy refused to stamp the POA. He told me 'we're not stamping it' and that they 'don't stamp anything involving Qataris.' He said it was because he had 'supreme orders' not to do so. I tried to argue with him, but he wouldn't listen—he wouldn't even look at us or engage in conversation; he simply waved to the person in line behind us and said 'next.'"); *ibid.*, para. 15; **Vol. X, Annex 242**, DCL-147, para. 19; **Vol. IX, Annex 224**, DCL-108, para. 16; *see also* **Vol. IX, Annex 212**, DCL-088, para. 13. In some cases, individuals who were denied powers of attorney on the basis of their nationality were later able to acquire them by trying again, thereby highlighting the arbitrary and discretionary nature of the process. *See, e.g.*, **Vol. VII, Annex 182**, DCL-030, paras. 12–13; **Vol. IX, Annex 224**, DCL-108, paras. 16–17; **Vol. X, Annex 238**, DCL-143, para. 16.

valid powers of attorney have often been unable to *use* them[631]. Indeed, individuals with valid powers of attorney have been harassed, arrested and interrogated for their association with Qataris[632].

4.66 Given the evidence, the conclusion is inescapable: the UAE's courts do *not* constitute a "reasonably available" remedy, let alone an "effective" one.

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4.67 In sum, Qatar has shown that the local remedies rule does not apply to its claims. But even if it *were* applicable to Qatar's claims, the UAE has failed to prove that any reasonably available and effective local remedies exist. It cannot do so because there are no such remedies. The local remedies rule accordingly cannot bar Qatar's claims.

Section II. Qatar's Recourse to the CERD Procedure Does Not Constitute a Bar to the Admissibility of Qatar's Claims

4.68 The UAE argued at the hearing on provisional measures that Qatar's claims are also inadmissible because, prior to the initiation of these proceedings, Qatar also initiated an inter-State complaint procedure under Article 11 of the

631 *See* **Vol. X, Annex 241**, DCL-146, paras. 22, 27–29 ("I executed POAs in the UAE with two of my employees before the blockade so that they could engage in certain business activities on my behalf . . . The police refused to honour the POA, threatened him for having come in to the authorities, and told him that the Qatari has to come himself for his car."); **Vol. XII, Annex 265**, DCL-182, paras. 8–13; **Vol. X, Annex 238**, DCL-143, paras. 17–21; **Vol. VII, Annex 182**, DCL-030, para. 13.

632 *See, e.g.,* **Vol. X, Annex 241**, DCL-146, paras. 27–31; **Vol. VII, Annex 179**, DCL-027, paras. 23–24.

CERD[633]. Qatar's decision to pursue remedies under both Articles 11 and 22 of the CERD is, the UAE said, "incompatible with both the *electa una via* principle and the *lis pendens* exception, since the same claim has been submitted in turn to two organs by the same applicant against the same respondent"[634].

4.69 This is not a serious argument, as evidenced by the fact that the UAE is simultaneously trying to use it to challenge both these proceedings before the Court *and* the proceedings before the CERD Committee.

4.70 Indeed, the UAE has argued before the Court that the CERD Committee proceedings must end before this case could be admissible. According to the UAE, Qatar cannot "bypass the organ that the authors of the Convention established as its guardian", and it "seems *perfectly clear* that when a matter is referred to [the Committee], it *must be allowed to fulfil its mission*"[635].

4.71 And at the same time, before the CERD Committee, the UAE has argued precisely the opposite. There, the UAE claims that "Qatar, by commencing the Pending ICJ CERD Proceedings, has abandoned the [Committee] process in

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633 *See* CR 2018/13, p. 18–19 (Pellet), paras. 19–24. *See also* **Vol. IV, Annex 116**, Letter from the Permanent Mission of the State of Qatar to the United Nations Office and other international organizations in Geneva to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) referring the matter at issue in ICERD-ISC-2018/2 again to the CERD Committee (29 October 2018); **Vol. IV, Annex 117**, State of Qatar v. United Arab Emirates, ICERD-ISC-2018/2, Response of the United Arab Emirates (7 November 2018); **Vol. IV, Annex 119**, Note Verbale of the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) to the Permanent Mission of the State of Qatar to the United Nations Office at Geneva regarding interstate communication ICERD-ISC-2018/2 (14 December 2018), available at https://www.ohchr.org/Documents/HRBodies/CERD/NV_QatarUAE_14Dec2018%20_003.pdf.

634 CR 2018/13, p. 19 (Pellet), paras. 22–24.

635 CR 2018/13, p. 18, paras. 20–21 (Pellet) (emphasis added).

favour of a judicial procedure before the pre-eminent United Nations World Court"[636], and that the Committee must therefore "*yield to the ICJ procedure*"[637].

4.72 Most recently, on 20 March 2019, the UAE reversed its position before the Court and took the extraordinary step of requesting that the Court exercise its power to indicate provisional measures in exceptional circumstances actually to order Qatar to "immediately withdraw its Communication" and "take all necessary measures to terminate consideration thereof by" the Committee[638].

4.73 The UAE cannot have it both ways[639]. But even setting these disingenuous contradictions aside, the fact is that neither the doctrines of *lis pendens* nor *electa una via* constitute a bar to the admissibility of Qatar's claims.

4.74 Qatar observes first that both the Court and its predecessor have regularly entertained cases where the parties were simultaneously pursuing other,

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636 **Vol. IV, Annex 118**, State of Qatar v. United Arab Emirates, ICERD-ISC-2018/2, Supplemental Response of the United Arab Emirates (29 November 2018), para. 54.

637 **Vol. IV, Annex 120**, State of Qatar v. United Arab Emirates, ICERD-ISC-2018/2, Supplemental Response of the UAE on Issues of Jurisdiction and Admissibility (14 January 2019), para. 41 (emphasis added); *see, e.g.*, *ibid*. ("It would be inappropriate for the Committee to proceed in parallel at a time when the ICJ, as the pre-eminent World Court in the United Nations system, remains seised of the very same question in the Pending ICJ CERD Proceedings."); *ibid.* ("the CERD Committee, as a United Nations Treaty body, should not act in any way to undermine the integrity of the Court."); **Vol. IV, Annex 118**, State of Qatar v. United Arab Emirates, ICERD-ISC-2018/2, Supplemental Response of the United Arab Emirates (29 November 2018), para. 79.

638 *Request for the Indication of Provisional Measures of the United Arab Emirates, Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, 22 March 2019, para. 74.

639 Indeed, if the UAE had its way, both proceedings before the CERD Committee and the Court would be dismissed. This cannot possibly be the proper result.

consensual means for settling their dispute[640]. That is all that is happening here. For the reasons explained more fully above[641], the CERD Committee procedure effectively constitutes a form of facilitated negotiation. No solution may be imposed on the parties; any settlement, if there is one, must be adopted by mutual consent.

4.75 Moreover, neither *lis pendens* nor *electa una via* apply in inter-State litigation or arbitration, absent express treaty language so providing[642].

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640 *See, e.g.*, *Passage through the Great Belt (Finland v. Denmark)*, *Provisional Measures, Order, I.C.J. Reports 1991*, para. 35 ("[P]ending a decision of the Court on the merits, any negotiation between the Parties with a view to achieving a direct and friendly settlement is to be welcomed ....".); *Land and Maritime Boundary (Cameroon v. Nigeria)*, *Preliminary Objections, Judgment, I.C.J. Reports 1998*, para. 68; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, *Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, para. 108; *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, *Judgment, ICJ Reports 1980*, para. 43; *Aegean Sea Continental Shelf (Greece v. Turkey)*, *Jurisdiction, Judgment, ICJ Reports 1978*, para. 29; *Free Zones of Upper Savoy and the District of Gex (France/Switzerland), Judgement, P.C.I.J. Reports 1932, Series A, No. 22*, p. 13.

641 *See* Chap. III, Sect. II.A, above.

642 *See, e.g., Chorzow Factory (Germany v. Poland)*, *Judgment, 1927, P.C.I.J., Series A, No. 9*, p. 30 ("[T]he Court, when it has to define its jurisdiction in relation to that of another tribunal, cannot allow its own competency to give way *unless confronted with a clause which it considers sufficiently clear to prevent the possibility of a negative conflict of jurisdiction involving the danger of a denial of justice*") (emphasis added); *Rights of Minorities (Germany v. Poland), Judgment, 1928, P.C.I.J., Series A, No. 15*, p. 23 ("This principle [of consent as sufficient basis for jurisdiction] only becomes inoperative in those exceptional cases in which the dispute which States might desire to refer to the Court would fall within the exclusive jurisdiction reserved to some other authority"). None of the four cases cited by the UAE at the hearing on provisional measures suggest otherwise. *See* CR 2018/13, p. 19, n. 50 (Pellet). On the contrary, three involved instruments with *express* language of a kind not found in CERD. *See Chevron Corporation and Texaco Petroleum Company v. Ecuador*, PCA Case No. 2009-23, Third Interim Award on Jurisdiction and Admissibility (2012), para. 4.73; *Pantechniki S.A. Contractors and Engineers v. Albania*, ICSID Case No. ARB/07/21, Award (30 July 2009) (Paulsson), para. 68; *VO v. Norway*, Communication No. 168/1984, Decision, document CCPR/C/25/D/168 (1985), paras. 4.4.–4.5. The fourth case, *Polish Upper Silesia*, equally fails to prove the UAE's point for the reasons explained below.

4.76 With respect to *lis pendens* in particular, Judge Crawford has written: "Whether there is any international equivalent to the national law doctrine[] of *lis alibi pendens* … is controversial"[643]. Indeed, neither the Court nor the PCIJ has *ever* found *lis pendens* to apply in international law generally, let alone in the cases before them.

4.77 The only case the UAE cited during the hearing on provisional measures to suggest otherwise was the *Polish Upper Silesia* case[644]. But on the very same page of the judgment the UAE cited, the PCIJ made clear that it did not accept that *lis pendens* applies in international law, finding: "It is a much disputed question … whether the doctrine of *litispendance* … can be invoked in international relations …"[645]. The PCIJ also made clear that even if the doctrine did apply, the standard would be high: a) the parties must be the same; b) the actions in both proceedings must be identical; and c) the bodies hearing the two proceedings must be "of the same character"[646]. None of these elements was present in that case[647].

4.78 In this case, the Parties may be the same but neither of the other two elements the PCIJ identified is present. The action before the CERD Committee is not identical to the action Qatar has brought before the Court. Whereas the

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643 *See* **Vol. V, Annex 147**, J. Crawford, *Brownlie's Principles of Public International Law* (8th ed. Oxford University Press, 2012), p. 701.

644 CR 2018/13, p. 19, n. 50 (Pellet).

645 *Certain German Interests in Polish Upper Silesia (Germany v. Poland), Judgement, P.C.I.J. Reports (1925), Series A, No. 6*, p. 20.

646 *Certain German Interests in Polish Upper Silesia (Germany v Poland), Judgment, 1925, P.C.I.J., Series A, No. 6*, p. 20.

647 *Certain German Interests in Polish Upper Silesia (Germany v Poland), Judgment, 1925, P.C.I.J., Series A, No. 6*, p. 20.

proceedings before the CERD Committee can result only in non-binding recommendations[648], the Court will issue a legally binding decision[649]. The CERD Committee and the Conciliation Commission, on the one hand, and the Court, on the other hand, are also not bodies "of the same character"[650]. The CERD Committee is an expert monitoring body[651] and, as the UAE itself submitted before the Committee, the Conciliation Commission "is not a judicial body but a fact-finding body"[652]. The Court, in contrast, is the "principal judicial organ of the United Nations"[653].

4.79 In *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, the Court made clear that it can adjudicate a dispute even when there is a concurrent fact-finding commission:

> "The Commission … was established to undertake a … fact-finding mission …. [The Secretary-General] created the Commission … as an organ or instrument for mediation, conciliation or negotiation …. *The establishment of the Commission by the Secretary-General … cannot, therefore, be*

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[648] CERD, Art. 13(2). *See* CR 2018/13, p. 18, para. 20 (Pellet) ("Of course, the Committee cannot take binding decisions").

[649] *See* Rules of the International Court of Justice, Arts. 59, 60.

[650] *Certain German Interests in Polish Upper Silesia (Germany v. Poland), Judgment 1925, P.C.I.J., Series A, No. 6*, p. 20.

[651] *See* OHCHR, *Committee on the Elimination of Racial Discrimination*, https://www.ohchr.org/en/hrbodies/cerd/pages/cerdindex.aspx.

[652] **Vol. IV, Annex 120**, *State of Qatar v. United Arab Emirates*, ICERD-ISC-2018/2, Supplemental Response of the UAE on Issues of Jurisdiction and Admissibility (14 January 2019), para. 43.

[653] Statute of the International Court of Justice, Art. 1.

> *considered in itself as in any way incompatible with the continuance of parallel proceedings before the Court.* Negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement are enumerated together in Article 33 of the Charter as a means for the peaceful settlement of disputes"[654].

4.80 The UAE's invocation of the so-called "*electa una via* principle"[655] fails for many of the same reasons. Suffice it to say that, like *lis pendens*, it "does not find any meaningful support in the international jurisprudence" in the absence of "explicit treaty language"[656]. An example of such express treaty language can be found in Article IV of the Pact of Bogotá, which provides:

> "Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfillment of the present Treaty or a previous pact, no other procedure may be commenced until that procedure is concluded"[657].

4.81 The contrast with CERD Article 11 cannot be more obvious. Nothing in Article 11 prioritizes its procedures over any other dispute resolution method, let alone judicial proceedings before the Court under Article 22[658]. The UAE's

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654 *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, *Judgment, I.C.J. Reports 1980*, para. 43 (emphasis added).

655 CR 2018/13, p. 19 (Pellet), paras. 22–24.

656 **Vol. VI, Annex 149**, Y. Shany, *The Competing Jurisdictions of International Courts and Tribunals* (Oxford University Press, 2003), p. 229.

657 Organization of American States, *American Treaty on Pacific Settlement ("Pact of Bogotá")*, 30 April 1948, Treaty Series, No. 17 and 61, Art. 4 (emphasis added).

658 In fact, because the doctrine of *electa una via* encompasses subsequent proceedings, if it applied in the present circumstances, it would operate to bar Qatar from instituting proceedings before the Court *even after the proceedings before the CERD Committee are complete*. Needless to say, this cannot be the correct result.

argument that the Court should decline to hear this case because Qatar resorted to the CERD procedures accordingly must fail.

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4.82 For the foregoing reasons, there is no bar to the admissibility of Qatar's claims in this case.

CHAPTER V
THE UAE HAS VIOLATED THE CERD

5.1 The UAE's Discriminatory Measures subvert the CERD's fundamental objective to "eliminat[e] racial discrimination in all its forms and promot[e] understanding among all races"[659]. Instead of abiding by its undertaking to pursue this goal, the UAE has singled out a specific group—Qataris—on the basis of their national origin and subjected them to measures that, in direct opposition to the mandate in Article 1(1), have both "the purpose [and] effect of nullifying or impairing [Qataris'] recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms"[660].

5.1 The Discriminatory Measures fall into four main categories of racially discriminatory State conduct prohibited by the CERD. *First*, the Expulsion Order required all Qataris to leave the UAE within 14 days, and the Absolute Travel Ban barred all Qataris from entering the UAE. For those Qataris living in the UAE prior to 5 June 2017, these actions constituted collective expulsion in violation of the UAE's broad obligations under Article 2(1), as well as of their fundamental procedural rights to due process and access to remedy guaranteed by Articles 5(a) and 6 (**Section I**).

5.2 *Second*, and independent of the collective expulsion, the UAE's Absolute Travel Ban and its ongoing maintenance of the Modified Travel Ban, impacted and continues to impact, respectively, not only the Qataris living in the UAE who were expelled on 5 June, but all Qataris with substantial family,

659 **Vol. III, Annex 92**, CERD, Art. 2(1).

660 **Vol. III, Annex 92**, CERD, Art. 1(1).

education, work, and/or property-related ties to the UAE, who remain cut off by the UAE's arbitrary and discriminatory actions. In this regard, the UAE's Absolute Travel Ban violated, and its Modified Travel Ban continues to violate, Articles 2(1), 5(a), 5(d)(iv), 5(d)(v), 5(e)(i), 5(e)(v) and 6 of the CERD (**Section II**).

5.3 *Third*, the UAE has suppressed—and continues to suppress—Qatari media, in violation of the right to free expression and thought contained in Article 5(d)(viii) of the CERD (**Section III**).

5.4 *Fourth*, the UAE has instigated, perpetuated and encouraged—and continues to instigate, perpetuate and encourage—anti-Qatari propaganda by engineering and promoting "ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against"[661] Qataris in violation of Articles 2(1), 4, 6 and 7 of the CERD (**Section IV**).

Section I. The UAE Violated Article 2(1), Article 5(a) and Article 6 of the CERD by Collectively Expelling Qataris

5.5 The CERD requires States parties to ensure that they do not treat non-nationals in a racially discriminatory manner—in either purpose or effect[662]. As such, any measures that distinguish between non-nationals on the basis of national origin must be enacted for a legitimate aim and proportional to achievement of

[661] **Vol. III, Annex 92**, CERD, Art. 4(a).

[662] *See* Chap. III, Sec. I.A, above.

that aim; to do otherwise results in an arbitrary deprivation of fundamental rights and constitutes impermissible racial discrimination as defined in Article 1(1)[663].

5.6 As discussed in the sections that follow, collective expulsion is the act of expelling a group of people collectively and without consideration of individual circumstances, and thus, by definition, without due process. By its very nature, collective expulsion on the basis of a shared national origin can never serve a legitimate aim, nor constitute a proportional means to achieve that aim, and thereby violates the obligations of States parties under Article 2(1) of the CERD, as well as the due process protections contained in Articles 5(a) and 6 (**Section I.A**).

5.7 The UAE's Expulsion Order and Absolute Travel Ban constitute the collective expulsion of Qataris and are "distinction[s]", "exclusion[s]", and "restriction[s]"[664] based on Qataris' national origin that had both the purpose and effect of nullifying Qataris' fundamental due process rights, constituting racial discrimination under Article 1(1), and thereby violating Article 2(1) (**Section I.B**), as well as Articles 5(a) and 6 (**Section I.C**).

A. The CERD Requires States Parties to Ensure That They Do Not Expel Non-Nationals from Their Territory on a Collective Basis

5.8 Under the CERD, a State party's targeting of a group of non-nationals collectively and on the basis of, *inter alia*, their national origin for expulsion from its territory, while failing to take into account individual circumstances and

663 *See* paras. 3.11–3.20, above.

664 **Vol. III, Annex 92**, CERD, Art. 1(1).

without the provision of due process, constitutes an "act or practice[665]" of "racial discrimination" as defined in Article 1(1) and is prohibited by Articles 2(1), 5(a) and 6.

5.9 Singling out a group of non-nationals for expulsion represents a "distinction, exclusion [and] restriction . . . based on" national origin under Article 1(1). Such an act *by definition* "has the *purpose* or *effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms", because it is inherently arbitrary in substance, implementation and effect and contravenes basic principles of due process. These rights and freedoms include the procedural guarantees that are incorporated into the open-ended litany of rights that are protected from racial discrimination pursuant to Article 5[666] and Article 6, including: guarantees of the right to challenge the state action; the opportunity to be heard before a court of competent jurisdiction; the respect of regular—as opposed to *ad hoc*—procedures such as prior notice; equal treatment before the courts; and access to effective remedies[667].

5.10 Accordingly, collective expulsion on the basis of national origin is categorically prohibited not only by the general requirement in Article 2(1) to condemn and eliminate "racial discrimination in all its forms", but also the

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665 **Vol. III, Annex 92**, CERD, Art. 2(1).

666 *See* paras. 5.95-7 below; *see also* UDHR, Arts. 6 *et seq.* setting out *inter alia*, the rights to recognition as a person before the law, entitlement of equal protection of the law, access to an effective remedy, right to a hearing in the determination of rights and obligations.

667 *See* **Vol. III, Annex 92**, CERD, Arts. 5(a), 6; paras. 4.4–4.8, above; *see also* Draft Articles on the Expulsion of Aliens, with commentaries, *Yearbook of the International Law Commission*, 2011, vol. II, Part Two, Arts. 5(3), 26(1) (setting out a list of procedural rights that all aliens should enjoy prior to expulsion).

specific undertaking of each State party "to engage in no act or practice of racial discriminations against persons, groups of persons or institutions and to ensure that *all public authorities and public institutions*, national and local, shall act in conformity with this obligation" under Article 2(1)(a)[668]. Because the deprivation of due process rights is at the core of collective expulsion, it also runs afoul of the protections contained in Articles 5(a) and 6.

5.11 Expulsion on a collective basis, which is—by definition—arbitrary, is categorically prohibited by the CERD and by numerous human rights treaties and instruments as contrary to human rights and fundamental freedoms[669]. Generally

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668 Unlike "mass expulsion," collective expulsion may not be enacted on "even a relatively small number of aliens . . . if the expulsion of each alien is not considered on an individual case-by-case basis." *See* International Law Commission, *Expulsion of Aliens, Memorandum by the Secretariat, Fifty-Eighth Session*, document A/CN.4/565 (10 July 2006), p. 560, para. 985; *see also* ECtHR, *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, Judgment, Grand Chambers (23 February 2012), para. 184; IACtHR, *Nadege Dorzema et al. v. Dominican Republic*, Judgment (24 October 2012), para. 172. In contrast, "mass" expulsion is governed by a different legal regime, and can be comprised of a large number of aliens. International Law Commission, *Expulsion of Aliens, Memorandum by the Secretariat, Fifty-Eighth Session*, document A/CN.4/565 (10 July 2006), p. 2 ("The individual expulsion, the collective expulsion and the mass expulsion of aliens may be viewed as being governed by separate legal regimes and are treated as such for purposes of the present study.").

669 The first explicit prohibition of collective expulsion appeared in 1968, in Protocol No. 4 of the ECHR, one year before the entry into force of the CERD. Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 *UNTS.* 221, Protocol No. 4, (1963), Art. 4 ("Collective expulsion of aliens is prohibited."). The prohibition is also reflected in the ICCPR, the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, the American Convention on Human Rights ("***ACHR***"), the African Charter on Human and Peoples' Rights ("***ACHPR***"), and the Arab Charter on Human Rights. *See* **Vol. III, Annex 93**, Human Rights Committee, *General Comment No. 15: The Position of Aliens Under the Covenant* (11 April 1986), para. 10 (stating that Article 13 "entitles each alien to a decision in his own case and, hence…would not be satisfied with laws or decisions providing for collective or mass expulsions."); International Convention on the Protection of the Rights of All Migrant Workers and Their Families, 18 December 1990, 2220 *UNTS* 3, Art. 22(1) ("Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually."); Organization of American States, American Convention on Human Rights "Pact of San José, Costa Rica", 22 November

speaking, while States are afforded the power to expel non-nationals from their territories, that right is subject to limitations, most notably those derived from States' human rights obligations[670]. The Court, interpreting the prohibition on collective expulsion contained in Articles 12 and 13 of the ICCPR in *Diallo*, emphasized that those provisions demand that "an expulsion must not be arbitrary in nature, since protection against arbitrary treatment lies at the heart of the rights guaranteed by the international norms protecting human rights"[671]. Article 9 of the ILC Draft Articles on the Expulsion of Aliens ("***Draft Articles on Expulsion***") provides in relevant part:

> "(1) For the purposes of the present draft article, collective expulsion means expulsion of aliens, as a group.
>
> (2) The collective expulsion of aliens is prohibited.

1969, 1144 *UNTS* 123, Art. 22(9) ("The collective expulsion of aliens is prohibited."); Organization of African Unity, African Charter on Human and Peoples' Rights, 27 June 1981, 1520 *UNTS* 217, Art. 12(5) ("The mass expulsion of non-nationals shall be prohibited."); League of Arab States, Arab Charter on Human Rights, 2 May 2004, Art. 26(2) ("Collective expulsion is prohibited under all circumstances.").

670 "Expulsion" is defined broadly in the ILC Draft Articles on the Expulsion of Aliens as: "[A] formal act or conduct attributable to a State by which an alien is compelled to leave the territory of that State . . .". Draft Articles on the Expulsion of Aliens, with commentaries, *Yearbook of the International Law Commission*, 2011, Vol. II, Part Two, Art. 2(a); *ibid.*, Art. 3 ("Expulsion shall be in accordance with the present draft articles, without prejudice to other applicable rules of international law, in particular those relating to human rights."); *ibid*., commentary to Art. 3 ("[T]he specific mention of human rights is justified by the importance that respect for human rights assumes in the context of expulsion, an importance also underlined by the many provisions of the draft articles devoted to various aspects of the protection of the human rights of aliens subject to expulsion.").

671 *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, para. 65 (referencing Articles 12 and 13 of the ICCPR).

> (3) A State may expel concomitantly the members of a group of aliens, *provided that the expulsion takes place after and on the basis of an assessment of the particular case of each individual member of the group* in accordance with the present draft articles"[672].

5.12 Specifically, this assessment requires that the grounds for the expulsion must be "assessed in good faith and reasonably, in the light of all the circumstances" for the individual non-national[673], and must be stated in the

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672 Draft Articles on the Expulsion of Aliens, with commentaries, *Yearbook of the International Law Commission*, 2011, Vol. II, Part Two, Art. 9(1)–(3) (emphasis added). The Introduction to the Draft Articles generally notes that the articles "involve both the codification and the progressive development of fundamental rules on the expulsion of aliens". *Ibid.*, p. 2. Accordingly, certain Draft Articles specify that they constitute progressive development. *See, e.g.*, commentary to Arts. 23(2), 27, 29 (clarifying that the provisions reflected the progressive development of international law). Draft Articles 2, 9 and 26, which are relevant to the scope of the prohibition on collective expulsion, make no such qualification. *Third report on the expulsion of aliens, by Mr. Maurice Kamto, Special Rapporteur*, document A/CN.4/581 (19 April 2007), para. 115 ("[I]t seems reasonable to suggest that there is a general principle of international law on this matter that is 'recognized by civilized nations' and prohibits collective expulsion. First of all, it would follow from the fact that if the admission of an alien is an individual right, the loss or denial of this right can only be by an individual act. Secondly, this rule against collective expulsion is enshrined in three regional human rights conventions that, among them, cover most States members of the international community."); *see also* ECtHR, *Intervener Brief Filed on Behalf of the United Nations High Commissioner of Human Rights*, *Hirsi et al v. Italy*, Application No. 27765/09 (4 May 2011), para. 7 ("It may therefore be observed that the prohibition of collective expulsion has evolved as a principle of general international law."); OHCHR, *Expulsions of aliens in international human rights law* (September 2006), p. 19 ("The scope of the procedural safeguards suggests that collective expulsions are unlawful under international and regional human rights law."); Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, Seventh Session*, document A/HRC/7/12 (25 February 2008), para. 49, n. 36 ("The prohibition on the collective expulsion of non-nationals is arguably a recognized principle of international customary law."); **Vol. V, Annex 146**, B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Cambridge University Press, 2006), 32–36.

673 Draft Articles on the Expulsion of Aliens, with commentaries, *Yearbook of the International Law Commission*, 2011, Vol. II, Part Two, Art. 5(3).

decision[674]. In addition, prior notice and a reasoned decision that allows the non-national to understand the basis on which the decision was made are prerequisites to allow for the decision to be challenged and to fulfill the non-national's right to be heard[675].

5.13 In its General Recommendation No. 30, the CERD Committee specifically stated that the CERD requires that States parties "*[e]nsure that non-citizens are not subject to collective expulsion*, in particular in situations where there are *insufficient guarantees that the personal circumstances of each of the persons*

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674 Draft Articles on the Expulsion of Aliens, with commentaries, *Yearbook of the International Law Commission*, 2011, Vol. II, Part Two, Art. 5(1); *ibid*., Art. 5(3) ("The ground for expulsion shall be assessed in good faith and reasonably, in light of all the circumstances, taking into account in particular, where relevant, the gravity of the facts, the conduct of the alien in question or the current nature of the threat to which the facts give rise."). The ECtHR has found six cases of collective expulsion, based on a failure to "afford sufficient guarantees demonstrating that the personal circumstances of each of those concerned had been genuinely and individually taken into account." ECtHR, *Čonka v. Belgium*, Application No. 51564/99, Final Judgment (5 May 2002), para. 63; *see also* ECtHR, *Georgia v. Russia (I)*, Application No. 13255/07, Judgment (Merits) (3 July 2014); ECtHR, *Shioshvili and Others v. Russia*, Application No. 1935607, Final Judgment (20 March 2017); ECtHR *Berdzenishvili and Others v. Russia*, Application Nos. 14594/07, 14597/07, 14976/07, 14978/07, 15221/07, 16369/07 and 16706/07, Judgment (Merits) (20 December 2016) (cases in which the individuals targeted for expulsion shared an origin – Roma families in the first case and Georgian nationals in the others); ECtHR, *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, Judgment, Grand Chambers (23 February 2012) and ECtHR, *Sharifi and Others v. Italy and Greece*, Application No. 16643/09, Judgment (21 October 2014) (cases in which the applicants were members of a category of people—migrants and asylum-seekers); *see also* IACtHR, *Expelled Dominicans and H aitians v. Dominican Republic*, Judgment (28 August 2014), para. 355; IACtHR, *Nadege Dorzema et al. v. Dominican Republic*, Judgment (24 October 2012), para. 163 (enumerating the same procedural safeguards).

675 *See* Draft Articles on the Expulsion of Aliens, with commentaries, *Yearbook of the International Law Commission*, 2011, Vol. II, Part Two, Arts. 5(3), 26(1) (setting out a list of procedural rights that all expelled aliens should enjoy). The commentary to Art. 26 clarifies the interdependence between certain rights, *inter alia*, explaining that prior notice—which includes the stated ground for expulsion—is a "*conditio sine qua non* for the exercise by an alien subject to expulsion of all of his or her procedural rights".

concerned have been taken into account"[676]. Notably, the CERD Committee confirmed that the inherently arbitrary and indiscriminate character of collective expulsion negates any claim that it could be proportional to achieve a legitimate objective[677]. The CERD Committee has also emphasized that States parties must ensure that:

> "laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party *do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies*"[678].

5.14 Likewise, in its practice, the CERD Committee has expressed concerns over situations of "collective deportations (repatriations)" taking place "without guarantee of due process" and in that regard, has recommended that States parties

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676 **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens, Sixty-fifth session* (2005), para. 26 (emphases added).

677 *See* **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens, Sixty-fifth session* (2005), para. 4.

678 **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens, Sixty-fifth session* (2005), para. 25 (emphasis added). The CERD establishes a protective human rights framework that limits the rights of States parties to expel groups on certain discriminatory grounds. Even outside of a protective framework, general international law establishes minimum standards that must be respected: these include protection from an "abrupt expulsion, or expulsion in an offensive manner", neither of which would provide minimum due process rights, such as the right to receive notice of the expulsion, the right to challenge the expulsion, the right to a hearing before a fair and impartial tribunal, the right to counsel, the right to an appeal or the right to consular protection. W. Kidane, "Procedural Due Process in the Expulsion of Aliens Under International, United States, and European Union Law: A Comparative Analysis", 27 *Emory International Law Review* (2013) 285, p. 292.

to the CERD "ensure that non-citizens are not subject to collective expulsion."[679] In particular, in Concluding Observations adopted with respect to the Dominican Republic in 2008, the CERD Committee highlighted that collective expulsion is incompatible with Articles 5(a) and 6 of the CERD, and called attention to instances in which "migrants of Haitian origin" were deported to Haiti without "equal access to effective remedies" such as "the right to challenge expulsion orders"[680].

5.15 Notably, neither Article 1(2) nor Article 1(3) reserves to a State party the discretion to compel all nationals of a single country to depart from the host State's territory. As set out above, Article 1(2) allows States parties to make "distinctions, exclusions, restrictions, or preferences . . . between citizens and non-citizens", but does not provide a similar privilege for distinctions between different groups of non-nationals[681]. And as confirmed by the CERD Committee, collective expulsion on the basis of national origin is unlawful under the CERD precisely because its arbitrary and sweeping nature negates any claim that its expulsion is in the service of a legitimate aim or constitutes proportional means to achieve such an aim; in other words, where a State does not assess the particular

679 CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Dominican Republic*, document CERD/C/DOM/CO/12 (March 2008), para. 13(b).

680 CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Dominican Republic*, document CERD/C/DOM/CO/12 (March 2008), para. 13.

681 *See* para. 3.47, above.

case of *each individual*, it has the clear *purpose* and *effect* of impairing the non-nationals' fundamental due process rights[682].

5.16 Likewise, Article 1(3) preserves for States parties their legal provisions "concerning nationality, citizenship or naturalization", but "provided that such provisions do not discriminate against any particular nationality"[683], which cannot justify collective expulsion on the basis of national origin.

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5.17 In sum, the CERD prohibits the collective expulsion of a group of non-nationals on the basis of their national origin as impermissible racial discrimination under Article 1(1), in violation of Articles 2(1), 5(a) and 6. In the circumstances before the Court of a State directive ordering a particular group of non-nationals collectively to leave the State's territory, and cutting them off from their homes, families, livelihoods and/or property, these rights are even more significant.

B. THE UAE COLLECTIVELY EXPELLED QATARIS FROM ITS TERRITORY IN VIOLATION OF ARTICLE 2(1)

5.18 The only basis for the UAE's differential treatment of Qataris in its Expulsion Order and Absolute Travel Ban was their national origin. The UAE made no provision for the consideration of the specific circumstances of

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682 *See* **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens, Sixty-fifth session* (2005), paras. 25–26; *see also* Draft Articles on the Expulsion of Aliens, with commentaries, *Yearbook of the International Law Commission*, 2011, Vol. II, Part Two, Arts. 9(1), 26 (stipulating the prohibition of collective expulsion and the protection of fundamental procedural rights respectively).

683 **Vol. III, Annex 92,** CERD, Art. 1(3).

individual Qataris. And it made no provision for Qataris to exercise their fundamental due process rights to challenge the order or regarding its application to their individual cases.

5.19 The UAE's actions in these respects impacted Qataris who were living in the UAE prior to 5 June 2017 and who were expelled and prohibited from returning to the UAE. In most instances, the Qataris expelled by the UAE were present in their homes in the UAE on 5 June 2017 and forced to flee by virtue of the Expulsion Order. In some instances, Qataris living in the UAE happened to be outside the UAE on that day—often visiting family in Qatar in light of the timing of the UAE's actions to coincide with the holy month of Ramadan—and could not return to their homes in the UAE due to the Absolute Travel Ban.

5.20 The UAE's Expulsion Order and Absolute Travel Ban violate Article 2(1)'s prohibition of any act or practice of racial discrimination for two primary reasons. *First*, the *purpose* of the Expulsion Order and Absolute Travel Ban—on their face—was to single out and collectively expel Qataris from the UAE on the basis of their national origin without regard for their fundamental rights of due process or consideration of the impact on any other rights (**Part 1**). *Second*, the *effect* of the Expulsion Order and Absolute Travel Ban was the collective expulsion of Qataris from the territory of the UAE and thus the nullification and impairment of their right to due process (**Part 2**).

1. The Purpose of the Expulsion Order and Absolute Travel Ban Was to Collectively Expel Qataris from the UAE

5.21 The UAE's Expulsion Order and Absolute Travel Ban issued by the UAE's Ministry of Foreign Affairs, both individually and taken together,

constitute State acts of collective expulsion of all Qataris living in the UAE, in violation of Article 2(1).

5.22 *First,* the UAE has committed a textbook act of collective expulsion. The language used by the UAE in its Expulsion Order and Absolute Travel Ban was precise, mandatory and directed at *all Qataris*: "[i]t has been *decided* to take the following measures . . . *giving* Qatari residents and visitors in the UAE 14 days to leave the country for precautionary security reasons" and "*preventing*" Qataris "from entering *the UAE or crossing its points of entry*"[684]. The UAE actually admits that the very purpose of the 5 June Directive was to coerce the Qatari State to yield sovereign control over internal and external policy by virtue of acceding to its Thirteen Demands and Six Principles[685]. And the chosen means was the collective punishment of Qataris.

5.23 By issuing the Expulsion Order and Absolute Travel Ban in blanket terms, the UAE thus made no provision for "the personal circumstances of each of the persons concerned [to] have been taken into account"[686]. No attempt was made to consider the individual circumstances of a *single* Qatari in the UAE before ordering them to leave as a group. Nor did the UAE make provision for any procedural standards, much less guaranteed "*minimum procedural standards*"[687].

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684 **Vol. II, Annex 1**, United Arab Emirates Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017) (emphases added).

685 CR 2018/13, p. 12, para. 8 (Alnowais); *see* para 1.19, above.

686 **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens, Sixty-fifth session* (2005), para. 26.

687 *Yeager v. Iran*, Partial Award No. 324-10199-1, 1987 WL 503859 (2 November 1987, Chamber One), paras. 49–50.

Qataris were given *no notice* of what was going to happen, no individualized reasons for their expulsion, and no legal recourse to challenge either the Expulsion Order or the Absolute Travel Ban, to contest their application to their particular situation or to seek effective (or indeed any) remedies. In short, the UAE's actions in these respects are plainly arbitrary and indiscriminate and constitute impermissible racial discrimination.

5.24 *Second*, and as set out above, collective expulsion *by definition* is an illegitimate and disproportionate means of achieving any goal. The UAE's actions, therefore, cannot be justified on any grounds. But the UAE's stated "national security" justification does not even make sense as the purported basis for its targeting of Qataris: the UAE has only ever referred, wrongly, to the *Qatari State*, and its alleged support for and financing of terrorist groups, to support its supposed national security concerns, not Qatari civilians.

5.25 *Third*, the UAE's various attempts to evade responsibility under the CERD by mischaracterizing the nature of the Expulsion Order itself—to argue that it is not actually an order—are unavailing. At the provisional measures hearing, the UAE alleged that the 5 June Directive was merely a "political statement" issued by a State organ without authority to order such an expulsion[688]. But whether or not the Ministry of Foreign Affairs was acting within its competence or by supposedly informal means is irrelevant: the 5 June Directive

[688] CR 2018/13, p. 64, para. 25 (Shaw).

was an act of State issued by a State organ, and as such constitutes an act engaging the UAE's international responsibility[689].

5.26 The UAE's further argument that it did not implement "the necessary legal and administrative orders and regulations" to render the 5 June Directive "binding"[690] also cannot excuse its conduct. As noted, the UAE ordered Qataris to leave the UAE in 14 days; there was nothing ambiguous about it. The language was not precatory, it was not conditioned on further steps to be taken, and there certainly was no reference to the need for further implementing laws or regulations, as the UAE has argued *post hoc* to justify its actions.

5.27 Equally, the context of the 5 June Directive puts a lie to the UAE's excuses: by expelling Qatari diplomats and severing all relations with the State of Qatar[691], eliminating flight paths between the UAE and Doha[692], and banning

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689 *See* Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two), Arts. 4, 7. Further, the level of formality associated with a State's act is irrelevant, and international tribunals have held States liable for wrongful expulsion even where an individual was just told to leave by Government officials rather than subject to a written expulsion order. *See, e.g., Yeager v. Iran*, Partial Award No. 324-10199-1, 1987 WL 503859 (2 November 1987, Chamber One); *see also Alfred L. W. Short v. Iran*, Award No. 312-11135-3, 1987 WL 503820 (14 July 1987, Chamber Three) ("[A]n alien may . . . be considered wrongfully expelled in the absence of any order or specific state action, when, in the circumstances of the case, the alien could reasonably be regarded as having no other choice than to leave and when the acts leading to his departure were attributable to the State.").

690 CR 2018/13, p. 64, para. 25 (Shaw).

691 **Vol. II, Annex 1**, United Arab Emirates Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017).

692 **Vol. II, Annex 1**, United Arab Emirates Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017).

Qataris from re-entering the country[693], the UAE made clear that it meant what it said in the Expulsion Order. Notably, the UAE does not, and cannot, argue that these *other* orders—issued in a single statement by the UAE in the 5 June Directive—were not mandatory. It is simply not credible to suggest that the 5 June Directive was intended to have mandatory effect with regard to each of its provisions *except for* the expulsion of Qataris.

5.28 It is equally not credible for the UAE to suggest that the Expulsion Order was not mandatory when it explicitly stated that the expulsion was for "*precautionary security reasons*".[694] In other words, the Order clearly was backed by the full power of the UAE Government's security apparatus. As noted earlier, this apparatus is notorious for its human rights abuses, particularly with respect to what Human Rights Watch has called the UAE's "brutally repressive" approach to suppressing any form of political criticism[695], and systemic failure to guarantee

693 **Vol. II, Annex 1**, United Arab Emirates Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017).

694 **Vol. II, Annex 1**, United Arab Emirates Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017), p. 2 (emphasis added).

695 **Vol. V, Annex 138**, Human Rights Watch, *UAE: Award-Winning Activist Jailed for 10 Years* (1 June 2018), https://www.hrw.org/news/2018/06/01/uae-award-winning-activist-jailed-10-years (concluding that the "UAE has exposed itself as a brutally repressive place more interested in sending rights defenders to rot in jail than in any real reform"). In its submission for the 2018 Universal Periodic Review of the UAE, in June 2017, Human Rights Watch found that "[t]he UAE arbitrarily detains, and in some cases forcibly disappears, individuals who criticize authorities" within the UAE's borders. **Vol. V, Annex 130**, Human Rights Watch, *Submission for the Universal Periodic Review of the United Arab Emirates* (29 June 2017), https://www.hrw.org/news/2017/06/29/submission-universal-periodic-review-united-arab-emirates; *see also* United States Department of State Bureau of Democracy, Human Rights and Labor, *United Arab Emirates 2017 H uman Rights Report* (2017), p. 5, https://www.state.gov/documents/organization/277513.pdf ("The government, however, reportedly often held persons in custody for extended periods without charge or a preliminary judicial hearing."); Reprieve, *Reprieve Submission to the United Nations Universal Period Review* (June 2017), n. 5 ("Rights groups have condemned the [counterterrorism] law for its

the right to a fair trial and humane conditions in detention, particularly for those arrested on national security-related charges[696].

5.29 Tellingly, the UAE took no action at the time to retract or clarify the Expulsion Order as a "non-binding policy", not to be followed. To the contrary, the UAE—through its State media platforms, including the official Emirates News Agency—disseminated the Expulsion Order and Absolute Travel Ban widely in the days and weeks that followed their issuance[697]. The UAE also made certain that the Expulsion Order was communicated to as many Qataris as possible by removing—*for that one day only*—its pre-existing block on Al Jazeera's satellite

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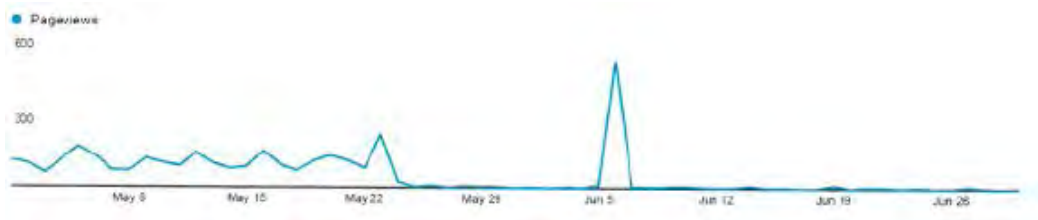
propensity to be applied against perceived political opponents."); Alkarama Foundation, *Universal Periodic Review: United Arab Emirates* (29 June 2017), Sec. 3.2 ("State Security Forces . . . continue to arrest lawyers, professors, human rights defenders and anyone critical of the government, without a warrant or informing the individuals of the reason for their arrest."); **Vol. V, Annex 124**, International Federation for Human Rights, *United Arab Emirates: Criminalising Dissent UAE 94 Trial Deeply Flawed, Judicial Observation Report*, (August 2013); Americans for Democracy and Human Rights in Bahrain, Oral Intervention at the 38th session of the United Nations Human Rights Council (2 July 2018), https://www.adhrb.org/wp-content/uploads/2018/07/2018.07.02_IDO-Item-8-GD_UAE_YH.pdf ("[T]he UAE frequently arbitrarily detains and forcibly disappears residents who have spoken about human rights or criticized the Emirati government. While in detention, they are at severe risk of torture and abuse.").

696 Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, document A/HRC/29/26/Add.2 (5 May 2015), paras. 50–51; *see* Chap. IV, Sec. I.B., above; "Why is the UAE's legal system being criticised?", *BBC News* (22 November 2018), https://www.bbc.com/news/world-46304951; Alkarama Foundation, *Universal Periodic Review: United Arab Emirates*, p. 5 (29 June 2017) ("Following her visit to the UAE in 2014, the former SRIJL reported that more than 200 complaints of torture and ill-treatment had been presented before judges and prosecutors, but were not investigated or accounted for in judicial proceedings.").

697 *See* Chap. II, Secs. II.A–B, above.

distribution website in the UAE: on 5 June, there were nearly 600 page views, up from almost zero the day before, and dropping back to zero the day afterwards[698].



5.30 Further, when the Qatari Embassy in Abu Dhabi tweeted that "Qatari citizens must leave the United Arab Emirates within 14 days *according to the statement issued by Emirati competent authorities*", no clarification or correction was forthcoming from the UAE[699]. That would have been the logical response had the Expulsion Order truly been issued "without authority" or was intended not to be binding.

5.31 In fact, the UAE's statements before the Court denying the mandatory purpose of the 5 June Expulsion Order *contradict* its representations to other UN bodies. In its September 2017 response to UN Special Rapporteurs' joint letter expressing concern at the human rights impacts of the UAE's Discriminatory Measures, the UAE admitted that:

> "the United Arab Emirates severed diplomatic ties with Qatar on 5 June 2017, at which point all Qatari residents in the United Arab Emirates *were ordered*

698 **Vol. XII, Annex 264**, DCL-181 Witness Declaration, Al Jazeera Media Network Representative, para. 8.

699 **Vol. II, Annex 1**, United Arab Emirates Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017) (emphasis added).

> *to leave* the country within 14 days and all Emirati residents in Qatar were instructed likewise."[700]

5.32 And finally, contrary to the UAE's current, self-serving argument, at the time, *Emirati officials themselves* viewed the Expulsion Order and Absolute Travel Ban as binding. For example, on the morning of 5 June, the Qatari Ambassador was called to a high-level meeting with the UAE authorities, at which it was confirmed to them that the terms of the 5 June Directive *were mandatory* and that all Qataris had to leave the country within 14 days[701]. Individual Qataris were likewise told by Emirati officials that compliance with the Expulsion Order was mandatory[702].

5.33 In sum, the UAE's Expulsion Order and Absolute Travel Ban, both individually and taken together, are explicit acts of racial discrimination on the

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[700] **Vol. II, Annex 23**, Reply of the Permanent Mission of the United Arab Emirates to the United Nations Office in Geneva to the Joint Communication from the Special Procedures Mandate Holders of the Human Rights Council, document HRC/NONE/2017/112 (18 September 2017), p. 2 (emphasis added).

[701] **Vol. XII, Annex 264**, DCL-181 Witness Declaration, Al Jazeera Media Network Representative, para. 8. While the UAE appears to contend that "[m]any of the persons who left were strongly encouraged to do so by instructions issued by the Embassy of Qatar in the UAE on 5 June 2017", CR 2018/13, p. 12, para. 11 (Alnowais), this is misleading and incorrect. As noted above, the Embassy re-tweeted the UAE's own announcement of the 5 June Directive to convey information to its citizens, informed them that Qatari diplomatic staff had been expelled, and tried to assist with information about travel routes for those that called. The only "instruction" that compelled Qataris to leave the UAE was the UAE's Expulsion Order. *See* Chap. II, Sec. II.A, above.

[702] *See, e.g.*, **Vol. VII, Annex 170**, DCL-011, paras. 11–12, 14 ("The policeman then instructed my wife that our children . . . would have to leave the UAE as soon as possible because they are Qatari."); **Vol. IX, Annex 204**, DCL-076, paras. 14, 18 ("[T]he official told me that if I did not leave before the deadline, the government would take action against me."); **Vol. IX, Annex 222**, DCL-105, para. 12 ("[A] police officer approached . . . and reminded me that . . . I had to leave the territory. . . . [and] that if I decided to stay, the police would "deal with me". . . . He ended the conversation by stating that he was executing orders[.]").

basis of national origin as defined by Article 1(1) and constitute the collective expulsion of all Qataris living in the UAE, in violation of Article 2(1) of the CERD.

2. The Expulsion Order and Absolute Travel Ban Had the Effect of Expelling Qataris on a Collective Basis

5.34 Further and in addition, the Expulsion Order and the Absolute Travel Ban had their intended *effect*: the collective expulsion of thousands of Qataris from the UAE without regard for their personal circumstances and without affording them any fundamental due process rights prior to being expelled.

5.35 *First*, Qataris were expelled. 72 of the individual complainants to the CCC stated that they fled the UAE in response to the Expulsion Order. A representative sample of 38 Qataris submitted declarations documenting their expulsion as a result of the UAE's actions and demonstrating that they were not provided the requisite due process protections[703]. These declarants had lived for years, and in some cases, decades, in the UAE. Those declarants who were in their homes in the UAE on 5 June 2017 were forced to leave behind their families, lives, studies, friends and possessions in a matter of days and with no consideration having been given to their personal circumstances[704]. One Qatari, who had lived in the UAE for almost two decades, stated that:

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[703] *See* **Vol. XII, Annex 272**, Affidavit, State of Qatar Compensation Claims Committee, Exhibit B (Portion of CCC Claims Database related to the UAE). 52 individuals fled between 5 and 18 June; 4 fled following the 14-day grace period; and another 16 individuals reported that they were in the UAE on 5 June, but did not specify the date upon which they left the UAE for Qatar.

[704] **Vol. VII, Annex 163**, DCL-001, paras. 7, 11 ("I was shocked . . . . I was also confused: what had I done that meant the UAE wanted to kick me out of the country? I did not want to leave

> "I could not believe the news. . . . It was hard to digest what was happening—I had been living in the UAE for almost 20 years, and suddenly I was supposed to leave my family, my home, my businesses and everything I knew."[705]

5.36 Of those affected, some individuals happened to be outside the UAE on 5 June 2017, and while not forced to flee, they nevertheless experienced the same painful result of being expelled from their homes and cut off from their lives in the UAE by virtue of the Expulsion Order and Absolute Ban[706]. The UAE's

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the UAE, because my entire life was there. But once I knew that the government had ordered me to leave, I felt that I needed to return to Qatar as quickly as possible."); **Vol. VII, Annex 180**, DCL-028, paras. 9, 24, 30 ("I lost my life in the UAE—the man I was about to marry, my friends. . . . My life fell apart."); **Vol. XI, Annex 247**, DCL-161, paras. 5, 6, 21, 26 ("The UAE forced me to abandon the independent life I built for myself there. With only two weeks notice, I had to leave my home, my career, and my friends."); *see also* **Vol. VII, Annex 166**, DCL-005, paras. 8, 15; **Vol. VII, Annex 167**, DCL-006, paras. 6–7, 15; **Vol. VII, Annex 168**, DCL-009, paras. 7, 12; **Vol. VII, Annex 172**, DCL-013, paras. 7, 16; **Vol. VII, Annex 173**, DCL-018, paras. 5, 7; **Vol. VII, Annex 175**, DCL-020; **Vol. VII, Annex 175**, DCL-021, paras. 6, 16; **Vol. VII, Annex 176**, DCL-022, paras. 4–5, 8; **Vol. VII, Annex 177**, DCL-024, paras. 6, 15; **Vol. VII, Annex 178**, DCL-025, paras. 6–7, 11; **Vol. VII, Annex 179**, DCL-027, paras. 7–8, 18; **Vol. VIII, Annex 187**, DCL-038, paras. 6–7, 14; **Vol. VIII, Annex 188**, DCL-040, paras. 6, 12–13; **Vol. VIII, Annex 190**, DCL-043, paras. 6–7, 21; **Vol. VIII, Annex 191**, DCL-046, paras. 6, 16–17; **Vol. VIII, Annex 200**, DCL-070, paras. 7, 15–17; **Vol. VIII, Annex 201**, DCL-072, paras. 7, 16; **Vol. IX, Annex 204**, DCL-076, paras. 13, 20; **Vol. IX, Annex 205**, DCL-078, paras. 6–7, 14; **Vol. IX, Annex 208**, DCL-082, paras. 7, 18; **Vol. IX, Annex 209**, DCL-083, paras. 6–7, 16; **Vol. IX, Annex 213**, DCL-089, paras. 5–6, 8–9; **Vol. IX, Annex 214**, DCL-091, paras.5, 8; **Vol. IX, Annex 222**, DCL-105, paras. 5, 13; **Vol. X, Annex 225**, DCL-109, paras. 10–11, 14; **Vol. X, Annex 236**, DCL-139, paras. 7, 11; **Vol. X, Annex 238**, DCL-143, paras. 11–12; **Vol. X, Annex 239**, DCL-144, paras. 8, 16; **Vol. X, Annex 240**, DCL-145, paras. 10, 15; **Vol. XI, Annex 247**, DCL-161, paras. 5, 6, 21; **Vol. XI, Annex 253**, DCL-168, paras. 5,18; **Vol. XI, Annex 256**, DCL-172, para. 7, 8, 14; **Vol. XI, Annex 259**, DCL-175, paras. 5–6, 14–15; **Vol. XII, Annex 268**, DCL-185, paras. 6, 9; **Vol. XII, Annex 270**, DCL-188, paras. 8–9, 11.

705 **Vol. IX, Annex 204**, DCL-076, paras. 11, 13.

706 *See, e.g.*, **Vol. VII, Annex 169**, DCL-010, para. 21 ("The greatest impact of the UAE's measures was to deprive me of my home in the UAE. I had a house, a car, and a life there . . . Suddenly, and without warning, all of that was taken away from me."); **Vol. VIII, Annex 192**, DCL-047, para. 22 ("Being separated from life in the UAE and my family has caused me a lot of stress and emotional pain. The UAE was my second home where I had my work

expulsion was not restricted to Qatari individuals, and included Qatari corporations expelled without notice or other due process, and swiftly enforced by the authorities, including the police forces[707].

5.37 In their declarations submitted to the Court, Qataris uniformly described their shock upon hearing of the sudden Expulsion Order on 5 June, and of learning that they had to leave the UAE within a matter of days[708]. Qataris consistently described the fear of remaining in the UAE contrary to the Expulsion Order[709]. As

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and my family."); **Vol. IX, Annex 224**, DCL-108, paras. 5, 18, 21 ("I moved to [the UAE] in the mid 1980s . . . On June 5, 2017, I was away home from, travelling in China for business . . . My family has lost everything as a result of the UAE's decision to sever ties with Qatar and order Qataris to leave the country: We lost our home, most of our belongings, and the lives we had built for ourselves in [the UAE]."); **Vol. VIII, Annex 196**, DCL-056, paras 25-26; **Vol. X, Annex 226**, DCL-112, paras. 11, 19.

707 The CERD protects the rights of legal persons, as well as those of individuals. *See* para. 5.147, below. Qatar Airways received notification by text that its licences had been cancelled; that very day and the day following, the UAE authorities – including the police forces – entered the QA premises to enforce the swift closure of its offices. **Vol. XI, Annex 244**, DCL-151 Witness Declaration, Qatar Airways Representative, paras. 14–18.

708 *See, e.g.*, para 5.35, nn. 696, 697, above; **Vol. VII, Annex 175**, DCL-021, para. 8 ("I was shocked by the news. . . . When I saw that it was a government body in the UAE that had issued the order that Qataris had to leave the country, I understood that it was mandatory. I would have to abandon my apartment and my studies . . ."); **Vol. VIII, Annex 190**, **DCL-043**, paras. 11–12 ("I was shocked. It was hard to believe. How could the UAE do this to its neighbor, brothers and sisters to one another?"); **Vol. XI, Annex 247**, DCL-161, paras. 11–13 ("The news confirmed everything[.] … Qataris had 14 days to leave the UAE and would be banned from reentering and entering the country. It was overwhelming and surreal. Upon seeing the news broadcast on television, I fainted and became ill."); *see also* **Vol. VII, Annex 163**, DCL-001, paras. 8–9; **Vol. VII, Annex 166**, DCL-005, paras. 9–10, 12; **Vol. VII, Annex 167**, DCL-006, paras. 10–13; **Vol. VII, Annex 174**, DCL-020, para. 9; **Vol. VII, Annex 177**, DCL-024, paras. 11–12; **Vol. VII, Annex 180**, DCL-028, paras. 12, 19; **Vol. VIII, Annex 187**, DCL-038, para. 9; **Vol. VIII, Annex 191**, DCL-046, paras. 11–13; **Vol. VIII, Annex 195**, DCL-053, para. 8; **Vol. VIII, Annex 201**, DCL-072, paras. 9, 14–15; **Vol. IX, Annex 209**, DCL-083, paras. 10–12; **Vol. XI, Annex 256**, DCL-172, paras. 13–14; **Vol. XI, Annex 259**, DCL-175, paras. 10–12.

709 *See, e.g.,* **Vol. VII, Annex 163**, DCL-001, para. 11 ("I was so scared that I did not leave my apartment that day until it was time to go to the airport…."); **Vol. VIII, Annex 190**, DCL-

one Qatari student living in the UAE explained: "[s]uddenly, the place I considered my home had become a scary place to live. Why? Simply because I was a Qatari"[710].

5.38 Many Qataris fled the UAE on 5 and 6 June 2017, leaving behind everything but their most essential belongings. As one Qatari student explained:

> "As I was leaving in a state of emergency, I packed my most prized possessions into my car with the help of my [redacted] friends. I was forced to leave the majority of my belongings behind, including all my furniture, a refrigerator, an oven and other kitchen appliances, cutlery, electronic items, and video games. I eventually left my apartment at 12:30 a.m. on 6 June, and have not returned to the UAE since."[711]

043, paras. 12, 15 ("The message that I heard was therefore loud and clear: Qataris are not welcome in the *UAE*. I suddenly felt very unsafe and under threat. I felt like I was a Qatari in 'enemy territory,' vulnerable to harassment and even attack."); **Vol. VIII, Annex 200**, DCL-070, paras. 11, 16 ("I became terrified that I would be arrested and that my family would never know where I was taken."); **Vol. X, Annex 259**, DCL-175, para. 13 ("The UAE's government shows no tolerance to its own people, why would they show mercy to me—someone they had ordered to leave the country?"); **Vol. VII, Annex 166**, DCL-005, para. 11; **Vol. VII, Annex 167**, DCL-006, paras. 10, 14–15 **Vol. VII, Annex 168**, DCL-009, para. 11; **Vol. VII, Annex 174**, DCL-020, para. 10; **Vol. VII, Annex 175**, DCL-021, para. 14; **Vol. VII, Annex 176**, DCL-022, para. 7; **Vol. VII, Annex 177**, DCL-024, para. 14; **Vol. VII, Annex 178**, DCL-025, para. 8; **Vol. VII, Annex 179**, DCL-027, paras. 12–13; **Vol. VIII, Annex 187,** DCL-038, para. 12; **Vol. IX, Annex 204**, DCL-076, para. 18; **Vol. IX, Annex 205**, DCL-078, paras. 11-12 ; DCL-082, para. 16; **Vol. VIII, Annex 209**, DCL-083, para. 15; **Vol. IX, Annex 213**, DCL-089, para. 9; **Vol. IX, Annex 214**, DCL-091, para. 8; **Vol. IX, Annex 215**, DCL-092, para.11; **Vol. XI, Annex 247**, DCL-161, para. 18; **Vol. XI, Annex 253**, DCL-168, paras. 16–17.

710 **Vol. VIII, Annex 200**, DCL-070, para. 11.

711 **Vol. VII, Annex 177**, DCL-024, para. 15; *see also* **Vol. VII, Annex 178**, DCL-025, para. 21 ("Leaving a country that I considered to be my home, after [redacted] years, with only a small bag of my belongings and the clothes I was wearing, has left me completely broken,

5.39 A Qatari who had worked in the UAE for over a decade prior to the Expulsion Order described the tense atmosphere at his office on the morning of 5 June, as non-Qatari managers called an emergency meeting with the company's Qatari employees: "[e]veryone understood that the UAE's announcement meant we had to leave the country, and we agreed that [we] . . . would leave the UAE that same day."[712] He also described the experience of leaving the UAE to return to Qatar:

> "I packed up as many of my valuables as I could in the time I had available[.] . . . Then I took a car to [redacted] airport and boarded the Qatar Airways flight to Doha . . . [S]everal other Qataris, including my colleagues . . . were on the same flight. We did not talk about the situation or the fact that we were leaving the UAE. Everyone looked tired and upset, and I could feel that we were all tense and very stressed"[713]

5.40 As another Qatari business-owner explained,

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with no sense of purpose. I am very depressed and feel like I have lost everything."); **Vol. X, Annex 239**, DCL-144, para. 16 ("I left of my belongings in my apartment in the UAE. I only brought my laptop and a few clothes."); **Vol. VII, Annex 163**, **DCL-001,** para. 11; **Vol. VII, Annex 166**, **DCL-005,** para. 22; **Vol. VII, Annex 179**, **DCL-027,** para. 17.

712 **Vol. VII, Annex 179**, DCL-027, para. 15. Other declarants explain their understanding of the mandatory nature of the Expulsion Order, *see, e.g.*, para. 5.35, n. 696, para. 5.37, nn. 700 and 701; **Vol. VII, Annex 167**, DCL-006, para. 13 ("All of us knew that we had to obey the order to leave the country. It was a direct instruction coming from the UAE authorities."); **Vol. XI, Annex 259**, DCL-175, para. 11 ("I immediately understood that this was a mandatory order. The fact that the government had placed a time limit in which to comply indicated to me that if I did not follow the terms of the announcement, I would face repercussions from the government.").

713 **Vol. VII, Annex 179**, DCL-027, paras. 17–18; *see also* **Vol. VII, Annex 166**, DCL-005 ("I recognized around [redacted] other [redacted] on the flight [to Doha] as fellow Qataris …[they] seemed afraid and tense, as if we were all in shock and unable to really process or discuss what had just happened to us.").

> "After June 5, I was so busy putting in place processes for the company to continue operations in my absence that I did not have time to think about what to do with my apartment or personal belongings in the UAE. When I left the UAE, I carried a few items that I would need immediately back to Doha with me, but left everything else . . . in the apartment."[714]

5.41 Several Qatari students who were living in the UAE in order to study at Emirati universities fled the UAE in the middle of their exam periods and could not sit for their exams.[715] Indeed, the Expulsion Order was enforced by the Universities in the UAE themselves, many of which expelled Qatari students simply because they were Qatari. According to the OHCHR, writing only six months after the UAE issued its Expulsion Order and Absolute Travel Ban:

> "[t]he expulsion of Qatari students who were studying in KSA, UAE, Bahrain and Egypt has had a detrimental effect on the right to education as Qatari students who were prevented from either pursuing their studies or passing their exams. Students in KSA, Bahrain, and reportedly particularly in UAE, were ordered to immediately return to Qatar, often by the administration of universities. According to information collected by the team, this was generally not followed by any formal or personalized communication."[716]

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[714] **Vol. XI, Annex 253**, DCL-168, para. 19.

[715] *See, e.g.*, **Vol. VII, Annex 163**, DCL-001, para. 12; **Vol. VII, Annex 166**, **DCL-005**, para. 6; **Vol. VII, Annex 167**, DCL-006, para. 15; **Vol. VII, Annex 175**, DCL-021, paras. 15–16; **Vol. VIII, Annex 190**, DCL-043, para. 15; **Vol. IX, Annex 222**, DCL-105, para. 15; **Vol. X, Annex 239**, DCL-144, para. 15; **Vol. XI, Annex 256**, DCL-172, para. 13.

[716] **Vol. III, Annex 98**, OHCHR Report, para. 50 (emphasis added).

5.42 One Qatari student described how he was removed from campus in the middle of an exam on 16 June:

> "a University security guard accompanied by a member of the University's administration walked into the exam hall. The security guard looked around the room and pointed at three Qataris, myself included, and asked us to stand up and leave the hall . . . The security guard . . . said that we should no longer enter the University campus, and that we should leave the UAE given the 5 June announcement."[717]

5.43 Another Qatari studying in the UAE was informed by an administrator that she was "no longer a student" of her university[718]. A Qatari student enrolled at a public Emirati institution received an email stating that the registration of *all* Qatari students in his program had been frozen[719].

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717 **Vol. IX, Annex 222**, DCL-105, paras. 10-11.

718 **Vol. VIII, Annex 200**, DCL-028, para. 14; *see also* **Vol. VII, Annex 249**, DCL-164, para. 12 ("I received an email to my student account from the head of my college apologizing and informing me that I would not be able to continue with my [redacted] program.").

719 **Vol. VIII, Annex 202**, DCL-073, para. 18; *see also* European Parliament Subcommittee on Human Rights, Testimony of Jawaher Al Meer (19 February 2019 at 11:42:08), http://www.europarl.europa.eu/ep-live/en/committees/video?event=20190219-0900-COMMITTEE-DROI (describing her experience as a Qatari student at the Sorbonne, Abu Dhabi at the time of the 5 June Directive: "I emailed the admission saying what can I do, what's next. They sent me an email the second day…I open the attachment and found a transfer paper to Paris. Without any explanation whatsoever. . . . I got the emotional shock, the cultural shock.. all shocks possible in 20 days.…So meanwhile, in the same time of going to classes, I had to do legal papers, finish my apartment, skyping the shipment company in Abu Dhabi to pick up my things . . . I put pressure on my family emotionally, financially, god knows how much they paid. I was always the daughter that they'll do the best for education… but not that much, it was too much to handle.").

5.44 Of course, the number of CCC claimants and declarants substantially understates the number of Qataris impacted, as they include only those who stepped forward to self-report[720]. The actual number of Qataris impacted is far greater. For example, passenger records maintained by Qatar Airways show that a total of 2,651 Qataris flew to Doha on Qatar Airways' flights from the UAE, Kuwait and Oman during the 14-day grace period between 5 and 18 June 2017[721].

5.45 Before the UAE's aviation restrictions on direct flights between the two countries went into effect in the early hours of 6 June, 172 Qataris departed the UAE on Qatar Airways' final flights from the country; 107 of those Qataris purchased their tickets *on* 5 June in order to leave the country hours later.[722]

5.46 As a result of the UAE's decision to cut direct air routes between the UAE and Qatar on 6 June, Qataris fleeing the UAE after that date and choosing to fly could do so only indirectly, many through the traditional transit hubs of Kuwait and Oman. While Qatar cannot obtain confirmation that all of the passengers from Kuwait and Oman originated from the UAE, the ticket purchase timing and anomalous travel patterns of Qataris using these routes indicate a strong link to the UAE's actions. Of the Qataris flying from Kuwait City and Muscat to Doha on Qatar Airways flights during the first two days of

720 **Vol. XII, Annex 272**, Affidavit, State of Qatar Compensation Claims Committee.

721 **Vol. XI, Annex 244**, DCL-151 Witness Declaration, Qatar Airways Representative, paras. 25, 29.

722 **Vol. XI, Annex 244**, DCL-151 Witness Declaration, Qatar Airways Representative, para. 26.

the grace period alone, 485 purchased their tickets *after* the UAE ordered Qataris to leave the country[723].

5.47 During the entire 14-day evacuation period (including after direct flights were cut off on 6 June 2017), a total of 2,479 Qataris flew to Doha from airports in Oman and Kuwait; of this group, the vast majority—1,966 Qataris—purchased their tickets *after* the UAE ordered Qataris to leave the country on 5 June[724]. These numbers of travelers were exponentially larger than the number in comparable periods in comparable years. The average number of Qataris flying from Kuwait City increased by as much as 396%[725], while the average number of Qataris flying from Muscat increased by as much as 825%[726]. On Tuesday, 6 June—the first full day in which there were no direct flights linking the UAE to Qatar—353 Qataris traveled from Kuwait City to Doha—an increase of up to 4,313% compared to prior average use of this route by Qataris[727]. Notably, even these numbers depicting the flight of thousands of Qataris significantly understate the total number of Qataris who fled, as they do not include individuals who departed on airlines other than Qatar Airways or by land for the seven-to-eight-hour car trip across Saudi Arabia from Abu Dhabi or Dubai to Qatar.

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723 **Vol. XI, Annex 244**, DCL-151 Witness Declaration, Qatar Airways Representative, paras. 26, 30, 35–36, 41.

724 **Vol. XI, Annex 244**, DCL-151 Witness Declaration, Qatar Airways Representative, para. 30.

725 **Vol. XI, Annex 244**, DCL-151 Witness Declaration, Qatar Airways Representative, para. 32.

726 **Vol. XI, Annex 244**, DCL-151 Witness Declaration, Qatar Airways Representative, paras. 32, 39.

727 *See* **Vol. XI, Annex 244**, DCL-151 Witness Declaration, Qatar Airways Representative, paras. 30, 34.

5.48 The UAE's own evidence from the provisional measures phase—put in its proper context—also demonstrates the significant decrease in the number of Qataris in the UAE following the 5 June Directive. By the UAE's own account, Qataris entered and exited the UAE around 8,000 times in the period 5 June 2017 through 20 June 2018, and taking account that over half were Qatari exits from the UAE, that amounts to approximately 300 Qatari entries into the UAE per month[728]. But what the UAE omits is the full, comparative picture: Qatari movements *prior to* the Expulsion Order and Absolute Travel Ban. During the period 1 January 2016 to 4 June 2017, the day before the Discriminatory Measures were imposed, the Qatari Government recorded 321,088 Qatari entries into UAE[729]. This translates to approximately 18,800 Qatari entries per month. These data demonstrate a *98% decline in the number of Qataris entering the UAE after the 5 June Directive.*

5.49 The fact that the number of Qataris in the UAE plummeted after 5 June 2017 is also evident from phone and banking records that document the precipitous decline in the number of Qataris present in the UAE after 5 June 2017. As stated, Ooredoo Qatar, the largest telecommunications company in Qatar, reports that the number of Qatari customers roaming in the UAE *dropped by 96%* between May 2017 and July 2017, one month after the imposition of the measures[730]. A second carrier's data confirms the decline: in

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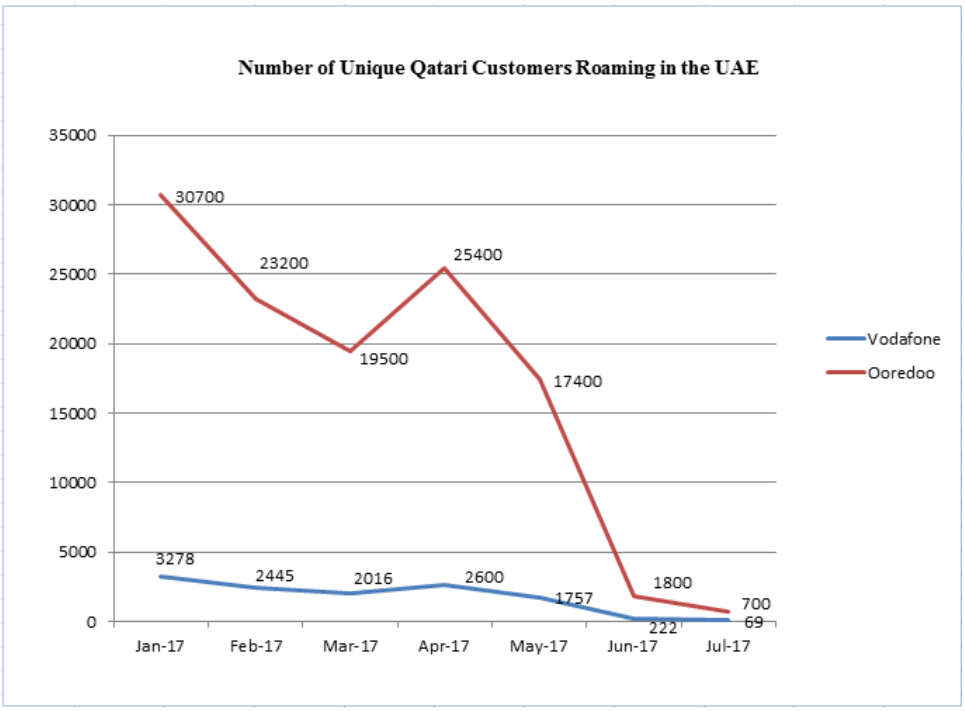
728 *See* para 4.50, above. The UAE's Annex shows 8,390 movements that appear to be comprised of 4,345 exits from the UAE and 4,045 entries into the UAE. Focusing on just entries, that translates to roughly 300 entries per month. *See* **UAE Exhibit 14** (Immigration – Complete Entry-Exit Records).

729 **Vol. XII, Annex 276**, Affidavit, Airport Passports Department, State of Qatar Ministry of Interior, para. 3.

730 In May 2017, there were 17,400 unique Qatari Ooredoo customers present and utilizing their network in the UAE. In June 2017, that number plummeted to 1,800 unique customers and in

May 2017 there were 1,757 unique Qatari Vodafone customers roaming in the UAE; that number dropped to 222 in June 2017 and to just 70 in July 2017[731]. This, again, represents a decrease of 96% of Vodafone's Qatari customers[732].



5.50 The level of Qatari debit card transactions in the UAE also steeply declined after June 2017. The National ATM & POS Switch system ("***NAPS***") processes transactions based on debit cards, which have been issued locally within Qatar. Its records show transactions made on Qatari debit cards in the UAE

July 2017, the number went down to 700. **Vol. XII, Annex 277**, Affidavit of Youssef Abdullah Al-Kebesi, Chief of Operations, Ooredoo Qatar, Annex A.

731 **Vol. VII, Annex 179**, Affidavit of Hamad bin Abdullah Al Thani, Chief Executive Officer, Vodafone Qatar Co, Annex A.

732 **Vol. VII, Annex 179**, Affidavit of Hamad bin Abdullah Al Thani, Chief Executive Officer, Vodafone Qatar Co, Annex A.

ranging from a high of approximately USD 27 million in January 2017 to a low of approximately USD 2.7 million in June 2017, while, prior to June 2017, NAPS transactions for each month totaled between USD 18.9 million and USD 27 million[733].

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5.51 In short, the UAE's collective expulsion of all Qataris—by which the UAE targeted Qataris as a group, on the basis of their national origin—is exemplary of racial discrimination prohibited by the CERD. It is, by definition, arbitrary, and can never qualify as proportionate to a legitimate aim. It had both the purpose and effect of undermining Qataris' fundamental due process rights and thus constituted an act of racial discrimination contrary to Article 2(1).

C. The Collective Expulsion of Qataris Also Violated Article 5(a) and Article 6 of the CERD

5.52 As set out above, the Expulsion Order made no provision for challenge by individual Qataris before a competent court or tribunal before Qataris were expelled. As a result, the UAE violated Articles 5(a) and 6 of the CERD.

5.53 Article 5(a) goes to the "right to equal treatment before the tribunals and all other organs administering justice"[734]. Article 6 provides that States parties:

> "shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State

[733] **Vol. XII, Annex 275**, Affidavit, Qatar Central Bank, Appendix A.

[734] **Vol. III, Annex 92**, CERD Art. 5(a).

> institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."[735]

5.54 Both the right to equal treatment before a competent court or tribunal and access to *effective* remedies are central components of human rights law in general and the CERD in particular[736]. In other words, as observed by Professor Thornberry in his commentary of the CERD, Article 6 is not only structural in nature, "laws must also be *effectively implemented* through an infrastructure of mechanisms appropriate to the task"[737].

5.55 Here, the UAE has violated both Article 5(a) and Article 6 for two reasons.

5.56 *First*, the Expulsion Order and Absolute Travel Ban automatically run afoul of Article 5(a) and Article 6, because they expelled Qataris, without, on their face, making any provision for individual recourse against their application on a collective basis. Qataris therefore were deprived of equal access to effective remedy (or any remedies) before Emirati courts or other competent public entities prior to application of the Expulsion Order[738]. The discrimination in this case is a

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735 **Vol. III, Annex 92,** CERD, Art. 6.

736 *See, e.g.*, UDHR, Arts. 7, 8; ICCPR, Arts. 14, 2(3).

737 **Vol. VI, Annex 150**, P. Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination* (Oxford University Press, 2016), p. 427.

738 *See also* **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens, Sixty-fifth session* (2005), p. 4, para. 25.

matter of Emirati policy and practice, propagated by Emirati government officials at the highest levels.

5.57 *Second*, as described above, the well-documented systemic flaws in the UAE's judicial system (particularly in the context of cases involving purported national security concerns and non-nationals), operate to ensure that, even if provision had been made for recourse, there could be no effective remedy for Qataris collectively expelled to challenge the Order[739].

5.58 The CERD Committee, in its practice, has expressed its concern about violations of Article 5(a) and Article 6 in similar circumstances. As noted already, in its Concluding Observations to the Dominican Republic calling attention to instances in which "*migrants of Haitian origin*" had been collectively expelled, the CERD Committee noted in particular the failure to provide "equal access to effective remedies" such as "the right to challenge expulsion orders"[740].

5.59 The same is true here. The UAE violated Article 5(a) and Article 6 by virtue of its Expulsion Order and Absolute Travel Ban because it failed to provide

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739 *See* paras. 4.56–4.60, above.

740 CERD Committee, *Concluding Observations of the Committee on the Elimination of Racial Discrimination, Dominican Republic*, document CERD/C/DOM/CO/12 (March 2008), para. 13. The ECtHR has found that "[i]n expulsion cases… enforcement of the contested State measure produce[s] irreversible consequences," and that persons who have been collectively expelled "retain[] an interest in having [an expulsion order] quashed, unless their departure had been voluntary." ECtHR, *Čonka v. Belgium*, Application No. 51564/99, Final Judgment (5 May 2002), para. 72. In *Georgia v. Russia,* the ECtHR dismissed Russia's argument that domestic remedies had not been exhausted, because such remedies were found not to be available to affected Georgians as a result of, *inter alia*, the closure of transport links and all other means of communication between the two States. ECtHR, *Georgia v. Russia (I)*, Application No. 13255/07, Judgment (Merits) (3 July 2014), paras. 147–158.

equal access to recourse against, or remedies for, those orders prior to its collective expulsion of Qataris.

Section II. The UAE's Maintenance of the Absolute Travel Ban Violated and the Modified Travel Ban Continues to Violate Articles 2(1), 5(a), 5(d)(iv), 5(d)(v), 5(e)(i), 5(e)(v) and 6 of the CERD

5.60 For the first week following 5 June 2017, the Absolute Travel Ban was categorical in nature. No exceptions were made to its terms and no recourse was provided against its blanket and indiscriminate application. While the UAE has since made some cosmetic modifications to its Travel Ban, to this day, the UAE continues to implement its Modified Travel Ban in an arbitrary and discriminatory manner, contrary to the letter and the object and purpose of the CERD.

5.61 The Absolute Travel Ban—and subsequently the Modified Travel Ban—operated to keep out of the UAE both Qataris who had been living in the UAE prior to 5 June 2017, as well as those who were not living in the UAE, but who had significant links to that country, whether as a result of family ties, their studies, property that they owned, or their work[741]. Accordingly, the UAE's Absolute and Modified Travel Bans impacted not only those Qataris who were expelled as discussed above, but also those Qataris who did not live in the UAE, but who had built substantial lives there. The rights of these Qataris to family, education, property, work, and equal treatment before Emirati tribunals were fundamentally compromised by the UAE's arbitrary and discriminatory

[741] *See, e.g.,* para. 5.35, nn. 704, 706, above; *see also* **Vol. VII, Annex 169**, DCL-010, paras. 5–7; **Vol. VII, Annex 170**, DCL-011, para. 18; **Vol. VII, Annex 171**, DCL-012, para. 7; **Vol. VII, Annex 184**, DCL-033, paras. 7–8; **Vol. VIII, Annex 189**, DCL-041, para. 8; **Vol. VIII, Annex 202**, DCL-073, para. 12–13; **Vol. IX, Annex 218**, DCL-097, paras. 7–10; **Vol. X, Annex 228**, DCL-121, para. 8–9; **Vol. X, Annex 237**, DCL-140, paras. 5–6.

imposition of the Absolute and Modified Travel Bans. This resulted in independent violations of Articles 2(1), 5(a), 5(d)(iv), 5(d)(v), 5(e)(i), 5(e)(v) and 6 of the CERD.

A. The Absolute Travel Ban Was Neither Legitimate nor Proportional

5.62 As set out above, while States have broad latitude to control entry into and residence in their territory, in so doing they are required to respect certain fundamental tenets of international human rights law, including their obligation not to engage in acts or practices of racial discrimination that in purpose or effect undermine fundamental human rights and freedoms[742]. For the reasons set out below, the UAE's Absolute Travel Ban fails on this basis: it does not pursue a legitimate aim, nor is it proportional to the achievement of a legitimate aim.

5.63 *First*, as discussed above, the UAE's aim in putting in place the Absolute Travel Ban cannot be legitimate, as it admits that it did so in order to coerce the Qatari State to yield sovereign control over internal and external policy, through the collective punishment of Qataris[743]. Nor does the UAE's stated aim of "national security" provide the requisite legitimacy, for the reasons stated above[744]. Invocations of "national security" and "terrorism" do not function as talisman that shield a State's measures from scrutiny under international human rights law.

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742 *See* para. 3.54, above.

743 *See* para. 1.19, above.

744 *See* paras. 2.68–2.69, above.

5.64 As the CERD Committee clarified in General Recommendation 30, States Parties must "ensure that any measures taken in the fight against terrorism do not discriminate in purpose or effect, on the grounds of . . . national [] origin"[745]. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has likewise noted that "States must refrain from pretextual use of exaggerated economic and national security concerns that are not grounded in objective reality in order to justify racist and xenophobic practices in the context of citizenship, nationality and immigration laws and policies."[746]

5.65 *Second*, the Absolute Travel Ban was *not proportional* to achieving the UAE's purported (and pretextual) "national security" objective. The 5 June Directive subjected all Qataris—and only Qataris—to the Absolute Travel Ban, pursuant to which Qataris were, without exception, "prevent[ed] from entering the UAE or crossing its points of entry." As such, the Absolute Travel Ban singled out one group of non-nationals, and subjected that group to the most restrictive "immigration" measure imaginable based *solely* on their membership in a protected class. The Absolute Travel Ban brooked no exceptions, and provided no recourse for challenge by Qataris either in general or in relation to each Qatari's individual circumstances.

5.66 The UAE cannot seriously argue—and has not attempted to argue—that *all* Qataris constituted a national security threat to the UAE. In any event, a

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745 **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens, Sixty-fifth session* (2005), para. 10.

746 United Nations Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, *Thirty-eighth session*, document A/HRC/38/52 (25 April 2018), para. 65.

blanket ban targeting all Qataris because they are Qatari is inherently unlawful. As explained above, both the CERD Committee and the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance have identified immigration regulations as liable to engage a State's non-discrimination obligations under the CERD and have emphasized that differential treatment "between citizens and non-citizens or between different groups of non-citizens, are permissible only if they serve a legitimate objective and are proportional to the achievement of that objective"[747]. In this context, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has opined that "*blanket bans* on specific nationalities and other immigration measures that exclude on the basis of race, colour, ethnicity or national origin *are unlawful*" under the CERD[748].

5.67 In other words, blanket entrance bans on particular groups of non-citizens, by definition, cannot satisfy the CERD's legitimacy and proportionality requirements. That is because—like collective expulsion orders—such bans are arbitrary and fundamentally undermine the rights of the targeted individuals without taking their personal circumstances into account or providing any recourse.[749]

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747 *See* para. 3.48-3.52, 3.55, above.

748 United Nations Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Thirty-Eighth Session*, document A/HRC/38/52 (25 April 2018), para. 67(b) (emphasis added).

749 *See* paras. 5.12–5.13, above.

B. THE MODIFIED TRAVEL BAN IS NEITHER LEGITIMATE NOR PROPORTIONAL

5.68 Beginning on 11 June 2017, the UAE announced carve-outs to the Absolute Travel Ban that were simultaneously limited in scope and entirely cosmetic in effect.

5.69 On 11 June 2017, the UAE announced that its President had "instructed the authorities concerned to take into consideration the humanitarian circumstances of Emirati-Qatari joint families . . . [I]n implementation of these directives, the Ministry of Interior has set up a telephone line (+9718002626) to receive such cases and take appropriate measures to help them."[750]

5.70 Almost a year later, on 5 July 2018, the UAE issued another statement, in the context of the hearing on provisional measures:

> "Since its announcement on June 5th, 2017, pursuant to which the United Arab Emirates (UAE) took certain measures against Qatar for national security reasons, the UAE has instituted a requirement for all Qatari citizens overseas to obtain prior permission for entry into the UAE. Permission may be granted for a limited-duration period, at the discretion of the UAE Government.
>
> The UAE Ministry of Foreign Affairs and International Cooperation wishes to confirm that Qatari citizens already resident in the UAE need not apply for permission to continue residence in the UAE. However, all Qatari citizens resident in the

[750] **Vol. II, Annex 13**, United Arab Emirates Ministry of Foreign Affairs, *President issues directives to address humanitarian cases of Emirati-Qatari joint families* (11 June 2017), https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/11-06-2017-UAE-Qatar.aspx#sthash.z7G6Rt1q.dpuf.

> UAE are encouraged to obtain prior permission for re-entry into UAE territory.
>
> All applications for entry clearance may be made through the telephone hotline announced on June 11, 2017 (+9718002626).[751]"

5.71 Following this announcement, at some point during the late summer or fall of 2018, the UAE seems to have established an online system for Qataris to apply for authorization to travel to the UAE. There was no official UAE government notice or announcement regarding this system; to the contrary, selected Qataris individually were informed by Emirati security officials, either at the border or over the "hotline" that they had to apply to an "online" system[752]. Qatar subsequently discovered a travel update posted on the Emirates airline's website, ostensibly dated 16 August 2018, which states:

> "Qatari nationals will be granted entry into the UAE on providing proof of first degree relatives (father, mother, husband, wife and children), who hold valid UAE citizenship.
>
> In addition, Qatari students enrolled in the UAE as well as persons in emergency or humanitarian

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751 **Vol. II, Annex 13**, United Arab Emirates Ministry of Foreign Affairs, President issues directives to address humanitarian cases of Emirati-Qatari joint families (11 June 2017), https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/11-06-2017-UAE-Qatar.aspx#sthash.z7G6Rt1q.dpuf.

752 *See, e.g.*, **Vol. VII, Annex 184**, DCL-033, para. 18 ("Over the course of a few days, I called the hotline approximately ten times . . . . The person that answered the [tenth] call directed me to a website where I could apply for a permit to enter the UAE and visit my family."); **Vol. X, Annex 231**, DCL-125, para. 24 ("When I tried to apply this time, I was told [by the hotline operator] that I had to apply using a website."); **Vol. VIII, Annex 185**, DCL-036, para. 23 ("The UAE [customs] officers asked my wife to register . . . via a link to the UAE Ministry of Interior's website.").

> situations will be granted entry provided they submit a request to the UAE Federal Authority for Identity and Citizenship through the following link: https://beta.echannels.moi.gov.ae/echannels/web/client/guest/index.html#/dashboard
>
> For more information on Qatari nationals traveling to the UAE, please call the Federal Authority for Identity and Citizenship's toll free number 8002626 or +971-8002626."[753]

5.72 Just like the Absolute Travel Ban, the Modified Travel Ban (in all its iterations) does not pursue a legitimate aim and, even if it did, it is an entirely disproportionate means of achieving that aim. As already noted, the Modified Travel Ban serves an illegitimate end and remains pretextual—a means of collectively punishing the Qatari people for alleged crimes it says have been committed by the Qatari State[754]. Further, and as set out in detail in above, the

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[753] **Vol. VI, Annex 157**, Emirates Airline, *Help Centre: Travel updates*, https://www.emirates.com/ae/english/help/travel-updates.aspx#/#4258319.

[754] *See, e.g.*, para. 2.68, above; para. 4.46, n. 561, above (quoting **Vol. VIII, Annex 193**, DCL-048, para. 24); **Vol. VIII, Annex 185**, DCL-036, paras. 21–22 ("She answered that she was going to visit her [redacted] and then was asked to provide his ID, although she had never been asked for that before . . . [w]hen immigration officers realized that my wife had Qatari children and was married to a Qatari, they took her to an office and started questioning her. A man who looked like a soldier asked her about Qatar, how Qataris treated her, and whether she had been mistreated or insulted. She answered that her only problem was the permit to travel to the UAE. He replied, 'You are Emirati, this is your country but because your children are Qatari, we have to go through this process'"); **Vol. VIII, Annex 193**, DCL-048, para. 24 ("I once called the hotline and was asked to provide many personal details and documents. That just increased my fear"); **Vol. IX, Annex 206**, DCL-079, para. 24 ("Each time I spoke to someone, it was someone new. They would ask the same questions: who was I visiting, with whom, and where we would stay—although I believe that they already had my file containing my application, the documents I provided, details I already gave, and even the history of my calls before them because they asked tailored questions on details I had given to someone else. Yet, they made me repeat my story many times and provide the same documents over and over…"); **Vol. X, Annex 231**, DCL-125, para. 15 ("In the airport in Dubai, I was taken to a special office where I was asked many questions, for example about why I was visiting, what my address was, how many days I was staying, and what my

hotline is run by the Abu Dhabi police as a "security channel" and its true aim appears to be to collect information in order to identify those who call the hotline and their families as targets for harassment by UAE officials[755]. For this reason alone, the Modified Travel Ban fails to meet the legitimacy criterion.

5.73 In addition, the Modified Travel Ban cannot be deemed a legitimate differentiation between different groups of Qataris on the basis of national security concerns. While the various iterations of the Modified Travel Ban are inconsistent and unclear, it appears that they fall into the following three categories of conduct: (*i*) from 11 June 2017 to 4 July 2018, the UAE maintained a narrow purported exception to the Absolute Travel Ban, in the form of a "hotline" available only for Emirati-Qatari "joint families," while the Absolute Travel Ban continued to apply to all other Qataris; (*ii*) from 5 July 2018 to the present, the UAE maintained the same "hotline," but stated Qataris could "obtain prior permission for entry into the UAE" for a "limited-duration period, at the discretion of the UAE Government," and that Qatari citizens "already resident" in the UAE could obtain prior permission for re-entry into the UAE; and (*iii*) from sometime during the fall of 2018 to the present, the UAE advised only some Qataris informally that they could apply through an "online" system for authorization to enter the UAE if they could provide proof of "first degree relatives," or were "students" or "persons in emergency or humanitarian situations"[756].

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grandmother's telephone number was".); **Vol. VII, Annex 171**, DCL-012, paras. 10–11; **Vol. XI, Annex 247**, DCL-161, para. 25.

755 *See, e.g.*, paras. 4.45–4.47, above.

756 *See* Chap. II, Sec. II.B., above.

5.74 Accordingly, at various times the UAE has stated that Qataris with a first-degree Emirati relative, Qataris enrolled at educational institutions in the UAE, and Qataris who may be suffering from an emergency or humanitarian crisis are exempted from the Absolute Travel Ban[757]. But these categories (and the Qataris not captured by these categories) have no logical link to the purported "threat" to the UAE's national security, and they still involve subjecting Qataris—and only Qataris—to differential treatment because they are Qatari.

5.75 Indeed, the Modified Travel Ban is illegitimate because it is arbitrary, non-transparent, ineffective, and itself a violation of the CERD[758]. As explained in further detail above, the "hotline" has been decried by expert observers as nothing more than a cosmetic response to the outcry from international human rights organizations against the Absolute Travel Ban[759]. It is arbitrary and entirely opaque, and has resulted in instances of tracking and harassment[760]. Calls

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757 *See* **Vol. II, Annex 13**, United Arab Emirates Ministry of Foreign Affairs, *President issues directives to address humanitarian cases of Emirati-Qatari joint families* (11 June 2017), https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/11-06-2017-UAE-Qatar.aspx#sthash.z7G6Rt1q.dpuf; CR 2018/13, p. 13, para. 14 (Alnowais) ("Earlier this year, my Government asked all post-secondary institutions in the UAE to contact Qatari students who discontinued their studies to ensure they understood that they were welcome to return.").

758 *See* Chap. V, Sec. II.C, below.

759 *See* para. 2.32, n. 81, above.

760 *See* paras. 4.45–4.47, 5.72, above; **Vol. VII, Annex 165**, DCL-004, para.19 ("When my son finally arrived in [redacted], he was interrogated for four hours before being allowed to exit the airport…My son was utterly terrified. He is young and had never experienced questioning like this before."); **Vol. VII, Annex 170**, DCL-011, para.20: "My wife noticed that, upon arrival in the UAE, the immigration officers do not stamp our children's passports at the same counter as hers, which was not the case prior to 5 June 2017. Each time, they send the children to another line…"); **Vol. IX, Annex 206**, DCL-079, para. 21 ("When my mother arrived at the airport in the UAE, she had to go through a different line than the line for GCC citizens. She was taken to an office upon arrival by two men wearing civilian clothes, who she believed were officers. They asked her questions about the purpose of her visit, who she was visiting, and how she was related to them. They questioned her for an hour".).

frequently go unanswered[761]. The UAE authorities operating the "hotline" issue inconsistent decisions, including with regard to the same callers on the basis of the same information[762]. And even where a Qatari receives authorization to travel, they are sometimes still denied entry at the border[763].

5.76 While the UAE has made certain cosmetic alterations to the hotline, namely, it is now formally housed within the Federal Authority for Identity and Citizenship[764]—the nature and process of the hotline has not changed; the hotline number is the same, it continues to be operated as a security channel apparently within the Ministry of Interior, and it still operates as arbitrarily and ineffectively as ever[765].

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761 *See* para. 4.48, above; **Vol. IX, Annex 222**, DCL-105; para. 18 ("I was asked questions about my University and the number of courses I had left to graduate. I replied that I . . . was expelled from the country. The operator objected to the way I had responded and asked whether I was recording the call given the manner in which I spoke. I replied in the negative. He advised me to send a copy of my passport to the hotline on WhatsApp, along with a copy of my plane ticket. However, the operator then said it was actually better for me if I did neither of these things, because the UAE was not going to allow me to enter the country in any case. […]"); **Vol. X, Annex 231**, DCL-125, para. 15 ("That's when I realized that they had no idea what they were doing").

762 *See* para. 4.49, above.

763 *See* para. 4.49, above.

764 UAE Cabinet, *President Issues Federal Decree Amending Emirates Identity Authority Establishment*, https://www.uaecabinet.ae/en/details/news/president-issues-federal-decree-amending-emirates-identity-authority-establishment-federal-law. *See* Federal Law No. (3) of 2017, Article 2, https://www.ica.gov.ae/en/emirates-id/laws-and-legislation.aspx ("The Authority also deals with nationality and passports and the entry and residence of foreigners in the State and shall be responsible for the formulation of the relevant policy and ensure their implementation in accordance with the provisions of this Decree Law and laws and regulations and decisions in force in the State.").

765 *See* paras. 4.45–4.49, above.

5.77 Further, the UAE's latest iteration, its "e-Channel" system[766], remains arbitrary[767]. And tellingly, as noted, there has been no official announcement of the application method, nor a description of its interplay with the "hotline," nor any of the basic guarantees of due process[768] that would need to be implemented if the UAE had a genuine wish to make the mechanism effective.

5.78 The hotline process—whether by phone or via the website – is entirely misconceived for the purpose of complying with the Order. *Even if* it worked effectively, the temporary visits that it is designed to facilitate would not qualify

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766 **Vol. VI, Annex 157**, Emirates Airline, Help Centre: Travel updates, https://www.emirates.com/ae/english/help/travel-updates.aspx#/#4258319.

767 **Vol. VIII, Annex 188**, DCL-040, para. 12 ("My [brother] tried to apply on my behalf for travel authorization using an online application on the UAE's Federal Authority for Identity and Citizenship website . . . The application included a prompt for an ID number, but I do not have an Emirates ID number, so we [redacted] how to complete the form. It was impossible to submit the form without filling in this field. My family called a phone number in the UAE for assistance, but no-one picked up the phone."); **Vol. X, Annex 231**, DCL-125, para. 26 ("This time I was rejected and told that my [redacted]. I then applied again, but I found out after reaching back out that my application was again rejected, this time without any explanation. I asked why it had been rejected, but the person simply told me that maybe there was something wrong with my application and that I should just apply again"); **Vol. XII, Annex 269**, DCL-187, para.12 ("I tried first to get a travel license to travel there by using a UAE official website during 2018. Because there were a lot of required documents and the process was long, I quit my application to get a travel license. I decided to try again in early [. . .] 2019. I passed through a long and arduous process on the website that required many steps from me and I was required to submit many documents. Despite submitting all the required documents, my application was still pending on the day I planned to travel. Although my application was not refused, it was not approved either, and I could not travel").

768 *See* Chap. IV, Sec. I.B.1., above; **Vol. X, Annex 233**, DCL-132, para.13 ("When entering the UAE on each of these trips, I was taken aside and questioned. The pattern was similar each time - once the immigration officials saw my Qatari passport, they told me to visit the offices beside customs and passports office at the airport. The officers there reviewed my permission to enter the UAE, and questioned me for about 30 minutes regarding the purpose of my visit, who I would be visiting and where I would be staying. They even asked me to provide them with my mobile phone number. Only after this interrogation was over was I allowed to enter the UAE").

as “reunification”, nor a genuine “opportunity” to continue with education in the UAE, nor has it enhanced in any way “access to justice”. Families, for example, cannot build relationships in the way they choose, they cannot support each other, and they cannot plan with each other or provide any certainty to their children[769]. Students cannot study based on this system—they need a visa for a specific number of years (not days) and the ability to travel home[770]. Access to judicial mechanisms continues to be undermined by an inability to find a lawyer, and a lawyer that is free from harassment regardless of the origin of their client, to communicate with them, transfer documents to them, and change representation if the lawyer does not prove effective[771].

5.79 Many Qataris who purportedly fall within one of the UAE’s carve-outs under the Modified Travel Ban remain unable to enter the UAE. For example, one Qatari woman living in Doha was unable to travel to the UAE for a close relative’s funeral, or to visit another relative in the UAE—who has since also passed away—despite numerous attempts to obtain authorization through the UAE’s hotline. She reported that, in mid-2018, she

> “called the hotline at least 50 times a day. Only around six of these calls were answered. Each time somebody answered they told me that they were going to call me back. I received around four calls back from the hotline. Each time I spoke to someone, it was someone new. They would ask the same questions: who was I visiting, with whom, and where we would stay—although I believe that they

769 *See* paras. 5.101–5.106, below.

770 *See* paras. 5.113–5.116, below.

771 *See* para. 5.140, below.

> already had my file containing my application, the documents I provided, details I already gave, and even the history of my calls before them because they asked tailored questions on details I had given to someone else. Yet, they made me repeat my story many times and provide the same documents over and over.
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> …
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> As I had booked tickets to travel on [redacted] 2018, someone from the hotline called me and asked why we had purchased tickets to travel on the day we were applying. I explained that I had first applied on [redacted] 2018. I postponed our plane tickets to [redacted] 2018 . . . I called the hotline another 70 times between [redacted]; they only answered six times. During my last discussion with them, they asked me to stop calling because I was calling too frequently and told me that someone would call me back. No one ever did."[772]

As she was unsuccessful in obtaining authorization through the hotline in mid-2018, the Qatari woman could not attend her relative's funeral and has not visited the UAE or seen her Emirati family since before 5 June 2017[773].

5.80 As such, the Modified Travel Ban fails to address the fundamental illegitimacy at the heart of the discriminatory travel restrictions on Qataris.

5.81 But even if the Modified Travel Ban had been adopted as a legitimate means of protecting the UAE's national security, it is still unlawful because it is

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772 **Vol. IX, Annex 206**, DCL-079, paras. 24, 26.

773 *See* **Vol. IX, Annex 206**, DCL-079.

not proportionate in the sense that "there is not a *reasonable relationship of proportionality* between the means employed", the Modified Travel Ban, "and the aim sought to be realized," *i.e.*, the UAE's national security[774]. As articulated by the ECtHR, when adopting measures that are liable to impact human rights, the State must achieve a "fair balance" between the interests of the State and those of the rights-holder in question. In the context of expulsions and travel bans, the interests of the rights-holder include the length of their stay in, and the closeness of their ties with, the expelling State[775]. "Generally, only the *least discriminatory means available* will be proportionate to the aim; superfluous discrimination is always disproportionate"[776]. Further, the more severe the interference with an individual's rights, the stronger the State interest required to justify it[777].

5.82 Particularly weighed against the severity of their impact on the rights of Qataris, there can be no credible argument that the Modified Travel Ban represents a proportionate means for the UAE to address its alleged national security concerns for the following reasons.

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774 *See, e.g.*, ECtHR, *Marckx v. Belgium*, Application No. 6833/74, Plenary Judgment (13 June 1979), para. 33 (citing, *inter alia*, *Case 'Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium' v. Belgium*, Application Nos. 1474/62, 1677/62, 1769/63, 1994/63, 2126/64, Judgment (Merits) (23 July 1968), para. 10).

775 *See* ECtHR, *Moustaquim v. Belgium*, Application No. 12313/86, Judgment (18 February 1991), paras. 44–46; ECtHR, *Boultif v. Switzerland*, Application No. 54273/00, Judgment (2 August 2001), paras. 47–56.

776 A. Fellmeth, "Nondiscrimination as a Claiming Paradigm" in *Paradigms of International Human Rights Law* (Oxford University Press, 2016), pp. 119–120 (emphasis added).

777 *See, e.g.*, ECtHR, *Marckx v. Belgium*, 6833/74, Plenary Judgment (13 June 1979), para. 33 (citing, *inter alia*, *Case 'Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium' v. Belgium*, Application Nos. 1474/62, 1677/62, 1769/63, 1994/63, 2126/64, Merits Judgment (23 July 1968), para. 10).

5.83 *First*, rather than attempting to identify individual Qataris based on competent evidence, the Modified Travel Ban imposes a blanket ban against *all* Qataris, but subject to certain limited carve-outs. In this basic way, the UAE's approach turns the fundamental prohibition on discrimination on its head. The Modified Travel Ban remains essentially indiscriminate in nature, which undermines any claim that it may have to proportionality.

5.84 *Second*, the Modified Travel Ban is disproportionate because it takes no account of the severity of its impact on individual Qataris' personal circumstances. Many individuals' lives have been built upon the rights that Qataris, as GCC nationals, are entitled to enjoy without differentiation and discrimination" under UAE law pursuant to the GCC Economic Agreement, including, *inter alia*, the enjoyment of equal treatment with respect to movement and residence, as well as engagement in economic activities such as property ownership, investment, or work[778].

5.85 Prior to 5 June 2017, Qataris were entitled to move freely between Qatar and the UAE using only their Qatari ID cards rather than passports[779]. As GCC

[778] *See* Economic Agreement Between the GCC States, 31 December 2001, Art. 3 ("GCC natural and legal citizens shall be accorded, in any Member State, the same treatment accorded to its own citizens, without differentiation or discrimination, in all economic activities, especially the following: 1. Movement and residence; 2. Work in private and government jobs; 3. Pension and social security; 4. Engagement in all professions and crafts; 5. Engagement in all economic, investment and service activities; 6. Real estate ownership; 7. Capital movement; 8. Tax treatment; 9. Stock ownership and formation of corporations; 10. Education, health and social services. Member States shall agree to complete implementation rules sufficient to carry this out and bring into being the Gulf Common Market.").

[779] The website of the UAE Interior Ministry still states that GCC citizens enjoy visa-free entry to the UAE and need only to "produce their GCC country passport or national ID card at the point of entry into the UAE". *See* **Vol. II, Annex 34**, United Arab Emirates Government Portal, *Do you need an entry permit or visa to visit the UAE?*, https://government.ae/en/information-and-services/visa-and-emirates-id/do-you-need-an-

nationals, they were also not required to apply for the same official documentation or permits to remain in the UAE that apply to individuals of other nationalities; for example, Qataris did not need a visa or permit to study in the UAE[780].

5.86 Once in the UAE, as a result of their identity as citizens of the GCC, Qataris were entitled to set up home in the UAE, and access a broad array of participation rights, on an equal basis, in all spheres of economic activity[781], such as to find employment and receive a pension[782], enroll in UAE schools[783], invest

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entry-permit-or-a-visa-to-enter-the-uae (accessed 11 April 2019). This freedom of movement was a pillar of the GCC, which has hailed the free movement and residence of its citizens as a significant achievement: "The GCC citizens enjoy equal treatment in respect to the right of residence and movement among the GCC states." *See* Gulf Cooperation Council, *Steps have been taken to achieve economic citizenship*, http://www.gcc-sg.org/en-us/CooperationAndAchievements/Achievements/EconomicCooperation/TheGCCCommonMarketandEconomicnationality/Stepshavebeentakentoachieveeconomiccitizenship/Pages/IMovementandresidence.aspx.

780 *See*, *e.g.*, Herriot-Watt Dubai University (" United Arab Emirates (UAE) law requires all non-national (except GCC nationals) students to obtain a 'Student Entry Permit', followed by a 'Student Residence Visa' for the duration of their studies.") https://www.hw.ac.uk/documents/dubai-student-visa-outside-uae.pdf.

781 *See* Z. Babar, *Free Mobility within the Gulf Cooperation Council*, Center for International and Regional Studies, Georgetown University School of Foreign Service in Qatar (2011), pp. 3–5 ("Under Article Three of the new Economic Agreement signed in December 2001, all GCC natural and legal citizens were given the right to participate in all spheres of economic activity within member-states' territories. The specific rights stated in the agreement of December 2001, include amongst other things: the rights to movement and residence; the right to avail of employment opportunities in both the public and private sectors; access to pension and social security benefits; and engagement in all professions including economic, investment, and service activities").

782 Al Tamimi & Company, "Employment and labour law in the UAE," Lexology, https://www.lexology.com/library/detail.aspx?g=31e69b6a-4b6e-4f1d-8812-1843afdf5a0b (noting that UAE and other GCC nationals are not required to "procure or obtain a UAE residency visa" before obtaining a UAE work permit; UAE and other GCC nationals are also "entitled to a pension scheme where contributions are made by the employer, the employee and the government").

in businesses,[784] and own property[785]. The GCC agreement that establishes the right to equal treatment in respect of these activities are still in place[786].

5.87 Such unrestricted access to the UAE by Qataris—and to Qatar by Emiratis—was not only the product of formal GCC agreements, but constituted the historical norm in the GCC region "[f]or centuries" [787]:

> "[P]eople in the Arab world moved across different spatial boundaries . . . to seek employment and

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783 *See*, *e.g.*, **Vol. II, Annex 35,** The Official Portal of the Dubai Government, *Education*, http://www.dubai.ae/en/Lists/Topics/DispForm.aspx?ID=3&category=Home ("While all students can enroll at private schools, only UAE nationals, holders of UAE passports, GCC citizens and the children of holders of decrees issued by UAE President or Vice President are eligible for public schools.").

784 Gulf News, "GCC nationals and foreigners can form partnerships without Emirati sponsorship", https://gulfnews.com/business/gcc-nationals-and-foreigners-can-form-partnerships-without-emirati-sponsorship-1.1138433 ("While the regulations of the GCC Common Market allows [*sic*] GCC nationals to set up businesses in Dubai without local partners, the new initiative grants them a chance to have partnerships with foreigners without local partners.").

785 Each Emirate passes its own laws to regulate property ownership. As an example, "[i]n Dubai, UAE nationals, Gulf Cooperation Council (GCC) nationals and companies fully owned by either of these can own property anywhere in Dubai (Article 4 of Law 7/2006). A non-UAE/GCC national can own only a freehold, leasehold (up to 99 years) or usufruct (up to 99 years) in designated areas in Dubai, which are listed in Regulation 3/2006 (as amended by Regulation 1/2010), or in the free zones." *See* Lexology, *Real estate rights and registration in the United Arab Emirates*, https://www.lexology.com/library/detail.aspx?g=f1cb95d6-bdc1-4a88-83e8-0a6f2663a653.

786 *See* GCC Secretariat General Joint Action Process – The Economic Agreement 2001, http://www.gcc-sg.org/en-us/CooperationAndAchievements/Achievements/EconomicCooperation/JointActionProcess/Pages/TheEconomicAgreement2001.aspx; *see also* United Arab Emirates Federal Customs Authority, Cooperation Council for Arabian Gulf Countries Secretariat General Economic Agreement among Cooperation Council Countries 2002, https://www.fca.gov.ae/en/homerightmenu/pages/gccagreement.aspx?SelectedTab=13.

787 Z. Babar, *Free Mobility within the Gulf Cooperation Council*, Center for International and Regional Studies, Georgetown University School of Foreign Service in Qatar (2011), p. 6.

> economic opportunity, to seek improved skills and education, and to join their families. Movement as such was the standard, and restricting it was the exception."[788]

5.88 In reliance upon this legal and cultural framework, many Qataris chose to make the UAE their home. Qataris living in the UAE raised families there, studied, worked and established businesses[789]. And the flow of residents went both ways—based on information from the Planning and Statistics Authority of the Qatari Government, from 2015 to early 2017, an average of over 3,000 Emiratis resided in Qatar[790].

5.89 Thus the rights of Qataris who had been living in the UAE prior to 5 June 2017 were severely and negatively impacted by the Modified Travel Ban. The UAE's 11 June 2017 announcement—which referred only to mixed Emirati-Qatari families that could access a "hotline"—made *no provision* for those Qataris who had been living in the UAE, including those who had been studying or working in the UAE, and whose lives had thus been upended by the Expulsion Order and remained entirely disrupted by the Modified Travel Ban. These Qataris had been peacefully living in the UAE for years; it is not credible to suggest—and the UAE does not suggest—that overnight the UAE discovered that they each posed a national security threat. It is still less credible to suggest that the Modified Travel Ban—with its arbitrary functioning in both design and effect—is an appropriate and proportionate response to such an alleged threat.

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788 Z. Babar, *Free Mobility within the Gulf Cooperation Council, Center for International and Regional Studies*, Georgetown University School of Foreign Service in Qatar (2011), p. 6.

789 *See* para. 2.33, above. The Qatari Government has not historically tracked Qataris living in the UAE, in light of long-standing practice of free movement between the GCC countries.

790 **Vol. XII, Annex 273**, Affidavit, State of Qatar Planning and Statistics Authority, para. 3.

5.90 Indeed, the UAE made no mention of former Qatari residents in the UAE *until almost one year later*, its 5 July 2018 announcement which—misleadingly, since this was for the first time—"confirm[ed]" that "Qatari citizens already resident in the UAE need not apply for permission to continue residence in the UAE."[791] However, this "confirmation" rings hollow. The UAE had expelled Qataris over a year earlier, and then subjected them to the Absolute and Modified Travel Ban for the preceding thirteen months. The 5 July announcement is inconsistent on its face; it followed its purported "permission [for Qatari residents] to continue residence" with the contradictory recommendation—in the next sentence—that Qatari residents in the UAE are "encouraged" to apply for permission to re-enter the UAE[792]. Either Qatari residents have permission to reside in the UAE, and thus are at liberty to enter, exit and reenter its territory, or they do not. The 5 July announcement is also inconsistent with the Modified Travel Ban. There is *no option* on the online system for Qataris to select "valid residency in the UAE" when they apply for authorization to enter the country—a restriction that does not appear to apply to any other country[793]. The "travel

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791 **Vol. II, Annex 29**, United Arab Emirates Ministry of Foreign Affairs, *An Official Statement by The UAE Ministry of Foreign Affairs and International Cooperation* (5 July 2018), https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/05-07-2018-UAE-Statement-of-MoFAIC.aspx#sthash.Ojk3aHhy.dpuf, p. 2.

792 **Vol. II, Annex 29**, United Arab Emirates Ministry of Foreign Affairs, *An Official Statement by The UAE Ministry of Foreign Affairs and International Cooperation* (5 July 2018), https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/05-07-2018-UAE-Statement-of-MoFAIC.aspx#sthash.Ojk3aHhy.dpuf, p. 2.

793 *See* **Vol. II, Annex 36**, United Arab Emirates Federal Authority for Identity & Citizenship, *Browse Smart Service*, https://beta.echannels.moi.gov.ae/echannels/web/client/guest/index.html#/dashboard (accessed 30 March 2019).

update" on the Emirates airline website likewise did not refer to current residency in the UAE as grounds for permissible entry into the UAE[794].

5.91 Likewise, a significant number of other Qataris relied upon the freedom of movement between Qatar and the UAE to build lives that straddled the two countries. As a result, their ability to see their families, pursue their studies, enjoy their property, work and run their business were built on that pre-existing freedom[795]. For example, one Qatari man living in Doha relied on the open borders between Qatar and the UAE in order to visit his Emirati wife, who lives in the UAE:

> "Trips between Qatar and the UAE were quick and simple. There were many direct flights . . . each day, and tickets were not very expensive. To enter the UAE, I simply presented my Qatari ID at immigration. Living separately between the UAE and Qatar did not negatively affect our relationship,

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[794] **Vol. VI, Annex 157**, Emirates Airline, *Help Centre: Travel updates*, https://www.emirates.com/ae/english/help/travel-updates.aspx#/#4258319, p.1.

[795] *See, e.g.*, **Vol. VIII, Annex 186**, DCL-037, paras. 5–6 ("Living in two different cities did not affect our relationship because we made sure that we spent lots of time together. My husband used to visit [redacted] and me in Doha almost every weekend, and [redacted] and I would visit him in the UAE for weekends or holidays approximately every three months. It was very easy to travel between Qatar and the UAE, and sometimes my husband would even visit us for one day."); **Vol. VII, Annex 169**, DCL-010, para. 8; **Vol. VII, Annex 170**, DCL-011, para. 7; **Vol. VII, Annex 171**, DCL-012, para. 7; **Vol. VIII, Annex 189**, DCL-041, para. 8; **Vol. VIII, Annex 194**, DCL-051, para. 6; **Vol. VIII, Annex 196**, DCL-056, para. 5; **Vol. VIII, Annex 198**, DCL-066, para. 9; **Vol. VIII, Annex 202**, DCL-073, para. 12; **Vol. IX, Annex 207**, DCL-080, para. 11; **Vol. IX, Annex 210**, DCL-084, paras. 9–10; **Vol. IX, Annex 216**, DCL-093, paras. 5–8; **Vol. IX, Annex 220**, DCL-100, para. 12; **Vol. IX, Annex 221**, DCL-102, para. 7; **Vol. X, Annex 229**, DCL-123, para. 7; DCL-125, para. 5; **Vol. X, Annex 233**, DCL-132, para. 6; **Vol. XI, Annex 249**, DCL-164, paras. 6–7; **Vol. XI, Annex 251**, DCL-166, para. 7; **Vol. XI, Annex 255**, DCL-171, paras. 6–7; **Vol. XI, Annex 261**, DCL-178, paras. 6, 9; **Vol. XII, Annex 263**, DCL-180, para. 7; *see also* n. 789, above.

> because my wife and I . . . travelled to see one another several times a month."[796]

5.92 The Modified Travel Ban, as applied to the personal circumstances of these Qataris, is equally disproportionate. The UAE's 5 July announcement is clear that all non-resident Qataris are permitted to enter the UAE only at the UAE's discretion and for a "limited duration." Again, this restriction is indiscriminate and does not purport to be based upon the threat that particular individuals are alleged to pose to the UAE's national security, nor does it take into account the closeness of their prior ties with the UAE. Further, no explicit carve-out to the Absolute Travel Ban has *ever* been made for those Qataris whose rights to property and to work depend upon their ability to travel to the UAE.

5.93 In short, an inaccessible, broad brush and arbitrary process of this nature could never qualify as legitimate or proportionate so as to justify the racial discrimination at its core. Many Qataris relied upon their ability to reside in and travel freely to the UAE in order to fully realize their fundamental human rights to family, to study, to work and to own property. As detailed in the next section, because of these historic close ties and the GCC framework promoting seamless integration, the Modified Travel Ban has had a devastating impact, nullifying and impairing these Qataris' ability to enjoy fundamental human rights in violation of the CERD.

[796] **Vol. VII, Annex 184**, DCL-033, paras. 7–8.

C. THE UAE'S ABSOLUTE TRAVEL BAN VIOLATED AND ITS MAINTENANCE OF THE MODIFIED TRAVEL BAN CONTINUES TO VIOLATE ARTICLES 2(1), 5, AND 6 OF THE CERD

5.94 Articles 1(1), 2(1), 5, and 6 neither restrict nor create the civil, political, economic, social or cultural rights to which States parties must "guarantee the right of everyone" to equally enjoy[797]. Instead, the provisions "assume[] the existence and recognition of these rights"[798] outside of the CERD, under customary international law, the UDHR[799] and other treaties, such as the Convention on the Rights of the Child ("***CRC***"), ratified by the UAE on 3 January 1997[800], and the Arab Charter on Human Rights, which was ratified by the UAE on 15 January 2008 and Qatar on 11 January 2009[801]. As the CERD Committee has stated, "[t]he list of human rights to which the principle [of the prohibition of discrimination] applies under the Convention is not closed and extends to any

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797 *See* **Vol. III, Annex 92**, CERD, Art. 5.

798 **Vol. IV, Annex 108**, CERD Committee, *General Recommendation No. 20 on article 5 of the Convention*, contained in document A/51/18 (1996), para. 1.

799 Members of the Court have on several occasions recognized the status of rights set out in the UDHR as customary law. *See, e.g.*, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Advisory Opinion, Separate Opinion of Judge Ammoun, I.C.J. Reports 1971*, para. 6 ("Although the affirmations of the Declaration are not binding *qua* international convention within the meaning of Article 38, paragraph 1 *(a)*, of the Statute of the Court, they can bind States on the basis of custom within the meaning of paragraph 1 *(b)* of the same Article, whether because they constituted a codification of customary law . . . or because they have acquired the force of custom through general practice accepted as law".); *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, I.C.J. Reports 1980*, para. 91 (relying on the UDHR as a source of "fundamental principles").

800 *See* Convention on the Rights of the Child, 1577 *UNTS* 3 (20 November 1989) (entered into force 2 September 1990).

801 *See* League of Arab States, Arab Charter on Human Rights, 12 *International Human Rights Report* 893 (22 May 2004) (entered into force 15 March 2008).

field of human rights regulated by the public authorities in the State party."[802] As such, "[t]he Convention is an 'open' Convention" and "[p]ractice does not confine the scope of the Convention to any particular class or classes of rights."[803]

5.95 The scope of Article 5 is in keeping with the CERD's object and purpose: to eliminate the detrimental impact of racial discrimination on the enjoyment of all fundamental freedoms and human rights, whether listed and "similar rights"[804], and therefore to avoid the "nullif[ication] or impair[ment]" of all rights afforded. Further, the pairing of the terms "nullifying" and "impairing" opens up "the prospectus of discrimination which need not be aimed at or have only nullifying

802 **Vol. IV, Annex 112**, CERD Committee, *General Recommendation No. 32 on the Meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, document CERD/C/GC/32 (2009), para. 9.

803 **Vol. VI, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 128.

804 **Vol. IV, Annex 108**, CERD Committee, *General Recommendation No. 20 on article 5 of the Convention*, contained in document A/51/18 (1996), para. 5; *see also* **Vol. III, Annex 77**, United Nations, *Official Records of the Economic and Social Council, Commission on Human Rights, Twentieth Session*, document E/3873, E/CN.4/874, para. 200 ("It was emphasized that many of the rights proclaimed in the Universal Declaration of Human Rights had been left out [of Article 5] but that the word 'notably' preceding the list of rights implied that there had been a selection of the rights to which special attention should be accorded."); M. O'Flaherty, "Substantive provisions of the International Convention on the Elimination of All Forms of Discrimination" in *Indigenous Peoples, the United Nations and Human Rights* (Federation Press, 1998), pp. 177–180; **Vol. IV, Annex 108**, CERD Committee, *General Recommendation No. 20 on article 5 of the Convention*, contained in document A/51/18 (1996), para. 1; *see also* **Vol. VI, Annex 150**, P. Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination* (Oxford University Press, 2016), p. 307 ("The equality guarantee applies to the enjoyment of an extensive, unclosed list of rights—'notably in the enjoyment of other rights'—so that other, unnamed rights are also subject to its protection.").

effect on the 'recognition, enjoyment or exercise' of rights or freedoms but only impair them, presumably to some meaningful degree."[805]

5.96 As set out in further detail below, the Absolute and Modified Travel Bans have nullified or impaired the following rights and freedoms in violation of Articles 5(d)(iv), 5(e)(v), 5(d)(v), 5(e)(i), and 5(a):

- The right to family life;
- The right to education and training;
- The right to own property alone as well as in association with others;
- The rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment; and
- The right to equal treatment before the tribunals and all other organs administering justice.

5.97 By nullifying and impairing the rights of Qataris on the basis of national origin, in violations of Articles 2(1) and 5, the UAE has not only failed to "protect" and "prevent against" discriminatory interference with Article 5 rights, but has also engaged its obligations under Article 6 – to provide an effective remedial framework to challenge and obtain reparation for those violations. The

[805] **Vol. VI, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 128.

UAE has failed to do so, contrary to its Article 6 commitments, and the protective framework frequently emphasized by the CERD Committee.[806]

1. Interference with the Right to Family Life

5.98 The UAE has impermissibly interfered with the right to protection against arbitrary interference with family life. The right to family life falls squarely within the scope of Article 5, despite the fact that it is not explicitly mentioned therein.[807] The integrity of family and family life is laid down as a basic human right in Articles 12 and 16(3) of the UDHR, and is similarly expressed in other international law instruments, customary international law and the "general principles of law recognized by civilized nations"[808]. One such instrument is the

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[806] *See A.M.M. v. Switzerland*, Communication No. 50/2012, Opinion, document, CERD/C/84/D/50/2012 (2014), para. 8.2; *L.R. v. Slovakia*, Communication No. 031/2003, Opinion, document CERD/C/66/D/31/2003 (2005), para. 10.2. Having found a violation of Articles 2 and 5, the Committee stated that "[w]ith respect to the claim under article 6, the Committee observes that, at a minimum, this obligation requires the State party's legal system to afford a remedy in cases where an act of racial discrimination within the meaning of the Convention has been made out, whether before the national courts or in this case the Committee. The Committee having established the existence of an act of racial discrimination, it must follow that the failure of the State party's courts to provide an effective remedy discloses a consequential violation of article 6 of the Convention." *Ibid.* para. 10.10.

[807] *See* **Vol. III, Annex 92**, CERD, Art. 5(d)(iv); *see also* CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Denmark*, document CERD/C/DNK/CO/18-19, (27 August 2010) para. 14 (regarding the "right to family life, marriage and choice of spouse"); United Nations, *Official Records of the General Assembly, Fifty-ninth Session, Report of the Committee on the Elimination of Racial Discrimination*, document A/59/18, para. 17 (observing, in Decision 2(65), the adverse effect of a Suspension Order on families and marriages); CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Israel*, document CERD/C/ISR/CO/14-16, para. 18 (expressing concern regarding impediments to family reunification).

[808] *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, Separate Opinion of Judge Evensen*, *I.C.J. Reports 1989*, pp. 210–211; *see also* Arab Charter on Human Rights, Arts. 21 ("No one shall be

CRC, which requires that children are protected against all forms of discrimination on the basis of the "status" of their parents, that children are not separated from their parents against their will and that applications for family reunification are dealt with in a humane manner, as encompassed in Articles 2(2), 9(1) and 10(1)[809].

5.99 The CERD Committee has highlighted the particular risk that discriminatory travel bans may cause to the right to family life. States are to

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subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation . . . "), 33 ("1. The family is the natural and fundamental group unit of society; it is based on marriage between a man and a woman. Men and women of marrying age have the right to marry and to found a family according to the rules and conditions of marriage . . . 2. The State and society shall ensure the protection of the family, the strengthening of family ties, the protection of its members and the prohibition of all forms of violence or abuse in the relations among its members, and particularly against women and children. . . . 3. The States parties shall take all necessary legislative, administrative and judicial measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and dignity and shall ensure, in all cases, that the child's best interests are the basic criterion for all measures taken in his regard, whether the child is at risk of delinquency or is a juvenile offender.").

809 CRC, Arts. 2(2) ("States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."), 9(1) ("States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child . . ."), 10(1) ("In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse for the applicants and for the members of their family.").

"avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life . . ."[810].

5.100 The UAE, however, has intentionally taken the opposite course through the maintenance of the Absolute and Modified Travel Bans.

5.101 As noted above, family ties frequently cut across national boundaries in the Gulf region. As of June 2017, there were with 3,694 recorded marriages between Qataris and Emiratis[811]. These families of mixed nationality often settled in either the UAE or Qatar, or lived between the two States, with one spouse commuting between countries for work or children commuting between separated or divorced Qatari-Emirati parents[812]. For these mixed Qatari-Emirati families, the ability to live and move freely across State lines is essential to maintaining the family unit and the well-being of the parents and children within those units[813]. These families relied, in particular, on (*i*) direct flight connections between Qatar and the UAE of just over an hour; (*ii*) the freedom of movement provisions enshrined in the GCC treaties, which allowed Qataris and Emiratis to transit

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[810] **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens, Sixty-fifth session* (2005), para. 28. The Draft Articles on Expulsion also emphasize, at Art. 18 ("The expelling State shall respect the right to family life of an alien subject to expulsion. It shall not interfere arbitrarily or unlawfully with the exercise of such right.").

[811] *See e.g.,* para 5.88, n. 789; **Vol. VII, Annex 165**, DCL-004, paras. 5–6; **Vol. VII, Annex 171**, DCL-012, para. 7; **Vol. VIII, Annex 189**, DCL-041, para. 8–9 ("We would also see each other almost every weekend because my husband would travel to Doha on Thursdays and stay until Saturday.").

[812] *See e.g.,* para 5.88, n. 789; DCL-004, paras. 5–6; DCL-012, para. 7; DCL-041, para. 8–9.

[813] *See* n. 795, above.

between the countries without restrictions; and (*iii*) the freedom, under the GCC treaties, for Qataris and Emiratis to reside in either country[814].

5.102 The Absolute and Modified Travel Bans imposed significant and sometimes insuperable obstacles on Qatari-Emirati family life:

- As of June 2018, one year after the Absolute Travel Ban was first imposed, Qatar's NHRC had recorded 82 cases of self-reported family separation involving the UAE[815].

- Almost half of the individuals interviewed by Human Rights Watch in the month following the 5 June Directive (22 of 50), which included Qataris, reported that the travel restrictions had cut them off from immediate family members[816].

- 6.4% of the individual complainants to the CCC cited instances of family separation as a result of the UAE's measures[817].

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814 *See* paras. 2.33, 5.86–5.89, above.

815 **Vol. V, Annex 140**, National Human Rights Committee, *Fifth General Report, Continuation of Human Rights Violations: A Year of the Blockade Imposed on Qatar* (June 2018), p. 14.

816 *See* **Vol. V, Annex 134**, Human Rights Watch, *Qatar: Isolation Causing Rights Abuses* (12 July 2017), https://www.hrw.org/news/2017/07/13/qatar-isolation-causing-rights-abuses, p. 4 (interviewing Qatari, Saudi, and Bahraini individuals).

817 **Vol. XII, Annex 272**, Affidavit, State of Qatar Compensation Claims Committee. Complaints submitted to the CCC include claims by Qataris who have been separated from their spouses, children, and immediate family members in the UAE. In several cases, the claimant was not the only family member affected by the UAE's Discriminatory Measures; rather, his or her children have also been separated from family members in the UAE but did not submit an independent claim.

5.103 In short, and as documented by the OHCHR, "[t]he decision of 5 June has led to cases of temporary or potentially durable separation of families across the countries concerned, which has caused psychological distress as well as some difficulties for some individuals to economically support their relatives left in Qatar or the other countries."[818]

5.104 Individual declarants likewise describe the devastating impacts that the Travel Bans have had on their family life.

5.105 *First,* there are some Qatari-Emirati families who have not seen each other since the Absolute Travel Ban first was adopted almost two years ago, resulting in enduring hardship and suffering as a result of that separation[819]. For one example, a Qatari mother describes the effect of her family's prolonged separation on her child, who she describes as "deeply" affected, and who misses their "father very much and is also saddened and anxious about the political situation." After 5 June 2017, her child "was very depressed . . . completely shut down, stopped talking for a while and gained a lot of weight." She described her own experience "heartbreaking" to see her child "in such pain"[820].

5.106 *Second,* for those families who have been able to meet over the past two years, their relationships have changed dramatically as a result of the Travel Bans, both in frequency of contact and substance. For example, a Qatari woman who lives in Doha with her Emirati child describes the separation she now endures

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818 **Vol. III, Annex 98**, OHCHR Report, para. 32

819 *See, e.g.*, **Vol. VII, Annex 171**, **DCL-012**, paras. 15–16 ("As a result of the UAE's order, I have not been able to see my [redacted] since [redacted] 2017.").

820 **Vol. VIII, Annex 186**, DCL-037, paras. 11, 23–24.

from her husband, who resides in the UAE[821]. Prior to the Travel Bans, her family would spend time together in Doha "almost every weekend", and the couple would use their leave to "spend two, three, or four months together as a family" every year[822]. Since 5 June 2017, the family has seen each other only every two months and always in a hotel in third countries[823]. She explains that "our visits gain an additional measure of impermanence because we are not in a home. … Our shared life in Qatar and the UAE simply no longer exists".[824] She explains that the "longer term separations forced by the UAE's measures have also been very difficult emotionally". [825]

5.107 A Qatari father whose family was separated for almost a year and a half following the 5 June Directive explained that:

> "[t]his is the most difficult situation my family has ever faced. It has deeply affected me emotionally, and has had a profound effect on my children."[826]

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821 **Vol. VIII, Annex 189**, DCL-041, paras. 1, 8.

822 **Vol. VIII, Annex 189**, DCL-041, para. 8.

823 **Vol. VIII, Annex 189**, DCL-041, para. 16; *see also* **Vol. VII, Annex 184**, DCL-033, para. 12 ("For several months, we waited, expecting that the situation would be resolved. . . . Although my wife and I remained in contact by WhatsApp every day, it was terrible to be separated for so many months—we had never gone so long without seeing each other in person. Finally, since I could not enter the UAE and my wife could not travel to Qatar, we agreed that the family would meet in [redacted].").

824 **Vol. VIII, Annex 189**, DCL-041, paras. 17, 23.

825 **Vol. VIII, Annex 189**, DCL-041, para. 25.

826 **Vol. VII, Annex 165**, DCL-004, paras. 6 –7, 12, 25.

5.108 *Third,* some Emirati-Qatari families have refused to obey the UAE's orders, and decided to stay together in Qatar or in the UAE. But children in such families remain separated from their grandparents, uncles, aunts and cousins, while adults are separated from their parents and siblings. This is the case for a Qatari man whose Emirati wife gave birth to their first child in Doha just a few days before 5 June 2017. To date, the family has been unable to introduce the child to the wife's Emirati family[827].

5.109 Notably, while the stated rationale for the Modified Travel Ban was "humanitarian"—to alleviate the situation of mixed Qatari-Emirati families—it has failed to do so. Further, for those Qataris in the UAE that were not married to Emiratis, it has done *nothing* to alleviate the Expulsion Order's impact. A Qatari woman reports that when she called the "hotline", the official she spoke with "explained that, because I was not married to an Emirati, he could not help me and that I would need to leave within 14 days"[828].

5.110 As set out above, many Qataris fear using the "hotline", for good reason[829]. Many who try to use the hotline do not receive responses, or are denied

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827 *See, e.g.,* **Vol. VII, Annex 181**, DCL-029, paras. 5, 17 ("This situation is extremely difficult for my family. My wife is . . . really saddened by the fact that her . . . child does not know her parents and that it will be the same for our [future child], unless the UAE stops imposing measures against Qatar"); DCL-036, para. 32 ("My children are suffering as well, because they are losing out on a relationship with their Emirati family."); **Vol. VIII, Annex 197**, DCL-058, para. 21 ("We used to see each other all the time and we were a central part of each other's support system. My young children have spent far less time with their grandmother than we would have hoped."); *see also* **Vol. VII, Annex 170**, DCL-011, para. 28; **Vol. IX, Annex 206**, DCL-079, para. 34.

828 **Vol. IX, Annex 204**, DCL-076, para. 15. The woman stated: "I was deeply disappointed. I had hoped that the 'hotline' would be able to help me. How could they only be concerned with families that had one Emirati parent?" *Ibid.*, para. 15.

829 *See* paras. 4.45–4.47, above.

permission to enter the UAE with no explanation[830]. Even Qataris who have been authorized to travel to the UAE usually are only permitted to travel for a short period of time—consistent with the UAE's 5 July 2018 announcement that "permission may be granted for a limited-duration period"—and have a specific exit date[831]. Moreover, in light of the arbitrary functioning of the "hotline," they usually do not know when they will be allowed back into the UAE to see their families again upon their return to Qatar[832].

5.111 In short, the Travel Ban—in both its Absolute and Modified forms—has nullified or impaired many Qataris' realization and enjoyment of their right to family life.

2. Interference with the Right to Education and Training

5.112 The UAE has also violated Article 5(e)(v) by impermissibly interfering with Qataris' right to education and training on the basis of their national origin[833]. As described above, Article 5(e)(v) imposes a series of affirmative

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830 *See* paras. 4.48–4.49, above.

831 *See* para. 5.79, above; *see also* **Vol. VIII, Annex 197**, DCL-058, para. 18 ("While in the UAE, my wife considered extending her stay to spend more time with her family. Because the children's travel authorization was for a period of only [redacted] weeks, however, she was afraid they would be taken away from her if they stayed longer").

832 *See, e.g.*, **Vol. IX, Annex 206**, DCL-079, para. 27 ("We never heard back from the hotline again, and we all missed [the] . . . funeral. . . . We were not able to be with our family to mourn"); *see also* **Vol. VII, Annex 170**, DCL-011, para. 19.

833 *See* **Vol. III, Annex 92**, CERD, Art. 5(e)(v); *see also* UDHR, Art. 26 ("(1) Everyone has the right to education . . . (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace."); Arab Charter on Human Rights, Art. 41 ("1. The eradication of illiteracy is a binding obligation upon the State and everyone has the right to education."). The Committee on

obligations on the UAE not only not to engage in, but also to protect against and remedy, discrimination with respect to education and training; ensure effective access to education[834]; ensure that "public educational institutions are open to non-citizens"[835]; and "to the extent that private institutions influence the exercise of rights or the availability of opportunities . . . ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination."[836] The State's obligations to protect against discrimination perpetrated by private persons and entities that impairs the enjoyment of other rights[837] likewise flow from Article 2(1)(d), which requires States parties to "prohibit and bring to an

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Economic, Social and Cultural Rights has described education as a "human right in itself and an indispensable means of realizing other human rights." *See* UNCESCR, *General Comment No. 13: The Right to Education (article 13 of the Covenant)*, contained in document E/C.12/1999/10, para. 1.

834 CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Albania*, document CERD/C/ALB/CO/5-8 (14 September 2011), para. 16 (requiring "effective access to education").

835 **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens, Sixty-fifth session* (2005), para. 30.

836 **Vol. IV, Annex 108**, CERD Committee, *General Recommendation No. 20 on article 5 of the Convention*, contained in document A/51/18 (1996), para. 5.

837 **Vol. III, Annex 92**, CERD, Art. 2(1)(a)–(c) (reflecting States parties' obligations to eliminate discrimination by the State, public organs and institutions, and State-supported entities), 2(d) (reflecting States parties' obligation to "prohibit and bring to an end . . . discrimination by any persons, group or organization."); **Vol. IV, Annex 108**, CERD Committee, *General Recommendation No. 20 on article 5 of the Convention*, *contained in* document A/51/18 (1996), para. 5 ("To the extent that private institutions influence the exercise of rights or the availability of opportunities, the State party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination."); **Vol. V, Annex 144**, M. Banton, *International Action* (Oxford University Press, 1995), p. 199 ("Article 2.1(*d*) is unqualified in its requirement that a State party bring to an end racial discrimination; it is not limited to the state sector or to governmental action or to the enactment of laws, but makes the state responsible for bringing to an end racial discrimination throughout the society.").

end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, groups or organizations."[838]

5.113 The Absolute and Modified Travel Bans (especially when applied to those previously expelled) gravely impacted the right to education of Qataris who were studying in the UAE. As noted above, no exception to the Absolute Travel Ban was made for students enrolled in the UAE until July 2018, over a year after it was issued, by which point the impact on their educational rights had been irreversibly damage. Further, the carve-out for students was ineffective for those who wished to study in the UAE, as permission to enter was uncertain and granted for limited periods of time[839].

5.114 As of June 2018, the NHRC documented 148 complaints related to interference with education by the UAE[840]. The Qatari Ministry of Education reports that 137 Qatari students who were studying in the UAE prior to 5 June 2017 self-reported that they were negatively impacted, including by being displaced, unable to continue studying at their universities, and deprived of their academic certificates, proof of graduation, and other documents evidencing their registration and performance[841]. 14% of the verified individual complainants to

838 **Vol. III, Annex 92**, CERD, Art. 2(1)(d).

839 *See* para. 5.79, above.

840 **Vol. V, Annex 140**, National Human Rights Committee, *Fifth General Report, Continuation of human rights violations: A year of the blockade imposed on Qatar* (June 2018), p. 18.

841 **Vol. XII, Annex 274**, Affidavit, State of Qatar Ministry of Education and Higher Education, p. 1.

the CCC, cited to interference with their educational rights as a result of the UAE's measures.[842]

5.115 As the experiences of individual declarants make clear, the UAE has interfered with Qataris' right to education and training in the following four ways.

5.116 *First*, many Qatari students were unable to complete their studies in light of the application of the Travel Bans. Many had to leave the UAE while they were studying, including in the middle of exam periods[843]. Others were on a study break in Qatar to celebrate Ramadan and could not return to the UAE to finish their degrees as a result of the Travel Bans[844]. One such student tried diligently to complete her exams after returning to Qatar, but her university failed to respond to her multiple requests to make alternate arrangements[845].

5.117 Those universities in the UAE that did not automatically expel or suspend their Qatari students were unwilling or unable to assist Qatari students with the sudden interruption to their studies. Some university offices did not pick up the phone when students called and did not reply to emails[846], others communicated to

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842 **Vol. XII, Annex 272**, Affidavit, State of Qatar Compensation Claims Committee, Exhibit B (Portion of CCC Claims Database related to the UAE).

843 *See* para. 5.41, n. 708, above; *see e.g.*, **Vol. VII, Annex 172**, DCL-013, para. 38; **Vol. VII, Annex 180**, DCL-028, para. 19; **Vol. VIII, Annex 200**, DCL-070, para. 13; **Vol. VIII, Annex 201**, DCL-072, para. 12; **Vol. XI, Annex 259**, DCL-175, para. 9.

844 *See e.g.*, **Vol. VII, Annex 183**, DCL-031, paras. 9–10; **Vol. VIII, Annex 196**, DCL-056, paras. 9, 15–16; **Vol. X, Annex 226**, DCL-112, paras. 10–12; **Vol. XI, Annex 249**, DCL-164, para. 9.

845 *See* **Vol. VIII, Annex 190**, DCL-043, paras. 10, 18–20, 25–26, 28, 34.

846 *See, e.g.*, **Vol. VIII, Annex 198**, DCL-066, para. 13 ("As I did not have the phone number of the [redacted] University's [redacted], I called his secretary. She answered the phone, asked

the students there was nothing they could do to help[847], and some advised Qatari students to wait and see if the situation resolved itself[848]. For instance, a Qatari student enrolled at a university in the UAE reported that his university did not provide any support when he and his Qatari classmates asked to take their exams early in light of the 14-day deadline imposed by the Emirati authorities[849]. Another Qatari student reported receiving an error message when trying to access his online university account to register for an online class in July 2017[850].

5.118 *Second*, many Qatari students were not able to retrieve properly authenticated educational records from their UAE universities, which has hindered

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me whether I was Qatari, and hung up upon hearing my answer."); **Vol. XI, Annex 249**, DCL-164, para. 10 ("The head of my college responded that the University had not yet received any instructions from the UAE government . . . he said the University would wait one month for instructions from the UAE Ministry of Education and would then get back to me. I did not receive any further updates from the University . . ."); *see also* **Vol. VII, Annex 174**, DCL-020, para. 12; **Vol. VII, Annex 176**, DCL-022, para. 10; **Vol. VIII, Annex 202**, DCL-073, para. 20; **Vol. IX, Annex 207**, DCL-080, paras. 18–19; **Vol. IX, Annex 209**, DCL-083, para. 19; **Vol. XI, Annex 252**, DCL-167, para. 22.

847 *See e.g.,* n. 836, above; **Vol. VII, Annex 180**, DCL-028, para. 18 ("He said the University was 'trying to figure it out,' but that the decision came 'from the ministry.' He said there was nothing he could do and asked that I give the University more time to figure the situation out."); **Vol. VIII, Annex 188**, DCL-040, para. 17 ("He informed me in confidence that University staff had been ordered not to communicate with Qataris, nor to provide them with any documents or information. If they did, he told me they would be disciplined by the University."); **Vol. VII, Annex 175**, DCL-021, para. 12; **Vol. VIII, Annex 187**, DCL-038, para. 18; **Vol. VIII, Annex 196**, DCL-056, para. 12; **Vol. VII, Annex 249**, DCL-164, para. 12.

848 **Vol. VII, Annex 166**, DCL-005, para. 16 ("The university responded to my e-mail stating that they had not received any update from Emirati authorities, and telling me that I should wait to see how the 'political situation' progressed."); **Vol. VII, Annex 172**, DCL-013, para. 19; **Vol. VIII, Annex 190**, DCL-043, para.17.

849 **Vol. VII, Annex 175**, DCL-021, para. 12.

850 **Vol. IX, Annex 209**, DCL-083, para. 18.

their ability to apply to other programs and jobs. One Qatari student called his university for information on how he could obtain his transcript. He explained that: "[w]hen someone did answer the phone, they asked me if I was Qatari and then hung up when I answered the question."[851] Almost two years later, some Qatari students are still waiting for transcripts[852].

5.119 Even when Qatari students were able to retrieve their diplomas or transcripts, not all of them had been authenticated by the competent UAE Ministry[853]. Because certified original records are usually required in Qatar, this has complicated, and sometimes prevented, students from transferring to other universities or obtaining employment[854].

5.120 *Third*, where Qatari students were able to transfer to another university, differences between syllabuses meant that they were sometimes required to study alternative subjects and the new university did not recognize all of their credits. Further, some students have traveled further to find equivalent courses or where

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851 **Vol. VIII, Annex 198**, DCL-066, para. 15; *see also e.g.,* para. 5.115, nn. 833–834, above; **Vol. VII, Annex 176**, DCL-022, para. 10 ("I called the University on six or seven occasions to request these transcripts. The University administration either said to me: 'we will see' or they transferred me to another department . . . However, none of these departments answered the phone."); **Vol. VII, Annex 163**, DCL-001, para. 15; **Vol. VII, Annex 172**, DCL-013, para. 20; **Vol. VII, Annex 174**, DCL-020, para. 12; **Vol. VIII, Annex 200**, DCL-070, para. 18 (needed to collect transcript in person); **Vol. XI, Annex 263**, DCL-180, para. 13.

852 *See, e.g.,* **Vol. VII, Annex 176**, DCL-022, para. 12; **Vol. VIII, Annex 200**, DCL-070, para. 20; **Vol. X, Annex 239**, DCL-144, para. 32.

853 *See, e.g.*, **Vol. VIII, Annex 196**, DCL-056, para. 11 ("[the transcripts] that I received were only copies and not official documents; they were not stampled by the Emirati and Qatari authorities."); **Vol. VII, Annex 183**, DCL-031, para. 12; **Vol. IX, Annex 213**, DCL-089, paras. 11–14.

854 **Vol. VII Annex 180**, DCL-028, para. 29; **Vol. XII, Annex 263**, DCL-180, paras. 18–20.

grades will be accepted. As a result, students' career plans have changed, their graduation has been delayed and the cost and time required to complete their studies has increased[855].

5.121 *Finally*, some Qatari students have not been able to continue their education due to the lack of comparable alternatives outside of the UAE. For instance, some Qatari students who studied in more flexible programs in the UAE prior to 5 June, have been generally unable to find a comparable alternative[856]. Prior to the Travel Ban, students had traveled to the UAE for these types of programs because they did not exist in Qatar[857]. These students therefore had to

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855 *See e.g.,* **Vol. VII, Annex 172**, DCL-013, para. 39 ("My studies, career and life plans have been delayed by two years. I will now graduate at the age of [redacted]. This has affected me very deeply on a psychological level because in Qatar, it is not considered normal to start working at this age. I moreover cannot get married before I start working. I feel really guilty that my father still has to pay for my living expenses."); *see also* **Vol. VII, Annex 168**, DCL-009, para. 18; **Vol. VII, Annex 173**, DCL-018, para. 11; **Vol. VII, Annex 174**, DCL-020, para. 18; **Vol. VII, Annex 175**, DCL-021, paras. 18–19, 22; **Vol. VII, Annex 176**, DCL-022, para. 13; **Vol. VII, Annex 183,** DCL-031, para. 13; **Vol. VIII, Annex 187**, DCL-038, para. 20; **Vol. VIII, Annex 188**, DCL-040, para. 19; **Vol. VIII, Annex 190**, DCL-043, para. 31; **Vol. VIII, Annex 196**, DCL-056, para. 32; **Vol. VIII, Annex 200**, DCL-070, para. 20; **Vol. IX, Annex 208**, DCL-082, para. 23; **Vol. X, Annex 233**, DCL-132, para.10; **Vol. X, Annex 239**, DCL-144, para. 31; **Vol. XI, Annex 259**, DCL-175, paras. 17–18; **Vol. VIII, Annex 268**, DCL-185, para. 10.

856 *See, e.g.,* **Vol. VIII, Annex 196**, DCL-056, para. 33 ("Studying in [redacted] is not easy for me. I have to leave my family, my wife, and my children for long periods of time when I go there. . . . It would have been much more convenient to continue studying in the UAE."); *see also* **Vol. VII, Annex 174**, DCL-020, para. 5; **Vol. VII, Annex 183,** DCL-031, paras. 14, 21; **Vol. VIII, Annex 202**, DCL-073, para. 28; **Vol. IX, Annex 221**, DCL-102, para. 12; **Vol. XII, Annex 263**, DCL-180, para. 21.

857 *See, e.g.,* **Vol. VII, Annex 177**, DCL-024, para. 27; **Vol. VII, Annex 183,** DCL-031, para. 6; **Vol. VIII, Annex 198**, DCL-066, para. 7; **Vol. IX, Annex 221**, DCL-102, para. 6; **Vol. XI, Annex 249**, DCL-164, para. 6; **Vol. XI, Annex 251**, DCL-166, para. 8; **Vol. XI, Annex 256**, DCL-172, para. 15.

stop their studies or take a leave of absence from work to complete them elsewhere[858].

5.122 The Travel Bans have not only negatively impacted Qatari students' education and work prospects in the myriad ways set out above, but also their mental health and well-being. As one Qatari student put it, "I feel emotionally drained and fragile. No student expects to have their graduation snatched away from them in the final stages of their education, especially given the personal and professional sacrifices I had made to study in the UAE."[859]

5.123 While the UAE claimed at the provisional measures hearing that hundreds of Qataris are presently enrolled in educational institutions in the UAE, the evidence adduced in support is nothing more than a list of dates and ports of entry. No effort has been made to demonstrate that the entries listed correlate to students or even Qataris, let alone to Qatari students who remain enrolled at UAE

858 *See, e.g.*, **Vol. VIII, Annex 196**, DCL-056, para. 33 ("I also have to take annual leave to study now, as my work will not allow me to take unpaid leave."); **Vol. IX, Annex 221**, DCL-102, paras. 10, 12 ("Because I would not be able to travel to the UAE, I had no hope that I could complete my degree there); *see also* **Vol. VII, Annex 183**, DCL-031, para 21; **Vol. XI, Annex 251**, DCL-166, para. 22; **Vol. X, Annex 261**, DCL-178, para. 11.

859 **Vol. VIII, Annex 190**, DCL-043, para. 38; *see also* **Vol. VIII, Annex 188**, DCL-040, para. 20 ("I simply cannot express the devastation I feel."); **Vol. VIII, Annex 201**, DCL-072, paras. 21, 25 ("This was a very dark period—and the beginning of an extended depression. . . . I lost weight. I did not want to eat. I did not want to see my family. I just stayed alone in my room. I had no energy and was not in the mood for anyone or anything."); **Vol. VII, Annex 163**, DCL-001, para. 20; **Vol. VII, Annex 167**, DCL-006, para. 21; **Vol. VII, Annex 175**, DCL-021, para. 17; **Vol. VII, Annex 177**, DCL-024, para.30; **Vol. VII Annex 180**, DCL-028, para. 30; **Vol. VIII, Annex 200**, DCL-070, para. 25; **Vol. IX, Annex 208**, DCL-082, para. 26; **Vol. IX, Annex 209**, DCL-083, para. 28; **Vol. IX, Annex 213**, DCL-089, para. 16; **Vol. IX, Annex 214**, DCL-091, para.13; **Vol. IX, Annex 222**, DCL-105, para. 20; **Vol. X, Annex 238**, DCL-143, para. 14; **Vol. X, Annex 239**, DCL-144, para. 33; **Vol. X, Annex 240**, DCL-145, para. 23; **Vol. XI, Annex 249**, DCL-164, para. 18; **Vol. XI, Annex 259**, DCL-175, para. 19; **Vol. XII, Annex 263**, DCL-180, paras. 22–23.

institutions.[860] Further, the fact that a student remains enrolled at a university does not mean that the student has *in fact* been able to continue and complete their studies.

5.124 The only piece of evidence presented by the UAE that contained any specific details relating to education is an email dated 8 March 2018 from the UAE Office of the Undersecretary for Higher Education, which just concedes that a "number of students from the State of Qatar dropped out university studies [*sic*] for non-academic reason [*sic*]."[861] The UAE has provided no credible evidence to suggest that the effects of the violation has been mitigated, much less remedied.

3. Interference with the Right to Property

5.125 The UAE has impermissibly interfered with the right to property, a right that is explicitly referenced in Article 5(d)(v) of the CERD, and further protected in, *inter alia*, the UDHR, the Arab Charter on Human Rights, and the United Nations General Assembly's Declaration on the Human Rights of Individuals

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860 *See* CR 2018/13, p. 13, para. 14 (Alnowais); CR 2018/15, p. 34, paras. 25–26 (Buderi); **UAE PM Exhibit 12** (25 June 2018), *Immigration – Student Entry Records*, pp. 3–17.

861 **UAE PM, Exhibit 8** (25 June 2018), *Education – Undersecretary of Academic Affairs Email* (dated 8 March 2018), p. 5. The UAE claimed that this email instructed higher education institutions to inform Qatari students that "studies are available to all students who meet the required conditions." However, according to one Qatari student, "On [redacted] 2018, I received an email from [redacted] to my personal email account, asking me to confirm that I wished to resume my studies at [redacted]. [**Exhibit A**] By that time, I had already been taking classes at the [redacted] for several months and had missed nearly two full semesters of classes at [redacted]. I found the email very confusing, because I still was not allowed to travel to the UAE—as the [redacted] administration knew—and the email did not actually say I could return if I wished to do so. I therefore replied to the email by explaining that I could not enter the UAE to resume classes, and in any case I had already transferred to another university." **Vol. XI, Annex 249**, DCL-164, para. 14.

Who Are Not Nationals of the Country in Which They Live[862]. Article 5(d)(v) prohibits discriminatory interference with the right to own property, and any privileges that flow from that ownership right[863].

5.126 It is not uncommon for Qataris to invest in property in the UAE. In 2016 alone, Qataris bought approximately US$500 million worth of property in Dubai[864]. As a result of the Absolute and Modified Travel Bans, however, Qataris are unable to freely exercise rights associated with ownership. Notably, to this day the ownership of property has *never* been an explicit carve-out to the successive iterations of the Absolute Travel Ban.

5.127 As of June 2018, the NHRC had received 458 individual claims related to property[865], while the CCC has documented a total of 786 claims related to interference with property rights[866]. The UAE's own evidence shows a steep drop

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862 *See* UDHR, Art. 17 ("(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property."); Arab Charter on Human Rights, Art. 31 ("Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property."); United Nations, *Official Records of the General Assembly*, *Fortieth Session*, 116th Plenary Meeting, document A/RES/40/144, Art. 5(2)(d) ("[Aliens shall enjoy] . . . [t]he right to own property alone as well as in association with others, subject to domestic law.").

863 *See* **Vol. III, Annex 92,** CERD, Art. 5(d)(v).

864 *See* "The boycott of Qatar is hurting its enforcers", *The Economist* (19 October 2017), https://www.economist.com/news/middle-east-and-africa/21730426-if-saudis-and-emiratis-will-not-trade-doha-iranians-will-boycott.

865 **Vol. V, Annex 140**, National Human Rights Committee, *Fifth General Report, Continuation of human rights violations: A year of the blockade imposed on Qatar* (June 2018), p. 24.

866 **Vol. XII, Annex 272**, Affidavit, State of Qatar Compensation Claims Committee, Exhibit B (Portion of CCC Claims Database related to the UAE). The vast majority of these claims (83%) were submitted by Qataris who were prevented from accessing real property—apartments, houses, and land—in the UAE. *Ibid.*

in the number of property purchases by Qataris in the UAE, from 220 in 2017 to just 23 in 2018[867].

5.128 As a result of the Travel Ban, Qataris have lost physical access to their properties in the UAE. One Qatari who owns land in the UAE reports that he cannot access his property and is therefore left to wonder "whether I still own my land . . . Someone else could have taken it, and I would not know about it."[868] A property developer told another Qatari owner the only way to exit the purchase agreement for a property he could not access was to find a buyer for the property and "then come to the UAE to transfer the agreement . . . into the buyer's name. I told the representative that I wasn't allowed to come to the UAE because I am Qatari, but he did not seem to care. He told me that it was the only choice I had if I wanted to get out of the purchase agreement."[869] Other Qataris lost control over

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867 **UAE PM Exhibit 3** (25 June 2018), *Report of Abu Dhabi police on Hotline, Real Estate, Funds, Licenses and Immigration*, p. 14. The 2017 number may well be misleading, since it does not indicate how many of those transactions took place before 5 June 2017 versus after.

868 **Vol. VIII, Annex 193**, DCL-048, para. 26;*see, e.g.*,**Vol. IX, Annex 216**, DCL-093, paras. 19, 25 ("However, we cannot check [the property's] status with our own eyes, as we can no longer travel to the UAE. There is no one in the UAE who could help me and check the status of the construction for me . . . We do not know if or when we will be able to access it again."); **Vol. VII, Annex 169**, DCL-010, para. 21; **Vol. VIII, Annex 191**, DCL-046, paras. 8–10, 23, 26; **Vol. VIII, Annex 194**, DCL-051, para. 13; **Vol. VIII, Annex 195**, DCL-053, para. 13; **Vol. VIII, Annex 196**, DCL-056, para. 25; **Vol. VIII, Annex 199**, DCL-068, paras. 8, 16; **Vol. IX, Annex 211**, DCL-086, paras. 13, 16; **Vol. IX, Annex 215**, DCL-092, para. 16; **Vol. IX, Annex 217**, DCL-096, para. 23; **Vol. IX, Annex 218**, DCL-097, para. 25; **Vol. X, Annex 237**, DCL-140, paras. 17; **Vol. XI, Annex 250**, DCL-165, paras. 9–10; **Vol. XI, Annex 252**, DCL-167, para. 17; **Vol. XI, Annex 258**, DCL-174, para. 16; **Vol. XI, Annex 260**, DCL-177, para. 12; **Vol. XI, Annex 269**, DCL-187, para. 14; **Vol. X, Annex 229**, DCL-123, para. 10; **Vol. X, Annex 230**, DCL-124, paras. 19–22.

869 **Vol. VIII, Annex 182**, DCL-030, para. 9; *see e.g.*, **Vol. VII, Annex 170**, DCL-011, para. 26; **Vol. X, Annex 242**, DCL-147, para. 12; **Vol. XI, Annex 258**, DCL-174, para. 10.

their businesses and had to either close or sell them, including because they could not travel to the UAE to renew the Emirati commercial license[870].

5.129 Qataris also have reported being unable to sell or transfer their UAE properties as they cannot travel there to manage the sales and property managers will not communicate with them. There is also evidence of the UAE authorities freezing real estate sales and property registrations by Qataris—a further State act of racial discrimination which is significantly impairing Qataris' property rights[871]. For example, a Qatari who owned property in the UAE contacted his agent in July 2017 to find out how to sell his property. The agent reported that the Land Department had communicated verbally that Qataris cannot sell properties in the UAE[872].

5.130 Because they cannot travel to the UAE, some Qataris have tried to grant a Power of Attorney ("***PoA***") in order to manage their property from abroad via a third party. A valid PoA must be signed and notarized by a Notary Public. If executed outside of the UAE, it must be notarized and authenticated by the UAE Embassy (or equivalent) in the country in which it is signed. As the UAE Embassy in Qatar is closed, a Qatari wishing to execute a PoA must travel to a

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870 *See, e.g.,* **Vol. IX, Annex 204**, DCL-076, para. 32 ("I lost everything: my home, my businesses, all of my savings, and my friendships. . . . My family and I have had to start over empty-handed."); **Vol. IX, Annex 224**, DCL-108, para. 12. ("It was devastating to lose control over a business that I had built by myself, from scratch, and had turned into a successful shop over the course of a decade."); **Vol. IX, Annex 217**, DCL-096, paras. 14–22; **Vol. IX, Annex 219**, DCL-098, para.15; **Vol. IX, Annex 220**, DCL-100, paras. 22–32; **Vol. X, Annex 238**, DCL-143, para. 19; **Vol. XI, Annex 247**, DCL-161, para. 19.

871 *See* **Vol. XI, Annex 248**, DCL-162, para 13; **Vol. XII, Annex 265**, DCL-182, paras. 9, 11 ("They refused to register the sale agreement just because I am Qatari.") **Vol. IX, Annex 218**, DCL-097, para. 21; **Vol. XII, Annex 267**, DCL-184, para. 14.

872 **Vol. VII, Annex 169**, DCL-010, para. 16.

third country such as Kuwait or Oman. During the provisional measures hearing, the UAE attempted to demonstrate that UAE embassies and consulates in third countries continue to be available as normal to Qataris to authenticate documents, such as PoAs[873]. As an initial matter, the alleged availability of PoAs does not and cannot remedy the impairment of Qataris' property rights as a result of the Absolute and Modified Travel Bans. At most, the hypothetical availability of PoAs could mitigate harm caused by the UAE's unlawful expulsion and Travel Bans.

5.131 But in practice, PoAs have proven ineffective. *First,* the process for Qataris to obtain PoAs is arbitrary. Some of the attempts by Qataris to obtain PoAs have been rebuffed by UAE embassy officials, who have rejected requests because the applicant was Qatari[874]. *Second,* the small number of Qataris who have actually received valid PoAs have often been unable to use them including because, as set out in further detail below, Emiratis and non-Emiratis alike are afraid to act pursuant to a Qatari PoA as a result of the Anti-Qatari Incitement Campaign[875].

5.132 The few documents adduced by the UAE to support its claim are hardly convincing—two relate to documents submitted not by Qataris but by an Emirati couple and a Qatari-Emirati couple, and the majority of them were executed by corporations, not individual Qataris[876]. In fact, one of the examples cited by the

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873 CR 2018/13, p. 14, para. 17 (Alnowais).

874 *See* para. 4.65, above.

875 *See* para. 4.65, above.

876 *See* **UAE PM Exhibit 5** (25 June 2018), *Business – UAE Embassy – Authentication Records*.

UAE as a "successful" receipt of a PoA by a Qatari corporation was one obtained by Muntajat, a state-owned subsidiary of Qatar Petroleum[877]. But what the UAE omitted were the details. Muntajat explained that, prior to 5 June, the relatively straightforward process for obtaining a PoA took "one day (or two, at most, if there was some delay)."[878] However, its attempt to obtain a POA since 5 June 2017, "took some *six weeks, three lawyers' offices, and visits to two embassies and four ministries in three countries*", at an exorbitant cost of approximately US$11,000[879]. Further:

> "The only reason that Muntajat was able to manage this complicated process is that it had preexisting relationships with lawyers in the various legal fields and the existing transnational relationships among the law firms, as well as the Company's considerable resources that enabled it to complete the process at embassies and notary offices in three countries."[880]

5.133 Individuals who do not have access to the same extensive financial and expert resources thus face insurmountable obstacles to obtaining a valid PoA[881]. As a result, the system of PoAs argued by the UAE simply has not, and cannot,

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877 *See* **UAE PM Exhibit 6** (25 June 2018), *Power of Attorney*.

878 **Vol. XI, Annex 245**, DCL-152, para. 19.

879 **Vol. XI, Annex 245**, DCL-152, paras. 21, 26 (emphasis added).

880 **Vol. XI, Annex 245**, DCL-152, para. 22.

881 For example, a Qatari who has been unable to access and manage his properties in the UAE since 5 June 2017 can no longer rent those which were not already under local management. **Vol. IX, Annex 211**, DCL-086, paras. 14–15 ("Regarding the [redacted] which are currently under estate agent management . . . we have been unable to obtain powers of attorney for individuals in the UAE to manage this process in our absence, as there is no Emirati embassy in Qatar.").

even begin to mitigate the harm caused by the UAE's impermissible interference with the right of Qataris to their property in the UAE[882].

4. Interference with the Right to Work

5.134 The UAE has impermissibly interfered with the right to work and free choice of employment as stated in Article 5(e)(i), Article 23(1) of the UDHR and Article 34 of the Arab Charter on Human Rights[883], which require that the UAE refrain from discriminatory interference with, at a very minimum, access to the labor market[884].

5.135 As a result of the UAE's Absolute and Modified Travel Ban, Qataris were deprived of their work on a discriminatory basis because Qataris working in the

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882 Further, while the UAE introduced evidence at the provisional measures phase purporting to demonstrate that commercial licenses continue to be issued and renewed for Qataris in the UAE, the data, again, only covers the period between 5 June 2017 to 18 June 2018. *See* **UAE PM, Exhibit 3** (25 June 2018), *Report of Abu Dhabi police on Hotline, Real Estate, Funds, Licenses and I mmigration*, p. 16. Further, regardless of whether a license is issued or renewed, Qatari managers cannot effectively manage their businesses if they cannot travel to the UAE, an impossibility that is compounded by the difficulties they face in executing a valid PoA.

883 *See* **Vol. III, Annex 92**, CERD, Art. 5(e)(i); UDHR, Art. 23(1) ("Everyone has the right to work, to free choice of employment, to just and favourable working conditions of work and to protection against unemployment."); Arab Charter on Human Rights, Art. 34 ("1. The right to work is a natural right of every citizen. The State shall endeavor to provide, to the extent possible, a job for the largest number of those willing to work, while ensuring production, the freedom to choose one's work and equality of opportunity without discrimination of any kind on grounds of race, colour, sex, religion, language, political opinion, membership in a union, national origin, social origin, disability or any other situation" . . . 5. "Each State party shall ensure to workers who migrate to its territory the requisite protection in accordance with the laws in force."); *see also* International Convenant on Economic, Social and Cultural Rights, Art. 6(1) ("The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.").

884 *See ibid.*

UAE had their employment summarily ended when they were forced to leave the country[885]. Notably, employment in the UAE has never been an explicit carve-out to the successive iterations of the Absolute Travel Ban.

5.136 Ten of the verified complaints submitted to the CCC relate to interference with the right to work[886]. For example, a Qatari woman who had been working in the UAE for many years fled the UAE on 5 June 2017 in response to the Expulsion Order. Her Emirati employer's human resources director now refuses to communicate with her and she has not been able to find a new position in Qatar[887].

5. Interference with Right to Equal Treatment Before Tribunals

5.137 As noted above, the UAE's Article 2(1), 5(a) and 6 obligations require that the UAE provide equal access to justice without interference on racially

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885 *See, e.g.*, **Vol. VIII, Annex 191**, DCL-046, para. 25 ("On June 5, 2017, without any notice or time to prepare, I was forced to leave my job[.] . . . I have worked hard for 20 years, and instead of being promoted and continuing to climb the career ladder as a Manager, I found myself in between jobs for approximately a year, forced to eventually take up a lower position. I have worked so hard, and now I cannot help but feel like my career is ruined."); *see also* **Vol. VII, Annex 179**, DCL-027, para. 19.

886 **Vol. XII, Annex 263**, Affidavit, State of Qatar Compensation Claims Committee, Exhibit B (Portion of CCC Claims Database related to the UAE). All ten of these claimants were in the UAE when the Expulsion Order was announced, and fled the UAE on or after 5 June 2017. As a result of the UAE's Discriminatory Measures, five of these claimants lost the job or position they held on 5 June 2017.

887 *See* **Vol. VII, Annex 178**, DCL-025, para. 23 ("As a woman who worked very hard to reach a senior position as [redacted], it is absolutely devastating to be unemployed and without any social status."); *see also* **Vol. V, Annex 135**, National Human Rights Committee, *100 Days Under the Blockade: NHRC Third report on human rights violations caused by the blockade imposed on the state of Qatar* (30 August 2017), p. 7 ("[M]any citizens who are employed at public, private, or government sectors and used to move freely between the four countries are now jobless with no source of income and with no compensations from the three states that initiated the blockade").

discriminatory grounds, ensuring the enjoyment of fundamental procedural rights[888].

5.138 The multiple links between Qataris and the UAE prior to the 5 June, based upon the freedoms established under the GCC framework, mean that Qataris have rights subject to UAE law and the jurisdiction of Emirati courts. For Qataris that have been expelled and/or subject to the Travel Bans, they have been denied access to justice and procedural rights on discriminatory grounds.

5.139 In June 2018, the NHRC documented the inability of Qataris to "resort to the courts" and to "exercise the right to litigation and [the] right to defense," including through the "[n]on-implementation of court orders issued in favor of Qataris"[889]. Twenty-six of the verified complaints submitted to the CCC relate to denial of access to justice in the UAE[890]. As explained by the OHCHR, "legal cooperation has been suspended, including power of attorney." [891]

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888 *See* para. 5.10, above; *see also* **Vol. VI, Annex 150**, P. Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination* (Oxford University Press, 2016), p. 427 (the overarching "justice infrastructure requirements of Articles 2 and 5—notably 5(a)—are complemented by the specific requirements of Article 6" to make tribunals an effective means of relief from racial discrimination); Arab Charter on Human Rights, Art. 12 ("All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels."), 13(1) ("Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law . . .").

889 **Vol. V, Annex 140**, National Human Rights Committee, *Fifth General Report, Continuation of human rights violations: A year of the blockade imposed on Qatar* (June 2018), p. 53.

890 **Vol. XII, Annex 272**, Affidavit, State of Qatar Compensation Claims Committee, Exhibit B (Portion of CCC Claims Database related to the UAE). The majority of these claimants submitted claims related to ongoing cases before UAE courts, which they have been unable to meaningfully participate in since 5 June 2017. Some claimants also reported that they were

5.140 As a result of the Travel Bans, Qataris cannot physically access UAE courts and institutions, meet with an Emirati attorney in the UAE or appear before the court as a party or witness[892]. Once again, pursuing legal actions before local courts and tribunals is not an explicit carve-out to the Absolute Travel Ban, nor is defending such actions[893]. In addition, Emirati courts are reported to have adopted a discriminatory attitude to cases brought by Qataris, with one declarant reporting: "I have heard from my lawyer's office [in the UAE] that Emirati authorities have indefinitely delayed proceedings involving Qataris"[894]. Further, as explained above, the UAE has compounded this violation with the difficulties that it has imposed on Qataris' ability to execute valid PoAs,[895] and engaging Emirati agents, including local counsel, has proved extremely difficult for Qataris, as Emiratis are afraid of punishment under the law if they assist Qataris[896].

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unable to validate or use Powers of Attorney for use in the UAE. Others reported that they faced difficulties finding legal representation or communicating with lawyers in the UAE.

891 **Vol. III, Annex 98**, OHCHR Technical Mission to the State of Qatar, *Report On the impact of the Gulf Crisis on human rights* (December 2017), *available at* http://nhrc-qa.org/wp-content/uploads/2018/01/OHCHR-TM-REPORT-ENGLISH.pdf, para. 40.

892 *See* paras. 4.79–4.81, above.

893 Likewise, the Travel Bans prevent Qataris from seeking redress against violations of their rights, but also render them unable to defend themselves if claims are brought against them in the UAE. *See e.g.,* **Vol. VIII, Annex 193**, DCL-048, paras. 19, 25 ("[A]fter obtaining a court order in my favor, I am still unable to enforce it or collect the sums under it."); **Vol. IX, Annex 203**, DCL-074, para. 17; **Vol. XI, Annex 262**, DCL-179, paras. 14-17.

894 **Vol. X, Annex 230**, DCL-124, para. 18.

895 *See* paras. 5.131–5.133, above.

896 *See* para. 4.62, above.

5.141 In short, just like the UAE's collective expulsion of Qataris, neither the Absolute nor Modified Travel Bans can be justified as legitimate or proportional. The UAE has compromised Qataris' fundamental human rights and freedoms, including the rights to due process, to family life, to education and access to justice, because they are a member of a group defined by their national origin. The UAE's arbitrary conduct has been compounded by its failure to afford a protective legal framework or access to an effective remedy as required by Article 6. As such, the UAE has violated a multiple Article 5 obligations, as well as Articles 2(1) and 6 of the CERD.

Section III. The UAE's Interference with Qataris' Right to Freedom of Opinion and Expression Violates Articles 2(1), 5(d)(viii) and 6 of the CERD

5.142 The UAE also has silenced media emanating from Qatar through its Qatari Media Block, thereby nullifying and impairing the rights of Qataris to freedom of opinion and expression on racially discriminatory grounds, directly contrary to its obligations to respect and protect these rights under Articles 2(1), 5(d)(viii) and 6 of the CERD[897].

5.143 As discussed above, even before announcing the Discriminatory Measures, the UAE had moved to block the transmission of Al Jazeera and other Qatari content in the UAE and then demanded that Qatar dismantle Al Jazeera as a

[897] *See* **Vol. III, Annex 92**, CERD, Arts. 2(1), 5(d)(viii), 6; *see also* UDHR, Art. 19 ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."); Arab Charter on Human Rights, Art. 32(1) ("The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.").

condition of repealing its Discriminatory Measures[898]. Silencing the region's premier independent news channel stands in stark contrast to the directive that "[e]veryone has the right to hold opinions and to seek, receive and impart information and ideas of all kinds through any media and regardless of frontiers"[899].

5.144 Evidence obtained from Al Jazeera shows that attempts to block the transmission of Al Jazeera's content began as early as 23 May 2017, the day that the QNA was hacked. While Al Jazeera's satellite signal was protected from interference, its website and the broadcast of its television content were no longer available in the UAE as of 23 and 24 May 2017 respectively:

> "the number of site visits from the UAE [to Al Jazeera's satellite distribution website] dropped from **972** visitors in May 2017 to **52** in June 2017. This represents a drop of 95%, which persisted through the following months and strongly indicates that access to Al Jazeera' satellite distribution website was being blocked for internet users located in the UAE."[900]

Country	Jan -17	Feb -17	Mar -17	Apr -17	May -17	Jun -17	Jul -17	Aug -17	Sep -17	Oct -17	Nov -17	Dec -17
United Arab Emirates	540	472	896	1195	972	52	38	55	68	74	59	59

898 *See* paras. 2.43, 2.64, above.

899 **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35: Combating racist hate speech*, document CERD/C/GC/35 (26 September 2013), para. 26.

900 **Vol. XII, Annex 264**, DCL-181 Witness Declaration, Al Jazeera Media Network Representative, para. 7.

5.145 On 18 September, the number of views on Al Jazeera's social media and mobile network platforms in the UAE "plummeted from 350,000/day to zero . . . Access to these apps is still blocked in the UAE."[901]

5.146 Steps were also taken to silence Qatar's beIN Sports, the region's preeminent network of sports channels. Following the 5 June Directive, the Emirati government ordered hotel property managers to "terminate the broadcast and display of bein [*sic*] sports channels in the hotel facilities until further notice"[902], although certain content later became available from 26 July 2017[903]. The sale of beIN Sports receivers and cards was also prohibited[904].

5.147 The UAE also directed internet providers in the UAE to block access to the websites of Qatari service providers from the territory of the UAE. In addition to Al Jazeera, Qatari newspapers such as the Peninsula were blocked[905].

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901 **Vol. XII, Annex 264**, DCL-181 Witness Declaration, Al Jazeera Media Network Representative, para. 11.

902 **Vol. II, Annex 17**, Sharjah Commerce and Tourism Development Authority, *Ban of bein [*sic*] Sports Channels Display* (15 June 2017).

903 *See* **Vol. II, Annex 22**, Abu Dhabi Tourism and Culture Authority, *Circular No. (33) 2017* (26 July 2017).

904 *See* **Vol. II, Annex 16**, "UAE bans selling and subscription of beIN Sports receivers and cards", *UAE News Agency WAM* (14 June 2017), http://wam.ae/en/details/1395302619057, p. 1; **Vol. II, Annex 28**, Letter from United Arab Emirates National Media Council to United Arab Emirates Ministry of Economics, *beIN Sports Receivers and Cards* (6 June 2018) (with certified translation).

905 *See* "Websites of Al Jazeera, Qatari newspapers blocked in Saudi Arabia and UAE", *Al Arabiya* (24 May 2017), http://english.alarabiya.net/en/media/digital/2017/05/24/Websites-of-Al-Jazeera-Qatari-newspapers-blocked-in-Saudi-Arabia.html; **Vol. V, Annex 125**, Committee to Protect Journalists, *Saudi Arabia, UAE, Bahrain block Qatari news websites* (25 May 2017), https://cpj.org/2017/05/saudi-arabia-uae-bahrain-block-qatari-news-

5.148 Into this informational vacuum, the UAE has injected and tolerated anti-Qatari rhetoric and sentiments[906]. In this environment, Qataris have withdrawn from public life in the UAE *as* Qataris. The UAE has engendered such fear that Qataris can no longer freely express their views, opinions and even identity as Qataris while in the UAE, for example. Qataris have stopped wearing Qatari dress, speaking with a Qatari accent, or playing Qatari songs[907], Qatari license plates have been removed, and cars with such license plates vandalized[908].

5.149 As emphasized by the CERD Committee, the rights to freedom of opinion and expression are "indispensable for the articulation of human rights" and all "States parties should adopt policies empowering all groups within the purview of the Convention to exercise" them[909].

5.150 Notably, the CERD protects both the rights of individuals and "institutions", which should be read broadly to include corporations such as Qatari media outlets. Article 2(1)(a) explicitly provides that "[e]ach State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons *or institutions*". The ordinary meaning of "institutions" includes

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website.php, pp. 1–3; "The Peninsula Qatar website blocked in UAE", *The Peninsula* (10 June 2017), https://thepeninsulaqatar.com/article/10/06/2017/The-Peninsula-Qatar-website-blocked-in-UAE.

906 *See* paras. 2.45–2.61, above.

907 *See, e.g.,* para. 2.25, nn. 64, 65, above; para. 3.95, n. 318, above; **Vol. VII, Annex 180**, DCL-028 , para 20.

908 *See, e.g.,* para. 2.25, n. 66, above; **Vol. IX, Annex 220**, DCL-100, paras. 33–34.

909 **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35: Combatting Racist Hate Speech*, document CERD/C/GC/35 (2013), para. 29.

corporations[910], and the object and purpose of the CERD—to guarantee protection against racial discrimination—supports their inclusion as rights-holders under the Convention. Indeed, the *travaux préparatoires* clarify that the reference to "institutions" was included in Article 2(1)(a) to address concerns that the Convention's jurisdiction *ratione personae* was "too restricted" precisely because "article 2 protected only individuals and did not offer any safeguards against discriminations to groups or institutions".[911]

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[910] *See* Merriam-Webster Dictionary, Definition of "Institution", https://www.merriam-webster.com/dictionary/institution ("[A]n established organization or corporation (such as a bank or university) especially of a public character".).

[911] **Vol. III, Annex 70**, United Nations, *Official Records of the General Assembly*, *Eighteenth Session*, *Third Committee*, document A/C.3/SR.1214, paras. 3–4. Corporations are recognized as rights-holders under other human rights conventions. The ECHR explicitly grants rights to legal persons in Art. 1 Protocol 1 ("Every natural or legal person is entitled to the peaceful enjoyment of his possessions . . .") and the ECtHR has also recognized that, *inter alia*, the following rights granted to "persons" include legal persons: "freedom of expression, right to privacy, right to a fair trial". The standing of legal persons to bring claims in protection of rights has also been recognized under the ACHPR (*see* African Commission on Human and Peoples' Rights, *Interights v. Mauritania*, Communication No. 242/2001, 56 (4 June 2004)), and under the ACHR (*see* **Vol. IV, Annex 123**, IACtHR*, Entitlement of Legal entities to hold rights under the Inter-American Human Rights System (Interpretation and scope of Article 1(2), in relation to Articles 1(1), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as well as of Article 8(1)(A) and (B) of the Protocol of San Salvador),* Advisory Opinion OC-22/16 (26 February 2016) ("***IACtHR Advisory Opinion***"), paras. 105, 107, 111, 115–117, 120; Inter-American Commission on Human Rights, *Granier et al. (Radio Caracas Television) vs. Venezuela*, Judgment, (ser. C) No. 293 (22 June 2015) (restrictions on freedom of expression affecting media outlets may affect the rights of individuals who engage in communication through that entity.). The terms of the ACHR grants rights strictly to "ser humanos" ("human beings"). However, the IACtHR has expressly distinguished the terms of the ACHR and its practice in this respect from that of certain other human rights bodies, particularly the ECtHR and the CERD Committee, which recognize legal persons as having rights. The CERD Committee has "established that legal persons can denounce violations affecting *their* rights, provided they have suffered harm and can be considered victims in the case". *See IACtHR Advisory Opinion*, in which the IACtHR notes that, at paras. 60, 62 (emphasis added).

5.151 In sum, by adopting the Qatari Media Block, the State has not only failed to prevent discriminatory interference with the right to freedom of opinion and expression, it has been the primary agent of that interference. This is a clear violation of Article 5. The singling out of Qataris and Qatari media based solely on their Qatari national origin and subjecting them to "restrictions" which nullify or impair their right to freedom of opinion and expression represents a violation of Article 2(1). Further, as set out above, by failing to provide a remedy to the Qataris whose rights were impacted by the Qatari Media Block, the UAE has violated Article 6 of the CERD.

Section IV. The UAE's Propagation and Incitement of Discriminatory Anti-Qatari Propaganda and Ideas Violate Articles 2, 4, 6 and 7 of the CERD

5.152 The Expulsion Order and the Absolute Travel Ban were not the only measures that the UAE took that nullified and impaired the rights of Qataris. They were accompanied by the UAE's wide-ranging Anti-Qatari Incitement Campaign.

5.153 The UAE's Anti-Incitement Campaign constitutes a fundamental violation of the CERD in two broad respects. *First*, the UAE *itself* has propagated Anti-Qatari ideas and incited racial discrimination. The Anti-Sympathy Law and the Block on Qatari media contributed to and facilitated the reach of this Campaign – which has fostered prejudice and fear in a manner deeply detrimental to the perception of Qatari identity (**Section A**). *Second*, the UAE has also tolerated (indeed, encouraged) the dissemination of such Anti-Qatari ideas by private individuals (**Section B**). Both categories of State action and inaction violate Articles 2, 4, 6 and 7 of the CERD.

A. THE UAE IS VIOLATING THE CERD THROUGH ITS ANTI-QATARI INCITEMENT CAMPAIGN

5.154 The core of the CERD's protections against racially discriminatory theories and ideas can be found in Article 4:

> "States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:
>
> (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
>
> (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
>
> (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination."

5.155 Article 4 plays a crucial role in achieving the objectives of the CERD. As the CERD Committee explained in General Recommendation 35: "[w]hen the [Convention] was being adopted, article 4 was regarded as central to the struggle against racial discrimination …. [T]he implementation of article 4 is now of increased importance."[912] The reason is straightforward: "dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin" are anathema to the objectives of the CERD[913].

5.156 Other provisions of the CERD are likewise engaged by the propagation and tolerance of racially discriminatory ideas: in particular, the positive obligations set out in Article 7 are mandatory and require "immediate and effective measures" that aim to combat prejudice, recognizing the importance of States parties educating and informing their populations so as to promote friendship and tolerance[914]. These obligations have been described by the CERD Committee as "an indispensable complement to other approaches to combatting

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912 **Vol. IV, Annex 106**, CERD Committee, *General Recommendation No. 15 on article 4 of the Convention*, *contained in* document A/48/18 (1993), para. 1.

913 **Vol. III, Annex 92**, CERD, Art. 4(a). *See* UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, 999 *UNTS* 171, Art. 20 (providing that "any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law"). Though the CERD does not itself define "propaganda", international law generally defines propaganda as statements or materials designed to influence their audience, whether organized or unorganized. *See* E. De Brabandere, "Propaganda" in *Max Planck Encyclopedia of Public International Law* (Oxford Public International Law, 2012) ("Propaganda can be described as a method of communication, by State organs or individuals, aimed at influencing and manipulating the behaviour of people in a certain predefined way. The element of influence and manipulation is at the centre of the concept, and distinguishes it from mere factual information.").

914 **Vol. III, Annex 92**, CERD, Art. 7.

racial discrimination."[915] They reinforce the obligations set out in Article 4 by seeking to create an atmosphere in which racially discriminatory ideas and propaganda cannot thrive. A State party that is systematically avoiding its Article 4 obligations is thus by definition undermining its Article 7 obligations, and the effectiveness of the measures that might fall within its scope.

5.157 Each of States parties' panoply of obligations under Article 2(1)—including the undertakings not to engage in acts of racial discrimination, not to sponsor or support racial discrimination by others, and to prohibit and bring to an end all racial discrimination—is likewise engaged by the promotion and tolerance of racially discriminatory ideas. Article 6 reinforces this framework by requiring *effective* protection and remedies against *all* "dissemination of ideas based on racial superiority . . .".

5.158 The CERD Committee has made clear that each of these provisions works in conjunction not only to prohibit States parties from themselves propagating racially discriminatory ideas, but also by mandating them to adopt *effective* measures to prohibit the promotion and incitement of racial discrimination:

> "[I]t does not suffice, for the purposes of article 4 of the Convention, merely to declare acts of racial discrimination punishable on paper. Rather, criminal laws and other legal provisions prohibiting racial discrimination must also be effectively implemented by the competent national tribunals and other State institutions. This obligation is implicit in article 4 of the Convention, under which States parties

[915] *See e.g.*, **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 6; *Gelle v. Denmark*, Communication No. 34/2004, Opinion, document CERD/C/68/D/34/2004 (2006), para. 7.4.

> undertake to adopt immediate and positive measures to eradicate all incitement to, or act of, racial discrimination. It is also reflected in other provisions of the Convention, such as article 2, paragraph 1(d), which requires States to prohibit and bring to an end, by all appropriate means, racial discrimination, and article 6, which guarantees to everyone effective protection and remedies against any acts of racial discrimination."[916]

5.159 States parties' obligations in this regard extend to non-citizens[917]. Indeed, States parties *must* "address xenophobic attitudes and behavior towards non-citizens", and the CERD therefore mandates "resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of . . . national or ethnic origin, members of 'non-citizen' population groups."[918]

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916 *Jama v. Denmark*, Communication No. 41/2008, Opinion, document CERD/C/75/D/41/2008 (2009), para. 7.3; *see also Gelle v. Denmark*, Communication No. 34/2004, Opinion, document CERD/C/68/D/34/2004 (2006), paras. 7.2–7.3; N. Lerner, *The UN Convention on the Elimination of All Forms of Racial Discrimination* (BRILL, 2014), p. 42.

917 *See e.g.*, **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 6. While there is no explicit reference to "national origin" in the chapeau of Article 4, the CERD Committee also has made clear that *(i)* racially discriminatory propaganda targeting a group of individuals on the basis of national origin falls within the scope of Article 4. *Gelle v. Denmark*, Communication No. 34/2004, Opinion, document CERD/C/68/D/34/2004 (2006); *see also* **Vol. VI, Annex 150**, P. Thornberry, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 282 (while the "travaux are not illuminating in this respect", Article 4 "should not be read to suggest that particular categories remain bereft of protection from hate speech").

918 **Vol. IV, Annex 109**, CERD Committee, *General Recommendation No. 30 on discrimination against non-citizens*, document CERD/C/64/Misc.11/rev.3 (2004), paras. 11–12; *see also* **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 10 ("The Committee recalls the mandatory nature of article 4 . . . .").

5.160 Accordingly, singling out a group of non-citizens on the basis of their national origin and subjecting them to a State-sponsored campaign of racially discriminatory incitement and ideas engages a State Party's obligations under (*i*) Article 4, in particular its obligation under Article 4(c) "not [to] permit public authorities or public institutions, national or local, to promote or incite racial discrimination"; (*ii*) Article 7, as such a campaign is the antithesis of "promoting understanding, tolerance and friendship among nations and racial or ethnical groups"; (*iii*) under Article 2(1)(a), as such a campaign is an "act or practice" of racial discrimination prohibited by Article 2(1)(a) as it has the "purpose or effect of nullifying or impairing the recognition, enjoyment or exercise" of their human rights and fundamental freedoms; and (*iv*) Article 6, where the State Party fails to provide an effective remedy for its own and its officials' unlawful dissemination of racially-discriminatory ideas. The reach of the CERD is broad in this regard; General Recommendation 35 specifies that "[p]ublic authorities at all administrative levels" are bound by Article 4[919]. Equally, the acts of State officials are undoubtedly captured by these prohibitions as they are attributable to the State pursuant to Article 4 of the ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts[920].

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[919] The CERD Committee has made clear "that the provisions of article 4 are of a mandatory character" and that "[p]ublic authorities at all administrative levels" are bound by those provisions. *See* **Vol. IV, Annex 106**, CERD Committee, *General Recommendation No. 15 on article 4 of the Convention*, *contained in* document A/48/18 (1993), paras. 2, 7.

[920] Draft Articles on Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two) ("***ILC Articles***"), Art. 4 ("[t]he conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State", where an organ includes "…any person or entity which has that status in accordance with the internal law of the State."). The commentaries to Article 4 quote the *Moses* case: "An officer or person in authority represents

5.161 Indeed, the power of public officials to disseminate and promote racial discrimination is "of particular concern" to the CERD Committee[921], especially "reported instances of hate speech directed against national and ethnic minorities . . . attributed to high-ranking government officials and public figures [and] reported to have a significant detrimental effect on the population."[922] The CERD Committee has also emphasized the "important role" played by high-level public officials in achieving the mandate of Article 7 —to promote a culture of tolerance

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pro tanto his government, which in an international sense is the aggregate of all officers and men in authority", and then states "[t]here have been many statements of principle since then". [para. 4] As long as an official is exercising his authority, it does not matter what position that person holds within the government [commentaries to Article 4, para. 7]. Per Article 7, the actions of its officials still constitute acts of the UAE even if they exceed authority or contravene instructions.

921 **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 22. The Committee noted in particular "the role of politicians and other public opinion-formers in contributing to the creation of a negative climate towards groups protected by the Convention and has encouraged such persons and bodies to adopt positive approaches directed to the promotion of intercultural understanding and harmony." *Ibid*. para. 15.

922 CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Turkmenistan*, document CERD/C/TKM/CO/5 (27 March 2007), para. 11; *see also* CERD Committee, *Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria*, document CERD/C/BGR/CO/20-22 (2017), paras. 11–12 ("In particular, the Committee is concerned that racist discourse and appeals are evident during election campaigns and that political parties and candidates frequently use slurs against minority groups and individuals."); CERD Committee, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, document CERD/C/RUS/CO/23-24 (20 September 2017), paras. 15–16 (expressing concern that "[r]acist hate speech is still used by officials and politicians," and recommending, *inter alia*, that Russia "[i]ntensify its efforts to raise the awareness of the public, civil servants and law enforcement officials ... in order to combat stereotypes, prejudices and discrimination"); CERD Committee, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Pakistan*, document CERD/C/PAK/CO/21-23 (3 October 2016), paras. 15–16 (noting a "rise in racist hate speech . . . including by public officials and political parties" and recommending, *inter alia*, "enhanced human rights education and awareness-raising campaigns," as well as the condemnation of racist hate speech by public officials).

and respect—by formally rejected and condemning racially hateful ideas.[923] Public figures hold an elevated position in the public discourse, and their affiliation with the State bestows upon them a cover of legitimacy—to say nothing of their power to transform racially discriminatory ideas into action.

5.162 As such, the Committee has recommended that States parties "[d]raw the attention of politicians and members of political parties to the particular duties and responsibilities incumbent upon them pursuant to Article 4 of the Convention with regard to their speeches, articles or other forms of expression in the media."[924] For example, in the face of apparent racist public discourse, including by political candidates and parties in Bulgaria, the Committee recommended that States not only amend their legislation "to include a definition of hate speech that is in line with article 4", but also "[e]stablish protocols to prevent and condemn hate speech by public officials and politicians" and "[r]aise public awareness on respect for diversity and the elimination of racial discrimination."[925]

5.163 Likewise, in its recent Concluding Observations adopted with respect to the United Kingdom, the Committee expressed concerns about "divisive, anti-immigrant and xenophobic rhetoric" and observed that politicians and prominent political figures "not only failed to condemn such rhetoric, but also created and

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923 **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 37.

924 *See Kamal Quereshi v. Denmark*, Communication No. 27/2002, Opinion, document CERD/C/63/D/27/2002 (2003), para. 9; *P.S.N. v. Denmark*, Communication No. 36/2006, Opinion, document CERD/C/71/D/36/2006 (2007), para. 6.5; *A.W.R.A.P. v. Denmark*, Communication No. 37/2006, Opinion, document CERD/C/71/D/37/2006 (2007), para. 6.5.

925 CERD Committee, *Concluding Observations on the combined twentieth to twenty-second periodic reports of Bulgaria*, document CERD/C/BGR/CO/20-22 (31 May 2017), paras. 11–12.

entrenched prejudices, thereby emboldening individuals to carry out acts of intimidation and hate."[926] The Committee recommended that the United Kingdom "ensure that public officials not only refrain from such speech but also formally reject hate speech and condemn the hateful ideas expressed, so as to promote a culture of tolerance and respect."[927]

5.164 Here, the UAE and its officials, far from "condemning" racial discrimination, have instead exercised their public power in violation of Articles 2(1), 4, 6 and 7 of the CERD in three ways: *first*, the UAE itself has spread and encouraged racially discriminatory propaganda against Qataris; *second,* the UAE has sought to silence any dissent—indeed, anyone seeking to "show compassion" to Qatar or Qataris; and *third*, the UAE has failed to take any action whatsoever to provide effective redress for those affected by the Campaign and to punish the officials responsible for the spread of racially-discriminatory ideas.

5.165 *First,* the UAE and its officials have actively pursued the spread of racially discriminatory ideas debasing and stigmatizing Qatar and Qataris. The UAE has orchestrated the Anti-Qatari Incitement Campaign: a campaign that it has propagated, encouraged and condoned, through lobbyists, State-sponsored speech

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926 CERD Committee, *Concluding Oobservations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland*, document CERD/C/GBR/CO/21-23 (3 October 2016).

927 CERD Committee, *Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland*, document CERD/C/GBR/CO/21-23 (3 October 2016), paras. 15–16; *see also* **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 37 ("Formal rejection of hate speech by high-level public officials and condemnation of the hateful ideas expressed play an important role in promoting a culture of tolerance and respect.").

and planting of false news[928]. For example, the UAE's National Media Council paid a British communications company USD 333,000 to launch a public relations campaign against Qatar on social media[929].

5.166 The UAE's preference for Twitter and other social media outlets for broadcasting discriminatory rhetoric is particularly problematic as it is a platform known to reach a wide audience and on which messages are, by design, easy to disseminate further[930]. In fact, the CERD Committee has stressed the power of media outlets, including social media outlets, such as Twitter, as a conduit of the immediate mass dissemination of ideas based on racial superiority or hatred, incitement, and threats, as well as a channel to promote tolerance and provide information to the public to combat prejudice. On this basis, the Committee has advised that States should therefore be particularly concerned by the use of the media, including social media and the internet, as a platform to disseminate racially discriminatory ideas[931].

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928 *See* para. 2.36, above.

929 *See* **Vol. VI, Annex 158**, United States Department of Justice, FARA Registration Unit, SCL Social Limited Registration Statement Pursuant to the Foreign Agents Registration Act (6 October 2017), https://efile.fara.gov/docs/6473-Exhibit-AB-20171006-1.pdf.

930 Joyce Hakmeh, *Cybercrime Legislation in the GCC Countries: Fit for Purpose?*, Chatham House Research Paper (July 2018), Table 1. The choice of social media by the UAE and its State officials to spread its message was deliberate. The GCC has among the highest "internet and mobile penetration rates" in the world: in the UAE, 91.2% of the population uses the Internet, and 94% of the population has a social media account. This "remarkable online presence, standing in contrast to a traditionally limited public sphere for interaction", has served many purposes, including as a vehicle for leaders "to engage with their millions of followers." *Ibid.*, pp. 5–6.

931 **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combatting racist hate speech*, document CERD/C/GC/35 (2013), paras. 15, 39.

5.167 Further, as detailed above[932], high-profile representatives of the State have engaged openly[933], or behind thinly veiled disguise[934], in anti-Qatar and anti-Qatari rhetoric designed to incite racial hatred and even violence[935]. Indeed, the UAE's own public officials are among the best-known propagators of anti-Qatar and anti-Qatari sentiment in a context where identity of State and population are intertwined[936]. The acts and statements of these officials are attributable to the UAE and thus engage its responsibility under Article 2(1) and Article 4 of the CERD, and derail the effectiveness of measures to encourage tolerance, as required by Article 7.

5.168 The UAE's actions are a far cry from the Committee's recommendation to "ensure that public officials not only refrain from such speech but also formally reject hate speech and condemn the hateful ideas expressed, so as to promote a culture of tolerance and respect."[937] The actions of the UAE's public officials designed to promote anti-Qatari incitement have been taken with the full knowledge and approval of the highest levels of the UAE Government. As such,

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932 *See* para. 2.36, above.

933 *See* paras. 2.54-2.55, above.

934 *See* para. 2.53, above.

935 *See* para. 2.56-2.61, above.

936 *See* para. 2.54-2.55, above.

937 *See* CERD Committee, *Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland*, document CERD/C/GBR/CO/21–23 (2016), para. 16(d); *see also* **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 37 ("Formal rejection of hate speech by high-level public officials and condemnation of the hateful ideas expressed play an important role in promoting a culture of tolerance and respect.").

the nature of the UAE's conduct is far more egregious than conduct the CERD Committee has found to violate the CERD. In particular, in *TBB-Turkish Union v. Germany*, the CERD Committee found violations of Articles 2(1)(d), 4, and 6 of the CERD on the basis of Germany's failure to effectively investigate statements of a German public official classifying Turkish immigrants as "bad" immigrants, thus "[adding] to public vilification and debasement of Turks and Muslims in general."[938]

5.169 Further, the Anti-Qatari Incitement Campaign sits alongside the UAE's Expulsion Order. By collectively expelling Qataris from the UAE on the grounds of alleged "*precautionary security reasons*",[939] the Emirati government singled out the Qatari people as a group that should be both feared and despised, without any legitimate or objective basis whatsoever. In so doing, the UAE has, to borrow the words of the UN Human Rights Council, "exaggerated economic and national security concerns that are not grounded in objective reality in order to justify racist and xenophobic practices in the context of citizenship, nationality and immigration laws and policies."[940]

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938 *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, Communication No. 48/2010, Opinion, document CERD/C/82/D/ 48/2010 (2013), paras. 12.4, 12.9.

939 **Vol. II, Annex 1**, UAE Ministry of Foreign Affairs, *UAE supports statements of Kingdom of Bahrain and Kingdom of Saudi Arabia on Qatar* (5 June 2017) (emphasis added).

940 United Nations, *Official Records of the General Assembly Human Rights Council, Thirty-Eighth Session,* document A/HRC/38/52, para. 65. According to the UNHCR, "racist and xenophobic ideologies rooted in ethno-nationalism regularly combine with national security fears and economic anxieties to violate the human rights of non-citizens . . . on the basis of race, ethnicity, national origin and religion." *Ibid.* para. 63. For this reason, "States must refrain from pretextual use of exaggerated economic and national security concerns that are not grounded in objective reality in order to justify racist and xenophobic practices in the context of citizenship, nationality and immigration laws and policies." *Ibid.* para. 65.

5.170 *Second,* the UAE has supplemented its vilification of Qataris by stifling any voices that it deems show "sympathy" to Qatar and Qataris and any public discourse that might temper the Campaign. The UAE's Anti-Sympathy law, which prohibited the expression of "sympathy, bias, or affection for that state [of Qatar], or objecting to the position of the State of the United Arab Emirates and the strict and firm measures that it has taken against the Qatari government", has reinforced its Campaign[941]. While the Attorney General may have referred to Qatar and "the Qatari government", these are clearly understood as a reference to Qatar *qua* State and Qatar *qua* Qataris, including by Emiratis and Qataris alike[942]. The Anti-Sympathy Law is no idle threat; as discussed above, it has been actively enforced against Emiratis, Qataris and other nationals [943].

5.171 As noted above, the UAE also closed down Qatari media channels in favor of its own media outlets and those of its allies. The effect of this shutdown, again, has been to silence sources of independent information that might have mitigated the racially discriminatory messages disseminated through the Anti-Qatari Incitement Campaign[944]. It is an explicit example of the dangers of departing from the CERD Committee's warning that media pluralism "facilitates the emergence of speech capable of countering racist hate speech".[945]

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941 **Vol. II, Annex 46**, "Attorney General Warns against Sympathy for Qatar or Objecting to the State's Positions", *Al-Bayan Online* (7 June 2017), https://www.albayan.ae/across-the-uae/news-and-reports/2017-06-07-1.2969979 (certified translation).

942 *See* para. 2.39, above.

943 *See* para. 2.40-2.41, above.

944 *See* para. 2.42, above.

945 **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 41.

5.172 *Third and finally*, the UAE's failure to take any action whatsoever to provide effective redress for those affected by the Campaign and to punish the officials responsible for the spread of racially-discriminatory ideas represents a further violation of Article 6.

5.173 In short, the UAE has deliberately pursued the "public vilification and debasement" of specific protected groups, in this case, Qataris[946]. It had also stymied the possibility of any dissent to its Anti-Qatari Incitement Campaign. It has violated its obligations under Articles 2(1), 4, 7, and 6 as a result.

B. THE UAE IS VIOLATING THE CERD BY FAILING TO TAKE EFFECTIVE MEASURES TO ERADICATE INCITEMENT TO RACIAL DISCRIMINATION

5.174 As noted above, Articles 2(1), 4, and 7 also set out a series of non-exhaustive "*positive measures*" that States must adopt "*to eradicate all incitement to, or acts of … discrimination*" by private institutions and individuals. Of particular relevance, Article 4(a) requires States Parties to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts," while Article 2(1) also requires, *inter alia*, the adoption of "legislation" prohibiting and bringing to an end "racial discrimination by any persons, group and organization" and an undertaking that States Parties "not … sponsor, defend or support racial discrimination." Article 7 demonstrates the scope of the UAE's positive obligations in this regard, requiring it not just to

946 *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, Communication No. 48/2010, Opinion, document CERD/C/82/D/48/2010 (2013), paras. 12.4, 12.9; *ibid.*, para. 12.8 (concluding that statements published by a German official characterizing Turkish immigrants as a problematic group "amounted to dissemination of ideas based upon racial superiority or hatred and contained elements of incitement to racial discrimination").

criminalize discrimination but also to adopt immediate and effective measures to "combat[] prejudices" and "promot[e] understanding, tolerance and friendship. Article 6, when read with Articles 2(1) and (4) demands that such legislation is not only *adopted*,[947] but also *effectively implemented*.[948]

5.175 The CERD Committee has emphasized in particular States parties' obligations regarding the regulation of media outlets[949], which it views as "hav[ing] an essential role in promoting responsibility in the dissemination of ideas and opinions".[950] It has thus encouraged States to "put[] in place legislation for the media in line with international standards" and encourage the media to adopt codes of conduct that incorporate the principles of the Convention".[951] The Committee has also recommended that States "take effective measures to combat

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947 *See* **Vol. IV, Annex 110**, CERD Committee, *General Recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, Sixty-fifth session* (2005), para. 4(a) ("States parties should…criminalize all acts of racism as provided by [Article 4], in particular the dissemination of ideas based on racial superiority or hatred, incitement to racial hatred, violence or incitement to racial violence, but also racist propaganda activities and participation in racist organizations").

948 *Gelle v. Denmark*, Communication No. 34/2004, Opinion, document CERD/C/68/D/34/2004 (2006), para. 17 ("The Committee reiterates that it is not enough to declare the forms of conduct in Article 4 as offences; the provisions of the Article must also be effectively implemented. Effective implementation is characteristically achieved through investigations of offences set out in the Convention, and, where appropriate, prosecution of offenders.").

949 *See also* CERD Committee, *Concluding observations on the twentieth to twenty-second periodic reports of Greece*, document CERD/C/GRC/CO/20-22 (3 October 2016), para. 17(c) (expressing concern at xenophobic speech in local media and recommending that Greece "[*e]nsure that the media does not stigmatize, stereotype or negatively target non-citizens and ethnic minorities*" by inter alia imposing "appropriate sanctions.") (emphasis added).

950 **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 39.

951 **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 39.

racist media coverage…and ensure that such cases are thoroughly investigated, and where appropriate, that sanctions are imposed."[952] For example, in response to concerns regarding the dissemination of racial prejudice and stereotypes by the media in Russia, the Committee recommended that Russia "[e]nsure that media regulatory bodies investigate and repress manifestations of racism, xenophobia and intolerance, adequately discipline and punish perpetrators…"[953]. It has also set out key factors that States parties should consider in determining the scope of the criminal offence that they must adopt to combat racially discriminatory propaganda and ideas, which are particularly relevant to media outlets, such as the nature of the audience, the potential for repetition and the frequency of the dissemination[954].

5.176 Yet, far from effectively criminalizing anti-Qatari discrimination and ensuring media outlets within its jurisdiction promote the principles of the CERD, the UAE has promoted and encouraged the natural consequence of its own actions: the spread of anti-Qatari sentiment by private Emirati institutions—including the Emirati media—and individuals.

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952 CERD Committee, *Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland*, document CERD/C/GBR/CO/21-23 (3 October 2016), paras. 15–16.

953 CERD Committee, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, document CERD/C/RUS/CO/23-24 (20 September 2017), paras. 15–16; *see also* CERD Committee, *Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria*, document CERD/C/BGR/CO/20-22 (31 May 2017), paras. 11–12.

954 **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 15.

5.177 As noted above, the OHCHR has identified a "widespread defamation and hatred campaign against Qatar", with hundreds of anti-Qatar press articles and caricatures published in the Emirati media since June 2017. For example, on 20 June 2017, the Emirati newspaper Al-Ittihad published an article targeting a Qatari institution as "the terrorist arm of Qatar in the sports world!" It alleged that Aspire Academy—an independent, government-funded agency in Qatar that provides sports training and education—is a cover for "secret activity" and "activities that are in violation of international law."[955] The article further claims that "[t]he answer is clear to all but the people of Qatar[.]"[956] Al-Ittihad again targeted a Qatari institution as promoting terrorist activity in October 2018, when it published a caricature of a man with "Qatari Regime" written on his clothing, holding a rifle in the shape of the Al-Jazeera logo, and carrying a terrorist on his back[957]:

[955] **Vol. II, Annex 48**, "Qatar Commits Suicide: Aspire…Qatar's 'terrorist' in the 'sports world'!", *Al–Ittihad* (20 June 2017).

[956] **Vol. II, Annex 48**, "Qatar Commits Suicide: Aspire…Qatar's 'terrorist' in the 'sports world'!", *Al–Ittihad* (20 June 2017).

[957] **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index No. 45.

5.178 This message is a common one among Emirati news outlets. Sky News Arabia, an [Emirati channel], has posted videos alleging that Qatar supports terrorists; some of Sky News' anti-Qatari videos have also been widely shared online by Emiratis. One such video, for example, was shared on Twitter with the caption "#suspicious deals…financing terrorists, kidnapping and taking hostages as well as secret deals exposing the role of Qatar…#Sky documentaries".[958] In fact, hundreds of private individuals have taken to social media to express anti-Qatari sentiment, examples of which have been compiled into a compendium[959]. One such social media user writes:

> "The Qatari is like a pig or a swine (wild boar). The pig is distinguished from other animals by the fact that it is a cuckold and lacks virility... The Qatari

958 **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index No. 46.

959 *See generally* **Vol. VI, Annex 161**, Compendium of Social Media Posts. The Compendium includes samples of social media posts from UAE officials, media, and private individuals containing incendiary speech against Qataris and Qatar.

> does not have any manhood or masculinity… There are not enough men in Qatar, so its government imports men for them from Turkey and Iran to protect their wives and families."[960]

5.179 Such propaganda constitutes "other-directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society", which the CERD Committee notes is abhorred by the international community[961].

5.180 And yet, the UAE has thus failed to live up to its obligation to "take all appropriate measures" to "bring to an end" racially discriminatory propaganda against Qataris. Instead of dedicating the "widest possible range of resources" to eradicate racially discriminatory propaganda, the UAE has dedicated none. For example, the UAE has taken no steps to censure or curb the prolific spread of anti-Qatari sentiments including through the use of its anti-discrimination laws. Nor has the UAE "[e]nsure[d] that media regulatory bodies investigate and repress manifestations of racism, xenophobia and intolerance, adequately discipline and punish perpetrators…"[962]. There is no evidence of legislative amendments or public awareness and education campaigns. Instead, it has taken the opposite course. While the UAE has claimed that discrimination is punishable under its

960 **Vol. VI, Annex 161**, Compendium of Social Media Posts, Index No. 80.

961 **Vol. IV, Annex 113**, CERD Committee, *General Recommendation No. 35 on Combating racist hate speech*, document CERD/C/GC/35 (2013), para. 10.

962 CERD Committee, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, document CERD/C/RUS/CO/23-24 (2017), para. 16; *see also* CERD Committee, *Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria*, document CERD/C/BGR/CO/20-22 (2017), paras. 11–12.

anti-discrimination and hatred law[963], it is instead punishing those who speak out against discrimination[964].

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5.181 The obligations set out in Articles 4 and 7, read together with Articles 2(1) and 6, are central to achieving the overarching objectives of the CERD – to fight against and eliminate racial discrimination. The UAE, however, has chosen not to comply with these obligations and has actively fostered a climate of hostility. The UAE has propagated, encouraged and tolerated the spread of racially discriminatory propaganda and ideas – using the very platforms that the CERD Committee has warned to be of greatest reach and influence in the spread of racial prejudice. It has not sanctioned its own public officials, known as some of the most prolific propagators of racially discriminatory ideas against Qatar and Qataris, nor has it taken any measures to stem the use of media platforms to spread a message of difference and rejection. This is the opposite course from that previewed by Article 7, that States parties actively using platforms such as these to encourage tolerance and combat prejudice.

5.182 The UAE's actions demonstrate the destructive effects of propagating and tolerating racially discriminatory ideas and prejudice on the enjoyment of fundamental rights and freedoms. Indeed, the Anti-Qatari Incitement Campaign, and in particular the Anti-Sympathy Law, has had a devastating impact on the ability of Qataris to fully realize and enjoy their rights and freedoms, including in

963 *See* CR 2018/13, p. 65, para. 32 (Shaw).

964 *See, e.g.*, para. 2.40, above.

relation to their family relationships[965], their education rights[966], their property rights, including investments and businesses, and right to work[967], and their access to Emirati tribunals to defend their rights[968]—compounding the impact of the Expulsion Order and Travel Ban.

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965 *See, e.g.,* para. **Error! Reference source not found.** n.**Fout! Bladwijzer niet gedefinieerd.**, **Vol. VIII, Annex 195**, DCL-053, para. 11; **Vol. IX, Annex 218**, DCL-097, para.17;**Vol. VIII, Annex 189,** DCL-041, paras. 18-20 ("My husband is very worried about doing or saying anything that could be interpreted as sympathizing with Qatar . . . Our conversations are not as meaningful as they once were."); ; **Vol. VII, Annex 181,** DCL-029, para. 12; **Vol. VIII, Annex 185,** DCL-036, para. 33; **Vol. VIII, Annex 186,** DCL-037, paras. 13, 25; **Vol. IX, Annex 207,** DCL-080, para. 28; **Vol. IX, Annex 209,** DCL-083, para. 29; **Vol. X, Annex 237,** DCL-140, para. 11.

966 *See, e.g.,* **Vol. VIII, Annex 188,** DCL-040, para. 17 ("I asked an Emirati friend of mine to visit the University staff on my behalf. He is in [redacted] the UAE. My friend was turned away, and was told by the University staff that he could be in breach of the anti-sympathy law if he continued to assist me. He called me from a number that I did not recognize to tell me what had happened and, apologetically, that he would not be able to assist any further because he was afraid of violating the law").

967 *See, e.g.*, **Vol. VIII, Annex 194,** DCL-051, para 13; **Vol. IX, Annex 212,** DCL-088, para. 10; **Vol. IX, Annex 217,** DCL-096, para. 18; **Vol. IX, Annex 220,** DCL-100, para. 22 ("We knew that there was reluctance to do business with Qataris, and so I tried to minimize my association with the company. A couple of clients also stopped doing business with us and told us this was because I am Qatari.").

968 *See* **Vol. III, Annex 95**, OHCHR Report, para. 40 ("Furthermore, lawyers in these countries are unlikely to defend Qataris as this would likely be interpreted as an expression of sympathy towards Qatar."). The Discriminatory Measures therefore not only prevent Qataris from seeking redress against violations of their rights, but also render them unable to defend themselves if claims are brought against them in the UAE. *See, e.g.*, para. 4.62; *see also* **Vol. VI, Annex 153**, Nashwa Fakry, "Testimonies of Citizens and Residents Affected by the Blockade", *Al Sharq* (29 June 2018). A Qatari who tried to find legal representation against his business partners in the UAE reported to Qatari newspaper Al Sharq: "He said that he had contacted many lawyers in the UAE. When he told them that he is a Qatari national, they refused to act on his behalf. He called other lawyers but they all had the same response, '*Qatari? I'm sorry, I can't help*.' He continued: 'There was a contact person between us and the UAE. Suddenly he stopped communicating with us. We learned that the authorities there had summoned him and prevented him from contacting me or anyone else in Qatar'" *Ibid.* (emphasis added).

CHAPTER VI
THE UAE'S ONGOING VIOLATION OF THE PROVISIONAL MEASURES ORDER

6.1 The Court's Order of 23 July 2018 indicated the following provisional measures to prevent irreparable harm to the rights in dispute[969]:

> (1) The UAE must ensure that:
>
> (i) Families that include a Qatari, separated by the measures adopted by the United Arab Emirates on 5 June 2017, are reunited;
>
> (ii) Qatari students affected by the measures adopted by the United Arab Emirates on 5 June 2017 are given the opportunity to complete their education in the United Arab Emirates or to obtain their educational records if they wish to continue their studies elsewhere; and
>
> (iii) Qataris affected by the measures adopted by the United Arab Emirates on 5 June 2017 are allowed access to tribunals and other judicial organs of the United Arab Emirates.
>
> (2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

6.2 The UAE has failed to comply with these measures, each of which constitutes an autonomous legal obligation separate and apart from the UAE's

969 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Order of 23 July 2018*, para. 79.

obligations under the CERD.[970] Instead, the UAE persistently has denied the existence of its violations, relying upon a patently ineffective "hotline" mechanism as its means of "compliance", while continuing to promote discriminatory sentiment against Qatar and Qataris through its Anti-Qatari Incitement Campaign.

Section I. The Order's Binding and Autonomous Legal Character

6.3 The Order created new autonomous legal obligations that are of a binding character,[971] handed down to preserve the rights in dispute pending a decision on the merits, and thus to uphold the exercise of the Court's judicial function in this case. These obligations, which came into effect on 23 July 2018, were immediately binding on the UAE, and any failure to respect the Order after that date gives rise to an obligation to *cease* the breach and make *reparation*[972].

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970 *See Request for Interpretation of the Judgment of 31 March 2004 in the Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2009*, para. 51 (finding a breach of a provisional measures order under the Court's ancillary jurisdiction, despite not finding jurisdiction to adjudicate the request for reconsideration).

971 In the Order itself, the Court reaffirmed that its "orders on provisional measures under Article 41 [of the Statute] have binding effect" (*LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109) and thus create international legal obligations for any party to whom the provisional measures are addressed." *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Order of 23 July 2018*, para. 77; *see also Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Order of 3 October 2018*, para. 100 (reaffirming that provisional measures orders create binding international legal obligations).

972 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2015*, para. 126 ("what may have ceased is the breach, not the responsibility arising from the breach.").

6.4 The Order is designed to prevent irreparable harm to the rights in dispute[973]. In this case, the rights in dispute are fundamental human rights, the violation of which risks long-lasting and irreparable harm, and thus the obligations are of the most pressing and immediate nature. The Order recognizes the "human realities" of the situation before it[974]: that the lives of many individuals are daily impacted by the actions of the UAE.

6.5 The Court has jurisdiction to adjudicate compliance with the obligations contained in provisional measures orders, separate from its competence to adjudicate Qatar's other claims under the CERD. This power is implicit in the Court's incidental jurisdiction to indicate provisional measures under Article 41 of the Statute.[975] It underpins the effectiveness of that authority and thus the integrity of the judicial functions that provisional measures seek to protect.

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973 *See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Order of 23 July 2018*, para. 71 (concluding that there was an imminent risk of irreparable prejudice to Qatar's rights under CERD).

974 *See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Separate Opinion of J. Cançado Trindade*, para. 70. (explaining that "[h]uman beings in vulnerability are the ultimate beneficiaries" of provisional measures orders). R. Higgins, "Interim Measures for the Protection of Human Rights," (1997) 36 *Columbia Journal of Transnational Law* 91, p. 108 (noting that the evolving jurisprudence on provisional measures shows a "growing tendency to recognize the human realities behind disputes of states").

975 *See Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2009*, para. 51 ("There is no reason for the Court to seek any further basis of jurisdiction than Article 60 of the Statute to deal with this alleged breach of its Order indicating provisional measures issued in the same proceedings. The Court's competence under Article 60 necessarily entails its incidental jurisdiction to make findings about alleged breaches of the Order indicating provisional measures. That is still so even when the Court decides, upon examination of the Request for interpretation, as it has done in the present case, not to exercise its jurisdiction to proceed under Article 60"). While the Court's reasoning is applied to its powers under Article 60 of the Statute, the same rationale can be extrapolated to

Section II. The UAE's Intransigent and Inadequate Response to the Order

6.6 The provisional measures ordered by the Court are protective in scope and exacting and specific in their requirements. By their very nature and purpose, they impose obligations of result, not just conduct. This is reflected in the language chosen by the Court: that the UAE "*must* ensure…". "[E]nsure" means that the UAE must "*make certain*" that *all* "families that include a Qatari", "Qatari students affected by the measures" and "Qataris affected by the measures", are afforded the rights and opportunities set out in the Order[976]. The Order thus requires proactive steps to bring about a specific end.

6.7 In relation to "families that include a Qatari", the envisaged end is reunification. Reunite means to "cause to come together again after a period of separation or disunity"[977]. The measure requires that the UAE restore the status-quo for families that existed before it implemented the Discriminatory Measures, *i.e.*, to allow families to "come together" in the way that *they* choose. "Unity" does not mean temporary, infrequent visits, subject to an arbitrary approval mechanism.[978] Nor is it compatible with the Anti-Sympathy Law, the restrictions on freedom of expression and identity, and the Anti-Qatari Incitement Campaign

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the exercise of its powers under Article 41, where the original basis of claim is a treaty, should the Court find no jurisdiction to adjudicate those treaty claims.

976 *Oxford Dictionary*, Definition of "Ensure", https://en.oxforddictionaries.com/definition/ensure (""[m)ake certain that [something] will occur or be the case"); *Cambridge Dictionary*, Definition of "Ensure", https://dictionary.cambridge.org/us/dictionary/english/ensure ("to make something certain to happen"); "Ensure", Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/ensure ("to make sure, certain, or safe).

977 *Oxford Dictionary*, Definition of "Reunite", https://en.oxforddictionaries.com/definition/reunite.

978 *See* para. 5.79, above.

which act to instill fear in Qataris of travelling to the UAE, and in Emirati family members of communicating with their Qatari relatives, or restricting what they can and cannot talk about. [979]

6.8 The UAE must also *ensure* that Qatari students are given the opportunity to complete their education or obtain their educational records, whether they studied at a public or private institution. At the provisional measures hearing, the UAE implicitly acknowledged its violations of the right to education, noting that educational institutions contacted students in March 2018 to tell them that they are "welcome" to return[980]. The experience of declarants, as detailed above, shows that any such contact has been isolated[981].

6.9 In any case, this is not enough, as the Court recognized by issuing the Order. The opportunity to continue studies must be genuine. Telling students they are "welcome" in the prevailing atmosphere in the UAE is futile. In March 2018, there was no possibility for students to gain permission to enter the UAE – the arbitrary opportunity that did exist was only for family members with first degree relatives in the UAE[982]. Further, when students are too scared to travel to the UAE, are harassed on the basis of their national origin, and are subjected to

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979 *See* paras. 2.39, above.

980 CR 2018/13, p. 13, para. 14 (Alnowais) ("Earlier this year, my Government asked all post-secondary institutions in the UAE to contact Qatari students who discontinued their studies to ensure they understood that they were welcome to return.")

981 *See* para. 5.116-5.122, above.

982 *See* para. 4.52, above.

propaganda against their people or country of origin, any such opportunity is illusory[983].

6.10 Likewise, ensuring that Qataris affected by the measures are afforded access to courts and tribunals requires that Qataris have *effective* access to a mechanism to vindicate their rights. The obligation is not concerned simply with theory, but also with ensuring that in practice, Qataris are empowered to bring a legal claim in the UAE. This is far from the reality Qataris face when they have tried to access judicial mechanisms in the UAE, including with respect to the arbitrary and ineffective processes for Qataris to obtain PoAs and the fear that Emiratis have of assisting or being associated in any way with Qataris[984]. Nor has the UAE taken steps to address concerns about the independence of the judiciary or the violation of due process rights, especially in cases that relate to 'security' concerns[985].

6.11 The UAE has not only failed to comply with the Order, but has clearly indicated a deliberate and concerted decision *not* to comply. The day after the Order, the UAE Ministry of Foreign Affairs issued a statement proclaiming that the Court had refused to grant the provisional measures sought by Qatar and only "indicated certain measures with which the UAE is already in compliance"[986]. The

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983 *See* para. 5.124–5.125, above.

984 *See* paras. 5.132, above.

985 *See* para. 4.54, above.

986 **Vol. II, Annex 30**, UAE Ministry of Foreign Affairs, *International Court of Justice refuses to grant provisional measures sought by Qatar* (24 July 2018), https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/24-07-2018-International-Court-of-Justice-refuses-to-grant-provisional-measures-sought-by-Qatar.aspx.

UAE reaffirmed this position in its 12 September 2018 letter to the Court, arguing that the Order merely "reflects long-standing UAE policy and practice"[987]. The UAE further flatly rejected Qatar's offer to work collaboratively to monitor the implementation of the Order and made clear it did not see the need to take additional remedial steps[988].

6.12 The UAE's argument that it has always been in compliance with the Order is belied by the fact that the Court will only indicate provisional measures when it is satisfied that the current state of affairs presents an imminent risk of irreparable harm to the rights in dispute. The *raison d'être* of the Order is therefore to preserve rights that were at risk of not being adequately protected before 23 July 2018, by definition, requiring a change in policy and/or practice. Maintaining the pre-Order position is thus not only an unacceptable approach, it is definitive evidence of breach[989].

6.13 The UAE has been true to its statements. Since 23 July 2018, the UAE has not made any effective changes to its policies and practices. The day after the Order, the UAE made clear that it would not modify or add to its ineffective

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987 **Vol. II, Annex 31**, Letter from the Agent of the United Arab Emirates to the Registrar of the International Court of Justice (12 September 2018).

988 **Vol. II, Annex 31**, Letter from the Agent of the United Arab Emirates to the Registrar of the International Court of Justice (12 September 2018).

989 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, para. 289 ("When the Court finds that the situation requires that measures of this kind [provisional measures] should be taken, it is incumbent on each party to take the Court's indications seriously into account, and not to direct its conduct solely by reference to what it believes is its rights.").

hotline mechanism, alleging that "Qatari visitors may enter the UAE with prior entry permission through the telephone hotline announced on June 11, 2017"[990].

6.14 In its 12 September 2018 letter, the UAE vaguely alludes to "significant steps" it has taken to ensure that the rights of ordinary Qatari citizens are protected, but only specifically refers to the singular step of applying for travel authorization through the hotline[991]. The UAE's "hotline" was ineffective in July 2018, and it remains ineffective now.[992]

6.15 Finally, the UAE's refusal to make any changes has been most prominent in respect of the Discriminatory Measures themselves, including the proliferation of racially discriminatory propaganda. The Anti-Qatari Incitement Campaign continues unabated. UAE officials have continued to make public statements that foster a climate of hostility and discrimination, perpetuating the UAE's violations of the CERD and exhibiting a conscious choice to ignore the Order. [993] In so doing, the UAE's refusal to comply with the Order and its decision to continue its discriminatory practices in violation of the CERD have also aggravated the dispute.

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990 **Vol. II, Annex 30**, UAE Ministry of Foreign Affairs, *International Court of Justice refuses to grant provisional measures sought by Qatar* (24 July 2018), https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/24-07-2018-International-Court-of-Justice-refuses-to-grant-provisional-measures-sought-by-Qatar.aspx.

991 **Vol. II, Annex 31**, Letter from the Agent of the United Arab Emirates to the Registrar of the International Court of Justice (12 September 2018).

992 *See* para. 4.49, above.

993 *See* para. 2.59, above.

6.16 The evidence demonstrates that the UAE has violated the Order: there has been no meaningful shift in policy or practice and the UAE's discriminatory practices continue as before.

6.17 The obligations contained in the Order are binding upon the UAE, and thus non-compliance is an internationally wrongful act. The UAE's conscious and public decision not to change the acts that gave rise to the Order in the first place continue to perpetuate prejudice and to inflict irreparable harm on Qataris envisaged by the existence of the Order itself—irreparable, severe and widespread.[994] The damage caused is both material and non-material in nature and the UAE is obligated to make reparation for this harm[995].

[994] CR 2018/14, p. 33, para. 9 (Goldsmith) ("Where the existence and *raison d'être* of rights stem from the equality and dignity of human beings, the harm that results from their violation is apparent. Deprivation of family life, education, medical care, property, work on a discriminatory basis all strike at the very heart of equality and dignity…irreparable harm is the natural consequence of violation of such rights.").

[995] *See* para. 7.3, below.

CHAPTER VII
REMEDIES

7.1 As Qatar has demonstrated in the preceding sections of this Memorial, the UAE has committed multiple violations of the CERD, each of which undermines a foundational norm of the international legal order: the prohibition of racial discrimination. Worse, it has done so with the aim of punishing the Qatari people for purposes of executing on its attempted political and economic coercion of the Qatari Government.

7.2 Qatar sets out below an overview of the relief it seeks from the Court (**Section I**), and an elaboration of the relief it seeks in respect of each of the UAE's violations (**Section II**).

Section I. The Applicable Principles

7.3 It is an uncontested principle of the law of State responsibility that commission of an internationally wrongful act or omission entails international responsibility. Upon a finding and declaration of breach by the Court, Qatar will be entitled to specific remedies as a consequence of the UAE's violations of the CERD, including the obligations of the UAE to (*i*) cease its ongoing wrongful acts; (*ii*) make reparation for the injury resulting from its wrongful acts; and (*iii*) provide assurances and guarantees of non-repetition[996]. Qatar will address each in turn.

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[996] *See* Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two), Commentary to Arts. 30–31, pp. 88–94 (citing, *inter alia*, *LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001*, para. 125; *Factory at Chorzów, Merits,*

7.4 *First*, the obligation of *cessation* stands separate and apart from the obligation to make reparation. Cessation plays an essential role in protecting not only the interests of the injured State, but also those of all States parties to the CERD, as well as the international community as a whole:

> "The function of cessation is to put an end to a violation of international law and to safeguard the continuing validity and effectiveness of the underlying primary rule. The responsible State's obligation of cessation thus protects both the interests of the injured State or States and the interests of the international community as a whole in the preservation of, and reliance on, the rule of law."[997]

7.5 Cessation is the "first requirement"[998] for the UAE to meet in rectifying those of its breaches of the CERD that are still ongoing[999]. That requirement applies to both acts and omissions[1000].

Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 47; *Corfu Channel, Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949*, p. 250).

997 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two), Commentary to Art. 30, p. 89.

998 Draft Articles on Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two), Commentary to Art. 30, p. 89.

999 *See Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, I.C.J. Reports 2012*, p. 153, para. 137 ("According to general international law on the responsibility of States for internationally wrongful acts, as expressed in this respect by Article 30 *(a)* of the International Law Commission's Articles on the subject, the State responsible for an internationally wrongful act is under an obligation to cease that act, if it is continuing"); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 150 ("The Court observes that Israel also has an obligation to put an end to the violation of its international obligations flowing from the construction of the wall in the Occupied Palestinian Territory. The obligation of a

7.6 *Second*, the Court has reaffirmed the obligation to *make reparation* for wrongful acts on numerous occasions, reiterating the elementary principle of international law set out by the PCIJ in *Factory at Chorzów*:

> "any breach of an engagement involves an obligation to make reparation. . . reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself [...] The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, *wipe out all the consequences of the illegal act* and reestablish the situation which would, in all probability, have existed if that act had not been committed."[1001]

7.7 The obligation to make *full* reparation for the damage caused by an internationally wrongful act has been codified in Article 31 of the ILC's *Draft Articles on the Responsibility of States for Internationally Wrongful Acts* ("***ILC Articles***") and repeatedly recognized by the Court as applicable customary

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State responsible for an internationally wrongful act to put an end to that act is well established in general international law, and the Court has on a number of occasions confirmed the existence of that obligation").

[1000] *See Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements, concluded on 9 July 1986 between the two States and which related to the problems arising from the* Rainbow Warrior *Affair*, Decision, 30 April 1990, *RIAA,* Vol. XX, p. 270, para. 113 (cessation may consist of abstaining from certain actions or positive conduct).

[1001] *Factory at Chorzów, Merits, Judgment No. 13 of 13 September 1928, P.C.I.J., Series A, No. 17*, pp. 29, 47 (emphasis added); *see also Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2004*, para. 119; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, para. 161.

international law[1002]. Article 31 emphasizes that the obligation to make full reparation extends to both *material* and *moral* damage[1003].

7.8 The ILC Articles establish three forms of reparation: restitution, compensation and satisfaction[1004].

7.9 Damage should be made good by restitution, unless impossible or unduly burdensome, in which case compensation is to be awarded in respect of financially assessable damage[1005]. As the PCIJ said in *Factory at Chorzów*, a claim for compensation is "the most usual form of reparation", and "[t]he remedy should be commensurate with the loss, so that the injured party may be made whole"[1006].

[1002] Draft Articles on Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two), Commentary to Art. 31(1), pp. 91–94; *see also Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, para. 161; *Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2004*, para. 119; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, para 150.

[1003] *See* Draft Articles on Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two), Commentary to Art. 31(2).

[1004] *See* Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two), Commentary to Art. 34, pp. 95–96.

[1005] *See* Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, (Part Two), Commentary to Art. 35, pp. 96–98; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010*, para. 273.

[1006] *Factory at Chorzów, Merits, Judgment No.13 of 13 September 1928*, *P.C.I.J., Series A, No. 17*, pp. 27–28 ("[i]t is a principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law. This is even the most usual form of reparation; it is the form selected by Germany in this case and the

7.10 The requirement that damage be "financially assessable" to be amenable to compensation does not disqualify non-pecuniary (or moral) damage from its scope[1007]. In the words of the Umpire in *Lusitania*, cited by the ILC:

> "It is difficult to lay down any rule for measuring injury to the feelings, or humiliation or shame, or mental suffering, and yet it frequently happens that such injuries *are very real and c all for compensation as actual damages* as much as physical pain and suffering and many other elements which, though difficult to measure by pecuniary standards, are, nevertheless, universally considered in awarding compensatory damages."[1008]

7.11 The Court has adopted the same approach. In the *Diallo* case, the Court held that "[n]on-material injury to a person which is cognizable under international law may take various forms," and it gave as examples the forms of damage set out in *Lusitania*, as well as endorsing the observation of the IACtHR in *Gutiérrez‑Soler v. Colombia* that "[n]on pecuniary damage may include distress, suffering, tampering with the victim's core values, and changes of a non-pecuniary nature in the person's everyday life"[1009].

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admissibility of it has not been disputed"); *Opinion in the* Lusitania *Cases*, Decision, 1 November 1923*, RIAA*, Vol. VII, p. 39 ("The remedy should be commensurate with the loss, so that the injured party may be made whole").

[1007] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001 Vol. II (Part Two), Commentary to Art. 36(2), p. 99.

[1008] *Opinion in the* Lusitania *Cases*, 1 November 1923, *RIAA*, Vol. VII, p. 40 (emphasis in original).

[1009] *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Judgment, I.C.J. Reports 2012*, para. 18 (citing IACtHR, *Gutiérrez‑Soler v. Colombia*,

7.12 Satisfaction is envisaged as a residual form of reparation, available in respect of "non-financially assessable damage" where restitution and compensation cannot meet the requirement that reparation "wipe[s] all out the consequences of the illegal act and reestablish[es] the situation which would, in all probability, have existed if that act had not been committed"[1010]. Two forms of satisfaction are relevant here: (*i*) declarations of wrongfulness and (*ii*) an apology[1011]. While a form of satisfaction, declarations of wrongfulness are also the natural result of the exercise of the Court's judicial function and the precursor to determining the consequences that flow from a breach of an international obligation:

> "Any court or tribunal which has jurisdiction over a dispute has the authority to determine the lawfulness of the conduct in question and to make a declaration of its findings, as a necessary part of the process of determining the case. Such a declaration may be a

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Judgment (12 September 2005), para. 82). In *Diallo*, the award of compensation was predominantly for the moral damage suffered. In its merits judgment in the case, the Court also held: "[i]n the light of the circumstances of the case, in particular the fundamental character of the human rights obligations breached and Guinea's claim for reparation in the form of compensation, the Court is of the opinion that, in addition to a judicial finding of the violations, reparation due to Guinea for the injury suffered by Mr. Diallo must take the form of compensation". *Case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, para. 161.

[1010] *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J.*, *Series A, No. 17*, p. 47; Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001 Vol. II (Part Two), Commentary to Art. 37, pp. 105–107.

[1011] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001 Vol. II (Part Two), Commentary to Art. 37, p. 106.

> preliminary to a decision on any form of reparation . . . "[1012].

7.13 The ILC commentaries to Article 37 of the ILC Articles note that "[r]equests for, or offers of, an apology are a quite frequent feature of diplomatic practice and the tender of a timely apology, where the circumstances justify it, can do much to resolve a dispute"[1013]. Apologies have, for example, been offered by the responsible State in cases before the Court in which prisoners on death row were not afforded consular notification.[1014] Human rights courts and other bodies also regularly award apologies as a form of satisfaction for human rights violations[1015].

[1012] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001 Vol. II (Part Two), Commentary to Art. 37, pp. 105–107.

[1013] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001 Vol. II (Part Two), Commentary to Art. 37, p. 107. For example, an apology was required when the US Coast Guard sank a ship and offered when obligations of consular notification were violated. *See S.S. "I'm Alone" (Canada v. United States)*, Award, 5 January 1935, *RIAA*, Vol. III, p. 1618; *LaGrand Case (Germany v. United States of America), Judgment, I.C.J. Reports 2001*, paras. 123, 125; *Case concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America), Provisional Measures Order, I.C.J. Reports 1998*, Declaration of President Schwebel, p. 15, Declaration of Judge Oda, p. 17.

[1014] *See, e.g.*, *LaGrand Case (Germany v. United States of America), Judgment, I.C.J. Reports 2001*, paras. 123, 125; *Case concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America), Provisional Measures Order, I.C.J. Reports 1998*, Declaration of President Schwebel, p. 15, Declaration of Judge Oda, p. 17.

[1015] *See, e.g.*, IACtHR, *Case of the Miguel Castro-Castro Prison v. Peru*, Judgment (25 November 2006), para. 445; IACtHR, *Case of Girls Yean and Bosico v. Dominican Republic*, Judgment (8 September 2005), para. 235; ACHPR, *Institute for Human Rights and Development in Africa and Others v. Democratic Republic of Congo* (18 June 2016), Communication 393/10, para. 154. The utility of apologies are also recognized in the general guidance of certain of these tribunals. *See* ACHPR, *General Comment on Article 5 of the African Charter on Human and Peoples' Rights*, (23 February – 4 March 2017) Twenty-First Extra-Ordinary Session, para. 44 ("Satisfaction includes . . . public apologies, including

7.14 Notably, a party's choice as to the appropriate form will be given some weight[1016]. The ILC Articles also make clear that "full" reparation may require an award that encompasses a combination of forms of reparation[1017]. Here, Qatar seeks restitution, compensation and satisfaction in order to meet the standard of full "reparation" for the injuries resulting from the various wrongful acts for which the UAE bears responsibility.

7.15 *Finally*, like cessation, assurances and guarantees of non-repetition are forward-looking, designed to ensure the "continuation . . . of the legal relationship affected by the breach"[1018]. They play a preventative role. The suitability of assurances and guarantees of non-repetition depends upon the nature of both the obligation and the breach in question[1019].

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acknowledgement of the facts and acceptance of responsibility"); United Nations, *Resolution adopted by the General Assembly on 16 December 2005: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, document A/RES/60/147, Art. 22(e) (listing "[p]ublic apology, including acknowledgement of the facts and acceptance of responsibility" as a form of satisfaction).

[1016] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001 Vol. II (Part Two), Art. 43(2).

[1017] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001 Vol. II (Part Two), Commentary to Art. 34, pp. 95–96.

[1018] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001 Vol. II (Part Two), Commentary to Art. 30, p. 90.

[1019] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001 Vol. II (Part Two), Commentary to Art. 30, pp. 88–91.

Section II. The Relief Sought

7.16 As set out above, the UAE has committed four independent violations of the CERD: (*i*) the Expulsion Order and accompanying Absolute Travel Ban, which violate Articles 2(1), 5(a) and 6 of the CERD; (*ii*) the past imposition of the Absolute Travel Ban and ongoing maintenance of the Modified Travel Ban, which violated and continues to violate, respectively, Articles 2(1), 5(a), 5(d)(iv), 5(d)(v), 5(e)(i), 5(e)(v) and 6 of the CERD; (*iii*) the Block on Qatari Media, which violates Articles 2(1), 5 and 6; and (*iv*) the Anti-Qatari Incitement Campaign, which violates Articles 2(1), 4, 6 and 7 of the CERD. In addition, the UAE has violated and remains in violation of the Court's Provisional Measures Order.

7.17 *First*, as set out above in Chapter V, Section I, through the June 2017 Expulsion Order and Absolute Travel Ban[1020], the UAE expelled Qataris on a collective basis, without any consideration of their personal circumstances, in violation of Articles 2(1), 5(a) and 6 of the CERD. Qatar requests:

- ***Full reparation*** in the form of restoration of the *status quo ante* to reverse the collective and discriminatory exclusion of Qataris who were living in the UAE on 5 June 2017 on the basis of their national origin, including but not limited to:

  (*i*) ***restitution*** in the form of lifting, by means of the UAE's own choosing, of any current bar on re-entry through the Modified Travel Ban, as it applies to Qataris resident in the UAE prior to 5 June 2017 and collectively expelled; and

  (ii) ***compensation*** to remedy the material losses and moral damage that Qatar and Qataris have suffered as a result of the

[1020] As discussed above in Chapter II, the Expulsion Order expelled Qataris in the UAE on 5 June 2017 and the imposition of the Absolute Travel Ban prevented Qataris living in the UAE but who happened to be outside the UAE on 5 June 2017 from returning home.

Expulsion Order and Absolute Travel Ban, together with interest on a pre- and post-judgment basis[1021], as restitution cannot fully address the UAE's past interference with the fundamental due process and other rights of Qataris by way of the collective expulsion. Qatar requests that compensation be quantified at a later date. In line with the Court's recent practice,[1022] Qatar asks that the parties be given a fixed period of time of 12 months from the date of the Court's judgment on the merits to negotiate the quantum of compensation due, and, should they fail to reach agreement, that the question be referred back to the Court.

- A ***declaration*** that the Expulsion Order and Absolute Travel Ban violated Articles 2(1), 5(a) and 6.

- ***Assurances and guarantees of non-repetition.***

7.18 *Second*, as set out above in Chapter V, Section II, the UAE has violated Articles 2(1), 5(a), 5(d)(iv), 5(d)(v), 5(e)(i), 5(e)(v) and 6 of the CERD through the Absolute Travel Ban and continues to violate those provisions through the ongoing maintenance of the Modified Travel Ban (in all of its iterations)[1023]. By these actions, the UAE impaired individual Qataris' rights to family, education, property, work and equal access to Emirati courts and tribunals. Qatar thereby requests:

[1021] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001 Vol. II (Part Two), pp. 107–109; *see also Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2018*, pp. 40–41, paras. 150–155 (awarding both pre-judgment and post-judgment interest); *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment,, I.C.J. Reports 2012 (I)*, p. 343, para. 56 ("[T]he award of post-judgment interest is consistent with the practice of other international courts and tribunals . . .").

[1022] *See, e.g.*, *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2015*, p. 741, para. 229(5)(b) (requiring the parties to seek a settlement on the matter of compensation within 12 months of the judgment).

[1023] *See* Chapter V, above.

- ***Cessation*** of the ongoing discriminatory treatment of Qataris with respect to entry into and residence in the UAE.

- ***Full reparation*** in the form of restoration of the *status quo ante* by any means necessary to reverse the collective and discriminatory exclusion of Qataris on the basis of their national origin, including but not limited to:

  (*i*) ***restitution*** in the form of lifting, by means of the UAE's own choosing, the Modified Travel Ban as it applies to Qataris collectively based on their national origin, and to the extent that the UAE seeks to impose new conditions on re-entry by Qataris, an order that the UAE ensure that it does so only after guarantee of a good faith assessment of each individual's circumstances and in light of the impact on fundamental rights and due process rights; and

  (ii) ***compensation*** to remedy the material losses and moral damage that Qatar and Qataris have suffered as a result of the Absolute and Modified Travel bans, together with interest on a pre- and post-judgment basis, as restitution cannot fully address the UAE's past interference with Qataris' rights to family, education, property, work, and equal access to Emirati courts and tribunals. Qatar requests that compensation be quantified at a later date in accord with the Court's practice set forth above.

- A ***declaration*** that the ongoing maintenance of the Modified Travel Ban violates Articles 2(1), 5(a), 5(d)(iv), 5(d)(v), 5(e)(i), 5(e)(v) and 6 of the CERD.

- ***Assurances and guarantees of non-repetition***.

7.19 *Third*, as set out above in Chapter V, Section IV, the Block on Qatari Media violates Articles 2(1), 5(d)(viii) and 6 of the CERD. Qatar requests:

- ***Cessation*** of the Block on Qatari Media, by any means necessary.

- A ***declaration*** that the Block on Qatari Media violates Articles 2(1), 5(d)(viii) and 6 of the CERD.

- ***Assurances and guarantees of non-repetition***.

7.20 *Fourth*, as set out above in Chapter V, Section III, the UAE continues to conduct the Anti-Qatari Incitement Campaign through which it has propagated, encouraged, and failed to suppress anti-Qatari propaganda, theories, and ideas in violation of Articles 2(1), 4, 6 and 7. Qatar requests:

- ***Cessation*** of the Anti-Qatari Incitement Campaign by any means necessary, including but not limited to (*i*) ensuring that UAE public authorities, institutions and officials immediately cease the dissemination of anti-Qatari propaganda, theories, and ideas including indirectly through the engagement of public relations professionals and lobbyists; and (*ii*) ceasing discriminatory application of the Cybercrime Law to criminalize the expression of "sympathy" for Qatar.

- ***Compensation*** to remedy the moral damage that individual Qataris are shown to have suffered as a result of the Anti-Qatari Incitement Campaign, together with interest on a pre- and post-judgment basis, as restitution does not appear possible with respect to this violation of the CERD. Qatar requests that compensation be quantified at a later date in accord with the Court's practice set forth above.

- A ***declaration*** that the Anti-Qatari Incitement Campaign violates Articles 2(1), 4, 6 and 7 of the CERD.

- ***Assurances and guarantees of non-repetition***.

7.21 *Fifth,* as set out above in Chapter VI, the UAE has violated the Court's Provisional Measures Order by failing to ensure that (*i*) families that include a Qatari separated as a result of the Discriminatory Measures are reunited, (*ii*) Qatari students are given the opportunity to complete their education in the UAE or to obtain their educational records, and (*iii*) Qataris are allowed access to tribunals and other judicial organs of the UAE. Qatar requests:

- A ***declaration*** that the UAE has violated the Provisional Measures Order.

7.22 *Finally*, Qatar requests an ***apology*** for the UAE's violations of Articles 2(1), 4, 5, 6 and 7 of the CERD. In making this request, Qatar draws the Court's attention to the UAE's intentional and discriminatory infliction of fear, humiliation, and material hardship on individual human beings in an attempt to pressure a neighboring State to submit to its demands. The UAE has acted in deliberate disregard of both the letter and the spirit of the fundamental values contained in a universal human rights convention.

SUBMISSIONS

On the basis of the facts and legal arguments presented in this Memorial, Qatar, in its own right and as *parens patriae* of its citizens, respectfully requests the Court:

1. To adjudge and declare that the UAE, by the acts and omissions of its organs, agents, persons, and entities exercising governmental authority, and through other agents acting on its instructions or under its direction and control, is responsible for violations of the CERD, namely Articles 2(1), 4, 5, 6 and 7, including by:

    a. expelling, on a collective basis, all Qataris from the UAE;

    b. applying the Absolute Ban and Modified Travel Ban in violation of fundamental rights that must be guaranteed equally to all under the CERD, regardless of national origin, including the rights to family, freedom of opinion and expression, education and training, property, work, and equal treatment before tribunals;

    c. engaging in, sponsoring, supporting, and otherwise encouraging racial discrimination, including racially discriminatory incitement against Qataris, most importantly by criminalizing "sympathy" with Qatar and orchestrating, funding, and actively promoting a campaign of hatred against Qatar and Qataris, and thereby failing to nullify laws and regulations that have the effect of creating or perpetuating racial discrimination, to take "all appropriate" measures to combat the spread of prejudice and negative stereotypes, and to promote tolerance, understanding and friendship; and

    d. failing to provide access to effective protection and remedies to Qataris to seek redress against acts of racial discrimination under the CERD through UAE tribunals or institutions, including the right to seek reparation;

2. To adjudge and declare that the UAE has violated the Court's Order on Provisional Measures of 23 July 2018;

3. And further to adjudge and declare that the UAE is obligated to cease its ongoing violations, make full reparation for all material and moral damage caused by its internationally wrongful acts and omissions under the CERD, and offer assurances and guarantees of non-repetition.

4. Accordingly, the Court is respectfully requested to order that the UAE:

    a. immediately cease its ongoing internationally wrongful acts and omissions in contravention of Articles 2(1), 4, 5, 6, and 7 of the Convention as requested in Chapter VII;

    b. provide full reparation for the harm caused by its actions, including (*i*) restitution by lifting the ongoing Modified Travel Ban as it applies to Qataris collectively based on their national origin; (*ii*) financial compensation for the material and moral damage suffered by Qatar and Qataris, in an amount to be quantified in a separate phase of these proceedings; and (*iii*) satisfaction in the forms of a declaration of wrongfulness and an apology to Qatar and the Qatari people, as requested in Chapter VII; and

    c. provide Qatar with assurances and guarantees of non-repetition in written form as requested in Chapter VII.

Qatar reserves the right to supplement or amend these submissions in light of further pleadings and as necessary.

Respectfully submitted,

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Dr. Mohammed Abdulaziz Al-Khulaifi
AGENT OF THE STATE OF QATAR
25 APRIL 2019

CERTIFICATION

I certify that all Annexes are true copies of the documents referred to and that the translations provided are accurate.

_____

Dr. Mohammed Abdulaziz Al-Khulaifi
AGENT OF THE STATE OF QATAR
25 APRIL 2019

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