Jurisdiction of the Inter-state communication submitted by Qatar against the Kingdom of Saudi Arabia

Applicant State: Qatar
Respondent State: Kingdom of Saudi Arabia
Date of communication: 8 March 2018 (initial submission)
Date of adoption of decision: 27 August 2019
Subject matter: Effective protection and remedy against any act of racial discrimination; obligation of the State party to act against racial discrimination
Procedural issues: Jurisdiction of the Committee
Substantive issues: Discrimination on the ground of national or ethnic origin
Articles of the Convention: 11(2)

* The present document is being issued without formal editing.
** The following members of the Committee participated in the examination of the present inter-State communication: Noureddine Amir, Alexei Avtonomov, Marc Bossuyt, Jose Francisco Cali Tzay, Fatimata-Binta Victoire Dah, Bakari Sidiki Diaby, Rita Izsák-Ndiaye, Keiko Ko, Gun Kut, Yanduan Li, Pastor Elias Muriel Martinez, Verene Albertha Shepherd, Maria Teresa Verdugo Moreno and Yeung Kam John Yeung Sik Yuen.
1. The present document has been prepared pursuant to article 11 of the Convention on the Elimination of All Forms of Racial Discrimination (the "Convention").


3. This document should be read in conjunction with CERD/C/99/R.6.

4. On 8 March 2018, the Applicant State submitted a communication against the Respondent State to the Committee on the Elimination of Racial Discrimination (the “Committee”), pursuant to Article 11 of the Convention. This note summarizes the main arguments raised by both parties, pursuant to the decision adopted by the Committee on 14 December 2018, requesting the parties to “inform the Committee whether they wish to supply any relevant information on issues of jurisdiction of the Committee or admissibility of the communication”.

5. On 29 October 2018, the Applicant State referred again the matter to the Committee in accordance with Article 11(2) of the Convention.

I. Communication submitted by the Applicant State, dated 8 March 2018

A. Facts

6. The Applicant State submits that on 5 June 2017, the Respondent State, in coordination with the United Arab Emirates (UAE), the Kingdom of Bahrain (“Bahrain”), and the Arab Republic of Egypt (“Egypt”) (the “Four States”), announced they would impose sanctions on the Applicant State, including by blocking its borders and economic and political sanctions. As part of this campaign, the Respondent State enacted and implemented discriminatory policies directed at Qatari citizens and companies, including, by expelling all Qatari residents and visitors, without any justification under international law. Those acts resulted in many cases, in irreversible human rights abuses, particularly since June 2017.

7. The Applicant State submits that, in December 2017, the Office of United Nations High Commissioner for Human Rights (OHCHR) assessed the consequences of these coercive measures taken by the Respondent State, UAE and Bahrain and concluded that the majority of the measures were broad and non-targeted, making no distinction between the Government of the Applicant State and its population. OHCHR also concluded that measures targeting individuals based on their Qatari nationality or their links with the Applicant State can be qualified as non-disproportionate and discriminatory.¹

8. The Applicant State further submits that the implementation of the Coercive Measures targeted its people and company only based on their Qatari nationality. The Applicant State submits that early 2017, reports and commentaries hostile to the Applicant State and orchestrated by the Four States began to appear in prominent media outlets.

9. On 5 June 2017, the Respondent State announced “coercive measures” against the Applicant State, including breaking off diplomatic relations, and gave its diplomats 48 hours to leave the KSA, preventing Qatari nationals from entering the KSA or crossing its points of entry. The Respondent State also gave Qatari residents and visitors 14 days to leave the KSA for precautionary security reasons. The Respondent State closed its airspace and seaports for all Qatars and banned all Qatari means of transportation, coming to or leaving, from crossing, entering or leaving its territories.

10. The Respondent State argued that it took these decisive measures because of the Qatari authorities’ failure to abide by the Riyadh Agreement and the Applicant State’s continued support, funding and hosting of terror groups.

11. On 23 June 2017, the Respondent State and the other States (through Kuwaiti mediators) issued a 13-point list of demands to the Applicant State to request the ending of the coercive measures. Their demands were not related to security issues but demanded that the Applicant State muzzle news outlets through which opinions sometimes critical of the Respondent State were expressed. It also requested to surrender diplomatic and strategic relationships by which the Applicant State maintained its sovereignty, accede to the interference of the Respondent State in the internal affairs of the Applicant State, and pay undetermined reparations for unidentified harms. The Applicant State refused to comply with the ultimatum, but it has attempted to reach a diplomatic resolution of this conflict, to no avail.

12. The closure of air, land, and sea borders and collective expulsion were implemented without warning. On 5 June 2017, the Respondent State withdrew its ambassador from Qatar and instructed its citizens to leave Qatar within 14 days, under the threat of civil penalties or criminal sanctions. The Respondent State issued these directives without concern for the fact that many families in Qatar are “mixed” and composed of both Qatari and Saudi nationals. Qatari nationals were not allowed to travel to the Respondent State with their family members, solely by virtue of their Qatari nationality. The Respondent State’s citizens who remained in the Applicant State faced threat of severe civil penalties, including deprivation of their nationality, and criminal sanctions. The Respondent State closed its airspace and airports to all Qatari airlines and aircraft. The Respondent State also closed all Qatar Airways offices in the country.

13. The Applicant State submits that the Respondent State announced the coercive measures at the beginning of the holy month of Ramadan, which has traditionally seen many Qatari pilgrims travel to Mecca for Umrah. Only on 17 August 2017, the Respondent State announced that it would permit Qatari pilgrims to attend Hajj. This was two weeks before the beginning of Hajj in 2017, which the Applicant State submits was unreasonable notice, as it made it practically impossible for Qatari to arrange their trips. The Applicant State submits accounts of Qatari citizens whose ability to perform Hajj or Umrah was affected by the imposition of coercive measures. The Applicant State also refers to the OHCHR Report which noted “[a]t least temporaril y, the restrictions of movement disrupted the exercise of freedom of religion as they were imposed in the midst of Ramadan and the Hajj pilgrimage.”

14. The Applicant State submits that the Respondent State, along with the UAE and Bahrain, issued promulgated measures criminalizing acts that may be perceived as “sympathizing” with the Applicant State. The coercive measures have had a devastating impact on Qatari nationals and families: it has led to the disruption of family unity, interference with medical treatment since no exceptions to the Respondent State’s restrictions on travel and movement have been made for persons who need to receive essential medical treatment. The coercive measures have also resulted into interference with education. Qatari

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2 Id. at para. 34.
4 OHCHR Report, para. 34.
6 General Civil Aviation Authority closes down Qatar Airways offices in UAE, Emirates News Agency (7 June 2017), http://www.enae.com/details/1395302617967.
students have been prevented from accessing to universities in the Four States. In addition to the above violations of basic human rights, the Four States also freeze assets of nationals and limit financial transfers of citizens or residents of the Applicant State.

B. Alleged violations of the Convention by the Respondent State

15. The Applicant State submits that the Respondent State has violated its obligations under articles 2, 4, 5, and 6 of the Convention. It claims that the Respondent State failed to enact measures to prevent, prohibit, and criminalize racial discrimination, and that it has actively promoted and engaged in racial discrimination and criminalized actions intended to benefit Qatars.

16. The Applicant State claims that by imposing the coercive measures, the Respondent State has unlawfully targeted Qatari citizens solely based on their nationality without any legitimate justification, individualized hearing or consideration. The Applicant State also claims that, while article 1(2) allows States Parties some discretion in applying distinctions between citizens and non-citizens, this article does not permit States Parties to distinguish between different groups of non-citizens. It further submits that the defendant state breaches article 2(1) of the Convention by enacting broad-based measures targeting all Qatari nationals and encouraging its citizens and institutions to do the same.

17. The Applicant State submits that collective expulsions based on nationality or ethnicity violate rights to non-discrimination under the Convention and international law, and that the fight against terrorism cannot justify discrimination based on the grounds of race, colour, descent, or national or ethnic origin. The Applicant State submits that several international treaties and bodies, including the ICJ, the Arab Charter on Human Rights, the European Court of Human Rights (“ECHR”), and the Inter-American Court of Human Rights (“IACHR”) recognize that massive expulsions based on ethnicity or nationality constitute a violation of human rights.

18. The Applicant State submits that prohibiting Qatari nationals from entering into or passing through its territory, and recalling its citizens without any individual consideration, clearly violate the Convention’s prohibition on discrimination based on national origin, including discrimination against non-citizens encompassed in general recommendation No. 30 (2004).

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9 See NHR Fourth Report, at 12 and 13.
10 See generally Committee, general recommendation No. 30 (2004).
12 The ICJ later has issued a Judgment on 1 April 2011 finding that certain procedural preconditions outlined in Article 22 of the CEDR had not been met, meaning that the Court did not have jurisdiction to proceed to the merits of the dispute. It noted, however, that while the Order for provisional measures was no longer operative, “the Parties are under a duty to comply with their obligations under CEDR, of which they were reminded in that Order.” Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia Federation), Preliminary Objections Judgment (1 Apr. 2011), para. 186.
19. The Applicant State argues that the Respondent State violates articles 2 and 5 of the Convention by failing not only 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.

20. The Applicant State argues that the responding state, by enacting and enforcing the coercive measures, violates a number of the human rights recognized under international law and enumerated in article 5 of the Convention, and has interfered with the rights of Qatari nationals.

21. Recalling the Respondent State citizens from the Applicant State, and prohibiting Saudis from traveling to the Applicant State, the Respondent State has unlawfully interfered with their rights to marriage and family life in breach of article 5(d)(iv).

22. The Applicant State submits that the coercive measures prevent many Qatari pilgrims from travelling on time to Mecca for Umrah or to attend Haj; and therefore violate the rights of its citizens to freedom of thought, conscience and religion in breach of article 5(d)(vii) of the Convention.

23. The Applicant State further submits that the Respondent State has triggered a manipulation of the press and falsification of statements and ideas against Qatari media outlets and blocked the transmission of Al Jazeera and other Qatari stations and websites. It considers that this amounts to an interference with the right to freedom of expression, and transgress the principles of inclusion and respect for diversity that underlie the Convention.

24. The Applicant State submits that the coercive measures have led to the violation of the right to public health and medical care for Qatars, who have been expelled and prohibited from travelling between the two territories or from continuing their treatment in the four States. The coercive measures imposed by the Respondent State have also unduly interfered with the right to education as many university students were forced to interrupt their programs of study in the Respondent State and return home to the Applicant State.

25. The Applicant State submits that the responding state violates article 5(e)(i) of the Convention in relation to the enjoyment of the "rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration". The coercive measures, and in particular the forced expulsion of Qatari citizens from the Respondent State and the restrictions on future travel, have forced many people to abandon their jobs for fear of severe punishment if they did not comply.

26. In violation of article 5(d)(v) of the Convention, the Respondent State, through the coercive measures, has severely disrupted property rights of Qatari citizens, who have been denied the ability to access enjoy, utilize, or manage their property in violation of the Convention.

27. The Applicant State also claims that the Respondent State denies to its citizens the right to equal treatment before tribunals in violation of article 5(a) of the Convention. Qatari nationals have been effectively unable to enter KSA, hire an attorney, or otherwise exercise their rights, challenge discrimination, or have their voices heard. The Applicant State submits that the Respondent State departs from its obligations under article 4(a) and (c) of the Convention to condemn racial hatred and incitement on the duty of States party to prevent "public authorities or public institutions, national or local from promoting or inciting racial discrimination". The Respondent State also does not comply with its obligation to punish ideas based on racial superiority or hatred, and incitement to racial discrimination.

18 Committee, general recommendation No. 30 (2004), para. 31.
19 NHRC Second Report, at 12. At the beginning of the crisis, the NHRC received numerous complaints from UAE nationals who were unable to work following the coercive measures.
20 Art. 4(a) of the Convention.
28. The Applicant State submits that the Respondent State violates its obligation under article 6 of the Convention with regard to its failure to provide to everyone within its jurisdiction effective protection and remedies, against any acts of racial discrimination.

29. Based on article 11(1) of the Convention, the Applicant State requested the Committee to transmit its communication to the Respondent State. The Respondent State was invited to respond within the three-month period set forth under that article, and take all necessary steps to end the coercive measures, which are in violation of international law and its obligations under the Convention. The Applicant State reserved its right to supplement and amend its communication in light of developments, as well as its request for relief, and its right to all other dispute resolution avenues that are open to it.

II. Response of the Respondent State dated 7 September 2018

30. On 2 August 2018, the Respondent State requested an extension of 30 days, which was granted by the Committee on 7 August 2018.

31. On 7 September 2018, the Respondent State submitted a reply to the inter-state communication. It argues that the Committee has no jurisdiction to review it, as the inter-state communication does not fall within the scope of the Convention because it does not involve a situation in which a "State Party is not giving effect to the provisions of the Convention".

32. The Respondent State argues that the Applicant State’s submission is based on an erroneous interpretation of ‘racial discrimination’, under Article 1(1) of the Convention, so as to include differential treatment on the basis of nationality. The Respondent State argues that the differentiation based on nationality is a common international practice. Under the Convention, differentiation based on nationality is not a prohibited ground of racial discrimination, therefore it falls outside the Convention and the mandate of the Committee.

33. The Respondent State states that it severed diplomatic and consular ties with the Applicant State due to its violation the commitments it undertook in a series of agreements concluded among the Gulf States (the ‘Riyadh Agreements’), as well as its continued support for terrorism and attempts to destabilize the region.

34. The Respondent State also asserts that the coercive measures undertaken were "precipitated by Qatar’s own actions and failures to abide by obligations it undertook in a series of agreements commonly referred to as the ‘Riyadh Agreements’".

35. The Respondent State further indicates that the actions taken are fully consistent with its right under customary international law to safeguard its national security. It also asserts its position that the measures taken by the Respondent State are not a violation of its obligations under the Convention.

III. Responses of the Respondent State dated 18 and 29 January 2019

36. On 18 January 2019, the Respondent State submitted its reply to the Committee’s decision of 14 December 2018. The Respondent State requested the Committee for a deadline extension of 18 days in order to provide a substantive reply to the communication. On 21 January 2019, the Committee considered that, while the requested extension could not be granted in the circumstances, it would maintain some degree of flexibility in terms of the date of receipt of the additional observations, provided that the non-compliance with the deadlines imposed, did not compromise the calendar of the Committee, nor the equality between the States concerned.

37. On 29 January 2019, the Respondent State submitted its reply to the Committee’s decision of 14 December 2018. The reply was same as the reply submitted on 7 September 2018.
IV. Comments of the Applicant State dated 14 February 2019

38. On 14 February 2019, the Applicant State submitted its comments to the Respondent State’s submission dated 29 January 2019. The Applicant State argues that the alleged violations fall within the scope of the Convention.

39. The Applicant State recognizes that Article 1(2) provides that the “Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens”; nevertheless it argues that this article does not permit States Parties to distinguish between different groups of non-citizens, unless this differential treatment is for a legitimate aim and is carried out in a way that is proportionate to that aim. The Applicant State also argues “[a]ny interpretation of the Convention that would allow States parties to discriminate on the basis of an individual’s present nationality would contradict the Convention’s explicit object and purpose of eliminating racial discrimination ‘in all its forms and manifestations’ in that it would limit its ability to effectively protect against contemporary forms of racial discrimination.”

40. The Convention’s definition of ‘racial discrimination’ explicitly covers discrimination “which has the purpose or effect” of impairing the enjoyment of human rights. The Applicant State thus argues that the discriminatory effects of the Coercive Measures bring the Respondent State’s conduct within the ambit of the Convention. By discriminating on the basis of nationality, the effects of the Coercive Measures are felt by persons of Qatari national origin in the historical-cultural sense of heritage or descent.

41. Furthermore, the Applicant State indicates that nationality is encompassed by ‘national origin’ in Article 1(1) of the Convention, which may be evidenced by the ordinary meaning of the term read in context, the Convention’s object and purpose and the examination of the travaux préparatoires. In this regard, it refers to various dictionary definitions in order to determine the ordinary meaning of “national origin” as consistent with Article 31 of the Vienna Convention on the Law of Treaties (VCLT). The Applicant State submits that “national origin relates to the country or nation where a person is from, or where a person’s ancestors were from, extending to an individual’s association with a particular country or nation in both a historical-cultural sense, for example by virtue of an individual’s membership in a community defined by, and subject to, a common government”. The Applicant State further considers that Articles 1(2) and 1(3) of the Convention allow Members States to make distinctions, exclusions, restrictions or preferences between citizens and non-citizens and maintain legal provisions concerning nationality, citizenship, or naturalization, where such provisions do not discriminate against certain nationalities, respectively, so long as States do not do so in a way that falls afoof of Article 1(1). In support of this assertion, the Applicant State refers to general recommendation No 30.

42. Also referring to the travaux préparatoires, the Applicant State further indicates that throughout the drafting of the Convention, “delegates expressed the view that the term ‘national origin’ could be interpreted in a number of different ways, including to encompass nationality in the sense of citizenship as well as in the sense of an individual’s historical connections to a State”. Considering the travaux préparatoires, the Applicant State concludes that the delegates understood ‘national origin’ as capable of encompassing present nationality. In turn, the Applicant State argues that a broad application of the terms of

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21 Committee, General Recommendation 30 (2004), para. 4.
22 Convention’s Article 1(1).
25 The Applicant State refers to the France-United States amendment which proposed to exclude the term “nationality”, and indicates that it was rejected in favour of a compromised amendment which maintained the Convention’s primary goal of eliminating all forms of racial discrimination. The Applicant State refers to 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, UN Doc A/6181 (1965), para. 37.
Article 1(1), in which ‘national origin’ is given the widest application possible, is in line with the intent of the drafters.

43. The Applicant State argues that the fundamental protection against discrimination is a *jus cogens* norm and an obligation *erga omnes* from which there can be no derogation.\(^{26}\)

V. Further submission by the applicant and Respondent States

44. On 19 March 2019, the Respondent State transmitted its arguments to the Committee on the issues of jurisdiction and admissibility. On 25 March 2019, the Applicant State submitted that the Respondent State’s submission of 19 March 2019 should be rejected by the Committee, given that it was submitted after the lapse of the deadline established by the Committee. The Applicant State also noted that such submission raised new issues, as it contested the admissibility of the communication.

45. On 1 April 2019, bearing in mind the principle of equality of arms, the Committee considered that the submission could not be taken into account by the Committee at this stage of the procedure, as it raised issues not previously raised and was submitted far beyond the deadline indicated in the Committee’s decision of 14 December 2018, which was notified to the Respondent State on the same date.

46. On 3 May 2019, the Committee, pursuant to its decision dated 14 December 2018, conducted the hearings on the matter, on the issues of jurisdiction and admissibility, with the participation of one representative from both parties, as per article 11(4) and (5) of the Convention and the Rules of procedure adopted by the Committee on 29 April 2019.\(^{27}\)

47. During the hearings, the Respondent State presented its view that nationality has been excluded as a basis of racial discrimination for the purposes of the Convention, as Article 1(2) refers to “the right of States to make distinction between ‘citizens and non-citizens’. Therefore, this is indicative of a right to accord differential treatment on the basis of nationality. The Respondent State also highlighted that Article 1(3) provides that the Convention should not 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”. The Respondent State also asserted that this provision is indicative of the Convention’s drafters’ awareness of the difference between ‘national origin’ and ‘nationality’.

48. The Respondent State argued that revoking special privileges granted to a particular nationality is in line with the practice of certain States. The Respondent State also argued that the Applicant State does not present any arguments on discrimination based on the grounds of race, colour, descent, or national or ethnic origin. The Respondent State further submitted that the fact that the measures taken affected persons of one or more national origins is insufficient to bring the measure within the scope of the Convention.

49. In its turn, the Applicant State reiterated its arguments previously raised in its written submissions.

VI. Decision of the Committee on its jurisdiction in respect of the inter-state communication

50. Before considering the appointment of an *ad hoc* Conciliation Commission pursuant to article 12(1) of the Convention, the Committee must first be satisfied that it has jurisdiction to deal with the inter-state communication submitted on 8 March 2018 by Qatar against the Kingdom of Saudi Arabia, pursuant to article 11(1) of the Convention.

\(^{26}\) The Applicant State refers to the Inter-American Court of Human Rights, Advisory Opinion No. 18, Juridical Condition and Rights of Undocumented Migrants (17 September 2003), para. 101.

\(^{27}\) In order to address the issues of jurisdiction and admissibility, the Committee adopted on 29 April 2019, the “Rules of procedure regarding the hearings carried out pursuant to article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination”. 
51. The Committee notes that, in its response dated 7 September 2018, the Respondent State raises the issue of lack of jurisdiction of the Committee on the grounds that the Convention does not prohibit “differentiation based on present nationality”.

52. The ground invoked for lack of jurisdiction relates to the interpretation of the concept of racial discrimination as prohibited by the Convention. The Committee considers that this question raises the preliminary issue of its competence ratione materiae, and does not affect the jurisdiction of the Committee. The Committee therefore decides to examine this issue when dealing with the question of the admissibility of the communication.

53. In the absence of any other exception of jurisdiction raised by the parties, the Committee decides that it has jurisdiction to examine the exception of inadmissibility raised by the Respondent State.