



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

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

<i>Applicant State:</i>	Qatar
<i>Respondent State:</i>	Kingdom of Saudi Arabia
<i>Date of communication:</i>	8 March 2018 (initial submission)
<i>Date of adoption of decision:</i>	27 August 2019
<i>Subject matter:</i>	Effective protection and remedy against any act of racial discrimination; obligation of the State party to act against racial discrimination
<i>Procedural issues:</i>	Admissibility of the communication
<i>Substantive issues:</i>	Discrimination on the ground of national or ethnic origin
<i>Articles of the Convention:</i>	11(3)

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- * The present document is being issued without formal editing.
 - ** The following members of the Committee participated in the examination of the present communication: Nouredine 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, Gay McDougall, Yemhelhe Mint Mohamed, Pastor Elias Murillo Martinez, Verene Albertha Shepherd, Verdugo Moreno María Teres 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.
2. Qatar (the “Applicant State”) acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter ‘the Convention’) on 22 July 1976. The Kingdom of Saudi Arabia (the “Respondent State”) acceded to the Convention 23 September 1997. The communication alleges a violation of articles 2, 4, 5 and 6 of the Convention, in the context of enforcement of coercive measures taken by the Respondent State in 2017.
3. This document should be read in conjunction with CERD/C/99/5.
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. Submission of the Respondent State dated 19 March 2019 with regard to the admissibility of the complaint

6. 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.
7. On 1 April 2019, the Working Group on communications of the Committee, acting on behalf of the Committee, bearing in mind the principle of the equality of arms, decided that the Respondent State’s submission of 19 March 2019 could not be taken into account by the Committee as it raised issues not previously raised and was submitted far beyond the deadline indicated in the Committee’s decision of 14 December 2018.¹

II. Decision of the Committee on the admissibility of the inter-state communication

8. In its submissions, the Respondent State raised the issue of nationality as exception of inadmissibility of the inter-state communication.
9. In its responses of 7 September 2018 and 18 January 2019, the Respondent State observes that “[I]CERD contains no reference to differentiations based on present nationality as a prohibited ground of racial discrimination” (*ibid.*, paras. 1-2). In its submission of 19 March 2019, the Respondent State argued that the Applicant State had failed to establish that domestic remedies had been invoked or exhausted.

¹ In its 14 December 2018 decision, the Committee invited the Respondent State to inform the Committee whether it wishes – within a period of one month after receipt of the request to supply any relevant information on issues of jurisdiction of the Committee or admissibility of the communication, including the exhaustion of all available domestic remedies:

A. The scope *ratione materiae* of the Convention (the issue of nationality)

10. In its responses of 7 September 2018 and 29 January 2019, the Respondent State submits that “Qatar’s complaint 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 [I]CERD” and that “[I]CERD contains no reference to differentiations based on present nationality as a prohibited ground of racial discrimination” (*ibid.*, paras. 1-2). In its response of 14 February 2019, the Applicant State replies that the Convention prohibits the coercive measures based upon the Respondent State’s discriminatory purpose of targeting Qataris on the basis of nationality and based upon the discriminatory effect on individuals of Qatari national origin.

11. The Committee notes that in article 1(1) of the Convention “racial discrimination” is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin”. “Nationality” as such is not mentioned as a ground of prohibited racial discrimination. Moreover, in its article 1(2) the Convention states that it “shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens”.

12. The Committee is aware that the *travaux préparatoires* of the Convention show that in the different stages of the elaboration of the Convention (the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, the Commission on Human Rights and the Third Committee of the General Assembly) the ground “national origin” was understood as not covering “nationality” or “citizenship”.

13. However, article 1(3) of the Convention 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”.

14. Moreover, in its subsequent practice, the Committee has repeatedly called on States Parties to address instances of discrimination against non-citizens on the basis of their nationality. As stated by professor P. Thornberry, former member of the Committee, in his authoritative Commentary on the Convention: “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”.²

15. The Committee recalls that, as stated in its General Recommendation N° 30 on discrimination against non-citizens the Committee has stated that: “Under the Convention, differential treatment based on citizenship or immigration status 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”.³

16. It is in line with this standard, which requires “a legitimate aim” and “proportionality” in achieving this aim, that the Committee examines whether a distinction based on citizenship constitutes discrimination prohibited by the Convention.

17. The Committee also recalls that States parties shall ensure 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 concerned have been taken into account”, and that they shall avoid “expulsions of non-citizens, especially of

² Patrick THORNBERRY, *The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary*, Oxford University Press, 2016, p. 158.

³ General Recommendation No. 30, on discrimination against non-citizens, adopted on 1 October 2002, point 4.

long-term residents, that would result in disproportionate interference with the right to family life”.⁴

18. The Committee further highlights that, as singled out in its General Recommendation 30, the Convention includes the duty to protect non-citizens against States Parties’ arbitrariness. In this regard, any text concerning non-citizens or persons of a particular national or ethnic origin shall not be applicable when incompatible with the provisions of the Convention.

19. It is in light of this constant practice that the Committee exercises its competence *ratione materiae* when confronted with differences of treatment based on nationality. Far from considering any difference of treatment between citizens and non-citizens as contrary to the Convention, which would be in contravention of its article 1(2), the Committee considers itself competent to examine whether such differences pursue a legitimate aim, are proportional to the achievement of this aim and do not result in a denial of fundamental human rights of non-citizens. Only when those requirements are fulfilled and when a different treatment does not discriminate any particular nationality as required by article 1(3) of the Convention, such differences do not constitute discrimination prohibited by the Convention. Consequently, the allegations contained in the inter-state communication of Qatar v. the Kingdom of Saudi Arabia do not fall outside the scope of competence *ratione materiae* of the Convention. The Committee therefore rejects the preliminary exception raised by the Respondent State related to the absence of “nationality” in the definition of racial discrimination prohibited by the Convention.

B. The exhaustion of domestic remedies

20. Article 11(3) of the Convention requires that the Committee has to ascertain “that all available domestic remedies have been invoked and exhausted in the case”. In its reply of 19 March 2019, the Respondent State argued that the Applicant State had failed to establish that domestic remedies had been invoked or exhausted. In a Note of 25 March 2019, the Applicant State requested the Committee to reject this argument for being outside the deadline and for raising new issues. On 1 April 2019, the Committee decided not to take into account the submission by the Respondent State of 19 March 2019 as it raised issues not previously raised, and it was submitted far beyond the deadline indicated in its decision of 14 December 2018.

21. The Committee decides that, at the present stage of the examination of the interstate communication submitted by Qatar against the Kingdom of Saudi Arabia, there are no grounds to declare it inadmissible for non-exhaustion of domestic remedies.

C. Conclusion

22. In respect of the inter-state communication submitted on 8 March 2018 by Qatar against the Kingdom of Saudi Arabia, the Committee rejects the exceptions raised by the Respondent State concerning the admissibility of the communication.

23. The Committee requests its Chairperson to appoint, in accordance with article 12(1) of the Convention, the members of an ad hoc Conciliation Commission which shall make its good offices available to the States concerned with a view to an amicable solution of the matter.

⁴ Ibid. points 26 and 28.

Annex

CERD- Inter-state communication Qatar v. Kingdom of Saudi Arabia (ICERD-ISC 2018/3), (Article 11 of the ICERD)

Inventory of the submissions

1. Communication submitted by Qatar pursuant to article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination, dated 8 March 2018 (57 p.).
 2. Response of the Kingdom of Saudi Arabia dated 7 September 2018 (reiterated on 29 January 2019) (2 p.) to the Communication dated 8 March 2018 submitted by Qatar pursuant to Article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination,
 3. Comments by Qatar to the responses of the Kingdom of Saudi Arabia of 7 September 2018 and 29 January 2019, dated 14 February 2019 (29 p.).
 4. Further response of the Kingdom of Saudi Arabia, dated 19 March 2019 (9 p.).
 5. Comments by Qatar, dated 25 March 2019 (2 p.).
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