

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Tayeb Benabderrahmane

v.

State of Qatar

(ICSID Case No. ARB/22/23)

PROCEDURAL ORDER NO. 7
Request for Additional Provisional Measures

Members of the Tribunal

Ms. Lucinda Low, President of the Tribunal
Prof. Andreas Bucher, Arbitrator
Mr. Makhdoom Ali Khan, Arbitrator

Secretary of the Tribunal

Dr. Jonathan Chevry

July 31, 2024

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I. INTRODUCTION AND PROCEDURAL HISTORY

1. The present dispute has been submitted to arbitration under the auspices of the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”) on the basis of the Agreement between the Government of the French Republic and the Government of the State of Qatar on the reciprocal encouragement and protection of investments (the “**BIT**” or the “**Treaty**”)¹ and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”).
2. The Claimant is Mr. Tayeb Benabderrahmane, a national of Algeria and France (the “**Claimant**”), and the Respondent is the State of Qatar (“**Qatar**” or the “**Respondent**”). The Claimant and the Respondent are collectively referred to as the “**Parties.**”
3. On May 7, 2024, the Claimant submitted a request to the Tribunal styled a Request for an Order Following the Respondent’s Non-Compliance with Procedural Orders (the “**Request**”), together with an index of cited authorities.
4. On June 7, 2024, the Respondent submitted its Observations on the Request (“the **Observations**”), together with annexed materials.
5. On June 18, 2024, the Claimant submitted a Reply to the Respondent’s Observations on the Request (the “**Reply**”), to which was appended an Annex and supporting documents and authorities. On June 25, 2024, the Claimant submitted an English translation of the expert report of Ms. Celine Lauro submitted (in French) with the Reply (Exh. C-077).
6. On July 9, 2024, pursuant to an extension of time granted by the Tribunal, the Respondent submitted a Rejoinder to the Request for Additional Provisional Measures (the “**Rejoinder**”), together with an Annex commenting on specific documents listed at paragraph 77 of the Claimant’s Reply.

¹ Signed at Doha on July 8, 1996.

7. The Tribunal, having reviewed the parties' submissions and considered the issues raised, now issues its decision on the Request. For the reasons set forth below, the Request is denied, subject to the Tribunal's Order set forth in Section IV herein.

II. THE PARTIES' SUBMISSIONS

8. This section summarizes generally the submissions of the parties. Additional submissions of particular relevance to the Tribunal's analysis will be discussed in the following section as appropriate. The Tribunal has carefully considered all of the parties' arguments, and the fact that a specific point may not be mentioned in this Order should not be taken as an indication that it was not considered.

A. SUBMISSIONS OF THE CLAIMANT

(1) The Request

9. The Claimant's Request is based on the Respondent's asserted non-compliance with previous orders of the Tribunal, namely Procedural Order No. 3 of October 3, 2023 ("PO3"), and Procedural Order No. 5 of December 20, 2023 ("PO5"). The Claimant maintains that these orders were binding, and that the Tribunal has the authority under Rule 27 of the ICSID Arbitration Rules to issue an order in the face of such non-compliance.²
10. PO3 ordered the Respondent to provide all documents related to its decisions to arrest and detain the Claimant for 307 days in 2020. PO5, a provisional measures order issued in the context of the Claimant's having become aware that he had been criminally convicted and sentenced to death by Respondent *in absentia*, ordered the Respondent, *inter alia*, to undertake to refrain from harming the life and safety of the Claimant or any of his relatives or enforcing that death sentence. It also accepted the offer of Respondent to issue an undertaking reflecting its commitments to refrain from certain actions.

² Request, paras. 18-19.

11. The Claimant submits that the Respondent has failed to comply with these orders and has engaged in conduct that is deceitful, has aggravated the dispute, and threatens the integrity of the arbitral proceedings.
12. Relying on Article 47 of the ICSID Convention and Rule 22 of the ICSID Rules, the Claimant asked the Tribunal, in summary, to issue the following orders:

“(i) acknowledge that the Respondent did not fully comply with the PO3 relating to document production, given the obvious lack of authenticity of some of the documents so produced;

(ii) acknowledge that the Respondent did not comply with the PO5 relating to provisional measures, given this party’s failure (i) to give the requested by the Tribunal to protect the life and safety of the Claimant and of any of his relatives and (ii) to provide the document that it was ordered to produce; [and]

(iii) order the Respondent to refrain from using in the instant proceeding any such irregular documents and discharge the Claimant from its burden of proof regarding all factual information which should have been evidenced by the documents to be produced under the PO3 and PO5.”³

a. PO3—Document Production

13. With respect to PO3, the Claimant submits that the documents produced by the Respondent following the issuance of PO3 were largely duplicative of documents produced prior to the issuance of that procedural order,⁴ and the Respondent has not only failed to produce all of the ordered documents, but has also produced inauthentic documents.⁵ While the Respondent claims that the ordered documents were first produced on June 22, 2023 (and then reproduced on October 18, 2023), the Claimant highlights what it considers to be “obvious” gaps in the production.⁶ With regard to authenticity, he emphasizes a recent incident during the review of Qatar’s report by the United Nations Commission on the

³ Request, pp. 2-3. The full scope of the requested order is set out at paragraph 36 *infra*.

⁴ According to the Claimant, the Respondent produced 9 documents on 18 October 2023, 7 of which had been previously produced. Request, para. 7.

⁵ Request, Sections 3.1 and 3.2, paras. 25 *et seq.*

⁶ See Request, para. 26.

Elimination of Racial Discrimination (“CERD”) on April 17-18, 2024, in which the Qatari delegation—which included a [REDACTED], whose name appeared in documents of the proceedings involving the Claimant—indicated a lack of knowledge regarding the Claimant’s case. The Claimant argues that such lack of knowledge was evidence not only of the inauthenticity of the court documents produced, but also of a lack of proper process concerning Claimant in the Qatari proceedings. He also flags what he terms “formal abnormalities” in the court decisions produced.⁷ For the Claimant, this proves the Respondent’s “bad faith” and disregard of the orders of the Tribunal.⁸

b. PO5—Provisional Measures

14. With respect to PO5, granting the Claimant’s request for provisional measures and ordering the Respondent to provide an undertaking as further detailed below (the “**Undertaking**”) with the aim of protecting the Claimant’s life and safety and maintaining the integrity of the arbitral proceedings, and to provide, within 45 days of its issuance, a listing of all documents and documentary evidence seized from the Claimant (the “**Listing Order**”).⁹ The Claimant takes issue with the adequacy and authenticity of the Undertakings provided by the Respondent to date in response to PO5 as well as its compliance with the Listing Order.¹⁰
15. On January 19, 2024, further to the requirement of PO5 for the issuance of the Undertaking, the Respondent filed with the Tribunal a statement issued by [REDACTED]
[REDACTED]
[REDACTED].¹¹ After the Claimant expressed concerns with the authenticity of this first Undertaking, the Respondent, while disputing that the Undertaking was non-compliant with the Tribunal’s order, provided a second Undertaking by [REDACTED]

⁷ Request, para. 3.2.iii., paras. 40 *et seq.*

⁸ Request, para. 46.

⁹ PO5, para. 61(e).

¹⁰ Request, Section IV.

¹¹ Letter from the Respondent’s counsel to ICSID dated January 19, 2024.

[REDACTED]

[REDACTED].¹²

16. The Claimant takes issue with the authenticity of this second Undertaking as well. He argues that both suffer from certain “inconsistencies” with the Tribunal’s order in PO5 and particular its direction that the Undertaking be given by “an appropriate and duly empowered official of the Public Prosecutor of the State of Qatar.” Specific concerns highlighted by the Claimant are that the Undertakings: a) are drafted in English, rather than a formal language of the State of Qatar; b) are not issued on official letterhead of the Public Prosecutor of Qatar and lack a seal and page footer; and c) lack the barcode that appears on all official documents and the signatures are missing official stamps. In his view, these “inconsistencies” with the Tribunal’s order impair his rights, including by impeding the Claimant’s ability to travel abroad, his ability to seek witnesses and experts to substantiate his claims; and by causing him to be concerned about further retaliation by the Respondent.¹³ The Claimant cites to a recent filing of a criminal complaint by Qatar against the Claimant as an example of a breach of the latter.¹⁴
17. The Claimant also submits that the powers of the authors of the two Undertakings have not been established,¹⁵ and it is therefore not clear that they are “appropriate and duly empowered officials” of the Respondent as ordered by the Tribunal. He further submits, based on the Vienna Convention of 1969, that only Heads of State, Heads of Government or Ministers of Foreign Affairs are empowered to act on behalf of a State at the international level.¹⁶
18. Finally, the Claimant submits that the Respondent has failed to comply with the Listing Order in PO5.¹⁷ The Respondent has relied on an examination report dated February 10,

¹² Letter from the Respondent’s counsel to the Claimant’s counsel dated May 3, 2024.

¹³ Request, para. 54.

¹⁴ Request, para. 55, citing to C-074.

¹⁵ Request, Section 4.1.ii.

¹⁶ Request, para. 60.

¹⁷ Request, Section 4.2, paras. 62 *et seq.*

2020 as constituting a complete listing;¹⁸ however, the Claimant argues that this cannot be a complete listing inasmuch as it would not reflect materials that were seized from Claimant at a later date,¹⁹ and that the document relied upon is not, by its terms, a listing of all materials but only an examination report.²⁰

19. In addition to the specific orders requested by the Claimant as set forth in paragraph 12 above, the Claimant requests that the Tribunal draw adverse inferences from the Respondent's non-compliance, namely that: (i) the documents that should have been produced in response to PO3 would have shown that the Claimant's detention in 2020 was carried out without due process of law and without appropriate judicial review; and (ii) the information that should have been provided in respond to PO5's Listing Order would have shown that the Claimant had transferred to Qatar both documentary assets and know-how that were real and substantial.²¹
20. The Claimant further requests, relying on Rule 36(1) of the ICSID Rules and Article 47 of the ICSID Convention, that the Respondent be barred from using or referring to any document lacking in authenticity.²² Paragraph 83 of the Request goes on to seek a declaration from the Tribunal that the documents specified therein are inadmissible and excluded from the record of these proceedings, and reliance on them is disallowed.²³
21. With respect to witnesses, in light of the Claimant's submissions as to the chilling effect of the Respondent's conduct, he requests that the Tribunal order that he:

¹⁸ Exhibit C-051.

¹⁹ Request, para. 66.

²⁰ Request, para. 67.

²¹ Request, para. 79.

²² Request, Section 5.1.ii, paras. 80 *et seq.*

²³ Request, para. 83. These documents are: (1) pages 105 and 8-12 of the document "minutes of Sessions and Orders for Detention dated 10.2.2020"; (2) the documents "SQ-TB-Decision dated 16 March 2020"; "SQ-TB-Decision dated 15 April 2020"; "SQ-TB-Decision dated 28 April 2020"; "SQ-TB-Decision dated 17 May 2020" and "SQ-TB-Decision dated 25 June 2020; and (3) the document "Examination Report dated 10.2.2020", "insofar as this document is used by the Respondent as an alleged comprehensive detail of all the documents and documentary evidence seized from the Claimant."

- be authorized to produce any further witness testimony or expert report in a redacted version, with the name and any identifying information masked, provided a non-redacted version of such testimony or report is remitted to the Tribunal, under the seal of confidentiality, and to refuse any call to examination and for examination by the Respondent, without any inferences being drawn from such refusal;
- disclose to the Respondent’s counsel the unredacted version of any such testimony or report filed by the Claimant, only after a protective order is rendered and under the terms and conditions provided for in such protected order, terms and conditions which shall include, without limitation, (i) the acknowledgement by the Respondent’s counsel of the confidential nature of the identity of the said witness or expert and of any such unredacted testimony or report, including in any document of the arbitration to be published, (ii) the obligation for any person requested, on a strict need-to-know basis, to access such unredacted testimony or report to have previously signed an appropriate confidentiality undertaking, and (iii) the commitment by the Respondent’s counsel and any person accessing such unredacted testimony or report, to refrain from contacting or communicating with the witness or expert, beyond his/her examination at the hearing.²⁴

22. The full set of rulings and orders sought by the Claimant in its Request is set forth at paragraph 92, pages 32-35 of that Request.

(2) The Reply

23. In his Reply, the Claimant maintains his position that the Respondent has not complied with PO3 and PO5, and argues that remedial measures are “necessary and urgent”.²⁵

²⁴ Request, para. 89.

²⁵ Reply, paras. 4-5.

a. PO3—Document Production

24. With respect to PO3, the document production order,²⁶ the Claimant asserts that despite having produced three additional documents beyond its previous productions (two with its October 18, 2023 production, and one on June 12, 2024), the Respondent has nonetheless still failed to produce all of the documents requested by the Tribunal. The Claimant points specifically to the absence of any documents regarding the authorization for or justification of the following events:
- The Claimant’s detention in the period from January 13 to February 10, 2020;
 - The Claimant’s detention in the period between February 18 and March 16, 2020;
 - The Claimant’s placement under house arrest between July 1 and October 31, 2020;
or
 - The location where the Claimant was detained or placed under house arrest from January 13 and October 31, 2020.²⁷
25. The Claimant therefore seeks an order acknowledging this failure and directing the Respondent to “promptly and fully comply’ with all provisions of PO3.²⁸
26. The Claimant continues to maintain that there is a lack of authenticity in the documents produced and therefore submits they should not be given probative value.²⁹ The Claimant also continues to rely on the lack of knowledge of his case on the part of the Qatari

²⁶ “(v) [...] the decision(s) to detain the Claimant in an undisclosed detention facility between January 13, and February 1, 2020 [...];
(vi) [...] the decision(s) to incarcerate the Claimant in the Salwa Road prison and to maintain his detention in this prison until 1st July 2020 [and ...];
(vii) [...] the decision(s) to place and maintain the Claimant under house arrest between July 1, 2020, and October 31, 2020. [...]”³
PO3, para. 27, as cited in Reply, para. 6.

²⁷ Request, para. 26.

²⁸ Reply, para. 14.

²⁹ Reply, Section 2.2, paras. 15 *et seq.*

delegation during the CERD meeting, as well as documents submitted in those proceedings, and dismisses the submissions of the Respondent as insufficient.

27. The Claimant provides additional detail regarding the discussions regarding his case between UN experts and the Qatari delegation in the CERD meeting. He underscores the “serious doubts” expressed by the UN experts regarding the delegation’s lack of knowledge of the case, and “more generally, the lack of good faith of Qatar when questioned.”³⁰ In his view, this lack of knowledge evidences that the treatment of the Claimant was “outside of all due process and judicial review.”³¹
28. The Claimant also reiterates his prior concerns about the lack of knowledge on the part of [REDACTED] during the CERD meeting, and argues that the statement of the Judge submitted by the Respondent with its Observations [see paragraphs 39-40 below] has no probative value, apparently on the basis that while it makes certain “formal acknowledgments,” it does not answer the Claimant’s “critical claims” of falsehood. The Claimant therefore submits that either the document entitled “SQ-TB-Decision dated 25 June 2020” is forged or that the Judge did not respect the proper laws in conducting the proceeding. He reiterates his request for relief, consisting of disregard and exclusion from these proceedings of all of the judicial decisions relating to his case.³²
29. The Claimant reiterates his position that the Qatari court orders produced by the Respondent contain many “formal abnormalities.” In support of this position, the Claimant submits an Annex analysing six of the documents produced in response to PO3 in detail, and an expert opinion of Celine Laur, a graphologist,³³ concluding that Documents Q1 and Q2 are the result of computer manipulation, and Documents Q1 and Q3 are from the same hand.³⁴

³⁰ Reply, para. 32.

³¹ Reply, para. 33.

³² Reply, paras. 35-39.

³³ The Expert Report of Celine Laur dated 16 June 2024 is exhibited at C-077.

³⁴ Reply, para. 43, citing to C-077, at p. 10.

30. The Claimant continues to cite to a prior unrelated case between Qatar and Bahrain as support for his position that the documents are fraudulent, noting the similarities between the formal abnormalities submitted in that case and those allegedly present here.³⁵

31. In terms of requested relief, the Claimant seeks a ruling of non-compliance by the Respondent, and that the documents produced by the Respondent be excluded from the records and an “appropriate” inference be taken.

b. PO5—Provisional Measures

32. With respect to PO5, the Reply elaborates on the points made in the Request with respect to both the sufficiency of the undertakings provided by the Respondent and the list produced by the Respondent.³⁶ The Claimant emphasizes the need to ensure that the undertakings “genuinely protect him and his relatives”.³⁷ To that end, he underscores the importance, in the context of the death sentence that has been proclaimed against him, and similar matters, of the document being in Arabic so that potential witnesses are able to confirm that it is an official document.³⁸

33. To the Respondent’s argument [see paragraph 43 below] that the formal requirements for which the Claimant advocates for the undertakings are not specifically ordered by the Tribunal in PO5, the Claimant’s argument seems to be that they were intended at least implicitly, and the Respondent’s argument shows a lack of good will. The Claimant also dismisses as absurd the position that he needs to demonstrate the failure of attempts to secure witness evidence in order for his submissions to succeed.³⁹ He disputes any attempt to relitigate these issues and argues without further detail that circumstances have changed,

³⁵ Reply, paras. 45-47.

³⁶ Reply, Part III.

³⁷ Reply, para. 59.

³⁸ Reply, paras. 60-65.

³⁹ Reply, paras. 66-67.

and that he is responding to paragraph 63 of PO5 requiring notice to the Tribunal of such change. He further argues that he has been impaired in presenting his case.⁴⁰

34. In terms of relief, the Claimant reiterates the measures requested in the Request, namely that he:

- “be authorized to produce any further witness testimony or expert report in a redacted version, with the name and any identifying information masked, provided a non-redacted version of such testimony or report is remitted to the Tribunal, under the seal of confidentiality, and to refuse any call to examination and for examination by the Respondent, without any inferences being drawn from such refusal;
- disclose to the Respondent’s counsel the unredacted version of any such testimony or report filed by the Claimant, only after a protective order is rendered and under the terms and conditions provided for in such protected order, terms and conditions which shall include, without limitation, (i) the acknowledgement by the Respondent’s counsel of the confidential nature of the identity of the said witness or expert and of any such unredacted testimony or report, including in any document of the arbitration to be published, (ii) the obligation for any person requested, on a strict need-to-know basis, to access such unredacted testimony or report to have previously signed an appropriate confidentiality undertaking, and (iii) the commitment by the Respondent’s counsel and any person accessing such unredacted testimony or report, to refrain from contacting or communicating with the witness or expert, beyond his/her examination at the hearing.”⁴¹

35. With respect to compliance with PO5’s Listing Order, the listing of seized documents and documentary evidence, the Claimant questions whether the new listing, provided by the Respondent with its Observations, is “no more comprehensive or accurate than the previous one”.⁴² He observes that a comprehensive listing would include all of the documents

⁴⁰ Reply, paras. 68-71.

⁴¹ Reply, para. 72.

⁴² Reply, para. 77.

identified in the Examination Report produced on June 22, 2023, as well as all of the documents detailed by Respondent's courts in the criminal proceedings, providing in paragraph 77 of his Reply a table providing examples of documents identified in both earlier sources but not included in the most recent listing. He appears also to question whether some of the documents listed are his or were possessed by him.⁴³ He therefore maintains his request for an inference from such non-production as to the real and substantial nature of the assets he transferred to Qatar.⁴⁴

36. The Claimant maintains in its entirety its request for relief set forth in the Request, referenced at paragraph 22 above. The requested relief is set out in full below:

- **“Rule** that Qatar and/or Qatar’s agencies or instrumentalities did not fully comply with the Procedural Order No. 3 relating to document production;
- **Rule** that Qatar and/or Qatar’s agencies or instrumentalities did not comply with the Procedural Order No. 5 relating to provisional measures;
- **Rule** that the orders and recommendations of the Procedural Order No. 3 and the Procedural Order No. 5 are binding on Qatar and order Qatar to comply, without delay, with all their provisions, including but not limited, by recommending that appropriate and duly empowered official of the Public Prosecutor of the State of Qatar issue, within 15 days of the date of Order to be rendered, the undertakings on behalf of the State of Qatar, its agencies and instrumentalities listed in para. 61 of the PO5, in Qatar’s official language, on an official headed paper of his administration, and with the relevant official signs and stamps, with a copy of this official’s power to make such undertaking on behalf of the State of Qatar, and with a translation into English of both the document enacting these undertaking and the official’s power;

⁴³ Reply, para. 79: “the Claimant formally contests....also to have ever detained most of the documents so listed.”

⁴⁴ Reply, para. 80.

- **Rule** that the Tribunal will take into account the Respondent's non-compliance with Procedural Order No. 3 and Procedural Order No. 5 in its evaluation of the respective factual allegations and, notably, that it shall be inferred from the refusal by the Respondent:
 - i. to fully comply with the Procedural Order No. 3, that the responsive documents would have shown that the detention of the Claimant, from 13 January to 31 October 2020, as well as the location of such detention, was decided without due process of law and without appropriate judicial review;
 - ii. to fully comply with the Procedural Order No. 5, that the responsive list of “all documents and documentary evidence seized” from the Claimant would have shown that he transferred to Qatar, both documentary assets and know-how that were real and substantial.
- **Declare** inadmissible, exclude from the record of this arbitration and disallow the Respondent from using or drawing any factual or legal conclusion out of the following documents:
 - i. the pages 1 to 5 and 8 to 12 of the document “Minutes of Sessions and Orders for Detention dated 10.2.2020”, produced on 22 June 2023;
 - ii. the documents “SQ-TB - Decision dated 16 March 2020”, “SQ-TB - Decision dated 15 April 2020”, “SQ-TB - Decision dated 28 April 2020”, “SQ-TB - Decision dated 17 May 2020” and “SQ-TB - Decision dated 25 June 2020” produced on 18 October 2023; and
 - iii. The document produced on 12 June 2024 entitled “the [REDACTED] [REDACTED] dated 16 February 2020, renewing the Claimant’s detention for 30 days”.
- **Rule**, with regard to any further witness testimony or expert report produced by the Claimant:

- i. that the Claimant shall be authorized to produce any such testimony or report in a redacted version, with the name and any identifying information masked, provided a non-redacted version of such testimony or report is remitted to the Tribunal, under the seal of confidentiality,
- ii. that the Claimant shall be authorized to refuse any call for examination or for cross-examination by the Respondent, of any such witness or expert, without any inferences being drawn from such refusal; and
- iii. that the unredacted version of any such testimony or report shall be disclosed to the Respondent's counsel, only after a protective order is rendered and under the terms and conditions provided for in such protected order, terms and conditions which shall include, without limitation, (i) the acknowledgement by the Respondent's counsel of the confidential nature of the identity of the said witness or expert and of any such unredacted testimony or report, including in any document of the arbitration to be published, (ii) the obligation for any person requested, on a strict need-to-know basis, to access such unredacted testimony or report to have previously signed an appropriate confidentiality undertaking, and (iii) the commitment by the Respondent's counsel and any person accessing such unredacted testimony or report, to refrain from contacting or communicating with the witness or expert, beyond his/her examination at the hearing."

37. The Claimant concludes with the submission that the additional measures requests are both "necessary and urgent for the preservation of his rights in this arbitration" and reserves the right to seek moral damages.⁴⁵

⁴⁵ Reply, para. 83.

B. SUBMISSIONS OF THE RESPONDENT

(1) The Respondent's Observations

38. The Respondent, in its Observations, focuses on the allegedly forged or inauthentic court orders produced in response to PO3 and the allegedly unreliable Undertakings provided in response to PO5.

a. PO3—Document Production

39. As to the court orders, the Respondent submits that there is no basis for the “very serious” allegations that have been made.⁴⁶ The Respondent observes that of the five court orders that have been disclosed in this case, the Claimant has taken issue with only one, the order by [REDACTED] of June 25, 2020. The Respondent disputes that the Judge’s statement at the CERD meeting regarding his non-recollection of the Claimant’s case constituted an admission or that anything can be inferred from the Qatari delegation’s lack of familiarity with the Claimant’s case at that meeting.

40. The Respondent observes that the Claimant’s case was not on the agenda in advance of the meeting, resulting in there being no advance briefing of the Qatari delegation to the meeting on the case, and that the Judge’s lack of recollection of the case at that time was not reflective of any irregularity with respect to it. The Respondent submits into evidence a statement of the Judge confirming that the court decision of June 25, 2020 is “in all respects a genuine and authentic Court Order which [he] issued on 25 June 2020”; that his signature appears on the decision; and that the document that has been introduced into the record in these proceedings conforms to the original of the decision in the court’s records.⁴⁷

41. As to the alleged “formal abnormalities” of the court orders, the Respondent denies that there is any basis to suspect that court orders have been fabricated or even tampered with, and invites the Tribunal, the Secretariat, or an independent expert appointed by the Tribunal

⁴⁶ Section 1, paras. 6 *et seq.*

⁴⁷ Observations, para. 7.

to inspect the relevant court files if it considers it appropriate to do so.⁴⁸ The Respondent questions the Claimant's reliance on an unrelated incident involving acknowledged inauthentic documents in a dispute between Qatar and Bahrain 30 years ago in a maritime delimitation case.⁴⁹

42. The Respondent further submits that there is no basis for the relief sought by the Claimant in relation to the exclusion, inadmissibility, or ability to rely on, any of the court orders and documents at issue, or the adverse inferences sought.⁵⁰ The Respondent considers these to be issues for the merits phase of the proceedings.⁵¹

b. PO5—Provisional Measures

43. As to the allegedly unreliable Undertakings, the Respondent disputes the merits of the Claimant's concerns. It accompanies its Observations with a written confirmation from the Attorney General of Qatar confirming that the two individuals issuing the Undertakings, referred to in paragraph 15 above, are and were duly empowered to do so by the State.⁵² The Respondent disagrees that international law requires that the Undertakings be given by a Head of State, Head of Government, or Foreign Minister, given the context.⁵³ The Respondent further disagrees with the necessity for the Undertakings to be issued in Arabic, arguing that this was not required by the Tribunal in PO5 and that English, as the language of the arbitration and of Qatar's originally proffered undertaking, was the most appropriate.⁵⁴
44. As to the new proceeding allegedly commenced by the Respondent against the Claimant, the Respondent maintains that it is a proceeding in France involving private defamation of

⁴⁸ Observations, para. 8.

⁴⁹ Observations, para. 9.

⁵⁰ Observations, paras. 11 *et seq.*

⁵¹ Observations, para. 13.

⁵² Observations, para. 15.

⁵³ Observations, para. 18.

⁵⁴ Observations, para. 18.

an individual who, although a public official in Qatar, is claiming in his private capacity, and as such fall outside the scope of the required undertakings.⁵⁵

45. Concerning the relief sought by the Claimant, and in particular the confidentiality regime proposed by the Claimant, the Respondent first emphasizes that the only justification for the relief is the asserted defects in the Undertakings, and that if they have been given in accordance with the Tribunal's order, there is no basis for such relief (or for relitigating matters addressed in PO5). The Respondent further argues that the confidentiality measures sought by the Claimant are "unfair and oppressive", and considers the proposal that witnesses tendered by the Claimant not be subject to cross-examination to be not only unworkable but of no assistance to the Tribunal.⁵⁶ Moreover, the Respondent submits that while requesting relief under Article 47 of the ICSID Convention, the Claimant has not established a case according to the "usual tests" for such relief.⁵⁷
46. With respect to the alleged non-compliance with PO5 concerning the inventory, the Respondent first confirms that the direction in PO5, paragraph 61(e), to preserve all concerned documents and documentary evidence, has been complied with.⁵⁸ With respect to the Tribunal's Listing Order, the Respondent attaches as an annex to its Observations a "comprehensive list" of the individual documents held on the devices seized from the Claimant, other than material on a telephone that the Respondent asserts to have been stolen, and duplicates of that material on a laptop, hard disk and memory card.⁵⁹
47. The Respondent submits that there is no basis for the requested inference that the documents seized would show that the Claimant's assets and know-how transferred to Qatar were real and substantial.⁶⁰

⁵⁵ Observations, paras. 19-21. The Claimant does not contest this in his Reply.

⁵⁶ Observations, paras. 28-29.

⁵⁷ Observations, para. 30.

⁵⁸ Observations, para. 32.

⁵⁹ Observations, para. 34.

⁶⁰ Observations, para. 36.

48. The Respondent suggests that, in making this Request, the Claimant may be seeking to “construct an explanation” for the lack of witness testimony submitted with its Memorial.⁶¹

(2) The Rejoinder

a. PO3—Document Production

49. In its Rejoinder, the Respondent rejects the suggestion that it is not treating this matter as serious, but denies that the Claimant has stated any basis for measures to be taken under Article 47 of the ICSID Convention. It particularly challenges the nature of the relief sought by the Claimant,⁶² characterizing the Request as “unprincipled and unorthodox”, noting the absence of any citation to a previous decision that would support the relief sought, and arguing that any decisions regarding inferences to be taken or document admissibility are for the merits stage when the Tribunal has all of the relevant evidence before it.⁶³

50. With respect to the CERD proceedings, the Respondent argues that the Claimant’s submissions in its Reply regarding the content of those proceedings do not support that the documents produced by the Respondent are inauthentic and that its submission regarding due process and judicial review at paragraph 33 of the Reply is irrelevant at this stage.⁶⁴ It also contests the Claimant’s position that the statement of [REDACTED] lacks probative value and that it should be excluded. It also highlights what it terms the inconsistency between the proposed exclusion and the Claimant’s interest in cross-examining the judge at a hearing.⁶⁵

51. As to the issues of inauthenticity of the Qatari court documents put forward by the Claimant, the Respondent continues to maintain that the documents are not forged, and that the Claimant’s submissions, including its expert evidence, do not establish forgery. The Respondent submits that the issues of authenticity should be determined during the merits

⁶¹ Observations, para. 37.

⁶² Rejoinder, paras. 2-3.

⁶³ Rejoinder, para. 8.

⁶⁴ Rejoinder, para. 11.

⁶⁵ Rejoinder, paras. 12-13.

phase, and that there is insufficient basis at this time for the Tribunal to order the relief sought by the Claimant.⁶⁶ It also reiterates its prior offer to have a representative of the Tribunal or a Tribunal-appointed expert examine the court file.⁶⁷

b. PO5—Provisional Measures

52. As to the Undertakings, the Respondent disputes that its conduct with respect to the Undertakings provided to date reflects any bad faith on its part, given the Tribunal’s prior order, and further disputes that there has been any non-compliance. It again decries the lack of detail provided by the Claimant with respect to witnesses being chilled, and notes the Claimant’s lack of engagement with the Respondent’s expressed concerns about the confidentiality regime proposed by the Claimant in relation to witness evidence, which are reiterated.⁶⁸
53. As to the Listing Order, the Respondent disputes the Claimant’s submission that the list annexed to its Reply has omissions and submits that every document referred to by the Claimant in paragraph 77 of the Reply either appears in that annex or is part of what the Respondent expressly excluded on that basis of its position that it constitutes stolen property. The Respondent goes on to provide, in an annex to its Rejoinder, detailed commentary on each category of document listed in paragraph 77 of the Reply. Finally, it disputes that the Claimant has established a basis for the requested relief or that it would be appropriate at this stage.⁶⁹
54. The Respondent in conclusion disputes that there is any basis for an order in respect of the Request and argues either for its dismissal or a holding over of the Request to the merits stage. It also requests a hearing if the Request is to be considered, arguing that the “extreme

⁶⁶ Rejoinder, paras. 20-22.

⁶⁷ Rejoinder, para. 18.

⁶⁸ Rejoinder, paras. 24-29.

⁶⁹ Rejoinder, paras. 30-35.

relief” sought by the Claimant could have serious implications for the Respondent’s due process rights.⁷⁰

III. THE TRIBUNAL’S ANALYSIS

55. The Tribunal will first address the issues relating to PO3, document production. Second, the Tribunal will address the issues relating to PO5, the provisional measures order. In both cases, it will address the asserted non-compliance by the Respondent and then the requested relief in relation to that asserted non-compliance.

A. PO3—DOCUMENT PRODUCTION

56. As to PO3, the order issued by the Tribunal granted the Claimant’s request for production by the Respondent of the following documents:

“(v) [...] document(s) regarding the decision(s) to detain the Claimant in an undisclosed detention facility between January 13, and February 1, 2020 [...];

(vi) [...] the document(s) regarding the decision(s) to incarcerate the Claimant in the Salwa Road prison and to maintain his detention in this prison until 1st July 2020. [...];

(vii) [...] document(s) regarding the decision(s) to place and maintain the Claimant under house arrest between July 1, 2020, and October 31, 2020. [...].”

57. The principal basis for the Claimant’s requested declaration regarding the Respondent’s asserted noncompliance with this order, and the relief he requests, is an inference based on the alleged inauthenticity of the Qatari court documents produced by the Respondent that the detention of the Claimant from January 13 to October 31, 2020, as well as the location

⁷⁰ Rejoinder, paras. 36-37.

of such detention, was decided without due process of law and without appropriate judicial review.⁷¹

58. The Tribunal is not persuaded that the Claimant has sufficiently demonstrated the inauthenticity of the Qatari court documents produced so as to justify the decision and relief he has sought. The evidence submitted by the Claimant with respect to the CERD proceedings earlier this year involving the Qatari delegation does not demonstrate such inauthenticity, nor is it sufficient, in the Tribunal's view, to establish that the Qatari court proceedings lacked due process or appropriate judicial review. While it is perhaps surprising at first blush that a judge who was a member of the Qatari CERD delegation and who was also involved in the Qatari court proceedings involving the Claimant had no recollection of those proceedings, the Tribunal agrees with the Respondent that such non-recollection could have been a function of the judge's limited involvement and the passage of time.
59. As to the so-called "formal abnormalities" allegedly associated with the Qatari court documents that have been produced, the Tribunal does not consider that the expert report submitted by the Claimant provides a sufficient basis, given its limited scope and findings, and in light of the submissions of the Respondent, to conclude that those "abnormalities" establish a lack of authenticity. It is not probative, in the Tribunal's view, that 30 years ago in a wholly unrelated proceeding, the Respondent acknowledged the submission of inauthentic documents.
60. To be clear, the Tribunal makes no determination at this time regarding the authenticity of the Qatari court documents. It further denies the Claimant's request for those documents to be declared inadmissible at this time. There will be opportunity in the merits phase of this case for additional evidence to be adduced, and if Qatari court document authenticity remains an issue, the Tribunal will consider at that time the Respondent's offer to appoint an expert to examine the court files.

⁷¹ See paragraph 36, *supra*.

61. The Tribunal notes that although some additional documents have been produced by the Respondent pursuant to PO3, none of the documents produced by the Respondent to date appear to be official documents relating to the Claimant's initial detention between January 13 and February 10, 2020, responsive to the Tribunal's order to produce in subparagraph 27(v) of PO3, or official documents relating to the Claimant's house arrest between July 1, and October 31, 2020, as called for by subparagraph (vii) of PO3. If that is confirmed, a request for a negative inference that such documents do not exist if made at the appropriate time, *i.e.*, during the merits phase of this case, will be considered by the Tribunal. In the meantime, the Tribunal determines that the Respondent shall be directed to carry out a thorough search of all official documents related to Claimant's detention in Qatar between January 13, 2020 and October 31, 2020, and provide any such documents to Claimant that are discovered during this search that are responsive to the order in PO3 within 4 weeks of receipt of this PO7.
62. Given its view that inauthenticity has not been established, the Tribunal finds no basis for the Claimant's request for the requested relief in the form of an order barring use of the Qatari court documents, including the documents identified in paragraph 83 of the Request, in these proceedings.
63. The requested order and relief with respect to PO3 is therefore denied, subject to the Respondent's compliance with the order set forth in Section IV pursuant to the last sentence of paragraph 61 above. Having said that, the Tribunal expects full and timely compliance with its orders. When those orders involve the production of documents, the Tribunal expects that a prompt and diligent search will be made for the responsive documents and they will be produced in good time as ordered by the Tribunal, not provided piecemeal over time. The Tribunal declines to find any bad faith in the conduct of the Respondent to date, but emphasizes the importance of full and timely compliance by the Parties with the Tribunal's orders for the efficient and expeditious conduct of these proceedings.

B. PO5—PROVISIONAL MEASURES

64. As to PO5, the Tribunal will address first, the undertakings and the relief requested with respect to them, and second, the issues related to the Listing Order.
65. It bears recalling that PO5 was an order for provisional measures issued under Article 47 of the ICSID Convention. As such, it was based on findings by the Tribunal as to: (1) the existence of rights deserving protection; (2) urgency; (3) necessity; and (4) proportionality.⁷² The Tribunal has applied these criteria, which the Parties agreed in their submissions prior to PO5 were the relevant criteria governing the Tribunal’s provisional measures decision, in assessing the Request in relation to matters covered by PO5.

(1) The Undertakings

66. The Tribunal is satisfied that, with the statement of the [REDACTED], submitted with the Respondent’s Observations as Exhibit R-005, the provisions of PO5 that required that the Undertaking be issued by an “appropriate and duly empowered official” of the Respondent have been complied with.⁷³
67. The Tribunal does not consider that the present circumstances require an undertaking issued by the Head of State, Head of Government, or Foreign Minister of Qatar. While undertakings of those officials may be necessary for purposes of binding the State at the international level, they are not necessary in the context of a criminal proceeding such as the one at issue here.
68. The Tribunal is persuaded, however, that the Undertakings that have been issued to date, namely, the First and Second Statements made by [REDACTED] and [REDACTED], respectively, are not formally sufficient for the purposes intended by the Tribunal in PO5. While it is true that these proceedings are in English, the Tribunal’s expectation with PO5’s stipulation that the Undertaking be issued by an

⁷² PO5, paras. 44-45.

⁷³ Exhibit R-005 states, in relation to the undertakings signed by [REDACTED] and [REDACTED] [sic], that these two individuals “are and were duly empowered on behalf of the State of Qatar to provide the undertakings mentioned above.”

“appropriate and duly empowered” official was that any Undertaking provided would fully conform to Qatari standards for such official documents. The Tribunal therefore agrees with the Claimant that the Undertakings need to be reissued as original Arabic documents (with English translations provided for the convenience of the Tribunal) on official letterhead, and duly signed, stamped or otherwise bearing all markings necessary or appropriate for such official documents under Qatari law.

69. To be clear, the Tribunal has not determined that the Undertakings issued to date are not in compliance with PO5, but rather that a further clarifying order in respect of the Undertakings is warranted under the relevant criteria to make explicit its underlying expectations.
70. The fact that the Tribunal has so determined does not mean, however, that it considers the relief the Claimant has requested with respect to witness and expert testimony and cross-examination⁷⁴ to be justified, for several reasons. In the Tribunal’s view, the Claimant has not made a sufficient showing of the basis for, necessity, urgency, or proportionality of its requested relief. The Respondent rightly observes that the requested measures would have significant implications for its ability to confront and effectively cross-examine any witnesses and experts. On the basis of the record before it, it would be premature for the Tribunal to grant such relief, and the present determination that a clarifying order is warranted does not support the granting of such relief.
71. Nor does the Tribunal find bad faith on the part of the Respondent in its handling of the Undertakings. Bad faith is a serious finding requiring serious evidence of deliberate non-compliance or recurring non-compliance in circumstances in which such intent may be fairly inferred. Having said that, the Tribunal would have expected the Respondent to anticipate that if it did not issue undertakings in the form now ordered, they might not be fit for the purposes that could be reasonably expected of them (such as use with potential witnesses and experts) under the circumstances. It should not have required resort to the Tribunal by the parties to address this issue. But this is not solely the responsibility of the

⁷⁴ See para. 36, *supra*.

Respondent; the Claimant also has a responsibility to try to address issues of this nature with the Respondent. The Tribunal appreciates that the relationship between the Parties may be highly strained given the history of this matter, but that is not a basis for counsel not to try to address and resolve procedural issues before turning to the Tribunal.

(2) The Listing Order

72. As to the Listing Order in PO5, it is important to recall at the outset the reasons for that Order—namely, to ensure the full effectiveness of the Tribunal’s decision and order regarding the preservation of evidence set forth therein.⁷⁵ Accordingly, it was incumbent on the Respondent to produce a proper listing on a timely basis.
73. It is evident from the chronology of this matter that the February 2020 Examination Report could not constitute such a listing, even though it might have constituted an initial listing.
74. Be that as it may, the Respondent has now produced a listing (excluding documents that it deems to be illegally acquired by the Claimant).⁷⁶ The Claimant takes issue with that listing, but the Tribunal is not persuaded that it is deficient as the Claimant has submitted.
75. Nonetheless, the Tribunal is concerned with the delay in production of Annex A, and reiterates the need for the Parties to fully and timely comply with the Tribunal’s orders in this matter. The Claimant should not have had to resort to a further filing to secure such a ministerial act. But given the Respondent’s earlier productions and ultimate compliance, the Tribunal finds an insufficient basis for a determination that PO5 has not been complied with in respect of the listing.
76. The Tribunal further declines to order the relief requested by the Claimant in terms of drawing any inferences as to the sufficiency of the Claimant’s investment or the unlawfulness of his detention. The requested inferences go substantially beyond the

⁷⁵ PO5, para. 54.

⁷⁶ Observations, para. 34; Annex A to the Respondent’s Observations.

purposes of the Tribunal's order in PO5, and have not been shown to have a sufficient basis, or be necessary, urgent or proportional at this time.

77. The Request in relation to PO5 is therefore denied in full, except with respect to the reissuance of the Undertakings in conformity with this PO7.

78. The Tribunal agrees with the submission of the Respondent that many if not all of the requests for relief made by the Claimant are more suitable for the merits phase of this proceeding than the current phase. The Tribunal's dismissal is subject to later submission and examination of issues set forth in the Request at a later stage of these proceedings. The Tribunal considers that the provisions of PO3 and PO5 no longer serve as a basis for future exchanges between the parties before entering into the merits phase of this proceeding.

IV. ORDER

79. For the foregoing reasons, the Tribunal denies and dismisses the Request, except as set forth in paragraph 80 below.

80. The Respondent is directed:

- a. to carry out a thorough search of all official documents related to Claimant's detention in Qatar between January 13, 2020 and October 31, 2020, and provide any such documents to Claimant that are discovered during this search responsive to PO3 within 4 weeks of receipt of this PO7.
- b. to reissue, within 15 days of the issuance of this PO7, the Undertakings required by PO5 previously provided by [REDACTED] and [REDACTED], respectively, as the First and Second Statements, as original Arabic documents (with English translations provided for the convenience of the Tribunal) on official letterhead, and duly signed, stamped or otherwise bearing all markings necessary or appropriate under Qatari law for such official documents.

On behalf of the Tribunal,

[signed]

Ms. Lucinda Low
President of the Tribunal
Date: July 31, 2024