

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Tayeb Benabderrahmane

v.

State of Qatar

(ICSID Case No. ARB/22/23)

PROCEDURAL ORDER NO. 5
Request for 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

20 December 2023

I. INTRODUCTION AND PARTIES

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**”)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. The present order sets out the Tribunal’s analysis and decision on the Claimant’s Application for Provisional Measures and Temporary relief dated 3 November 2023.
4. It is divided into the following subsections: Procedural History (II); Positions of the Parties (III); The Tribunal’s Analysis (IV); and Decision and Order (IV).

II. PROCEDURAL HISTORY

5. On 3 November 2023, the Tribunal received from the Claimant an Application for Provisional Measures and Temporary Relief (the “**Provisional Measures Application**” or “**Application**”).
6. On 13 November 2023, the Respondent, in response to an invitation from the Tribunal, submitted its comments on the Application (the “**Response**”).
7. On 16 November 2023, the Claimant submitted a Reply to the Application (the “**Reply**”).

¹ Signed at Doha on 8 July 1996.

8. On 20 November 2023, the Respondent submitted its response to the Claimant's submission of 16 November (the "**Further Response**").

III. THE PARTIES' POSITIONS

9. 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. THE CLAIMANT'S APPLICATION

10. In the Application, the Claimant makes three requests:
- a) First, for the suspension of the death sentence that was pronounced by the Respondent against the Claimant;
 - b) Second, for the suspension of the criminal proceedings that the Respondent has initiated regarding the Claimant; and
 - c) Third, a two-part request, (i) for the protection of witnesses from interference and harassment as well as (ii) the preservation and protection of documentary evidence from destruction. [Application, introductory paragraph]
11. The Claimant's claim in this arbitration relates to the consequences of the Claimant's alleged arrest, detention and seizure of the Claimant's assets, a sequence of events that took place between 13 January and 31 October 2020. His claims for expropriation and denial of fair and equitable treatment required by the France-Qatar BIT arise out of these events. [Application, paras. 1-2]
12. Following his release from detention on 31 October 2020, the Claimant left Qatar on 1 November 2020 and returned to France. [Application, paras. 3, 14]

13. On 22 August 2023, the Claimant commenced the present proceedings. Since that time, and the constitution of this Tribunal, the Claimant has made numerous document requests of the Respondent relating to his arrest and detention, on which the Tribunal has ruled, and as to which the Respondent voluntarily produced certain documents.²
14. From press articles published in September 2023, the Claimant became aware of correspondence between the French and Qatari authorities in which the latter advised the former that, on 31 May 2023, the Qatar Criminal Court sentenced the Claimant to death. [Application, paras. 4-6, 18]
15. The Claimant submits that he was never made aware of the existence of these criminal proceedings nor of the sentence pronounced against him. [Application, paras. 7, 15] He particularly criticizes the Respondent for not mentioning these facts during the course of these proceedings in which he was seeking document disclosure. He notes that the Respondent produced an Arrest Warrant dated 6 December 2020, but that it represented the only document produced for the period after the Claimant left Qatar. [Application, para. 16] It was produced on 22 June 2023, *i.e.*, after the apparent pronouncement of the death sentence on 31 May 2023. [Application, paras. 16-17]
16. The Claimant argues that these developments “threaten to undermine the integrity” of these proceedings, “radically alter the status quo” from the time the case was filed, impeding his ability to present his case, and aggravate the dispute. On that basis he submits that provisional measures are necessary. [Application, paras. 8-9]
17. Relying on Article 47 of the ICSID Convention and Rule 47 of the 2022 ICSID Arbitration Rules, and decisions of arbitral tribunals the Application sets forth the reasons why the Claimant submits that he is entitled to the provisional measures requested. He identifies four requirements that a party seeking such measures must meet:

- (1) that it holds rights deserving protection;

² Procedural Order No. 3, dated 3 October 2023; letters from Respondent to Claimant of 22 June 2023.

- (2) that those rights are in urgent need of protection;
- (3) that the requested measures are necessary; and
- (4) that the requested measures are proportional. [Application, para. 28]

18. He argues that each of these requirements is met in this case. [Application, paras. 30-54]

19. He requests injunctive relief as follows:

“On the basis of the foregoing, the Claimant respectfully requests that the Tribunal preserve his rights through the granting of provisional measures. Specifically, the Claimant requests an order by the Tribunal recommending that the Respondent:

- (a) Order Qatar and/or Qatar’s agencies or instrumentalities to refrain from engaging in any conduct that may harm the life and safety of the Claimant, his relatives or other individuals (witnesses, experts etc) directly related to the present arbitration (“**Request No. 1**”);
- (b) Order Qatar and/or Qatar’s agencies or instrumentalities to refrain from engaging in any conduct that aggravates the dispute between the Parties and/or alters the status quo (“**Request No. 2**”);

As a consequence,

- (c) Order Qatar and/or Qatar’s agencies or instrumentalities to take all appropriate measures to suspend the criminal proceedings initiated against the Claimant and any other criminal proceedings directly related to the present arbitration (“**Request No. 3**”);
- (d) Order Qatar and/or Qatar’s agencies or instrumentalities to take all appropriate measures to suspend the enforcement of any condemnation rendered by Qatar’s tribunal against the Claimant, including the condemnation to death pronounced on 31 May 2023 (“**Request No. 4**”);
- (e) Order Qatar and/or Qatar’s agencies or instrumentalities to refrain from initiating any other criminal proceedings concerning the Claimant, the Claimant’s relatives or other individuals (witnesses, experts etc.) directly related to the present arbitration, or engaging

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in any other course of action which may jeopardize the procedural integrity of the present arbitration (“**Request No. 5**”);

- (f) Order Qatar and/or Qatar’s agencies or instrumentalities to refrain from taking any step or other action that may lead to the intimidation of witnesses or the unavailability or destruction of the documents and documentary evidence seized from the Claimant (“**Request No. 6**”);
- (g) Order Qatar and/or Qatar’s agencies or instrumentalities to detail the documents and documentary evidence seized from the Claimant, to make a full copy of them, to preserve the originals and provide such inventory and the documents to the Tribunal and the Claimant (“**Request No. 7**”)
- (h) Order Qatar and/or Qatar’s agencies or instrumentalities to pay the entirety of the costs, fees, and expenses incurred by the Claimant in prosecuting its requests for provisional measures (“**Request No. 8**”); and
- (i) Order any other relief that the Tribunal deems appropriate. (“**Request No. 9**”).

20. Finally, the Claimant reserves the right to supplement or amend the requested relief, and indicates the Application is without prejudice to a potential claim for moral damages.
[para. 56]

B. THE RESPONDENT’S RESPONSE

21. The Response submitted by the Respondent by letter of 13 November included two documents: (1) the Judgement of the Court of First Instance, Criminal Court – Felonies First Circuit of the State of Qatar dated 31 May 2023 (in Arabic, with an English translation); and (2) a Decision of the Court of Appeal dated 26 October 2023 (this decision had already been submitted together with a translation by the Claimant on 3 November

2023; the Respondent filed the Arabic version on 13 November 2023, and a translation on 14 November 2023)³.

22. The Response noted that the Court of Appeal decision was not a decision in an appeal but rather a provision of Qatari law that requires the Public Prosecutor to submit a judgment involving the death penalty to the Court of Appeal for consideration. It also indicated that, apparently for the same reason, the case would be referred to the Court of Cassation.
23. The Response conceded that the subject matter of the Application is “of the utmost seriousness”. Without prejudice to its position on jurisdiction, and without engaging in any admissions regarding factual matters which the Response did not address, the Respondent, after expressing itself in relation to the orders requested by the Claimant in paragraph 55 of the Application, set forth in full above, offered five undertakings (respectively as set forth below, “**Undertakings Nos. 1-5**”), as follows:

“1. The State of Qatar shall refrain from engaging in any conduct that may harm the life and safety of the Claimant (or indeed any of his relatives, whilst however noting that there is no evidence whatsoever to suggest that it would seek to do so).

2. Criminal proceedings against the Claimant will be generally suspended pending the resolution of the arbitration and the Public Prosecution of the State of Qatar will request that the Court of Cassation take no further action on the referral of the Judgment by the Public Prosecution pursuant to Article 302 of Law No. (23) for 2004 Promulgating the Criminal Procedure Code.

3. The State of Qatar shall not take any step to enforce the sentence pronounced against the Claimant on 31 May 2023 (or any other analogous sentence or penalty).

4. The State of Qatar shall not, without first notifying the Tribunal and the Claimant via his Counsel in this arbitration, initiate or pursue any other criminal proceedings against the Claimant.

³ [not relevant]

5. The State of Qatar shall preserve all documents and documentary evidence seized from the Claimant.”

24. The Respondent expressed itself prepared to provide these undertakings directly to the Tribunal in a letter from an appropriate official within the Public Prosecution of the State of Qatar.
25. Finally, the Respondent argued that given its response, there is no basis for a costs order as requested by the Claimant.

C. THE PARTIES’ FURTHER SUBMISSIONS

(1) The Claimant’s Reply

26. At the invitation of the Tribunal, the Claimant submitted its Reply to the Response on 16 November 2023. The Claimant maintained its request for provisional measures and argued that the Response and the documents submitted with the Response underscored the necessity and urgency of the requested measures, and confirmed their proportionality. The Claimant particularly underscored that the two court judgments produced by the Respondent with its Response confirm certain factual matters in his previous submissions. [Reply, para. 4]
27. The Claimant disputes the adequacy of the undertakings proffered by the Respondent in the Response in response to the provisional measures he requested, which the Claimant described as comprised of “two general requests” [Application, para. 55, subparas. (a) and (b)], “five specific requests” [Application, para. 55, subparas. (c) through (g)], and “two ancillary ones.” [Application, para. 55, subparas. (h) and (i)]
28. As to the first general request (Request No. 1), which was for the Tribunal to order the Respondent to “Order Qatar and/or Qatar’s agencies or instrumentalities to refrain from engaging in any conduct that may harm the life and safety of the Claimant, his relatives or other individuals (witnesses, experts etc) directly related to the present arbitration,” the Claimant takes issue with the Respondent’s refusal to give an undertaking as to other

individuals such as witnesses and experts in relation to the arbitration in addition to the Claimant and his relatives. [paras. 12-18]

29. As to the second general request (Request No. 2), which was for the Tribunal to order the Respondent to “refrain from engaging in any conduct that aggravates the dispute between the Parties and/or alters the status quo”, the Claimant disputes the Respondent’s position that such an undertaking is rendered unnecessary by virtue of the other proffered undertakings, and continues to maintain that it is necessary and appropriate. [paras. 19-23]
30. In its Reply, the Claimant does not elaborate further on its first two “specific” requests (Requests Nos. 3 and 4, listed as (c) and (d) in the Claimant’s Application and relating to the suspension of the criminal proceedings against the Claimant in Qatar and to the suspension of the enforcement of the condemnation issued against the Claimant). However, the Claimant maintains these two Requests in its request for injunctive relief, which maintains in its entirety the request for provisional measures made in his Application. [para. 49]
31. As to the third specific request (Request No. 5), for the Tribunal to order the Respondent to refrain from initiating any other criminal proceedings against the Claimant, his relatives or others related to the present arbitration, or from engaging in any other activity that may jeopardize the procedural integrity of these proceedings, the Claimant decried the limited scope of the undertaking proffered by the Respondent, which was limited to notice of any other proceedings initiated against the Claimant. [paras. 24-28]
32. As to the first part of the fourth specific request (Request No. 6), for the Tribunal to order the Respondent to refrain from any actions that could lead to the intimidation or others involved in the arbitration, a request not accepted by the Respondent on the grounds that the request was unjustified, the Claimant essentially argued that the actions already taken by the Respondent were intimidating in nature and reiterated its request. [paras. 29-35]
33. As to the second part of the fourth specific request (Request No. 6), for the Tribunal to order the Respondent to refrain from taking any actions leading to the unavailability or

destruction of documents or documentary evidence seized from the Claimant, which the Respondent also argued was unjustified, the Claimant submitted that the judgments have made clear that the materials seized from Claimant and now confiscated are at risk given the state security allegations in the case of destruction or unavailability. [paras. 36-44]

34. The Claimant does not discuss its Request No. 7 in his Reply, relating to its request to preserve, copy, detail and produce the seized documents, but maintains it in the requested relief. [para. 49]
35. Finally, the Claimant reiterates its request in its Request No. 8 that the Tribunal order the Respondent to indemnify it for the full costs, fees and expenses incurred in the making of the Application. The Claimant disputes the “cooperative” position of the Respondent and argues that the Respondent has concealed its actions, resisted providing information, and disrespected the Tribunal, thereby forcing it to make the Application. [paras. 45-48]
36. The Claimant maintains its request for injunctive relief as requested in the Application. He also reiterates his preservation of rights as set forth in the Application. [para. 50]

(2) The Respondent’s Further Response

37. In its Further Response of 20 November 2023, the Respondent continued to argue that the five proffered undertakings remove the risk of irreparable prejudice and, consequently, the need for an order. It also addresses the areas where the Claimant has requested broader relief. It continues to maintain that the Tribunal should not issue any order that goes beyond these proffered undertakings, and requests a hearing with a further opportunity to advance more detailed submissions if the Tribunal considers that it would order any of the relief requested by the Claimant. [paras. 5-7]
38. The Respondent disputes the Claimant’s submission that the information contained in the two court judgments it has produced support his position on provisional measures. [para. 8].

39. The Respondent submits that the five proffered undertakings remove the risk of irreparable prejudice and should be given weight, something the Claimant does not engage with. The Respondent cites several International Court of Justice (ICJ) decisions that have given weight to undertakings that have been considered sufficiently comprehensive. [paras. 9-14].
40. The Respondent then proceeds to address the Respondent’s specific requests.
- a) As to Request No. 1, the Respondent submits that Claimant has not sufficiently shown who is at risk and on what basis beyond those as to whom it has indicated it would be willing to provide undertakings (the Claimant, his relatives, and two individuals, should the Claimant intend to call them as witnesses). The Respondent argues that the cases on which the Claimant relies are distinguishable, and suggests that its suggested approach is supported by the decision of the tribunal in *Pugachev v. Russia*, which rejected the breadth of the order sought by the Claimant as too imprecise and unsubstantiated. [paras. 15-21]
 - b) As to Request No. 2, the Respondent continues to dispute the need or basis for such a general order. [paras. 22-24]
 - c) As to Request No. 3 regarding the initiation of criminal proceedings, the Respondent first argues that its undertaking to provide notice is sufficient, and the broader order sought by the Claimant would be neither necessary nor proportionate. It further maintains that the standard for granting provisional measures with respect to criminal proceedings is very high, given that this is a “particularly sensitive” area of State sovereignty. [paras. 27.1, 28] As to the request in Requests Nos. 1 and 5 to broaden the scope of an order beyond Claimant, Respondent submits that such an order has not been sufficiently justified. [paras. 27.2-31]
 - d) As to elements of Requests Nos. 1 and 5 regarding witnesses, the Respondent argues that the Claimant has not justified the broader order it has sought and that the Respondent’s proffered undertaking is sufficient based on the facts currently before the Tribunal. [paras. 32-39]
 - e) As to Request No. 7 for documents, the Respondent notes that it has already undertaken to preserve all of the documents and documentary evidence seized from

the Claimant. [para. 41]. However, it objects to the production of this evidence, given the nature of the ongoing criminal proceedings. [paras. 40-44]

- f) As to Request No. 8 for costs, the Respondent disputes that the authorities cited by the Claimant support the granting of a costs order at this time and indicates *a contrario* that the established practice is to reserve on the issue. [paras. 45-49]

IV. THE TRIBUNAL'S ANALYSIS

41. The standard for the Tribunal's recommendation on the Application is set forth in Article 47 of the ICSID Convention and Rule 47 of the 2022 ICSID Arbitration Rules.

42. Article 47 of the ICSID Convention provides that:

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of each party.

43. Rule 47 of the 2022 ICSID Arbitration Rules provides in its subsections (1) and (3) that:

(1) A party may at any time request that the Tribunal recommend provisional measures to preserve that party's rights, including measures to

(a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;

(b) maintain or restore the status quo pending determination of the dispute; or

(c) preserve evidence that may be relevant to the resolution of the dispute. [...]

(3) In deciding whether to recommend provisional measures, the Tribunal shall consider all relevant circumstances, including:

(a) whether the measures are urgent and necessary; and

(b) the effect that the measures may have on each party.

44. The Respondent did not dispute the Claimant's submission that four requirements apply to the Tribunal's decision whether to recommend provisional measures: (1) the existence of rights deserving protection; (2) urgency; (3) necessity; and (4) proportionality. The Respondent did, however, dispute the relevance of certain authorities relied upon by the Claimant for the relief sought as well as the application of these criteria to the full set of requests set forth in the Application and maintained by the Claimant in its Reply based on the facts and circumstances of this case. It also contests the breadth of the provisional measures sought and maintains that the undertakings offered by it suffice to meet all the concerns of the Claimant.
45. While the Tribunal is persuaded that the Claimant has rights deserving of protection, as well as of the urgency of and need for protection both for him and for these proceedings, and agrees with the statement of the Respondent that the subject matter of the Application is "of the utmost seriousness", it is not persuaded that the full scope of measures requested by the Claimant is justified at this time either in terms of necessity or proportionality, particularly in light of the undertakings proffered by the Respondent. The Tribunal considers that the five proffered undertakings, provided they are issued by an appropriate and duly empowered official on behalf of the State of Qatar and extend to its agencies and instrumentalities, are responsive to the rights deserving of protection under the facts and circumstances currently known to the Tribunal, that they are likewise proportionate to the need currently presented, and that with certain clarifications as set forth below, they represent appropriate provisional measures at this time.
46. The Tribunal observes that the Claimant's Requests are either covered by or overlapping with the five undertakings proffered by the Respondent. Given this observation, and notwithstanding the general denial expressed on page 1 of the Claimant's Reply, the Tribunal does not consider that the Claimant has wholly rejected the Respondent's undertakings. His position must be rather understood as asserting that he does not consider these undertakings sufficient to ensure his personal protection in general and in relation to the pursuit of this arbitration. Thus, the Claimant's Reply contains several recommended orders to be addressed to the Respondent, but notably does not contain a formal request

that the Tribunal disregard and reject the undertakings the Respondent is submitting on behalf of the State of Qatar.

47. In particular, both Parties submit, in similar terms, that the Tribunal should order that no steps be taken by the Respondent to enforce the sentence pronounced against the Claimant on 31 May 2023 (Claimant’s Request No. 4, Respondent’s Undertaking No. 3). Given the irreversible nature of that sentence, this Request specifically seems to the Tribunal to be particularly compelling under the governing criteria.
48. However, the Tribunal considers that requests defined in overly broad and/or unspecific terms, such as those deemed to protect “his relatives or other individuals (witnesses, experts etc.)” (Request No. 1), or prohibiting conduct “that aggravates the dispute between the Parties and/or alters the *status quo*” (Request No. 2) are unnecessary and disproportionate and are, therefore, not approved. Likewise, the Claimant’s Requests Nos. 5 and 6, which repeat in large part his Request No.1 and are, furthermore, unspecific, while leaving without identification the individuals concerned and the documentary evidence that should be kept available. The Claimant’s Application does not specify the criminal proceedings that are still on-going and that should be suspended (Request No. 3), other than those mentioned in the second and fourth undertakings proposed by the Respondent.
49. For these reasons, the Tribunal accepts the proffered undertakings as appropriate responses to the facts and circumstances currently known to it, provided they are issued by an appropriate and duly empowered official and bind the State of Qatar along with its agencies and instrumentalities, and with clarifications with respect to certain of them noted in italics below.
50. Undertaking No. 1, that “[t]he State of Qatar shall refrain from engaging in any conduct that may harm the life and safety of the Claimant or any of his relatives,” is responsive to Request No. 1 and is accepted by the Tribunal. The Tribunal notes the Respondent’s submission that the Claimant has put forward no evidence that it would seek to harm the life and safety of any of Claimant’s relatives and that the undertaking was put forward on this basis. The Claimant’s request, included in its Request No. 1, for a similar order in

relation to witnesses and experts, is denied at this time as too general in nature; however, the Tribunal addresses the issue of witnesses in paragraph 55 below.

51. Undertaking No. 2, that “Criminal proceedings against the Claimant will be generally suspended pending the resolution of the arbitration and the Public Prosecution of the State of Qatar will request that the Court of Cassation take no further action on the referral of the Judgment by the Public Prosecution pursuant to Article 302 of Law No. (23) for 2004 Promulgating the Criminal Procedure Code” is accepted by the Tribunal as responsive to the first part of Request No. 3 without further modification except to clarify that “the arbitration” refers to these proceedings. The Claimant’s additional request in Request No. 3 that any other criminal proceedings directly related to the present arbitration be suspended is denied for lack of evidence at this time of any such proceedings.
52. Undertaking No. 3, that “The State of Qatar shall not take any step to enforce the sentence pronounced against the Claimant on 31 May 2023 (or any other analogous sentence or penalty)”, is accepted as responsive to the Claimant’s Request No. 4. Without limiting the generality of this language (“any step”), the Tribunal clarifies that this term should include steps such as seeking the issuance of a “Red Notice” by Interpol for the arrest of the Claimant, and the making of a request for extradition or other form of judicial assistance from any country.
53. Undertaking No. 4, that “The State of Qatar shall not, without first notifying the Tribunal and the Claimant via his Counsel in this arbitration, initiate or pursue any other criminal proceedings against the Claimant”, is accepted by the Tribunal as sufficiently responsive to the Claimant’s Request No. 5, with the additional specificity that such notice should be provided in writing by the Respondent at least 30 days in advance of any such action. The broader requests within this Request No. 5, that the Respondent be ordered to refrain from initiating any new criminal proceedings against the Claimant, his relatives or other individuals directly related to this arbitration, or engage in any other activity which may jeopardize the procedural integrity of this arbitration, are insufficiently justified at this time in terms of the relevant standard, and are therefore denied.

54. Undertaking No. 5, that “The State of Qatar shall preserve all documents and documentary evidence seized from the Claimant,” is accepted as sufficiently responsive to Request No. 7, with the additional provisions that (i) such preservation shall be maintained through this arbitration, and (ii) to ensure that preservation is fully effective, the Respondent should prepare a detailed listing, such as an inventory, of such documents and documentary evidence. The Tribunal does not consider the Claimant’s additional requests in Request No. 7, that these documents and documentary evidence be copied and provided to Claimant, to be justified. The Tribunal has already considered two requests for document production and ordered the production of certain documents as a result of those requests.⁴ The Respondent has also voluntarily produced certain documents. This element of the provisional measures is therefore focused on the preservation of evidence which may be relevant to the resolution of the dispute, in the terms of Rule 47(1) of the 2022 ICSID Arbitration Rules.
55. With respect to the issue of witnesses set forth in Requests Nos. 1 and 5, as well as in Request No. 6, the Tribunal notes that the Respondent has expressed its willingness to provide an undertaking with respect to two individuals, the Claimant’s co-defendants in the criminal proceeding (identified as Messrs. Hisam Karmousi and Zuhair Boumadakh), similar to that provided in relation to the Claimant and his relatives [see para. 50, above], should it be the intention of the Claimant to call them as witnesses. The Tribunal considers it important that potential witnesses and experts not be chilled or deterred from participating in these proceedings due to a possible perception of personal criminal risks from doing so. The Tribunal appreciates the offer of the Respondent to provide an undertaking as to the two individuals. The Tribunal at present lacks specific information regarding the identity of such witnesses and experts. If and when such further information is brought to the notice of the Tribunal, it may, after considering all the facts and circumstances, make appropriate recommendations covering such individuals.

⁴ See Procedural Order No. 3, dated 3 October 2023.

56. The foregoing deals with Requests Nos. 3-7 in the Application and reiterated in its Reply. The Claimant also in the Application and Reply requested two general orders (Requests Nos. 1 and 2) and two so-called “ancillary requests” (Requests Nos. 8 and 9) that require brief discussion.
57. Request No. 1 is a requested order that “Qatar and/or Qatar’s agencies or instrumentalities to refrain from engaging in any conduct that may harm the life and safety of the Claimant, his relatives or other individuals (witnesses, experts etc) directly related to the present arbitration”. In the Tribunal’s view, Undertaking No. 1 adequately addresses this issue at this time.
58. Request No. 2 is a requested order that “Qatar and/or Qatar’s agencies or instrumentalities to refrain from engaging in any conduct that aggravates the dispute between the Parties and/or alters the status quo.” The Tribunal is of the view that this order is not necessary at this time in light of the undertakings that have been proffered by the Respondent, provided they are implemented as set forth in this Order.
59. The Tribunal reserves its decision on Request No. 8, costs, albeit not because of an asserted practice of other tribunals in doing so. The Tribunal notes that the 2022 ICSID Arbitration Rules which govern these proceedings expressly provide that it may make an interim decision on costs at any time. [Article 52(3)] The Tribunal considers that its decision on costs with respect to the Application should be taken at a later stage of the proceedings. Although the Tribunal has not granted the Application on the specific terms requested by the Claimant, the undertakings proffered by the Respondent as confirmed and clarified in this Order, once issued, will in the Tribunal’s view provide to a substantial degree the relief requested by the Claimant and ensure that his life and safety is not threatened by the Respondent during the pendency of these proceedings and/or the arbitral process prejudiced.
60. Request No. 9 was for “any other relief that the Tribunal deems appropriate”. Subject to the above no additional relief has been demonstrated to be warranted at this time. In this respect, the Tribunal does not consider that a hearing is actually required.

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V. ORDER

61. For the foregoing reasons, the Tribunal recommends that an appropriate and duly empowered official of the Public Prosecutor of the State of Qatar issue, within 30 days of the date of this Order, the following undertakings on behalf of the State of Qatar, its agencies and instrumentalities:
- a. The State of Qatar, on behalf of itself and its agencies and instrumentalities, shall refrain from engaging in any conduct that may harm the life and safety of Mr. Tayeb Benabderrahmane or any of his relatives.
 - b. Criminal proceedings against Mr. Tayeb Benabderrahmane will be generally suspended pending the conclusion of this arbitration, and the Public Prosecution of the State of Qatar will request that the Court of Cassation take no further action on the referral of the Judgment by the Public Prosecution pursuant to Article 302 of Law No. (23) for 2004 Promulgating the Criminal Procedure Code.
 - c. The State of Qatar, its agencies and instrumentalities, shall not take any step to enforce the sentence pronounced against Mr. Tayeb Benabderrahmane on 31 May 2023 (or any other analogous sentence or penalty), it being understood and accepted that the concept of “any step” includes steps such as seeking the issuance of a “Red Notice” by Interpol for the arrest of Mr. Tayeb Benabderrahmane, and the making of a request for extradition or other form of judicial assistance from any country.
 - d. The State of Qatar, including its agencies and instrumentalities, shall not, without first notifying the Tribunal and Mr. Tayeb Benabderrahmane via his Counsel in this arbitration in writing at least thirty (30) days in advance, initiate or pursue any other criminal proceedings against Mr. Tayeb Benabderrahmane.
 - e. The State of Qatar, including its agencies and instrumentalities, shall preserve all documents and documentary evidence seized from Mr. Tayeb Benabderrahmane for the duration of this arbitration, and shall prepare a listing of all such materials which shall be provided to the Tribunal and the Claimant within forty-five (45) days of the issuance of this Order.
62. The Tribunal orders the Respondent to confirm its acceptance of these recommendations within seven (7) days of the issuance of this Order.

63. Pursuant to Rule 47(5) of the 2022 ICSID Arbitration Rules, any material change in circumstances upon which this Order is based shall be promptly notified to the Tribunal.

On behalf of the Tribunal

[signed]

Ms. Lucinda Low
President of the Tribunal
Date: 20 December 2023