



## Security Council

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### Letter dated 16 December 2021 from the Ombudsperson addressed to the President of the Security Council

I have the honour to transmit herewith the twenty-second report of the Office of the Ombudsperson to the Security Council Committee pursuant to resolutions [1267 \(1999\)](#), [1989 \(2011\)](#) and [2253 \(2015\)](#) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities, submitted pursuant to paragraph 20 (c) of annex II to Security Council resolution [2368 \(2017\)](#), according to which the Ombudsperson shall submit biannual reports to the Council summarizing the activities of the Ombudsperson. The report provides a description of the activities since the previous report was issued, covering the period from 24 July to 16 December 2021.

I would appreciate it if the present letter, the report and its annex\* were brought to the attention of the members of the Security Council and issued as a document of the Council.

(Signed) Daniel **Kipfer Fasciati**

Ombudsperson to the Security Council Committee pursuant to resolutions [1267 \(1999\)](#), [1989 \(2011\)](#) and [2253 \(2015\)](#) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities

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\* Circulated in the language of submission only.



## **Report of the Office of the Ombudsperson submitted pursuant to Security Council resolution [2368 \(2017\)](#)**

### **I. Background**

1. The present report provides an update on the activities undertaken by the Office of the Ombudsperson since the issuance of the twenty-first report of the Office to the Security Council on 23 July 2021 ([S/2021/676](#)).

### **II. Activities related to delisting requests**

#### **A. General**

2. The primary activities of the Office during the reporting period related to delisting requests submitted by individuals. In the context of his casework, the Ombudsperson communicated with relevant Member States and conducted independent research and interviews with petitioners, various experts and interlocutors related to the cases.

#### **B. Delisting requests**

3. During the reporting period, three new petitions were submitted to the Office. As at 16 December 2021, a total of 99 delisting petitions have been accepted by the Office since its establishment. Unless a petitioner requests otherwise, all names remain confidential while a petition is under consideration. In the case of denial or withdrawal of a petition, the petitioner's name is not revealed at any stage of the process.

4. Since the Office was established, the Ombudsperson has submitted 93 comprehensive reports<sup>1</sup> to the Security Council Committee pursuant to resolutions [1267 \(1999\)](#), [1989 \(2011\)](#) and [2253 \(2015\)](#) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities, pursuant to paragraph 8 of annex II to Security Council resolution [2368 \(2017\)](#) or the equivalent paragraph of previous resolutions. During the reporting period, three reports were submitted to the Committee, two of which remain under the Committee's consideration at the time of writing and one of which awaits a Committee decision. In the light of the Ombudsperson's resignation, effective 17 December 2021, the Office submitted the comprehensive reports for two of the three cases ahead of the deadline for the dialogue period established by the resolution, with the aim of ensuring that they could be filed prior to the Ombudsperson's departure. The Office communicated extensively with the lawyers in the pending cases and with the States involved regarding the submission of information and the Ombudsperson's travel arrangements to meet with petitioners, in view of the anticipated early submission of the reports in these cases.

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<sup>1</sup> This number includes one case concluded in 2011, in which the delisting request was withdrawn by the petitioner after the Ombudsperson had submitted and presented the comprehensive report to the Committee. It also includes one case concluded in 2013, in which the Committee decided to delist the petitioner after the Ombudsperson had submitted the comprehensive report to the Committee but before the Ombudsperson had presented it to the same. This number does not include three additional cases in which the Ombudsperson case became moot following a decision by the Committee to delist the petitioners before the Ombudsperson had submitted the comprehensive report.

5. In addition, the Ombudsperson presented one comprehensive report to the Committee. The report was presented during an in-person meeting of the Committee held on 24 November 2021.

6. The Ombudsperson interviewed three petitioners. Two of the three interviews were conducted in person. In the third case, for reasons unrelated to the coronavirus disease (COVID-19) pandemic, the State of nationality and residence of the petitioner informed the Ombudsperson that its authorities would prevent him from meeting with the petitioner in person should he travel there for that purpose. The interview therefore took place via videoconference instead.

7. Since the issuance of the twenty-first report, one individual has been delisted from the Committee's sanctions list following the Ombudsperson's review and recommendation.

8. Cumulatively, since the Office was established, 93 cases involving requests from an individual, an entity or a combination of both have been resolved through the Ombudsperson process or through a separate decision of the Committee. In the 88 cases fully completed through the Ombudsperson process, 65 delisting requests have been granted and 23 have been denied. As a result of the 65 petitions granted, 60 individuals and 28 entities have been delisted and one entity has been removed as an alias of a listed entity. In addition, four individuals were delisted by the Committee before the Ombudsperson process was completed and one petition was withdrawn following the submission of the comprehensive report. A description of the status of all of the cases is given on the website of the Office.<sup>2</sup> The status of the most recent cases is contained in the annex to the present report.

9. There are currently six cases pending. Three cases are in the information-gathering phase. In two cases, the Ombudsperson has submitted the comprehensive report for the Committee's consideration, and in one case the Ombudsperson has presented the comprehensive report to the Committee.

10. The six pending cases were each filed by an individual. To date, in total, 91 of the 99 cases have been brought by individuals alone, 2 cases by an individual together with one or more entities and 6 cases by entities alone. In 58 of the 99 cases, the petitioner is being or was assisted by legal counsel.

11. In addition to the six pending cases, during the reporting period the Office engaged in dialogue with a further two designated individuals who have expressed interest in filing a petition for delisting but have not yet done so.

### **C. Gathering information from States**

12. For each petition received, the Ombudsperson invites relevant Member States to submit substantive information, accompanied by underlying evidentiary documentation wherever possible.

13. With regard to the cases accepted during the reporting period, the Office sent 12 requests for information to Member States and is in the process of sending 11 more.

14. The Ombudsperson met in New York with representatives of Member States to discuss the pending cases.

15. With regard to three cases in which the Ombudsperson submitted his comprehensive report during the reporting period, the Office had sent 19 requests for information to States and received 15 responses from States sharing information. In one case, a designating State did not respond to the request to submit relevant

<sup>2</sup> See [www.un.org/securitycouncil/sc/ombudsperson/status-of-cases](http://www.un.org/securitycouncil/sc/ombudsperson/status-of-cases).

information. In another case, the State of nationality communicated with the Office, but did not submit information. In one case, the State of nationality and residence responded but did not submit relevant information.

16. The Ombudsperson reiterates that the submission of updated and relevant information by States is of great importance, as the Ombudsperson analyses the situation of the petitioner at the time of consideration of the request, not the time of listing. Some of the responses received simply repeat the information available in the narrative summary of the reasons for the listing.

17. During the reporting period, the opportunity did not arise for the Ombudsperson to shorten the information-gathering period pursuant to paragraph 3 of annex II of resolution [2368 \(2017\)](#).

#### **D. Dialogue with petitioners**

18. During the reporting period, the Ombudsperson and the Office interacted with all current petitioners and their legal representatives, including through written exchanges, telephone calls, videoconferences and in-person meetings.

19. The Ombudsperson interviewed three petitioners during the reporting period. As noted in paragraph 6 above, two interviews were conducted in person. In the third case, the interview took place via videoconference instead.

20. The Ombudsperson reiterates that interviews should take place in person for a more holistic experience during the meeting and to uphold the standard of fairness to the petitioner. The importance of in-person meetings with petitioners is discussed in more detail in section V below.

#### **E. Access to classified or confidential information**

21. During the reporting period, the Ombudsperson continued his efforts to further expand the list of agreements and arrangements with States. During bilateral meetings, he emphasized the advantages of such cooperation between States and the Office. He particularly calls upon States of nationality and residence of listed individuals to sign an arrangement, thereby solidifying the basis for the submission of classified, declassified or confidential information to the Ombudsperson.

22. In total, the Office has entered into 21 agreements or arrangements for access to classified information.<sup>3</sup> Of these, two agreements have been entered into with Austria and Romania, and 18 arrangements have been made with Australia, Belgium, Canada, Costa Rica, Denmark, Finland, France, Germany, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Portugal, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America. In addition, the Syrian Arab Republic has expressed its willingness to share information with the Office through an ad hoc arrangement.

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<sup>3</sup> More information is available on the relevant web page on the website of the Office of the Ombudsperson (see [www.un.org/securitycouncil/ombudsperson/classified\\_information](http://www.un.org/securitycouncil/ombudsperson/classified_information)).

### **III. Summary of activities relating to the development of the Office of the Ombudsperson**

#### **A. General**

23. On 26 and 27 July 2021, the Ombudsperson participated in a seminar on sanctions, held in Geneva, organized by the Graduate Institute of International and Development Studies and the Security Council Subsidiary Organs Branch of the Security Council Affairs Division.

24. On 5 November, a representative of the Office gave a presentation at a seminar for incoming Security Council members organized by the Security Council Affairs Division and Security Council Report.

25. On 3 December, the Ombudsperson gave a briefing to Member States, via videoconference, on his mandate and the work of the Office, during an open briefing.

26. On 5 December, the Ombudsperson participated, via videoconference, in a training session on sanctions for incoming Security Council members, held at the Greentree Estate, organized by the Security Council Subsidiary Organs Branch and the Graduate Institute of International and Development Studies.

27. The Office received an update from Kuwait with regard to the country's rehabilitation programme for listed Kuwaiti citizens. If listed individuals complete the programme successfully, they can submit delisting requests, which will be supported by the Kuwaiti authorities.

28. During the reporting period, the Ombudsperson continued to discuss bilaterally with Member States his proposal to provide petitioners with a redacted version of the comprehensive report in lieu of the summary of analysis contained in the same. This proposal is discussed in more detail in section V below.

29. During the high-level week of the General Assembly, in September, and International Law Week, in October, the Ombudsperson held discussions with several representatives of Member States on the development of the Office and his proposals for further improvement, the new resolution and renewal of the mandate, and the transition to a new Ombudsperson.

30. The Ombudsperson had informal discussions on the same topics with members of the Committee and representatives of several other States, including members of the Group of Like-Minded States on Targeted Sanctions.

#### **B. Interaction with the Committee and the Analytical Support and Sanctions Monitoring Team**

31. During the reporting period, the Office continued to engage with the Chair of the Committee, and with the coordinator and members of the Analytical Support and Sanctions Monitoring Team. The experts of the Monitoring Team have continued to provide relevant information in pending cases in accordance with paragraph 4 of annex II to Security Council resolution [2368 \(2017\)](#).

32. Since the issuance of the twenty-first report, the Ombudsperson has presented one comprehensive report to the Committee.

33. The Monitoring Team provided substantive assistance to the Office in two cases, and an expert of the Monitoring Team shared his views on information that had been obtained independently by the Office.

34. The Ombudsperson discussed the matter of the content of the narrative summary of reasons for listing with members of the Monitoring Team. The Ombudsperson emphasizes the importance of keeping the listing information updated and accurate. This issue is discussed in more detail in section V below.

### **C. Liaison with States, intergovernmental organizations, United Nations bodies and non-governmental organizations**

35. During the reporting period, the Office continued to interact with agencies and bodies of the United Nations system and Member States, in particular members of the Committee and Member States of relevance to pending delisting petitions.

36. The Office also liaised with representatives of law enforcement agencies, legal practitioners, counter-terrorism experts, international jurists and international and human rights law professionals.

### **D. Working methods and research**

37. Casework during the reporting period continued to involve extensive open-source research and liaison with various interlocutors and experts, from Member States and otherwise, to collect and analyse information relevant to delisting requests.

### **E. Website**

38. The Office continued to revise and update its website during the reporting period.<sup>4</sup>

## **IV. Other activities**

### **A. Notifications of listing**

39. In accordance with paragraph 20 (b) of annex II to resolution [2368 \(2017\)](#), when an individual or entity is added to the list and the relevant States have been notified, the Ombudsperson shall send notification directly to the individual or entity, if there is a known address.

40. In the five months since the issuance of the twenty-first report, one entry has been added to the ISIL (Da'esh) and Al-Qaida sanctions list. This listing was considered with reference to the question of notification and the listed person is being notified.

41. The Office wrote to one Member State seeking address information for newly listed individuals. The Member State responded but did not provide the requested information.

### **B. Transition**

42. In the light of the Ombudsperson's resignation, effective 17 December 2021, the Ombudsperson interacted with the Chair of the Committee, members of the Committee and the Secretariat to discuss how to maintain fair process for the petitioners involved in the pending procedures during the period of transition, in

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<sup>4</sup> See [www.un.org/securitycouncil/ombudsperson](http://www.un.org/securitycouncil/ombudsperson).

particular in the event of a gap between the departure of the current Ombudsperson and the appointment of the next one.

43. The Ombudsperson participated in the recruitment process for his successor, taking part in interviews as a panel member and providing his analysis of suitable candidates to the panel.

44. The transition to the next Ombudsperson is discussed in more detail in section V below.

### **C. Miscellaneous matters**

45. The Ombudsperson has responded to various requests for information about the Committee and the mandate of the Ombudsperson. He has provided public material in response to such requests, as appropriate, which have included requests for assistance by States seeking information or clarifications and requests made by non-governmental organizations, lawyers, individuals, the media and the public.

## **V. Observations and conclusions**

46. The observations set out in the Ombudsperson's previous reports (in particular [S/2018/579](#), [S/2019/112](#), [S/2019/621](#), [S/2020/106](#), [S/2020/782](#), [S/2021/122](#) and [S/2021/676](#)) remain valid.

### **A. Institutional issues: renewal of the mandate; appointment of a successor, acting Ombudsperson or other representative; and transitional measures**

47. The observations set out in the twenty-first and previous reports regarding the well-documented issues concerning the independence of the Office and the proposal to create a Deputy Ombudsperson or another backup mechanism in the event of the absence of the Ombudsperson remain valid.

48. In 2009, the Security Council created a review mechanism in the form of the Ombudsperson process. Since then, the mechanism has been improved through the work of three Ombudspersons in collaboration with the Committee. The mechanism has proven robust and effective in guaranteeing at least the core elements of fairness and due process.

49. The recommendations of the Office to prevent the absence of an Ombudsperson from affecting the fairness of the process, as described in previous reports to the Security Council, have yet to be considered by the Committee or the Council. A lack of political consensus to resolve the matter poses a threat to continuity and fairness, both within the mechanism as a whole and with regard to the pending cases in particular.

#### **Renewal of the mandate**

50. The institutional weakness of the function becomes particularly visible at the end of a mandate, after the resignation of the post holder and before the mandate is renewed. Nothing can be taken for granted, not even the reverse consensus decision mechanism that is crucial to the mandate; the renewal and substance of the mandate are potentially subject to political negotiations, as is the appointment of a successor. This is happening all while several hundred individuals and entities remain on the

ISIL (Da'esh) and Al-Qaida sanctions list and have a right to have their listings reviewed.

### **Appointment of a successor**

51. Resolution [2368 \(2017\)](#) expires on 17 December 2021 and, consequently, so too does the mandate of the Ombudsperson. On 3 June 2021, the Ombudsperson submitted his resignation, more than six months in advance of his actual departure on 17 December. Despite the fact that the Ombudsperson's resignation was announced in a timely manner, a successor has yet to be appointed.

52. The Office was approached by a considerable number of States – non-permanent members of the Security Council and non-members alike. They expressed their concern about the future of the Ombudsperson's function and a possible gap between the departure of the current Ombudsperson and the appointment of the next one. They all asked who would be in charge after 17 December 2021. The Office liaises with many States outside the Committee, especially when they are involved in the procedures of the Ombudsperson. This includes designating States, States of nationality and residence of a petitioner, and other States that are relevant to the petition. All States that contacted the Office stated their hope for the timely appointment of a successor in order to avoid another prolonged gap in the execution of the function, as had occurred in 2017 and 2018, after the previous Ombudsperson had left the post.

### **Acting Ombudsperson or other representative**

53. The almost one-year gap between the departure of the second Ombudsperson in 2017 and the appointment of the current Ombudsperson in 2018 was an alarming situation that has been continually highlighted by the Ombudsperson. When there is no Ombudsperson in office and no backup mechanism in place, all pending proceedings are blocked and new petitions can be accepted by the Office only on an informal basis.

54. Another gap would not only damage the reputation and the credibility of the entire mechanism, but also jeopardize the achievements of the past 12 years and deprive those individuals whose petitions cannot formally be accepted of their right to review. For this reason, the Ombudsperson reiterates the view, as expressed in the fifteenth and sixteenth reports of the Office to the Security Council (see [S/2018/579](#), para. 26; and [S/2019/112](#), paras. 24 and 25), that the Ombudsperson mechanism should be functional at all times, including when there is a vacancy in the position of Ombudsperson.

55. The Ombudsperson has proposed language for the upcoming resolution renewing the mandate of the Ombudsperson. Under this proposal, the Secretary-General would be requested to ensure the continuity of the Ombudsperson mechanism by instituting a Deputy Ombudsperson function mandated to review petitions and advance the procedure in the absence of an Ombudsperson. In the Ombudsperson's view, this function would not require the creation of a new post; rather, it could be performed by the Legal Officer supporting the Ombudsperson, without any financial implications.<sup>5</sup>

### **Transitional measures**

56. In an effort to mitigate the consequences of a possible gap, the Ombudsperson proposed transitional measures to ensure the continuation of the pending procedures

<sup>5</sup> At the time of writing, it appears that this proposal will not form part of the final text for the new resolution.



before the Office. Cases 94, 95 and 96 are pending with the Committee and cases 97, 98 and 99 are in the information-gathering period. In order to ensure the Office's continued work on cases, handle formal extensions of the procedural phases as necessary, decide on the admissibility of new petitions and present to the Committee the comprehensive reports of the Ombudsperson with regard to two pending cases, the Ombudsperson's proposal was to authorize the competent Legal Officer to fulfil these very specific and time-sensitive tasks for a limited period until a new Ombudsperson was in office. Unfortunately, the proposal was not acceptable to some members of the Committee and an alternative arrangement for the transitional period has thus been proposed. In this alternative arrangement, which is similar to the transitional measures put in place in 2017 (see [S/2017/685](#), para. 49), no temporary representative has been agreed upon to take over the Ombudsperson's tasks for case-related procedural steps. At the time of submission of the present report – the Ombudsperson's penultimate day in office – the proposal for transitional measures remains pending before the Committee. At this point, the greatest concern is the fact that it remains unclear how the two pending comprehensive reports will be presented, thus allowing these cases to be finalized within resolution timelines, in the event that a new Ombudsperson has not been appointed in time to perform this task.

57. In one of these cases, counsel has indicated that he is considering *Kadi*-style<sup>6</sup> litigation in the event that the procedure relating to his client's case is delayed because the Ombudsperson position remains vacant.

## **B. Summary of analysis and redacted comprehensive report**

58. After three years of practice under the new provisions on sharing expanded reasons with petitioners, the Ombudsperson proposed to the Committee that a redacted version of the comprehensive report should be shared with petitioners instead of the summary of analysis contained in the comprehensive report. In one case, the Committee accepted the proposed new practice, which was immediately implemented. The Ombudsperson considers this practice to be an important improvement in transparency and fairness and understands the Committee's decision as precedent setting. The substance of this redacted report was changed minimally from the summary of analysis. Importantly, the petitioner was able to read the information in the original report format, rather than in a separate document. Although confidential information was removed from the report, the petitioner was able to get a better understanding of the case against him, as the facts and reasons for the recommendation by the Ombudsperson were transmitted in a more comprehensive manner than is provided in the summary of analysis. For this reason, the Ombudsperson recommends that the Security Council provide the Ombudsperson with at least the option of this new practice in the renewed resolution. The new practice does not limit the right of members to be involved in communicating reasons to petitioners; supplementary redactions upon the request of a member of the Committee remain possible.

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<sup>6</sup> See, for example, the judgment of the Grand Chamber of the Court of Justice of the European Union, *Commission and Others v. Kadi* (Joined cases C-584/10 P, C-593/10 P and C-595/10 P) (18 July 2013), in which the Court stated that effective review by the courts of the European Union was all the more essential in the absence of guarantees of effective judicial protection at the level of the United Nations.

### **C. Meeting in person with petitioners**

59. During the reporting period, one Member State that is the State of nationality and residence of a petitioner did not allow the Ombudsperson to interview the petitioner in person before the Ombudsperson's comprehensive report was submitted. No sound reasons were provided in support of that decision, which contravenes the resolution. The Ombudsperson drew attention to the relevant provisions in the resolution and insisted on a personal meeting, to no avail. The unsubstantiated refusal of the Ombudsperson's request to meet the petitioner in person within resolution timelines constitutes an unfounded restriction of the petitioner's right to be heard and has affected the fairness of the procedure in this case. The Ombudsperson has indicated on several occasions that, beyond the petitioner's right to be heard, an in-person interview can also be critical to establishing the truth. The Security Council should call on all Member States to cooperate unconditionally with the Ombudsperson within the procedural framework of the resolution.

60. During a discussion with the petitioner's counsel, the Ombudsperson explained the options of postponing the interview or conducting the interview via videoconference. In the light of the Ombudsperson's impending departure and the unknown start date of his successor, and the consequent possible delay in the case and compromising of the fairness of the procedure, the decision was made by the parties involved to conduct the interview via videoconference with the petitioner's consent, on an exceptional basis and without prejudice to future cases.

### **D. Quality of listing information, lack of evidence and due process**

61. In one case that was considered during the reporting period, it became clear that the reasons for the listing of the petitioner and the requests from different States to maintain the listing were based exclusively on intelligence information. It could not be established whether the information had been collected by the intelligence services of different countries or had originated from one source and been shared by that source with the services of other countries. The information was once again submitted during the Ombudsperson's process. The quality of the information is poor and is a cause for concern. Although important parts of the allegations against the petitioner were investigated thoroughly by the authorities of the petitioner's home country and were not confirmed, the States involved are simply reiterating the information already disproved in the national proceedings. In addition, the information has not been subjected to a plausibility check. It has not been considered or even acknowledged that the allegation thus appears to be highly improbable and implausible when set against the background of publicly available information about the petitioner. Some pieces of information are obviously wrong. Other aspects of information are based on a poor understanding of the conflict in which the petitioner was involved. For example, a government military training camp was attributed to Al-Qaida, even though it could not possibly have been under the control of Al-Qaida. Another possible explanation – although the Ombudsperson does not have evidence of this – is that the allegations were planted intentionally, possibly as an act of revenge against the petitioner. Yet another, less serious but still troubling, explanation is that a biased interpretation of or insufficient knowledge about ambiguous political and military conditions on the ground lies at the origin of the allegations.

62. In another case considered during the reporting period, the Ombudsperson's investigation revealed that at least some of the information upon which the original listing decision was based was obtained through torture and was thus inherently unreliable.

63. It goes without saying that the means and instruments at the disposal of the Ombudsperson are insufficient to clarify such serious matters in a comprehensive and authoritative manner. The Ombudsperson's review mechanism is an important remedy in the interests of due process and fairness, yet it is obviously insufficient. Both of the possible interpretations relating to the flawed information in the first case and the obvious unreliability of the information in the second case equally demonstrate how important it is to apply high standards in assessing and approving the underlying factual basis for listing decisions in the first place. The Ombudsperson recommends that the Security Council and the Committee work more explicitly on the criteria applicable in assessing and approving factual claims to avoid undue decisions.

#### **E. Systematic update of information about listed individuals and entities**

64. The above-mentioned cases confirm what the Ombudsperson has found in many other cases: once a person has been listed, the information about the person is no longer updated, at least not in any systematic manner. Several States have expressed the opinion that the mere fact that an individual has been listed is sufficient reason to maintain the listing. The Ombudsperson was informed on several occasions that no updated information was available and that it was therefore assumed that the reasons for the listing still existed. Conversely, States rarely feel responsible for updating the relevant information and for making updated information available to the Committee on their own initiative, whether in favour of or against the listed person. For example, in one case, the United Nations listing was based on a domestic criminal case. The fact that another relevant judgment was issued seven years later, in the same State against the same person after a public trial, was not known at the level of the United Nations sanctions system. In another case, the Ombudsperson was explicitly told that the petitioner was still living in his home country and was supporting Al-Qaida there, even though he had actually left his home country four years earlier and had since been enjoying political asylum in another State. The Ombudsperson recommends that the Security Council and the Committee take further steps to ensure that information is updated and is available at all times, not just when the Ombudsperson starts a new procedure based on a petition.

65. In the Ombudsperson's view, the following principle stems from general principles of law: an agency that authoritatively sanctions legal entities and persons has a responsibility to ensure that the information upon which it relies is accurate, updated and reliable. This is all the more true because the sanctioned person has no opportunity to exercise his or her right to be heard until he or she files a delisting request with the Ombudsperson.

#### **F. Informal arrangements reinforcing the independence of the Office**

66. The thirteenth and fourteenth reports of the Ombudsperson ([S/2017/60](#) and [S/2017/685](#)) described informal arrangements by the Secretariat related to the strengthening of the independence of the Office. These arrangements included the measure to involve the Ombudsperson in all recruitment processes relating to the staff supporting the Office ([S/2017/60](#), para. 36). Recently, the position of Legal Officer of the Office has become vacant and the position has been advertised. The Ombudsperson strongly recommends including his successor in the recruitment procedure and the decision-making processes relating to the hiring of the new Legal Officer.

## **G. Translation of comprehensive reports**

67. The comprehensive reports of the Ombudsperson to the Committee are translated into all six official languages of the United Nations and made available to the Committee for its consideration. Recently, the time taken to translate the reports has increased significantly compared with previous practice. The Ombudsperson emphasizes that the sooner the translations become available, the sooner the Committee can take a decision on pending cases.

## **H. Practical issues linked to the pandemic**

68. During the reporting period, the Office delivered on all aspects of its mandate, despite the restrictions imposed as a result of the COVID-19 pandemic and necessary adaptations to working methods, both at United Nations Headquarters and while travelling. During the reporting period, in two cases, the Ombudsperson was able to travel to the petitioner's country of residence to hold in-person meetings. In a third case, the cancellation of the in-person meeting was unrelated to the pandemic.

69. The Ombudsperson delivered an in-person presentation to the Committee with regard to case 94, as envisaged by the Security Council.

## **I. Conclusions**

70. The Office of the Ombudsperson continues to provide individuals and entities listed by the Committee with a functioning and efficient review mechanism that protects the core elements of fairness and due process.

71. Nonetheless, it is imperative and urgent that a system be put in place to ensure the continuity of the mechanism, including when there is a gap between the departure and appointment of an Ombudsperson.

72. The cases considered during the reporting period have highlighted more than ever the need to ensure the quality of the information upon which listing decisions are based. The consequences of sanctions on an individual's life are too high for the Committee not to take measures to prevent listings being based on information arising from malevolent actions such as torture or false allegations. A decision to list is the responsibility of every member of the Committee, not only the designating State. Each member should therefore exercise due diligence when reviewing the information supporting a listing proposal.

73. The lack of institutional independence and the status of the Ombudsperson remain a challenge that has been highlighted by all three Ombudspersons. It is hoped that an independent office can be created in the near future, as has been mandated time and again by the Security Council. This would also be an opportunity to institute a Deputy Ombudsperson function to ensure the continuity of the Ombudsperson process.

74. Lastly, it is hoped that the progress achieved in terms of transparency during the reporting period, such as a redacted version of the Ombudsperson's comprehensive report being shared with the petitioner, will be maintained and institutionalized under the tenure of the next Ombudsperson.

75. The Ombudsperson takes this opportunity to thank Member States, the Secretariat, petitioners and their counsel for their confidence in the Ombudsperson process and their support over the past three and a half years.

## Annex

### Status of recent cases<sup>1</sup>

#### Case 99, one individual (Status: information-gathering phase)

| <i>Date</i>      | <i>Description</i>   |
|------------------|--|
| 16 December 2021 | Transmission of case 99 to the Committee                               |
| 16 April 2022    | Deadline for completion of the four-month information-gathering period |

#### Case 98, one individual (Status: information-gathering phase)

| <i>Date</i>      | <i>Description</i>   |
|------------------|--|
| 29 November 2021 | Transmission of case 98 to the Committee                               |
| 29 March 2022    | Deadline for completion of the four-month information-gathering period |

#### Case 97, one individual (Status: information-gathering phase)

| <i>Date</i>       | <i>Description</i>   |
|-------------------|--|
| 27 September 2021 | Transmission of case 97 to the Committee                               |
| 27 January 2022   | Deadline for completion of the four-month information-gathering period |

#### Case 96, one individual (Status: Committee phase)

| <i>Date</i>      | <i>Description</i>                              |
|------------------|---|
| 1 July 2021      | Transmission of case 96 to the Committee        |
| 1 November 2021  | Information-gathering period completed          |
| 29 November 2021 | Comprehensive report submitted to the Committee |

#### Case 95, one individual (Status: Committee phase)

| <i>Date</i>      | <i>Description</i>                              |
|------------------|---|
| 9 June 2021      | Transmission of case 95 to the Committee        |
| 25 October 2021  | Information-gathering period completed          |
| 16 December 2021 | Comprehensive report submitted to the Committee |

<sup>1</sup> The status of all cases since the establishment of the Office of the Ombudsperson can be accessed through the website of the Office: [www.un.org/securitycouncil/sc/ombudsperson/status-of-cases](http://www.un.org/securitycouncil/sc/ombudsperson/status-of-cases).

**Case 94, one individual (Status: Committee phase)**

| <i>Date</i>      | <i>Description</i>  |
|------------------|---|
| 1 April 2021     | Transmission of case 94 to the Committee                                      |
| 1 August 2021    | Information-gathering period completed  |
| 1 October 2021   | Comprehensive report submitted to the Committee                               |
| 24 November 2021 | Presentation of the comprehensive report by the Ombudsperson to the Committee |

**Case 93, Khalifa Muhammad Turki al-Subaiy (Status: delisted)**

| <i>Date</i>       | <i>Description</i>   |
|-------------------|--|
| 28 September 2020 | Transmission of case 93 to the Committee   |
| 11 February 2021  | Information-gathering period completed   |
| 11 May 2021       | Comprehensive report submitted to the Committee  |
| 7 July 2021       | Presentation of the comprehensive report by the Ombudsperson to the Committee  |
| 6 September 2021  | Committee decision to delist   |
| 15 September 2021 | Formal notification to the petitioner with redacted version of the comprehensive report (in lieu of the summary of analysis) |