



## Security Council

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### Letter dated 8 February 2021 from the Ombudsperson addressed to the President of the Security Council

I have the honour to transmit herewith to you the twentieth 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 8 August 2020 to 8 February 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 nineteenth report of the Office to the Security Council on 7 August 2020 (S/2020/782).

### 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 various interlocutors, including petitioners.

3. During the reporting period, the Ombudsperson presented three comprehensive reports 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 10 of annex II to Security Council resolution 2368 (2017). As an exceptional measure owing to the coronavirus disease (COVID-19) pandemic, the presentations were submitted in writing. The impact of the pandemic is discussed in more detail in section IV below.

#### B. Delisting requests

4. During the reporting period, two new petitions were submitted to the Office of the Ombudsperson. As at 8 February 2021, a total of 93 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.

5. In total, the Ombudsperson has submitted 88 comprehensive reports<sup>1</sup> to the Committee since the Office was established. During the reporting period, two reports were submitted to the Committee, which remain under the Committee's consideration at the time of writing.

6. Since the issuance of the nineteenth report, one listing has been retained on the Committee's sanctions list following the Ombudsperson's review and recommendation.

7. Cumulatively, since the Office was established, 89 cases involving requests from an individual, an entity or a combination of both have been resolved through the

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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.

Ombudsperson process or through a separate decision of the Committee. In the 84 cases fully completed through the Ombudsperson process, 62 delisting requests have been granted and 22 have been denied. As a result of the 62 petitions granted, 57 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 of the Ombudsperson.<sup>2</sup> The status of the most recent cases is contained in the annex to the present report.

8. There are currently four cases pending. One case is in the information-gathering phase, one case is in the dialogue phase and in two cases the Ombudsperson has submitted and presented the comprehensive report for the Committee's consideration.

9. The four pending cases were each filed by an individual. To date, in total, 85 of the 93 cases have been brought by individuals alone, 2 by an individual together with one or more entities, and 6 by entities alone. In 53 of the 93 cases, the petitioner is being or was assisted by legal counsel.

10. In addition to the four 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**

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

12. With regard to the cases accepted during the reporting period, the Office sent requests for information to 21 Member States.

13. The Ombudsperson met in New York with the representatives of some Member States to discuss the pending cases. For the same purpose, he also interacted through videoconferences.

14. In addition to meetings in New York, the Ombudsperson met in person with relevant representatives and interlocutors of one Member State to gather information in a case prior to interviewing a petitioner. In another case, the Ombudsperson received information from a Member State during several in-person meetings with authorities in their capital, also prior to interviewing a petitioner.

15. Furthermore, the Ombudsperson communicated by videoconference on one occasion with officials in their respective capital to gather information on a specific case.

16. With regard to the cases accepted during the reporting period, one of the three Member States that put forward petitioners' names for designation responded to the Ombudsperson's requests for information. Furthermore, 6 of the 17 relevant Member States and States of nationality and residence responded to the Ombudsperson's request for information.

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

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

## **D. Dialogue with petitioners**

18. During the reporting period, the Ombudsperson and the Office interacted with all current petitioners and those providing them with legal assistance, including through written exchanges, telephone calls and videoconferences.

19. The Ombudsperson also interacted with several interlocutors with links to petitioners and interviewed several character witnesses through written exchanges and videoconferences.

20. During the reporting period, the Ombudsperson conducted interviews with two petitioners in person. In a third case, the Ombudsperson conducted the interview with the petitioner by videoconference, as an exceptional measure as a result of the COVID-19 pandemic. The impact of the pandemic is discussed in more detail in section IV below.

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

### **A. General**

21. On 28 August 2020, the Ombudsperson participated as a keynote speaker at the advanced online summer programme on terrorism, counter-terrorism and the rule of law organized by the International Centre for Counter-Terrorism and the Asser Institute's Center for International and European Law in The Hague.

22. In October, the Office of the Ombudsperson contributed updates for the research project by United Nations University entitled "Due process in UN targeted sanctions: old challenges, new approaches".

23. On 4 November, the Ombudsperson participated in an event to introduce the work of the Office of the Ombudsperson to incoming members of the Security Council, organized by the Security Council Affairs Division of the Department of Political and Peacebuilding Affairs.

24. On 6 November, the Ombudsperson addressed the topic of fair and clear procedures in the Committee at the tenth annual Security Council Affairs Division-Security Council Report seminar on sanctions.

25. On 10 November, the Ombudsperson participated in an interview with an academic conducting research in the area of non-judicial review procedures.

26. On 2 December, the Ombudsperson met with the Group of Like-Minded States on Targeted Sanctions to discuss issues pertaining to the Office.

27. On 17 and 18 December, the Ombudsperson briefed participants during a conversation on strengthening due process within the United Nations sanctions system, organized by the Permanent Missions of Belgium, Germany and Switzerland to the United Nations.

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

28. During the reporting period, the Office of the Ombudsperson continued to engage with the two individuals who served as Chair of the Committee, and with the coordinator and members of the Monitoring Team. The Monitoring Team has continued to provide relevant information and assistance in accordance with

paragraph 4 of annex II to Security Council resolution [2368 \(2017\)](#). Since 8 August, the Ombudsperson has presented three comprehensive reports to the Committee. The presentations were submitted in writing, as an exceptional measure owing to the COVID-19 pandemic. In addition, the Ombudsperson made himself available to answer questions from Committee members during the Committee's informal meetings. During the reporting period, the Monitoring Team assisted the Office of the Ombudsperson by providing information and insights on two new delisting requests.

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

29. During the reporting period, the Office of the Ombudsperson 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.

30. The Office also liaised with representatives of law enforcement agencies, legal practitioners, United Nations special rapporteurs, counter-terrorism experts, international jurists, administrators of correctional facilities and international and human rights law professionals.

31. The Ombudsperson continued to discuss methodological issues and different standards of evidence in judicial and quasi-judicial review proceedings with academics and representatives of the Secretariat.

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

32. Casework during the reporting period involved 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**

33. The Office continued to revise and update its website during the reporting period.<sup>3</sup>

## **IV. Observations and conclusions**

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

35. Pursuant to paragraph 20 (b) of annex II to resolution [2368 \(2017\)](#), the Ombudsperson is mandated to notify newly listed individuals and entities about the status of their listing, where an address is known. In 2020, the Committee listed four individuals and five entities. For eight of these listings, there was no known address and for one listing, the address provided was insufficiently specific to allow for notification. Therefore, the Office is exploring other avenues to reach such individuals and entities pursuant to paragraph 20 (b) of annex II to resolution [2368 \(2017\)](#).

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<sup>3</sup> [www.un.org/securitycouncil/ombudsperson](http://www.un.org/securitycouncil/ombudsperson).

## **A. Provision of legal assistance to petitioners**

36. During the reporting period, the Office was asked whether the provision of legal assistance to a petitioner could fall within the scope of the designation criteria set out in paragraph 2 of resolution 2368 (2017), in particular, “otherwise supporting acts or activities of Al-Qaida, ISIL, or any cell, affiliate, splinter group or derivative thereof”.

37. The Ombudsperson recalls his observations regarding the provision of legal assistance to petitioners in his seventeenth report to the Council (S/2019/621).

38. In this connection, the Ombudsperson suggests that the Security Council or the Committee might consider whether, for the sake of clarification, it may be necessary to state explicitly either in the resolution, the Committee’s guidelines<sup>4</sup> or the explanation of terms papers<sup>5</sup> that the designation criteria set out in paragraph 2 of resolution 2368 (2017) and its successor resolutions are not applicable to the provision of professional assistance to petitioners in proceedings before the Ombudsperson.

## **B. Member State consideration of delisting requests**

39. At the beginning of every case, the Ombudsperson reaches out to certain Member States seeking information, evidence and a reasoned view on whether the delisting request should be granted. These States include designating States, States of nationality, residence or incorporation and other States that may possess relevant information. Sometimes, a Member State will respond that they recommend retaining the listing because they do not have any updated information beyond what was shared when the petitioner was originally listed.

40. One benefit that the Ombudsperson process can offer is to fill that information gap. The Ombudsperson conducts a widespread information-gathering exercise for each petition. Moreover, whenever possible, the Ombudsperson meets in person with the petitioner and other individuals in order to elucidate the petitioner’s current situation.

41. Before the Committee reaches a decision on a petition, it may be beneficial to grant relevant Member States a period of time to review the Ombudsperson’s comprehensive report and reconsider their position in the light of the additional information gathered. Such an approach is not explicitly contemplated in the Ombudsperson’s procedures. For relevant States that are also members of the Committee, such a review can be built into the existing procedure: when the Committee meets with the Ombudsperson to consider the comprehensive report, the Chair may wish to invite those relevant States that have stated their opposition to delisting based on a dearth of relevant information to reconsider their position in the light of the new information gathered. For relevant States that are not members of the Committee, such an exchange is not possible prior to the Committee’s decision being reached. Pursuant to resolution 2368 (2017), the only relevant States that are entitled to receive a copy of the comprehensive report are designating States and States of nationality, residence or incorporation. For these States, such a review may only take place with the Committee’s consent, after the Committee has reached a decision. Other relevant States that are not members of the Committee are not entitled to receive a copy of the comprehensive report at any stage of the process.

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<sup>4</sup> See [www.un.org/securitycouncil/sanctions/1267/committee-guidelines](http://www.un.org/securitycouncil/sanctions/1267/committee-guidelines).

<sup>5</sup> Links to the explanation of terms papers can be found on the Committee’s homepage under the heading “Further information on measures”: [www.un.org/securitycouncil/sanctions/1267](http://www.un.org/securitycouncil/sanctions/1267).

### **C. Practical issues linked to the pandemic, and independence of the Office**

42. During the reporting period, it has once again become evident that in certain cases it is only possible to obtain information from Member States through face-to-face meetings or hard-copy documents – not electronically. This means that the physical presence of the Ombudsperson at the duty station is essential.

43. During the reporting period, the Office of the Ombudsperson has delivered on all aspects of its mandate, despite the global upheaval that followed the outbreak of the COVID-19 pandemic. Some adaptation of working methods was required in order to achieve this, as detailed in the Ombudsperson's previous report ([S/2020/782](#)). In addition, during the reporting period, the pandemic has meant that in one proceeding (case 90) it was not possible to travel to the petitioner's country of residence to hold in-person meetings with the authorities and the petitioner himself. The relevant discussions, and in particular the interview with the petitioner, were therefore conducted by videoconference. The Ombudsperson takes the opportunity to reiterate in this context that the decision to conduct the interview via videoconference in case 90 was made with the petitioner's consent on an exceptional basis and without prejudice to future cases. In taking the decision, the Ombudsperson was cognizant of balancing the petitioner's right to be heard against the right to timely resolution of the case. In this case, both rights were ultimately protected. At the time of writing, owing to ongoing travel restrictions, the Ombudsperson is planning an interview in another case by videoconference, with the petitioner's consent.

44. During the reporting period, it was possible in cases 91 and 92 to travel to each petitioner's country of residence to conduct in-person interviews and to meet with the relevant authorities. Two separate trips were necessary, and the organization of each required some flexibility from the Ombudsperson and from the Secretariat. Owing to the travel restrictions in place, each trip was only possible if taken in conjunction with a limited stay in the Ombudsperson's home country. In the planning and execution of those trips, it became manifest that the structures and clerical requirements of the United Nations administration were not favourable to pragmatic solutions in the interest of an independent proceeding. On the contrary, they were an obstacle to independent execution of the mandate, especially in times of crisis. Although a satisfactory conclusion was ultimately reached, the Ombudsperson felt pressured by a United Nations policy whereby his ability to work from outside the duty station – in this case, a necessary measure for the execution of his mandate – could be made conditional on a partial waiver of his contractual claims.

45. Ultimately, the situation demonstrates what the Ombudsperson himself as well as both his predecessors have emphasized at length: that the way the Office is integrated into the Secretariat, the Ombudsperson's contractual arrangement and the resultant working conditions are not appropriate for the function of the Ombudsperson as an independent reviewer. The Ombudsperson invites the Council to address the inappropriate contractual arrangement and the lack of institutional independence afforded to the Office. The Ombudsperson has recorded his reflections on the major achievements of the Office and the challenges regarding fairness, institutional independence and transparency. He has shared these reflections with a few interested Member States and members of the Secretariat. He is prepared and willing to discuss these considerations with the Council or its members, should they be of interest.

## Annex

**Status of recent cases<sup>1</sup>****Case 93, one individual (Status: information-gathering phase)**

<i>Date</i>	<i>Description</i>
28 September 2020	Transmission of case 93 to the Committee
11 February 2021	Deadline for completion of the extended information-gathering period

**Case 92, one individual (Status: dialogue phase)**

<i>Date</i>	<i>Description</i>
14 August 2020	Transmission of case 92 to the Committee
14 December 2020	Information-gathering period completed
14 February 2021	Deadline for completion of the two-month dialogue period

**Case 91, one individual (Status: Committee phase)**

<i>Date</i>	<i>Description</i>
5 May 2020	Transmission of case 91 to the Committee
4 September 2020	Information-gathering period completed
29 October 2020	Comprehensive report submitted to the Committee
17 December 2020	Presentation of the comprehensive report by the Ombudsperson to the Committee (in writing)

**Case 90, one individual (Status: Committee phase)**

<i>Date</i>	<i>Description</i>
10 March 2020	Transmission of case 90 to the Committee
10 July 2020	Information-gathering period completed
10 November 2020	Comprehensive report submitted to the Committee
17 December 2020	Presentation of the comprehensive report by the Ombudsperson to the Committee (in writing)

**Case 89, one individual (Status: denied)**

<i>Date</i>	<i>Description</i>
23 September 2019	Transmission of case 89 to the Committee
23 March 2020	Information-gathering period completed
23 July 2020	Comprehensive report submitted to the Committee
15 September 2020	Presentation of the comprehensive report by the Ombudsperson to the Committee (in writing)
17 September 2020	Committee decision to retain listing
25 September 2020	Formal notification to the petitioner with summary of analysis in the comprehensive report

<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: <https://www.un.org/securitycouncil/sc/ombudsperson/status-of-cases>.

**Case 88, one individual (Status: denied)**

<i>Date</i>	<i>Description</i>
28 May 2019	Transmission of case 88 to the Committee
28 September 2019	Information-gathering period completed
28 January 2020	Comprehensive report submitted to the Committee
1 April 2020	Presentation of the comprehensive report by the Ombudsperson to the Committee (in writing)
13 April 2020	Committee decision to retain listing
23 April 2020	Formal notification to the petitioner with summary of analysis in the comprehensive report

**Case 87, Ibrahim Mohamed Khalil (Status: delisted)**

<i>Date</i>	<i>Description</i>
20 May 2019	Transmission of case 87 to the Committee
20 September 2019	Information-gathering period completed
13 December 2019	Comprehensive report submitted to the Committee
24 January 2020	Presentation of the comprehensive report by the Ombudsperson to the Committee
24 March 2020	Committee decision to delist
2 April 2020	Formal notification to the petitioner with summary of analysis in the comprehensive report

**Case 86, Al-Mokhtar Ben Mohamed Ben al-Mokhtar Bouchouha (Status: delisted)**

<i>Date</i>	<i>Description</i>
7 May 2019	Transmission of case 86 to the Committee
7 September 2019	Information-gathering period completed
7 November 2019	Comprehensive report submitted to the Committee
20 December 2020	Presentation of the comprehensive report by the Ombudsperson to the Committee
18 February 2020	Committee decision to delist
3 March 2020	Formal notification to the petitioner with summary of analysis in the comprehensive report

**Case 85, Imad Ben Bechir Ben Hamda al-Jammali (Status: delisted)**

<i>Date</i>	<i>Description</i>
19 March 2019	Transmission of case 85 to the Committee
19 September 2019	Information-gathering period completed
15 November 2019	Comprehensive report submitted to the Committee
20 December 2019	Presentation of the comprehensive report by the Ombudsperson to the Committee
18 February 2020	Committee decision to delist
3 March 2020	Formal notification to the petitioner with summary of analysis in the comprehensive report

**Case 84, Mazen Salah Mohammed (Status: delisted) *Ombudsperson case became moot following Committee decision***

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<i>Date</i>	<i>Description</i>
4 February 2019	Transmission of case 84 to the Committee
22 March 2019	Information-gathering period suspended following the submission of a delisting request by the designating State
21 May 2019	Committee decision to delist

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