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2013年1月31日监察员给安全理事会主席的信

谨依照安全理事会第2083(2012)号决议附件二第18(c)段随函附上监察员办公室的第五次报告。根据该报告，监察员应一年两次向安全理事会提交报告，概述其活动。本报告介绍了监察员办公室自前次报告印发以来从2012年7月21日至2013年1月31日这六个月中的活动。

请提请安全理事会成员注意到本信及报告并将其作为安全理事会文件印发为荷。

监察员

金伯利·普罗斯特(签名)



监察员办公室依照安全理事会第 2083 (2012) 号决议提交的报告

一. 背景

1. 本报告介绍了 2012 年 7 月 30 日监察员第四份报告 (S/2012/590) 印发以来监察员办公室开展活动的最新情况。

二. 有关除名案件的活动

总体情况

2. 本报告所述六个月期间, 监察员办公室的主要活动是处理个人和实体提交的除名申请。

除名案件

3. 本报告所述期间, 监察员办公室收到 6 宗新案, 使办公室设立以来截至 2013 年 1 月 31 日的除名申请总数达到 36 宗。所有这些申请均已受理, 在编写报告时处于经第 2083 (2012) 号决议修正的第 1989 (2011) 号决议附件二所规定流程的各个阶段。除非申请人要求, 否则所有姓名在审议期间和在申请被驳回或申请被撤回的情况下始终保密。

4. 自办公室设立以来, 总共已向委员会提交 26 份综合报告。本报告所述期间, 监察员提交了 6 份报告并 4 次就 7 宗案件陈述案情。

5. 第四次报告发布以来, 已有 4 人¹ 被除名, 1 个除名申请被驳回。自办公室成立以来, 累计已完成 24 宗案件, 涉及个人、实体或两者的结合。审议这些案件的结果是 20 名个人和 24 个实体被除名, 1 个实体是另一个已列名实体的别称, 因而被除名, 2 项除名申请被驳回, 1 份申请被撤回。附件一载有截至 2013 年 1 月 31 日所有这些案件的审理情况说明。

6. 在报告所述期间向办公室提交的 6 项申请中的 4 项是个人提交的, 两项是实体提交的。4 人中的 1 人和 2 个实体由法律顾问代表。总体而言, 36 宗案件中 29 宗是个人提出的, 2 宗是个人与 1 个或多个实体提出的, 5 宗仅由实体提出。36 宗案件中的 24 宗, 申请人现在或过去有法律顾问协助。

从各国收集信息

7. 在 6 宗新案中, 到目前为止已向 10 个国家发送 20 项提供资料的请求。本报告所述期间, 在已向委员会提交综合报告的 6 宗案件中, 联络的 20 个国家中 18 个收到了答复, 一些国家提供了多次答复。此外, 委员会一些成员针对普遍传阅

¹ Abdullahi Hussien Kahie、Yassin Abdullah Ezzedine Qadi、Ibrahim ben Hedhili ben Mohamed al-Hamami 和 Adel Abdul Jalil Ibrahim Batterjee。

的申请提供了信息。重要的是，在这 6 宗案件中，指认国和居住国都提供了答复。在两宗案件中，国籍国没有答复，但这两宗案件的申请人已经相当长一段时间未在该国居住。

8. 在已向委员会提交综合报告的 6 宗案件中，监察员已向每宗案件的相关国家提出了问题。她两次就具体案件在有关国家首都会见官员，直接收集信息。

与申请人对话

9. 在过去六个月，监察员在待审案件的对话阶段继续与申请人沟通，包括电子邮件交流，电话讨论，在可能的情况下面谈。报告所述期间，监察员亲自去与 4 名申请人面谈。²

获取保密/机密资料

10. 迄今已签署 12 份获取保密/机密资料的协议或安排，包括本报告所述期间生效的与奥地利签署的正式协议，以及与澳大利亚、比利时、法国、德国、哥斯达黎加、列支敦士登、新西兰、葡萄牙、瑞士和大不列颠及北爱尔兰联合王国达成的安排。本报告所述期间与荷兰做了补充安排。

11. 如下文所述，目前迫切需要进一步推动扩大名单，特别是扩大到经常被牵连到除名申请中的其他国家。

三. 有关监察员办公室发展的活动综述

总体情况

12. 报告所述期间尽可能继续开展了进一步发展和加强监察员办公室的活动。

办公室的外联和宣传工作

13. 监察员参加了一些外展活动，但仍受时间和资源的限制。2012 年 10 月 3 日，监察员参加了都柏林举行的国际律师协会年会关于定向制裁专题的小组讨论。10 月 15 日，她在美利坚合众国圣路易的华盛顿大学法学院做了题为“公正程序与安全理事会：监察员办公室的理由”的发言。³ 2012 年 10 月 29 日，监察员在纽约律师协会的一个小组委员会介绍了办公室的工作。12 月 4 日，监察员参加了联合国人权事务高级专员办事处和德国常驻联合国代表团主办的“有针对性的制裁、人权和适当程序——1267/1989 基地组织制裁制度的未来”专题的小组讨论会。2012 年 12 月 17 日，监察员是反恐执行工作队务虚会的主旨发言人，发言专题是“作为反恐战略有效组成部分的监察员办公室”。监察员还“以虚拟方式”

² 在一宗案件中，由于担心安全，没有到居住国会见申请人，而采用了书面信函的方式。

³ 发言视频见：<http://mediasite.law.wustl.edu/Mediasite/Viewer/?peid=1e4546751a1b42fe83203a356ba55a69>。

向 10 月 26 日在纽约举行的福特汉姆大学法学院的“联合国制裁委员会的适当程序”小组讨论会发表了讲话。

安全理事会关于基地组织及与之有关联的个人和实体的第 1267(1999) 号和第 1989(2011) 号决议所设委员会和与监测组的互动

14. 2012 年 7 月 30 日以来, 监察员四次出席安全理事会关于基地组织及与之有关联的个人和实体的第 1267(1999) 号和第 1989(2011) 号决议所设委员会会议: 9 月 10 日介绍了关于Abdullahi Hussien Kahie(已除名, 以前为QI. K. 50. 01) 和 Yassin Abdullah Ezzedine Qadi(已除名, 以前为QI. Q. 22. 01) 案件的综合报告; 11 月 6 日介绍了关于Adel Abdul Jalil Ibrahim Batterjee(已除名, 以前为QI. B. 182. 04) 和Ibrahim ben Hedhili ben Mohamed al-Hamami(已除名, 以前为QI. A. 98. 03) 案件的综合报告; 11 月 27 日介绍了委员会正在审议的一宗案件; 2013 年 1 月 8 日介绍了两宗案件的综合报告, 其中一宗仍待委员会作出决定, 而另一宗的除名申请被驳回。⁴ 监察员还在几宗案件经过的每个阶段向委员会提供了这些案件的若干书面最新情况说明。

15. 本报告所述期间, 监察员继续会见协调员和监测组成员并与其沟通。在业务层面, 办公室根据特定案件的需要酌情与监测组各方面专家保持联系。监测组继续根据经第 2083(2012) 号决议更新的第 1989(2011) 号决议附件二第 3 段的规定向监察员提供与案件有关的资料。本报告所述期间, 监测组还提供了大量协助, 提供有关基地组织发展和历史问题的意见, 并就一些单独案件事实情景产生的具体问题提出看法。

与各国家、政府间组织、联合国机构和非政府组织的联络

16. 本报告所述期间, 监察员像以往一样继续与各国互动, 特别是与除名申请未决的相关国家互动。监察员还在各种场合会见各国反恐和制裁问题专家, 讨论一般性问题。监察员还继续与定向制裁问题上意见一致国家⁵ 的非正式小组定期讨论, 并继续会晤欧洲联盟代表。除了与案件相关的差旅, 监察员还在有关国家首都与一些国家官员讨论。12 月, 监察员参加了联合国政治事务部安全理事会事务司为安全理事会新成员联合举办的关于制裁的研讨会, 包括安全理事会的报告。

17. 监察员继续与反恐怖主义执行工作队和反恐怖主义委员会执行局以及联合国毒品和犯罪问题办公室预防恐怖主义处的代表联络。她还会见了在反恐怖主义过程中促进和保护人权与基本自由问题特别报告员本·埃默森, 讨论编写和向大会提出他的报告。⁶ 监察员和特别报告员继续交换与双方任务相关的信息。

⁴ 如果除名申请被驳回, 按政策除非特别批准, 将不公布申请人姓名。

⁵ 由奥地利、比利时、哥斯达黎加、丹麦、德国、芬兰、列支敦士登、荷兰、挪威、瑞典和瑞士组成。

⁶ 特别报告员最近一份报告(A/67/396)侧重监察员办公室的影响及其任务与国际人权准则的一致性, 并提出若干建议。

18. 本报告所述期间，监察员与民间社会组织和非政府组织互动，会见了学术界人士和有关组织的代表。

程序和研究

19. 特别是在本报告所述期间，案件工作涉及广泛的开放源研究，包括联系记者和作家收集信息，并验证正在审查的有关某些案件的公开可获得材料的来源。

20. 本报告所述期间，监察员继续关注相关法律案件的发展，包括欧洲法院大法庭面前的卡迪II案件上诉的审理⁷以及欧洲人权法院的纳达诉瑞士案判决的下达。⁸ 监察员继续关注有关报刊文章以及非政府组织的报告和学术文章。监察员还与秘书处法律事务厅法律顾问讨论相关的一般法律问题并得到了帮助，特别是从该厅获得关于保密安排和协议的帮助。

网站

21. 监察员办公室继续修订和更新网站(www.un.org/en/sc/ombudsperson)。

四. 其他活动

列名通知

22. 根据第 1989(2011)号决议附件二第 16(b)段和第 2083(2012)号决议附件二第 18(b)段的规定，如已知地址，在某个人或实体列入名单并通知有关国家后，监察员应向有关个人或实体直接发送通知。

23. 第四次报告印发以来的 6 个月里，基地组织制裁名单增列了 3 个条目。每次列名都考虑到通知问题。新列名的 3 宗案件没有地址或提供的地址信息不详细，可以合理地推测，通知书无法送达收件人。

其他事项

24. 监察员答复了提供有关安全理事会关于基地组织及与之有关联的个人和实体的第 1267(1999)号和第 1989(2011)号决议所设委员会信息的多个请求，针对这些请求，提供了公开资料，包括协助请求提供信息或说明的国家以及非政府组织、律师、个人、媒体和公众提出的请求。

⁷ 委员会诉卡迪案, 2010 年 9 月 30 日对综合法院判决的上诉(第七分庭)(亚辛·阿卜杜拉·卡迪诉欧洲联盟委员会案, T-85/09), 欧洲法院, 案件号: C-584/10 P(共同案件号: C-584/10 P, C-593/10 P, C-595/10 P)。

⁸ 纳达诉瑞士案, 2012 年 9 月 12 日判决, 欧洲人权法院, 大审判庭(申请号: 10593/08)。

五. 今后的工作

25. 监察员的优先事项一直保持不变。最重要的活动仍是与除名申请相关的活动。今后工作量如何很难准确预测，但根据最近的活动模式，可以合理地假设，今后 6 个月监察专员办公室将收到大约 5 项申请，在下一个报告所述期间结束时，将有 9 宗案件正在处理中。

26. 第二个优先事项仍是达成获取保密/机密信息的安排或协议。在资源允许的情况下，监察员将继续开展外联和联络活动。

六. 意见和结论

27. 本报告所述期间，安全理事会通过了第 2083(2012)号决议，将监察员办公室的任务期间延长了 30 个月。该决议处理了监察员在前次报告中向安全理事会提出的有关程序的一些关切问题。下文有关一般事项的段落讨论了这些变化。

公正程序的成绩

28. 本报告所述期间的实践进一步显示，监察员程序的运作符合公正性的基本原则。每个已完成案件，包括仅有的一个除名被拒绝案件，都让申请人知悉列名理由，最大程度地提供证明信息。申请人有机会以事实作出回答，详细阐述论据，而且回答的内容会通过监察员综合报告完全地提交决策者。报告所述期间所作决定均依照监察员的建议，没有任何事项移交安全理事会。对于除名被拒绝的案件，委员会依照第 2083(2012)号决议提供了详细理由，并转送申请人。关于报告所述期间的其他已完成案件，预期将会收到决定的理由，但还没有提交。这些案件还显示出授权程序结构的重要性，特别是规定须经协商一致才能推翻监察员的建议，以确保公正的决策过程完全基于监察员收集并向申请人传达的信息。

29. 总体上看，监察员办公室开始运作以来，公正程序的情况是连贯一致的。总之，申请人得到他/她的案件的通知并有机会对决策者作出答复，或由决策者听询。基本信息由一个客观第三方审查和评估，第 1989(2012)号决议通过以来，这种分析形成的建议成为作出的所有决定的依据。虽然一项决定可能被协商一致推翻，或者案件被移送安全理事会，但实践中这种情况从未发生过。此外，安全理事会规定的严格时间表，也促进了整个过程的公正性。

30. 有鉴于此，监察员欢迎根据第 2083(2012)号决议延长监察员办公室的任务期限。借此安理会保留并在某些情况下加强了监察员制度维护公正程序的重要组成部分。她还注意到，将监察员的任务期限延长 30 个月，显著增强了监察员办公室结构的独立性，而且有助于提高效率。

披露指认国身份

31. 在第 2083(2012)号决议第 12 段，安全理事会把具体说明是否不得将该信息披露给申请人的责任转移给了有关国家，以此回应就披露指认国身份提出的担心。这个变化是明显的进步，特别有助于以前对披露请求的答复不明确的情况。一旦制定了新规定，就可以更好地进行评估其在公正程序方面的整体效率。

国家合作和信息具体性

32. 报告所述期间，国家在答复方面的合作很有力，扭转了前次报告指出的无答复情况有所增加的趋势。在报告所述期间完成的案件中，所有指认国和居住国都做了答复。没有答复的两个国家都是国籍国，与之进行接触是按照该决议的规定，并非由于明确预期这些国家掌握相关信息。在这两个情况下，申请人与国家很少或根本没有联系。另外还注意到，由于两国面临的内部情况，很可能无法方便地从当局获得信息。

33. 然而，与此相反，及时答复方面仍然成问题。第 2083(2012)号决议第 23 段中包含了新的措辞，鼓励及时共享信息。此外，安全理事会在该决议附件二第 4 段强调指出，应特别提请委员会注意向各国收集信息方面遇到的任何挑战。对于鼓励各国在监察员程序中的合作，这些补充规定应该是有益的，尽管这个问题最好留待下一次报告评估。

34. 各国就单个案件提交的材料不具体，仍然是合作方面最显著的缺点，也是整个程序有效性方面最紧迫的一个挑战。特别令人关注的是，国家的答复只是宽泛地声言表示支持申请人的活动，而证据信息或详细情况却很有限，有时根本没有。如第四次报告所述，没有具体的信息，就很难、甚至在某些情况下不可能适当评估基本信息是否充分、合理和可信，也无法与申请人进行有意义的对话，并收到申请人具体的答复。显然，披露详细信息的主要障碍是对基本信息适用保密或规定为机密的限制。如上文第 10 段所述，报告所述期间，在新的安排和协议方面，已经取得了一些进展，包括与奥地利的正式协议生效。然而，更多的协议和安排是必要的，尤其是与经常涉及具体案件的国家。如果要取得任何真正的进展，克服缺乏具体信息带来的挑战，就必须找到切实可行的解决办法。在最近的案件中，对于各国没有提出有利于申请人的信息，也表示了一些关切。这种材料对于公正程序必不可少，未来的决议应考虑对这个问题采用明确的措辞。⁹

35. 监察员办公室现在有了更多的资源，将作出新的努力，鼓励制定通过协定和安排，并谋求提供各个名单的更具体的相关材料。在这方面，在第 2083(2012)号决议第 23 段，安理会特别敦促会员国提供所有相关信息，并鼓励它们达成这样的安排或协定，这些规定应该是有益的。

⁹ 在反恐主义过程中促进和保护人权与基本自由问题特别报告员在他的报告(A/67/396)第 45 段讨论了对不披露这些信息的关切。

获得豁免

36. 第四次报告强调了在某些案件中有关在居住国面见申请人方面出现的问题。报告所述期间，由于安全方面的关切，遇到了同样的问题。安全理事会在第 2083(2012)号决议第 36 段处理了这个问题，让监察员能够直接向委员会为申请人寻求豁免旅行限制，以便在对话阶段，在该人居住国之外进行面谈。这将促进监察员程序中在公正与效率方面已证明具有重大价值的重要组成部分。

37. 同样，安全理事会第 2083(2012)号决议，回应了前几次报告提出的无法方便地获得居住国援助导致一些个人无法获得人道主义豁免的关切。该决议规定列入名单的个人或实体可以利用第 1730(2006)号决议建立的协调人机制，按照安理会的规定(见第 1452(2002)号决议第 1 段、第 1989(2011)条第 1(b)段和第 2083(2012)号决议第 37 段)直接寻求人道主义豁免。这是一个重要改进，如果列入名单的个人或实体在提出人道主义豁免方面不能得到国家的援助，可以让委员会审议豁免请求。

38. 遗憾的是，不同于将除名申请直接不受限制地发送给监察员、甚至在其他制度下发送给协调人的程序，豁免程序在协调人采取任何行动之前有一个前提条件必须得到满足。具体而言，可以接收和转递申请，“但有关申请须先提交居住国审议”(第 2083(2012)号决议，第 37(a)段)，想必是由寻求豁免的个人提交。这个要求的原因和效用并不明显。此外，在通信设施或与国家或政府机关接触途径有限的国家，对于寻求豁免的个人和实体而言可能是一个障碍。至少会推迟豁免申请的提交。在这种情况下，应考虑通过实践取消或改进这项要求，确保个人和实体有平等和公开的机会获得安全理事会规定的豁免。

决定的理由

39. 安全理事会在其第 2083(2012)号决议中，充分认可了委员会为所作决定提供理由的重要性，无论是同意或不同意除名。为确认现行做法，现在授权委员会提供所有决定的理由，不管结果如何。这个要求将有助于显示决策过程是公正的，经过深思熟虑的，并为监察员处理以后的除名案件提供指导。此外，由于将把理由转达申请人，申请人将了解决定的依据，因此，这方面的程序的透明度将会提高。然而，时间上仍存在一个实际问题。根据决议现在作出规定的现行做法，往往拖延很长时间才能提供理由。需要进行执行该决议各项规定的进一步经验，以确定是否加强授权将有助于减少转达决定理由所需要的时间。

程序的透明度

40. 第 2083(2012)号决议在提高监察员程序的透明度方面取得的进展不大。该决议仍然详细描述一般程序，在个别案件适用该程序的信息披露方面补充了两点。监察员现在特别获得授权，将程序所达到的阶段通知申请人以及不是委员会成员的有关国家。这有助于确保申请人和关注的国家了解案件的总体进展。此外，在委员会审议案件的末尾，监察员现在可以向不是委员会成员的关注国家通报提出

的建议，这对受牵涉国家是非常有益的，有助于整个程序，确保被要求予以合作的国家将得到有关结果的信息。

41. 然而，尽管这些发展变化，程序的大部分，包括监察员的重要建议，仍然完全要申请人猜测。至于公众，包括法院和学术界等关注机构，程序的透明度没有提高。这很令人失望，因为总体透明度对于监察员制度的公信力至关重要。

42. 此外，决定不规定向申请人披露任何具体信息，固化了申请人之间的不平等。第 2083(2012)号决议规定适用的时间表和委员会开展工作的指导方针显然都产生于委员会的认真审查，¹⁰ 因此，完全了解决议和准则规定的申请人或法律顾问，能够推断出监察员的建议是什么，以及是否适用“触发机制”，以协商一致方式推翻决定，还是将问题移交安全理事会，完全取决于做出决定所需要的时间。另一方面，对于不那么熟悉决议的申请人或者获得决议的途径有限的申请人，整个过程从头到尾基本很茫然。

43. 委员会或安全理事会最终做出的有关除名申请的决定直接影响到申请人的权利，因此，为了公正起见，必须让申请人知道自己案件进行过程的详细情况。这不仅应包括一般的时间和阶段信息，也应有做出重大决定的信息，而且为了完整起见，还应有决定背后的推理过程。

44. 对于公众，不披露信息，不愿意披露信息，只能让人对监察员程序的公正性和成效产生怀疑。

45. 总之，虽然有了改进，但对于申请人和公众而言，程序缺乏透明度仍然令人严重关切。

授权采取除名后续行动

46. 个人和实体被除名之后仍受限制这个严重问题，仍然没有进展。

47. 报告所述期间，4 个人提出了可能涉及他们被除名后继续对其适用制裁措施的情节，尽管委员会的决定与之相反。4 宗案件中 3 宗涉及旅行限制，1 宗涉及扣押资产，都足够详细，应该采取具体的后续行动。然而，没有进行任何授权，限制在这种情况下监察员可以采取的任何步骤。

48. 监察员办公室开始运作以来，这个问题一直是其提交安全理事会的所有报告的评论主题。涉及的公正性原则是明显的、重大的。在每一个情况下，财产和行动的基本权利受到限制，而且很可能是由于安理会制裁措施的不当延续。这很可能是有关投诉没有事实根据的支持，或者这些措施是根据国内法采取的。然而，只能通过一个适当的机制，对事实加以审查，才能确定这一点。在目前的结构下，不存在这样的机制，留给个人和实体的求助途径有限，甚至根本没有。

¹⁰ 由于一般而言译文送交日期无从知晓，审议的 30 天期间何时开始并不清楚。

49. 这些情况如果属实，是委员会决定落实方面的一个普遍问题，有可能妨碍基地组织制裁制度的公信力和有效性。由于这些原因以及监察员先前报告(见 S/2012/590，第 46 段；S/2012/49，第 50 段；S/2011/447，第 47 段)所述原因，应考虑授权监察员办公室对于指称的尽管已除名但仍继续适用制裁措施的情况采取后续行动。

翻译和行政问题

50. 如先前的报告(见 S/2012/590，第 50 段；S/2012/49，第 55 至 56 段)所述，联合国系统会议文件适用的关于翻译字数限制的一般准则，也适用于监察员的综合报告。报告所述期间，一宗案件中再次出现严重问题，案件的性质和复杂性导致超出了限制。虽然最终找到了可行的解决办法，但这个办法不能用于今后的案件。因此，字数的限制，加上翻译作为审议报告的一个先决条件，对于监察员的独立性和关键全面报告的有效性构成严重威胁。

资源

51. 监察员以前的报告确定的人力资源需求现已得到解决。办公室足额配备了工作人员，有 1 个 P-4 法律干事和 1 名全职助理。报告所述期间，笔译和口译资源的迫切需要再次清楚地显现出来。安全理事会第 2083(2012)号决议第 22 段确认了这一点，其中安全理事会要求为此提供资源。秘书处表示，最新的预算为监察员办公室的笔译和口译援助专门拨出了经费。

特别报告员的报告

52. 2012 年 9 月，在反恐怖主义过程中促进和保护人权与基本自由问题特别报告员提交了报告(A/67/396)，集中讨论了基地组织制裁制度的公正程序，重点是监察员办公室。他的报告详细讨论了监察员程序的一些具体方面。特别报告员评论了监察员先前已处理的几个问题，对这些问题，有关规定已纳入第 2083(2012)号决议，不再需要详细讨论。¹¹ 特别报告员谈到的另外一些问题可以在本报告评论，详述如下。

透明度

53. 特别报告员重申监察员要求向申请人披露监察员的建议的立场。他还进一步建议监察员的综合报告在必要修订后普遍印发(A/67/396，第 50 段)。他坚定认为应采取这些步骤提高该程序的透明度。如上所述，监察员完全同意特别报告员有关该程序透明度的不足的意见。第 2083(2012)号决议中没有任何措施来解决这

¹¹ 特别报告员要求让监察员在人道主义豁免方面发挥作用，并提请委员会注意人道主义豁免。第 2083(2012)号决议通过协调人解决了这个问题，协调人被赋予这个责任。特别报告员还表示支持监察员需要能够向申请人披露指认国的身份，并要求提供除名的法定理由和适当的口笔译资源。如上所述，第 2083(2012)号决议中对这些问题有新的规定。

些具体的缺陷，¹² 监察员和特别报告员共同建议在今后的决议中采取措施，在这方面加强该程序。

标准

54. 监察员评估除名申请所采用的标准是目前是否有足够的信息提供合理和可信的列名依据。特别报告员指出这不是为人熟知的标准，导致监察员的做法不清楚。他接着提供了介于刑事标准和纯粹怀疑之间的较为公认的一些测试实例。¹³ 最后，特别报告员主张监察员程序采取或然性权衡标准，在普通法中，这是最高的标准，仅次于刑事事项中适用的标准。¹⁴

55. 监察员采用标准的理由详见监察员编写的关于方法和标准的文件(见附件二)。总之，目前所采用的标准不反映国内或区域法律的现有方法。这是个深思熟虑的选择，考虑到了该机制的国际性质，以及需要避免采用来自某个特定法律制度和传统的标准。相反，该标准基于对不同法律制度采用的各种方法进行的审查，反映了根本而一贯的概念，特别是充足性、合理性和公信力。实践表明，该标准是可行的，监察员仍然感到满意的是，测试以及那些公认的基准，为监察员程序提供了足够的明确性和一致性。

56. 此外，在确定一个适当标准方面，监察员考虑到了牵涉的重要权利，既有个人对财产和行动的权利，也有安全理事会和委员会有责任维护的对生命和安全的集体权利。监察员认为所采用的标准合理平衡了有关的各项权利，对个人给予保护，同时允许采取适当的预防性措施，旨在防范恐怖活动和恐怖袭击。

酷刑

57. 特别报告员表示严重关注监察员对可能是通过酷刑获得的信息的态度，以及这些信息没有被排除在其评估范围之内之外，因为她不认为自己受正式证据规则的约束(A/67/396, 第 46 至 47 段)。对此，监察员澄清了她对酷刑问题的态度(见附件三)。简言之，监察员不是出于任何理由“接受”或“排除”信息，而是评估其相关性、具体性和公信力或可靠性。因此，她可以决定不依赖任何特定信息，特别是因其缺乏公信力。监察员认为，通过酷刑获得的信息本质上是不可靠的。因此，虽然监察员所依赖的程序没有一些国内法律制度适用的排他性条款，其结果实际上是相同的，监察员程序将不依赖通过酷刑获得的信息，因为缺乏可靠性。此外，在没有对照适用标准确定存在酷刑但存在关切的案件，信息的分量可能会

¹² 正如上文第 40 段所述，在所处状况的信息披露方面，以及向不是委员会成员的国家提供信息方面，已经有了一些改善。

¹³ A/67/396, 第 56 段(包括合理的怀疑理由、合理的相信理由、以及或然性权衡证据)。

¹⁴ A/67/396, 第 57 段(建议适用“很可能”标准和实施制裁措施与干预名单所列个人或实体的基本权利之间的相称测试)。

受到影响。监察员完全满意的是，对于借助酷刑获得的信息所通过的程序与国际标准和规范是一致的。

法律顾问

58. 特别报告员呼吁设立一个基金，为通过监察员程序在基地组织制裁制度下寻求除名的申请人提供法律援助。虽然监察员对该建议的实质内容没有评论，但认为在迄今审议的案件中，无论申请人是否由法律顾问代表，该程序的适用方式是相同的。¹⁵ 此外，鉴于监察员程序的性质，从来没有出现过申请人由于没有代表人而受到歧视的情况。

程序的充足性

59. 特别报告员在其具体任务范围内，对于监察员程序总体公正性及其是否符合正当程序的国际最低标准进行了评估并发表看法。鉴于给监察员授权的性质，由她就这样一个广泛问题发表意见显然是不恰当的。然而，监察员强调上文第 28 段和第 29 段有关迄今通过监察员程序审议的单独案件程序公正性的意见。

结论

60. 过去几个报告期间，监察员办公室的工作量一直相对稳定。监察员办公室运作两年半以来，列入名单的个人和实体继续诉诸该程序，显示出该程序在有关个人和实体中的公信力。国家合作对于该任务的成效至关重要，依然十分强劲，表明国家对这个程序仍然有信心。第 2083(2012) 号决议现在处理了先前报告中提请安全理事会注意的一些关切问题。然而，如本报告所详述，挑战依然存在。特别是国家提交答复的细节和具体性方面仍有问题，必须加以解决。此外，仍然需要增强该程序的透明度。然而，尽管仍存在这些问题，安理会给予监察员办公室的任务仍然是按照公正性的基本原则执行的。

¹⁵ 然而，见上文第 42 段关于缺乏披露监察员建议导致出现不平等的评论。

Annex I

Status of cases

Case 1, one individual (status: denied)

Date	Description
28 July 2010	Transmission of case 1 to the Committee
28 February 2011	Comprehensive report submitted to the Committee
10 May 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 June 2011	Committee decision
1 September 2011	Formal notification to petitioner with reasons

Case 2, Safet Ekrem Durguti (status: delisted)

Date	Description
30 September 2010	Transmission of case 2 to the Committee
26 April 2011	Comprehensive report submitted to the Committee
31 May 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 June 2011	Committee decision to delist
12 August 2011	Formal notification to petitioner with reasons

Case 3, one entity (status: delisting request withdrawn by petitioner)

Date	Description
3 November 2010	Transmission of case 3 to the Committee
14 June 2011	Comprehensive report submitted to the Committee
26 July 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
2 August 2011	Withdrawal of petition

Case 4, Shafiq ben Mohamed ben Mohammed al Ayadi (status: delisted)

Date	Description
6 December 2010	Transmission of case 4 to the Committee
29 June 2011	Comprehensive report submitted to the Committee
26 July 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
17 October 2011	Committee decision to delist
8 November 2011	Formal notification to petitioner with reasons

Case 5, Tarek ben al-Bechir ben Amara al-Charaabi (status: delisted)

Date	Description
30 December 2010	Transmission of case 5 to the Committee
26 April 2011	Comprehensive report submitted to the Committee
31 May 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 June 2011	Committee decision to delist
12 August 2011	Formal notification to petitioner with reasons

Case 6, Abdul Latif Saleh (status: delisted)

Date	Description
14 January 2011	Transmission of case 6 to the Committee
17 June 2011	Comprehensive report submitted to the Committee
26 July 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
19 August 2011	Committee decision to delist
8 November 2011	Formal notification to petitioner with reasons

Case 7, Abu Sufian al-Salamabi Muhammed Ahmed Abd al-Razziq (status: delisted)

Date	Description
28 January 2011	Transmission of case 7 to the Committee
23 September 2011	Comprehensive report submitted to the Committee
15 November 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
30 November 2011	Committee decision to delist
13 February 2012	Formal notification to petitioner with reasons

Case 8, Ahmed Ali Nur Jim'ale and 23 entities^a (status: delisted)

Date	Description
17 March 2011	Transmission of case 8 to the Committee
23 September 2011	Comprehensive report submitted to the Committee
13 December 2011	Presentation of comprehensive report by the Ombudsperson to the Committee
27 December 2011	Committee decision to delist 6 entities
21 February 2012	Committee decision to delist one individual and 17 entities
8 June 2012	Formal notification to petitioner with reasons

Case 9, Saad Rashed Mohammed al-Faqih and Movement for Reform in Arabia (status: delisted)

Date	Description
19 April 2011	Transmission of case 9 to the Committee

^a Barakaat North America, Inc., Barakat Computer Consulting, Barakat Consulting Group, Barakat Global Telephone Company, Barakat Post Express, Barakat Refreshment Company, Al Baraka Exchange, LLC, Barakaat Telecommunications Co. Somalia, Ltd., Barakaat Bank of Somalia, Barako Trading Company, LLC, Al-Barakaat, Al-Barakaat Bank, Al-Barakaat Bank of Somalia, Al-Barakat Finance Group, Al-Barakat Financial Holding Co., Al-Barakat Global Telecommunications, Al-Barakat Group of Companies Somalia Limited, Al-Barakat International, Al-Barakat Investments, Barakaat Group of Companies, Barakaat Red Sea Telecommunications, Barakat International Companies and Barakat Telecommunications Company Limited.

Date	Description
21 February 2012	Comprehensive report submitted to the Committee
17 April 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
1 July 2012	Committee decision to delist

Case 10, Ibrahim Abdul Salam Mohamed Boyasseer (status: delisted)

Date	Description
6 May 2011	Transmission of case 10 to the Committee
9 January 2012	Comprehensive report submitted to the Committee
1 March 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
8 May 2012	Committee decision to delist

Case 11, Mondher ben Mohsen ben Ali al-Baazaoui (status: delisted)

Date	Description
1 June 2011	Transmission of case 11 to the Committee
19 January 2012	Comprehensive report submitted to the Committee
1 March 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
30 March 2012	Committee decision to delist
10 July 2012	Formal notification to petitioner with reasons

Case 12, Kamal ben Mohamed ben Ahmed Darraji (status: delisted)

Date	Description
30 June 2011	Transmission of case 12 to the Committee
28 February 2012	Comprehensive report submitted to the Committee
3 April 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
4 May 2012	Committee decision to delist

Case 13, Fondation Secours Mondial (status: amended)^b

Date	Description
7 July 2011	Transmission of case 13 to the Committee
14 December 2011	Comprehensive report submitted to the Committee
24 January 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
17 February 2012	Committee decision to amend
9 July 2012	Formal notification to petitioner with reasons

Case 14, Sa'd Abdullah Hussein al-Sharif (status: delisted)

Date	Description
20 July 2011	Transmission of case 14 to the Committee
29 February 2012	Comprehensive report submitted to the Committee
3 April 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
27 April 2012	Committee decision to delist
5 June 2012	Formal notification to petitioner with reasons

Case 15, Fethi ben al-Rebei Absha Mnasri (status: delisted)

Date	Description
4 August 2011	Transmission of case 15 to the Committee
9 March 2012	Comprehensive report submitted to the Committee
17 April 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
2 May 2012	Committee decision to delist

^b Amended to be removed as an alias of Global Relief Foundation(QE.G.91.02).

Case 16, Mounir ben Habib ben al-TaHER Jarraya (status: delisted)

Date	Description
15 August 2011	Transmission of case 16 to the Committee
9 March 2012	Comprehensive report submitted to the Committee
17 April 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
2 May 2012	Committee decision to delist

Case 17, Rachid Fettar (status: delisted)

Date	Description
26 September 2011	Transmission of case 17 to the Committee
27 April 2012	Comprehensive report submitted to the Committee
5 June 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
20 June 2012	Committee decision to delist

Case 18, Ali Mohamed el Heit (status: delisted)

Date	Description
5 October 2011	Transmission of case 18 to the Committee
2 May 2012	Comprehensive report submitted to the Committee
3 July 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
19 July 2012	Committee decision to delist

Case 19, Yasin Abdullah Ezzedine Qadi (status: delisted)

Date	Description
16 November 2011	Transmission of case 19 to the Committee
11 July 2012	Comprehensive report submitted to the Committee

Date	Description
10 September 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
5 October 2012	Committee decision to delist

Case 20, Chabaane ben Mohamed ben Mohamed al-Trabelsi (status: delisted)

Date	Description
21 November 2011	Transmission of case 20 to the Committee
23 April 2012	Comprehensive report submitted to the Committee
5 June 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
20 June 2012	Committee decision to delist

Case 21, Adel Abdul Jalil Ibrahim Batterjee (status: delisted)

Date	Description
3 January 2012	Transmission of case 21 to the Committee
10 October 2012	Comprehensive report submitted to the Committee
6 November 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 January 2013	Committee decision to delist

Case 22, Ibrahim ben Hedhili ben Mohamed al-Hamami (status: delisted)

Date	Description
6 February 2012	Transmission of case 22 to the Committee
25 September 2012	Comprehensive report submitted to the Committee
6 November 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
21 November 2012	Committee decision to delist

Case 23, one individual (status: Committee phase)

Date	Description
23 February 2012	Transmission of case 23 to the Committee
30 August 2012	Comprehensive report submitted to the Committee
27 November 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee

Case 24, one individual (status: Committee phase)

Date	Description
28 February 2012	Transmission of case 24 to the Committee
12 November 2012	Comprehensive report submitted to the Committee
8 January 2013	Presentation of the comprehensive report by the Ombudsperson to the Committee

Case 25, Abdullahi Hussien Kahie (status: delisted)

Date	Description
28 February 2012	Transmission of case 25 to the Committee
26 July 2012	Comprehensive report submitted to the Committee
10 September 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
26 September 2012	Committee decision to delist

Case 26, one individual (status: dialogue phase)

Date	Description
23 April 2012	Transmission of case 26 to the Committee
22 February 2013	Deadline for the completion of the dialogue phase

Case 27, one individual (status: dialogue phase)

Date	Description
7 May 2012	Transmission of case 27 to the Committee
11 February 2013	Deadline for the completion of the dialogue phase

Case 28, one individual (status: denied)

Date	Description
7 June 2012	Transmission of case 28 to the Committee
20 November 2012	Comprehensive report submitted to the Committee
8 January 2013	Presentation of the comprehensive report by the Ombudsperson to the Committee
8 January 2013	Committee decision
29 January 2013	Formal notification to petitioner with reasons

Case 29, one individual (status: dialogue phase)

Date	Description
25 July 2012	Transmission of case 29 to the Committee
11 February 2013	Deadline for the completion of the dialogue phase

Case 30, one entity (status: dialogue phase)

Date	Description
25 July 2012	Transmission of case 30 to the Committee
27 February 2013	Deadline for the completion of the dialogue phase

Case 31, one individual (status: dialogue phase)

Date	Description
1 August 2012	Transmission of case 31 to the Committee
4 March 2013	Deadline for the completion of the dialogue phase

Case 32, one individual (status: dialogue phase)

Date	Description
19 September 2012	Transmission of case 32 to the Committee
21 March 2013	Deadline for the completion of the dialogue phase

Case 33, one individual (status: information-gathering period)

Date	Description
12 October 2012	Transmission of case 33 to the Committee
13 February 2013	Deadline for information gathering

Case 34, one individual (status: information-gathering period)

Date	Description
8 November 2012	Transmission of case 34 to the Committee
8 March 2013	Deadline for information gathering

Case 35, one entity (status: information-gathering period)

Date	Description
13 December 2012	Transmission of case 35 to the Committee
15 April 2013	Deadline for information gathering

Case 36, one entity (status: information-gathering period)

Date	Description
13 December 2012	Transmission of case 36 to the Committee
15 April 2013	Deadline for information gathering

Annex II

Approach to and standard for analysis, observations and principal arguments

Context

Decisions regarding the Security Council's Al-Qaida and Taliban sanctions regime rest exclusively with the Security Council. With respect to the Consolidated List, the Security Council has mandated the Al-Qaida and Taliban Sanctions Committee with making determinations regarding listing and delisting in accordance with the overarching criteria set out by the Council. The creation of the Office of the Ombudsperson has not altered that decision-making structure. As a corollary, it is clearly for the Security Council and the Committee to determine what standards it will apply in taking its decisions in this context.

However, the Ombudsperson has been assigned an important role to assist the Committee in its determinations on delisting. In that role, to ensure that the analysis and observations of the Ombudsperson are provided in a fair and consistent manner from case to case, it is necessary to clearly articulate the approach being employed and the standard by which the information is to be assessed.

Both the approach and standard must be informed by the unique context of decisions being taken by a body of the Security Council and the particular role of the Ombudsperson. Further, the method and test employed must take into consideration the threat to international peace and security underlying the sanctions, as well as the serious nature of the sanctions measures when applied to individuals and entities.

Approach

The Security Council has mandated the Ombudsperson to assist the Committee with delisting requests by, inter alia, providing an analysis of, and observations on, all information available to the Ombudsperson relevant to the delisting request.

This statement provides clear guidance as to the nature of the analysis and observations expected. As the role of the Ombudsperson is to assist with delisting decisions, any comments provided should obviously relate to the question that the Committee must answer in deciding on a delisting request.

The Security Council has not defined separate criteria which must be met for delisting to occur. While resolution 1735, in paragraph 14, sets out factors of a non-exclusive nature, which the Committee "may consider",^a in deciding on delisting, these cannot be categorized as criteria which must be met for delisting to occur.

Rather, it is evident from the relevant resolutions that the Committee, in reviewing a delisting request, will consider all of the relevant circumstances, with a view to determining whether the individual continues to meet the criteria for listing set forth by the Security Council. In essence, the test for delisting is the opposite of the

^a "Decides that the Committee, in determining whether to remove names from the Consolidated List, **may consider, among other things ...**" (emphasis added).

test for listing. Therefore, in my view, the analysis and observations of the Ombudsperson should similarly focus on that question.

In addition, the Security Council has, in my opinion, unmistakably signalled that a delisting decision will be a *de novo* one which looks at the circumstances, as they stand at the time of the delisting request, to determine the appropriateness of a continued listing. In this regard, the Security Council's inclusion in resolution 1735 (2006), of "disassociation" as a factor which may be considered with reference to delisting, evidences this approach. Similarly, the reference in resolution 1904 (2009) to the removal from the Consolidated List of "members and/or associates of Al-Qaida, Usama bin Laden, or the Taliban who **no longer** meet the criteria"^b supports a consideration of circumstances which have changed since the original listing. Further, the Security Council has plainly directed the Ombudsperson to analyse **all** the available information.^c The absence of restrictions, particularly temporal ones, makes it evident that the assessment should address all the pertinent material, whether relied on in the context of the original decision or not.

At the same time, it is obvious that any assessment of the totality of information at present will include the historical context of the listing and, in particular, the circumstances surrounding the original designation. It is also evident that in the context of a comprehensive analysis, the absence of recent information is in no way determinative. It is simply one factor which needs to be weighed and assessed on the basis of the particular circumstances in each case.

In conclusion, as the role of the Ombudsperson is to assist the Committee in its decision-making process, the analysis conducted and observations provided should relate substantively to the question to be determined by the Committee — whether an individual or entity continues to meet the criteria for being included on the Consolidated List. To accomplish this, in my opinion, the analysis and observations of the Ombudsperson, as well as the principal arguments set out, should address, to the defined standard, whether today the continued listing of the individual or entity is justified based on all of the information now available.

Standard

In aid of coherent analysis and observations from the Ombudsperson, the information gathered and the reasoning applied to it, must be assessed to a consistent standard. This standard must be one which is appropriate to the unique context of decisions by a Committee acting under the express direction of the Security Council. It must take into account the purely international framework, where the benchmark used cannot be premised on the precepts of one particular legal system or tradition. It must instead focus on concepts generally accepted as fundamental across legal systems. In order to arrive at an appropriate standard for the Ombudsperson to apply, I have looked to national and regional law and jurisprudence, particularly in the context of

^b Paragraph 22 of resolution 1904 (2009).

^c Paragraph 7 (c) of annex II to resolution 1904 (2009) which reads in part "Based on an analysis of all the information available to the Ombudsperson ..."

asset freezing or other restrictions in counter-terrorism regimes.^d This research has helped to inform the development of an appropriate test in the context of the Al-Qaida and Taliban sanctions regime.

The standard must also reflect the express intent of the Security Council with regard to the purpose of the sanctions, namely “that the measures ... are preventative in nature and are not reliant upon criminal standards set out under national law”. At the same time, it must be a measure of adequate substance to sustain the serious restrictions imposed on individuals and entities through the application of the sanctions.

In this regard, it is evident that the standard applicable in criminal proceedings, nationally, regionally or internationally, is not appropriate for assessing the information and circumstances related to a listing by the Committee. The sanctions are not intended to punish for criminal conduct. Rather, relevant Security Council resolutions demonstrate that the aim is twofold — to hamper access to resources in order to impede, impair, isolate and incapacitate the terrorist threat from Al-Qaida, Usama bin Laden and the Taliban, and to encourage a change of conduct on the part of those who are members of these groups or “associated with” this individual or these groups. In these circumstances, the standards applicable to a determination of criminal guilt or innocence are obviously of a different nature and serve a distinct purpose from that of the sanctions.

At the same time, the sanctions flowing from inclusion on the Consolidated List are of a significant nature. When implemented on an international scale they have a direct and considerable impact on the rights and freedoms of individuals and entities. They are also of an indeterminate length, with no specified end date. Therefore, there must be some substance and reliability to the information upon which such sanctions are applied to these individuals and entities. Mere “suspicion” or reliance upon statements without any consideration as to underlying information or some assessment of credibility is equally inapt in this context.

Finally, the standard must be informed by the wide variance of circumstances and types of information, relevant to these cases, particularly given the international nature of the listing process.

^d Several States use their normal criminal or other judicial procedure for the freezing of terrorist assets and so rely on standards applicable to the initiation of a criminal investigation or prosecution or application for a judicial warrant for freezing, for example that there is “sufficient evidence” or a “strong suspicion”. In the domestic designation of terrorist entities in a number of common law jurisdictions, a form of “reasonable grounds or a basis/to believe/suspect/be satisfied of” involvement in or commission of terrorist acts or activities is used. The Financial Action Task Force also recommends the alternatives of “reasonable grounds or basis/to suspect/to believe”, as does the Commonwealth’s Model Legislative Provisions on Measures to Combat Terrorism (reasonable grounds to suspect or to believe). In one interesting common law deviation the legislation used to designate terrorist groups requires demonstration of “sufficient cause” to uphold an unlawful association listing. The European Union uses different language again: the Council lists a person where there is precise information or material which indicates that a decision has been taken by a competent authority of a Member State based on “serious and credible evidence or clues”. In a different context, article 1F of the Refugee Convention provides that protection can be refused to an individual where there are “serious reasons to consider” they have committed an international crime.

Taking into account the need to balance these factors, in my view, the standard for the Ombudsperson's analysis and observations should be **whether there is sufficient information to provide a reasonable and credible basis for the listing.**

"Sufficiency" provides the necessary flexibility in terms of assessing different types of information from distinct sources, quantitatively, qualitatively and in substance. The criteria of "reasonableness and credibility" ensure that the combined circumstances provide a rational base for the listing, which is reliable enough to justify the imposition of the sanctions measures. These factors of sufficiency, reasonableness and credibility also offer appropriate benchmarks for analysing, as far as possible, underlying information, and the reasoning which is applied to it in relation to the listing. In my opinion, it is a standard which recognizes a lower threshold appropriate to preventative measures, but sets a sufficient level of protection for the rights of individuals and entities in this context.

Annex III

Approach to the assessment of information, including information alleged to have been obtained by torture

Assessment of information

In analysing gathered information, the Ombudsperson employs a methodology appropriate to an international context, which is not reliant on the procedural rules of any one legal system.^a In addition, the method is consistent with the preventative nature of the sanction measures and the applicable criteria and standard.

Specifically, all of the information obtained will be considered in the Comprehensive Report. The Ombudsperson does not “admit” or “exclude” information or otherwise apply “rules of evidence” as recognized in some legal traditions, notably the common law. Rather, each piece of information is assessed inter alia as to relevance, specificity and credibility. In some instances, as a result of this assessment, the Ombudsperson may decide not to rely on specific information and it will not form part of the analysis or basis for the recommendation. That finding and the reasons for it will be detailed to the Committee.

In assessing the credibility/reliability of information the Ombudsperson considers factors such as detail, particularity, source (to the extent known), corroborative or reinforcing material, and whether there is similar information from different sources.

Importantly, in each case, the Ombudsperson will also look at the totality of the circumstances and the inferences to be drawn from the gathered information once cumulated.

Information alleged to have been obtained by torture

It is possible that information gathered by the Ombudsperson, relevant to a particular listing by the Al-Qaida Sanctions Committee, will be challenged by the Petitioner as having been obtained through torture. In accordance with relevant international instruments and norms,^b any such allegation will be given careful and serious consideration by the Ombudsperson. Further, the Ombudsperson operates from the premise that information obtained through torture is inherently unreliable. As a result, such a contention is directly relevant to the credibility of the information, which is a key component of the standard applied by the Ombudsperson.^c

^a This is consistent with the approach taken to the development and application of a standard for the analysis. See “Approach to, and Standard for, Analysis, Observations, Principal Arguments and Recommendation”.

^b Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984, 1465 U.N.T.S. 85) (“CAT”); International Covenant on Civil and Political Rights (16 December 1966, 999 U.N.T.S. 171); Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (precursor of CAT) (GA Res. 3452 (XXX), 9 Dec. 1975).

^c The standard applied is whether there is sufficient information to provide a reasonable and credible basis for the listing.

If such impugned information is ultimately advanced in support of the listing,^d the Ombudsperson will make inquiries of any relevant State, organization or individual and will endeavour to gather as much information as possible with respect to the assertion of torture.

If satisfied to the applicable standard^e that the information has been obtained through torture, the Ombudsperson will not rely upon the information in the analysis and it will not form part of the basis for the recommendation. As indicated, the analysis and observation in this respect will be recounted fully to the Committee for its consideration.

Further, even if the use of torture is not demonstrated to the relevant standard, the material gathered may still be such that it will affect the weight which will be accorded to the impugned information. Once again any such determination will be detailed in the Comprehensive Report.

^d In two cases, the Petitioners alleged that certain information had been obtained by torture but ultimately that information was not submitted in the Ombudsperson process in support of continued listing and therefore was not considered.

^e In the view of the Ombudsperson, the standard should be consistent with that used to assess the delisting petition generally. Thus, the question will be whether there is sufficient information to provide a reasonable and credible basis for the allegation of torture with respect to the specific information in question.