



Security Council

Distr.: General
12 September 2023

Original: English

Letter dated 12 September 2023 from the Ombudsperson addressed to the President of the Security Council

I have the honour to transmit herewith the twenty-fifth 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 21 (c) of annex II to Security Council resolution [2610 \(2021\)](#), 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 23 February to 11 September 2023.

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) Richard **Malanjum**

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

* Circulated in the language of submission only.



Report of the Office of the Ombudsperson submitted pursuant to Security Council resolution 2610 (2021)

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-fourth report of the Office to the Security Council on 22 February 2023 (S/2023/133).

II. Activities related to delisting requests

A. General

2. The primary activities of the Office during the reporting period, from 23 February 2023 to 11 September 2023, related to delisting requests submitted by individuals.

3. In the context of his casework, the Ombudsperson communicated with the members of 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, as well as with relevant Member States, and with petitioners and their legal counsel. Furthermore, the Ombudsperson conducted independent research and interviewed various experts and other interlocutors on matters related to ongoing cases.

B. Delisting requests

4. Three new petitions were submitted to the Office of the Ombudsperson during the reporting period. Two petitions were accepted by the Ombudsperson, and one petition is pending the completion of the submission. The two pending cases are both in the information-gathering phase.

5. During the reporting period, the Ombudsperson appeared before the Committee four times to present comprehensive reports in six cases. This included presentations on five reports that had been submitted during the previous reporting period and on one comprehensive report that was submitted during the current reporting period.

6. As at 11 September 2023, a total of 107 delisting petitions involving requests from individuals, entities or a combination of both 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.

7. Since the Office was established, 105 cases have been completed, of which 100 cases were fully processed through the Ombudsperson process. The Ombudsperson has submitted a total of 102 comprehensive reports¹ to the Committee, pursuant to

¹ This number includes one case concluded in 2011, in which the petitioner withdrew the delisting request 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. Finally, 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.

paragraph 8 of annex II to Security Council resolution 2610 (2021) and the equivalent paragraph of previous resolutions.

8. Since the twenty-fourth report, two individuals have been delisted from the Committee's sanctions list following the Ombudsperson's review and recommendation.

9. Cumulatively, in the 100 cases completed through the Ombudsperson process, 70 delisting requests were granted and 30 were denied. As a result of the 70 petitions granted, 65 individuals and 28 entities have been delisted, and 1 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 cases is given on the website of the Office.² The status of the most recent cases is contained in the annex to the present report.

10. The two pending cases were each filed by an individual. To date, 98 of the 107 cases have been brought by individuals alone. Two cases were brought by an individual together with one or more entities, and six by entities alone. In 62 of the 107 cases, the petitioner was assisted by legal counsel.

11. During the reporting period, the Office engaged in dialogue with two designated individuals and with the legal representatives of three other designated individuals who have all expressed interest in filing a petition for delisting but have not yet done so.

C. Gathering information from States

12. During the information-gathering phase, the Ombudsperson requests Member States to provide all relevant information to the Ombudsperson, including any relevant confidential information, where appropriate, in accordance with paragraph 69 of resolution 2610 (2021). To this end, in each case, the Ombudsperson invites Committee members to submit relevant information to him. Furthermore, the Ombudsperson reaches out to other States which he identifies to be relevant, including designating States, States of nationality, States of residence and States of incorporation. In particular, the Ombudsperson requests substantive information that may indicate an association between the petitioner and listed individuals or entities, or a lack thereof. He considers all information gathered in his analysis of the case.

13. During the reporting period, the Ombudsperson made 21 requests for information to States in three cases. The Office received 12 substantive responses, while two States indicated to the Ombudsperson that they had no information to share. Seven States expressed a view on the delisting requests. As two cases are still in the information-gathering phase, responses to the remaining seven requests may still be forthcoming.

14. The Ombudsperson met with representatives of Member States to discuss pending cases and explain the Ombudsperson's procedures and approach, including the specific requirements pertaining to the Ombudsperson's review of repeat requests. The gathering of information is further discussed in section V of the present report.

15. During the reporting period, the opportunity did not arise for the Ombudsperson to shorten the information-gathering period in the pending cases pursuant to annex II, paragraph 3, of resolution 2610 (2021).

² See www.un.org/securitycouncil/sc/ombudsperson/status-of-cases.

D. Dialogue with petitioners

16. The Ombudsperson and the Office interacted with petitioners and their legal representatives, including through written exchanges, videoconferences and in-person meetings.

E. Access to classified or confidential information

17. To date, the Office of the Ombudsperson has entered into 22 agreements or arrangements for access to classified information³ and one arrangement on an ad hoc basis.

18. The Ombudsperson calls upon Member States, especially States of nationality and residence of listed individuals, to sign an arrangement, thereby solidifying the basis for the sharing of classified, declassified or confidential information with the Ombudsperson. The Office will continue its outreach efforts to this end.

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

A. General

19. During the reporting period, the Ombudsperson had bilateral meetings with all but two members of the Committee.

20. On 3 April, the Ombudsperson met with translators from the Documentation Division of the Department for General Assembly and Conference Management. The Ombudsperson gave an overview of his mandate and addressed general matters related to translating his reports.

21. On 15 April, the Ombudsperson gave a presentation on his mandate at the National University of Malaysia. On 28 April, he gave a presentation to the members of the Sabah Law Society of Malaysia on the functions of the Office and the menace of terrorism. On 3 May, the Ombudsperson met with the Undersecretary of the Multilateral Security and International Division of the Department of Multilateral Affairs of the Malaysian Ministry of Foreign Affairs to explain the work of the Office.

22. On 13 June, the Ombudsperson met with representatives of the Group of Like-Minded States on Targeted Sanctions to discuss his mandate, the possible enhancement of its working procedures and the potential extension of the mandate to other existing sanctions regimes.

23. From 30 June to 7 July, the Ombudsperson visited London; The Hague, Kingdom of the Netherlands; Brussels; Luxembourg; and Strasbourg, France. During that time, he met with a former Ombudsperson and with members of various institutions, government officials, lawyers, academics and other experts on counter-terrorism and due process. He expressed his observations on the implementation of his mandate since he took up his duties in early 2022, as well as on issues relating to due process and European Union sanctions. The meetings included the Belgian authorities, lawyers from the European Commission working on the implementation of sanctions and members of the Committee of Legal Advisers on Public International Law of the Council of Europe. The Ombudsperson also explained his mandate to the

³ 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).

President of the European Court of Justice and with the Registrar of the European Court for Human Rights. He also met with experts of the International Centre for Counter-Terrorism.

24. On 25 July, the Ombudsperson gave a virtual presentation at the fifth international training course on United Nations sanctions held at the Geneva Graduate Institute in Switzerland.

25. On 3 August, the Ombudsperson spoke about his mandate and the work of the Office during an open briefing to Member States, emphasizing its importance in enhancing the legitimacy of the sanctions regime, the challenges the Office was facing and the way forward.

26. On 16 August, the Ombudsperson was interviewed by a senior academic researcher from the University of Oxford on the current status of the Office and its sustainability under the prevailing institutional arrangements.

B. Interaction with the Analytical Support and Sanctions Monitoring Team

27. The Ombudsperson had several meetings on pending delisting requests with individual members of the Analytical Support and Sanctions Monitoring Team. The Ombudsperson notes that the Monitoring Team's mandate is to assist the Ombudsperson in carrying out his or her mandate, including by providing updated information on those individuals, groups, undertakings or entities seeking their removal from the ISIL (Da'esh) and Al-Qaida sanctions list. The Ombudsperson welcomes further cooperation with experts of the Monitoring Team on substantive information relevant to delisting petitions and encourages the Team to submit questions that may be used during interviews of petitioners.

28. The Ombudsperson's comprehensive reports are based on a thorough analysis of the case, including an assessment of the narrative summary of the reasons for listing in each procedure. Accordingly, the Ombudsperson reiterates to the Committee and the Monitoring Team that the assessment should be used to consider updates to the narrative summary of the reasons for listing petitioners in existing listed cases, especially where the designation is retained, and bearing in mind paragraphs 57 and 58 of resolution [2610 \(2021\)](#). Such an approach is crucial from the perspective of fairness, in particular in the case of petitioners who make repeat requests for delisting.

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 Member States, in particular members of the Committee and Member States of relevance to pending delisting petitions. In addition, the Ombudsperson also liaised with Member States to discuss his mandate more generally and its importance for the legitimacy of sanctions imposed by the Committee. The Ombudsperson also discussed cooperation between Member States and his Office. In this connection, he held bilateral meetings with representatives of all but 2 of the 15 members of the Committee, as well as with some non-Committee Member States.

30. The Office interacted with agencies and bodies of the United Nations system and, as indicated above, with independent experts, representatives of law enforcement agencies, legal practitioners, counter-terrorism experts, political analysts, international jurists, academics and international and human rights law professionals.

D. Working methods and research

31. As was done previously, 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

32. The Office continued to revise and update its website during the reporting period.⁴

IV. Other activities

Notifications of listing

33. For the two new names designated by the Committee during the reporting period, insufficient address information was provided to the Office for it to send notifications of listing pursuant to paragraph 21 (b) of annex II to resolution [2610 \(2021\)](#).

V. Observations and conclusions

A. Relevance of the Office

34. The Ombudsperson emphasizes his conviction that his mandate, in ensuring fairness and due process, enhances the credibility of the counter-terrorism measures taken by the Committee. The Office therefore plays an essential role in enhancing the legitimacy of the sanctions regime under resolution [1267 \(1999\)](#), which in turn strengthens the counter-terrorism efforts of the Security Council. Indeed, the critical role played by the Office in strengthening the legitimacy of the sanctions regime has also been recognized by several judicial authorities, including the European Court of Human Rights and the European Court of Justice.⁵ The Ombudsperson also notes that the Security Council, in expressing support for the Office in its resolutions, has reiterated that respect for human rights is a vital component of an effective and comprehensive approach to combating terrorism. The Ombudsperson expressed these views during his meetings with Member States and other interlocutors.

⁴ Available at www.un.org/securitycouncil/ombudsperson.

⁵ See European Court of Human Rights, *Nada v. Switzerland*, Application No. 10593/08, Judgment, 12 September 2012. Available at <https://hudoc.echr.coe.int/eng?i=001-113118>. In this case, the Court underlined the importance of ensuring that fundamental rights are given more weight in the sanctions process, and welcomed the initiative of the establishment of the Ombudsperson's Office as an important step forward in this regard. See also European Court of Justice, *Mohamed Al-Ghabra v. European Commission*, Case No. T-248/13, Judgment, 13 December 2016. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62013TJ0248>. In this case, the European Court of Justice encouraged listed parties to use the Ombudsperson mechanism before resorting to the Court, thus underscoring the essential role played by the Office in providing recourse for individuals under the sanctions regime.

B. Information-sharing by Member States

35. The Ombudsperson reiterates the observations in his twenty-fourth report to the Security Council (S/2023/133) regarding the difficulties associated with receiving relevant, timely and specific information from relevant Member States. This challenge persists. Therefore, the Ombudsperson again calls upon Member States to prioritize participation in his delisting request procedures. Moreover, the Ombudsperson observes that while sharing confidential information with the Ombudsperson can assist in overcoming this challenge, it is not a panacea. Basic principles of fairness dictate that the petitioner should know the core of the information that underlies their designation and be able to respond to it.

36. In this connection, the Ombudsperson recalls the language of paragraph 69 of resolution 2610 (2021), in which the Security Council strongly urged Member States to provide all relevant information to the Ombudsperson, including any relevant confidential information, where appropriate; encouraged Member States to provide relevant information, including any detailed and specific information, when available and in a timely manner; welcomed national arrangements entered into by Member States with the Office of the Ombudsperson to facilitate the sharing of confidential information; strongly encouraged Member States' further progress in this regard, including by concluding arrangements with the Office for the sharing of such information; and confirmed that the Ombudsperson must comply with any confidentiality restrictions that were placed on such information by Member States.

37. The timely submission of information in pending cases is essential to the Ombudsperson's process of reviewing delisting requests. The Ombudsperson needs time to thoroughly analyse information and determine which information is still needed, and to prepare for his interview with the petitioner. He therefore calls upon Member States that are requested to submit information in pending cases to ensure they do so as soon as possible. He also requests that Member States submit underlying evidentiary documentation, as the Security Council, in resolution 2610 (2021), urged all Member States to ensure any nominations for listing were evidence-based.

38. The Ombudsperson also encourages Member States to submit questions for the petitioner to the Office of the Ombudsperson, which he may include in his interview with the petitioner.

39. Furthermore, the Ombudsperson notes that there has been an increase in the number of repeat requests. He urges Member States to submit recent information in these types of cases instead of relying only on previous information, which has already been assessed during earlier reviews.

C. Automatic referral

40. The Ombudsperson also notes the observations made in his twenty-fourth report (S/2023/133, para. 49) regarding "collective impact" as an unintended consequence of targeted sanctions and the incursions they have on the liberty of those who are circumstantially associated with listed individuals, particularly their undesignated family members.

41. The Ombudsperson is of the view that one way to mitigate this collective impact, and the impression of unfairness as a result of the absence of due process at the listing stage, is to explore the possibility of the Committee authorizing an automatic referral of cases to the Ombudsperson. Rather than waiting for a petitioner to approach the Office in order to conduct a review of the listing, as is the current practice, the Ombudsperson could be mandated to conduct an automatic review according to the

already established procedures within a given period after the listing. In the proposed context, it would be possible to continue the current practice of excluding names under review by the Ombudsperson from the Committee's annual review of the sanctions list.

42. The Ombudsperson has discussed this possibility with several members of the Committee, including how this may improve procedural fairness, and will continue to explore the matter.

D. Scope and nature of the Ombudsperson's work

43. The Ombudsperson reiterates that, for the reasons outlined in more detail in his twenty-fourth report, while it may appear that the workload is limited given the number of petitions currently under consideration, even one case involves a significant amount of work and time. The processes of gathering information, eliciting and following up on responses from Member States to requests for information, verifying and corroborating information and preparing the comprehensive report can be extensive and time-consuming, especially in cases related to repeat requests.

E. Institutional issues

44. In accordance with the informal arrangements by the Secretariat pertaining to the recruitment processes for staff supporting the Office, all such recruitment processes involve the Ombudsperson, whose views are taken into account.

45. The Ombudsperson is satisfied that the recruitment procedure with regard to the temporary replacement of the Legal Officer post in his Office followed all applicable United Nations guidelines. He was given the opportunity to observe the candidate interviews and share his views on the recruitment.

46. The Ombudsperson also notes that the Office is currently benefiting from the support of two interns, who are working on outreach and database projects and providing other assistance to the Office in the discharge of its mandate.

47. The Ombudsperson emphasizes that the institutional issues and recommendations raised by all former Ombudspersons in previous biannual reports remain valid.⁶ Since its establishment, all Ombudspersons have observed that the Office of the Ombudsperson's independence is dependent upon the personal efforts of the Ombudsperson as well as relevant officials within the Department of Political and Peacebuilding Affairs and the staff members assigned to the Office.⁷ Such observations remain pertinent, with the Ombudsperson reaching out to the new appointments within the Department of Political and Peacebuilding Affairs to ensure that staff are managed in a way that does not compromise independence, both perceived and actual.

⁶ S/2014/553, paras. 49–51; para. 50: "While achieved in practice, in principle, no separate office has been established and the applicable administrative arrangements, particularly for budget, staffing, staff management and resource utilization, lack the critical features of autonomy."

⁷ S/2015/80, para. 52: "In practice, the personal efforts of the Ombudsperson, relevant officials within the Department of Political Affairs, and the staff members assigned to the Office have protected the independence of the Ombudsperson and the Office. However, this is evidently not what was foreseen by the Security Council in the mandate accorded and it is an extremely fragile basis for ensuring the independence of the Office of the Ombudsperson, particularly when in future it undergoes normal transition."

48. The Ombudsperson underscores the importance of the perception that the Office is independent from possible executive influence. The fact that currently, both the Committee and the Office of the Ombudsperson are administered by the same Security Council Affairs Division within the Department of Political and Peacebuilding Affairs, while the Office of the Ombudsperson is mandated to make a recommendation to the Committee independently, can and may give rise to a perception that both the Department and the Committee are in a position to influence the Office. Institutionalizing the independence of the Office of the Ombudsperson is therefore critical to counter such a perception. The Ombudsperson has discussed institutional independence with his predecessors in order to get a clearer understanding of their expressed views. He welcomes further discussions with the Secretariat and Member States with a view to finally resolving these pressing issues and to ensuring the institutional autonomy of the Office.

F. Summary of analysis; redacted comprehensive report

49. In six cases that were completed during the reporting period, the Ombudsperson shared a redacted version of the applicable comprehensive report with the petitioner, in both retention and delisting cases. Thus far, a total of 13 redacted comprehensive reports have been shared with petitioners.

50. The Ombudsperson continues the practice established in 2021 by the Office, together with the Committee, of sharing with the petitioner a redacted version of the comprehensive report rather than a summary of the Ombudsperson's analysis only. The Ombudsperson recommends changing the language in the next resolution, scheduled for 2024, to reflect the current practice of sharing a redacted version of the comprehensive report with the petitioner, which he believes continues to enhance transparency.

51. The Ombudsperson reiterates the importance of transparency in the Ombudsperson's procedures as a crucial component of fairness to petitioners. It is also an indication of legitimacy with regard to judiciaries around the world for whom the Ombudsperson's procedures are crucial for determining the effectiveness of the sanctions applicable through the ISIL (Da'esh) and Al-Qaida sanctions regime.

G. Security Council resolution 2610 (2021)

52. As reported in the Ombudsperson's two most recent biannual reports (S/2022/608 and S/2023/133), a solution has yet to be found for the contradiction that is inherent in the language of paragraphs 13 and 14 of annex II to resolution 2610 (2021). As reported previously, the issue relates to new language regarding the sharing of comprehensive reports with non-Security Council members who participated in the delisting review process.

53. As communicated to the Committee during the present reporting period, faced with the impossibility of complying with both provisions at once (in most cases, compliance with one paragraph necessarily results in a breach of the other), the Ombudsperson has continued the practice that was in place prior to the adoption of resolution 2610 (2021). This means that the Ombudsperson shares his comprehensive report only upon request by a Member State and with the approval of the Committee pursuant to paragraph 14 of annex II to resolution 2610 (2021). He will continue to do so until new guidance becomes available.

Annex

Status of recent cases¹

Case 107, one individual (Status: information-gathering phase)

<i>Date</i>	<i>Description</i>
23 June 2023	Transmission of case 107 to the Committee
23 October 2023	Deadline for completion of the four-month information-gathering period

Case 106, one individual (Status: information-gathering phase)

<i>Date</i>	<i>Description</i>
26 May 2023	Transmission of case 106 to the Committee
26 September 2023	Deadline for completion of the four-month information-gathering period

Case 105, Abd al-Aziz Aday Zimin al-Fadhil (Status: delisted)

<i>Date</i>	<i>Description</i>
31 May 2022	Transmission of case 105 to the Committee
1 October 2022	Information-gathering period completed
24 January 2023	Comprehensive report submitted to the Committee
5 April 2023	Presentation of the comprehensive report by the Ombudsperson to the Committee
5 June 2023	Committee decision to delist
16 June 2023	Formal notification to the petitioner with redacted version of the comprehensive report (in lieu of the summary of analysis)

¹ 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.

Case 104, Hamad Awad Dahi Sarhan al-Shammari (Status: delisted)

<i>Date</i>	<i>Description</i>
27 May 2022	Transmission of case 104 to the Committee
27 September 2022	Information-gathering period completed
24 January 2023	Comprehensive report submitted to the Committee
5 April 2023	Presentation of the comprehensive report by the Ombudsperson to the Committee
5 June 2023	Committee decision to delist
16 June 2023	Formal notification to the petitioner with redacted version of the comprehensive report (in lieu of the summary of analysis)

Case 103, one individual (Status: denied)

<i>Date</i>	<i>Description</i>
23 May 2022	Transmission of case 103 to the Committee
23 November 2022	Information-gathering period completed
23 March 2023	Comprehensive report submitted to the Committee
26 May 2023	Presentation of the comprehensive report by the Ombudsperson to the Committee
26 May 2023	Committee decision to retain the listing
8 June 2023	Formal notification to the petitioner with summary of analysis in the comprehensive report

Case 102, one individual (Status: denied)

<i>Date</i>	<i>Description</i>
10 May 2022	Transmission of case 102 to the Committee
10 September 2022	Information-gathering period completed
10 January 2023	Comprehensive report submitted to the Committee
21 March 2023	Presentation of the comprehensive report by the Ombudsperson to the Committee
21 March 2023	Committee decision to retain the listing
5 April 2023	Formal notification to the petitioner with summary of analysis in the comprehensive report

Case 101, one individual (Status: denied)

<i>Date</i>	<i>Description</i>
4 May 2022	Transmission of case 101 to the Committee
4 September 2022	Information-gathering period completed
4 January 2023	Comprehensive report submitted to the Committee
21 March 2023	Presentation of the comprehensive report by the Ombudsperson to the Committee
21 March 2023	Committee decision to retain the listing
5 April 2023	Formal notification to the petitioner with summary of analysis in the comprehensive report

Case 100, one individual (Status: denied)

<i>Date</i>	<i>Description</i>
17 December 2021	Transmission of case 100 to the Committee
17 June 2022	Information-gathering period completed
15 December 2022	Comprehensive report submitted to the Committee
1 March 2023	Presentation of the comprehensive report by the Ombudsperson to the Committee
1 March 2023	Committee decision to retain the listing
15 March 2023	Formal notification to the petitioner with summary of analysis in the comprehensive report