

Letter dated 7 August 2020 from the Ombudsperson addressed to the President of the Security Council

I have the honour to transmit herewith to you the nineteenth 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 February 2020 to 7 August 2020.

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

* Circulated in the language of submission only.

Report of the Office of the Ombudsperson submitted pursuant to Security Council resolution 2368 (2017) (Advance unedited version of the report submitted to the Security Council)

I. Background

1. The present report provides an update on the activities undertaken by the Office of the Ombudsperson since the issuance of the eighteenth report of the Office to the Security Council on 7 February 2020 ([S/2020/106](#)).

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 and entities. In the context of his casework, the Ombudsperson communicated with relevant Member States, and he conducted independent research and interviews with various interlocutors.

3. The Ombudsperson presented one Comprehensive Report to the Committee, pursuant to paragraph 10 of annex II to Security Council resolution 2368 (2017). As an exceptional measure due to Covid-19, the presentation was submitted in writing. This situation is discussed in more detail in part IV below.

4. The Ombudsperson also signed two information-sharing arrangements with Member States during the reporting period.

B. Delisting requests

5. During the reporting period, two new petitions were submitted to the Office. As at 7 August 2020, a total of 91 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 as well as in the case of denial or withdrawal of a petition.

6. In total, the Ombudsperson has submitted 86 comprehensive reports¹ to the Committee since the Office was established. During the reporting period, one report was submitted to the Committee, which remains under the Committee's consideration at the time of writing.

7. Since the issuance of the eighteenth report, one listing has been retained and three names have been removed from the Committee's sanctions list following the Ombudsperson's review and recommendation.

¹ 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.

8. Cumulatively, since the Office was established, 88 cases involving requests from an individual, an entity or a combination of both have been resolved through the Ombudsperson process or through a separate decision of the Committee. In the 83 cases fully completed through the Ombudsperson process, 62 delisting requests have been granted and 21 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.² An update to the status of cases since the previous report is contained in the annex to the present report.

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

10. The three pending cases were each filed by an individual. To date, in total, 83 of the 91 cases have been brought by individuals alone, 2 by an individual together with one or more entities, and 6 by entities alone. In 51 of the 91 cases, the petitioner is being or was assisted by legal counsel.

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

C. Gathering information from States

12. With regard to the cases accepted during the reporting period, the Office sent requests for information to 14 Member States. The Ombudsperson also met in New York with the representatives of some Member States to discuss the information-gathering phase in the cases.

13. In addition to meetings in New York, the Ombudsperson communicated via videoconference on one occasion with officials in their respective capital to gather information on a specific case.

14. 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 \(2017\)](#).

15. During the reporting period, two of the three Member States that put forward petitioners' names for designation responded to the Ombudsperson's requests for information.

D. Dialogue with the petitioner

16. 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.

17. During the reporting period, the Ombudsperson conducted one interview with a petitioner via videoconference as an exceptional measure due to Covid-19. This situation is discussed in more detail in part IV below.

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

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

A. General

18. The Office co-organised an online panel discussion on 15 June 2020 to commemorate the ten-year anniversary of the establishment of the Office of the Ombudsperson (resolution [1904 \(2009\)](#)).³ The Ombudsperson participated in this discussion, together with the two former Ombudspersons and other legal practitioners. The office co-organised the discussion with the Asser Institute - Center for International & European Law, and the International Centre for Counter-Terrorism (ICCT) in The Hague, The Netherlands. The discussion was originally intended to take place in person in The Hague, but due to Covid-19 was held as a webinar instead.

19. The Ombudsperson also participated at a webinar on 15 July 2020 organised by the Asser Institute and the Global Counterterrorism Forum (GCTF) on the Implementation of Watchlists and Independent Oversight & Information Management and Access.

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

20. During the reporting period, the Office continued to engage with the 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 \(2017\)](#).

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

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

22. The Office also liaised with representatives of law enforcement agencies, legal practitioners, United Nations special rapporteurs and international and human rights law professionals.

23. The Ombudsperson also conducted discussions with academics and representatives of the UN Secretariat about methodological issues and different standards of evidence in judicial and quasi-judicial review proceedings.

24. As mentioned in paragraph 4 above, the Ombudsperson also reached agreement on two information-sharing arrangements with Member States during the reporting period.⁴

D. Working methods and research

25. 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.

³ See <https://www.youtube.com/watch?v=4V4AuckG-OU&feature=youtu.be>.

⁴ See https://www.un.org/securitycouncil/ombudsperson/classified_information.

E. Website

26. The Office continued to revise and update its website during the reporting period.⁵

27. When a name is delisted following review by the Ombudsperson, the Office refers on its Status of Cases webpage to the Committee's press release announcing the delisting. The Ombudsperson welcomes the Committee's new approach limiting the information published in the press release to only that which is necessary for identification purposes.

IV. Observations and conclusions

28. The observations set out in the Ombudsperson's previous reports (in particular [S/2020/106](#), [S/2019/621](#), [S/2019/112](#) and [S/2018/579](#)) remain valid. Regarding the well-documented issues concerning the Office's independence, the Ombudsperson intends to comment systematically at a later date.

29. 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 coronavirus pandemic. Some adaptation of working methods was required in order to achieve this, as detailed below.

30. The Ombudsperson is required to present his comprehensive reports to the Committee in person during informal consultations (see resolution [2368 \(2017\)](#), annex II, paragraph 10). The timeline for presentation of the comprehensive report in Case 88 fell in the first half of April 2020, at which time the impact of the pandemic had made in-person meetings impossible. In lieu of an in-person discussion, the Ombudsperson presented his comprehensive report to the Committee in writing, and an exchange of written correspondence between the Ombudsperson and the Committee followed. Regarding the presentation of future comprehensive reports to the Committee, the Ombudsperson supports the use of videoconference technology where an in-person meeting is not possible.

31. Regarding Case 89, as part of the effort to contain the spread of the coronavirus, the border of the petitioner's country of residence was closed to non-citizens throughout the extended dialogue period. Therefore, on 7 July 2020, the Ombudsperson conducted an interview with the petitioner via videoconference with his legal counsel present. Also present on the call were an interpreter, as well as the Legal Officer and Research Assistant supporting the Office of the Ombudsperson, with the latter providing technical support throughout.

32. The Ombudsperson takes the opportunity to reiterate in this context that the decision to conduct the interview via videoconference in Case 89 was made with the petitioner's consent on an exceptional basis and without prejudice to future cases. In taking the decision, the Ombudsperson was cognisant of balancing the petitioner's right to be heard against the right to timely resolution of the case. Ultimately in this case, both rights were protected.

33. It should be emphasized once again that in order for the Ombudsperson to properly and professionally exercise his or her mandate, videoconferences should be used for petitioner interviews only as a measure of last resort. Resolution [2368 \(2017\)](#) provides clearly in annex II, paragraph 7 (c), that the Ombudsperson "should meet

⁵ www.un.org/securitycouncil/ombudsperson.

with the petitioner, to the extent possible”. A petitioner’s right to be heard requires that a petitioner should be interviewed in person whenever possible. Interviews undertaken by videoconference restrict the Ombudsperson’s wholistic observation of the petitioner regarding certain important indices of credibility, such as body language, tone, facial expressions, and overall demeanour. Moreover, virtual interviews place an additional burden upon interpreters as they navigate the compounding aural challenges that the format poses. Finally, the virtual format significantly inhibits the Ombudsperson’s ability to control and observe the petitioner’s communication with third parties during the interview.

34. At the time of writing, the Ombudsperson has two cases for which he is working with relevant Member States towards achieving the goal of an in-person interview.

35. The Ombudsperson is grateful for the infrastructure that has made it possible to fulfil his mandate without having to be physically present in the office during the coronavirus pandemic. The Ombudsperson fully supports a move towards greater flexibility when it comes to telecommuting. However, he also emphasises that the nature of the Ombudsperson’s mandate is such that it would not be feasible to move the Ombudsperson’s home base away from United Nations Headquarters.

Annex

Status of recent cases¹

Case 91, one individual (Status: information gathering period)

<i>Date</i>	<i>Description</i>
5 May 2020	Transmission of case 91 to the Committee
5 September 2020	Deadline for completion of the four-month information gathering period

Case 90, one individual (Status: dialogue period)

<i>Date</i>	<i>Description</i>
10 March 2020	Transmission of case 90 to the Committee
10 July 2020	Information gathering period completed
10 September 2020	Deadline for completion of the two-month dialogue period

Case 89, one individual (Status: Committee phase)

<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

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

¹ The status of all cases since the establishment of the Office of the Ombudsperson can be accessed at the website of the Office, <https://www.un.org/securitycouncil/sc/ombudsperson/status-of-cases>.

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 Bouchoucha (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

<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

Case 83, Mourad Ben Ali Ben al-Basheer al-Trabelsi (Status: delisted)

<i>Date</i>	<i>Description</i>
29 January 2019	Transmission of case 83 to the Committee
29 May 2019	Information gathering period completed
26 July 2019	Comprehensive Report submitted to the Committee
5 September 2019	Presentation of the Comprehensive Report by the Ombudsperson to the Committee
5 November 2019	Committee decision to delist
14 November 2019	Formal notification to the petitioner with summary of analysis in the Comprehensive Report

Case 82, one individual (Status: denied)

<i>Date</i>	<i>Description</i>
29 November 2018	Transmission of case 82 to the Committee
29 May 2019	Information gathering period completed
27 September 2019	Comprehensive report submitted to the Committee
7 November 2019	Presentation of the Comprehensive Report by the Ombudsperson to the Committee
7 November 2019	Committee decision to retain listing
18 November 2019	Formal notification to the petitioner with summary of analysis in the Comprehensive Report

Case 81, one individual (Status: denied)

<i>Date</i>	<i>Description</i>
19 June 2018	Transmission of case 81 to the Committee
7 December 2018	Information Gathering period completed

<i>Date</i>	<i>Description</i>
5 April 2019	Comprehensive report submitted to the Committee
16 May 2019	Presentation of the Comprehensive Report by the Ombudsperson to the Committee
16 May 2019	Committee decision to retain listing
30 May 2019	Formal notification to the petitioner with summary of analysis in the Comprehensive Report
