

Letter dated 23 July 2021 from the Ombudsperson addressed to the President of the Security Council

I have the honour to transmit herewith to you the twenty-first 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 9 February 2021 to 23 July 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

* 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 twentieth report of the Office to the Security Council on 8 February 2021 ([S/2021/122](#)).

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. On 3 June 2021, the Ombudsperson submitted his resignation to the Secretary-General¹, effective 17 December 2021. In light of his resignation and ensuring fair process in pending procedures, the Ombudsperson reached out to the lawyers in two recently accepted cases to inform them of the decision and its impact on the cases of their clients. The Ombudsperson also interacted with the Chair of the Committee, Committee Members and the Secretariat to discuss how to guarantee a continued fair process for the petitioners. The Ombudsperson's resignation is discussed in more detail in section IV below.

4. During the reporting period, the Ombudsperson presented two 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 \(2017\)](#). The reports were presented during an in-person meeting of the Committee on 7 July 2021. This was the first time the Ombudsperson met the Committee members in person since exceptional measures relating to the coronavirus disease (COVID-19) pandemic were put in place last year. The impact of the pandemic is discussed in more detail in section IV below.

B. Delisting requests

5. During the reporting period, three new petitions were submitted to the Office of the Ombudsperson. As at 23 July 2021, a total of 96 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

¹ Letter to the Secretary-General, 3 June 2021, available at: https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/20210603_letter_to_secretary-general_0.pdf

denial or withdrawal of a petition, the petitioner's name is not revealed at any stage of the process.

6. In total, the Ombudsperson has submitted 90 comprehensive reports² to the Committee since the Office was established. During the reporting period, two reports were submitted to the Committee, one of which remains under the Committee's consideration at the time of writing.

7. Since the issuance of the twentieth report, one individual has been retained and two individuals have been delisted from the Committee's sanctions list following the Ombudsperson's review and recommendation.

8. Cumulatively, since the Office was established, 92 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 87 cases fully completed through the Ombudsperson process, 64 delisting requests have been granted and 23 have been denied. As a result of the 64 petitions granted, 59 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.³ The status of the most recent cases is contained in the annex to the present report.

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

10. The four pending cases were each filed by an individual. To date, in total, 88 of the 96 cases have been brought by individuals alone. Two of the cases were brought by an individual together with one or more entities, and six by entities alone. In 56 of the 96 cases, the petitioner is being or was assisted by legal counsel.

11. In addition to the four pending cases, during the reporting period the Office engaged in dialogue with one other designated individual who has expressed interest in filing a petition for delisting but has not yet done so.

C. Gathering information from States

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

13. With regard to the cases accepted during the reporting period, the Office sent requests for information to 14 Member States.

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

² 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.

³ See www.un.org/securitycouncil/sc/ombudsperson/status-of-cases.

15. With regard to one case which was completed during this reporting period, the Ombudsperson is satisfied that all seven Member States who were asked to submit information did so. This included the Designating State, the State of nationality and residence and relevant States.

16. In a second case which was completed during this reporting period, the Office received substantive responses to the Ombudsperson's request for information from four States, while five States did not respond at all.

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 \(2017\)](#).

D. Dialogue with petitioners

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

19. During the reporting period, the Ombudsperson conducted one interview with a petitioner. The Ombudsperson conducted this interview by videoconference, as an exceptional measure as a result of the COVID-19 pandemic. The Ombudsperson reiterates that interviews should take place in person for a more holistic experience during a meeting and to uphold the standard of fairness to the petitioner. The impact of the pandemic is discussed in more detail in section IV below.

E. Delay in the consideration of a case by the Committee

20. During the reporting period, in one case (Case 92), the Committee considered the Ombudsperson's Comprehensive Report three days after the deadline under paragraph 11 of Annex II to resolution [2368 \(2017\)](#), i.e. outside of the timelines and in violation of the resolution. The reason for this delay was a conflicting Security Council meeting held at the same time as the originally planned Committee meeting. As a result, no interpretation services were available and the Committee meeting was rescheduled.

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

A. General

21. On 10 February 2021, The Ombudsperson met with the Rule of Law Unit of the Executive Office of the Secretary General.

22. On 5 May 2021, the Kuwaiti authorities met with the Ombudsperson via videoconference. The authorities provided information concerning a rehabilitation program established by the government and offered to listed Kuwaiti citizens. Kuwait committed to informing the Ombudsperson regularly in the future about the progress of that program. If the program is successful, it could lead to delisting requests, which will be supported by the Kuwaiti authorities.

23. On 22 July 2021, the Ombudsperson met with the Chef de Cabinet of the Secretary-General to discuss the reasons underlying his resignation and the contractual arrangements for the Ombudsperson position, with a view to improve the conditions for his successor (*see below*, Section IV-A).

24. During the reporting period, the Office of the Ombudsperson engaged with a Professor of the Law Faculty of Leiden University in the Netherlands regarding educational projects on due process and international law.

25. During the reporting period, the Ombudsperson held a number of bilateral meetings with Member States to discuss amending the format of the summary of analysis shared with petitioners after the Committee's decision.

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

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

27. Since 9 February 2021, the Ombudsperson has presented two comprehensive reports to the Committee. The presentations were done orally during an in-person Committee meeting.

28. In the context of the presentation, the Ombudsperson proposed a change in the current practice concerning the format of the summary of analysis shared with petitioners after the conclusion of their case. Under this proposal, the Ombudsperson would be able to share visibly redacted versions of the Comprehensive Report with the petitioner instead of the summary of analysis being formatted as a separate document. This redacted version of the Comprehensive Report would thus constitute the summary of analysis. This proposal, if accepted, would improve the transparency of the process.

29. The Monitoring Team provided substantive assistance to the Office of the Ombudsperson in one case; two experts received new information from the Ombudsperson which had been submitted to the Office of the Ombudsperson by a petitioner during the dialogue period. The experts analysed the information and shared their views with the Ombudsperson.

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

30. 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.

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

D. Working methods and research

32. As 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

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

34. The Office continued to publish the “Historical guide of the Ombudsperson process through Security Council resolutions and reports of the Office of the Ombudsperson to the Security Council”, a compilation of the contents of the analytical sections of the biannual reports presented by the Office of the Ombudsperson to the Security Council to date, together with relevant excerpts of the applicable Security Council resolutions.

35. The Office also updated the procedure section of the website to provide a more thorough explanation of the process relating to the communication of the decision and the summary of analysis provided for in resolution 2368 (2017).

36. Finally the Office updated the section of the website on the approach to analysis, assessment of information and use of information. In particular, new information was added on the application of the concept of conditional intent in the context of the Ombudsperson process.

IV. Observations and conclusions

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

A. Resignation and Independence

38. On 3 June 2021, the Ombudsperson submitted his [resignation](#) to the Secretary-General.⁵ He cited the contractual arrangements for the Ombudsperson position, which, combined with his personal situation, made it impossible for him to continue in the post beyond the current mandate of the resolution. His resignation will take effect on 17 December 2021.

39. As noted, 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.

40. 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.

41. As reiterated in the twentieth report to the Council ([S/2021/122](#)), the Ombudsperson and his predecessors have all raised concerns with respect to the lack of institutional independence of the Office of the Ombudsperson arising from the contractual, administrative and staffing arrangements through which the relevant

⁴ www.un.org/securitycouncil/ombudsperson.

⁵ Letter to the Secretary-General, 3 June 2021, available at:

https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/20210603_letter_to_secretary-general_0.pdf

resolutions have been implemented. While the Secretariat has addressed a few of the concerns informally on a case-by-case basis over the years, it remains that the way the Office is integrated into the Secretariat, the Ombudsperson's contractual arrangement and the resultant working conditions are simply not appropriate for the function of the Ombudsperson as an independent reviewer.

42. Some of the remaining issues are outlined below.

43. *Structure*: despite the language in the relevant resolutions, no Office of the Ombudsperson has been created as a distinct United Nations entity.

44. *Reporting line of the staff supporting the Office of the Ombudsperson*: in addition to the fact that the staff supporting the Office of the Ombudsperson do not report to the Ombudsperson because of the nature of his contract, they have a reporting line within DPPA/SCSOB⁶, the very branch that is responsible for supporting the Committees that impose sanctions. This structure results in a *prima facie* potential conflict of interest and creates an undue burden for the staff.

45. *Lack of decision-making power on expenses, in particular with respect to travel*: all travel must be pre-approved using DPPA's routine procedures. This process involves explaining the purpose of the trip and annexing documentary evidence of confirmed meetings (much of which is redacted, given the confidential nature of Ombudsperson proceedings). This requirement remains despite the decision in 2019 to grant the Office of the Ombudsperson a stand-alone budget.

46. *Duration of the office holder's term*: the short-term and unpredictable duration of the contract on which the Ombudsperson is engaged constitutes a threat to independence. The five-year limit is an administrative limit arising from the nature of the contract, rather than one imposed by the Council.

47. *Consultancy contract*: unlike individuals hired under different contracts by the United Nations, the Ombudsperson receives no pension, health insurance, sick leave or other justifiable leave (such as maternity or paternity leave) or any guarantee for medical evacuation. A possible unintended consequence of these conditions is the exclusion of certain qualified candidates, for example single persons with school-age children for whom residence in New York would be unaffordable.

48. The Council has an opportunity to address the inappropriate contractual arrangement and the lack of institutional independence afforded to the Office in its upcoming resolution, and the Ombudsperson invites it to do so. Otherwise, these contractual arrangements may not attract candidates with the necessary skill mix and experience required for the position of the Ombudsperson in the future.

49. As noted above, the Ombudsperson met with the Chef de Cabinet of the Secretary-General during the reporting period, to discuss these issues and explore solutions.

B. Acting Ombudsperson or another representative

50. The Ombudsperson reiterates his view expressed in the fifteenth⁷ and sixteenth⁸ reports to the Council, that the Ombudsperson mechanism should be functional at all times, including during a vacancy of the Ombudsperson position. The Ombudsperson recommended the creation of a mechanism which could consider delisting requests in the absence of an Ombudsperson, to be activated temporarily as needed. This could

⁶ The Department of Political and Peacebuilding Affairs/Security Council Subsidiary Organs Branch.

⁷ Office of the Ombudsperson's Fifteenth report to the Security Council, [S/2018/579](#), para. 26.

⁸ Office of the Ombudsperson's Sixteenth report to the Security Council, [S/2019/112](#), paras 24-25.

be for example an acting Ombudsperson or another person with delegated authority to temporarily represent the Ombudsperson. These observations are particularly important considering the Ombudsperson's resignation explained above. The Ombudsperson notes that he submitted his resignation on 3 June 2021, and that as of today, unfortunately the vacancy announcement has not been published. Given the administrative constraints and political hurdles involved in such a recruitment, concerns of a gap are legitimate and should be addressed as much as possible. The Council has an opportunity to minimise the negative impacts of any vacancy of the Ombudsperson position by providing for such an *ad-hoc* mechanism in the next resolution, pending the appointment of a fully-fledged Ombudsperson. This would be the only way to guarantee that a review mechanism remains available to listed individuals and entities at all times, and that delisting requests continue to be considered expeditiously, which is central to the fairness of the process.

C. Practical issues linked to the pandemic

51. During the reporting period, the Office of the Ombudsperson delivered on all aspects of its mandate, despite the restrictions imposed as a result of the COVID-19 pandemic and necessary adaptations to working methods. In this reporting period, the Ombudsperson was unable to travel to the petitioner's country of residence to hold in-person meetings with the authorities and the petitioner in one case (case 93). The relevant discussions, and in particular the interview with the petitioner, were therefore conducted via videoconference. As in a previous case mentioned in the Ombudsperson's last bi-annual report ([S/2021/122](#)), the decision to conduct the interview via videoconference in case 93 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. The Ombudsperson cannot emphasise enough the importance of in-person interviews with petitioners, as this setting is much more conducive to achieving a frank dialogue. The Ombudsperson thus welcomes the recent return to the practice of in-person meetings and is planning an in-person interview in a pending case.

52. The Ombudsperson was also able to deliver an in-person presentation to the Committee in cases 92 and 93, as envisaged by the Council.

D. Fairness: Confidentiality

53. During this reporting period, the Ombudsperson was made aware of a practice under which an unprotected non-watermarked Word version of his Comprehensive Report with tracked changes showing confidential information was being circulated to the Committee. This practice was part of the process of preparing the summary of analysis to be sent to the petitioner. After concerns were raised with the Secretariat, the practice was changed to circulating only a redacted version of the document.

E. Gender dimension of sanctions: impact of sanctions on the families of listed individuals

54. There are very few women listed on the ISIL (Da'esh) and Al-Qaida Sanctions list. That is not to say, however, that sanctions have no gender dimension. As part of the Dialogue phase of the Ombudsperson process, the Ombudsperson is in a unique position to hear about the impact of sanctions on non-listed individuals, i.e. the family members of listed individuals. Over the years, petitioners have shared with my predecessors and myself the enormous effect sanctions have had not only on their

own lives, but also on their spouses and children. Many petitioners have been listed on the 1267 Sanctions List for ten to fifteen years and their families have thus felt the long-term repercussions of sanctions. Many petitioners were unaware of the possibility to apply for exemptions until the Ombudsperson mentioned this during the Ombudsperson process. Some petitioners were previously the sole breadwinner of the family, leaving whole families without income, in poverty and unable to afford the desired level of education for the children. Petitioners have described the stigma and reputational damage resulting from sanctions, one of them noting that he and his family have become “social outcasts”. Others have lamented their inability to marry because of the stigma associated to sanctions and being perceived as a “terrorist”. Yet another petitioner described how his grown-up daughters were unable to find a spouse and found their own families for the same reasons. There should be a guarantee that the children of listed persons receive the primary and higher education to which they are entitled.

F. Provision of legal assistance to petitioners

55. As noted in the twentieth report to the Council ([S/2021/122](#)), the Office has been 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”.

56. The Ombudsperson recalls his observations regarding the provision of legal assistance to petitioners in his seventeenth report to the Council ([S/2019/621](#)). He invites the Security Council or the Committee to consider clarifying, whether in the upcoming resolution, the Committee’s guidelines⁹ or the explanation of terms papers¹⁰, 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. To his knowledge, no such discussion has taken place to date.

G. Member State consideration of delisting requests

57. As mentioned in his previous report to the Council¹¹, the Ombudsperson suggests providing Committee members that have expressed an opinion on a particular delisting request with an opportunity to reconsider their position on the request after reading the Ombudsperson’s Comprehensive Report. For example, when the Committee meets with the Ombudsperson to consider the Comprehensive Report, the Chair may wish to invite those Committee members that have stated their opposition to delisting to reconsider their position in the light of the new information gathered. The upcoming resolution in December 2021 could provide an opportunity for the Council to adopt such a practice.

⁹ See www.un.org/securitycouncil/sanctions/1267/committee-guidelines.

¹⁰ 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.

¹¹ Office of the Ombudsperson’s Twentieth report to the Security Council, [S/2021/122](#), paragraphs 39-41.

Annex

Status of recent cases¹

Case 96, one individual (Status: information-gathering phase)

<i>Date</i>	<i>Description</i>
1 July 2021	Transmission of case 96 to the Committee
1 November 2021	Deadline for completion of the four-month information-gathering period

Case 95, one individual (Status: information-gathering phase)

<i>Date</i>	<i>Description</i>
9 June 2021	Transmission of case 95 to the Committee
9 October 2021	Deadline for completion of the four-month information-gathering period

Case 94, one individual (Status: information-gathering phase)

<i>Date</i>	<i>Description</i>
1 April 2021	Transmission of case 94 to the Committee
1 August 2021	Deadline for completion of the four-month information-gathering period

Case 93, one individual (Status: Committee phase)

<i>Date</i>	<i>Description</i>
28 September 2020	Transmission of case 92 to the Committee
11 February 2021	Information-gathering period completed
11 May 2021	Comprehensive Report submitted to the Committee
7 July 2021	Presentation of the Comprehensive Report by the Ombudsperson to the Committee

Case 92, one individual (Status: denied)

<i>Date</i>	<i>Description</i>
14 August 2020	Transmission of case 92 to the Committee
14 December 2020	Information-gathering period completed
14 April 2021	Comprehensive report submitted to the Committee
7 July 2021	Presentation of the Comprehensive Report by the Ombudsperson to the Committee
7 July 2021	Committee decision to retain the listing
21 July 2021	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 through the website of the Office: <https://www.un.org/securitycouncil/sc/ombudsperson/status-of-cases>.

Case 91, Emrah Erdogan (Status: delisted)

<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)
19 February 2021	Committee decision to delist
2 March 2021	Formal notification to the petitioner with summary of analysis in the comprehensive report

Case 90, Said Ben Abdelhakim Ben Omar Al-Cherif (Status: delisted)

<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)
19 February 2021	Committee decision to delist
2 March 2021	Formal notification to the petitioner with summary of analysis in the comprehensive report
