

Open Briefing to Member States

28th November 2022

Ombudsperson: Richard Malanjum

Madam Chair, honorable delegates, fellow colleagues, ladies and gentlemen. I feel privileged to be given this opportunity to brief you about the function of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee ('1267 Committee'). I was appointed to the position in February 2022. Due to pandemic restrictions, I could only take up residence in New York in April 2022. I am the fourth Ombudsperson to hold the office since its establishment more than a decade ago. Prior to assuming this position, I was in retirement after having served as a judge for almost three decades with the Malaysian Judiciary. Although I am very much at home in domestic judicial work, I recognize that doing quasi-judicial function in a political environment demands quite a shift in mindset. I am therefore very grateful to my predecessors for the legacy they left and my present colleagues the two staff members assigned to support my office who have made my learning curve manageable so far.

To date I have built rapport with my many interlocutors including the members of the 1267 Committee, other relevant States, with representatives of international organizations and academics. I have learned a lot from the legacy of my predecessors and premised within the guidelines established by them I have been developing my own practice to meet the expectations of the Office and its mandate.

The Office was established by the Security Council resolution 1904 (2009) and started its function in July 2010, that is about twelve years ago. The core function is to assist the 1267 Committee when considering delisting requests.

Presently, the criteria for listing are set out in resolution 2610 (2021), by which the Security Council decided that an individual or entity will be eligible for inclusion on the ISIL (Da'esh) & Al-Qaida Sanctions List if they are associated with ISIL (Da'esh) or Al-Qaida. The measure is preventive in nature thus confidentiality and speed are of the essence. Accordingly, at the time of listing a targeted individual or entity is not given any opportunity to be heard. In other words, there is no due process and thus contrary

to what the former Secretary General Kofi Annan had in 2006 identified as the four basic elements of due process, namely : (i) the right of a person against whom measures have been taken to be informed; (ii) the right of such a person to be heard; (iii) the right to review by an effective review mechanism; and (iv) a periodic review of sanctions by the Security Council.

The establishment of the Office of Ombudsperson of the ISIL (Da'esh) and Al Qaida Sanctions Committee is therefore an important milestone. It has provided to a listed individual or entity the right for review by an independent mechanism. In one way it is a critical step, albeit indirectly, in enhancing the credibility of the ISIL (Da'esh) and Al Qaida sanctions regime and facilitating the implementation of sanctions by the States which otherwise might have to answer legal challenges when doing so in regional or national courts.

The Ombudsperson is given the important responsibility of providing an independent review mechanism which delivers an impartial and effective recourse to individuals and entities seeking to be removed from the ISIL (Da'esh) and Al-Qaida sanctions list. Although the role is to assist the 1267 Committee, in effect the Ombudsperson is, together with the Committee, responsible for due process and fairness in the ISIL (Da'esh) and Al-Qaida sanctions regime. In addition, the Ombudsperson also offers to such individuals and entities the possibility to know in as much detail as possible, subject to any confidentiality constraints, the information gathered during the initial phase of the process from various sources - so that they are fully aware of the case against them. It is also an opportunity for them to have their side of the story heard by the Ombudsperson and by the Committee via the Ombudsperson's Comprehensive Reports.

As stated earlier, the nature of the sanctions is preventive. Thus, the standard that has been applied by my predecessors, with which I concur to ensure consistency of approach, is lower than evidentiary standards generally applied to criminal cases. Accordingly, such standard is applied when assessing whether there is sufficient information to provide a reasonable and credible basis for the listing presently. The task of assessing involves weighing information, drawing reasonable inferences from factual circumstances and dealing with sensitive issues which may include access to

and handling of confidential information. I am familiar with this task owing to my decades of judicial experience.

Cases:

Cumulatively, since the Office was established, there are:

- 98 completed cases; and
- Seven requests currently pending with the Office of the Ombudsperson.

Of the 93 cases which have concluded through the Ombudsperson process (not including five cases that were withdrawn or rendered moot):

- 68 petitions were granted
- 25 petitions were denied.

Thus far, there has never been consensus to maintain sanctions in a case where the Ombudsperson recommended delisting, nor any referral of a case to the Security Council.

Procedure (Chart)

The Ombudsperson's review procedure must guarantee fairness and due process. The most important aspect is the right to be heard, the right to know the case and to comment on it and to know the reason for the outcome.

On our website you can find our procedural chart, with information about the different phases of the proceeding, its content, timelines, and the rules of decision making.

Transparency

Another important aspect of fairness in the procedure is transparency, in relation not only to the petitioners but also to the public in general. To address this issue, the Office

has its own website, upon which we publish not only all relevant information about the legal basis, requirements, conditions and functioning of the procedure, but also about the applicable standard of review and the reports to Security Council. The information in the website should be able to assist would-be petitioners and their counsel, if any, in preparing their petitions.

There is also the document “Historical guide of the Ombudsperson Process through Security Council resolutions and Reports of the Office of the Ombudsperson to the Security Council” found on the website. In it are issues and topics discussed since the inception of the Office.

Conclusion

In conclusion I share the views expressed by my predecessors on the challenges to be overcome if this review mechanism is to be further enhanced especially in terms of independence, perceived or otherwise, which in turn would generate further trust and confidence not only from would-be petitioners but also from regional and national courts.

Finally, I wish to express my gratitude for the trust placed in me by the Secretary-General and the ISIL (Da’esh) and Al-Qaida Sanctions Committee. I am also thankful that the United Nations have equipped the Office with motivated staff, who are very competent and dedicated in supporting the work of the Office.