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Security Council's creation of ombudsperson to look at Al Qaida and Taliban sanctions regime welcome but insufficient

"The Security Council's decision to establish an ombudsperson to analyze "delisting" of terrorist suspects on the Council's sanctions list is a welcome first step to address the human rights deficit that has marked the Council's counter-terrorism work so far" Amnesty International said today. However, the Al Qaida and Taliban sanctions regime must be developed further to meet due process guarantees.

Adopting a unanimous resolution that calls for the creation of an ombudsperson to analyze available information and "lay out ... the principal arguments concerning the delisting requests" of those seeking removal from the sanctions list is substantive progress compared to current closed procedures to which petitioners have no access. But it still falls far short of an independent and effective review mechanism mandated to examine delisting requests and to provide relief, namely lifting of the measures imposed, to those unfairly listed. Human rights groups, the previous UN Secretary-General and some concerned states have persistently called for such changes. The new ombudsperson is not even specifically mandated to make recommendations.

Amnesty International urges the Secretary-General, consulting the Security Council Committee responsible for the listing ("the 1267 Committee"), to appoint an Ombudsperson of high moral character and independence with substantive legal and human rights expertise. The organization urges the 1267 Committee to encourage the new Ombudsperson to make recommendations to it and urges the Committee to provide full transparency, including by publishing the Ombudsperson's full analysis and principal arguments about the delisting requests, whether accepted or rejected. The right to be represented by counsel must be guaranteed so that the Committee's listing decisions can be effectively questioned.

Prompted by dozens of court cases in many countries, regional courts and UN treaty monitoring bodies -- including the European Court of Justice and the Human Rights Committee -- the Security Council has sought to address major concerns about the Al Qaida and Taliban sanctions regime. These are that current UN procedures to list terrorist suspects for asset freezing and travel bans lack minimum standards of fairness and transparency. The UN General Assembly in particular has repeatedly called for "fair and transparent procedures" for placing on and removing people from sanctions lists. Court decisions specifically highlighted failures to guarantee the right to be heard and the right to judicial review.

The resolution unanimously adopted today, drafted by the USA, builds upon the persistent work of a small group of dedicated countries outside and inside the Security Council, as well NGO's, insisting that due process guarantees must be incorporated in the Security Council's listing and delisting procedures. Amnesty International salutes these states' efforts and urges them, and all other members of the Security Council, to keep the system under close review in order to strengthen basic guarantees towards building an independent review mechanism that can provide

effective relief including lifting of the measure and, if necessary, ordering reparation including compensation.

Despite claims in the resolution that the sanctions regime is "preventative in nature", Amnesty International views the Al-Qaida and Taliban sanctions regime to be punitive in nature. It allows for long term imposition of highly intrusive measures such as freezing of assets and travel bans without the right to be heard or a review or appeals mechanism. The organization has also repeatedly expressed concern that deceased persons remain on the "Consolidated List" and urged that delisting decisions are taken by majority vote instead of requiring consensus.

Positive features of the new procedures are:

- direct contact between the Ombudsperson and persons requesting to be removed from the list;
- an obligation for the ombudsperson to inform the person of delisting procedures, answer questions and provide comments in case the request is rejected;
- direct contact to seek information between the ombudsperson and states, including states of residence and nationality;
- strict timelines for information gathering, dialogue and decision making, to limit the entire process to six months and the need for the 1267 committee to provide reasons when rejecting a delisting request;
- some measures to speed up removal of dead individuals from the list.

Amnesty International furthermore urges other Security Council sanctions regimes, which similarly lack due process guarantees, to study the work and progress of the new ombudsperson mechanism carefully.

Background

The Al-Qaida and Taliban sanctions regime was established by the Security Council under resolution 1267 (1999) and further developed in a range of subsequent resolutions, nearly all adopted under the binding regime of Chapter VII of the UN Charter. It obliges all states to take targeted measures, such as asset freezing, against any individuals or entities designated by the 1267 sanctions committee to appear on the "Consolidated List".

Amnesty International has found that many of the hundreds of people on the "Consolidated List" were not informed of the listing decision, had no information about the reasons for being placed on the list, had no possibility to be heard and faced huge obstacles in being removed from the list, which requires a consensus decision by all members of the Security Council. Those typically listed can stay on the list for many years without any form of a review as there is no end date for listing. Security Council resolution 1822 (2008) made minimal improvements by requiring a detailed 'statement of case' by the proposing state, notification of a listing by a Member State, and ordering the Committee itself to review all names appearing on the 'Consolidated List'. Moreover, the names of dead persons continued to be on the list.

Under the new resolution adopted today, which was co-sponsored by Austria, Burkina Faso, Croatia, France, Japan, Mexico, the United Kingdom and Turkey - the Security Council's 1267 Committee continues to take decisions to put or remove people from the sanctions list but shall be assisted by an Ombudsperson when dealing with delisting requests. The Ombudsperson, established for 18 months, shall be supported by the Monitoring Team, established by the Security Council in 2004 to assist the 1267 Committee in its work, whose mandate was extended for another 18 months.

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