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Enhancing Due Process in UN Security Council Targeted Sanctions Regimes

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Executive Summary

The United Nations (UN) Security Council provided basic due process protection for individuals designated under its counter-terrorism sanctions regime when it created the Office of the Ombudsperson for the ISIL (Da'esh) and Al-Qaida Sanctions Committee in 2009. The Office has since strengthened sanctions implementation by addressing legitimacy challenges facing the policy instrument from litigation in courts around the world and improving the quality of designations. However, the rights to due process continue to be denied for those designated under the remaining UN sanctions regimes. Of the 934 individuals and entities currently designated for sanctions by the Security Council, a majority (584) lack access to the Office of the Ombudsperson. Recommendations that the mandate of the Office be extended to other UN sanctions regimes have been resisted by some permanent members of the Security Council.

A 2018 report by the Centre for Policy Research at the United Nations University (UNU) identified increasing numbers of cases of litigation against UN Security Council designations for non-terrorism related activities. The report also pointed to the instrumentality of due process as a means to improve targeting accuracy. The 2018 UNU report recommended that context-specific review mechanisms be established for individuals and entities designated for activities other than terrorism. This report picks up on the UNU proposal and presents ideas for context-specific review mechanisms that could provide comparable due process protections for situations of armed conflict, which constitute nearly three-quarters (72%) of the total non-terrorism related designations by the Council today.

Beginning with a discussion of the different types of conflicts for which individual sanctions have been applied – armed conflicts, proliferation, and non-constitutional changes of government – the report recommends an initial focus on creating a mechanism for armed conflict situations, particularly conflicts without counter-terrorism aspects. Next, counter-terrorism and armed conflict sanctions regimes are contrasted, and differences in political context and the kinds of information systems that underlie the respective sanctions regimes are highlighted. These differences have implications for the profiles of the potential reviewer(s), the processes that might guide their work, as well as their possible location. Core elements of due process at both the stages of listing and delisting are discussed and the report identifies two institutional options for a context-specific review mechanism for armed conflict situations: (1) an Independent Reviewer and/or (2) Panels of Independent Reviewers.

The Democratic Republic of the Congo (DRC) is recommended as an appropriate first case for the development of a new review mechanism, one that could possibly be extended to other, similar armed conflict situations without the presence of groups engaged in acts of global terrorism (such as Central African Republic, South Sudan, and Sudan). The report concludes with a draft text for a Security Council resolution, modeled after the resolution that created the Office of the Ombudsperson to ensure fundamental comparability with its due process protections, but adapted to accommodate the different experience, expertise, and procedures needed for conducting reviews in other contexts.

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Introduction

On 17 December 2009, UN Security Council Resolution 1904 was adopted, establishing the Office of the Ombudsperson for the 1267 Al-Qaida and associates sanctions regime, which at the time included listings of 400 individuals and 111 entities. The creation of the Ombudsperson responded to litigation in various States, as well as parliamentary debates and concerns expressed in transnational policy networks on the lack of fair process and effective legal remedies for those listed. At the 2005 World Summit, UN Member States called upon the Secretary-General to ensure that "fair and clear" procedures would exist for individuals on sanctions lists.[1] This call was not tailored to the 1267-regime only; it was phrased generically. Indeed, due process issues for individuals designated for sanctions by UN Sanctions Committees are fundamentally the same across regimes. Nonetheless, the Ombudsperson was confined to the 1267-regime. There have been calls and suggestions to extend the mandate of the Ombudsperson to other UN sanctions regimes beyond what is now the ISIL (Da'esh) and Al-Qaida regime with the goal of strengthening due process to ensure the effectiveness and legitimacy of UN sanctions.[2] These have not materialized.

Against this background, in 2018, the UN University's Centre for Policy Research (UNU) presented a study commissioned by the Swiss FDFA's Directorate of International Law, entitled, *Fairly Clear Risks; Protecting UN Sanctions' Legitimacy and Effectiveness through Fair and Clear Procedures*.[3] In its study, the authors observed a new wave of litigation specifically focused on UN sanctions regimes other than the ISIL (Da'esh) and Al-Qaida regime. They recommended preventive action to address fair process challenges. Specifically, their report presented the idea of developing "context-sensitive review mechanisms" for non-1267 sanctions regimes. The study argued that, while fair and clear procedures are essential for any individual whose rights are directly affected by the imposition of targeted sanctions, the exact modalities of a review

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1 *UN Doc.* A/RES/60/1, 24 October 2005, para. 109.

2 Thomas Biersteker, Sue Eckert and Marcos Tourinho, *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action* (Cambridge University Press, 2016: 273); as recommended by the High-Level Review of UN Sanctions Final Report and in several reports of the Like-Minded States Group: Letter to the President of the Security Council, 12 November 2015, S/2015/867, available at https://undocs.org/S/2015/867; Letter to the President of the Security Council, 11 December 2018 S/2018/1094, available at https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2018_1094.pdf; and see also https://www.government.se/speeches/20192/06/statement-by-ambassador-olof-skoog-of-sweden-on-behalf-of-the-group-of-likeminded-states-on-targeted-sanctions/.

3 James Cockayne, Rebecca Brubaker and Nadeshda Jayakody, *Fairly Clear Risks: Protecting UN Sanctions' Legitimacy and Effectiveness through Fair and Clair Procedures*, UNU, 2018.

mechanism may vary depending on the political context in which specific sanctions regimes operate, and on the types and sources of information underlying specific listings in different sanctions regimes (different information system contexts). According to this logic, and in light of the reality that extension of the 1267-Ombudsperson mandate to other sanctions regimes has proved difficult, the study suggested that the *functions* of the Ombudsperson be expanded to non-1267 regimes rather than the mandate per se.[4] The functions of the Ombudsperson could be expanded to a context-sensitive review mechanism, i.e., a review mechanism that is specifically designed for other types of UN targeted sanctions regimes, such as those involving armed conflicts. Given its context-sensitivity, the mechanism may then have institutional traits that are somewhat different from the 1267-Ombudsperson and tailored to the specificities and aims of the regime that it reviews. Two-thirds of the current UN sanctions regimes involve armed conflicts, and they account for the largest number of individual designations. While there is considerable variation among the armed conflict regimes, all involve mediation and negotiations at various stages, constituting a qualitatively distinctive context from countering terrorism where there typically are no direct negotiations, and therefore a need for a distinctive mechanism.

The UNU study outlined that in the context of nonproliferation sanctions regimes, individuals are often subjected to sanctions because of their position in and/or affiliation with the State that poses the actual threat to peace. In these sanctions regimes, the State and its policies are the actual target. Security Council Member States may propose designations of individuals that are involved in the targeted State's proliferation activities. Designating States are generally hesitant about sharing information about the basis of their designations, due to the fact that it may compromise intelligence sources or the extent of their intelligence gathering capabilities vis-à-vis the targeted state. This reservation complicates the idea of any type of independent review for those regimes.

Building on the findings from the UNU study, the present report elaborates on the idea for a context-sensitive mechanism that does not infringe on the Council's authority. In section 1, this report offers a typology of existing sanctions regimes, an overview of the scope of the problem, a description of the variation among armed conflict regimes, and it recommends the DRC sanctions regime as the most suitable regime to develop a context-sensitive review mechanism, with the possibility of extending this mechanism to also cover the cluster of interlinked armed conflict-regimes for CAR, South Sudan, and Sudan. In section 2, the report draws on the typology to illustrate how a review mechanism for an armed-conflict regime would differ from the Ombudsperson for the ISIL (Da'esh) and Al-Qaida regime, which is focused on counter-terrorism. Section 3 then suggests possible institutional and structural arrangements for the armed conflict-review mechanism, with an indication of the extent to which these options could minimize legal challenges. These options are compared with the Ombudsperson, and some suggestions are also offered on how the two institutions should relate. Section 4 applies the proposed option to the sanctions regime for the DRC, offers a concrete institutional design, and discusses the particularities associated with the DRC context. Finally, section 5 provides a draft annex with commentary for the proposed mechanism for a future UN Security Council Resolution.

[4] This suggestion builds on Australia's recommendation in the context of its assessment of the High Level Review, *UN Doc*. A/71/943-S/2017/534, 23 June 2017, Annex, Recommendation 5, p. 11.

1. Typology and overview of designations in ongoing UN sanctions regimes

1.1 Types of individual sanctions

All of the UN sanctions regimes currently in place entail individual designations. Of the regimes not covered by the Office of the Ombudsperson, two have only one type of individual sanction in place (Guinea-Bissau with only a travel ban and Iraq with only an asset freeze), while two regimes have three types of individual restrictions authorized (Taliban and Yemen have travel bans, asset freezes, and individual arms embargos in place). All of the other sanctions regimes have individual travel bans and asset freezes authorized (CAR, DPRK, DRC, Lebanon, Libya, Mali, Somalia, South Sudan, and Sudan).

1.2 Scope of the problem

A total of 429 individuals are subject to individual sanctions in the sanctions regimes not covered by the mandate of the Office of the Ombudsperson. A total of 155 groups, undertakings or entities are subject to restrictive measures, bringing the total affected to 584 designees. Any one of these individuals or entities may theoretically choose to pursue the course of litigation against UN Member States' application of the measures in national or regional courts.

In addition to the risk of new litigation, it is also problematic that UN sanctions regimes do not compare well to regional or even unilateral sanctions on the point of procedure and remedies. While unilateral or autonomous, non-UN sanctions, are mostly applied within a setting in which generalized procedures are in place including legal remedies,[5] UN sanctions – apart from the ISIL (Da'esh) and Al-Qaida regime – remain lacking in terms of adequate or minimally acceptable review mechanisms.[6] This poses a risk to sanctions from a legitimacy and effectiveness point of view, and it increases the tendency to consider UN sanctions outmoded when compared to national or regional review mechanisms.[7] The UNU *Fairly Clear Risks* report also pointed to the instrumentality of due process as a means to ensure targeting accuracy and noted the broader repercussions that the lack of adequate remedies may have for the system of collective sanctions.[8]

Although the potential violation of individual rights is fundamentally the same for all UN sanctions regimes, as discussed at length in the UNU *Fairly Clear Risks* study, there is significant variation in the different contexts of the sanctions regimes not currently covered by the Office of the Ombudsperson. The UN Security Council applies sanctions to maintain international peace and security for a variety of different reasons beyond countering the commitment of acts of terrorism (the one regime currently covered by the Ombudsperson). Sanctions are also applied to address situations of armed conflict, conflicts over the violation of nonproliferation norms, and

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5 See, e.g., for an analysis on US sanctions, Elena Chachko, Due process is in the details: US targeted economic sanctions and international human rights law, in 113 *AJIL Unbound symposium*, Anne van Aaken (ed.), pp. 157-162, 2019. For an analysis on EU and UK sanctions, see here: www.europeansanctions.com.

6 While individuals and corporate entities have access to the Focal Point Mechanism within the UN Secretariat, the consensus opinion among legal scholars is that it cannot provide due process and does not approximate the *de facto* effective remedy protections offered by the Office of the Ombudsperson.

7 This is despite the fact that recent listings by the UN surpass the level of detail provided by the US Office of Foreign Asset Control in its narrative statements of case.

8 Cockayne, Brubaker and Jayakody, (fn. 3), pp. 18-20.

to signal opposition to non-constitutional changes of government. One of the thirteen sanctions regimes under consideration in this report is concerned with violations of the nonproliferation regime (DPRK), affecting a total of 80 individuals and 75 entities (or 26.5% of the total designees not covered by the Ombudsperson). Guinea-Bissau, the sole UN sanctions regime concerned with a non-constitutional change of government, affects only ten individuals by (or 2.3% of the total individual designations not covered). By far the most common type of contextual setting for sanctions currently in place are those intended to address situations of armed conflict.[9] The ten situations of armed conflict entail a total of 339 individual designations and sanctions on 80 corporate entities (for a total of 419 or more than two thirds, 71.7%, of the total designations made by the UN that are not subject to the Ombudsperson's review). See **Table 1** for details of the total number of listings by the UN Security Council.

1.3 Variations among armed conflict sanctions regimes

Six of the sanctions regimes applied to armed conflict situations are in Africa, while there are three in the Middle East, and one in South-central Asia. There is considerable variation among the contexts of the armed conflict sanctions regimes beyond their geographical locations. Six of the ten have a significant counter-terrorism dimension to them – Iraq, Libya, Mali, Somalia, Taliban, and Yemen – involving elements of Al-Qaida and ISIL or groups openly affiliated with either of them.[10] These six regimes account for 277 of the individual designees and 69 of the entities (for a total of 346, or 82.6% of those designated in armed conflict sanctions regimes), but since they have a counter-terrorism element, at least some of their designations could conceivably be handled by the Office of the Ombudsperson.[11] The remaining four situations of armed conflict – CAR, DRC, South Sudan, and Sudan – do not have any significant link to groups engaged in acts of terrorism and account for 17.4% of those designated.

The degree of fragmentation among conflict parties is an important distinguishing characteristic in the armed conflict sanctions cases, one that can have significant implications for the potential mediation and resolution of conflicts. Six out of ten cases have relatively low fragmentation, with two principal adversaries involved, while four – DRC, Libya, Mali, and Yemen – have high degrees of fragmentation, with multiple parties to the conflict. The highly fragmented cases do not account for many of the designations, however, with only 21% of the total designations of individuals and entities in armed conflicts.

Some permanent members of the UN Security Council have in the past raised concerns that the introduction of an independent review mechanism in cases involving armed conflict could lead to interference with ongoing mediation and negotiation efforts. They have pointed out that this is not a problem in the case of the Office of the Ombudsperson, since its mandate is restricted to the ISIL (Da'esh) and Al-Qaida regime where there is no ongoing mediation or negotiation

[9] We are excluding Lebanon from this analysis, since the sanctions regime has been dormant for years and although individual sanctions have been authorized, there have been no UN sanctions applied to date.

[10] This includes the listings of Al Shabab in Somalia and Boko Haram in Nigeria, among others.

[11] This would also address the potential disregard of the Ombudsperson's authority, as in the well-known case of Mr. Ali Ahmed Nur Jim'ale, who was delisted from the 1267 regime and subsequently added to the list by the Somalia Committee. (The total numbers indicated here are skewed somewhat by the high number of residual designations against former Baathists still remaining in place in Iraq.)

with either group.[12] Each of the armed conflict sanctions regimes has had either mediation or negotiation efforts underway over the course of its conflict. Not all of them, however, are active, and they are at different stages of potential conflict resolution, ranging from ceasefires in place to formal negotiations for a transitional government, or the implementation of an agreement or political settlement. Indeed, in only half of the cases are there significant, ongoing negotiations or agreement implementation efforts underway: CAR, Libya, Mali, South Sudan, and the Taliban. In the five other armed conflict cases, negotiations are either stalled or currently dormant.[13] The numbers of individuals and entities sanctioned by the UN is approximately the same for the two groupings. There are 202 cases with ongoing negotiations or agreement implementation (or 48.2% of the total designated), while those with stalled or currently dormant processes affect 217 individuals and entities (or 51.8% of the total). To address the legitimate concerns of Security Council members that an additional review mechanism could complicate sensitive ongoing negotiations, the Council could reserve for itself the right to suspend application of the offices of the review mechanism for a specified period (renewable). This right could then be exercised based on criteria that are similar to the Security Council's power to defer pursuant to Article 16 of the ICC Statute.

Table 2 summarizes and groups different armed conflicts into the categories just described, including the frequency of their occurrence and the number of individuals and entities designated for sanctions by the UN Security Council.

1.4 Case selection

The preceding overview of UN sanctions regimes provides a basis for distinguishing among different contexts and selecting a regime (or cluster of regimes) suitable for the development of a review mechanism for individuals and entities designated for sanctions by the Security Council. Every sanctions regime is *sui generis*, but one stands out for immediate elimination based on the unique and particular aspects of its design: the sanctions authorized, but never applied, for the perpetrators of the Hariri assassination in Lebanon in 2005. The Council authorized the application of a travel ban and asset freeze on individuals designated by a special commission mandated to look into the attack. This is the only case in which the Council has delegated designation responsibility to an independent body rather than a Sanctions Committee, and as such, does not appear to be appropriate as a model for the development of a generalizable review mechanism. Another candidate for exclusion as a potential model is the case of Guinea-Bissau. Only a travel ban was applied to ten leaders of a military coup, arguably politically exposed persons (PEPs) who are often treated exceptionally because they are entrusted with (or in this case, forcibly acquired) prominent public functions.[14] Although the Council has applied sanctions in cases of non-constitutional changes of government or a refusal to accept UN-supervised electoral outcomes in the past, such as in Haiti, Sierra Leone, and the Ivory

[12] Indeed, one of the main reasons for splitting the Al-Qaida / Taliban sanctions regime in 2011 was to enable more vigorous negotiation efforts with the Taliban.

[13] There may be efforts to transform the tentative ceasefire in place in Yemen into ongoing negotiations, but they have not yet begun.

[14] Secretary-General reports in 2015 and 2016 described unintended consequences for these individuals, beyond their inability to travel, but civil society groups in Guinea-Bissau urged the Council to maintain the restrictive measures for accountability purposes. See 'Report of the Secretary-General on the progress made with regard to the stabilization of and restoration of constitutional order in Guinea-Bissau,' S/2015/619 (12 August 2015) and S/2016/720 (16 August 2016).

Coast, it is a relatively infrequent practice, and there is only one example of this type of case among the fourteen current sanctions regimes not covered by the Ombudsperson.

The nonproliferation case should probably not be prioritized at the moment for other reasons. The most obvious is the high political sensitivity of the issue and its very high salience among the permanent members of the Security Council. Three of the five permanent members – China, Russia, and the US – have direct interests and involvement in the DPRK case, including participating in rounds of the Six Party Talks following the DPRK's withdrawal from the NPT in 2003. If it is difficult for the permanent members to accept the idea of a general extension of the mandate of the Ombudsperson, it is even more difficult to imagine them accepting the idea of an independent review mechanism in such a sensitive issue area. While the nuclear nonproliferation case affects more than a quarter of the total number of designees not covered by the Ombudsperson (26.5%), the issue space is also unusually dense in terms of the number of other international organizations involved – the IAEA, the Nuclear Suppliers Group, the Proliferation Security Initiative, not to mention the Nonproliferation Treaty itself. Most of the individual designees are listed as a result of their status or position, rather than specific conduct or actions they have undertaken, which would give a potential review mechanism less room to maneuver when considering the bases for a potential delisting recommendation.

Ten situations of armed conflict remain on the list of potentially suitable sanctions regimes for the development of a tailored review mechanism. Their considerable variation has already been reviewed above. As explained, the regimes can be differentiated on the basis of whether or not there is a counter-terrorism dimension present. Among those with a counter-terrorism presence, Iraq is a highly unusual case, due not only to the presence of only one type of individual sanction (an asset freeze), but also due to the relative dormancy of its Sanctions Committee (at least until the last two years when it delisted 147 individuals and three entities) and the fact that most of the designations date from the period immediately following the post-2003 US-led invasion of the country and are focused on former Baathists who no longer play a significant role in the conflict.[15] While it accounts for the largest number of designations (147), there has been relatively little litigation to date (with one major exception in the Al Dulimi case). Iraq is also exceptional, because its sanctions involve asset confiscation and recovery and are entirely status-based, rather than conduct-based. Moreover, as noted, the Sanctions Committee seems to have revived the periodic review process delisting high numbers of individuals in the past two years. These actions render the need for a review mechanism less pressing in this case. Some of the other cases with a strong counter-terrorism dimension have relatively few individuals designated. Yemen has only five individuals (one of whom is deceased) and no entities listed. Mali has only eight individuals and no entities listed. Of the remaining regimes with a counter-terrorism dimension, the Taliban-regime has the largest number of designations (140), but it is again a politically sensitive case for the US and Russia and has ongoing negotiations underway (between the US, the Taliban, and the Afghan government).[16] That leaves Libya or Somalia. Both have a combination of status-based and conduct-based designations, but since there are about twice as many designations in Libya (30 as opposed to 16 in Somalia), Libya would be

[15] All of the individual designations were made between 27 June 2003 and 27 July 2005, while the listing of entities covers the period between 21 November 2003 and 12 May 2006.

[16] There was a brief period after the appointment of the first Ombudsperson (2010 to 2011) when the Taliban were technically eligible for access to the Office of the Ombudsperson, but that ended when the regime was split into two in 2011.

a better case for consideration for the development of a special review mechanism. There has been at least one case of litigation in European courts involving the Libyan sanctions regime in 2017. However, the situation in Libya is extremely volatile, permanent members of the Security Council are backing different factions, and there are ongoing and past political tensions and controversies, e.g., regarding the intervention pursuant to Resolution 1973, that might unnecessarily complicate discussions on the creation of a review mechanism for this regime.

Most importantly and beyond the specificities of the Libya regime, there are strong reasons to opt for an armed conflict regime without a strong counter-terrorism dimension. These reasons flow from the UNU report and its advocacy for a context-sensitive review mechanism. The basic logic of the idea of a context-sensitive review mechanism is that different types of regimes merit a different type of review mechanism. According to this logic, it is desirable to select an armed conflict regime that is fundamentally different from the counter-terrorist regime that the Ombudsperson reviews, hence an armed conflict regime without a counter-terrorism dimension. Choosing a most-different case allows us to explore the whole range of context-sensitivity that could be achieved by the mechanism and avoids potential institutional duplication of activities.

The group of armed conflict regimes without a strong counter-terrorism dimension includes Sudan, South Sudan, CAR and DRC. Both South Sudan and Sudan can be eliminated as the most suitable candidates for developing a new context-specific review mechanism due to the small number of potential cases – four individuals in Sudan and eight in South Sudan, with no entities listed in either case. DRC has nearly three times as many listings as the remaining case of CAR, which suggests it would be a better candidate for consideration. There have also been cases of litigation in European courts associated with the UN sanctions regime in the DRC.[17]

Hence, the DRC-regime is recommended as the most suitable candidate for the development of a new review mechanism on the basis that it is:

- An armed conflict regime
- Without a strong counter-terrorism dimension
- There is no high political sensitivity (unlike in Libya or for the Taliban)
- It has no peculiar characteristics (as in Lebanon or Iraq)
- It has a relatively high number of designations (45) compared to the other three similar armed conflict cases
- It has both conduct-based and status-based designations
- There has been recent litigation in relation to this regime.

The DRC sanctions regime is therefore recommended as the most suitable regime to develop a context-sensitive review mechanism, and the institutional design of the proposed mechanism is tailored to that regime. This does not exclude the possibility of extending the mechanism to a cluster of armed conflict-regimes, including the existing regimes for CAR, South Sudan, and Sudan. Such extension is warranted by the fact that the conflicts are interlinked and persons listed within one regime may operate on the territory of a State that is subject to another regime.[18] The mechanism could be given immediate power to review listings of all those four regimes or,

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[17] One case was concluded in 2017 and another in 2020.

[18] For instance, Joseph Kony, the LRA leader is listed in the CAR-regime and operates on the territory of the DRC, file number CFi.009, listed on 7 March 2016.

alternatively, it could be proposed and established only for the DRC regime first and then gradually be expanded as warranted by the Security Council.

2. Counter-terrorism and armed conflict sanctions regimes compared: differences in political context & information systems

The UNU proposal for context-sensitive review mechanisms hinges on the premise that different types of sanctions regimes may require different types of review. Drawing on the UNU study, the key differences between counter-terrorism sanctions regimes and armed conflict sanctions regimes are set out in this section. This provides the groundwork for the institutional design of a review mechanism tailored to the specificities of an armed conflict regime developed in section 3.

2.1 Counter-terrorism sanctions regimes

2.1.1 Political context and aim of the regime

The political context is the overarching fight against terrorism and the specific aim of the sanctions regimes is to constrain listed individuals from providing support for or participating in the commitment of acts of terrorism. Listings of groups are intended to exclude them from global society and disrupt their ability to engage in terrorist activity.

2.1.2 Features flowing from this political context

- Eligibility for designation is based on individual behavior, especially conduct associating a person with a terrorist / clandestine group either through direct participation or the provision of direct or indirect support.
- Because of clandestine nature of groups engaged in terrorism, designated individuals need the assistance of an intermediary who both the individual and the affected / designating states trust to draw together information and conduct an impartial inquiry.

2.1.3 Information system context

Much if not most of the information, underlying listings comes from intelligence sources. The Ombudsperson has to cultivate relationships of trust with the intelligence services of those countries most responsible for the largest numbers of listings.

2.1.4 Consequences of political and information context for setting and institutional design

The Ombudsperson has historically been a former judge with exposure to international law enforcement, prosecution of criminal cases, and has proven successful in building trust and confidence with intelligence services of key designating states. The procedure must be tailored to provide a secure setting in which (highly) classified information can be shared on a strictly confidential basis.

2.2 Armed conflict sanctions regimes

2.2.1 Political context and aim
The political context is one of (armed) conflict or civil strife/unrest and sanctions are typically used as political leverage towards political reconciliation / settlement of the conflict. Armed conflict situations typically entail multiple phases, from negotiating a ceasefire to reaching a negotiated settlement, maintaining adherence to an agreement, peacebuilding activities, and ultimately, political reconciliation.

2.2.2 Features flowing from this political context
- Negotiations are likely to be underway at multiple stages of the process.
- Sanctions may be *status*-based, *conduct*-based, or a combination of the two.
- Targets are usually politico-military actors who are designated to constrain their activity or to persuade them to participate in and/or implement a negotiated agreement, with a broader interest in political reconciliation or settlement of the conflict.

2.2.3 Information system context
Listings in an armed conflict regime are generally based on recommendations by Panels/Groups of Experts, information from (UN) field offices and experts, special envoys, SRSGs, Sanctions Committee members, NGOs operating in the regions, as well as other open or public sources.

2.2.4 Consequences of political and information context for setting and institutional design
The reviewer(s) should have a different professional background / expertise from that of the Ombudsperson, given the need to understand political / military dynamics of conflict and the need to engage with diverse sources of information in the field. The procedure must be tailored to facilitate the interaction of the reviewer(s) with relevant information-providers, including national authorities, witnesses in country, Panels/Groups of Experts, ICC investigators, UN peace operations bodies, relevant agencies at the UN secretariat, Member States, non-governmental organizations, and journalists.

3. Core functions of a review mechanism and overview of two options

In this section, the core functions of a sanctions review mechanism are identified as a basis for the tailored institutional design for the DRC regime, developed in section 4. While the focus of this report is on a review mechanism for achieving due process, it is important to emphasize that a review (delisting) mechanism needs to operate in tandem with the listing process. Hence the key elements of fair and clear procedures relate both to the listing as well as to the delisting process and their interaction.

3.1 Key elements of due process

3.1.1 Listing process
- Designation criteria (reference to conduct and/or status)
- Narrative summaries / statement of reasons for listing
- Evidentiary standards (use of intelligence or open source material)

- Notification of designees and relevant Member States
- Periodic review of designated individuals and entities
- Specification of delisting criteria and conditions

3.1.2 Delisting process

- Access
- Hearing
- Access to counsel[19]
- Impartial review of evidentiary base on which designations are made and maintained
- Independent review
- Binding decision

These key elements for ensuring due process are the same regardless of the type of sanctions regime. It is therefore important that the review mechanism that will be proposed for the DRC sanctions regime offers due process protections comparable to those currently provided by the Office of the Ombudsperson. Accordingly, the new review mechanism should engage in the following activities:

1. Information gathering (6-8 months per case).
   a. In contrast to the Office of the Ombudsperson, it is envisaged that this would entail a close working relationship with the relevant Panel/Group of Experts, political offices in country, and in the UN Secretariat in New York.
   b. Assistance from the Sanctions Branch will be key to ensure access to internal documents from previous panels.[20]

2. Dialogue (2-4 months per case).
   a. Research on the case.
   b. Dialogue with the petitioner.
   c. Report on the case, along with a recommendation.[21]

3. Liaison with the Sanctions Committee and its decision-making.
   a. There should be an opportunity for relevant Member States to engage with the Review Mechanism in order to provide further information relevant to the case, along with an opportunity for the Review Mechanism to revise the recommendation report.
   b. Sanctions Committees should take up the recommendation within 15 days and review it within another 15 days (total 30 days).
   c. If the recommendation is to retain, the listing continues.

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[19] Individuals have a right to be assisted by or to bring counsel to a hearing with the Ombudsperson, but not a right to the provision of counsel. The Office of the Ombudsperson retains a list of potential *pro bono* counselors, but has no role in making a recommendation of a particular lawyer. This procedure should be followed by the Review Mechanism.

[20] Although this goes beyond the mandate of this report, the Secretariat should be encouraged to archive materials from previous panels (and be provided resources for this activity). Currently some of the material remains with former panel members of Sanctions Committees and is not readily accessible to current or new panel members. It would be important for a new institutional review mechanism to have access to this material.

[21] The Review Mechanism submits the report in English first, with translation to follow when available).

d. If the recommendation is to delist, the individual or entity is delisted, unless all 15 members of the Sanctions Committee decide to retain the listing.

4. Communication of the Decision.
   a. The Review Mechanism should convey the information to the petitioner and all relevant member States who are not Committee members.

3.2 Institutional options for a review mechanism

While desirable in due process terms, extending the mandate of the Ombudsperson to the other Sanctions Committees has proven difficult. Member States have expressed concerns about the implications for ongoing negotiations in armed conflict situations and potential interference in politically sensitive nonproliferation sanctions. In the discussions of the *Fairly Clear Risks* report at Greentree and at the special event commemorating the creation of the Office of the Ombudsperson in New York in December 2019, it was suggested that an enhanced Focal Point, possibly with a more visible Focal Point Director, could fulfill some of the core functions mentioned above. The enhancements that have been suggested include:

- Stricter procedural time limits / better organized procedural pipeline
- Open to more stakeholders to be involved in the process to comment on delisting requests, including Member States where assets are held or states that are mentioned in the narrative summary or listing
- Earlier opportunity for Committee and Panels/Groups of Experts to comment on delisting request
- Requirement that Sanctions Committees provide substantive reasons for maintaining a person on the list that can be forwarded by the Focal Point to the petitioner[22]
- Procedure to assist delisted persons with post-delisting challenges such as failure to implement a delisting decision or lingering stigmatization and reputational consequences.

In addition, as part of initiatives to improve due process, further attention should be paid to the listing process. More specifically, there is a need for developing and publishing clear guidance on fair and clear procedures during Panels/Groups of Experts' investigations (drawing on guidance used by HRC commissions of inquiry) and enhancing fair process training for Panels/Groups of Experts. These suggestions merit further examination and institutionalization, including the need to work with panel members to ensure that names mentioned in their reports, but not designated for sanctions by the Sanctions Committees, do not become *de facto* designations, with all of their attendant consequences. However, while these recommendations would improve fair process for individuals, even if all of them were taken on board (including the five points above) such an enhanced Focal Point would not suffice as a review mechanism comparable to the functions performed by the Ombudsperson, because the Focal Point lacks sufficient independence of appointment, prominent career standing, and most importantly, the ability to recommend or make decisions on delisting.

[22] In the case of the Ombudsperson, the Committee originally had editorial control over the reasons for a decision, and some Member States argued that it was sufficient to inform the petitioner that they were delisted because the Committee could not reach consensus to overturn the Ombudsperson's recommendation. Today, the Ombudsperson compiles a summary of the analysis in the comprehensive report to the Committee for the petitioner and the Committee is invited to comment for the purpose of ensuring that confidential information is not inadvertently disclosed. This practice should be pursued by the Review Mechanism.

With regard to the institutional design for an independent, context-sensitive review mechanism, we propose the following two options:

- An **Independent Reviewer**, appointed by the Secretary-General, who operates according to tailored responsibilities and procedures aimed at ensuring that there is and continues to be a proper evidence-base for the listings of the sanctions regimes that it reviews, thereby generating and enhancing the political leverage that the particular sanctions regime(s) aim(s) to achieve. The Independent Reviewer could be located within the Office of the Ombudsperson so as to avoid institutional fragmentation and to increase cost-efficiencies and effectiveness.
- A **Panel of Independent Reviewers**, appointed by the Secretary-General, who operate according to tailored responsibilities and procedures aimed at ensuring that there is and continues to be a proper evidence base for the listings of different regimes (as above). In the event that it is difficult to identify a single person with the requisite combination of skills and experiences, a panel of up to three could be constituted to represent both judicial and field experience. A panel arrangement could also accommodate the potential need for country-based expertise should the Independent Reviewer for the DRC (discussed below) be expanded to other armed conflict situations as outlined in section 4.

The aim of the review is not to dispute the correctness of the decision to list. The political discretion of the UN Security Council and its subsidiary bodies, the Sanctions Committees, is respected. Rather, the Independent Reviewer or Panel of Independent Reviewers will ensure the accuracy of the information on which the individual/entity was originally listed. The Reviewer should also assess whether the basis of the designation remains valid and whether the person listed continues to meet the criteria for listing. This would ensure that the sanctions regimes remain current and responsive to the constantly changing contexts in which they operate. In addition to the enhanced functions recommended for the Focal Point identified above, the Independent Reviewer or Panel of Independent Reviewers could also be tasked with the responsibility to work with Panels/Groups of Experts to ensure names mentioned in their reports do not become *de facto* designations.

The profile of the Independent Reviewer or Panel of Independent Reviewers should be a former judge, or someone with substantial judicial experience, combined with significant field research experience, possibly including someone from the ranks of former Panel/Group of Experts coordinators or a former chair of a fact-finding mission.

Given that the goals of Office of the Ombudsperson and the proposed Independent Reviewer or Panel of Reviewers are fundamentally the same – to provide fair process for designated individuals and entities – there are many similarities between the two. Both entail impartial review, both must be independent, both require a meaningful hearing and engagement with petitioners, and both are intended to improve the accuracy, effectiveness, and legitimacy of sanctions regimes. There are, however, three important ways in which the proposed Independent Review mechanism differs from the Ombudsperson: profile, process, and potential placement.

3.2.1 Profile

The profile of the Independent Reviewer would ideally be someone with judicial experience as well as field experience. The field experience could come from an individual who had previously served as a special envoy, a former panel member, or an independent investigator of armed conflict situations, perhaps from the vantage point of a nongovernmental organization or a regional or international organization. Alternatively, a Panel of Independent Reviewers could be constituted to represent both judicial and field experience including country-based expertise.

3.2.2 Process

The process of the Independent Reviewer or Panel of Independent Reviewers would differ in that the work would entail close coordination with relevant Panels/Groups of Experts, including access to their confidential material. It would also entail independent investigation of material from other sources, including UN offices in the field, nongovernmental organizations, and Member States. While the counter terrorism context of the Ombudsperson approximates a criminal law review, the proposed Independent Reviewer or Panel of Independent Reviewers would be engaging with a more fluid conflict context, participating in a dialogue, with a goal not of exclusion, but potentially of inclusion and reconciliation with designees. Another difference stems from the fact that the proposed Independent Reviewer or Panel of Independent Reviewers would engage in a preliminary review of and dialogue around their report with relevant Member States before it is formally submitted for Sanctions Committee review and decision.

3.2.3 Placement

Given its close working relationship with the 1267 Monitoring Team, it is important that the Ombudsperson be located in New York. The placement of the Independent Reviewer or Panel of Independent Reviewers could be more flexible, since most of the Panels/Groups of Experts work from home and are dispersed across the globe. Being placed outside of New York might reduce some costs, but it would undercut potential synergies for coordination of the Independent Reviewer(s) and the Ombudsperson.

While there are necessarily many similarities between the Office of the Ombudsperson and the proposed Independent reviewer or Panel of Independent Reviewers, the chart below summarizes the main differences between the two.

	Ombudsperson	**Independent Reviewer or Panel of Independent Reviewers**
Profile	Judicial experience	Judicial experience & field investigative experience
Process	Coordination with 1267 Monitoring Team and special intelligence sharing agreements with individual Member States	Close consultation with relevant Panels/ Groups of Experts; dialogue with field actors; and the introduction of a preliminary draft report review and dialogue with Member States
Placement	New York	Potentially anywhere

4. Independent Reviewer or Panel of Independent Reviewers for the DRC sanctions regime

In this section, the DRC sanctions review mechanism is set out. The section draws on the core functions as listed in the previous section. It proceeds from the distinction made in the UNU Study regarding the difference between status-based and conduct-based listings.[23] The difference between status-based and conduct-based listings pertains to the following:

Status-based listings designate individuals based on their position in a certain organization or government and their contribution to the implementation of a certain policy of that entity. Their aim is to create political leverage and to influence the group / government activities.

Conduct-based listings are based on an individual's ongoing or past behavior assessed against legal or other normative standards. Their aim is to condemn behavior, attach moral stigma, and reinforce particular norms.

The UNU Study observed that conduct-based listings are more vulnerable to legal challenges. The underlying evidence for such listings may be in dispute and/or more difficult to collect. Particularly in the case of listings that are based on designation criteria which use legal categories that are also employed within the context of criminal trials, there might be an expectation of the use of criminal law evidentiary standards. If the underlying evidence or the statement of case does not come close to meeting the level of detail inherent in criminal law processes, the listings may come to appear fundamentally flawed. It may also be difficult to prove for a person that he/she is no longer involved in certain proscribed behavior. These sanctions thus risk becoming static and unresponsive to changes on the ground, and as a consequence they are, in the long run, more likely to be perceived as illegitimate.

In turn, status-based listings are easier to verify. Challenges to these types of listings are more limited in scope as they are generally confined to an identity check, a check on whether the person belongs to the designated category or whether the presumption that membership to the designated category makes the person eligible for listing is incorrect for other reasons.[24] The review of status-based listings may therefore be more straightforward. Given the less intrusive review, these types of listings may better acknowledge the broad discretion that the Security Council Sanctions Committees have in their decision to list. Status-based listings can also easier be subject to a suspension mechanism in the context of peace negotiations (as it may seem unreasonable to allow a person who is listed for committing serious human rights violation to have a seat on the negotiating table or other forms of legitimation).

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[23] James Cockayne, Rebecca Brubaker and Nadeshda Jayakody, *Fairly Clear Risks: Protecting UN Sanctions' Legitimacy and Effectiveness through Fair and Clair Procedures*, UNU, 2018, pp. 32/33.

[24] Ibid., p. 33.

4.1 The DRC sanctions regime

There are 45 designations on the DRC list: 36 individuals and nine corporate entities (groups, entities or undertakings). Fifteen individuals were designated in 2005, at the outset of the sanctions regime. One individual was added in 2007, four each in 2009 and 2010, two in 2011, and five in 2012. There was a hiatus in new designations until 2018, when four more names were added. One individual was listed in 2020. All of the corporate entities were listed between 2005 and 2014: one in 2005, five in 2009, two in 2012, and one in 2014. Although some individuals and one entity have been on the list for nearly fifteen years, the average length of time spent on the restrictive measures list has been greater than eleven years.

As indicated in **Table 3**, the status versus conduct distinction does not clearly apply for the overwhelming number of individual designations in the DRC case. The statements of case on the UN Sanctions Committee website indicates that most designations are based both on rank and specific conduct. The ranks of individuals listed range from heads of non-state armed groups and political factions (Presidents, Vice Presidents, Chiefs of Staff) to military leaders (Commanders in Chief, Generals, Colonels, and Lieutenant Colonels). While there are two status-based designations, the 34 other individual designations cite specific conduct in the statements of case – most frequently violations of the arms embargo, impeding disarmament and repatriation, and the use of child soldiers. More recently, sexual violence has been added to the list, along with the indiscriminate killing of civilians, and other serious human rights violations. Nearly all of the individuals designated are affiliated with non-state armed groups (M23, FDLR, FAPC, FRPI, UPC/L, PUSIC, FNI, NDC, RCD-G, and the ADF). There are so many different groups involved because of the splintering of some groups and the morphing of others over the fifteen-year long course of the conflict since the UN began imposing targeted sanctions. Two sanctioned individuals have been associated with the Federal Army of the DRC (FARDC).

Among the nine entities designated in the DRC, five are business firms directly involved either in arms trafficking or in the trading of gold that provides conflict financing for non-state armed groups. Members of the Secretariat met with two of them (and their lawyers) while traveling with the 1533 Sanctions Committee Chair in the Great Lakes region in 2015.[25] They argued that they had taken corrective actions after unknowingly finding themselves out of compliance with the sanctions measures. They had reportedly approached the Group of Experts for the DRC Sanctions Committee with updated information on their firms, and they opened their books to them. Nonetheless, their names have remained on the list.[26] They attempted to use the Focal Point process, but without success. Three non-state armed groups are specifically designated: the FDLR and M23 in December 2012 and the ADF in June 2014. The UN Sanctions Committee website contains long descriptions of the conduct for which the three groups are listed. One non-governmental organization was listed for facilitating arms transfers to a non-state armed group. Given the amount of information specifically related to conduct in the DRC conflict, there would appear to be a great deal for an Independent Reviewer or Panel of Independent Reviewers to evaluate in cases of delisting requests.

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[25] https://www.securitycouncilreport.org/monthly-forecast/2015-07/democratic_republic_of_the_congo_8.php.

[26] We should note that the composition of the Group of Experts has changed since the time of this report and that neither the original nor subsequent members of the Group have been approached for their assessment of the current situation.

4.2 Potential extension to similar armed conflict situations

Although the review mechanism being proposed relates specifically to the DRC, the functions of the same mechanism could possibly be extended to three other relatively similar armed conflict cases which also lack a strong counter-terrorism dimension: CAR, South Sudan, and Sudan. There are many fewer individuals (a total of 26) and only two corporate entities involved in those three cases combined. **Table 4** contains comparable information on the nature of the status versus conduct-based designations in these broadly similar cases.

In all of the individual designations in the three additional cases, designations are both status-based and conduct-based. Status based designations range from former Presidents of countries to heads of militias, senior government military leaders, and leaders of non-state armed groups. Conduct-based designations in the CAR include impeding transitional government arrangements to coup attempts, attacks on civilians, sexual violence, recruitment of child soldiers, arms trafficking, elephant poaching, and ivory smuggling. The corporate entities listed in CAR include one firm accused of diamond smuggling and conflict financing and one non-state armed group, the Lords Resistance Army (LRA). In South Sudan, the most common form of conduct cited is ceasefire violations, followed by attacks on civilians, targeted killings, and the recruitment of child soldiers. The conduct-based designations in Sudan are more varied and unique to each of the four individuals listed: arms embargo violations, attacks on civilians, ceasefire violations, and kidnapping of AU personnel.

As in the case of the DRC, the amount of information publicly available on the individuals and entities designated in the other three armed conflict cases, without a counter-terrorism dimension, would appear to give a review mechanism a substantial amount of information to investigate in cases of delisting requests. The kind of material to be researched, the methods of research, and the sources of information would appear to be largely the same. Thus, it would not be a major stretch to consider extending the context-sensitive review mechanism developed for the DRC to other, broadly similar types of armed conflict cases, such as CAR, South Sudan, and the Sudan.

It is important to note that the mere presence of an Independent Reviewer or Panel of Independent Reviewers will likely increase the incentive for Panels/Groups of Experts to make better recommendations for listings by the relevant Sanctions Committee.

5. Draft annex for a future UN Security Council Resolution

In accordance with paragraph X of this resolution, the Independent Reviewer[27] shall be authorized to carry out the following tasks upon receipt of a delisting request submitted by, or on behalf of, an individual, group, undertaking or entity on the DRC (CAR, South Sudan, Sudan) Sanctions List or by the legal representative or estate of such individual, group, undertaking or entity ("the Petitioner").

The Council notes that Member States are permitted to submit delisting petitions on behalf of, and with the consent of, an individual, group, undertaking or entity to the Independent Reviewer.

5.1 Information gathering (six to eight months)

1. Upon receipt of a delisting request, the Independent Reviewer shall:
   a. Acknowledge to the Petitioner the receipt of the delisting request;
   b. Inform the Petitioner of the general procedure for processing delisting requests;
   c. Answer specific questions from the Petitioner about Committee procedures;
   d. Inform the Petitioner in case the petition fails to properly address the original listing criteria, as set forth in paragraph X of this resolution, and return it to the Petitioner for his or her consideration; and
   e. Verify if the request is a new request or a repeated request and, if it is a repeated request to the Independent Reviewer and it does not contain relevant additional information, return it to the Petitioner, with an appropriate explanation, for his or her consideration.

2. For delisting petitions not returned to the Petitioner, the Independent Reviewer shall immediately forward the delisting request to the members of the Committee, designating State(s), State(s) of residence and nationality or incorporation, relevant United Nations bodies, and any other States deemed relevant by the Independent Reviewer. The Independent Reviewer shall ask these States or relevant United Nations bodies to provide, within six months, any appropriate additional information relevant to the delisting request. The Independent Reviewer may engage in dialogue with these States to determine:
   a. These States' opinions on whether the delisting request should be granted; and
   b. Information, questions or requests for clarifications that these States would like to be communicated to the Petitioner regarding the delisting request, including any information or steps that might be taken by a petitioner to clarify the delisting request.

3. Where all designating States consulted by the Independent Reviewer do not object to the Petitioner's delisting, the Independent Reviewer may shorten the information-gathering period, as appropriate.

4. The Independent Reviewer shall also immediately forward the delisting request to the Group of Experts, which shall provide to the Independent Reviewer, within four months:

[27] For the purposes of this draft resolution, the term Independent Reviewer will be used. If the Council prefers a Panel of Independent Reviewers, the term Independent Reviewer could be replaced throughout the text of this draft resolution.

a. All information available to or originating from the Group of Experts that is relevant to the delisting request, including court decisions and proceedings, news reports, and information that States or relevant international organizations have previously shared with the Group of Experts;
b. Fact-based assessments of the information provided by the Petitioner that is relevant to the delisting request; and
c. Questions or requests for clarifications that the Group of Experts would like asked of the Petitioner regarding the delisting request.

5. At the end of this six-month period of information gathering, the Independent Reviewer shall present a written update to the Committee on progress to date, including details regarding which States have supplied information, and any significant challenges encountered therein. The Independent Reviewer may extend this period once for up to two months if he or she assesses that more time is required for information gathering, giving due consideration to requests by Member States for additional time to provide information. The Independent Reviewer may also need to travel to the region of the conflict to consult with local authorities, resident UN officials, and other experts, in order to obtain sufficient information to make an informed recommendation in the case, or to some other location where he or she can meet relevant actors.

5.2 Dialogue (two to four months)

6. Upon completion of the information-gathering period, the Independent Reviewer shall facilitate a two-month period of engagement, which should include dialogue with the petitioner. Giving due consideration to requests for additional time, the Independent Reviewer may extend this period once for up to two months if he or she assesses that more time is required for engagement and the drafting of the Comprehensive Report described in paragraph 8 below. The Independent Reviewer may shorten this time period if he or she assesses less time is required.

7. During this period of engagement, the Independent Reviewer:
   a. May submit questions, either orally or in writing, to the Petitioner, or request additional information or clarifications that may help the Committee's consideration of the request, including substantive engagement with the Group of Experts and any questions or information requests received from relevant States, the Committee, the Group of Experts, and from the independent information gathering described in paragraph 5 above;
   b. Should meet with the Petitioner, to the extent possible;
   c. Shall forward replies from the Petitioner back to relevant States, the Committee and the Group of Experts and follow up with the petitioner in connection with incomplete responses by the Petitioner;
   d. Shall coordinate with States, the Committee and the Group of Experts regarding any further inquiries of, or response to, the Petitioner;
   e. During the information gathering or dialogue phase, the Independent Reviewer may share with relevant States information provided by a State, including that State's position on the delisting request, if the State which provided the information consents;

f. In the course of the information gathering and dialogue phases and in the preparation of the report, the Independent Reviewer shall not disclose any information shared by a State on a confidential basis, without the express written consent of that State; and
g. During the dialogue phase, the Independent Reviewer shall give serious consideration to the opinions of Sanctions Committees, as well as States that come forward with relevant information, in particular those States most affected by acts or associations that led to the original listing.

8. Upon completion of the period of engagement described above, the Independent Reviewer, shall draft and circulate to the Committee a draft Comprehensive Report that will exclusively:
   a. Summarize and, as appropriate, specify the sources of, all information available to the Independent Reviewer that is relevant to the delisting request. The draft report shall respect confidential elements of Member States' communications with the Independent Reviewer;
   b. Describe the Independent Reviewer's activities with respect to this delisting request, including dialogue with the Petitioner; and
   c. Based on an analysis of all the information available to the Independent Reviewer and the Independent Reviewer's recommendation lay out for the Committee the principal arguments concerning the delisting request. The recommendation should state the Independent Reviewer's views with respect to the listing as of the time of the examination of the delisting request.

5.3 Committee discussion

9. Following the distribution of the draft recommendation report, relevant States have the opportunity to engage with the Independent Reviewer in order to provide further information relevant to the case for a period of thirty days.

10. The Independent Reviewer will revise, as appropriate, the draft recommendation report and issue a final Comprehensive Report within ten days.

11. After the Committee has had fifteen days to review the final Comprehensive Report in all official languages of the United Nations, the Chair of the Committee shall place the delisting request on the Committee's agenda for consideration.

12. When the Committee considers the delisting request, the Independent Reviewer, shall present the Comprehensive Report in person or by a VTC and answer Committee members' questions regarding the request.

13. Committee consideration of the Comprehensive Report shall be completed no later than thirty days from the date the Comprehensive Report is submitted to the Committee for its review.

14. After the Committee has completed its consideration of the Comprehensive Report, the Independent Reviewer may notify all relevant States of the recommendation.

15. Upon the request of a designating State, State of nationality, residence, or incorporation, and with the approval of the Committee, the Independent Reviewer may provide a copy of the Comprehensive Report, with any redactions deemed necessary by the Committee, to such States, along with a notification to such States confirming that:
    a. All decisions to release information from the Independent Reviewer's Comprehensive Reports, including the scope of information, are made by the Committee at its discretion and on a case-by-case basis;
    b. The Comprehensive Report reflects the basis for the Independent Reviewer's recommendation and is not attributable to any individual Committee member; and
    c. The Comprehensive Report, and any information contained therein, should be treated as strictly confidential and not shared with the Petitioner or any other Member State without the approval of the Committee.

16. In cases where the Independent Reviewer recommends retaining the listing, the requirement for States to take the measures in paragraph X of this resolution shall remain in place with respect to that individual, group, undertaking or entity, unless a Committee member submits a delisting request, which the Committee shall consider under its normal consensus procedures.

17. In cases where the Independent Reviewer recommends that the Committee consider delisting, the requirement for States to take the measures described in paragraph 1 of this resolution shall terminate with respect to that individual, group, undertaking or entity 60 days after the Committee completes consideration of a Comprehensive Report of the Independent Reviewer, in accordance with this annex, including paragraph 7 (g), unless the Committee decides by consensus before the end of that 60-day period that the requirement shall remain in place with respect to that individual, group, undertaking or entity; provided that, in cases where consensus does not exist, the Chair shall, on the request of a Committee Member, submit the question of whether to delist that individual, group, undertaking or entity to the Security Council for a decision within a period of 60 days; and provided further that, in the event of such a request, the requirement for States to take the measures described in paragraph X of this resolution shall remain in force for that period with respect to that individual, group, undertaking or entity until the question is decided by the Security Council.

18. Following the conclusion of the process described in paragraphs X and Y of this resolution, the Committee shall convey, within 60 days, to the Independent Reviewer, whether the measures described in paragraph X are to be retained or terminated, and approve an updated narrative summary of reasons for listing, where appropriate. In cases where the Committee informs the Independent Reviewer that it has followed his or her recommendation, the Independent Reviewer immediately informs the Petitioner of the Committee's decision and submits to the Committee, for its review, a summary of the analysis contained in the Comprehensive Report. The Committee reviews the summary within 30 days of the decision to retain or terminate the listing, and communicates its views on the summary to the Independent Reviewer. The purpose of the Committee's review is to address any security concerns, including to review if any information confidential to the Committee is inadvertently included in the summary. Following the Committee's review, the Independent Reviewer transmits the summary to the Petitioner. The summary shall accurately describe the principal reasons for the recommendation of the Independent Reviewer, as reflected in

the analysis of the Independent Reviewer. In his or her communication with the Petitioner, the Independent Reviewer will specify that the summary of the analysis does not reflect the views of the Committee or of any of its members. In cases where the listing is retained, the summary of the analysis shall cover all the arguments for delisting by the Petitioner to which the Independent Reviewer responded. In cases of delisting, the summary shall include the key points of the analysis of the Independent Reviewer. In cases where the Committee informs the Independent Reviewer that it has not followed his or her recommendation or that the Chair has submitted the question to the Security Council under paragraph 17 of this Annex, the Committee communicates to the Independent Reviewer, within 30 days of its decision or the Council's decision, the reasons for this decision for transmission to the Petitioner. These reasons shall respond to the principal arguments of the Petitioner.

19. After the Independent Reviewer receives the communication from the Committee under paragraph 18 of this annex, if the measures in paragraph 1 are to be retained, the Independent Reviewer shall send to the Petitioner, with an advance copy sent to the Committee, a letter that:
    a. Communicates the outcome of the petition;
    b. Describes, to the extent possible and drawing upon the Independent Reviewer's Comprehensive Report, the process and publicly releasable factual information gathered by the Independent Reviewer; and
    c. Forwards from the Committee all information about the decision provided to the Independent Reviewer pursuant to paragraph 18 of this annex.

20. In all communications with the Petitioner, the Independent Reviewer shall respect the confidentiality of Committee deliberations and confidential communications between the Independent Reviewer and States.

21. The Independent Reviewer may notify the Petitioner, as well as those States relevant to a case but which are not members of the Committee, of the stage at which the process has reached.

5.4 Other Office of the Independent Reviewer's Tasks

22. In addition to the tasks specified above, the Independent Reviewer shall:
    a. Distribute publicly releasable information about Committee procedures, including Committee Guidelines, fact sheets and other Committee-prepared documents;
    b. Where address is known, notify individuals or entities about the status of their listing, after the Secretariat has officially notified the Permanent Mission of the State or States, pursuant to paragraph X of this resolution;
    c. Assist the Secretariat with recommendations on how to strengthen listing procedures;
    d. Work with the Group of Experts to ensure that names mentioned in their reports do not become de facto designations; and
    e. Submit biannual reports summarizing the activities of, and any challenges faced by, the Independent Reviewer to the Security Council.

TABLE 1: TYPE AND NUMBER OF UN SANCTIONS DESIGNATIONS BY CASE

	Type	Individuals	Entities	TOTAL
AQ/ISIL	TB, AF	261	89	350
CAR	TB, AF	14	2	16
DPRK	TB, AF	80	75	155
DRC	TB, AF	36	9	45
GUINEA BISSAU	TB	10	0	10
IRAQ	AF	86	61	147
LEBANON	TB, AF	0	0	0
LIBYA	TB, AF	28	2	30
MALI	TB, AF	8	0	8
SOMALIA	TB, AF	15	1	16
SOUTH SUDAN	TB, AF	8	0	8
SUDAN	TB, AF	4	0	4
TALIBAN	TB, AF, AE	135	5	140
YEMEN	TB, AF, AE	5	0	5
TOTAL		**690**	**244**	**934**
Sub-total NOT covered by Ombudsperson		429	155	584
Sub-total for armed conflict situations		339	80	419

Key: TB = Travel bans; AF = Asset freezes; AE = Arms embargoes.

TABLE 2: TYPES OF CONFLICT SITUATIONS

Counter-terrorism aspect	**Present**	**Absent**
	Iraq Libya Mali Somalia Taliban Yemen (277 individual + 69 entities = 346 total designations)	CAR DRC South Sudan Sudan (62 individual + 11 entities = 73 total designations)
Degree of Fragmentation	**High**	**Low**
	DRC Libya Mali Yemen (77 individual + 11 entities = 88 total designations)	CAR Iraq Somalia South Sudan Sudan Taliban (262 individual + 69 entities = 331 total designations)
Status of conflict situation	**Ongoing/Implementing**	**Stalled/Dormant**
Ceasefire, Negotiations and/or Agreement implementation underway	CAR Libya Mali South Sudan Taliban (193 individual + 9 entities = 202 total designations)	DRC Iraq Somalia Sudan Yemen (146 individual + 71 entities = 217 total designations)

TABLE 3: DRC DESIGNATIONS

Name	Status	Conduct
Individual designations		
Badege	Lt. Col. & Focal Point M23	Indiscriminate killing of civilians
Bwambale	RCD-ML Leader	Arms trafficking
Iyamuremye	Interim President FDLR	
Kaina	Deputy Commander, M23	Serious HR violations Child soldiers
Bukande	President FAPC	Arms trafficking Child soldiers
Katanga	Commander FRPI	Arms trafficking Child soldiers Referred to ICC
Lubanga	President UPC/L	Arms trafficking Child soldiers Referred to ICC
Makenga	Military leader, M23	Sexual violence Child soldiers
Mandro	President, PUSIC	Arms trafficking Child soldiers
Mbarushimana	Vice President, FDLR	Impeded disarmament and repatriation
Mpamo	Manager of airline company	Arms trafficking
Mudakumura	Commander of FOCA (FDLR)	Arms trafficking Busurungi massacre Child soldiers
Mugaragu	Chief of Staff FOCA (FDLR)	
Mujyambere	Commander FOCA (FDLR)	Impeded disarmament and repatriation Sexual violence Child soldiers
Mukulu	Military leader, ADF	Impeded disarmament and repatriation Financing for ADF
Murwanashyaka	President, FDLR	Arms trafficking Busurungi massacre Child soldiers

Name	Status	Conduct
Musoni	Vice President, FDLR	Impeded disarmament and repatriation Convicted in Germany
Mutebutsi		Arms trafficking
Myamuro	Military commander M23	Killing of civilians Arms trafficking Child soldiers Conflict financing
Ngudjolo	Chief of Staff, FRPI	Arms trafficking Child soldiers ICC acquittal, 2012
Njabu	President, FNI	Arms trafficking HR abuses (unspecified)
Nkunda	General RCD-G	Arms embargo violations Child soldiers
Nsanzubukire	Colonel, FDLR FOCA	Arms trafficking
Ntawunguka	Commander FOCA (FDLR)	Impeded disarmament and repatriation Sexual violence Child soldiers
Nyakuni		Arms trafficking
Nzeyimana	Deputy Commander FOCA (FDLR)	Impeded disarmament and repatriation Sexual violence Child soldiers
Mazio		Arms trafficking
Runiga	Coordinator Political Wing, later President of M23	Child soldiers Serious HR violations
Sheka	Commander in Chief of Mayi Mayi Sheka	Impeded disarmament and repatriation Sexual violence Child soldiers
Taganda	Military commander UPC/L	Arms trafficking Child soldiers Transferred to ICC; case underway

Name	Status	Conduct
Zimurinda	Lt. Col. FARDC	Massacres of civilians Child soldiers Sexual violence Denied MONC access
Mundos	Commander FARDC	Attacks on civilians Assistance to ADF
Mwissa	General, NDC	Child soldiers Arms embargo violations
Nzabamwita	Military leader FDLR	HR abuses Targeting of civilians
Kanonga	Leader, Bakata Katanga militia	HR abuses Targeting of civilians
Baluku	Leader, ADF	Sexual violence Child soldiers Forced labor
ADF	Armed Group	Child soldiers Sexual violence Forced recruitment Attacks on civilians Attacks on peacekeepers
Butembo Airlines		Arms trafficking Gold smuggling
CAGL Airline		Arms trafficking
Congomet Trading House		Gold smuggling for FNI No longer exists…
FDLR	Armed Group	Sexual violence Forced displacement Child soldiers Attacks on civilians
M23	Armed Group	Attacks on civilians Sexual violence Forced recruitment Child soldiers
Machanga Ltd.		Purchased gold that benefitted armed groups
Tous pour la Paix et le Développement (NGO)		Arms trafficking
Uganda Commercial Impex (UCI) Ltd.		Purchased gold that benefitted armed groups

TABLE 4. CAR, SOUTH SUDAN & SUDAN IN COMPARATIVE PERSPECTIVE

Name	Status	Conduct
CAR (14 individuals listed)		
Francois Bozizé	Former President, CAR	Created the anti-Balaka militia group Encouraged December 2013 attacks in Bangui Continues to destabilize
Nourredine Adam	Leader of Seleka Directs ex-Seleka	Urged Seleka to resist transitional government Encouraged attacks on civilians (2013) Raises funds for Seleka
Alfred Yeketom	Militia leader, anti-Balaka	Impeding political transition
Habib Soussou	Zone Commander, anti-Balaka	Impeding political transition Human rights violations
Oumar Younous	General, former Seleka	Diamond smuggling
Haroun Gaye	Leader, armed group (works with anti-Balaka	Resisting reconciliation Attacks on MINUSCA Coup attempt against transitional gov't.
Eugène Ngaikosset	Commander, anti-Balaka militia group	Perpetrator of violence in Bangui, September 2015 Incitement to civil war
Joseph Kony	Head of LRA	Attacks on civilians Looting of villages Seizing of mines Elephant poaching ICC indictment (12 counts)
Ali Kony	LRA Intelligence officer	Ivory trafficking
Salim Kony	Commander LRA Field Office	Ivory trafficking
Abdoulaye Hissene	Ex-Seleka militia leader	Coup attempt against transitional gov't. Clashes with MINUSCA Arms embargo violations
Martin Koumtamadji	President, FDPC	Resisting implementation of 2019 peace agreement Arms trafficking Attacks on civilians Sexual violence Child soldiers

Bi Sidi Souleman	President, 3R (armed group)	Resisting implementation of 2019 peace agreement Attacks on civilians Sexual violence Attacks on MINUSCA
CAR (2 entities listed)		
BADICA/KARDIAM		Diamond trafficking Conflict financing
LRA		Attacks on civilians Looting of villages Seizing of mines Elephant poaching Sexual violence Child soldiers
South Sudan (8 individuals)		
Gabriel Jok Riak 2015	Commander, SPLA	Ceasefire violations Attacks on civilians
Simon Gatwech Dual 2015	Leader of SPLM-IO	Ceasefire violations Attacks on civilians Targeted killings
James Koang Chuol 2015	Commander SPLA-IO	Attacks on civilians Targeted killings
Santino Deng Wol 2015	Major-General, SPLA	Ceasefire violations Attacks on civilians
Marial Chanuong Yol Mangok 2015	Commander, Presidential Guard	Attacks on civilians
Peter Gadet 2015	Commander, SPLA-IO	Ceasefire violations Attacks on civilians Targeted killings Child soldiers
Malek Ruben Riak Rengu 2018	SPLA Chief of Staff for Logistics	Attacks on civilians Sexual violence Child soldiers
Paul Malong Awon 2018	Chief of General Staff, SPLA	Ceasefire violations Attempted to kill opposition leader, Riek Machar Attacks on civilians Sexual violence Child soldiers
Sudan (4 individuals)		
Gaffar Mohammed Elhassan	Major-General, Darfur region	Arms embargo violations
Musa Hilal Abdalla Alnsiem	Chief of Jalul Tribe, Darfur	Attacks on civilians
Adam Yacub Sharif Shant	SLA Commander	Ceasefire violations
Jibril Abdulkarim Ibrahim Mayu	Field Commander, National Movement for Reform and Development	Kidnapping of AU Mission personnel

This report provides findings from a research project on *"Enhancing Due Process in UN Security Council Targeted Sanctions Regimes"* commissioned by the International Law Directorate of the Federal Department of Foreign Affairs of Switzerland in 2020.