

Second, and somewhat more importantly, is that the Ombudsperson has no direct decision making authority on delisting requests.<sup>121</sup> Indeed, the formal role of the Ombudsperson is merely to gather and present information to the Sanctions Committee, who retains the ultimate authority to delist the petitioner. Although a nominal improvement was introduced in 2013, making the decision of the Ombudsperson binding after 60 days if the Sanctions Committee does not reach a consensus,<sup>122</sup> this does not satisfy the requirement of the remedy being granted by an 'impartial body', the ultimate decision making authority still resting with the relevant Committee.

Third, as a result of the Ombudsperson's inability to enforce the de-listing of a petitioner, the mechanism lacks the 'accessibility element' of due process, which requires that 'the body that hears the individual or entity is the same body that has the power to make a binding decision based on the complaint of the affected individual or entity.'<sup>123</sup> Furthermore, since the Ombudsperson's mandate is subject to frequent renewal 'contributes to the perception of the mechanism as temporary.'<sup>124</sup>

On the above therefore, the office of the Ombudsperson, although presenting an improvement from the actually unsatisfactory Focal Point mechanism, still has scope for improvement in ensuring the fulfilment of due process rights for those listed.

### 3 | THE PRINCIPLE OF TRANSPARENCY

The principle of transparency has most often been represented as a right to freedom of or access to information<sup>125</sup> and has found expression in domestic,<sup>126</sup> regional<sup>127</sup> and international<sup>128</sup> human rights systems. It has been described as a 'core human rights principle'<sup>129</sup> and its applicability to the Security Council is uncontested.<sup>130</sup> Within the context of UN Sanctions, the increased propensity of the SC to impose 'targeted' sanctions has elevated the relevance of transparency, since those adversely affected have an amplified interest in the reasons behind the measures imposed, especially in regard to their rights of procedural due process. As the issue of due process has been examined above however, the following section focuses upon the release of information to the public eye.

It follows that the precise formulation of the principle as applied to the imposition and subsequent implementation of sanctions regimes – by the Council and its subsidiary sanctions committees respectively – remains unclear. This lack of clarity has largely been fuelled by the need to arrive at 'a realistic balance between transparency and confidentiality.'<sup>131</sup> Where the former may be understood as an absolute rule requiring that 'the reasons for applying and modifying sanctions [are] clearly expressed by the Security Council and its sanctions committees,'<sup>132</sup> the latter can be seen as a concept permitting deviation from the principle of transparency where discussion within the Council involves confidential and politically sensitive information,<sup>133</sup>

<sup>121</sup> Ibid. 401.

<sup>122</sup> [www.un.org/News/Press/docs/2013/unsc/sanctions13023.html](http://www.un.org/News/Press/docs/2013/unsc/sanctions13023.html) 9-10.

<sup>123</sup> Ibid. 401, 402.

<sup>124</sup> See Robert E. Thomas-Brennan 'Due Process and Targeted Sanctions: An Update of the "Western Report"' (2014) 11 [www.sankommission.org/wp-content/uploads/2014/05/Thomas-Brennan2014.pdf](http://www.sankommission.org/wp-content/uploads/2014/05/Thomas-Brennan2014.pdf) 33 (pdf) accessed 01/04/2015, 33.

<sup>125</sup> See generally, 'The Information Right: Transparency, Access to Information and UN Sanctions' in: Thomas and E. Rosenbaum (eds.), *Sanctions: International Law, Economics and International Security* (OUP 2010), 30.

<sup>126</sup> See *Journal of Human Rights* 10 (2011), 1-14.

<sup>127</sup> *Human Rights v. EU* App no 21261/05 (ECtHR, 26 April 2007), § 40.

<sup>128</sup> Ibid., art 19(2).

<sup>129</sup> Office of the High Commissioner for Human Rights, *The Human Rights Case System* (Geneva, <http://ohchr.org/Lib/2013/04/>).

<sup>130</sup> The Council itself has accepted its 'transparency of its operations' (2000 Presidential Statement, 28 January 2000) and has [www.un.org/News/Press/docs/2000/00012000101.htm](http://www.un.org/News/Press/docs/2000/00012000101.htm) 1.

<sup>131</sup> International Monitor of Human Rights (IMHR), *IMHR News*, <http://www.imhr.org.uk/news/2010/06/01/010601.htm> 1.

<sup>132</sup> See also, Rosenbaum, *United Nations Sanctions and the Rule of Law* (2007) 84.

<sup>133</sup> See Robert E. Thomas-Brennan, 'Sanctions Implementation and the UN Security Council: The Case for Greater Transparency' (2014) [www.sankommission.org/wp-content/uploads/2014/05/Thomas-Brennan2014.pdf](http://www.sankommission.org/wp-content/uploads/2014/05/Thomas-Brennan2014.pdf) accessed 01/04/2015, 8.

# Transparency International 20report

**Emanuele Sclafani**



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who do not want to fight bad leadership and problems with training learning and creativity In addition the structural weaknesses have a direct political effect that can aid an insurgency by hindering the development and implementation of a national strategy fostering poor relations with outside powers that might otherwise assist the COIN effort encouraging widespread corruption alienating the security forces from the overall population and offering the insurgents opportunities to penetrate the security forces Washington must recognize that its allies including these security forces are often the source of the problem as well as the solution The author argues that the ally s structural problems and distinct interests have daunting implications for successful U S counterinsurgency efforts The nature of regimes and of societies feeds an insurgency but the United States is often hostage to its narrow goals with regard to counterinsurgency and thus becomes complicit in the host nation s self defeating behavior Unfortunately U S influence often is limited as the allies recognize that America s vital interests with regard to fighting al Qaida linked groups are likely to outweigh any temporary anger at an ally s brutality or failure to institute reforms Training military to military contacts education programs and other efforts to shape their COIN capabilities are beneficial but the effects are likely to be limited at best

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