



**Fédération internationale des ligues des droits de l'Homme**

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,  
DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

International Federation  
for Human Rights

Federación Internacional  
de los Derechos Humanos

الفدرالية الدولية لحقوق الإنسان

**New York, May 21, 2008**

## **Open Letter to the Members of the Security Council**

**Re: The 1267 Sanctions Committee: Human Rights Concerns in Current Targeted Sanctions of Individuals and Non-State Entities**

Excellencies,

In light of the upcoming resolution on the 1267 Al-Qaida and Taliban Sanctions Committee, to be voted on before the end of June at the Security Council, and in response to the Eight<sup>th</sup> report of the Analytical support and Sanctions Monitoring Team of the 1267 Committee (S/2008/324), made public Monday May 19, 2008, the International Federation for Human Rights (FIDH) would like to submit to you its concerns and recommendations regarding the listing and delisting of individuals and non-state entities as part of targeted sanctions procedures that freeze assets and impose travel bans.

FIDH does not challenge the legitimacy of counter-terrorism measures, and acknowledges that targeted sanctions are a significant improvement over generalized sanctions. But it is important to recall that implementation of such measures must respect internationally recognized human rights, which are fundamental to the United Nations' architecture. In fact, all States are bound by international law which provides that any restriction on rights and freedoms be challengeable and subject to due process. Yet, and so far, the 1267 Sanctions Committee has failed to ensure fair and clear procedures, thereby seriously undermining both the efficiency of the sanctions, which have been challenged before national and regional courts, and the legitimacy of the Security Council in listing and delisting individuals without any kind of independent review or uniformly applied standards.

Initially conceived as preventive measures, targeted sanctions often turn into permanent punitive sanctions, and even sometimes have direct criminal consequences. Yet, no effective remedy is available for individuals or entities who were wrongly listed, or whose human rights were violated as a result of their inclusion on such lists.

While FIDH understands the highly political sensitivity attached to terrorism issues and to the authority of the Security Council, we believe that incremental change, starting from within the existing mandate and procedures of the 1267 Committee, is possible and would only benefit all actors. As stressed by former UN Secretary General Kofi Annan in 2002, "there is no trade-off between effective action against terrorism and

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the protection of human rights.”

### **The Current Sanctions Procedure: a Grey and Highly Political Process**

The freezing of assets impacts on the right to private property, and a whole range of other related rights. The travel restrictions may impact on the right to health should a listed individual require treatment that should be sought abroad, on the right to life or to be free from torture, should an individual risk repression in his country of origin. Sanctions infringe on individuals' freedom of association when non-state entities are targeted. Consequences of being listed also impact families and communities.

Throughout the whole 1267 Sanctions procedure, individuals are denied all rights that should be guaranteed under international human rights law in any attempt to restrict rights and freedoms.. Some argue that these sanctions are purely administrative in nature, that the Security Council being inherently political and the ultimate authority for dealing with international threats, it can disregard international law when judged necessary, and that therefore due process or legal language is inadequate here.

Yet, FIDH believes that the serious and punitive consequences of the sanctions, directly targeting individuals and not States, must imply a balanced and impartial process that is not solely political, but that is based on due process rights as recognized under international law. This is also the view of the U.N. High Commissioner for Human Rights, as stressed in her March 2007 report, of UN independent experts, major non-governmental organizations, academics, and some UN member States. In addition, European Advocate General, Mr. Maduro, in his January 2008 advisory opinion in the *Kadi* case found that European regulation implementing the 1267 sanctions was violating the right to be heard, the right to effective judicial review by an independent tribunal, and the right to property. An appeal is pending before the Court of Justice of the European Communities in this case and may be the beginning of greater challenges to the 1267 sanctions regime and procedures.

#### **➤ Listing**

Currently, decisions on whether to place an individual or non-state entity on the Committee's list are directed by the Security Council, on a consensus basis, based on the information provided by a designating State, requested to fill a Cover Sheet with criteria set out in Resolution 1735 (2006). That information may be made public only if the designating State authorizes it – in most cases it remains classified among Committee Members. There is no mechanism in place to ensure that the sanction is necessary and proportional. So far, because of a lack of uniformed standards, each Committee member looks at statements of cases applying its own evidentiary standards, which very much vary from one State to the other.

Targeted individuals or entities are never provided with information on the reasons why they were added on the list. Notification alone does not systematically happen, as the State of citizenship or residency is the only one responsible for informing its nationals / residents that they have been listed. Listed individuals are not permitted to challenge the restriction to their rights and freedoms – they have no right to prepare a defense, to a fair hearing, or to challenge evidence and the reasons for the sanction.

While the 1267 Sanctions Committee's list is the basis of work for the Committee, it is not yet an accurate document, if only because there are at least two dozens of deceased persons still targeted in the list (See Eight Report of the Monitoring Team, pp 14-15). In some cases, there is a serious lack of information, such as proper and full identification, which has led to innocent individuals – including diplomats in some cases – wrongly targeted.

#### **➤ General procedural issues**

The procedures in general pose serious underlying human rights problems, since consensus is the rule for decision-making, and diplomats – who are depending on the executive – are ultimately and uniquely responsible for sanctioning individuals and non-state entities. Here are a few examples of procedural issues affecting individuals' rights:

- Individual listings do not specify a time frame, which can result in a temporary freeze of assets or

- travel ban becoming permanent;
- The review of the Consolidated List takes place once a year, but only for names which have not been updated in four or more years. Members of the Committee are being given these names and unless one of them updates the information, the listing is automatically renewed;
- Resolution 1452 (2002) provides for a set of humanitarian exemptions, which is an excellent start. However, this procedure is not often used, as in most cases individuals listed are neither aware nor notified of this possibility.

➤ **Delisting and the lack of independent review mechanisms**

The only recourse for the individual or non-state entity to request delisting is to petition the Security Council through their State of nationality or residence – which can be extremely problematic – or through the Secretariat's Focal Point, established by Resolution 1730 (2006). Delisting can only occur with the unanimous consent of all of the Committee's members, or through a decision of the Security Council. There is no impartial and independent review mechanism that would advise or bind the Committee on delisting requests.

➤ **Lack of effective remedy**

Remedies are not at all considered for either individuals who were wrongly listed, or for individuals whose human rights were unduly restricted in the sanctions process.

## **Conclusion and Recommendations**

All restrictions to rights and freedoms should be taken according to the principle of legal security and duly respect due process rights. Yet, the current procedures ignore these principles. Such failures have been repeatedly condemned, in particular by the UN High Commissioner for Human Rights, and by the Special Rapporteur on the protection of human rights while countering terrorism.

The effectiveness and credibility of the sanctions mechanism depends primarily on its independence, neutrality, and fairness, and on effective recourse, for those listed, to obtain delisting and effective remedies. The confusion of power is one of the reasons fairness is questioned with regards to the 1267 Committee, since Members of the Security Council not only establish the rules, take sanction against individuals and entities, but also are the only ones in charge of reviewing their own decisions. The United Nations cannot promote the universal application of human rights on the one hand and violate them within its own procedures.

FIDH appeals to the UN Security Council to ensure fairness and respect for human rights in its decision-making process on sanctions. In particular, incremental and meaningful changes can be achieved starting from within its existing mandate:

- Sanctions must be applied in conformity with international human rights law;
- "Statements of cases" – possibly redacted when their confidentiality and intelligence value impedes complete transparency – stating the reasons for putting an individual or entity on the list, as well as the "basis for listing," should all be made public.
- A UN liaison (alike the Focal Point) should assist the State of citizenship or residency in reaching to listed individuals or entities to notify them of having been added to the list, of the reasons for it, as well as of the available procedures for humanitarian exemptions and delisting. It should not be the sole responsibility of the State of citizenship or residency to notify individuals / entities.
- Further detailed criteria, evidentiary standards and norms according to which individuals can be put on the list must be thoroughly and uniformly applied by all Members of the Committee, under the supervision of the Committee's Secretariat.
- Steps must be taken to guarantee to the listed individual or entity the right to present a submission, the right to be heard, and the right to challenge facts and evidence.

- All names on the list should be reconfirmed, and updated twice a year – and until this is materially possible, steps must be taken for more frequent and larger review.
- The mandate of the Focal Point must be strengthened, and it must be authorized to share individual communications with all Committee's Members as soon as they are received, rather than only with the designating and citizenship / residency States in the first stages.
- Unanimity for delisting requests should be replaced, as a first step, by the majority rule, and ultimately, by a procedure in which all Member States need to oppose the delisting request for it to be rejected.
- An independent review panel composed of experts must be established to impartially and with respect to due process rights, analyze all delisting requests and provide effective remedies when justified. The composition of this panel, its mandate, and its advisory or binding relationship to the Committee must be gradually reinforced through the years.

Thank you for considering our concerns and recommendations.

Ms. Souhayr Belhassen,  
FIDH President



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