



# Dismantling the Tools of Oppression: Ending the Misuse of INTERPOL

Fair

Trials

## About Fair Trials

Fair Trials is a global criminal justice watchdog with offices in London, Brussels and Washington, D.C., focused on improving the right to a fair trial in accordance with international standards.

Its work combines: (a) helping suspects to understand and exercise their rights; (b) building an engaged and informed network of fair trial defenders (including NGOs, lawyers and academics); and (c) fighting the underlying causes of unfair trials through research, litigation, political advocacy and campaigns.

As part of its work to ensure that cross-border justice mechanisms operate fairly, Fair Trials has campaigned for simple changes to help make INTERPOL a more effective crime-fighting tool which does not undermine fundamental human rights. Since 2012, Fair Trials has worked to highlight and tackle the misuse of INTERPOL. We have:

- Helped individuals who have been subject to abusive INTERPOL alerts, either by representing them directly or by providing support to their lawyers and other NGOs;
- Worked constructively with INTERPOL to gain a better understanding of the underlying causes of INTERPOL abuse, resulting in a range of detailed papers, including a major report in 2013 – Strengthening respect for human rights, strengthening INTERPOL – in which we set our proposals for reform;
- Supported regional and international bodies, including the Parliamentary Assembly of the Council of Europe, the European Union and the UN Committee against Torture, in their work relating to the issue of INTERPOL abuse;
- Collaborated with civil society organisations, lawyers and academics in building and advancing the case for INTERPOL reform; and
- Highlighted cases of injustice arising from INTERPOL abuse, generating press coverage across the world.

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## Table of Contents

### Glossary of key terms and abbreviations

<b>Executive Summary</b>	4
<b>A. Introduction</b>	6
Table 1: Reform progress to date	8
<b>B. Background to INTERPOL</b>	
<b>C. Overview of Fair Trials' concerns and recommendations</b>	17
<b>D. Drivers of reform</b>	24
<b>E. Analysis of reforms to date</b>	31
Table 2: Impact of Fair Trials' recommendations on CCF Reform	52
<b>F. Conclusions and recommendations</b>	63
ANNEX 1 – Excerpts from INTERPOL text on the Refugee Policy	72

## Glossary of key terms and abbreviations

**Article 2 of the Constitution:** provides that INTERPOL's mandate is to ensure and promote international police cooperation 'in the spirit of the "Universal Declaration of Human Rights"'.

**Article 3 of the Constitution:** provides that 'it is strictly prohibited for the Organization to undertake any intervention or activities of a political, military, religious or racial character'; this is sometimes referred to in this Report as the 'neutrality rule'.

**CCF:** the Commission for the Control of INTERPOL's Files, the body tasked under INTERPOL's Constitution for ensuring that the processing of personal data by INTERPOL takes place in accordance with its own rules. The CCF is divided into two chambers. The Advisory and Supervisory Chamber is responsible for carrying out checks to ensure that the data stored by INTERPOL is kept and processed in accordance with INTERPOL's rules, and it also advises INTERPOL on matters relating to the processing of personal data. The Requests Chamber is responsible for handling requests and complaints from individuals, including applications for access to information and for the deletion of data.

**CCF Statute:** the Statute of the Commission for the Control of INTERPOL's Files, which was adopted at the 85th INTERPOL General Assembly in 2016 and entered into force on March 2017. This statute defines the role of the CCF.

**Diffusion:** a request for international cooperation, including the arrest, detention or restriction of movement of a convicted or accused person, sent by a National Central Bureau directly to all or a selection of other National Central Bureaus.

**INTERPOL:** the International Criminal Police Organisation – INTERPOL.

**INTERPOL alert:** a generic term used by Fair Trials which encompasses **Red Notices** and **Diffusions**.

**INTERPOL Information System:** a collective term used by INTERPOL to refer to all systems used by INTERPOL for data processing for the purpose of international police cooperation.

**Member States:** countries and territories which are members of INTERPOL.

**NCB:** National Central Bureau, the division of the national executive authorities which acts as a contact point with INTERPOL and other NCBs, including and in particular by, issuing requests for Red Notices and Diffusions.

**NDTF:** the Notices and Diffusions Task Force, a specialist team within INTERPOL's General Secretariat tasked with the review of Red Notices and Diffusions.

**Operating Rules:** Operating Rules of the CCF, which were adopted in March 2017. These replaced the previous Operating Rules ("**Old Operating Rules**"), which came into force in November 2008.

**Red Notice:** electronic alerts published by the General Secretariat at the request of an NCB in order to seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender, or similar lawful action.

**RPD:** INTERPOL's Rules on the Processing of Data, which entered into force on 1 July 2012, and were updated most recently in 2016. The RPD regulates the processing of information by INTERPOL and NCBs, and it includes specific conditions for Red Notices and Diffusions.

## Executive Summary

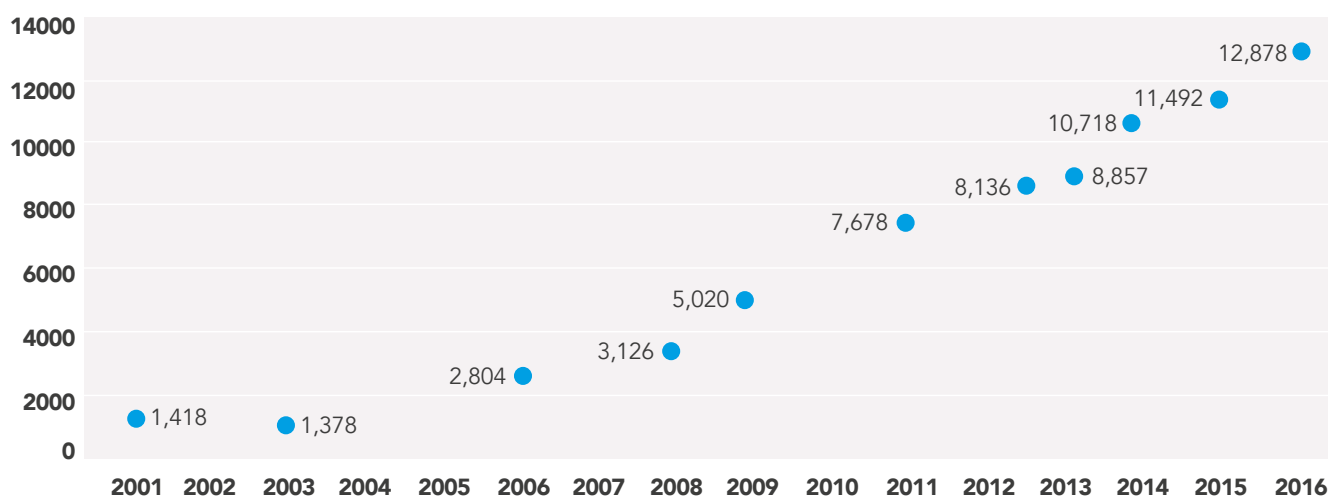
- I. In 2013, Fair Trials published a report – *Strengthening respect for human rights, strengthening INTERPOL* – which highlighted how INTERPOL, the world’s largest police cooperation body, was vulnerable to abuse by countries seeking to use its systems against human rights defenders, political activists and journalists living in exile. INTERPOL’s Constitution requires its international wanted person alert system to operate in compliance with the principle of neutrality and human rights. In practice, however, these requirements have not been consistently complied with, undermining INTERPOL’s credibility as a tool in the fight against global crime.
- II. Since 2013, INTERPOL has taken action to address the concerns we highlighted, and in line with our reform recommendations relating to the problems arising from:
  - a. INTERPOL’s interpretation of its own constitutional commitments to political neutrality and human rights;
  - b. the inadequacy of the systems in place to detect and prevent non-compliant INTERPOL alerts from being circulated; and
  - c. the ineffectiveness of the remedies available to people who believe they are subject to an unjust INTERPOL alert.
- III. Firstly, in 2015 INTERPOL announced a new policy confirming that INTERPOL alerts in relation to individuals with refugee status are not permitted if they are requested by the country from which the individual sought asylum. Secondly, INTERPOL has reasserted control over the data published on its databases, ensuring that all INTERPOL alerts are subjected to more detailed scrutiny. In the case of Red Notices, this now takes place before they are circulated, and in the case of Diffusions, INTERPOL aims to carry out its review shortly after they have been circulated. Thirdly, the Commission for the Control of INTERPOL’s Files – the body to which individuals wishing to challenge the validity of an INTERPOL alert submit requests – has undergone significant reform which we hope will enable it to operate as an efficient and transparent redress mechanism which adheres to basic standards of due process.
- IV. While these reforms represent a major step forward in INTERPOL’s efforts to protect itself from abuse, there is still work to be done to ensure that its commitment to the protection of human rights, in the context of international police cooperation, is upheld. We call upon INTERPOL to ensure that each of the recent reforms is implemented effectively in practice, and to collate and publish data which enables effective monitoring of their impact. Member States too have an important role to play, including by ensuring that INTERPOL has adequate resources to implement its reforms effectively. We have also outlined a series of further reforms which remain necessary in order to ensure that INTERPOL’s systems are well-protected against abuse.
- V. We are amazed by the level of engagement and support this issue has generated, and we are delighted that there is now increased awareness of the need to prevent the abuse of INTERPOL amongst policy-makers, civil society organisations, lawyers, and journalists. We are committed to continuing our constructive and fruitful collaboration with other civil society organisations, the legal community, as well as INTERPOL itself and its Member States, in order to support the organisation in the process of ensuring effective implementation, and to pursue further reforms. We will also be trying to deepen our engagement with political bodies and to develop stronger relationships with national police agencies.

VI. Finally, we acknowledge that INTERPOL is not the only cross-border mechanism that exposes individuals to human rights violations, and that the strengthening of its systems against misuse may result in Member States using alternative mechanisms to track, harass and undermine their opponents. We will work to detect such trends and, using the INTERPOL example of emerging good practice, develop recommendations to strengthen human rights protections.

## A. Introduction

1. The globalisation of criminal activity, resulting from the increased prevalence and sophistication of transnational criminal networks and the ease with which people can travel across borders, has rendered a purely national response to law enforcement and criminal justice anachronistic. The need for States to cooperate effectively in their law enforcement efforts has never been greater. INTERPOL provides valuable tools which facilitate such cooperation. This includes Red Notices and Diffusions, which are international wanted person alerts through which INTERPOL's members ("**Member States**") seek a person's arrest and detention with a view to extradition ("**INTERPOL alerts**"). The significant growth in the use of INTERPOL alerts in recent years – from 2,343 Red Notices issued in 2005 to 12,787 issued in 2016, with a current total of 48,535 in global circulation<sup>1</sup> – is indicative of the value that Member States attribute to INTERPOL's services.
2. The increased use of INTERPOL alerts has exacerbated the risks and potential scale of abuse, arising from the vulnerability of INTERPOL's systems. Despite rules which prohibit the use of INTERPOL alerts for politically-motivated purposes, or in a manner which undermines human rights, INTERPOL has not been effective in policing its own systems. As a result, INTERPOL alerts have become weaponised, used by repressive states against exiled journalists, human rights defenders and political activists. The resulting impact on innocent people and their families is often severe, not only when arrest and detention take place, but also as a result of the numerous other consequences including restricted movement, frozen assets and reputational harm.

### Rise in the number of Red Notices issued between 2001 and 2016













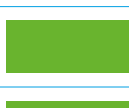
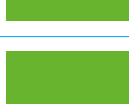

<sup>1</sup> Confirmed by INTERPOL as the figure for May 2017

3. In 2013, Fair Trials called upon INTERPOL to take action to improve the protection of its systems from abuse. In a detailed report – *Strengthening respect for human rights, strengthening INTERPOL* (“**Strengthening INTERPOL**”) – we used real-life cases to illustrate the problem and propose solutions. These focused on what we considered to be INTERPOL’s key vulnerabilities:
  - a. INTERPOL’s interpretation of its own constitutional commitments to political neutrality and human rights;
  - b. the inadequacy of the systems in place to detect and prevent non-compliant INTERPOL alerts from being circulated; and
  - c. the ineffectiveness of the remedies available to people who believe they are subject to an unjust INTERPOL alert.<sup>2</sup>
4. The recommendations which we proposed have underpinned a campaign for the reform of INTERPOL which has engaged civil society, the media, inter-governmental institutions, international human rights bodies, and crucially INTERPOL itself. We are delighted now to report on the steps which INTERPOL has taken, not only to prevent the circulation of abusive INTERPOL alerts but also to offer a meaningful avenue of redress for innocent people who should not be on INTERPOL’s databases. An overview of the reforms adopted to date is provided at Table 1.
5. This report provides a brief background to INTERPOL’s main functions and rules (**Part B**), summarises Fair Trials’ concerns and recommendations (**Part C**), explains the context in which INTERPOL has recognised the need for reform of its systems (**Part D**), provides a detailed analysis of the reforms which have been put in place (**Part E**) and identifies priorities for future action (**Part F**).

<sup>2</sup> Fair Trials, ‘Strengthening respect for human rights, strengthening INTERPOL’ (November 2013) Available at: <https://www.fairtrials.org/wp-content/uploads/Strengthening-respect-for-human-rights-strengthening-INTERPOL4.pdf>



**Table 1: Reform progress to date**

Area of reform	Fair Trials' Recommendation	Progress to date	Verdict
<b>1. Interpretation of INTERPOL's Rules (Paras 43 to 50)</b>	• Provide detailed information on how it interprets Article 3	Insight provided through published CCF decision excerpts (Para 138) - Publication of the Repository of Practice on Article 3 (Para137)	
	• Commission and publish an expert study analysing relevant international extradition and asylum law and its own obligations	No progress	
	• Publish a Repository of Practice on Article 2	2014 amendment to Rules on the Processing of Data requiring Repository of Practice to be developed (Para 133) - Insight provided through published CCF decision excerpts (Para 135)	
<b>2. Protection against abuse (Paras 30 to 36)</b>	• Make available information on how INTERPOL approaches the task of reviewing requests for INTERPOL alerts	Limited information provided regarding the review process (Para 64)	
	• Insist on the provision of arrest warrants with requests for Red Notices and Diffusions as well as complete factual circumstances	No progress	
	• Prevent Red Notices from being circulated prior to INTERPOL review	Reform confirmed in March 2015 (Para 66)	
	• Adopt a clear rule requiring deletion of a Red Notice or Diffusion when a request for extradition has been refused on political motivation grounds	No progress	
	• Adopt a clear rule requiring deletion of a Red Notice or Diffusion when asylum has been granted	Refugee Policy announced in May 2015 (Para 116)	
	• Systematically follow up with the NCB in an arresting country to determine whether an extradition request was received and what was the outcome	No progress	
<b>3. Effective redress mechanism (Paras 37 to 42)</b>	• Establish time limits for NCBs to respond to CCF requests	Introduced in CCF Statute (Paras 101 and 102)	
	• Enhance the competence and expertise of the CCF	Introduced in CCF Statute (Paras 92 and 93)	
	• Create separate chamber of the CCF for handling complaints	Introduced in CCF Statute (Para 92)	
	• Enhance the disclosure system	Introduced in CCF Statute (Paras 94 to 99)	
	• Introduce binding, reasoned and published decisions	Introduced in CCF Statute (Paras 82 to 84)	

## B. Background to INTERPOL

6. Headquartered in Lyon, INTERPOL is the world's largest international policing institution. It connects the law enforcement authorities of 190 countries, enabling them to exchange information and cooperate in fighting crime.

### Aims and operation

7. INTERPOL's Constitution states in Article 2 that INTERPOL's aims are: '(i) to ensure and promote the widest possible mutual assistance between all criminal police authorities ...; and (ii) to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary-law crimes'. Its rules enumerate the limited purposes for which its systems can be used, grouped under the heading 'purposes of international police cooperation'.<sup>3</sup>
8. INTERPOL discharges this function, primarily, by enabling information-exchange between national police forces. It maintains several databases containing, for example, information on lost and stolen travel documents, firearms, stolen works of art, stolen vehicles and stolen administrative documents. Its databases also include nominal data on known offenders, missing persons and dead bodies, including photographs and fingerprints. INTERPOL's databases for all these purposes are connected to the NCBs by means of the secure global network called 'I-24/7'.
9. INTERPOL is not a police force in itself. It has no powers to arrest anyone, investigate or prosecute crimes, but it occasionally deploys 'Incident Response Teams' to assist national police forces during joint cross-border operations or large-scale public events.

### Structure and governance

10. INTERPOL's organisational structure is established by its Constitution. The key parts of INTERPOL, as provided by the Constitution, are as follows:
  - a. **The General Assembly** is the 'supreme authority' of the organisation and is composed of 'delegates', who should be experts in police affairs.<sup>4</sup> INTERPOL publicises the involvement of some delegates, such as government ministers. The General Assembly meets at a plenary session once a year and establishes the rules governing INTERPOL's activities. Acting on a two-thirds majority, it adopts formal rules in the form of appendices to the Constitution, and appoints the President of the organisation. Acting on a simple majority, it adopts resolutions on other policy issues.
  - b. **The Executive Committee** supervises the execution of decisions of the General Assembly and oversees the work of the General Secretariat. It has the function, *inter alia*, of deciding upon an annual work programme for approval at each General Assembly session and handling certain disputes arising in the context of INTERPOL's work. Members are elected by the General Assembly. The Executive Committee is headed by the President of INTERPOL, who is also elected by the General Assembly. The current president is Meng Hongwei (China) whose tenure comes to an end in 2020.
  - c. **The General Secretariat** is the main executive body, which administers INTERPOL's networks, databases and other activities, and acts as the contact point between INTERPOL and national police forces. It has its own legal

<sup>3</sup> INTERPOL, Rules on the Processing of Data ('RPD'), Article 10

<sup>4</sup> INTERPOL's Constitution, Articles 6 and 7

service, the Office of Legal Affairs, which provides advice on the compliance of INTERPOL's work with international legal standards and the rules adopted by the General Assembly. The General Secretariat is headed by the Secretary General, who oversees the day-to-day work of INTERPOL. The Secretary General is appointed by the General Assembly. Their terms last five years, and they can be re-elected. The current Secretary General is Jurgen Stock (Germany), who was elected in 2014.

- d. **The Commission for the Control of INTERPOL's Files ('CCF')** is a body tasked with overseeing INTERPOL's information-processing. The CCF's structure has undergone significant changes in recent years, which are explained in more detail below. The CCF's chairperson is appointed by the CCF members themselves. The current chairperson is Vitalie Pirlog (Moldova).

For example, the United Kingdom's NCB is called 'INTERPOL Manchester', and China's NCB goes by the name of 'INTERPOL Beijing'. These bodies typically fall within the overall competence of the Ministries of the Interior of each country. The NCBs share information with INTERPOL and, through its channels, other NCBs all over the world. Since 1994, INTERPOL has also worked with international criminal tribunals such as the International Criminal Court,<sup>22</sup> issuing Red Notices seeking the arrest of persons accused of offences falling within the remit of the relevant court.

13. In practice, it is not only the NCB itself which will have access to INTERPOL's files. INTERPOL's rules allow the NCBs to authorise other law enforcement agencies within the relevant country to use the systems. One key 'user' of INTERPOL's systems is the corps of border control officials, often agents of the immigration authorities or border police, who carry out identity and travel document checks and can cross-reference names against INTERPOL databases.

## Relationship to national police and other entities

11. The other key part of the INTERPOL architecture is the network of National Central Bureaus ('**NCBs**'). The NCBs are the sections of each of the national police authorities which act as the contact point with INTERPOL, supply information for its databases, and use its systems for police cooperation.
12. The NCB for each member country serves as a contact point for INTERPOL. The NCB is most often a division of the national police force responsible for serious crime and/or cross-border cooperation. Although they are not formally part of the organisation, NCBs are often referred to as 'INTERPOL'.

## 'INTERPOL alerts'

14. One of the main tools used by INTERPOL to facilitate international police cooperation is its system of notices. INTERPOL notices are requests for cooperation or alerts which are disseminated to NCBs through INTERPOL. These notices are colour-coded depending on the type of cooperation sought. For example, yellow notices are used to locate missing persons, and green notices are used to warn NCBs about individuals who are likely to commit crimes. INTERPOL's notices system is complemented by Diffusions, discussed further below, which can be used to seek the same types of cooperation from NCBs, but in a less formal way.

## Red Notices

15. The Red Notice is an electronic alert published by INTERPOL at the request of one of the NCBs or other entities. Its function is to 'seek the location of a wanted person and their detention, arrest or restriction of movement with the view to extradition, surrender or similar lawful action'.<sup>5</sup> Its purpose is therefore to help one country locate a wanted person in order to have them extradited from the country in which s/he is encountered.
16. Each Red Notice is based on a national arrest warrant issued by the competent authorities of the requesting state. The NCB supplies a summary of the facts which form the basis for the allegation and specifies the offence charged, the relevant laws creating that offence and the maximum sentence, or the actual sentence imposed if the person has already been convicted. The request must also include identifiers for the person: their name, photograph, nationality and other items, including biometric data such as fingerprints and DNA profiles.<sup>6</sup> If the General Secretariat finds the Red Notice request compliant with the rules, the Red Notice will be published in its databases and circulated to all other NCBs.
17. A Red Notice is not an international arrest warrant. Each country decides what action to take based on a Red Notice. Some countries, such as the United Kingdom, do not consider the Red Notice to be a valid legal basis for provisional arrest, but many others do. A document produced by the United States NCB states that 'for approximately one-third of the member countries a Red Notice serves as a provisional arrest warrant',<sup>7</sup> but that the US itself, like the United Kingdom, does not treat it as such.<sup>8</sup> However, even in countries which do not regard Red Notices as a sufficient basis for arrest, officers at border points may have powers to hold a

person under administrative immigration detention powers,<sup>9</sup> during which time the requesting country can be notified of an arrest and a formal request made for a provisional arrest warrant.

18. In 2009, INTERPOL launched 'i-link', a system which made it easier for NCBs to upload requests for Red Notices by enabling them to record the content of Red Notices directly on to INTERPOL's databases. As explained in more detail below, the procedures for uploading Red Notices have changed since then and they are not visible to NCBs until they have been reviewed by the General Secretariat. The introduction of the i-link coincided with a sharp increase in Red Notices issued: from 3,126 in 2008, the figure jumped to 5,020 in 2009. Since then, the number of new Red Notices has continued to rise. In 2016, almost 13,000 new Red Notices were issued.<sup>10</sup>

## Diffusions

19. Since the early 2000s, NCBs have also had the option of circulating 'Diffusions': electronic alerts which, like a Red Notice, can be used to request the arrest of a wanted person. The difference is that these are not formal 'notices' published by the General Secretariat.<sup>11</sup>
20. Diffusions are circulated to other NCBs, and at the same time recorded on INTERPOL's databases. An NCB can use a Diffusion to limit circulation of the information to individual NCBs, groups of NCBs, or all NCBs. Diffusions can be issued to seek a person's arrest where the specific conditions for a Red Notice (e.g. the minimum sentence threshold) are not met. Diffusions thus seem to be designed as a more informal cooperation request, of lower authority and injunctive value than a Red Notice and, in practice, they appear to function like e-mails circulated by NCBs through INTERPOL's systems.

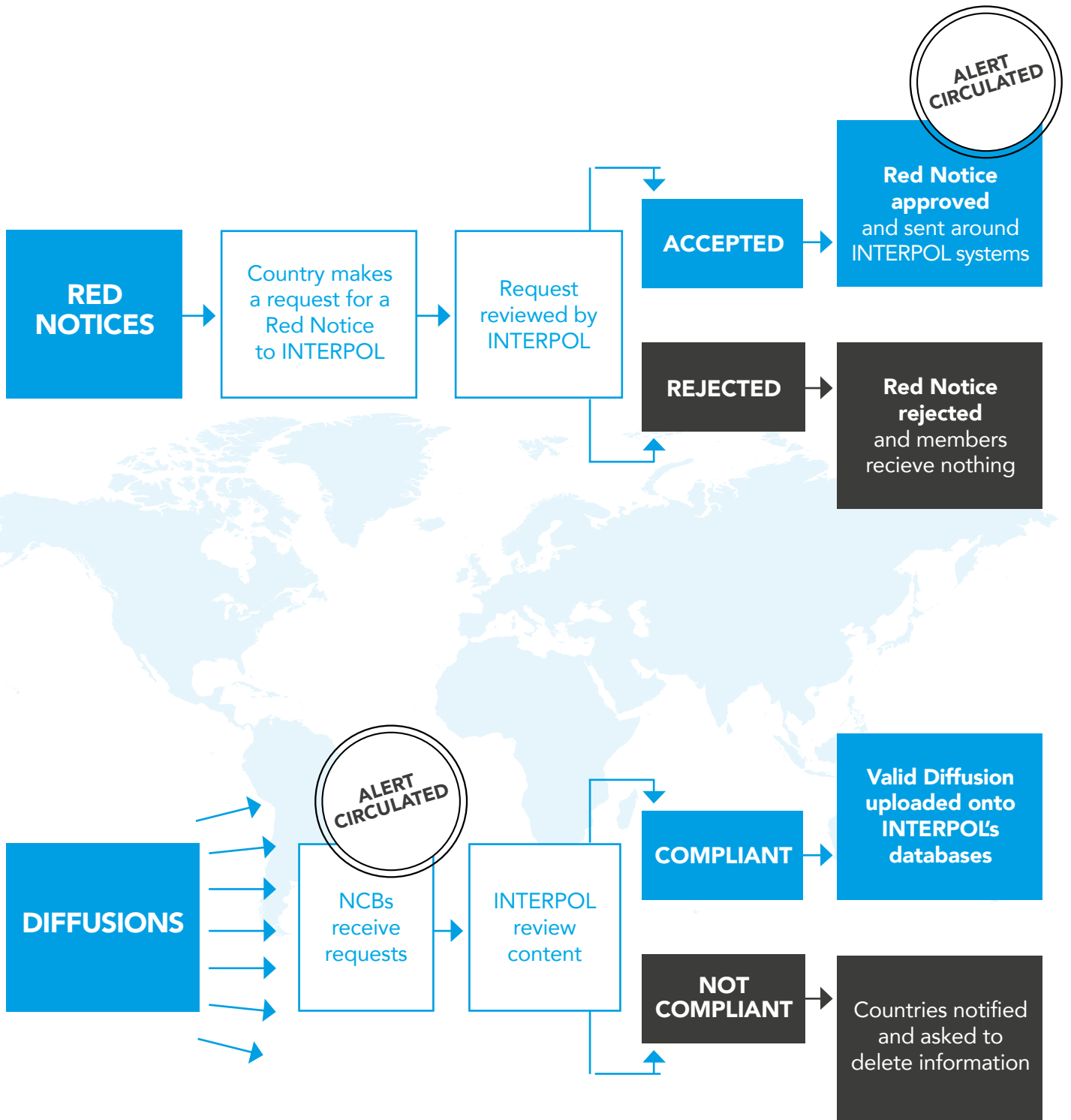
<sup>5</sup>RPD, Article 82

<sup>6</sup>RPD, Article 83

<sup>7</sup>Chatham House meeting summary, p. 4.

<sup>8</sup>US National Central Bureau of INTERPOL, Audit Report 09-35, September 2009, p. 11

<sup>9</sup>See, for example, in respect of the United Kingdom, Immigration Act 1971, Schedule 2, paragraph 16



**NB.** INTERPOL cannot delete information itself and relies on countries being proactive information can remain for years.

21. The General Secretariat has explained to Fair Trials that it 'reviews all Diffusions which request coercive measures, such as arrest'. We understand that Diffusions are not uploaded on to the INTERPOL Information System until they have been reviewed and that if Diffusions are found not to comply with INTERPOL's rules Member States are accordingly notified. Thus, once it has been reviewed, there is an expectation at the national level that the Diffusion, not unlike a Red Notice, contains a valid request that complies with INTERPOL's rules.

## Human Impact

22. INTERPOL alerts can have a considerable impact on the lives of individuals. Individuals subject to INTERPOL alerts are typically at risk of being detained and extradited, given that Red Notices exist for the precise purpose of facilitating such actions. But the impact of INTERPOL alerts can be far broader. They can, for example, severely limit an individual's ability to travel both because of the risk that they would face arrest at international borders, and because visa issuing authorities may refuse visas because of INTERPOL alerts. Red Notices can also result in serious reputational damage if they are public and their extracts are posted on INTERPOL's website. Individuals with public Red Notices have had difficulties, for instance, getting jobs, taking out loans, and opening bank accounts because their details have been found on INTERPOL's website.

23. This is not to suggest that the impact of INTERPOL alerts can never be justified: in many cases, it will be. It is inevitable that police activities, including the sharing of data about wanted persons, will have a significant effect on individuals' lives. INTERPOL alerts serve an important purpose in the prevention of cross-border crime, so if they are not used properly, the victims of crime and society at large bear the impact. But the significant

human impact of INTERPOL alerts brings into focus the need for INTERPOL. To detect the abuses of its system, to ensure that these effects arise only where they are justified, and to promote an effective redress mechanism.

24. The severe impact of INTERPOL alerts is illustrated by the case of Benny Wenda. Benny is the leader-in-exile of the movement for the independence of West Papua from Indonesia, originally recognised as a refugee by the United Kingdom after he fled imprisonment in Indonesia. In 2011, he found out that he was subject to a public Red Notice, which could be viewed on INTERPOL's website. The public website featured a picture of Benny photographed with a West Papuan flag, and it was apparent that the Red Notice was being used not only to undermine his reputation, by labelling him as a 'wanted criminal', but also to undermine the cause that he was working to promote. Although by this time Benny had been naturalised as a British Citizen, the threat of persecution remained in Indonesia, and if any country had decided to act on the Red Notice, this would have put him at risk of being extradited to the country he had fled fearing for his life. Given the very real risk of being stopped and detained at international borders, the Red Notice prevented Benny from travelling internationally to advocate for the rights of his people. For example, Benny had to appear by video link at a conference in the Australian Parliament, because he could not take the risk of transiting through Dubai where he might be arrested pursuant to the Red Notice.



<sup>10</sup> INTERPOL Annual Report 2016

<sup>11</sup> RPD, Article 1(14)

"They had lots of information but I didn't have any. I didn't know what was going to happen. That's why it's been so awful. I didn't even know where to start."

**Rachel Baines**

*Red Notice issued to secure repayment on an unpaid personal loan.*

**Alerts issued by INTERPOL can severely limit an individual's ability to travel both because of the risk that they would face arrest at international borders, and because authorities may refuse visas because of INTERPOL alerts. Red Notices can also result in serious reputational damage if they are public and their extracts are posted on INTERPOL's website.**

**Individuals with public Red Notices have, for instance, had difficulties getting jobs, taking out loans, and opening bank accounts because their details have been found on INTERPOL's website.**

"The persecution from Russian authorities definitely spoils life... and INTERPOL voluntarily helped Russia to do that."

**Nikita Kulachenkov**

*Anti-Corruption activist targeted by Russia*

"Indonesia was only using this INTERPOL Red Notice to try to silence me. Thanks to Fair Trials, the Red Notice was removed and I could return to campaigning for a free West Papua."

**Benny Wenda**

*Subjected to torture, death threats and a politically-motivated prosecution by the Indonesian government.*

I was arrested inside a church in Andalusia. I was arrested with my kids and wife. They could have arrested me at my hotel, or sent me a letter asking me to come by myself, but they preferred to humiliate me in front of hundreds of tourists."

**Bahar Kimyongur**

*Belgian activist of Turkish descent labelled a terrorist by Turkey because of a peaceful protest in the European Parliament*

"Even today after the long legal battle to achieve justice, I still feel as though the false accusations linger and people still look at me with suspicion."

**Patricia Poleo**

*Anti-corruption journalist subject to a Red Notice after fleeing Venezuela to claim political asylum in the U.S.*

"Regimes like the Russian one will have no shame in exploiting the INTERPOL network... We need to develop better controls of the system, to prevent situations like mine."

**Petr Silaev**

*Activist and journalist arrested under a "wanted person" alert for political reasons.*



## INTERPOL's Mandate and Human Rights

25. INTERPOL's aim, as defined by Article 2 of its Constitution, is to promote the widest possible mutual cooperation between police forces, in the detection and suppression of 'ordinary-law crime'. INTERPOL does not have a human rights mandate, but Article 2 of the Constitution makes it clear that its activities should be carried out 'in the spirit of the Universal Declaration of Human Rights'.<sup>12</sup> 'Ordinary-law crime' is defined with reference to Article 3 of the Constitution, which forbids INTERPOL from engaging in any 'intervention or activities of a political, military, religious, or racial character'.<sup>13</sup> In addition to protecting the political neutrality of the organisation, INTERPOL recognises that one of the primary objectives of Article 3 is to protect individuals from persecution.<sup>14</sup>
26. Together, these two provisions define INTERPOL's remit. INTERPOL helps police forces cooperate, but in doing so, it should respect international human rights standards, and it must be strictly neutral on matters regarding politics, race, and religion, and it should not facilitate persecution. These are not just overarching guiding principles of the organisation, they also have practical implications for INTERPOL's day-to-day activities, including on the issuance of INTERPOL alerts. Under the Rules on the Processing of Data, which regulate data processing by INTERPOL and NCBs, all data processed through INTERPOL's systems must comply with Articles 2 and 3 of the Constitution.<sup>15</sup> In other words, INTERPOL Notices and Diffusions must not violate human rights, and they must not be used for political purposes.
27. If INTERPOL's activities pursue its goal in accordance with Articles 2 and 3 of its Constitution, the human impact on those subject to alerts will not normally constitute human rights infringements. Internationally-recognised human rights standards allow justified interference with most human rights for the prevention of crime, and international police cooperation represents an important aspect of this. Conversely, where INTERPOL steps outside its remit, these interferences are no longer justified. The potentially severe human consequences of INTERPOL's activities require that it must be diligent in ensuring that use of its systems is restricted to legitimate purposes.

<sup>12</sup> INTERPOL's Constitution was adopted in 1956, when the Universal Declaration of Human Rights was the only major international human rights instrument in existence.

<sup>13</sup> RPD, Article 1(1)

<sup>14</sup> Repository of Practice on Article 3, 2.2

<sup>15</sup> RPD, Article 11, 34

## C. Overview of Fair Trials' concerns and recommendations

28. Since 2012, Fair Trials has worked to highlight cases of injustice caused by INTERPOL alerts issued in violation of INTERPOL's own constitutional rules (which we have referred to as 'abusive'). We found that INTERPOL faced significant challenges regarding its ability to prevent and remove abusive INTERPOL alerts.
29. Fair Trials has encouraged INTERPOL to take action to address concerns in three main areas: (a) the mechanism for preventing publication of alerts which do not comply with INTERPOL's constitutional rules; (b) the process through which those affected by INTERPOL alerts can seek access to the information being disseminated through INTERPOL's channels and request deletion of INTERPOL alerts which do not comply with INTERPOL's own rules; and (c) the interpretation of its Constitution which requires INTERPOL to respect political neutrality and human rights.
- Protection from abuse**
30. The gatekeeper of INTERPOL's alert system is the General Secretariat, which is responsible for reviewing requests for INTERPOL alerts from Member States, publishing INTERPOL alerts, and keeping them under review thereafter.
31. We know, however, that the General Secretariat has not always been able to detect and prevent abusive alerts from being disseminated, even in cases where there is very strong evidence to suggest they are either politically motivated or based on, or likely to expose individuals to serious human rights violations, such as torture.
- a. **Bahar Kimyongür:** Bahar, a journalist and activist, was detained in Italy in November 2013 pursuant to a Red Notice<sup>16</sup> issued at the request of the Turkish Government. Bahar had previously been detained in the Netherlands (in April 2006) and Spain (in June 2013) On the basis of the same Red Notice. The Red Notice arose following a peaceful protest in the European Parliament. The Government of Italy refrained from extraditing Bahar following the intervention of the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on Torture, and the Special Rapporteur on the promotion and protection of freedom of expression. The intervention raised a number of concerns, including that "there are reasonable grounds to believe that Bahar may be subjected to torture and other forms of ill-treatment if extradited to Turkey".<sup>17</sup> The UN Special Rapporteur on Torture "welcomed the decision of the Government of Italy to refrain from extraditing him and thereby complying with Article 3 of the UNCAT".<sup>18</sup> The Red Notice remained in place despite these findings and following an initial application to the CCF submitted by Bahar. It was not until Fair Trials made a further application on Bahar's behalf that the alert was eventually deleted in August 2014. However, the letter confirming the deletion of the Red Notice contained no reasoning.

<sup>16</sup> Fair Trials, 'Bahar Kimyongür – Turkey' Available at: <https://www.fairtrials.org/bahar-kimyongur/>

<sup>17</sup> United Nations Office of the High Commissioner for Human Rights, Joint Urgent Appeal ITA 3/2013 (17 December 2013) Accessible at: [https://spdb.ohchr.org/hrdb/24th/public\\_-\\_UA\\_Italy\\_17.12.13\\_\(3.2013\).pdf](https://spdb.ohchr.org/hrdb/24th/public_-_UA_Italy_17.12.13_(3.2013).pdf)

<sup>18</sup> United Nations Human Rights Council, Twenty eighth session, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez –Addendum', (6 March 2015) A/HRC/28/68/Add.1



**“...there are reasonable grounds to believe that Mr. Bahar Kimyongür’s may be subjected to torture and other forms of ill-treatment if extradited to Turkey, we would like to draw your Government’s attention to article 3 of the Convention against Torture, which provides that no State party shall expel, return (refouler), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.”**

Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on Torture, and the Special Rapporteur on the promotion and protection of freedom of expression

b. **Djamel Ktiti:** A French national, Djamel was first arrested in Morocco, where he was detained for more than two years, and subsequently in Spain, where he was imprisoned for nearly six months, on the basis of a Red Notice issued by Algeria in 2009. On both occasions, his extradition was refused by national authorities on the basis of a 2011 decision of the UN Committee against Torture, finding that his extradition would present an unacceptable risk of: (a) his being exposed to torture; and (b) his being prosecuted on the basis of evidence obtained through the use of torture. In January 2015, Fair Trials and REDRESS together submitted an application to the CCF.<sup>19</sup> The application

explained, inter alia, that the prohibition on torture, a norm of jus cogens and customary international law which binds international organisations, includes an obligation to prevent the occurrence of torture. As such, there could not be any possibility of an alert against Djamel being lawfully used ‘with a view to extradition’ or being compatible with Article 2 of INTERPOL’s Constitution in light of the UN Committee against Torture’s findings. INTERPOL eventually deleted the Red Notice in December 2015, over six years after it was originally published and five years after a UN treaty body published a decision confirming the risk of torture faced by Djamel.

**‘.... despite the complainant’s allegations highlighting the potential risks, the Supreme Court of Morocco did nothing to assess those risks but was content to base its decision to extradite on statements which, according to the complainant, were obtained under torture. In view of this evidence, .... the Committee concludes that the complainant’s extradition to Algeria would violate article 3 of the Convention.’<sup>20</sup>**

United Nations Committee against Torture, in the case of Djamel Ktiti

32. We found that this problem was largely caused by flaws in INTERPOL’s process of reviewing alerts, including:
- the lack of information on how the review is carried out (including the number of staff responsible, the level of detail and whether country or regional experts are employed to advise on individual cases) and what rules and guidance govern the process of review;

<sup>19</sup> Application available at: <http://www.redress.org/downloads/redressfti-interpol-applicationdjamel-ktiti.pdf>

<sup>20</sup> United Nations Committee Against Torture, Forty sixth session, Communication 419/2010 (26 May 2011) CAT/C/46/D/419/2010

- b. the lack of a requirement for an arrest warrant to be provided along with the Red Notice or Diffusion request; and
  - c. the absence of continual review of the 'effectiveness' of INTERPOL alerts, to determine whether an extradition request has been made following apprehension and, if so, whether it was successful.
33. We recommended that INTERPOL should:
- a. make public information about how it approaches the task for reviewing INTERPOL alerts;
  - b. conduct proactive background research into the requesting country's human rights record and provide more disclosure about the extent to which it does this;
  - c. require NCBs to supply arrest warrants, either at the point of requesting a notice or promptly thereafter if the matter is urgent; and
  - d. institute a practice whereby the General Secretariat, when informed of an arrest, systematically follows up with the NCB of the arresting country either six or 12 months after the event and asks standard questions as to whether an extradition request was made and whether this was accepted or refused, and on what grounds.
34. INTERPOL's processes for reviewing alerts were further compromised by the operation of the i-link system. As explained above, Red Notices are not formally issued until the General Secretariat has checked them to ensure that they comply with INTERPOL's rules. The i-link system, however, enabled NCBs to put requests for Red Notices directly onto INTERPOL's databases, making them immediately visible to all other NCBs. Although INTERPOL had systems that made it possible for NCBs to distinguish between formal Red Notices and mere requests that had not been reviewed, i-link nevertheless allowed issuing NCBs to upload information about wanted persons onto INTERPOL's systems without any scrutiny.
35. Fair Trials' understanding was that requests for Red Notices were reviewed relatively quickly, usually within 24 hours, but even within this short period of time, unchecked information about wanted individuals was accessible to NCBs across the world through INTERPOL's systems. We had concerns that this information could be copied by Member States prior to any review, and subsequently kept in national police databases even if the General Secretariat later decided to reject the request. Although INTERPOL could notify NCBs that it had refused to publish a Red Notice, it had no powers to compel the Member States to delete or amend data on their national databases. In effect, the operation of the i-link system made it possible for abusive requests for the arrests of individuals to infiltrate national police databases via INTERPOL's systems.
36. We recommended to INTERPOL that there should be changes to how i-link operates so that requests for Red Notices are not visible to other NCBs.

### Effective avenue of redress

37. Fair Trials is not aware of any cases to date in which individuals have successfully challenged INTERPOL's decisions in national courts. This is because INTERPOL does not have a physical presence in most countries, and in countries where it does have a presence, such as in France, the United States, and Singapore, it is protected from the jurisdiction of national courts by formal immunity agreements and national laws.<sup>21</sup> INTERPOL's Headquarters Agreement with France, in particular, makes INTERPOL's

<sup>21</sup> For example, Agreement between the International Criminal Police Organisation – INTERPOL and the Government of the French Republic Regarding INTERPOL's Headquarters in France (24 April 2008), and International Organisations (Immunities and Privileges) (ICPO-INTERPOL) Order 2012 (Singapore) (20 August 2012)

files 'inviolable'. This is understood to mean that any action by national authorities in relation to those files is precluded, including by way of judicial oversight.

38. In 1978, France passed its cornerstone law on data protection, establishing the *Commission nationale de l'informatique et des libertés* ('**CNIL**'), an independent supervisory authority with the power to grant individuals access to public authorities' files which related to them. INTERPOL's files are not within the jurisdiction of this body, but as a condition for this exemption, INTERPOL established what eventually became the CCF as its own data protection mechanism.
39. The CCF was initially set up as a supervisory body, but its role has since evolved, and it is now also responsible for handling requests from individuals who wish to gain access to, and seek deletion of, information concerning them which is stored on INTERPOL's files. Although in theory, individuals affected by INTERPOL alerts should be able to seek redress from the countries that issued the alert, this is not a realistic option for many individuals, who may, for example, be facing persecution, or be dealing with a broken legal system that offers no realistic hope of justice. This means that, in reality, many individuals have no avenue of redress when faced with an abusive INTERPOL alert other than through the CCF.
40. The CCF's role is significant not only for the individuals who wish to avail themselves of the remedies which it offers, but also for INTERPOL which relies on the CCF to justify its immunity from the jurisdiction of national courts. International bodies which are not subject to the jurisdiction of national or regional authorities should provide their own remedies so as not to leave the individual in a vacuum of legal protection.<sup>22</sup>
41. Fair Trials has demonstrated how the CCF did not offer an effective avenue of redress, noting in particular:
  - a. **The inadequate expertise of CCF members:** At the time of publication of Strengthening INTERPOL, and as required by the Rules on the Control of Information and Access to INTERPOL's Files, the CCF was staffed by five members – three data protection experts, a computer expert and a police cooperation expert – none of whom had significant background in key areas including criminal law, extradition and asylum and general human rights law. It was also understaffed and under-resourced, with the CCF's budget for 2012 less than 0.2% of INTERPOL's overall budget.
  - b. **The lack of equality of arms:** While there was a procedure through which people could seek access to the data relating to them stored on INTERPOL's files through the CCF, we knew of only a very small number of cases in which this procedure had resulted in disclosure. Further, proceedings before the CCF did not ensure equality of arms as the applicant was not able to comment on the observations and evidence of the NCB. This issue was caused, in part, by INTERPOL's adherence to the "national sovereignty" principle, under which all data recorded on INTERPOL's databases is ultimately controlled by the NCB that supplied it.<sup>23</sup> This meant that whenever individuals attempted to gain access to information about them on INTERPOL's systems, the CCF could not disclose any information unless it had permission from the NCB to do so. While we recognised that in the policing context, full transparency is not possible, the practice of keeping applicants completely in the

<sup>22</sup> Joined Cases C-415/05 P Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission [2008] ECR I-6351 ('Kadi'); Waite and Kennedy v Germany, App No 27083/94 (24 February 1997); and Nada v Switzerland, App No 10593/08 (12 September 2012)

<sup>23</sup> This principle is now clarified in the amended RPD, Art 7(1)

dark about the arguments being made against their submissions raised doubts about the effectiveness of the CCF as a redress mechanism.

- c. **The absence of reasoning:** The decisions of the CCF contained no explanation of the basis on which they were reached, with responses often limited to one short paragraph confirming the outcome of the CCF's deliberations in generic language.
  - d. **The significant delays in the CCF decision-making process:** Based on our own casework and the accounts provided by other lawyers who had engaged in the CCF process, it was clear that delays were a common feature. Rachid Mesli, whose case is described in more detail below, waited for almost four years to obtain a decision to delete his Red Notice from the CCF.
  - e. **The inability of the CCF to make binding decisions:** An indication of the CCF's lack of independence from INTERPOL's General Secretariat was its ability only to issue recommendations rather than binding decisions. Its practice of recommending the addition of addenda to INTERPOL alerts,<sup>24</sup> rather than their deletion, increased the likelihood that a compromise solution would be adopted rather than the CCF choosing to require an effective remedy.
42. In light of these concerns, we recommended that:
- a. INTERPOL should conduct a comprehensive review of the operation of the CCF;
  - b. The competence, expertise and procedures of the CCF required improvement in order for it to provide adequate redress for those directly affected by INTERPOL's activities; and

- c. A separate quasi-judicial chamber of the CCF, appropriately composed, and with procedures ensuring the equality of arms, reasonable timeframes, binding and reasoned decisions and a right to appeal, should be created to deal with complaints.

### Interpretation of INTERPOL's Rules

43. On paper, Articles 2 and 3 of INTERPOL's Constitution help to ensure the organisation's reputation as a trustworthy facilitator of international cooperation by enshrining its commitment to human rights and its neutrality. While the text of the Constitution and supplementary rules appear satisfactory, Fair Trials has recognised that there are problems, or at least a lack of clarity, in the way these were implemented.
- i) *Article 3: Political neutrality*
44. INTERPOL has produced a 'Repository of Practice' on Article 3, which explains how INTERPOL interprets and applies its constitutional obligation to remain neutral. The Repository of Practice confirms that Article 3 is interpreted in line with the 'political offence' exception in extradition law (see, for example, Article 3(1) of the European Convention on Extradition 1957 ("**ECE**") and Article 3(a) of the United Nations Model Treaty on Extradition ("**UNMTE**")) which covers 'pure' political offences such as treason or espionage and 'relative' political offences which relate to ordinary criminal law offences but are political due to their context and the motive for which they were committed. This leads INTERPOL to apply the 'predominance' test, developed by, inter alia, the Swiss courts, and according to which an offence acquires political character if it is committed in the context of a struggle for power and if the private harm done is proportionate to the political interest at stake. The 'predominance test'

<sup>24</sup> Addenda are additional information added to INTERPOL alerts to notify Member States of key facts such as the decision by a Member State to refuse extradition of the person to whom the INTERPOL alert relates.

narrowed in the 1970s to ensure terrorism and other violent crimes committed with political ends could be the subject of extradition, and INTERPOL narrowed its rule accordingly by two General Assembly resolutions.<sup>25</sup>

45. There is however no role in INTERPOL's analysis for the approach set out in the 'discrimination clause' found at Article 3(2) of ECE or at Article 3(b) of UNMTE, which provides for the refusal of extradition where there are "substantial grounds for believing that the request for extradition for an ordinary offence is made in order to prosecute or punish the person on account of their race, religion, nationality or political opinion, or that the person's position may be prejudiced for this reason". While INTERPOL has modernised its approach to a certain extent, taking into consideration factors such as 'the status of the person' and 'the general context of the case',<sup>26</sup> its approach continues to balance the 'Article 3 aspect' against the 'ordinary-law' aspect evolving from a classic predominance test into something else, which is difficult to determine due to the lack of public guidance.
46. The failure of INTERPOL to embrace the 'discrimination clause' approach, which has become commonplace in extradition law practice as the other test has narrowed, has resulted in its decisions being out of step with extradition and asylum courts, producing unsatisfactory outcomes. We have worked on numerous cases in which domestic courts have found the case to be politically-motivated but where INTERPOL maintains the Red Notice or Diffusion nonetheless. The case of Petr Silaev, outlined in detail in *Strengthening INTERPOL*, illustrates this problem well. Petr was forced into exile from Russia, having helped to organise the Khimki Forest demonstration

which took place in 2010 and to which the Russian authorities responded with a major crackdown against those involved. Petr was granted asylum in Finland on the basis of the risk of persecution he faced in Russia but he was subsequently arrested in Spain on account of an INTERPOL alert (in this case a Diffusion) circulated through INTERPOL's databases, following which a Spanish court refused Russia's request for extradition on the grounds of its political motivation. Petr's request for deletion of the Diffusion on Article 3 grounds was denied by the CCF in 2013. The Diffusion was only removed in October 2014 after Petr benefitted from a presidential amnesty in Russia.

47. In order to prevent cases such as Petr's arising in the future, we recommended that INTERPOL:
- a. provide detailed information on how it assesses political motivation and the significance it attaches to extradition refusals and asylum grants;
  - b. commission and publish an expert study analysing relevant international extradition and asylum law and its own obligations, pursuant to adopting an approach in line with the current approach adopted by domestic courts;
  - c. adopt a clear rule requiring the deletion of an INTERPOL alert when either (a) a request for extradition based on the proceedings giving rise to the Red Notice/ Diffusion has been rejected on political motivation grounds; or (b) asylum has been granted under the 1951 Convention on the basis of the criminal proceedings giving rise to the Red Notice/Diffusion; and
  - d. adopt a strong presumption in favour of deleting the Red Notice/Diffusion where the extradition refusal or asylum grant

<sup>25</sup> INTERPOL, Resolution No. AGN/53/RES/7 'Application of Article 3 of the Constitution' (September 1984), and Resolution AG-2004-RES-18 'Interim guidance to the General Secretariat in cases of membership in a terrorist organization' (October 2004)

<sup>26</sup> Rules on the Processing of INTERPOL's Data, III/IRPD/GA/2011 (2016), ('RPD'), Article 34(3) Available at: <https://www.interpol.int/content/download/13042/90082/version/37/file/OLA%20RPD%20UPDATE-EN-11%2016%20.pdf>

is made on the basis of criminal allegations which are not the same as those giving rise to the INTERPOL alert.

b. the risk that the charge or conviction underlying the INTERPOL alert has arisen from the use of torture evidence.

ii) *Article 2: Respect for human rights*

48. While it is encouraging to know that INTERPOL, a policing organisation with no human rights mandate, is committed to upholding international human rights principles, its approach to this commitment has been difficult to identify. INTERPOL has, to date, provided very few clear examples of how it applies Article 2 in practice. For example, in a Chatham House meeting at which INTERPOL spoke, it confirmed that it seeks to apply internationally-shared standards wherever identified, and provided the prohibition of the death penalty against minors as an example of this.<sup>27</sup> Therefore, if an alert is requested against a minor seeking the death penalty, this would be refused, but if an alert is requested against an adult in the same circumstances, it would be considered valid because international law does not, at present, contain any standard excluding the death penalty as such.

49. It is particularly concerning that INTERPOL has not published clear guidance on its approach to the prohibition of torture – an internationally-shared standard. There are two key risks to which INTERPOL should be alert:

- a. the risk of torture or ill-treatment arising following return to the requesting country, either during the criminal proceedings (e.g. torture by police during interrogations) or due to the nature of the potential sentence which might contravene international standards (e.g. stoning); and

50. Our main recommendation was to call for INTERPOL to publish a Repository of Practice on the interpretation and application of Article 2 of its Constitution, particularly to provide clarity on how INTERPOL perceives its responsibility to protect human rights.

<sup>27</sup> Chatham House, 'International Law Roundtable Summary – Policing Interpol' (5 December 2012) Available at: <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/051212summary.pdf>



## D. Drivers of reform

51. Since Fair Trials began its campaign to highlight and prevent the misuse of INTERPOL, we have witnessed INTERPOL shifting firmly into 'reform mode'. At the 84<sup>th</sup> INTERPOL General Assembly session in Rwanda, Secretary General Jürgen Stock urged members to 'be ambitious' and 'work together to shape a powerful reform agenda'.<sup>28</sup>
52. Under the leadership of Stock's predecessor, Ronald K. Noble, efficiency had been INTERPOL's priority, with the number of INTERPOL alerts in circulation and the speed with which they were published as the main indicators of success. It was clearly known to the organisation that INTERPOL alerts were not always justified, but it was apparent that INTERPOL did not recognise its responsibility to do more to prevent its systems from being misused in ways that violated its neutrality, or international human rights standards.<sup>29</sup>
53. INTERPOL's ethos appears to have shifted somewhat under Stock's leadership. The organisation seems to have become more conscious of the potentially devastating impact of notices and diffusions and better aware of the risks that it would itself face if it fails to prevent the misuse of its systems. We have identified four main drivers of the reforms ushered in during Stock's tenure as the Secretary General.
- a) INTERPOL's Immunity
54. The need to protect INTERPOL's legal immunity was undoubtedly a key driver of reform. As stated above, INTERPOL is immune from the jurisdiction of national courts, primarily due to bilateral agreements with certain states. It is now increasingly well-established, however, that international bodies which are not subject to the jurisdiction of national or regional authorities should provide their own remedies, so as not to leave the individual in a vacuum of legal protection. This has led to acceptance that national courts can only decline to adjudicate claims against international organisations if the affected individual has access to a remedy within the organisation. This doctrine has been elaborated by the European Court of Human Rights (the 'ECtHR'), which has held that immunities granted to international organisations are permissible under the European Convention on Human Rights (the 'ECHR') only if the person concerned '[has] available to them reasonable alternative means to protect effectively their rights under the Convention'.<sup>31</sup>
55. Analogous principles have been developed by the Court of Justice of the European Union ('CJEU') in its judgments concerning EU measures implementing United Nations Security Council ('UNSC') Resolutions imposing sanctions against individuals. In the case of Kadi,<sup>32</sup> the

**"If your view of the world is that because of a handful of difficult cases the entire system should be shut down, then you are entitled to that view.... My view is that the world is so dangerous, and it's so easy for criminals to move from one country to another country, that having countries alerted as quickly as possible that someone is wanted for arrest is important. We've only had a problem with 0.5 per cent of cases. These are very small complaints within a big picture."<sup>30</sup>**

Ronald K. Noble, Former Secretary General of INTERPOL

<sup>28</sup> Jürgen Stock, INTERPOL Secretary General, Directional Statement at 84<sup>th</sup> INTERPOL General Assembly Session, 2 November 2015

<sup>29</sup> Ronald K. Noble, 'INTERPOL makes the world a safer place; Far from showing the need for reform, the recent case of William Browder highlights how INTERPOL protects individuals and its member states'

<sup>30</sup> Jake Wallis Simons, 'INTERPOL: who polices the world's police?', Daily Telegraph (8 May 2014) <http://www.telegraph.co.uk/culture/books/10801997/Interpol-who-polices-the-worlds-police.html>

CJEU found that the redress mechanism provided at the UN level by way of a de-listing procedure '[did] not offer the guarantees of judicial protection', especially because there was no requirement 'to communicate to the applicant the reasons and evidence justifying his appearance in the list', and 'no obligation to give reasons' for adverse decisions.<sup>33</sup> The CJEU viewed disclosure, impartiality, and binding, reasoned decisions as essential elements of the right to a remedy, the absence of which justified the review of the implementing measures at the municipal level.

56. These developments highlight the need for the CCF, as INTERPOL's redress mechanism, to provide effective remedies, if INTERPOL wishes to safeguard its immunity. The concerns we raised about the CCF's ineffectiveness, and the risk that this could result in INTERPOL being brought before national courts to face costly litigation, clearly resonated. Secretary General Stock emphasised to the General Assembly in 2015 the need to build a "more robust system" in order to protect INTERPOL from litigation. A review of the CCF's procedures was the response and the results are discussed in more detail in Section E below.

b) Financial Considerations

57. In addition to the threat of costly litigation, INTERPOL also faced the risk of Member States withdrawing financial support if it was unable effectively to address the criticisms of its systems. Concerns raised in 2013 by the US Congressional Appropriations Committee, which stated that it "remains concerned that foreign governments may fabricate criminal charges against opposition activists and, by abusing the use of INTERPOL red notices, seek their arrest in countries that have provided them asylum",<sup>35</sup> were a clear warning signal of the potential financial implications of its failure to strengthen its ability to prevent non-compliant INTERPOL alerts from being circulated.

c) INTERPOL's credibility

58. If its immunity is vital to INTERPOL's financial survival, its credibility is vital to the effectiveness of its alert systems. For INTERPOL alerts to work as they should, it is imperative that INTERPOL's members trust that the alerts are a valid basis upon which to take action to limit the rights of an individual within their jurisdiction. Fair Trials was not alone in shining a light on all the reasons why Member States should perhaps think twice about putting their faith in INTERPOL.

**'... the Working Group on the Processing of Information, or GTI, will help build a more robust system that will ensure compliance with international standards and consequently provide increased protection to the Organisation from litigation.'**<sup>34</sup>

Jürgen Stock, Secretary General of INTERPOL

<sup>31</sup> Waite and Kennedy v. Germany (n 22)

<sup>32</sup> Kadi (n 22)

<sup>33</sup> Paragraphs 322-325.

<sup>34</sup> Stock (n 28)

<sup>35</sup> US Congressional Appropriations Committee, Committee Reports, 113 th Congress (2013-14), H Rept No 113-171

59. Similar criticisms made by international organisations (including the UNHCR),<sup>36</sup> representatives of national governments<sup>37</sup> and domestic courts<sup>38</sup> demonstrated that INTERPOL should take seriously the risks to its reputation. Further, the results of a survey of EU Member States conducted by the European Commission highlighted concerns about the reliability of Red Notices, with half of the responding EU Member States stating that they had encountered unlawful Red Notices and the majority confirming that they do not treat a Red Notice as a valid reason to arrest someone without further checks.<sup>39</sup>

This arose in the context of other threats to INTERPOL: credibility. The decision to conclude INTERPOL's profitable relationship with FIFA during 2015, following worldwide coverage of FIFA's corruption scandal, was explained by the need to protect INTERPOL from "taking decisions that pose high reputational risk",<sup>40</sup> emphasising the new focus on building trust.

d) Political and Media Pressure

60. It is clear that while INTERPOL concluded for itself that it should prioritise efforts to protect its immunity and improve its credibility, The pressure imposed through a combination of media scrutiny and examination by international and regional bodies has almost certainly played a role in leading INTERPOL to conclude that it should prioritise its immunity and credibility through a series of reforms. Media coverage of the misuse of INTERPOL's systems has certainly increased since 2013, with major outlets including The Washington Post, The New York Times, The Economist, Deutsche Welle, El Pais, and Al Jazeera being critical in their assessments.

<sup>36</sup> Vincent Cochetel, Deputy Director of the division of International Protection Services, UNHCR stated in 2008, while discussing issues which undermined international protection, that "UNHCR is also confronted [with] situations whereby refugees... when travelling outside their country of asylum .. are apprehended or detained, due to politically-motivated requests made by their countries of origin which are abusing of Interpol's 'red notice system'. Such persons are often left without access to due process of law, and may be at risk of refoulement or find themselves in 'limbo' if they are unable to return to their country of asylum". Available at: <http://www.refworld.org/pdfid/4794c7ff2.pdf>.

<sup>37</sup> In June 2013, following an embarrassing situation in which the Australian authorities relied upon information in an INTERPOL Red Notice which was later found to be incorrect, the Australian Immigration Minister, Brendan O'Connor, commented that the Australian police must examine the veracity of Red Notices because quite often the claims within them "are found to be wrong". (David Wroe, 'Interpol notices 'often wrong': Minister Contradicts AFP', The Age, (17 June 2013) <http://www.theage.com.au/federal-politics/political-news/interpol-notices-often-wrong-minister-contradicts-afp-20130617-2oe86.html>). In 2011, the Polish Ministry of the Interior called for reforms to INTERPOL following the arrest of Ales Michalevic on the basis of a Red Notice (Radio Poland, 'Poland wants changes to Interpol arrest system' (15 December 2011) Available at: <http://www.thenews.pl/1/10/Artykul/80561,Poland-wants-changes-to-Interpol-arrest-system>)

<sup>38</sup> See *Rihan v. Minister of Citizenship and Immigration* [2010] FC 123, in which a Canadian Federal Court judge warned against treating a Red Notice as conclusive for the purpose of excluding a person from refugee status pursuant to Article 1F(b) of the 1951 Convention relating to the Status of Refugees due to doubts casted on its content. See also *Leke Prendi aka Aleks Kola v Albania* [2015] EWHC 1809 (Admin), in which the High Court clarified the evidential test relating to the admission of evidence in extradition proceedings and raised questions as to the reliability of Red Notices in this context.

<sup>39</sup> Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, 'Abusive use of the Interpol System: the need for more stringent legal safeguards', Report No. 14277 (29 March 2017) ('PACE Report') adopted by Resolution 2161 (2017) (26 April 2017), para. 57

<sup>40</sup> Stock (n 28)



## In the News

Some of the media coverage showing the misuse of INTERPOL's system

### AL-JAZEERA

'Interpol: Red Alert!'

*"Human rights groups have suggested that some countries have used Interpol wanted notices to target political dissidents and opponents across borders, often with devastating consequences."*

12 JANUARY 2017

<http://ow.ly/o5t930IF4lf>

### BBC RADIO 4

'Inside Interpol'

*"Increasingly important in our globalised era, but lacking in accountability and surrounded with an aura of mystery, [INTERPOL] has to cope with new scrutiny. In this age of accountability and transparency, how long can it withstand demands for change?"*

15 JUNE 2015

<http://ow.ly/PLhg30IF4sa>

### THE ECONOMIST

'Abusing Interpol – Rogue States'

*"Red Notices", which seek the discovery and arrest of wanted persons for extradition, are open to abuse."*

16 NOVEMBER 2013

<http://ow.ly/UDbS30IF4tb>

### INTER PRESS SERVICE

'Interpol 'Misused' by Human Rights Abusers'

*"Criminal justice experts say that even though some of Interpol's member states are nations with poor human rights records and corrupt legal systems, the organisation has no effective mechanisms to prevent countries, or even individual prosecutors, abusing its system."*

6 AUGUST 2013

<http://ow.ly/QCQE30IF4Jk>

### NEW YORK TIMES

'Putin Plays Hardball'

*"Interpol has long been accused of allowing its Red Notices to be used for political purposes."*

17 NOVEMBER 2014

<http://ow.ly/EBRi30IF4Vc>

## THE TELEGRAPH

Is INTERPOL fighting for truth and justice, or helping the villains

**"...there is now overwhelming evidence that Interpol's channels are happy to assist secret police from some of the world's most vicious regimes as they target and then persecute internal dissidents."**

22 MAY 2013

<http://ow.ly/BfKs30IF4ol>

## WASHINGTON POST

'Reforming Interpol'

**"A related problem has been the extreme difficulty faced by people who are wrongly included on Interpol lists and want to be removed from a designation that can have debilitating consequences to reputations and to the ability to travel."**

19 NOVEMBER 2016

<http://ow.ly/KAFG30IF4qr>

## DEUTSCHE WELLE

Puigdemont case highlights concern over Interpol arrests

**German Chancellor Angela Merkel accused Turkey of misusing Interpol for political ends.**

16 NOVEMBER 2013

<http://ow.ly/pC4g30IF4HY>

## SUDDEUTSCHE ZEITUNG

Deutschland ließ politisch Verfolgte aus der Türkei im Stich

**'Interpol verleiht Vorwürfen den Anstrich der Seriösität'**

17 NOVEMBER 2017

<http://ow.ly/hSkM30IF4F3>

## REUTERS

China upset as Interpol removes wanted alert for exiled Uighur leader

**'Interpol, the international police organization, elected a senior Chinese public security official, Meng Hongwei, as president, prompting concern among rights groups that China could use the position to its advantage'**

24 FEBRUARY 2018

<http://ow.ly/KuCs30IF4X9>

## EL PAIS

Interpol señala, y España detiene

**"La comunidad internacional alerta de que países como Turquía abusan de las alertas rojas para perseguir a sus disidentes"**

30 AUGUST 2017

<http://ow.ly/28AK30IF51c>

61. In the last five years, INTERPOL has also come under scrutiny by international and regional bodies. The UN Special Rapporteur on Human Rights Defenders, Michel Forst, has shared his concerns in the context of the review of CCF procedures (described in more detail below) while the UN Committee against Torture has twice met with INTERPOL representatives to discuss matters relating to torture which arise in relation to INTERPOL alerts.
62. In October 2014, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe ("**the PACE Committee**") resolved to produce a report – *Abusive use of the Interpol system: The need for more stringent legal safeguards* ("**PACE Report**") – under the rapporteurship of then German MP Bernd Fabritius.<sup>48</sup> The Committee conducted a lengthy and diligent examination of INTERPOL's operations, seeking input from INTERPOL, civil society organisations, victims of abusive INTERPOL alerts and lawyers during three hearings in May 2015, May 2016 and December 2016 respectively.<sup>49</sup> While the report and resolution were not adopted until April 2017,<sup>50</sup> after the reforms described below were adopted, the very fact of its drafting taking place during such a critical period in the reform process was likely a contributing factor. The Committee's report and resolution set out a number of recommendations which will certainly help to inform future developments, as discussed in more detail below.

<sup>48</sup> Parliamentary Assembly of the Council of Europe ('PACE'), Committee on Legal Affairs and Human Rights, 'Abusive use of the Interpol System: the need for more stringent legal safeguards', Reference 4074 of 3 October 2014

<sup>49</sup> PACE, 'Two PACE committees to meet in Rome' (12 May 2016) Available at: <http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=6158&lang=2>; and 'Improving the effectiveness of Interpol to ensure respect for human rights' (14 December 2016) Available at: <http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=6459&lang=2>

<sup>50</sup> PACE Committee on Legal Affairs and Human Rights, 'Abusive use of the Interpol System: the need for more stringent legal safeguards', Reference 4074 of 3 October 2014, Doc/ 14277 (29 March 2017) ('PACE Report'); See also Fair Trials, 'Council of Europe denounces political abuses of INTERPOL' (3 May 2017) Available at: <https://www.fairtrials.org/council-of-europe-denounces-political-abuses-of-interpol/>

## E. Analysis of reforms to date

63. The drivers identified in Section D above have led to significant reforms being adopted in relation to each of the main areas of concern identified by Fair Trials.

### Protection from abuse

64. We have limited information about the process and the substance of the reviews which INTERPOL conducts in relation to requests for INTERPOL alerts. INTERPOL does not publish guidance on how it approaches the review process, so we have little indication of the factors which are taken into account, making it difficult to determine whether, on the whole, it is doing a good job. Despite this opacity, we have been notified of reforms to the process through which reviews are conducted which indicate that efforts are being made to improve the mechanism for preventing 'abusive' INTERPOL alerts from getting on to INTERPOL's databases.

#### *i) Review prior to publication*

65. As explained above, Fair Trials found that INTERPOL's ability to prevent abusive alerts from being circulated was compromised by the operation of the i-link system that made requests for Red Notices visible to NCBs before they were reviewed. This meant that, in practice, police forces across the world had access to information about wanted persons through INTERPOL's channels, even before they had been checked for compliance with INTERPOL's rules.

66. INTERPOL confirmed to Fair Trials in March 2015 that requests for Red Notices are no longer to be visible to NCBs until they have been reviewed by INTERPOL, providing the General Secretariat with the opportunity to weed out cases of abuse before they are circulated to police forces in all Member

States. From a procedural perspective this is a significant improvement, given the ease with which Member States could previously circulate information about innocent people without scrutiny.

67. Problems remain, however, in relation to Diffusions, which can be sent directly between Member States. Diffusions are not dissimilar to emails which are sent by one NCB to all or some other NCBs without the need for prior approval from the General Secretariat. INTERPOL does review Diffusions, but only after they have been circulated in this way. If an NCB receives a Diffusion, it may (but does not have to) check the name against INTERPOL's databases, and if the Diffusion has still not been approved by INTERPOL at this point, this will be evident. If INTERPOL does not approve the Diffusion, a message is circulated to all NCBs advising them of this decision and requesting that NCBs should not use INTERPOL's channels to act upon that Diffusion. It remains possible, however, for NCBs to act on the Diffusion in a bilateral manner.

68. While Diffusions are not formal INTERPOL notices per se, they can and often do serve the same function as Red Notices, by requesting the location and arrest of wanted persons. Even if they are intended to be less formal than Red Notices, it is up to Member States to determine the extent to which there is a difference in the injunctive value between the two types of alerts. This means that in practice, Diffusions, much like Red Notices, often trigger arrests and extradition proceedings.

69. Whereas INTERPOL has now put in place procedures to check Red Notices before their contents become visible to NCBs, similar measures have not been adopted to check the contents of Diffusions before they are circulated. We have concerns



that this makes Diffusions a convenient alternative to Red Notices that are subject to less stringent checks, even though their impact can be just as devastating. This challenge is illustrated

by the case of Nikita Kulachenkov, who became subject to a Diffusion, even after writing to INTERPOL to alert the organisation to the risk that Russia might issue an INTERPOL alert against him.

## Nikita Kulachenkov

Nikita is a Russian forensic accountant who was associated with the political activist Alexei Navalny in the conduct of anti-corruption work when he was charged with the theft of a street-art drawing valued at US\$1.55. Knowing he would not get a fair trial in Russia, Nikita fled to Lithuania where he was granted asylum in December 2015. Despite Nikita alerting INTERPOL in October 2014 to the possibility that Russia would seek to circulate an INTERPOL alert in his name, Russia was still able to circulate a Diffusion relating to Nikita through INTERPOL in August 2015 and, as a result, he was arrested in Cyprus in January 2016. Instead of enjoying the planned holiday with his mother, Nikita spent three weeks in detention until the Lithuanian authorities were able to convince Cyprus not to extradite Nikita to Russia and instead to release him and allow him to return to Lithuania where he had refugee status. Had Russia attempted to use a Red Notice to seek Nikita's arrest rather than a Diffusion, there is a greater chance that INTERPOL would have identified the request as abusive before the information was disseminated through INTERPOL's channels. Nikita was eventually able to convince INTERPOL to delete the Diffusion, in line with its then newly-adopted policy on refugees,<sup>51</sup> in March 2016.



**“And for the rest of my life I don’t have the guarantee, not INTERPOL, not Russia will ever assure me I will not face the same situation ”**

Nikita Kulachenkov

70. Even though Nikita's Diffusion has been deleted, questions remain as to whether INTERPOL will be able to prevent Russia from sending out the same request for his arrest in the future. In the case of Bill Browder, a British financier turned activist, INTERPOL issued a statement in 2013 confirming that Russia's attempt to request his arrest through INTERPOL had been refused because of the 'predominantly political nature' of that request.<sup>52</sup> According to reports, this did not prevent Russia from making at least six attempts to seek Browder's extradition through INTERPOL, as a result of which he has been detained,<sup>53</sup> and had his US visa revoked.<sup>54</sup> Although INTERPOL have confirmed that Browder has never been subject to a Red Notice, the absence of the Red Notice does not appear to have prevented Russia from sharing information with other countries about him. The suggestion has been made that this was made possible through the use of Diffusions.<sup>55</sup>
71. As explained, Diffusions are subject to checks, but by the time that these checks take place, the information about the wanted person would have already been shared with police forces across the world. The problems regarding Diffusions are thus similar to those of requests for Red Notices before the recent changes to the i-link system were adopted. If information regarding a wanted person is made accessible to police forces of Member States, this information can be copied or downloaded, and subsequently stored on national police databases, even if INTERPOL advises NCBs not to rely on the information. Currently, INTERPOL does not have effective mechanisms for preventing abusive requests for arrests from entering national databases through its systems

by way of Diffusions, and it also has no effective means of deleting or recalling such data from national databases if it has been found to violate INTERPOL's rules.

72. It is our view that if INTERPOL is unable to ensure that all NCBs will delete a Diffusion from national databases following confirmation from INTERPOL that it is non-compliant, then it must prevent circulation from taking place before a quality control review has been carried out (as it has done with Red Notices).

### **Recommendations for INTERPOL: Review prior to publication**

INTERPOL should develop more robust mechanisms for ensuring that NCBs comply with instructions to delete a Diffusion from national databases following a General Secretariat decision that it is non-compliant.

If INTERPOL is not able to ensure that all NCBs will delete a Diffusion from national databases following confirmation from INTERPOL that it is non-compliant, then INTERPOL must prevent circulation of Diffusions from taking place before a quality control review has been carried out.

#### *ii) Improved quality control*

73. Welcome as it is, the introduction of prior review of all Red Notices remains meaningless if the prior review itself is ineffective. In order to improve quality control at this stage, INTERPOL set up a special task force, known as the 'Notices and Diffusions Task Force' ('**NDTF**') in 2016, whose role is to check INTERPOL notices

<sup>52</sup> Ronald K. Noble, 'INTERPOL makes the world a safer place; Far from showing the need for reform, the recent case of William Browder highlights how INTERPOL protects individuals and its member states', The Telegraph, 28 May 2013

<sup>53</sup> Ellen Barry and Raphael Minder, 'Bill Browder, a Putin Critic, Live-Tweets his Arrest in Spain', The New York Times, 30 May 2018

<sup>54</sup> Andrew E Kramer, 'US Clears Bill Browder to Enter, Rebuking Russia', The New York Times, 23 October 2017

<sup>55</sup> Barry and Minder (n 5)

and Diffusions for compliance. Recognising the importance of resourcing the review procedure, we understand that the General Secretariat has dedicated more lawyers, law enforcement officials and other experts to the NDTF to ensure that the review of requests for INTERPOL alerts is carried out more robustly. The number of people involved in conducting reviews fluctuates at around 30-40 staff. We have also been encouraged to learn that there is now a stricter test applied for the publication of Red Notices online, which reduces the risk of abusive public Red Notices defaming individuals.

74. We have not been informed of how the NDTF carries out its reviews. We do not know, for example, what sources of information the NDTF consults to check for compliance, and what prompts the NDTF to conduct further inquiries.

This makes it difficult to determine how thorough and meaningful these reviews are, and how the NDTF is able to determine whether or not a request for a Red Notice is compatible with Articles 2 and 3 of the Constitution. We appreciate that the NDTF's task of checking requests for Red Notices is a challenging one, and that in many cases, it will not be obvious to INTERPOL that a request violates human rights, or is politically motivated. The NDTF is unlikely, for example, to have an easy way of checking whether or not someone has been granted refugee status. Such information is rightly treated as confidential and sensitive by most states.

75. There have been some cases that have received significant media coverage which demonstrate that INTERPOL is able to identify politically motivated requests for Red Notices and prevent their dissemination.

## Clare Rewcastle Brown

Clare Rewcastle Brown is a British journalist whose publication Sarawak Report alleged diversion of US\$700m into the personal accounts of the Prime Minister of Malaysia. Clare was subject to an arrest warrant in Malaysia for alleged "activity detrimental to parliamentary democracy" and the website through which she published the Sarawak Report was blocked within Malaysia. In a public statement, the Malaysian police announced that it had made a request for a Red Notice against Clare on the basis of these allegations. However, this request was rejected by INTERPOL, as confirmed by the General Secretariat in response to a letter written by Fair Trials.<sup>56</sup>

76. Clare Rewcastle Brown's case is an encouraging example that shows that INTERPOL's review mechanisms can work, but the media coverage in this case must have helped INTERPOL to identify Malaysia's request for the Red Notice to be politically motivated. Clearly, not all cases benefit from the same degree of publicity that this one had, and it would be hard to describe the NDTF's review procedures as effective, if it were only able to prevent the dissemination of Red Notices in high profile cases.
77. Since being notified that INTERPOL had taken steps to improve its ability to weed out requests for INTERPOL alerts which are contrary to its rules, we have continued to see cases which suggest that the process is not yet working as effectively as it should. These cases suggest that, whatever the procedures for the review are, there is much room for improvement. In some of these cases, INTERPOL would have been able to find information that suggested that a Red Notice or a Diffusion violated its rules, just by doing a quick internet search:
- a. **Muhiddin Kabiri**
- As the leader of the Islamic Renaissance Party of Tajikistan ("IRPT") since 2006, Muhiddin Kabiri was a member of Tajikistan's parliament until the country's 2015 elections, when the government began a crackdown on political opposition

in the country. IRPT was banned, and Kabiri and other members of his party were convicted and sentenced after criminal proceedings which were criticised by human rights activists as being politically motivated.<sup>58</sup> But only months after this judgment, Muhiddin's details were uploaded on to INTERPOL's list of wanted persons.<sup>59</sup> Muhiddin was a prominent member of the IRPT and reports critical of the government's crackdown on his party were widely available to the public, so the issuance of the Red Notice against him seemed to suggest that INTERPOL had failed to carry out sufficient checks. Muhiddin's Red Notice was removed in 2018 after Fair Trials notified the CCF of his refugee status.

**"In June, Tajikistan's Supreme Court sentenced IRPT leaders to lengthy prison terms on charges of attempting to overthrow the government. The sentences followed an unfair trial initiated in retaliation for their peaceful political opposition and reflect the government's pervasive manipulation of the justice system and egregious violations of the right to freedom of expression."<sup>60</sup>**

Human Rights Watch

<sup>57</sup> Human Rights Watch, 'Tajikistan: Severe Crackdown on Political Opposition (17 February 2016), Available at: <https://www.hrw.org/news/2016/02/17/tajikistan-severe-crackdown-political-opposition>

<sup>58</sup> The Guardian, 'Tajikistan human rights fears as banned party's ex-leaders jailed for life' (2 June 2016) Available at: <https://www.theguardian.com/world/2016/jun/02/tajikistan-human-rights-fears-banned-irpt-party-leaders-jailed-life>

<sup>59</sup> Radio Free Europe / Radio Liberty, 'Tajikistan's Islamic Party Leader Added to Interpol Wanted List' (5 September 2016) Available at: <https://www.rferl.org/a/tajikistan-islamic-party-chief-interpol-list/27968735.html>

<sup>60</sup> Human Rights Watch, 'World Report 2017 – Tajikistan: Events of 2016', <https://www.hrw.org/world-report/2017/country-chapters/tajikistan>

**“One of the few IRPT leaders to have escaped imprisonment is its chairman, Muhiddin Kabiri, who went into exile in 2015 ... who maintained a persistently moderate stance in opposition, Kabiri is now wanted in Tajikistan on charges of terrorism. Given the obvious political motive for the campaign against the party and the government’s abuse of its members, it is astonishing that INTERPOL agreed to a Tajik request to put out a global “red notice” for his arrest.”<sup>61</sup>**

John Heathershaw, Associate Professor in International Relations, University of Exeter

extradition to Turkey and was able to go back home after direct interventions from the German government.<sup>63</sup> Turkey’s misuse of INTERPOL against Dogan was widely criticised, including by the German Chancellor Angela Merkel.

**“I am very glad that Spain has now released [Dogan Akhanli]... It is not right. We must not misuse international organisations like INTERPOL for such purposes”<sup>64</sup>**

Angela Merkel,  
Chancellor of Germany

## b. Dogan Akhanli

Dogan Akhanli is a German writer of Turkish origin, who fled Turkey and was granted asylum in Germany in the 1990s. Dogan is renowned for his writings critical of Turkey’s human rights record, and for advocating for the recognition of the Armenian genocide, a position strongly opposed by the Turkish state. In August 2017, Dogan was arrested whilst on holiday in Spain, reportedly on the basis of an INTERPOL Red Notice issued at the request of the Turkish authorities. Dogan had a public profile prior to his arrest, and INTERPOL could have easily found out that there was a history of politically motivated prosecutions against him.<sup>62</sup> Dogan was eventually able to avoid

78. It is also clear that the NDTF will need continued and increased support and funding to carry out its activities properly. It is not known how many requests for Red Notices are reviewed by the NDTF, but this number is clearly in excess of the 13,000 new Red Notices issued each year,<sup>65</sup> assuming that a proportion of the Red Notice requests are refused as a result of the reviews. In addition, the NDTF also reviews Diffusions, which are issued at the rate of more than 22,000 per year.<sup>66</sup>

As well as reviewing alert requests, there are also over 47,000 Red Notices currently in circulation, the majority of which are likely to have been disseminated before the more stringent review procedures were introduced. These existing Red Notices will also need to be reviewed, further adding to the NDTF’s

<sup>61</sup> John Heathershaw and Edward Lemon, ‘After 25 years of independence, Tajikistan is a bastion of torture and repression’, The Conversation (7 September 2016) Available at: <https://theconversation.com/after-25-years-of-independence-tajikistan-is-a-bastion-of-torture-and-repression-64945>

<sup>62</sup> Volker Hage and Daniel Steinvorth, ‘Thin Evidence: Trial of German-Turkish Author Slammed as ‘Revenge’, Der Spiegel (8 December 2010) Available at: <http://www.spiegel.de/international/world/thin-evidence-trial-of-german-turkish-author-slammed-as-revenge-a-733447.html>

<sup>63</sup> Deutsche Welle, ‘Spain releases Dogan Akhanli, German author detained on Turkish warrant’ (20 August 2017), Available at: <http://www.dw.com/en/spain-releases-dogan-akhanli-german-author-detained-on-turkish-warrant/a-40163753>

<sup>64</sup> Reuters, ‘Merkel attacks Turkey’s ‘misuse’ of Interpol warrants’ (20 August 2017), Available at: <https://www.reuters.com/article/us-eu-turkey-election/merkel-attacks-turkeys-misuse-of-interpol-warrants-idUSKCN1B00IP>

<sup>65</sup> INTERPOL, Annual Report 2016

<sup>66</sup> INTERPOL, Annual Report 2015. It is unclear what proportion of these Diffusions are used to seek the location and arrest of wanted persons

<sup>67</sup> PACE Report (n 50), para. 58-59

already heavy workload. The 30-40 staff members of the NDTF clearly have an enormous task, and there are doubts about their ability to fulfil their objectives adequately unless the apparent capacity challenges are addressed.

79. There is also a relationship between the effectiveness of the review process and the interpretation of Articles 2 and 3 of the Constitution. Until clarity is provided on key aspects of the rules which govern the determinations of whether an INTERPOL alert is compliant, the effectiveness of the review process will be inhibited.

It has been suggested, that this is also a matter of resources. In its report and resolution, the PACE Committee has proposed that the budgetary challenges facing the General Secretariat could be overcome through the adoption of a 'causal responsibility' approach, with the NCBs responsible for the most abusive INTERPOL alerts paying the cost of the extra scrutiny which their abusive requests necessitate.<sup>67</sup> We question whether this approach would work in practice, with INTERPOL having no meaningful way to enforce payment. There is also a risk that by identifying certain Member States as 'abusers', INTERPOL will make itself open to criticisms of partiality.

## Recommendations: Quality Control

INTERPOL should provide more detailed information on how it approaches the task of reviewing Red Notices prior to publication and Diffusions following circulation, including the extent to which it conducts proactive background research into the requesting country's human rights record and the circumstances of the case.

INTERPOL should develop a database of trustworthy sources which can be relied upon to provide credible information to assist the General Secretariat in the task of reviewing requests for INTERPOL Alerts.

INTERPOL should establish an effective system of communication with UN treaty bodies, special mandates and other human rights bodies to ensure that information which they hold in relation to individuals subject to INTERPOL alerts, and which may have a bearing on the validity of such INTERPOL alerts, is shared promptly.

INTERPOL should ensure that all INTERPOL alerts currently in circulation are subjected to the more stringent process of review which we now understand to be applied to all new requests for INTERPOL alerts.

INTERPOL should collate and publish data regarding the number of requests for INTERPOL Alerts received each year (disaggregated according to Red Notices and Diffusions) and the number of requests which are refused and the reasons for such refusal.

INTERPOL should ensure that the NDTF has adequate resources to conduct the stringent reviews necessary to prevent the publication of INTERPOL alerts which do not comply with its rules.

Member States should support the work of the NDTF, including by ensuring that it has sufficient resources to carry out its activities effectively. We would recommend that Member States provide ring-fenced funding to INTERPOL to ensure that the NDTF is sufficiently staffed, and that it has enough resources to conduct a full review of existing Red Notices and Diffusions.

## Effective avenue of redress

### i) Moving in the direction of reform

80. A year after publication of *Strengthening INTERPOL*, we saw two key developments which signalled INTERPOL's commitment to addressing our concerns regarding the deficiencies of the CCF as an avenue of redress. In September 2014, Nina Vajic, a former judge of the European Court of Human Rights, a professor of Human Rights Law at the University of Zagreb and an expert in international organisations law, was appointed as Chair of the CCF. Given that the lack of human rights expertise within the CCF was one of the issues which Fair Trials had hoped to see addressed by INTERPOL, we welcomed this as a positive step in the right direction.
81. Two months later, during INTERPOL's General Assembly in November 2014, a Resolution was adopted which tasked an internal working group (*Groupe de travail sur le traitement d'information* or "**GTI**") with conducting a comprehensive review of INTERPOL's data processing at all levels, including the CCF, and tasking INTERPOL's General Secretariat with conducting consultations to assist the GTI.<sup>68</sup> The GTI met for the first time in July 2015, with over 60 participants from 30 countries, and Fair Trials welcomed the opportunity to make both written and oral representations at the meeting,<sup>69</sup> we reiterated our concerns about the way in which the CCF operates and called for reforms to ensure an adversarial process which functions with greater transparency and efficiency.
82. During the July 2015 meeting of the GTI, it became clear that there was a genuine commitment to reforming the CCF but

that there was a lack of clear vision within INTERPOL and on the part of its members of what precise reforms were required. We sought to inform further the GTI's thinking on these issues, by submitting a more detailed proposal for CCF reform in advance of the working group's second meeting which took place in December 2015.<sup>70</sup> Drawing on good practice examples from other international organisations and comparable bodies, and emphasising that reforms were imperative in order to bring the CCF in line with the requirements of internal redress mechanisms established by the Court of Justice of the European Union in *Kadi*,<sup>71</sup> we made the following proposals:

- a. **Composition and structure:** In order to address concerns about the CCF's lack of the expertise needed to determine complaints, the CCF should be divided into three entities, each with specialist expertise, which meet with sufficient regularity to ensure that requests and complaints are processed within specified timeframes:
- i) Data Protection Office, which advises and monitors INTERPOL on data protection matters and processes requests for access to INTERPOL's files;
  - ii) Complaints Committee, which has expertise in human rights and extradition law, and is responsible for handling requests for the deletion or amendment of information on INTERPOL's files; and
  - iii) Appeals Panel, which hears appeals from the Data Protection Office and the Complaints Committee.

<sup>68</sup> INTERPOL, Resolution No. 19, AG-2014-RES-19, 'INTERPOL's supervisory mechanisms concerning the processing of data in the INTERPOL Information System' (November 2014)

<sup>69</sup> Fair Trials, 'Fair Trials makes recommendations to INTERPOL on Red Notice abuse', (28 July 2015)

Available at: <https://www.fairtrials.org/fair-trials-make-recommendations-to-interpol-on-red-notice-abuse/>

<sup>70</sup> Fair Trials, 'Submission – Reform of the Commission for the Control of INTERPOL's Files and its data processing procedures'

(10 December 2015) Available at: <https://www.fairtrials.org/wp-content/uploads/Fair-Trials-Submission-to-GTI-Dec-2015.pdf?platform=hootsuite>

<sup>71</sup> *Kadi* (n 22); See also C-584/10 P, *Commission and Others v Kadi* [2010] ECR II 5177 ('Kadi II')



- b. **Funding:** INTERPOL should provide adequate funding to ensure the effective implementation of any reforms to the CCF and that consideration should be given to the use of video conferencing technology, for example, as a mechanism for making cost savings.
- c. **Unrepresented applicants:** The CCF should do more to ensure that people without legal representation are able to access the remedies which the CCF provides. More information about the procedures for making data access requests and complaints should be made publicly available, as well as template documents which unrepresented individuals could make use of. The CCF should use simpler language in its correspondence so that it is more easily understood by people who do not have legal training.
- d. **Data access requests:** The presumption of secrecy which governs the CCF's procedures and which prevents even people who have good reasons to believe that they are subject to an INTERPOL alert from accessing the data on INTERPOL's files, should be replaced by a presumption of disclosure of information about the existence of an INTERPOL alert. Data access requests should be subject to tighter deadlines, with data being blocked or deleted whenever such deadlines are not complied with.
- e. **Complaints procedures:** The CCF's procedures for requesting the deletion or amendment of information should be made more transparent, and should enable NCBs and individuals to exchange arguments more openly and effectively. There should be a presumption of disclosure of arguments and evidence submitted by both the NCB and the individual, subject to limited exceptions, and specific deadlines should be introduced to govern the complaints procedure. In order to facilitate the shift to a more open and transparent procedure, oral hearings should be made available with the use of video-conferencing technology where appropriate.
- f. **Decisions:** The CCF's decisions should be fully reasoned, including a description of the facts of the case, a summary of the arguments put forward by both parties, and references to specific provisions of INTERPOL's rules. Decisions should also be made publicly available, subject to redactions, so that both NCBs and individual applicants would be able to gain an improved understanding of how the CCF interprets INTERPOL's rules. CCF decisions should be binding on the General Secretariat.
- g. **Appeals:** The CCF's decisions in response to data access requests and complaints should be accompanied by a right to appeal to an Appeals Panel which are able to address any issues relating to the interpretation of INTERPOL's rules and the evidence provided by NCBs and applicants. The appeals procedure should be adversarial, enabling an effective exchange of arguments between the parties, and subject to specific timeframes.
- h. **Remedies:** There should be three types of remedies:
  - i) **Interim remedies:** The CCF should be able to add caveats to existing alerts to notify users of its systems that the data is subject to review, and it should block alerts in cases where NCBs fail to comply with its direction in the context of data access requests and complaints.

- ii) **Deletion of data:** Whenever the CCF finds that an alert does not comply with INTERPOL's rules, it must delete the data, make the decision public (subject to necessary redactions), notify all NCBs and issue a letter to the individual to confirm the deletion.
  - iii) **Addenda:** Addenda should only be used as interim remedies, or where the CCF wants to alert users of its systems that there is a good reason for a cautious approach to be taken when deciding whether to act on an alert. In the absence of any policy requiring the deletion of alerts where extradition has been refused on the basis of political motivation and/or the risk of refoulement, this might include cases in which there have been refusals of extradition. Addenda should appear on all public alerts and should be available automatically to other NCBs.
83. During 2015 and 2016, while the GTI was still conducting its review, we started to see changes in the way in which the CCF was operating, further demonstrating INTERPOL's commitment to reform. These changes included an increase in the number of sessions from three to four per year, each lasting for three days rather than the previous two. The CCF also started to make decisions between its sessions, particularly in straightforward cases (such as those to which the Refugee Policy applies). We understand that this was made possible by adopting a new procedure under which the CCF delegates certain powers to the CCF chairperson and/or the rapporteur, so that they can make decisions on some types of cases on a weekly basis.
84. In November 2015, the General Assembly adopted a resolution which strongly indicated that Member States were on board with the reform agenda. The Resolution urged members to cooperate promptly with the General Secretariat and the CCF, tasked the General Secretariat with developing proposals for reform of the CCF, and required the General Secretariat to implement the decisions of the CCF (i.e. making the decisions binding).<sup>72</sup>
85. In 2016, the CCF's new website was launched, giving the public clearer, more accessible information about the CCF's role and procedures that will help individuals to exercise their right to challenge data being held on INTERPOL's databases, particularly if they are not being assisted by a lawyer. During the same year, we started to see the inclusion of reasoning in the decisions provided by the CCF and other lawyers representing clients with INTERPOL Alerts have confirmed the same.<sup>73</sup>
86. During 2015, the CCF also began to include with deletion decisions a "to whom it may concern" letter which confirms that the applicant "is not subject to a Red Notice or a Diffusion and is not known in INTERPOL's databases". These letters are a valuable document for people who have previously been subject to INTERPOL alerts which have been deleted to carry with them when travelling given the risk that data relating to a deleted INTERPOL alert will remain on national police databases. In June 2015, 10 months after his Red Notice was deleted by INTERPOL, Bahar Kimyongür was detained for two and a half hours in a Greek airport on the basis of a national register of wanted persons and while the authorities checked with INTERPOL to

<sup>72</sup> INTERPOL, Resolution 9, AG-2015-RES-09 'Supplementary measures associated with the processing of notices and diffusions' (November 2015)

<sup>73</sup> See for example Michelle Estlund, 'INTERPOL Red Notice removal cases – a sample of results from 2016', Red Notice Journal (10 January 2017) Available at: <http://www.rednoticelawjournal.com/2017/01/interpol-red-notice-removal-cases-a-sample-of-results-from-2016-part-1/>

confirm whether the information on the Greek system was still valid. The letters which the CCF is now routinely providing should go some way to resolving such situations for people whose data lingers on national databases following deletion by INTERPOL.

### *CCF Reforms*

87. In November 2016, the General Assembly adopted a resolution<sup>74</sup> which approved a new Statute of the Commission for the Control of INTERPOL's Files<sup>75</sup> and introduced amendments to INTERPOL's Rules on the Processing of Data, both of which came into force in March 2017. These reforms were supplemented by the revised CCF Operating Rules which were adopted later in the same month.<sup>76</sup>

### *Greater independence and influence of the CCF*

88. The CCF Statute now states clearly that the CCF is to be independent in the performance of its functions.<sup>77</sup> There are now clearer protections of the independence of the CCF from the influence of the General Secretariat, but also the independence of CCF members from other external influences.

89. The role of the General Secretariat in the procedures of the CCF has been significantly reduced, with its residual role being limited to issues relating to the disclosure of information and to receiving information about extensions of deadlines.<sup>78</sup> The CCF's

independence from the General Secretariat is further entrenched by the codification in the CCF Statute of the binding nature of its decisions.<sup>79</sup> In addition, the recent reforms enable the CCF to submit a budget proposal, following which the General Assembly will allocate "the annual budget necessary to perform its functions". The General Secretariat, previously responsible for setting the CCF's budget, no longer plays any part in the process.<sup>80</sup>

90. Article 11 of the CCF Statute which deals specifically with the independence of the CCF requires INTERPOL and its Member States to "abstain from any action which might influence the members of the Commission or its Secretariat, or be prejudicial to the discharge of their functions"<sup>81</sup> and makes the Chairperson of the CCF responsible for ensuring that "the rules on the independence of the Commission and its members are respected".<sup>82</sup> The General Secretariat is no longer responsible for appointing the CCF Secretariat, which is now appointed and supervised exclusively by the CCF itself.<sup>83</sup>

91. As for the independence of CCF members from external influence, Article 11(2) of the CCF Statute requires that Commission members must "remain free from external influence, whether direct or indirect, and neither solicit nor accept instructions from any person, body or government", and CCF members should withdraw themselves

<sup>74</sup> INTERPOL, Resolution No. 6, AG-2016-RES-06, 'INTERPOL's supervisory mechanisms for the processing of data in the INTERPOL Information System' (November 2016)

<sup>75</sup> II.E/RCA/GA/2016 ('CCF Statute') Available at: <https://www.interpol.int/content/download/33754/446865/version/10/file/OLA-STATUTE%20CCF-AG-EN-nov2016-02.pdf>

<sup>76</sup> Commission for the Control of INTERPOL's Files – Operating Rules, CCF/100/d488 (Adopted 24 March 2017) ('Operating Rules')

<sup>77</sup> CCF Statute, Article 4.

<sup>78</sup> CCF Statute, Articles 21, 34(1), 35(3) and 40(3).

<sup>79</sup> CCF Statute, Article 3(2)(c) and Article 38(1).

<sup>80</sup> CCF Statute, Article 24; cf. RCI Article 8

<sup>81</sup> CCF Statute, Article 11(4).

<sup>82</sup> CCF Statute, Article 11(5).

<sup>83</sup> CCF Statute, Article 15

from participating in consideration of cases in which they have possible conflict of interests, which includes cases in which the member is a national of a country subject to a complaint.<sup>84</sup> This provision is significant in light of concerns which some civil society organisations have expressed regarding the potential politicisation of the CCF procedure through its members. Fair Trials has been informed by the CCF that the CCF Secretariat is responsible for ensuring that CCF members do not participate in decisions where there might be a conflict of interest.

*Improvements to the CCF's capacity and expertise*

92. The CCF has been split into two chambers that concentrate expertise in its two main roles. The Supervisory and Advisory Chamber manages its role of supervising and advising on INTERPOL's data processing activities,<sup>85</sup> while the Requests Chamber manages its role of handling individual requests for access to data and complaints.<sup>86</sup> The number of members of the CCF has increased from five to seven under the new Statute, and the requirement for the CCF

to include more legal experts from specific fields,<sup>87</sup> and representation of "the principal legal systems of the world",<sup>88</sup> mean that it has much better capability to handle complicated requests involving human rights arguments.

93. The new rules also establish quality requirements for the staff of the CCF Secretariat,<sup>89</sup> and permit the CCF to consult external experts and international bodies, and seek advice from recognised experts, to further enhance its ability to make informed decisions.<sup>90</sup> While the regularity of the CCF's meetings has not increased, with the requirement being for a minimum of three sessions to take place each year,<sup>91</sup> there is now the obligation for the dates of such meetings to be made public,<sup>92</sup> and provision has been made for the CCF's work to continue between sessions.<sup>93</sup> In addition to these changes, it is our understanding that there has been an increase in the number of staff at the CCF Secretariat, further enhancing its capacity to cope with its increasing responsibilities and caseload.

<sup>84</sup> Operating Rules, Rule 2.

<sup>85</sup> CCF Statute, Article 6(1)(a).

<sup>86</sup> CCF Statute, Article 6(1)(b).

<sup>87</sup> CCF Statute, Article 8(4).

<sup>88</sup> CCF Statute, Article 8(2).

<sup>89</sup> CCF Statute, Article 15.

<sup>90</sup> CCF Statute, Articles 21 and 22.

<sup>91</sup> CCF Statute, Article 16.

<sup>92</sup> CCF Statute, Article 16(3).

<sup>93</sup> CCF Statute, Article 17; Operating Rules, Rule 10.

Changes to the composition of the CCF	
Old CCF Composition	New CCF Composition
Chairperson (senior judicial/data protection expert) Two data protection experts Electronic data processing expert Expert in police and international cooperation	<b>Supervisory and Advisory Chamber</b> Data protection expert Expert on electronic data processing
	<b>Requests Chamber</b> Data protection expertise Expertise in police matters, especially international cooperation Expertise in international criminal law Expertise on human rights Senior judicial/prosecutorial position, preferably with expertise on international cooperation

*Better transparency and respect for the equality of arms*

94. The rules governing disclosure of evidence by the CCF have been significantly reformed, creating a presumption that information “shall be accessible to the applicant”.<sup>94</sup> NCBs are only able to prevent disclosure if they have good reasons for doing so, and these reasons are given in Article 35(3) of the CCF Statute as (a) to prevent public or national security or to prevent crime; (b) to protect the confidentiality of an investigation or prosecution; (c) to protect the rights and freedoms of the applicant or third parties; and (d) to enable the Commission or INTERPOL to properly discharge their duties. Where any of the above restrictions apply, the decision not to provide disclosure must be justified and an effort should be made to provide whatever information is possible, for example in the form of summaries.<sup>95</sup>
95. The failure by an NCB to provide justification for withholding disclosure does not, however, lead to the automatic

disclosure of the content of the information but the CCF may take the lack of justification into consideration when assessing and deciding on the request.<sup>96</sup> So far, the CCF has not clarified how exactly it takes into consideration the fact that disclosure has been refused when it is making its determinations in complaints proceedings. The CCF decisions we have seen so far, recognise that the refusal to disclose information regarding data on INTERPOL’s systems undermine the adversarial nature of the complaints proceedings, by compromising the individual’s ability to challenge the data properly. The decisions do not make it clear how exactly the CCF addresses the unfairness, only that it takes the ‘imbalance’ between the parties into consideration.

96. The new rules on disclosure have not replaced the “national sovereignty” principle, and given that the CCF continues to view the NCBs as the ultimate controllers of the data that they supply to INTERPOL, it remains the case that the CCF does not disclose any information to individuals before seeking permission from the NCB.

<sup>94</sup> CCF Statute, Article 35(1).

<sup>95</sup> CCF Statute, Article 35(4).

<sup>96</sup> CCF Statute, Article 35(4).

Any decision by NCBs to refuse disclosure should be subject to proper scrutiny by the CCF, so that in practice, information is only withheld from individuals where there are genuine reasons to justify this. At present, there are some questions about the extent to which the new rules of disclosure are promoting transparency. In Dolkun Isa's case, for example, it was evident that the CCF felt bound by NCB Beijing's insistence that no data should be disclosed, as a result of which the CCF did not even confirm whether or not there was a Red Notice against him. This was notwithstanding the fact that the Chinese Ministry of Foreign Affairs had made public statements that Dolkun was subject to a Red Notice. It seemed in this context there was no justifiable reason for refusing to disclose any information, even to confirm whether or not there was any data regarding Dolkun on INTERPOL's systems.

97. Currently, there are very few ways of finding out how effectively the CCF is applying the new rules on disclosure, because the CCF does not provide detailed responses to individuals when it has decided to restrict access to information. However, it seems that the CCF is still in the process of developing its procedures regarding the disclosure of information, and we have started to see, in some cases where the CCF has refused disclosure, that it identifies which of the four exceptions under Article 35(3) justified the withholding of information. We can also tell from some written decisions of the CCF, (explained further below) regarding requests for the removal of Red Notices, that the CCF is actively engaging in discussions with NCBs to encourage them to disclose data to individuals where it believes that withholding of information cannot be justified.

98. The disclosure requirements, including the permitted restrictions, apply both to the NCB and to the individual applicant, and the General Secretariat is also able to request that disclosure is withheld. There are some concerns that, far from making CCF procedures transparent, both the NCBs and individuals might be inclined to overuse the provisions of Article 35(3) to restrict access to information, making it more difficult to make decisions on individual complaints by seeking responses to arguments put forward by both parties.
99. It is worth noting that the previous Article 14(5) of the old Operating Rules, which created a presumption of disclosure in cases where the applicant could demonstrate knowledge of the existence of an INTERPOL alert, has not been replicated in the new CCF Statute or Operating Rules. It is assumed that this is because new broader presumptions of disclosure now apply, and this is unlikely to create significant changes in practice given our experience that this provision did not, in fact, lead to disclosure in such cases.

**"The Commission certainly understands the importance of the presumption of the confidentiality of the data processed by INTERPOL. However, a delicate balance needs to be found between the requirements of national sovereignty and the specific needs of international police cooperation on the one hand, and the fundamental rights of an individual to due process of law on the other."<sup>97</sup>**

Nina Vajic, Former Chair of the Commission for the Control of INTERPOL's Files

<sup>97</sup> Nina Vajic, 'Speech by the CCF Chair to the INTERPOL General Assembly' (9 November 2016) Available at: <https://www.interpol.int/en/News-and-media/Speeches/2016/2016-General-Assembly-%E2%80%93-Speech-by-Ms-Nina-Vaji%C4%87,-Chairperson-of-the-CCF/>

100. In addition to the new disclosure regime, a minor amendment to the drafting relating to the possibility of hearings could make them more likely given that they will now be held “if deemed necessary”<sup>98</sup> rather than only “in exceptional circumstances”.<sup>99</sup> Fair Trials is not aware of any cases in which the CCF has conducted a hearing, but we hope that these measures will further contribute to the transparency of the complaints process.

### *Specified timeframes*

101. Time limits have been introduced to the CCF’s procedures, requiring the CCF to make decisions in individual cases within a certain number of months after it has declared applications to be admissible. The time limits are as follows:

<b>Stage of proceedings</b>	<b>Timeframe</b>
Acknowledgement of receipt of request	At the earliest opportunity <sup>100</sup>
Decision on admissibility of request	At the earliest opportunity and no later than one month after receipt of the request
Decision on a request for access to data	Within four months from the date on which request was declared admissible (with extensions warranted due to the circumstances of a particular case reasonably and promptly communicated to the General Secretariat, the NCB and the applicant with an explanation of the decision to extend)
Decision on a request for correction or deletion of data	Within nine months from the date on which request was declared admissible (with extensions warranted due to the circumstances of a particular case reasonably and promptly communicated to the General Secretariat, the NCB and the applicant with an explanation of the decision to extend)
Communication of CCF decision to the General Secretariat	Within one month of the decision being made
Implementation of the decision by the General Secretariat	Within one month from the date on which it was received from the CCF
Written decision provided by CCF to the applicant and the NCB on access request	Within one month from the date of the decision made by the CCF
Written decision provided by CCF to the applicant and the NCB on request for correction or deletion	No later than one month from the date on which implementation is notified to the Requests Chamber

<sup>98</sup> CCF Statute, Article 36; Operating Rules, Rule 28.

<sup>99</sup> Old Operating Rules, Article 22.

<sup>100</sup> CCF Statute, Article 31(1)

<sup>101</sup> CCF Statute, Article 32(1)

<sup>102</sup> CCF Statute, Article 40(1)

<sup>103</sup> CCF Statute, Article 40(3)

<sup>104</sup> CCF Statute, Article 40(2)

<sup>105</sup> CCF Statute, Article 40(3)

102. To assist the CCF<sup>110</sup> in meeting these new time limits, NCBs are required to respond diligently to the requests from the CCF. Furthermore, the CCF is required to provide information to individuals on relevant timeframes and keep the applicant informed of the status of the request and any relevant developments, either at its own initiative or in response to a request from the applicant.<sup>111</sup> This is a very positive change, given that the frequent delays to the CCF's procedures have compromised its effectiveness as a redress mechanism.

*Reasoned and public decisions*

103. The CCF's recently introduced practice of providing reasoned decisions has been formalised in Article 38(2) of the CCF Statute and Rule 32 of the Operating Rules. The decision should include, at the very least, "a summary of the proceedings, the submissions of the parties, a statement of the facts, the application of INTERPOL's rules and an analysis of legal arguments and operative parts."<sup>112</sup> There is also the requirement for reasoning to be provided in relation to the decision on admissibility.<sup>113</sup> The extent to which the CCF is required to provide reasoning for decisions to withhold disclosure of information relating to the request is not entirely clear, but the CCF statute states that such decisions need to be "justified".<sup>114</sup>

**CCF Decisions – Before and After**

The CCF's Decision in the case of Petr Silaev (above), dated October 2014 in response to an application for the deletion of his Red Notice had two sentences, confirming that the application had been received, and that his Red Notice was deleted. By contrast, the redacted CCF decision published on INTERPOL's website in 2017 (right) is evidently much more detailed.



<sup>106</sup> CCF Statute, Article 41(1)  
<sup>107</sup> CCF Statute, Article 41(2)  
<sup>108</sup> CCF Statute, Article 41(3)  
<sup>109</sup> CCF Statute, Article 41(3)  
<sup>110</sup> CCF Statute, Article 5(2)  
<sup>111</sup> CCF Statute, Article 31  
<sup>112</sup> CCF Statute, Article 38(2)  
<sup>113</sup> CCF Statute, Article 32(3)  
<sup>114</sup> CCF Statute, Article 35(4)



104. There is also a commitment on the part of the CCF to make its decisions public<sup>115</sup> and, at the time of writing, fourteen redacted decisions have been published on the CCF website providing some much-needed insight into how INTERPOL's rules are interpreted. These include interpretations of Articles 2 and 3 (see paragraphs 135 and 138 below),<sup>116</sup> as well as the provisions of the RPD. In particular, the published decisions tell us how the CCF applies Article 35 of the RPD, which requires data on INTERPOL's files to be 'of interest for the purposes of international police cooperation' in various situations.<sup>117</sup> The excerpts also illustrate how the CCF interprets the provisions in the CCF Statute, including those that relate to re-examination of requests, demonstrating how stringently the requirement for "new material information" is applied.<sup>118</sup>

105. The CCF decisions also help us to understand the CCF's approach to decision-making. We learn from these excerpts that it "is not empowered to conduct an investigation, weigh evidence, or make a determination on the merits of a case" as these tasks are the responsibility of national authorities.<sup>119</sup> The CCF also refrains from making general assessments about a country's legal system.<sup>120</sup>

106. The CCF tends to take a holistic approach in its decisions and, in cases where it finds that an INTERPOL alert is not compliant with INTERPOL's rules, it does not always identify which specific provisions were violated. This approach is illustrated by Decision Excerpt No. 13, in which the CCF considered a range of arguments for the deletion of the Red Notice, including the assertion that the Red Notice was politically motivated, and that the dispute that formed the basis of the alert was a

private matter. The decision does not state clearly which of these arguments the CCF agreed with. It does not explain whether or not the Red Notice was issued in violation of Article 3 of the Constitution, and it also does not make a clear finding on the private nature of the dispute. Instead, the CCF decided in this case that, on balance, the combined effect of the doubts that it had regarding political motivation and the private nature of the dispute meant that the Red Notice did not comply with INTERPOL's rules. The availability of reasoned decisions is no doubt a very welcome improvement, but individuals and NCBs may need clearer explanations of how the CCF's decisions were made to be reassured that they were not made in an arbitrary manner.

#### *Analysis of reforms*

107. Fair Trials is delighted by the significant reforms which have been introduced by the new CCF Statute and Operating Rules. Many of our recommendations have been taken on board and we consider there now to be a solid foundation upon which to build a more transparent and effective redress mechanism than has ever been available before in the INTERPOL context. We believe that these reforms bring the CCF's procedures closer in line with the best practice examples we identified in comparable complaints bodies of international organisations in our submission to the GTI.<sup>121</sup>

108. These reforms must only be viewed, however, as a foundation. It is only through the effective implementation of these reforms that their potential can be fully realised, and this will not be straightforward.

<sup>115</sup> CCF Statute, Article 44

<sup>116</sup> Available at: <https://www.interpol.int/About-INTERPOL/Commission-for-the-Control-of-Files-CCF/Legal-texts-and-studies/Publications-of-the-Commission>.

<sup>117</sup> CCF, Decision Excerpts Nos. 11, 12, and 13

<sup>118</sup> See Decision Excerpts Nos. 6 and 7. Available at: <https://www.interpol.int/content/download/34450/452061/version/2/file/Decision%20Excerpt%20N%C2%B06.pdf> and <https://www.interpol.int/content/download/34446/452045/version/2/file/Decision%20Excerpt%20N%C2%B07.pdf>

<sup>119</sup> See Decision Excerpt No. 2 (n 34)

<sup>120</sup> CCF, Decision Excerpt No. 14

Much will depend on the CCF having sufficient capacity and resources to meet the new demands on its time. The requirement to provide reasoned decisions in every case combined with the new procedural timeframes will alone create additional pressures on what we understand to be very limited resources.

109. In order to ensure effective implementation, the CCF will almost certainly need to consider additional measures. It appears that the CCF has already taken steps to cope with its increasing workload and responsibilities by requiring all applications for the deletion or amendment of INTERPOL alerts to be ten pages, or less.<sup>122</sup> This is understandable given the capacity challenges faced by the CCF, but it is important that these changes are accompanied by the effective implementation of the new rules governing disclosure. Applicants need to have access to information about the data being held on INTERPOL's databases, as well as the arguments being made, to justify the data. Without such information, applications will inevitably be based on guess work, and individuals cannot be expected to make focused, succinct complaints to challenge the data.
110. The CCF will also need to develop ways to ensure that all parties involved in request procedures comply with its directions and timeframes. In our December 2015 submission to the GTI, we recommended that the CCF be given powers to block or delete information if NCBs fail to comply with directions or to respect timeframes. Time will tell whether the CCF is able to fulfil the promise of the 2016 reforms without assuming such powers.
111. While the CCF's decisions are now confirmed as binding on the General Secretariat, concerns remain as to how INTERPOL can ensure that Member States comply with these decisions. While NCBs are requested by INTERPOL to delete relevant information from domestic databases whenever notified that INTERPOL alerts have been deleted, there have been many occasions in which individuals have continued to face difficulties due to inadequate compliance by Member States.<sup>123</sup> We appreciate that INTERPOL and the CCF cannot be held responsible for NCBs' failure to respect their decisions, but more could be done by INTERPOL to ensure compliance.
112. The new presumption of disclosure of information is welcomed as it should introduce transparency to a procedure which has previously been undermined by its opacity. Only time will tell, however, whether this new presumption will make any difference in practice. There is a concerning gap in the protection offered by the disclosure rules set out in Article 35 of the CCF Statute in that an NCB's failure to justify its objection to disclosure will not automatically lead to disclosure of the evidence by the CCF. The absence of a justification is simply a fact which may be taken into account by the CCF when deciding on the request.<sup>124</sup> The implication is that the CCF may attribute less weight to evidence which the NCB has refused to disclose without justification, but it remains to be seen what impact this has in practice.<sup>125</sup>
113. The CCF reforms which came into force in March 2017 have done little to strengthen the remedies available to individuals subject

<sup>121</sup> Fair Trials, 'Submission – Reform of the Commission for the Control of INTERPOL's Files and its data processing procedures' (n 70)

<sup>122</sup> This has not been codified in the CCF Statute or the Operating Rules, but it is a requirement according to the CCF's website: <https://www.interpol.int/About-INTERPOL/Commission-for-the-Control-of-Files-CCF/Your-rights/How-to-submit-an-individual-request>

to abusive alerts. Our recommendations relating to the use of interim measures such as blocking INTERPOL alerts or addenda have not been taken on-board, and individuals are still denied the right to appeal the decisions made by the CCF either internally or through an external complaints mechanism.

114. Member States have an important role to play in the effective implementation of the CCF's reforms. As pointed out above, it is crucial that NCBs comply with the CCF's decisions, but it is also important that NCBs support and respect the CCF's efforts to implement the improved transparency and the equality of arms promoted by the CCF Statute. Member States should recognise the importance of the CCF's work in protecting INTERPOL's effectiveness and reputation in its interactions with the CCF, and they must also support its work by ensuring that it is adequately resourced. We have also seen in our own cases that NCBs can make positive contributions to the CCF during complaints procedures, by supplying it with helpful information regarding an individual.

115. The PACE Report proposes that there should be a right to financial compensation for individuals who are found to have been subject to abusive INTERPOL alerts, and that the fund for compensation "should be fed by contributions from States proportionately to the number of unjustified notices requested by their NCBs".<sup>126</sup> While we fully support, in principle, the suggestion that victims of rights violations should be entitled to compensation, in our view the priority should be to ensure that limited funds are focused on efforts to ensure that requests for INTERPOL alerts are adequately scrutinised before being circulated and to improve the CCF's ability to function as an effective redress mechanism.

<sup>123</sup> This problem is illustrated by the case of Ales Michalevic, whose Red Notice was deleted by INTERPOL, but was arrested in April 2011 in Poland, possibly on the basis that the Polish authorities had not acted fully in accordance with INTERPOL's decision to delete the information. Further information available Fair Trials, 'Data Protection Day highlights plight of INTERPOL victims' (28 January 2014), Available at: <https://www.fairtrials.org/data-protection-day-highlights-plight-of-interpol-victims/>

<sup>124</sup> CCF Statute, Article 35(4).

<sup>125</sup> For a more detailed analysis of the new disclosure regime, see Alex Tinsley, 'Echoes of Kadi: Reforms to Internal Remedies at INTERPOL', EJIL: Talk! (20 January 2017), available at: <https://www.ejiltalk.org/echoes-of-kadi-reforms-to-internal-remedies-at-interpol/>

<sup>126</sup> PACE Report (n 50), para. 64

## Recommendations: Effective avenue of redress

The CCF should clarify and publish how NCB's refusal to disclose data without justification affects its own decisions.

INTERPOL and the CCF should develop more robust mechanisms for ensuring that NCBs comply with instructions to delete data from national databases following a CCF decision.

The CCF Statute should be amended to grant to individuals and NCBs the right to appeal against a decision of the CCF.

The CCF should limit the use of addenda in lieu of deletion, and where addenda are used, they should be made visible on the public Red Notices to which they apply.

The CCF should collect and publish data that would illustrate the effectiveness and efficiency of its complaints procedures.<sup>127</sup>













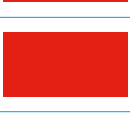



INTERPOL, acting through the General Assembly, should ensure that the CCF is given a sufficient budget to implement the new CCF Statute effectively.

Member States should support the work of the CCF by ensuring that the CCF is adequately funded, including by provided ring-fenced funding to make sure that the CCF is sufficiently staffed and resourced.

Member States should comply with requests from the CCF as much as possible and respect its decisions.

<sup>127</sup> These could include: (i) the total number of requests for (a) access for data, and (b) deletion of INTERPOL Alerts; (ii) the number of requests for (a) access for data, and (b) deletion of INTERPOL Alerts which are successful; (iii) the number of requests for access for data which are unsuccessful and the reasons provided; (iv) the number of requests for deletion in which disclosure to information to the applicant is refused and the reasons provided; (v) the average length of time between submission of a request to access data and the date of the decision; (vi) the average length of time between submission of a request for deletion of data and the date of the decision; (vii) the number of CCF cases each year in which oral hearings are (a) requested, and (b) granted; and (viii) the number of CCF cases each year in which the CCF consults external experts.

**Table 2: Impact of Fair Trials' recommendations on CCF Reform**

Area of reform	Proposal	Action	Verdict
<b>1. Composition and structure</b>	Divide CCF into three entities – Data Protection Office, Complaints Committee, Appeals Panel	Divided CCF into two entities – Supervisory and Advisory Chamber and Requests Chamber	
	Ensure sufficient expertise	Improved requirements for CCF expertise	
<b>2. Funding</b>	Ensure adequate funding to implement reforms.	CCF given more control over its budget and General Secretariat no longer has control	
<b>3. Unrepresented applicants</b>	Make more information available to the public	Revised CCF website	
<b>4. Data access requests</b>	Presumption of disclosure when individuals know about the INTERPOL alert	General presumption of disclosure subject to limitations introduced	
	Introduce specific timeframes	Deadlines for responding to requests introduced	
	Introduce sanctions for NCBs which fail to comply	No change	
<b>5. Complaints procedure</b>	Improve transparency	Presumption of disclosure subject to limitations introduced	
	Introduce specific timeframes	Deadlines for responding to requests introduced	
	Oral hearings where appropriate	Oral hearings where necessary (rather than only in exceptional circumstances)	
<b>6. Complaints procedure</b>	Reasoned, binding and public decisions	All introduced through CCF Statute	
<b>7. Appeals</b>	Introduce right to appeal	No change	
<b>8. Remedies</b>	Interim remedies where NCBs do not comply with CCF directions	No change	
	Robust requirements for CCF to notify all NCBs of deletion	No change	
	Limitations on use of addenda in lieu of deletion	No change	
	Inclusion of addenda on public INTERPOL alerts	No change	

## Interpretation of INTERPOL's Rules

### *Refugee Policy*

116. In May 2015, INTERPOL announced a new policy on recognised refugees which had been circulated to all NCBs earlier in the year ("**the Refugee Policy**") and which is set out in Annex 1. The guidance shared with all NCBs confirmed that the General Secretariat will remove a Red Notice or Diffusion if it can verify that the person has been recognised as a refugee under the 1951 Convention. Fair Trials strongly welcomed the Refugee Policy as a real step forward in line with a key recommendation in *Strengthening INTERPOL*. This policy was subsequently endorsed by the General Assembly by Resolution 9 of 2017 ("**Refugee Policy Resolution**").<sup>128</sup>
117. We have also welcomed the efficiency with which the CCF has, for the most part, been applying the Refugee Policy, especially in cases where recognised refugees are subject to extradition proceedings. In one case, we received a positive response from the CCF within two weeks. We have seen a number of examples of the refugee policy working well in practice, providing a relatively straightforward route out of the harsh difficulties imposed by politically-motivated INTERPOL alerts.

<sup>128</sup> INTERPOL General Assembly, Resolution No. 9, GA-2017-86-RES-09

## Protected by the new Refugee Policy

NADEJDA  
ATAEVA



**Nadejda Ataeva:** Based in France, Nadejda is the president of the Association of Human Rights in Central Asia. She and her family were charged with embezzlement and forced to flee Uzbekistan after her father Alim Atayev disagreed with President Islam Karimov. Close relatives and colleagues of the Atayevs were arrested and tortured into giving evidence against Nadejda, her father and her brother. After fleeing the country, Nadejda was sentenced in absentia to six years in prison and a Red Notice was published in 2000. Despite Nadejda being a recognised refugee in France, the Red Notice against Nadejda was not lifted until 2015 following the introduction of the Refugee Policy.

AZER  
SAMADOV



**Azer Samadov:** A political activist from Azerbaijan, Azer left his home country due to his fear of persecution after supporting the candidate opposing the incumbent President, Ilham Aliyev, in the 2003 presidential elections. He fled to Georgia, where he was recognised as a refugee in 2008 by the United Nations High Commissioner for Refugees, and later given protection as a refugee by the Netherlands. In 2009, he was briefly detained at an airport due to an INTERPOL alert issued by Azerbaijan. He attempted to challenge his Red Notice in 2010 but received no response from the CCF for several years. During this period, Azer, who needed to travel to perform his work, was unwilling to do so. It was not until September 2015, after the introduction of the Refugee Policy, that Azer's Red Notice was eventually deleted, eight years after it was first issued.

RACHID  
MESLI

**Rachid Mesli:** Rachid Mesli is a human rights lawyer currently working in Geneva. In 1997, Rachid was convicted by an Algerian court, sentenced to three years in prison and was declared a prisoner of conscience by Amnesty International owing to the flagrant unfairness of the trial. In 2000, Rachid left Algeria, and was granted refugee status in Switzerland. In 2002, Rachid was charged by the Algerian authorities in absentia with belonging to an 'armed terrorist group' operating abroad, after two men were allegedly forced under torture into making statements in which they 'confessed' to being associated with Rachid and an armed group. In August 2012, Fair Trials submitted a request to the CCF, seeking access to the information which it holds in relation to Rachid as a precursor to submitting a request for the deletion of that data. In August 2015, Rachid was arrested in Italy during a holiday with his family. He was subsequently held under house arrest for four weeks until the Turin Court of Appeal lifted the restrictive measure due to the failure of the Algerian authorities to provide the information necessary for a decision on extradition to be reached. Rachid was eventually notified that the Red Notice had been deleted in May 2016, almost four years after Fair Trials had initially made contact with the CCF and only after a specific request for the Refugee Policy to be applied had been submitted.

**Mauricio Ochoa Urioste:** Mauricio Ochoa Urioste is a lawyer who acted as the Legal Director of a Bolivian state-owned oil and gas company, where he received mounting pressure because he repeatedly refused to sign contracts that he considered illegal. He was arrested in December 2008, and released a few days later after he resigned from his job. Over the course of 2009 Mauricio published several articles criticising Evo Morales. In September 2009, Mauricio was notified that he was facing charges of corruption. He deemed this accusation to be politically motivated, and after receiving various threats, Mauricio fled Bolivia and he was eventually granted asylum in Uruguay. INTERPOL issued a Red Notice upon Bolivia's request following his departure. Mauricio's lawyer requested that INTERPOL delete his Red Notice in September 2015, on the grounds of the Refugee Policy. INTERPOL acted promptly, officially removing the alert only two months later.



**MAURICIO  
OCHOA URIOSTE**

**Vicdan Özerdem:** Vicdan is a journalist who was subject to persecution in Turkey on account of her work and her political activism. As a result, in 2004, she fled to Germany, where she was recognised as a refugee in 2006. Vicdan initially became aware of the Red Notice against her when she was arrested crossing the border between Croatia and Bosnia-Herzegovina in 2012. A day after she was arrested, the Croatian court informed her of the Red Notice and allowed her to view a copy of it. The Red Notice informed Vicdan that she had been convicted in absentia of armed struggle and membership of a terrorist organisation and sentenced to 30 years in prison. After being detained in Croatia for six months, during which time Vicdan's health deteriorated considerably, she was released by the Croatian authorities and allowed to return to Germany as the Croatian Government believed that the allegations against her were no longer relevant. Vicdan's Red Notice was eventually deleted in 2017 when the Refugee Policy was applied in her case.



**VICDAN  
ÖZERDEM**

**Paramjeet Singh:** Paramjeet Singh was granted asylum in the UK in 2000 having fled India in fear of his life, due to continuous harassment and torture by the Indian police. During a family holiday in December 2015, however, he was arrested by the Portuguese police, on the basis of a Red Notice that had been issued in 2012 at the request of the Indian authorities. The Red Notice, related to his alleged involvement in murder and terrorism offences committed when he was already living in the UK. These matters had been investigated in a joint operation by the British and Indian police, which concluded in 2011 that there was no evidence with which to charge Paramjeet. Once it was notified by Fair Trials of Paramjeet's refugee status, the CCF acted promptly to remedy the situation. Within a matter of days, the Red Notice had been blocked and in less than three weeks, the CCF confirmed that all data relating to Paramjeet had been deleted from INTERPOL's files. On the same day that this confirmation was received, the Portuguese Minister of Justice decided that an extradition request for an Indian national with refugee status in the UK was inadmissible.

**PARAMJEET  
SINGH**



118. Despite these examples of cases in which the Refugee Policy has been implemented to promising effect, the policy does present a number of challenges, both in terms of its implementation, and its scope.
119. The Refugee Policy is phrased as though it is intended to prevent the dissemination of INTERPOL alerts against refugees – *“the processing of Red Notices and Diffusions against refugees will not be allowed if the following conditions are met...”* - but in practice, this policy is most likely to be applied retrospectively as a ground for deletion of an INTERPOL alert. This is because INTERPOL is unlikely to have access to information on which people have been granted refugee status, and because of the lack of information available to individuals who benefit from this policy. This implies that in reality, many individuals with refugee status will have to suffer the impact of an INTERPOL alert – potentially facing arrest and extradition proceedings – before they have sufficient information and knowledge to challenge the existence of the alert in line with the Refugee Policy.
120. INTERPOL encourages Member States to share information about the grant of refugee status proactively, so that it can implement this policy effectively by identifying those who benefit from this policy. However, information regarding the grant of refugee status is rightly treated by many Member States as sensitive and confidential, and NCBs may rightly be reluctant to share this information INTERPOL, especially without the consent of the individual concerned.
121. The sensitivity of sharing this information systemically with INTERPOL is exacerbated by the fact that the General Secretariat includes staff seconded from Member States. We have been assured that information about the grant of refugee status is handled confidentially, so that sensitive information does not end up in the wrong hands. However, many refugees may nevertheless have very understandable reservations about having information about them shared with a policing organisation whose role it is to share information between police forces, including those of the country they have fled.
122. We believe that even despite these challenges, INTERPOL and the CCF should take proactive steps to identify individuals who are already on INTERPOL’s databases that fall within the Refugee Policy. We recognise that given the constraints on INTERPOL’s resources, as well as challenges regarding confidentiality, this is no easy task. However, this is necessary because of the difficulties that individuals face in requesting INTERPOL to apply the Refugee Policy in their cases.
123. The Refugee Policy, which is included as an annex to this report, can be found in full on Fair Trials’ website, but it remains nowhere to be found in any of INTERPOL’s official publications or on its website. Fair Trials and various legal practitioners have tried to raise awareness of this policy, but it is unsatisfactory that individuals are only able to find confirmation that such a policy exists through secondary sources. The lack of adequate information about this policy prevents the vast majority of refugees subject to INTERPOL alerts from making use of this crucial policy that could significantly bolster their protection from persecution.
124. Despite the challenges in accessing information about the Refugee Policy, we are aware that some individuals with refugee status have been in touch with the General Secretariat or the CCF to notify the organisation of their status with the intention of preventing the dissemination

of an INTERPOL alert against them. However, we know of at least one case in which the notification of refugee status did not prevent the dissemination of a Red Notice. In that case, the individual was stopped at an airport just months after she had written to the CCF, providing evidence of her refugee status. The CCF responded by saying that there was no data regarding her on INTERPOL's databases, but the information provided did not stop her country of origin from issuing a Red Notice. This example highlights that the Refugee Policy needs to be accompanied by improvements on the procedures that enable INTERPOL to identify abusive INTERPOL alerts.

125. On paper, the Refugee Policy applies only to individuals granted refugee status under the 1951 Convention. It does not appear to protect individuals who are in need of protection from the risk posed by an INTERPOL alert, but who fall outside the remit of the 1951 Convention.

These include:

- a. people who have not been granted refugee status but instead a subsidiary form of protection in recognition of the risk which they face in the country which is pursuing them; and
- b. people who have been naturalised as citizens of the country in which they were previously granted asylum.

126. We understand that, although not spelt out in the Refugee Policy, the CCF applies the principle of '*non-refoulement*' more broadly, recognising that the extradition of refugees and asylum-seekers is prohibited under customary international law, not just in the context of the 1951 Convention. This means that the CCF would find that a Red Notice or a Diffusion violates INTERPOL's rules if it is issued for the

purpose of extraditing an individual with protective status, irrespective of the designation of that status, so long as the status is granted to protect the individual from *refoulement*.

127. By contrast, it does not appear from CCF decisions that individuals who have been naturalised as a citizen of the country which granted them refugee status fall within the Refugee Policy, and they are not automatically assumed to be at risk of *refoulement*. The CCF acknowledges that individuals who were previously granted refugee status often continue to be at risk even after they have lost their status through naturalisation, but it justifies this position on the basis that refugees who have been naturalised as citizens are able to benefit from the protection of their newly adopted homelands. However, we know from our own experience that not all individuals subject to extradition benefit from effective assistance or protection from the authorities of their own countries. Not all countries prohibit the extradition of their own nationals, and individuals subject to extraditions from a third country cannot always expect to rely on the authorities of their own country to intervene, even if there are serious human rights concerns.

## Dolkun Isa

Dolkun Isa is a leader of the World Uyghur Congress, who left China over twenty years ago and was granted asylum in Germany in 1996, due to his fear of persecution in China on account of his political beliefs and activities. He subsequently was naturalised as a German citizen, which meant that under international law, he was no longer considered a refugee. Dolkun has faced a number of difficulties with law enforcement and immigration officials in various countries, and he believes that they were caused by an INTERPOL Red Notice disseminated at the request of China. Fair Trials submitted a request in January 2017 which asked the CCF to grant access to information held on INTERPOL's files in relation to him, as well as to apply the Refugee Policy in his case, but the CCF appeared not to apply the policy, and we received a response which simply confirmed that the Chinese authorities had not agreed to the disclosure of evidence to him. The CCF eventually removed Dolkun's Red Notice in February 2018, taking into consideration the fact that he had previously been recognised as a refugee, and that although his extradition had been requested from several countries, none of these attempts had succeeded. Had the CCF treated Dolkun's case as a Refugee Policy case, the Red Notice would almost certainly have been deleted much sooner.



**"A Red Notice should never have been allowed to be issued on my name to begin with, illustrating the extent to which INTERPOL may suffer from strong politicization. Such a serious allegation from any state must be thoroughly scrutinized to determine its legitimacy – something that was regrettably not done here."**

Dolkun Isa

128. The final concern relating to INTERPOL's Refugee Policy is that INTERPOL alerts are sometimes relied upon to justify exclusion from, or to delay access to the protection of the 1951 Refugee Convention. The Refugee Policy makes it clear that its objective is not only to protect vulnerable refugees from abusive INTERPOL alerts, but to prevent "criminals from abusing refugee status". As such the Refugee Policy encourages NCBs to check INTERPOL's databases to ensure that refugee status is not granted to

"dangerous criminals". This is clearly reaffirmed by the Refugee Policy Resolution, which encourages Member States to consult INTERPOL's databases for the purpose of refugee status determination. The Refugee Policy thus seems to endorse policies in certain countries like Australia, where the existence of an INTERPOL alert is an explicit lawful basis on which immigration status can be refused. The case of Sayed Abdellatif is emblematic of this challenge.

## Sayed Abdellatif

Sayed Abdellatif claimed asylum in Australia in May 2012 based on the risk of persecution which he faces in Egypt, which he fled in 1992, having been repeatedly arrested and tortured by the State Security Intelligence. In 1999, Sayed was tried in absentia before the military courts in Egypt at a trial during which evidence obtained by torture was used to convict him. On 1 October 2001, INTERPOL issued a Red Notice for Sayed, in relation to alleged offences of inter alia murder, destruction of property and firearms offences – offences subsequently found to have been erroneously included in the Red Notice, given that he had never faced these accusations in Egypt. This Red Notice was reviewed and maintained in 2007 and 2011, albeit, as a result of which references to some of the more serious offences, including murder, were dropped. While the Australian authorities have found Sayed and his family to have prima facie claims to refugee status, and have acknowledged that evidence used against him in the 1999 trial was obtained under torture, the Red Notice has served to stall the asylum process. As a result, Sayed has spent five years in immigration detention with a significant impact on his relationship with his family who have been separated from him. Fair Trials applied for the deletion of Sayed's Red Notice, and in February 2018, the CCF removed the notice, primarily due to the evidence of the use of torture in his criminal case. It is hoped that this will enable Sayed to claim asylum in Australia, and that he will finally be released from detention.



**"I feel like I'm paying for the mistakes of INTERPOL and the Australian government... They make the mistakes and I pay with my life and my family's life."**

Sayed Abdellatif

129. In light of the limitations on the nature of the review which INTERPOL conducts prior to publication of INTERPOL alerts, and the concerns that have been raised previously by national courts, governments and international organisations regarding their evidential weight (see paragraphs 58 to 59 above), it is worrying that the existence of an INTERPOL alert is being used to justify the refusal of refugee status. Unless INTERPOL can demonstrate that it is able to prevent the dissemination of abusive alerts effectively, Member States should not rely heavily on INTERPOL alerts for the purpose of refugee status determination. In some instances, the criminal prosecution that forms the basis of the alert will be the evidence of persecution.

#### *Extradition Refusals*

130. Our recommendation to INTERPOL that it should adopt a clear rule regarding the deletion of an INTERPOL alert when an extradition request has been refused on human rights or political motivation grounds has yet to be addressed.

The standard practice in INTERPOL vis-à-vis extradition decisions has been, and continues to be, that information about these decisions is recorded as an addendum to an INTERPOL alert,<sup>130</sup> so that they can be taken into consideration by Member States when deciding how to respond to the alert.

131. As discussed previously, the CCF has started to publish excerpts of some decision since March 2017. Some of these excerpts now give us a better understanding of how the CCF and INTERPOL take into consideration extradition refusals by domestic courts when assessing the compliance of data with Articles 2 and 3

of INTERPOL's constitution.<sup>131</sup> The CCF appears to take a case-specific approach to extradition refusals, acknowledging that such decisions can be made for a variety of reasons, and that not all refusals imply that the extradition request was politically motivated or issued in violation of international human rights principles. This seems to be a sensible approach, but it is not accompanied by a general policy of deleting INTERPOL alerts in cases where extraditions have clearly been refused on human rights or political motivation grounds. Instead, the CCF acknowledges that decisions to refuse extraditions on human rights or political grounds could, in 'some cases' be regarded as 'additional evidence' that the INTERPOL alert violates Article 2 or 3 of the Constitution. As such, it appears that INTERPOL treats extradition refusals on human rights grounds as one of several factors to be taken into consideration for the purpose of determining compliance, as opposed to one that creates a strong presumption in favour of the deletion of the alert.

132. It is encouraging to see that INTERPOL views extradition refusals as a persuasive factor in assessing the compliance of INTERPOL alerts, but if INTERPOL is able to adopt a general rule that requires the deletion on the basis of refugee status, it should also be able to adopt a similar one regarding extradition refusals on human rights and political motivation grounds. Refusals of extradition on human rights grounds, much like grants of asylum, are decisions made by countries to prevent cross-border transfers of individuals with a view to protecting the individual from violations of human rights. While extraditions are not regulated by an international legal

<sup>130</sup> INTERPOL General Assembly, Resolution AGN/543/RES/7 of 1984; CCF Decision Excerpt No 2 confirms that extradition refusals will, rather than automatically leading to deletion as Fair Trials has proposed, be recorded as an addendum to the original notice. Available at: <https://www.interpol.int/content/download/34452/452069/version/2/file/Decision%20Excerpt%20N%C2%B02.pdf>

<sup>131</sup> CCF, Decision Excerpt 2

framework to the same degree as refugee status determinations, both are sovereign decisions that give effect to legal obligations under international law. For example, extradition refusals made on non-refoulement grounds, or due to the use of torture evidence apply well-established principles of international law. There is no obvious reason why INTERPOL should give more weight to one type of sovereign decision over another.

*Repository of practice on article 2 of the constitution*

133. In the Rules on the Processing of Data, an amendment brought into force following the 83rd General Assembly in 2014 requires INTERPOL to prepare a repository of practice on Article 2 of the Constitution. Given the distinct lack of clarity on how INTERPOL approaches its constitutional commitment, this was a welcome development. We understand, however, that more than 4 years later the process of developing the Repository is still underway.

134. INTERPOL has, nonetheless, met twice with the UN Committee against Torture with a view to seeking its input on how it should interpret its obligations in relation to the prohibition of torture and to identifying ways in which the UN Committee against Torture can contribute to INTERPOL's decision-making.<sup>132</sup> We acknowledge that INTERPOL faces challenges in finding the right balance between its primary role of facilitating international police cooperation and the need to do so without undermining human rights. We have been informed by INTERPOL that internationally recognised human rights standards regarding the prohibition of torture are being applied, and CCF decisions also confirm that INTERPOL recognises international human rights standards

regarding the prohibition of torture.<sup>133</sup> We believe that it would be helpful for INTERPOL to develop and publish clear principles on how it will address such matters and the evidence which it will take into account.

135. In the recently published decisions of the CCF (discussed in more detail below), we find indications of where the CCF, at least, considers the limits of INTERPOL's human

a. rights obligations to lie. These can be summarised as follows:

In Decision Excerpt No. 2, we see that the Commission will examine the risks of human rights violations on a case-by-case basis, and that it does not perceive its role to be "to assess a country's law enforcement or judicial system". The implication is that, in order to be successful, human rights arguments in favour of deletion of an INTERPOL alert will need to be specific to the case in question and not generic statements about the human rights record of the country in question.

b.

Decision Excerpt No. 12 provides some insight into how extradition refusals are taken into consideration by the CCF. This decision also confirms that INTERPOL recognises freedom from torture and cruel, inhuman and degrading treatment, as guaranteed under Article 3 of the European Convention of Human Rights and Article 5 UDHR as a fundamental right under international law. In this case, the CCF appears to have found that a decision made by an independent judiciary to refuse extradition on *non-refoulement* grounds provided evidence that the data in question violated Article 2 of the Constitution.

<sup>130</sup> INTERPOL General Assembly, Resolution AGN/543/RES/7 of 1984; CCF Decision Excerpt No 2 confirms that extradition refusals will, rather than automatically leading to deletion as Fair Trials has proposed, be recorded as an addendum to the original notice. Available at: <https://www.interpol.int/content/download/34452/452069/version/2/file/Decision%20Excerpt%20N%C2%B02.pdf>

<sup>131</sup> CCF, Decision Excerpt 2

- c. We learn from Decision Excerpt No. 9 that the CCF defers to the extradition courts of its members on certain human rights matters, finding that the question of whether the principle of double jeopardy (or '*ne bis in idem*') has been violated is a matter for competent national courts.
- d. Decision Excerpt No. 5 confirms the weight which the CCF attributes to positions expressed either by other NCBs or by international institutions relating to human rights matters, including in relation to the violation of the right to a fair trial. In this particular case, such positions were determinative of the CCF's decision that the INTERPOL alert should be deleted.

### *Interpretation of article 3*

136. INTERPOL has so far made no noticeable changes to the way it interprets Article 3 of its constitution, and as evidenced by published CCF decisions, it continues to apply the 'predominance test'. This means that INTERPOL still holds the position that as a general rule, an offence committed in the context of a political struggle is characterised as 'political' only if the harm done is proportionate to the political aim. One possible exception to this approach is the Refugee Policy, given that INTERPOL does not make its own assessment on whether or not an offence is political when applying the Refugee Policy. This assessment is instead made by the asylum-granting authority in accordance with the 1951 Convention.

137. INTERPOL has however, published its Repository of Practice on Article 3, which was previously not available to the public several years after it was last updated in 2013.<sup>134</sup> This is a positive step that improves INTERPOL's transparency, and it enables individuals affected by INTERPOL alerts and their lawyers to better understand INTERPOL's rules and, if necessary, challenge the data more effectively.

138. The CCF decisions published on INTERPOL's website also provide some additional clarity on certain matters regarding the interpretation of Article 3:

- a. The decisions confirm that the CCF applies the predominance test in order to determine whether an INTERPOL alert complies with Article 3, and that it takes into consideration the factors listed in Article 34(3) of INTERPOL's Rules on the Processing of Data, which are the nature of the offence, the status of the persons concerned, the identity of the source of the data, the position expressed by another NCB or international entity, obligations under international law, the implications for neutrality of the case, and the general context of the case.<sup>135</sup>
- b. Decision Excerpts 3 and 5 confirm that the CCF attaches significant weight to the opinions provided by other NCBs and international organisations on the political nature of the case.

<sup>134</sup> INTERPOL, 'Repository of Practice: Application of Article 3 of INTERPOL's Constitution in the context of the processing of information via INTERPOL's channels' (February 2013). Available at: [www.interpol.int/content/download/34480/452435/version/6/file/article%203-english-february%202013vb%20CD.pdf](http://www.interpol.int/content/download/34480/452435/version/6/file/article%203-english-february%202013vb%20CD.pdf)

<sup>135</sup> These factors are: nature of the offence, status of the persons concerned, identify of the source of the data, the position expressed by another NCB or international entity, obligations under international law, implications for neutrality of the case, and the general context of the case.

## Recommendations on Interpretation of INTERPOL's Rules

INTERPOL should publish the Refugee Policy on its website, along with guidance on its interpretation.

INTERPOL should specifically include within the Refugee Policy a presumption that refugee status exists where evidence of that status is provided by the individual concerned (or their representative) and where the status-granting State has not disputed the validity of the refugee status within a period of one month.

INTERPOL should clarify and publish how it protects the confidentiality of information provided by a person with refugee status in dealings with General Secretariat staff, CCF members and the NCB from the Member State from which protection has been sought.

INTERPOL should amend the Refugee Policy so that it provides clarity on the application of the Refugee Policy where subsidiary protection has been provided in lieu of refugee protection, and extend the application of the policy to individuals who have been naturalised following the grant of refugee status.

INTERPOL should adopt a policy on extradition refusals that is similar to its Refugee Policy – under which there is a strong presumption that an INTERPOL alert violates Article 2 and/or 3 of its Constitution if there has been a decision to extradite on human rights and/or political motivation grounds.

INTERPOL should provide guidance to Member States as to the limitations of INTERPOL alerts and their use as the basis for denying or delaying access to refugee status.

Member States should not treat the existence of a Red Notice or a Diffusion as reliable evidence for the purpose of denying or delaying access to refugee status.

INTERPOL should collate data on (i) the number of requests for INTERPOL alerts refused on the basis of the refugee policy; (ii) the number of people with refugee status requesting deletion of INTERPOL alerts on the basis of Refugee Policy; (iii) the number of cases in which the CCF does not apply the Refugee Policy in response to a request to do so and the reasons why; and (iv) the average length of time between submission of deletion requests to the CCF on the basis of the Refugee Policy and the decision to delete the INTERPOL alert.

Member States should help INTERPOL to remove INTERPOL alerts against refugees by either: a) encouraging refugees subject to an alert to request its removal; or b) with the consent of the individual, sharing information about the grant of refugee status with INTERPOL.

INTERPOL should stand by its commitment to publish a Repository on Article 2 of the Constitution.

INTERPOL should continue to engage with the UN Committee against Torture and other human rights bodies as it develops the Repository.

UN treaty bodies and special mandates and other human rights bodies are encouraged to offer support to INTERPOL in developing a framework through which it can demonstrate its commitment to human rights protection.

The CCF is encouraged to continue publishing decisions which provide an insight into its interpretation of Article 3.

INTERPOL should consider adopting the test in Article 3(b) of the UN Model Extradition Treaty as it is applied by extradition courts. As a first step, INTERPOL should commission and publish an expert study analysing relevant international extradition law and its own obligations.



## F. Conclusions and recommendations

### a) Conclusions

139. INTERPOL has been used as a weapon against journalists, human rights defenders, and refugees by states that are willing to abuse not only their own criminal justice systems, but also international cooperation mechanisms. We are delighted that INTERPOL now recognises that this is a serious challenge that undermines its efforts to make the world a safer place, and that it has begun to take decisive action to protect itself from abuse.

140. The reforms that INTERPOL have adopted strengthen the organisation by helping to ensure that its systems are trustworthy tools for international police cooperation and not channels for exporting oppression. In particular, there have been significant improvements to prevent abusive INTERPOL alerts from being published, and to improve the effectiveness of the redress mechanism provided by the CCF.

141. The reforms introduced over the last three years are, however, only the beginning. We conclude that there are now three priority areas for future work and propose that, while INTERPOL's General Secretariat, the CCF and Member States must take the lead in meeting these priorities, there is also a supporting role for civil society to play. Fair Trials has been working closely with a growing movement of lawyers and civil society organisations to ensure international cooperation on criminal matters respects human rights.

#### i) *Implementation of existing reforms*

142. While documents such as the Refugee Policy and the CCF Statute indicate a commitment to reform, they remain no more than words on paper without effective implementation in practice. We appreciate that these reforms are potentially far-reaching and ground-breaking, and we do not expect

that the implementation of these reforms will be an easy process for INTERPOL. The institutionalisation of human rights-related reforms is not without challenges in a policing environment. It is ultimately up to INTERPOL to ensure such implementation through its General Secretariat, the CCF and its Member States, but civil society and other external actors can also play a supporting role. We envisage four main aspects of implementation: information-sharing, monitoring through data collection, ensuring adequate resources, and awareness-raising.

**'The question is whether the... reforms adopted in Bali in November 2016 are sufficient to ensure that the CCF can henceforth provide an effective remedy to putative victims of abusive Red Notices. In my view, much will depend on how these reforms will be implemented in practice.'**<sup>136</sup>

Bernd Fabritius, Special Rapporteur on Abuse of Red Notices, Parliamentary Assembly of the Council of Europe

143. INTERPOL's decision-making is only as good as the information which it has before it, with INTERPOL representatives suggesting that they frequently do not have access to the evidence they need to make robust decisions (either during the ex-ante review process or in relation to deletion requests). Member States have a particularly important role to play in the sharing of information that could help both INTERPOL and the CCF to carry out effective reviews. We know that INTERPOL actively encourages Member States to share helpful information, such as extradition decisions and refugee status determinations.<sup>137</sup> While we agree that Member States should be encouraged to do this, Member States

should also be cautious about the disclosure of sensitive information, such as the grant of refugee status, without consulting the individuals concerned. We have also seen positive examples of Member States making helpful contributions to the CCF's complaints handling procedures. We can see from CCF decision excerpts that, for example, Member States that received extradition requests from countries that issued INTERPOL alerts are frequently consulted. We also know from cases we have worked on that Member States can also advocate strongly for their own citizens, and those to whom they have granted protective status, with positive results.

144. Civil society organisations often, as a matter of course, collect information about patterns of human rights abuse and the experiences of vulnerable groups (such as human rights defenders, journalists and political activists). There is, therefore, potential for civil society to assist INTERPOL by sharing information which may help to improve the quality of its decision-making. For example, we have collaborated with other civil society organisations to notify our concerns about the misuse of INTERPOL alerts by Turkey in response to the arrest of Dogan Akhanli,<sup>138</sup> and we have alerted INTERPOL about the risk that Azerbaijan might try to use an INTERPOL alert against Leyla Yunusova, a prominent human rights defender, following a domestic court decision seeking her arrest.<sup>139</sup>
145. Similarly, international bodies – such as the UN Treaty Bodies and Special Mandates – have a wealth of information, both relating to patterns of human rights abuse and individual complaints which we know INTERPOL and the CCF will treat as determinative to the extent it is relevant to specific cases. We hope that INTERPOL will be willing to engage constructively with such bodies in order to maximise the potential for information-sharing.
146. The effectiveness of implementation can only be determined through diligent monitoring. The ability of civil society and the legal community to engage in such monitoring will continue to be inhibited so long as INTERPOL does not publish data on the impact of its reforms. INTERPOL is therefore encouraged to collate and regularly publish data which will facilitate this process. The call for INTERPOL to improve its data collection has been echoed in the PACE Report.<sup>140</sup>
147. In the absence of INTERPOL-produced statistics, we will work with civil society and the legal community to monitor the implementation of the reforms through other means, including media monitoring. We know that Bernd Fabritius, the former German MP responsible for the PACE Report, also committed to monitoring the implementation of INTERPOL reforms and we hope his successor will continue to be a close ally in this endeavour.<sup>141</sup>
148. As highlighted earlier, the NDTF and the CCF perform crucial roles in the implementation of INTERPOL's reforms, but they face serious capacity challenges. They need adequate funding and continued support which will give them the necessary tools, influence, expertise, and manpower in order to carry out the functions effectively. However, the long-term future of the NDTF and the CCF is not guaranteed. Already, countries have been expressing misgivings about the additional checks and reviews that prohibit them from issuing INTERPOL alerts as easily as in the

<sup>138</sup> Fair Trials, 'INTERPOL urged to act as Turkish journalists targeted with international alerts' (1 September 2017) Available at: <https://www.fairtrials.org/interpol-urged-to-act-as-turkish-journalists-targeted-with-international-alerts/>

<sup>139</sup> Federation Internationale de Droits de l'Homme, 'Azerbaijan/Netherlands: Open letter to INTERPOL on Leyla Yunusova and Arif Yunus case' (12 June 2017) Available at: <https://www.fidh.org/en/issues/human-rights-defenders/azerbaijan-netherlands-open-letter-to-interpol-on-leyla-yunusova-and>

<sup>140</sup> PACE Report (n 50), para. 63

<sup>141</sup> Confirmed during 'Ending abuse of INTERPOL's Red Notices: how to implement the recommendations of the PACE Legal Committee' (Strasbourg, 26 April 2017) See Open Dialog Foundation at: <http://en.odfoundation.eu/a/8187,ending-abuse-of-interpol-s-red-notices-how-to-implement-the-recommendations-of-pace-legal-committe>

past,<sup>142</sup> and there is a risk that this could result in opposition to the continued growth and strengthening of INTERPOL's review mechanisms. In order to tackle this problem, we will be campaigning to encourage INTERPOL's Member States, and in particular, its major funders, to secure adequate funding for the NDTF and the CCF, including by providing specific, ring-fenced funding to INTERPOL.

149. We have already outlined some of the ways in which INTERPOL could contribute to improved awareness of its Refugee Policy and the CCF procedures through the publication of accessible information on its website. Fair Trials is committed to continue raising awareness by working with other civil society organisations – through the distribution of guidance materials and the delivery of training - particularly amongst communities which are 'at risk' of falling victim to abusive INTERPOL alerts and their representatives.

ii) *Further reforms*

150. While many of the recommendations we have proposed have been translated into the concrete reforms outlined above, some key proposals have yet to be acted upon. We are glad that INTERPOL has, overall, been responsive to our concerns, but there are key areas of reform that it has yet to address.

151. For example, we remain concerned that despite significant improvements, INTERPOL has inadequate systems and procedures for checking alerts prior to dissemination. We believe that INTERPOL should do more to prevent abusive requests for arrest from reaching national police databases via its channels by ensuring that Diffusions are subject to the same type of scrutiny as Red Notices before circulation. We also want to see improvements in the way that INTERPOL identifies cases

of abuse, to reinforce trust in its ex ante review mechanisms. There are also further improvements to be made in how INTERPOL interprets its rules. We have highlighted, in particular, some issues of concern regarding the Refugee Policy, and the need for INTERPOL to adopt a clear policy regarding extradition refusals on human rights grounds.

152. The ongoing monitoring of implementation as well as the publication of further information and statistics by INTERPOL will also enable civil society to identify any other areas in relation to which further reform is required. Since 2013, a large, active and vocal constituency has developed in support of INTERPOL reform, including the media, civil society, the legal community, and international and regional bodies. Fair Trials is committed to engaging civil society organisations and the legal community in promoting future INTERPOL reform, especially those which have been so instrumental in promoting reforms to date.

iii) *Tackling emerging challenges*

153. As the world's largest international police organisation, INTERPOL plays a leading role in facilitating international police cooperation, but it is not the sole cross-border mechanism that exposes individuals to human rights violations. There is for example increasing pressure on the international community to collaborate in order to tackle the threat of terrorism, and this has resulted in the creation of other international frameworks that aim to promote security. The unintended consequences of such mechanisms have, for example, led to the reform of Recommendation 8 of the Financial Action Task Force ("**FATF**"), which was also being misused by several countries to crack down on civil society organisations within their own borders.

## FATF Recommendation 8

**Recommendation 8 was adopted by the FATF, the intergovernmental body set up to tackle international money-laundering, not long after the '9/11' terror attacks, out of concerns that non-profit organisations were particularly vulnerable to abuse by terrorist organisations. It called on countries to ensure that non-profit organisations were not being used conceal financial transactions relating to terrorist activities. Although Recommendation 8 was intended to protect non-profit organisations, its broad wording resulted in several countries adopting laws that severely restricted the funding of legitimate civil society organisations, and compromised their activities. In 2016, Recommendation 8 was amended further to the efforts of various non-profit organisations to make sure that any laws regulating non-profit organisations are "focused and proportionate".<sup>143</sup>**

154. It is unlikely that INTERPOL and FATF are isolated examples of the misuse of international mechanisms. Indeed, alongside the shrinking space for civil society there is growing global pressure for countries to co-operate to fight crime and to increase technological capacity to exchange growing quantities of data for this purpose. Use of sanctions, so-called 'terror lists' and pre-emptive security measures all carry the risk of abuse by states seeking to silence legitimate human rights activism and are likely to become an issue of growing concern in the coming years. Having made such positive steps to ensure that it is not facilitating cooperation at the expense of fundamental human rights, the change achieved already by INTERPOL serves as an example of good practice for other cooperation mechanisms.

155. However, there is also a risk that, as a result of INTERPOL's recent reforms, and the strengthening of its protections against the misuse of its systems, countries might begin to use alternative mechanisms without similar protections to track, harass, and undermine political dissidents, human rights defenders, and others. International criminal justice cooperation should take place within a rules-based framework, such as the kind provided by INTERPOL, and INTERPOL should be alert to the risk that its own ability to ensure that international police cooperation takes place effectively could be undermined, if countries use alternative mechanisms. There are signs that this is already starting to happen, and one example of this is Turkey's increasing use of its 'terrorist search' ('Teror Arananlar') website.

<sup>143</sup> Iva Dobichina, 'The Big Impact of the Little-Known "Recommendation 8"', Open Society Foundations (11 July 2016) Available at: <https://www.opensocietyfoundations.org/voices/big-impact-little-known-recommendation-8>

156. The 'Teror Arananlar' website contains a database of individuals labelled by the Turkish authorities as 'terrorists'. Not unlike INTERPOL's alert system, the website has colour coded lists, with the 'Red List' containing those that Turkey perceives to be the most serious terrorists, such as Fethullah Gulen, the leader of the Gulenist movement accused by the government of orchestrating the failed 2016 coup d'état. Fair Trials has found that amongst the individuals listed on the Turkish government's website are also individuals known to be recognised refugees, and those whose INTERPOL Red Notices have been deleted for failing to comply with INTERPOL's rules.
157. We have deep concerns about these online lists, not only because of their visual similarities to INTERPOL's public Red Notices, but also because they appear to be a way of avoiding formal international police cooperation. Rather than calling on police forces to seek information about wanted persons, the website targets the general public, by offering financial incentives to informants. It is also apparent that the Turkish authorities are using these lists to track down individuals living in exile. The website encourages informants overseas to provide information to their nearest embassy or consulate, and the website has been translated into various languages, including German, presumably given the large Turkish and Kurdish diaspora communities in Germany and other German-speaking countries. In effect, the Turkish 'terror search' lists seem to be designed to turn members of diaspora communities against one another by luring them with financial rewards, and to send a message to those who have fled Turkey that they are not safe even in their place of refuge. In April 2018, Fair Trials wrote to the president of the European Commission to highlight our concerns that Turkey is sowing division in its diaspora communities in Europe, and putting dissidents at risk.
158. It is unclear why the Turkish authorities are using Turkey's own online platform to target dissidents overseas, but the high-profile criticisms that they have faced for misusing INTERPOL's systems cannot be ignored. There were even reports in 2017 (later denied by INTERPOL) that INTERPOL had suspended Turkey after it had attempted to seek the arrest of 60,000 wanted persons through INTERPOL. Turkey could be using an alternative mechanism to intimidate its critics now that INTERPOL has made it more difficult for countries to abuse its systems.

159. Fair Trials hopes that, in collaboration with other civil society organisations and the legal community, it will also be able to detect trends in the use of such mechanisms to identify abuses that are comparable to the misuse of INTERPOL's alert system and to develop, based on what we have learnt from the INTERPOL experience, recommendations to strengthen protection of human rights.

## Recommendations

### Recommendations for INTERPOL and the CCF

#### Reform Diffusions

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- INTERPOL must ensure that Diffusions, like Red Notices, are subject to review before information in the alert can be circulated through the INTERPOL Information System.
- INTERPOL should develop more robust mechanisms for ensuring that NCBs comply with its decisions to delete a Diffusion.

#### Improve *ex-ante* reviews of INTERPOL alerts

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- INTERPOL should ensure that all INTERPOL alerts currently in circulation are subject to the more stringent process of review that is now being applied to new requests for Red Notices.
- INTERPOL should clarify how it carries out *ex-ante* reviews.
- INTERPOL should adopt measures to ensure that it has information that would help the organisation to identify alerts that violate its rules, for example, by strengthening relationships with UN human rights bodies and by developing a database of trustworthy sources.
- INTERPOL should ensure that the NDTF has adequate funding, so that it is properly staffed and resourced.

### Ensure the effectiveness of the CCF reforms

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- INTERPOL and the CCF should develop more robust mechanisms for ensuring that NCBs comply with the CCF's directions and its decisions, especially regarding deletions of data.
- The CCF should clarify and publish how NCBs' refusal to disclose data without justification affects its own decisions.
- The CCF should limit the use of addenda.
- INTERPOL, acting through the General Assembly, should ensure that the CCF is given a sufficient budget to implement the reforms effectively.
- INTERPOL should look into the possibility of allowing appeals of CCF decisions.

### Enhance protections for refugees and other individuals in need of international protection

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- The Refugee Policy should be published on INTERPOL's website.
- The scope of INTERPOL's Refugee Policy should be expanded to include those who have been granted subsidiary protection and those who have lost their status through naturalisation.
- INTERPOL should adopt a policy on extradition refusals similar to its policy on refugees – under which there is a strong presumption that an INTERPOL alert violates INTERPOL's rules if there has been an extradition refusal on human rights and/or political motivation grounds.

- INTERPOL should provide guidance to Member States as to the limitations of INTERPOL alerts and their use as the basis for denying or delaying access to refugee status.
- INTERPOL should provide clarity on how it ensures that sensitive information handed over to the organisation by refugees are kept confidential.
- INTERPOL should review its approach on how it interprets Article 3 of its Constitution regarding political motivation in all cases, so that its position is closer in line with international standards on extradition law.

### Improve transparency

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- INTERPOL should develop its Repository of Practice on Article 2 of the INTERPOL Constitution, working with external experts and bodies.
- The CCF should continue to publish more of its decisions.
- INTERPOL should collate and publish data that would:
  - Inform how many requests for INTERPOL alerts are received and refused each year (including reasons for the refusal);
  - Illustrate the effectiveness and efficiency of its complaints procedures; and
  - Illustrate the effectiveness of its Refugee Policy.

### Recommendations for INTERPOL Member States:

#### Work with the CCF

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- Member States should comply with requests from the CCF as much as possible, and respect its decisions.

#### Protect refugees and other vulnerable individuals

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- Member States should not treat the existence of an INTERPOL alert on its own as reliable evidence for refusing or delaying access to refugee status.
- Member States should help INTERPOL to remove INTERPOL alerts against refugees, including by informing recognised refugees subject to INTERPOL alerts, and where the individual has consented, by sharing information with INTERPOL confirming the grant of refugee status.

#### Fund INTERPOL

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- Member States should provide financial support to INTERPOL that would help the organisation to implement its reforms effectively. In particular, they should provide ring-fenced funding that would ensure that the CCF and the NDTF, the two bodies tasked with reviewing INTERPOL alerts, are sufficiently staffed and resourced.



## ANNEX 1 – Excerpts from INTERPOL text on the Refugee Policy

The objective of the policy is to support member countries in preventing criminals from abusing refugee status, while providing adequate and effective safeguards to protect the rights of refugees, as guaranteed under the 1951 Convention relating to the Status of Refugees and other applicable conventions.

In practice, according to the new policy, each red notice and diffusion request against a refugee will be assessed by the General Secretariat or, where applicable by the Commission for the Control of INTERPOL Files (CCF), on a case-by-case basis along the following general guidelines:

In general, the processing of red notices and diffusions against refugees will not be allowed if the following conditions are met:

1. the status of refugee or asylum-seeker has been confirmed;
2. the notice/diffusion has been requested by the country where the individual fears persecution;
3. the granting of the refugee status is not based on political grounds vis-à-vis the requesting country.

In cases where the processing of red notices and diffusions against refugees is denied, consideration will be given to sharing the information sent by the requesting country with the country of asylum so that the latter can reconsider its previous decision of granting the refugee status. If the country of asylum decides to revoke the refugee status based on the new information, the processing of Red Notices and Diffusions may be allowed if it otherwise complies with INTERPOL's rules.

With due respect for national laws, the General Secretariat will ensure the confidentiality of the information exchanged under that policy.

In addition, in accordance with this new policy, member countries are encouraged to systematically:

1. check INTERPOL's databases (via the NCBs or by granting direct access to immigration authorities) when examining an application for asylum, in order to ensure that refugee status is not granted to dangerous criminals recorded in INTERPOL's databases;
2. inform the General Secretariat and relevant member countries when a decision has been taken to refuse a person refugee status on the basis of that person's criminal background.

The policy was approved by the EC at its June 2014 session. It is therefore already in place and was implemented in a number of cases either directly by IPSG or based on CCF's recommendations.

