

Strengthening INTERPOL

An Update

FOR CONSULTATION

Fair

Trials

About Fair Trials

Fair Trials is a non-governmental organisation that works for fair trials according to internationally-recognised standards of justice. Our vision is a world where every person's right to a fair trial is respected. Fair Trials pursues its mission in three main ways: by helping people to exercise their rights through the provision of advice and engagement in strategic casework; by fighting the underlying causes of unfair trials; and by building an international network of fair trial defenders.

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, producing a major report in 2013 – *Strengthening respect for human rights, strengthening INTERPOL* – in which we set out 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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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 with advising the INTERPOL General Secretariat on data protection issues, conducting spot checks of files and handling requests to access or delete information from individuals.

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 and simultaneously recorded in a police database of INTERPOL.

INTERPOL: the International Criminal Police Organisation – INTERPOL.

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

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, in particular, by issuing Draft Red Notices and Diffusions and accessing and downloading information from INTERPOL's files.

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 a National Central Bureau 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

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, had become 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 in response to our recommendations which addressed 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 will not be published in relation to individuals with refugee status granted to protect them from persecution in the country which has requested publication of the alert. Secondly, INTERPOL has reasserted control over the data published on its databases, ensuring that all INTERPOL alerts are subjected to more detailed scrutiny and, in the case of Red Notices, this now takes place before they are 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. 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. We are committed to collaborating with other civil society organisations and the legal community to supporting INTERPOL in the process of ensuring effective implementation and pursuing further reforms.

- V. 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. Fair Trials will work with its civil society partners to detect such trends and, using the INTERPOL example of emerging good practice, develop recommendations to strengthen human rights protection.

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 arguably 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 circulation¹ – is indicative of the value which Member States attribute to INTERPOL's services.
2. The increased use of INTERPOL alerts has exacerbated the risks arising from the vulnerability of INTERPOL's systems to abuse. 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.
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 proposed 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.²
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

¹ Confirmed by INTERPOL as the figure for May 2017

² 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>

the circulation of abusive INTERPOL alerts but 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 an overview of the concerns and recommendations set out in *Strengthening INTERPOL (Part B)*, explains the context in which INTERPOL has recognised the need for reform of its systems (*Part C*), provides a detailed analysis of the reforms which have been put in place (*Part D*) and identifies priorities for future action (*Part E*). The report is intended to serve as a basis for conversations both with INTERPOL, but also with other stakeholders with an interest in ensuring that INTERPOL’s systems operate fairly and do not undermine human rights protection. We look forward to consulting with a range of experts on the content of the report, and particularly the recommendations we have proposed, with a view to publishing a final version towards the end of 2017.

Table 1: Reform progress to date

Area of reform	Strengthening INTERPOL Recommendation	Progress to date	Verdict
1. Interpretation of INTERPOL’s Rules (Paras 7 to 15)	Provide detailed information on how it interprets Article 3	Insight provided through published CCF decision excerpts (Para 45)	☺
	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 40)	☺
2. Protection against abuse (Paras 16 and 17)	Make available information on how INTERPOL approaches the task of reviewing requests for INTERPOL alerts	Limited information provided regarding the review process (Paras 46 and 50)	☺
	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 47)	☺
	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 (Paras 30)	☺
	Systematically follow up with the NCB in an arresting country to determine whether an extradition	No progress	☹

	request was received and what was the outcome.		
3. Effective redress mechanism (Paras 18 to 20)	Establish time limits for NCBs to respond to CCF requests	Introduced in CCF Statute (Paras 71 and 72)	☺
	Enhance the competence and expertise of the CCF	Introduced in CCF Statute (Paras 66 and 67)	☺
	Create separate chamber of the CCF for handling complaints	Introduced in CCF Statute (Para 66)	☺
	Enhance the disclosure system	Introduced in CCF Statute (Paras 68 to 70)	☺
	Introduce binding, reasoned and published decisions	Introduced in CCF Statute (Paras 73 to 74)	☺

Overview of Fair Trials' concerns and recommendations

6. Since 2013, Fair Trials has encouraged INTERPOL to take action to address concerns in three main areas: (a) the interpretation of its Constitution which requires INTERPOL to respect political neutrality and human rights; (b) the mechanism for preventing publication of alerts which do not comply with INTERPOL's constitutional rules; and (c) 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.

a) Interpretation of INTERPOL's Rules

7. INTERPOL's Constitution provides that "it is strictly prohibited for [INTERPOL] to undertake any intervention or activities of a political, religious, racial or military character" (Article 3), and that it should facilitate international police cooperation "in the spirit of the Universal Declaration of Human Rights" (Article 2). In *Strengthening INTERPOL*, we recognised that, while the text of the Constitution and supplementary rules appears satisfactory, there are problems, or at least a lack of clarity, in the way these were implemented.

i) Article 3: Political neutrality

8. The Repository of Practice produced by INTERPOL's General Secretariat 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' narrowed in the 1970s in order 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.³

9. 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

³ 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)

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',⁴ 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.

10. The failure of INTERPOL to embrace the 'discrimination clause' approach, which has become current 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 of 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.
11. In order to prevent cases such as Petr's arising in the future, we recommended that INTERPOL should:
 - 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 is made on the basis of criminal allegations which are not the same as those giving rise to the INTERPOL alert.

ii) *Article 2: Respect for human rights*

⁴ 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>

12. 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 is impossible to identify. INTERPOL has, to date, only provided one clear example of how it applies Article 2 in practice. In a Chatham House meeting at which INTERPOL spoke, it confirmed that it seeks to apply internationally-shared standards wherever identified.⁵ 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.
13. 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 or due to the nature of the potential sentence which might contravene international standards (e.g. stoning); and
 - b. the risk that the charge or conviction underlying the INTERPOL alert has arisen from the use of torture evidence.
14. We know, however, that INTERPOL is failing to identify and mitigate these risks:
 - a. **Bahar Kimyongür:** Bahar, a journalist and activist, was detained in Italy in November 2013 pursuant to a Red Notice 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.⁶ 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".⁷ 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".⁸ The Red Notice remained in place despite these findings and following an initial application to the CCF

⁵ 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>

⁶ Fair Trials, 'Bahar Kimyongur – Turkey' Available at: <https://www.fairtrials.org/bahar-kimyongur/>

⁷ 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)

⁸ 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

submitted by Bahar, and it was not until Fair Trials made a further application on Bahar's behalf that the alert was eventually deleted in August 2014. The deletion of the Red Notice was confirmed, however, in a letter containing no reasoning.



"...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 Commission for the Control of INTERPOL's Files ("CCF").⁹ 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 finding. 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.

⁹ Application available at: <http://www.redress.org/downloads/redressfti-interpol-applicationdjamel-ktiti.pdf>

'... 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.'¹⁰

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

15. 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.
- b) *Protection from abuse*
16. As explained in *Strengthening INTERPOL*, the gatekeeper of INTERPOL's wanted alert system is the General Secretariat which is responsible for reviewing requests for INTERPOL alerts from INTERPOL members, publishing INTERPOL alerts and keeping them under review thereafter. We have raised a number of concerns about this process of review 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;
 - the lack of a requirement for an arrest warrant to be provided along with the Red Notice or Diffusion request;
 - the operation of the i-link system which enabled NCBs to record wanted persons information directly onto INTERPOL's databases in draft form, visible to all other NCBs, before INTERPOL had carried out any review; and
 - 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.
17. We recommended that INTERPOL should:
- make public information about how it approaches the task for reviewing INTERPOL alerts;
 - conduct proactive background research into the requesting country's human rights record and to provide more disclosure about the extent to which it does this;
 - require NCBs to supply arrest warrants, either at the point of requesting a notice or promptly thereafter if the matter is urgent;
 - change the standard process of the i-link system so that INTERPOL alerts (both Red Notices and Diffusions) are not visible to other NCBs while they are under review by the General Secretariat; and

¹⁰ United Nations Committee Against Torture, Forty sixth session, Communication 419/2010 (26 May 2011) CAT/C/46/D/419/2010

- e. 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 ask standard questions as to whether an extradition request was made and whether this was accepted or refused, and on what grounds.
- c) **Effective avenue of redress**
18. The CCF is 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. 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.¹¹ Further, with its headquarters in Lyon, INTERPOL was only able to avoid being subject to the French data protection legislation adopted in 1978, which would have required that individuals be able to access INTERPOL's data, by guaranteeing that its archives would be subject to internal controls exercised by the CCF.
19. In *Strengthening INTERPOL*, Fair Trials 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. While we recognised that in the policing context, full transparency is not possible, the practice of keeping applicants completely in the dark about the arguments being made against their submissions raise 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,¹² rather than their deletion, increased the likelihood that a compromise solution would be adopted rather than the CCF choosing to assert its authority over NCBs.
20. 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,.

¹¹ 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)

¹² 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.

Drivers of reform

21. Since the publication of *Strengthening INTERPOL*, we have witnessed INTERPOL shifting firmly into 'reform mode'. At the 84th INTERPOL General Assembly session in Rwanda, Secretary General Jürgen Stock urged members to 'be ambitious' and 'work together to shape a powerful reform agenda'.¹³ After 14 years under the stewardship of Stock's predecessor, Ronald K. Noble, during which efficiency was the priority with the number of INTERPOL alerts in circulation and the speed with which they were published the main indicators of success, we have identified three main drivers of the reforms ushered in following his departure.

"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."¹⁴

Ronald K. Noble, Former Secretary General of INTERPOL

a) Financial considerations

22. 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 meaning that individuals have no avenue of redress when faced with an abusive INTERPOL alert other than through the CCF. With the survival of this immunity dependant on the effectiveness of the CCF procedure, the concerns we raised in 2013 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. 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 D below.

'... 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.'¹⁵

Jürgen Stock, Secretary General of INTERPOL

¹³ Jürgen Stock, INTERPOL Secretary General, Directional Statement at 84th INTERPOL General Assembly Session, 2 November 2015

¹⁴ 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>

¹⁵ Stock (n 13)

23. 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",¹⁶ 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.

b) INTERPOL's credibility

24. 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 they 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.

25. Similar criticisms made by international organisations (including the UNHCR),¹⁷ representatives of national governments¹⁸ and domestic courts¹⁹ demonstrated that INTERPOL should take seriously the risks to its reputation. Further, the results of a

¹⁶ US Congressional Appropriations Committee, Committee Reports, 113th Congress (2013-14), H Rept No 113-171

¹⁷ 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>.

¹⁸ 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>)

¹⁹ 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.

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.²⁰ 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",²¹ emphasising the new focus on building trust.

c) International pressure

26. It is impossible not to reach the conclusion 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 and Al Jazeera being critical in their assessments.

In the News – Media coverage of the misuse of INTERPOL's systems

"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."

Al-Jazeera
'Interpol: Red Alert!'
12 January 2017²²

"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?"

BBC Radio 4
'Inside Interpol'
15 June 2015²³

²⁰ 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

²¹ Stock (n 13)

²² <http://www.aljazeera.com/programmes/peopleandpower/2017/01/interpol-red-alert-170111133954581.html>

²³ <http://www.bbc.co.uk/programmes/p02tsdkr>

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

The Economist
'Abusing Interpol – Rogue States'
16 November 2013²⁴

'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.'

Inter Press Service
'Interpol 'Misused' by Human Rights Abusers'
6 August 2013²⁵

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

New York Times
'Putin Plays Hardball'
Joe Nocera, 17 November 2014²⁶

"...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"

The Telegraph
'Is Interpol fighting for truth and justice, or helping the villains?'
Peter Osborne, 22 May 2013²⁷

"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."

Washington Post
'Reforming Interpol'
19 November 2016²⁸

27. In the last three years, INTERPOL has also come under scrutiny by international and regional bodies, particularly in Europe. The UN Special Rapporteur on Human Rights

²⁴ <http://www.economist.com/news/international/21589901-cross-border-policing-can-be-political-rogue-states>

²⁵ <http://www.ipsnews.net/2013/08/interpol-misused-by-human-rights-abusers/>

²⁶ <https://www.nytimes.com/2014/11/18/opinion/joe-nocera-putin-plays-hardball.html>

²⁷ <http://www.telegraph.co.uk/news/uknews/law-and-order/10073483/Is-Interpol-fighting-for-truth-and-justice-or-helping-the-villains.html>

²⁸ https://www.washingtonpost.com/opinions/reforming-interpol/2016/11/19/24b3dd24-ab65-11e6-8b45-f8e493f06fcd_story.html?utm_term=.c7dd1e8996a6

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.

28. 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 German MP Bernd Fabritius.²⁹ 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.³⁰ While the report and resolution were not adopted until April 2017,³¹ 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.

²⁹ 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

³⁰ Parliamentary Assembly of the Council of Europe, ‘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>

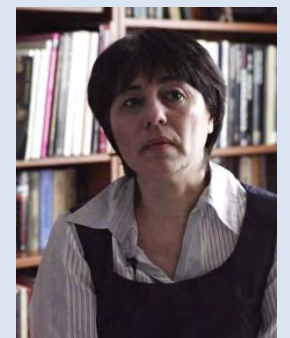
³¹ Fair Trials, ‘INTERPOL announces asylum policy at Council of Europe meeting’ (29 May 2015) Available at: <https://www.fairtrials.org/interpol-announces-new-asylum-policy-at-council-of-europe-meeting/>; PACE Report (n 20); See also Fair Trials, ‘Council of Europe denounces political abuses of INTERPOL’ (3 May 2017) Available at: <https://www.fairtrials.org/council-of-europe-denounces-political-abuses-of-interpol/>

Analysis of reforms to date

29. The drivers identified in Section C above have led to significant reforms being adopted in relation to each of the three areas on which Fair Trials made recommendations in Strengthening INTERPOL.
- a) Interpretation of INTERPOL’s Rules
- i) *Refugee Policy*
30. 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*. We have also welcomed the efficiency with which the CCF has, for the most part, been applying the Refugee Policy in cases where we have requested it to do so, 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.
31. We have seen a number of examples of the refugee policy working well in practice, providing a route out of the often long-endured nightmare existence imposed by politically-motivated INTERPOL alerts.

Protected by the new Refugee Policy

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.



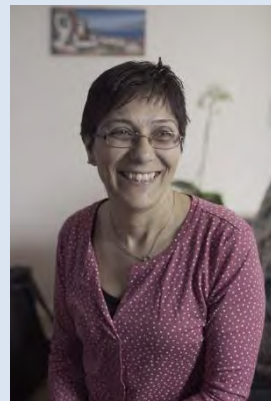
Azer Samadov: A political activist from Azerbaijan, Azer left his home country due to his fear of persecution after supporting the candidate opposing the incumbent President, Ilham Aliyev, in the 2003 presidential elections. He first travelled to Georgia, where he was arrested and informed that he had been accused of ‘participation in public disorder’ under

Article 220 of the Azeri Criminal Code.³² He was subsequently recognised as a refugee in 2008 by the United Nations High Commissioner for Refugees under its mandate and given protection as a refugee by the Netherlands. Sometime later, he was briefly detained in 2009 at Schiphol airport in Amsterdam due to an INTERPOL alert issued by Azerbaijan. When his application to the CCF in 2010 did not receive any answer, in March 2014 the Chief of Police Central Unit of the Dutch National Police contacted the CCF, reminding



them that they had been silent for over four years and pointing out that Azer was regarded as welcome on Dutch territory. 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.

Vicdan Özerdem: Vicdan is a Turkish citizen who was subject to persecution in Turkey on account of her work as a journalist 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 her 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. The Red Notice was eventually deleted in 2017 when the Refugee Policy was applied in her case.



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 in response to his support for the Sikhs' right to self-determination. With indefinite leave to remain in the UK, Paramjeet proceeded to build a new life for himself and his family, including his four children who are all British citizens. During a family holiday in December 2015, however, the blanket of protection, which he believed to cover him throughout the EU, began to unravel when the Portuguese authorities, acting on a Red Notice, complied with India's international request for Paramjeet's arrest. The public Red Notice, issued against Mr Singh in 2012 at the request of the Indian government, 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.

Rachid Mesli: Rachid Mesli is a high-profile human rights lawyer currently working as the Legal Director of the Alkarama Foundation 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, fearing for the safety of his family, 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. Over three years later, access to such data had still not been granted. 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.

Ochoa Urioste: Mauricio Ochoa Urioste is a lawyer who was subject to a Red Notice requested by Bolivian authorities. As Legal Director of a Bolivian state-owned oil and gas company, he began to receive 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, particularly in relation to the Bolivian government's dealings in the mineral industry. In September 2009, Mauricio was notified that he was facing charges of corruption in a case involving the adjudication of a contract to build a liquid separation plant. As a consequence of this accusation (which he deemed politically



motivated), and various threats received, Mauricio fled Bolivia to eventually seek asylum in Uruguay in early 2010. It was then that INTERPOL issued a Red Notice upon Bolivia's request. In January 2012, Mauricio was sentenced in absentia to nine years in prison for breach of duties, uneconomical conduct and criminal association. 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.

³² A 2014 decision of the European Court of Human Rights found that Azerbaijan had infringed his right to freedom of expression by banning the organisation of which he was a member. See *Islam-Ittihad Association and Others v Azerbaijan*, App No 5548/05 (13 November 2014)

Nikita Kulachenkov: Nikita is a Russian forensic accountant who was associated with 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. Nikita was eventually able to convince INTERPOL to delete the Diffusion, in line with the Refugee Policy, in March 2016.

32. Despite these examples of cases in which the Refugee Policy has been implemented to promising effect, it does, however, present a number of challenges, both in terms of its implementation, but also in relation to its scope. The Refugee Policy, which can be found in full on Fair Trials’ website, remains nowhere to be found in any of INTERPOL’s official publications or on its website. 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. 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. INTERPOL’s failure to publish its Refugee Policy highlights its lack of transparency and the need for it to better communicate how its rules are applied and interpreted.
33. Whilst INTERPOL’s Refugee Policy is phrased as being a preventative policy – “the processing of Red Notices and Diffusions against refugees will not be allowed if the following conditions are met...” – in practice, the policy can only be applied retrospectively as a ground for deletion of an INTERPOL alert due to INTERPOL’s lack of access to information on which of the people subject to INTERPOL alerts have been granted refugee status. It is difficult to envisage a system through which INTERPOL could be given access to such data which is rightly treated by Member States granting asylum as confidential. The sensitivity of systematically sharing this information with INTERPOL is exacerbated by the fact that police personnel are seconded from Member States to staff the General Secretariat. The implications, though, are that 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.
34. Fair Trials has witnessed the efficiency with which the CCF is able to deal with new applications which request the Refugee Policy to be applied in a particular case, or follow up correspondence which draws attention to the fact that the Refugee Policy

should be applied in relation to a case in which the applicant is still awaiting a response from the CCF. There is no evidence, however, that the CCF is of its own initiative revisiting legacy cases with a view to ensuring that there are no outstanding cases to which the Refugee Policy can be quickly applied, or indeed cases where deletion has previously been refused but which should now take place in light of the Refugee Policy.

35. The Refugee Policy is phrased as being limited to people for whom “the status of refugee or asylum-seeker has been confirmed”. While a refugee status document or a decision granting refugee status has been treated as sufficient evidence to confirm the “status of refugee”, it is not yet clear what is required to evidence that an individual’s status of asylum-seeker has been confirmed. We also note the fear expressed by individuals with refugee status about sharing sensitive information with the CCF, especially where the country from which they have sought protection has is represented by a CCF member (for example, based on the current membership of the CCF, Angola, Argentina, Moldova, Russia and Finland).
36. Further, there are concerns about the people who are in need of protection from the risk presented by an INTERPOL alert but who may not be caught by the Refugee Policy. 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.

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. Following a request submitted by Fair Trials 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, we received a response which simply confirmed that the Chinese authorities had not agreed to the disclosure of evidence to him. Had the CCF treated Dolkun’s case as a Refugee Policy case, the Red Notice would most likely have been deleted.

37. The final concern relating to INTERPOL’s Refugee Policy is that INTERPOL Alerts are sometimes relied upon to justify exclusion from, or delay in 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”. In countries such as Australia, for example, the existence of an INTERPOL alert is an explicit lawful basis on which immigration status can be refused.³³ The case of Sayed Abdellatif is emblematic of this particular challenge.

Sayed Abdellatif

Sayed Abdellatif claimed asylum in Australia in May 2012 based on the risk of persecution which he faces in Egypt, from where 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.



“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

This Red Notice was reviewed and maintained in 2007 and 2011, albeit with reference to different offences. 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 significant impact on his relationship with his family who are no longer being held in detention. Fair Trials has applied for deletion of the Red Notice in the hope that its removal will enable Sayed’s asylum claim to proceed.

38. 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

³³Direction No. 65, Migration Act 1958 – Direction under section 399, Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA, Annexe A, section 10; and Direction No. 63, Migration Act 1958, Direction under section 499, Bridging E visas, Cancellation under section 116(1)(g) – Regulation 2.43(1)(p) or (q), section 7

national courts, governments and international organisations regarding their evidential weight (see paragraphs 24 to 25 above), it is concerning that the existence of an INTERPOL alert can be used to justify either refusal or delay of refugee status. We encourage INTERPOL to advise its members regarding the limitations of INTERPOL alerts for purposes other than that for which they are primarily intended.

39. We note that while our recommendation regarding a policy relating to INTERPOL alerts for people with refugee status has prompted welcome action, our further recommendation that INTERPOL should adopt a clear rule requiring the deletion of an INTERPOL alert when a request for extradition based on the proceedings giving rise to that alert has been rejected on political motivation grounds or on the basis of other human rights concerns has yet to be addressed. The use of addenda to confirm that the extradition of the person featured in the INTERPOL alert has been refused by a Member State continues to be the standard practice, but we remain unconvinced that this is an adequate safeguard against future arrest and extradition by other Member States.³⁴

Questions for INTERPOL: Refugee Policy

How many INTERPOL alerts have been deleted on the basis of the Refugee Policy since its adoption?

What, if any, steps are being taken to ensure that all people to whom the Refugee Policy applies are benefitting from it? Has UNHCR’s assistance been sought?

Are any efforts being made to identify existing INTERPOL alerts which relate to refugees, especially where previous applications submitted before the adoption of the Refugee Policy confirmed the existence of refugee status?

What procedure is followed when a person provides evidence of their refugee status but the status-granting State does not provide timely confirmation of the same?

What steps are taken to protect 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?

³⁴ 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>

Recommendations: Refugee Policy

New recommendations:

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 provide clarity on the application of the Refugee Policy in cases where (a) subsidiary protection has been provided in lieu of refugee protection, and/or (b) where someone has been naturalised following a previous grant of asylum. To the extent that the Refugee Policy does not currently apply in such cases, it should be amended to do so.

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 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 the Refugee; (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.

Unaddressed recommendations from Strengthening INTERPOL:

INTERPOL should consider adopting a similar policy in relation to cases in which extradition has been refused on the grounds of (i) political motivation; and/or (ii) human rights concerns

ii) Repository of Practice on Article 2 of the Constitution

40. 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 some 30 months later, the process of developing the Repository is still underway.

41. 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.³⁵ 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. Given that the prohibition of torture (which includes the prohibition on the use of evidence obtained through torture and refoulement to torture) is *jus cogens*, it is anticipated that this is an area in which INTERPOL should be able to develop and publish clear principles on how it will address such matters and the evidence which it will take into account.

42. 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 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.
 - 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 *ne bis in idem* has been violated is a matter for the competent national courts.
 - 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, and in this particular case such positions were determinative of the CCF's decision that the INTERPOL should be deleted.
43. Given the challenges which INTERPOL faces not only in defining the boundaries of its human rights obligations, but also in obtaining the evidence to inform the implementation of those obligations in practice, it should give consideration to alternative ways to uphold its commitment to human rights. These may include, for example, the development of INTERPOL protocols on human rights compliant policing and associated training programmes.

Questions for INTERPOL: Article 2 of the Constitution

When will the Repository of Practice on Article 2 be published?

Is INTERPOL seeking input from human rights experts on the development of the Repository of Practice and, if so, which experts are being consulted?

³⁵ Fair Trials, 'Fair Trials and REDRESS organise expert meeting of the UN Committee against Torture and INTERPOL' (18 December 2015) Available at: <https://www.fairtrials.org/fair-trials-and-redress-organise-expert-meeting-of-the-un-committee-against-torture-and-interpol/>

Recommendations: Article 2 of the Constitution

New recommendations:

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.

INTERPOL should consider alternative ways to uphold its commitment to human rights, including through the development of INTERPOL guidance and training programmes on human rights-compliant policing which can be shared with Member States.

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.

iii) Interpretation of Article 3

44. Beyond the publication of the Refugee Policy, described more fully above, we are not aware of any reforms relating to the way in which INTERPOL interprets its obligation to remain politically neutral under Article 3 of the Constitution.
45. The CCF decisions published during April/May 2017, however, provide some clarity on certain matters:
 - 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.³⁶
 - b. Decision Excerpts 3 and 5 confirm that the CCF will treat as determinative the opinions provided by other NCBs and international organisations on the political nature of the case.

³⁶ 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: Article 3 of the Constitution

New recommendations:

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

Unaddressed recommendations from Strengthening INTERPOL:

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.

b) Protection from abuse

46. The process and the substance of the reviews which INTERPOL conducts in relation to requests for INTERPOL alerts remains the aspect of INTERPOL's operations on which we have the least information. Our understanding is that INTERPOL's Member States remain similarly uninformed about the review procedure, a situation which could inhibit their ability applications which better comply with INTERPOL's requirements. INTERPOL does not publish guidance on how it approaches the review process so we have little indication of what factors 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

47. INTERPOL confirmed to Fair Trials in March 2015 that Red Notices will not be visible to other 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 before INTERPOL had even looked at the Red Notice request (see paragraph 16 above).
48. Problems remain, however, in relation to Diffusions, which can still be shared directly between Member States. Diffusions are essentially emails which are sent by one NCB to all or some other NCBs directly. INTERPOL does review Diffusions, but only after they have been sent 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.

49. We remain concerned that Diffusions can still be circulated before INTERPOL has had the opportunity to carry out a quality control review. 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).

Questions for INTERPOL: Review prior to publication

What steps does INTERPOL take to ensure that a Diffusion is deleted from national databases if INTERPOL's initial review finds it to be non-compliant?

Does INTERPOL maintain a record of which Member States keep information on their databases following a deletion request from INTERPOL?

Recommendations for INTERPOL: Review prior to publication

New recommendations:

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

50. 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, we understand that INTERPOL has set up a legal analysis team to review Red Notices and Diffusions. Recognising the importance of adequately resourcing the review procedure, the General Secretariat has apparently dedicated more lawyers, law enforcement officials and other experts to ensure that the review of requests for INTERPOL alerts is carried out more robustly. The number of people involved in

conducting reviews fluctuates 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.

51. We have seen some encouraging examples of INTERPOL's quality control process functioning effectively to prevent alerts being published in relation to cases which clearly demonstrate political motivation.

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. Ms Rewcastle Brown 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. General Secretariat did not grant a request for a Red Notice by The Malaysian authorities made a public request for a Red Notice against Ms Rewcastle Brown on the basis of these allegations, but this request was refused by the General Secretariat.³⁷

52. 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, however, seen cases which suggest that the process is not yet working as effectively as it could. For example, a few months after reports that members of the Islamic Renaissance Party of Tajikistan ("IRPT") had been convicted and sentenced further to criminal proceedings criticised by human rights activists as being politically motivated,³⁸ the details of Muhiddin Kabiri, the chairperson of the party, could be found on INTERPOL's list of wanted persons in September 2016.³⁹ We have also been notified that exiled political activists from Bahrain and Turkey, whose governments have both been subject to intense international criticisms for their heavy-handed political crackdowns, have been arrested, possibly on the basis of Red Notices.

"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."⁴⁰

³⁷ Fair Trials, 'INTERPOL asked to clarify position on Clare Rewcastle Brown' (25 August 2015), Available at: <https://www.fairtrials.org/interpol-asked-to-clarify-position-on-clare-rewcastle-brown/>

³⁸ *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>

³⁹ *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>

⁴⁰ Human Rights Watch, 'World Report 2017 – Tajikistan: Events of 2016', <https://www.hrw.org/world-report/2017/country-chapters/tajikistan>

Human Rights Watch

“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.”⁴¹

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

53. There is clearly 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, however, 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.⁴² 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 and to its credibility being undermined.

Questions for INTERPOL: Quality Control

What are the detailed procedures employed by the legal analysis team when reviewing requests for INTERPOL alerts?

How many people are involved in the quality control procedure and what expertise do they have?

Are all cases treated the same, or are some prioritised over others? If so, how is this prioritisation conducted?

What are the primary indications of abusive notices which the legal analysis team monitor?

What external resources, if any, do the legal analysis team use in the context of their work?

⁴¹ John Heathershaw and Edward Lemon, ‘After 25 years of independence, Tajikistan is a bastion of torture and repression’, *The Conversation*, 7 September 2016, <https://theconversation.com/after-25-years-of-independence-tajikistan-is-a-bastion-of-torture-and-repression-64945>

⁴² PACE Report (n 20), para. 58-59

What steps is INTERPOL taking, if any, to apply its more stringent process of review to INTERPOL alerts which were subject to the previous system of review?

Recommendations: Quality Control

New recommendations:

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

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 publish statistics on the number of INTERPOL Alerts which result in (a) arrest, and (b) extradition each year.

Unaddressed recommendations from Strengthening INTERPOL:

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 require NCBs to supply arrest warrants, either at the point of requesting a notice or promptly thereafter if the matter is urgent.

INTERPOL should 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 ask standard questions as to whether an extradition request was made and whether this was accepted or refused, and on what grounds.

c) **Effective avenue of redress**

i) *Moving in the direction of reform*

54. 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.

55. 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.⁴³ 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, along with a small number of other NGOs.⁴⁴ We reiterated our concerns about the way in which the CCF operates and called for reforms which ensure an adversarial process which functions with greater transparency and efficiency.

56. 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 2015.⁴⁵ 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*,⁴⁶ we made the following proposals:

⁴³ INTERPOL, Resolution No. 19, AG-2014-RES-19, 'INTERPOL's supervisory mechanisms concerning the processing of data in the INTERPOL Information System' (November 2014)

⁴⁴ 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/>

⁴⁵ 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>

⁴⁶ *Kadi* (n 11); See also C-584/10 P, *Commission and Others v Kadi* [2010] ECR II 5177 (*'Kadi II'*)

- 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 on 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.
- 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 would be 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.

57. During 2015 and 2016, while the GTI was still conducting its review, we started to see changes in the way 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, as well as the CCF Secretariat being given increased responsibility for processing cases in between CCF sessions, particularly in straightforward cases (such as those to which the Refugee Policy applies).

58. Following a presentation by the GTI of its interim recommendations 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).⁴⁷

59. 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

⁴⁷ INTERPOL, Resolution 9, AG-2015-RES-09 'Supplementary measures associated with the processing of notices and diffusions' (November 2015)

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.⁴⁸

60. 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 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.

ii) CCF Reforms

61. In November 2016, the General Assembly adopted a resolution⁴⁹ which approved a new Statute of the Commission for the Control of INTERPOL's Files⁵⁰ and introduced amendments to INTERPOL's Rules on the Processing of Data,⁵¹ 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.⁵²

Greater independence and influence of the CCF

62. The CCF Statute now states clearly that the CCF is to be independent in the performance of its functions.⁵³ 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 influence.

⁴⁸ 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/>

⁴⁹ INTERPOL, Resolution No. 6, AG-2016-RES-06, 'INTERPOL's supervisory mechanisms for the processing of data in the INTERPOL Information System' (November 2016)

⁵⁰ II.E/RCIA/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>

⁵¹ RPD (n 4)

⁵² Commission for the Control of INTERPOL's Files – Operating Rules, CCF/100/d488 (Adopted 24 March 2017) ('Operating Rules')

⁵³ CCF Statute, Article 4.

63. 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.⁵⁴ 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.⁵⁵ 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.⁵⁶
64. 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"⁵⁷ and makes the Chairperson of the CCF responsible for ensuring that "the rules on the independence of the Commission and its members are respected".⁵⁸ The General Secretariat is no longer responsible for appointing the CCF Secretariat, which is now appointed and supervised exclusively by the CCF itself.⁵⁹
65. 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 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.⁶⁰ 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. Questions remain, however, regarding the access which members who have withdrawn themselves will have to the evidence in the case in question, and how their particular expertise will be replaced for the purpose of consideration of that case.

Improvements to the CCF's capacity and expertise

66. 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,⁶¹ while the Requests Chamber manages its role of handling individual requests for access to data and complaints.⁶²

⁵⁴ CCF Statute, Articles 21, 34(1), 35(3) and 40(3).
⁵⁵ CCF Statute, Article 3(2)(c) and Article 38(1).
⁵⁶ CCF Statute, Article 24; cf. RCI Article 8
⁵⁷ CCF Statute, Article 11(4).
⁵⁸ CCF Statute, Article 11(5).
⁵⁹ CCF Statute, Article 15
⁶⁰ Operating Rules, Rule 2.
⁶¹ CCF Statute, Article 6(1)(a)
⁶² CCF Statute, Article 6(1)(b).

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,⁶³ and representation of "the principle legal systems of the world",⁶⁴ mean that it has much better capability to handle complicated requests involving human rights arguments.

67. The new rules also establish quality requirements for the staff of the CCF Secretariat,⁶⁵ 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.⁶⁶ 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,⁶⁷ there is now the obligation for the dates of such meetings to be made public,⁶⁸ and provision has been made for the CCF's work to continue between sessions.⁶⁹

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	Supervisory and Advisory Chamber Data protection expert Expert on electronic data processing
	Requests Chamber 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

68. The rules governing disclosure of evidence by the CCF have been significantly reformed, creating a presumption that information "shall be accessible to the applicant".⁷⁰ NCBs are only able to prevent disclosure if they have good reasons for

⁶³ CCF Statute, Article 8(4).
⁶⁴ CCF Statute, Article 8(2).
⁶⁵ CCF Statute, Article 15.
⁶⁶ CCF Statute, Articles 21 and 22.
⁶⁷ CCF Statute, Article 16.
⁶⁸ CCF Statute, Article 16(3).
⁶⁹ CCF Statute, Article 17; Operating Rules, Rule 10.
⁷⁰ CCF Statute, Article 35(1).

doing so, and these are defined 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.⁷¹ The failure by an NCB to provide justification for withholding disclosure will 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.⁷²

69. 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. It is worth noting that the previous Article 14(5) of the 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 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. In addition to the new disclosure regime, a minor amendment to the drafting relating to possibility of hearings taking place makes resort to hearings more likely given that they will now be held “if deemed necessary”⁷³ rather than only “in exceptional circumstances”⁷⁴.

“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.”⁷⁵

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

70. It is notable that 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. We hope this will make it easier for individuals to access their data and to challenge it, and this is a significant departure from the CCF’s previous practice of withholding information from individuals in the absence of explicit permission from NCBs.

⁷¹ CCF Statute, Article 35(4).

⁷² CCF Statute, Article 35(4).

⁷³ CCF Statute, Article 36; Operating Rules, Rule 28.

⁷⁴ Old Operating Rules, Article 22.

⁷⁵ 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/>

Specified timeframes

71. 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:

Stage of proceedings	Timeframe
Acknowledgement of receipt of request	At the earliest opportunity ⁷⁶
Decision on admissibility of request	At the earliest opportunity and no later than one month after receipt of the request ⁷⁷
Decision on a request for access to data	Within four months from the date on which request was declared admissible ⁷⁸ (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 ⁷⁹)
Decision on a request for correction or deletion of data	Within nine months from the date on which request was declared admissible ⁸⁰ (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 ⁸¹)
Communication of CCF decision to the General Secretariat	Within one month of the decision being made ⁸²
Implementation of the decision by the General Secretariat	Within one month from the date on which it was received from the CCF ⁸³
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 ⁸⁴
Written decision provided by CCF to the applicant and the NCB on request for	No later than one month from the date on which implementation is notified to the

⁷⁶ CCF Statute, Article 31(1)

⁷⁷ CCF Statute, Article 32(1)

⁷⁸ CCF Statute, Article 40(1)

⁷⁹ CCF Statute, Article 40(3)

⁸⁰ CCF Statute, Article 40(2)

⁸¹ CCF Statute, Article 40(3)

⁸² CCF Statute, Article 41(1)

⁸³ CCF Statute, Article 41(2)

⁸⁴ CCF Statute, Article 41(3)

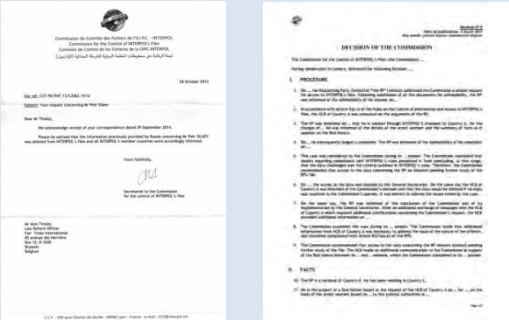
correction or deletion	Requests Chamber ⁸⁵
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72. To assist the CCF in meeting these new time limits, NCBs are required to respond diligently to the requests from the CCF.⁸⁶ Furthermore, the CCF is required to provide information to individuals on relevant 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.⁸⁷ This is a very positive change, given that the frequent delays to the CCF’s procedures have compromised its effectiveness as a redress mechanism. In one example known to Fair Trials, a Red Notice against a recognised refugee was deleted at the recommendation of the CCF more than two and a half years after the deletion request was made.

Reasoned and public decisions

73. 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, an analysis of legal arguments, and operative parts.”⁸⁸ There is also the requirement for reasoning to be provided in relation to the decision on admissibility.⁸⁹ 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”.⁹⁰

CCF Decisions – Before and After



The CCF’s Decision in the case of Petr Silaev (left), 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.

74. There is also a commitment on the part of the CCF to make its decisions public,⁹¹ and at the time of writing, nine redacted decisions have been published on the CCF

⁸⁵ CCF Statute, Article 41(3)
⁸⁶ CCF Statute, Article 5(2)
⁸⁷ CCF Statute, Article 31
⁸⁸ CCF Statute, Article 38(2)
⁸⁹ CCF Statute, Article 32(3)
⁹⁰ CCF Statute, Article 35(4)
⁹¹ CCF Statute, Article 44

website providing some much needed insight into how INTERPOL’s rules are interpreted (see paragraphs 42 and 45 above) and on how the CCF carries out its role.⁹² We learn from these excerpts that the Commission “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.⁹³ The excerpts also illustrate how the CCF interprets the provisions in the CCF Statute relating to re-examination of requests, demonstrating how stringently the requirement for “new material information” is applied.⁹⁴

iii) Analysis of reforms

75. Fair Trials is delighted by the significant reforms which have been introduced by the new CCF Statue 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.

76. 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. 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 believe to be very limited resources.

77. 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.⁹⁵ 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, so that applicants are able to make their complaints more precisely and succinctly.

78. 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

⁹² Available at: <https://www.interpol.int/About-INTERPOL/Commission-for-the-Control-of-Files-CCF/Legal-texts-and-studies/Publications-of-the-Commission>.

⁹³ See Decision Excerpt No. 2 (n 34)

⁹⁴ See Decision Excerpts Nos. 6 and 7. Available at: <https://www.interpol.int/content/download/34450/452061/version/2/file/Decision%20Excerpt%20%C2%B06.pdf> and <https://www.interpol.int/content/download/34446/452045/version/2/file/Decision%20Excerpt%20%C2%B07.pdf>

⁹⁵ This has not be 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>

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.

79. 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 required to delete relevant information from domestic databases whenever notified that INTERPOL alerts have been deleted by INTERPOL, there have been many occasions in which individuals have continued to face difficulties due to inadequate compliance by Member States.⁹⁶ 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.
80. 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.⁹⁷ 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.⁹⁸
81. It is disappointing that the CCF reforms which came into force in March 2017 have done little to strengthen the remedies available to individuals subject 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.
82. 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".⁹⁹ While we fully support, in principle, the suggestion that victims of rights violations should be entitled

⁹⁶ 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/>

⁹⁷ CCF Statute, Article 35(4).

⁹⁸ 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/>

⁹⁹ PACE Report (n 20), para. 64

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.

Questions for INTERPOL: Effective avenue of redress

What procedures follow the withdrawal of a CCF member from consideration of a case to ensure that (a) the member in question does not have access to the evidence in that case, and (b) the case in question still benefits from the type of expertise which that CCF member contributes?

As Article 14(5) of the old Operating Rules has not been replicated in the new Operating Rules, is there no longer a presumption of disclosure in cases where the applicant can demonstrate knowledge of the existence of an INTERPOL alert?

What criteria, if any, guide decisions of the CCF on how to use evidence which an NCB has refused to disclose without justification?

What steps does INTERPOL or the CCF take to ensure that an INTERPOL alert is deleted from national databases following a decision to delete it from INTERPOL's database?

Does INTERPOL or the CCF maintain a record of which Member States keep information on their databases following a decision to delete by the CCF?

What steps, if any, does INTERPOL or the CCF take if countries maintain INTERPOL alerts on national databases which have been deleted from the INTERPOL database?

Recommendations: Effective avenue of redress

New recommendations:

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

The CCF should develop a system of sanctions (including the blocking of data) against NCBs which do not comply with its directions during its review of data access requests and complaints.

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 on: (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
1. Composition and structure	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	😊
2. Funding	Ensure adequate funding to implement reforms.	CCF given more control over its budget and General Secretariat no longer has control	😊
3. Unrepresented applicants	Make more information available to the public	Revised CCF website	😊
4. Data access requests	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	😡
5. Complaints procedure	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)	😞
6. Decisions	Reasoned, binding and public decisions	All introduced through CCF Statute	😊
7. Appeals	Introduce right to appeal	No change	😡
8. Remedies	Interim remedies where NCBs do not comply with	No change	😡

	CCF directions		
	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	⊗

Conclusions and recommendations

a) Conclusions

83. Significant progress has been made in strengthening INTERPOL’s systems, both to prevent abusive INTERPOL alerts from being published and to improve the effectiveness of the redress mechanism provided by the CCF. The reforms introduced over the last three year are, however, only the beginning.

84. 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 started work to coordinate a network of civil society organisations and to facilitate civil society collaboration to ensure international cooperation on criminal matters respects human rights. The network will initially focus on the priorities listed below relating to INTERPOL reform.

i) Implementation of existing reforms

85. 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. Ultimately, only INTERPOL can ensure such implementation through its General Secretariat, the CCF and its Member States, but civil society and other external actors can play a supporting role. We envisage three main aspects of implementation: information-sharing, monitoring through data collection 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.’¹⁰⁰

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

86. 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). 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.

¹⁰⁰ PACE Report (n 20)

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.

87. 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 how 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.¹⁰¹
88. 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 and information collated through the casework of network members. We know that Bernd Fabritius, the German MP responsible for the PACE Report, is also committed to monitoring the implementation of INTERPOL reforms and will therefore be a close ally in this endeavour.¹⁰²
89. 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 and members of the civil society network are also committed to raising awareness – 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*

90. While many of the recommendations proposed in *Strengthening INTERPOL* have been translated into the concrete reforms outlined above, some key proposals have yet to be acted upon. The ongoing monitoring of implementation as well as the publication of statistics by INTERPOL will enable civil society to identify any other areas in relation to which further reform is required.
91. 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) *Applying lessons in other cooperation contexts*

92. 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 increasing pressure on the international community to collaborate in order to tackle the perceived 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”.¹⁰³

93. 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 looking 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.
94. There is a risk that, as a result of INTERPOL’s recent reforms, and the strengthening of its protections against the misuse of its systems, Member States might begin to use alternative international mechanisms without similar protections to track, harass, and

¹⁰¹ PACE Report (n 20), para. 63

¹⁰² 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>

¹⁰³ 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>

undermine political dissidents, human rights defenders, and others. 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 of such systems in ways 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.

b) Recommendations

i) Interpretation of INTERPOL's Rules

95. INTERPOL should:

- a. publish the Refugee Policy on its website, along with guidance on its interpretation;
- b. 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;
- c. provide clarity on the application of the Refugee Policy in cases where (a) subsidiary protection has been provided in lieu of refugee protection, and/or (b) where someone has been naturalised following a previous grant of asylum. To the extent that the Refugee Policy does not currently apply in such cases, it should be amended to do so;
- d. 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;
- e. collate data on:
 - the number of requests for INTERPOL alerts refused on the basis of the refugee policy;
 - the number of people with refugee status requesting deletion of INTERPOL alerts on the basis of the Refugee;
 - 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
 - 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.
- f. consider adopting a similar policy in relation to cases in which extradition has been refused on the grounds of (i) political motivation; and/or (ii) human rights concerns;
- g. stand by its commitment to publish a Repository on Article 2 of the Constitution;
- h. continue to engage with the UN Committee against Torture and other human rights bodies as it develops the Repository;
- i. consider alternative ways to uphold its commitment to human rights, including through the development of INTERPOL guidance and training programmes on human rights-compliant policing which can be shared with Member States; and
- j. 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.

96. 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.

ii) Protection from abuse

97. INTERPOL should:

- a. 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;
- b. prevent circulation of Diffusions from taking place before a quality control review has been carried out if it is not able to ensure that all NCBs will delete a Diffusion from national databases following confirmation from INTERPOL that it is non-compliant;
- c. 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;
- d. establish a better 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;
- e. 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;
- f. ensure that the General Secretariat has adequate resources to conduct the stringent reviews necessary to prevent the publication of INTERPOL alerts which do not comply with its rules;
- g. 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;
- h. publish statistics on the number of INTERPOL Alerts which result in (a) arrest, and (b) extradition each year;
- i. 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;
- j. require NCBs to supply arrest warrants, either at the point of requesting a notice or promptly thereafter if the matter is urgent; and
- k. 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 ask standard questions as to whether an extradition request was made and whether this was accepted or refused, and on what grounds.

iii) Effective avenues of redress

98. Acting through the General Assembly, INTERPOL should ensure that the CCF is given a sufficient budget to implement the new CCF Statute effectively.
99. The CCF should:
- a. develop a system of sanctions (including the blocking of data) against NCBs which do not comply with its directions during its review of data access requests and complaints;
 - b. develop more robust mechanisms for ensuring that NCBs comply with instructions to delete data from national databases following a CCF decision.
 - c. call for an amendment to the CCF Statute and/or the Operating Rules to grant to individuals and NCBs the right to appeal against a decision of the CCF.
 - d. 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.
 - e. collect and publish data on:
 - the total number of requests for (a) access for data, and (b) deletion of INTERPOL Alerts;
 - the number of requests for (a) access for data, and (b) deletion of INTERPOL Alerts which are successful;
 - the number of requests for access for data which are unsuccessful and the reasons provided;
 - the number of requests for deletion in which disclosure to information to the applicant is refused and the reasons provided;
 - the average length of time between submission of a request to access data and the date of the decision;
 - the average length of time between submission of a request for deletion of data and the date of the decision;
 - the number of CCF cases each year in which oral hearings are (a) requested, and (b) granted; and
 - the number of CCF cases each year in which the CCF consults external experts.

iv) Implementation of reforms

100. While it has certainly made significant progress, INTERPOL should not consider that the adoption of reforms represent the end of the road and should commit to ensuring their effective implementation. INTERPOL should:
- a. ensure that all reforms are adequately publicised through its websites so that individuals who may benefit from new policies and procedures are made aware of them;
 - b. be open to the possibility of collaborating with civil society and other international experts and human rights bodies as it embarks on the implementation process; and
 - c. collate data, as outlined in more detail above, through which the effectiveness of implementation can be monitored.

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.

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