



Commission on Security and Cooperation in Europe ('Helsinki Commission')
12 September 2019

'Tools of Transnational Repression – How Autocrats Punish Dissent Overseas'
Briefing note to the Commission

INTRODUCTION

1. Fair Trials welcomes this opportunity to speak before the Commission on Security and Cooperation in Europe ('**the Commission**') about the abusive use of INTERPOL's Notices and Diffusions by certain states to target dissidents overseas. We believe this is an important issue on which Congress can provide crucial oversight and advice, so we are thankful for the opportunity to assist the Commission in its reflections.
2. Fair Trials recognises the crucial role of INTERPOL as the world's largest international policing organisation, and as a key facilitator of international police cooperation. Our position has always been that law enforcement authorities need effective mechanisms for cooperation in order to tackle serious cross-border crime.
3. INTERPOL's rules include provisions that it must remain politically neutral, and respect fundamental rights. Under Articles 2 and 3 of INTERPOL's Constitution, the organisation has to carry out its activities within the 'spirit of the Universal Declaration of Human Rights', and it is prohibited from undertaking 'any intervention or activities of a political, military, religious or racial character', respectively. However, INTERPOL is not always able to ensure that countries comply with these rules, and this can result in its powerful police cooperation tools, including Red Notices and Diffusions being misused to target and harass dissidents, human rights defenders, journalists, and others who are in need of international protection.
4. INTERPOL is aware of these challenges, and the negative impact the abusive use of its systems can have both on individuals, as well as on its credibility. Its commitment to reform is evidenced by a number of positive changes to its procedures and policies in recent years, which build in further safeguards to its systems and improve its respect of fundamental rights. These include a policy to protect refugees who are subject to Red Notices and Diffusions (the '**Refugee Policy**'), changes to its *ex ante* review mechanisms to ensure that requests for Red Notices are subject to more stringent reviews before dissemination, and significant reforms to the procedures and the structure of the Commission for the Control of INTERPOL's Files ('**CCF**'), the body that acts as INTERPOL's complaints mechanism.

5. We consider the Helsinki Commission's intervention in relation to the abuse of INTERPOL's system to be of importance in the absence any other external oversight of INTERPOL's operation, and the Commission's extensive expertise on security and cooperation.

About *Fair Trials* and our INTERPOL work

6. Fair Trials is a global criminal justice watchdog with offices in London, Brussels and Washington, D.C., focused on improving the right to a fair trial in accordance with international standards. Our work combines: (a) helping suspects to understand and exercise their rights; (b) building an engaged and informed network of fair trial defenders (including NGOs, lawyers and academics); and (c) fighting the underlying causes of unfair trials through research, litigation, political advocacy and campaigns.
7. Since 2012, Fair Trials has worked to highlight the misuse of INTERPOL, and to campaign for changes that will help to prevent its systems from being used as a tool for exporting human rights abuses. We have:
 - a. 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;
 - b. Worked constructively with INTERPOL, including through meetings with the Secretary General, Jürgen Stock and chairpersons of the CCF, to gain a better understanding of the underlying causes of INTERPOL abuse, resulting in a range of detailed papers, including a major report in 2013 – *Strengthening respect for human rights, strengthening INTERPOL*¹ ('**Strengthening INTERPOL**' for short) – in which we set our proposals for reform, and our 2018 report, *Dismantling the Tools of Oppression*² in which we analysed the reforms adopted by INTERPOL so far;
 - c. 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;
 - d. Collaborated with civil society organisations, lawyers and academics in building and advancing the case for INTERPOL reform; and
 - e. Highlighted cases of injustice arising from INTERPOL abuse, generating press coverage across the world.

Key Terms

8. Key terms referred to in this paper are:

¹ Available at: <https://www.fairtrials.org/wp-content/uploads/Strengthening-respect-for-human-rights-strengthening-INTERPOL4.pdf>

² Available at: https://www.fairtrials.org/sites/default/files/publication_pdf/Dismantling%20the%20tools%20of%20oppression.pdf

- a. **'Red Notice'** = a notice published by INTERPOL saying a person is wanted for arrest by a certain country
- b. **'Diffusion'** = a less formal request for international police cooperation circulated through INTERPOL channels by a country (which might include an alert that an individual is wanted for arrest by a certain country)
- c. **'NCB'** = **'National Central Bureau'** (the unit within national police which acts as the contact point for matters relating to INTERPOL).
- d. **'CCF'** = **'Commission for the Control of Files'**, the body which handles requests from individuals seeking access to or removal of information from INTERPOL's files.
- e. **'Notices and Diffusions Task Force'** = a team within INTERPOL's General Secretariat responsible for reviewing the validity of Notices and Diffusions.
- f. **'Refugee'** = a person recognised as refugee under the **1951 Convention relating to the Status of Refugees** (not other forms of international protection)

INTERPOL and its system of Red Notices and Diffusions

9. INTERPOL's role is defined by its Constitution, Articles 2 and 3, under which it is mandated to facilitate police cooperation tackling 'ordinary-law' crime, in a manner consistent with the 'spirit of the Universal Declaration of Human Rights ('**UDHR**'), and at the exclusion of activities of a political character. There are various ways in which INTERPOL promotes police cooperation, such as through trainings, but it is best known for facilitating the exchange of information through its system of 'Notices' and 'Diffusions'.

Red Notices

10. Red Notices are part of a wider system of international 'Notices' administered by INTERPOL, which are colour-coded according to the limited purposes for international police cooperation in INTERPOL's rules. The function of the Red Notice is to seek the location of a wanted person with a view to their arrest.
11. Red Notices are based on a national arrest warrant issued by a competent authority of the issuing state. The information provided by the NCB to INTERPOL for the dissemination of a Red Notice includes the summary of the facts, specifics of the offence, relevant laws that create the offence, and depending on the case, either the maximum sentence, or the sentence that has already been handed down. In addition, the NCB provides data to help identify the individual, such as their physical description, name, and biometric data. Although based on a domestic arrest warrant, it must be stressed that Red Notices are not 'international arrest warrants'. Red Notices do not,

on their own, have legal value *per se* and countries take different approaches on how they treat such alerts.

Diffusions

12. Since the early 2000s, NCBs have also been able to circulate 'Diffusions'. These are electronic alerts disseminated through INTERPOL's systems that contain specific requests for cooperation. Diffusions can contain requests to locate and arrest and wanted person, so in practice, they often have the same effect as a Red Notice, and to the affected individual, there is usually very little noticeable difference between Diffusions and Red Notices. However, Diffusions seem to be designed as a more informal cooperation request, of lower authority and injunctive value than a Red Notice, and we have been informed like e-mails circulated by NCBs through INTERPOL's systems.
13. Diffusions are circulated to other NCBs, and at the same time recorded on INTERPOL's databases, but there are some key differences between Diffusions and Red Notices:
 - a. The processes for review are different. Requests for Red Notices are checked by the General Secretariat before they are disseminated, but with Diffusions, the information requesting cooperation can be circulated without prior review by INTERPOL;
 - b. An NCB can use a Diffusion to limit circulation of the information to individual NCBs, groups of NCBs, or all NCBs (Red Notices are disseminated to all of INTERPOL's member countries); and
 - c. Diffusions can be issued to seek a person's arrest where the specific conditions for a Red Notice (e.g. the minimum sentence threshold) are not met.

Overview of Fair Trials' Concerns

14. Fair Trials has identified three main areas that INTERPOL needs to address to strengthen its protections from abuse: (a) the mechanism for preventing publication of alerts which do not comply with INTERPOL's constitutional rules; (b) the process through which those affected by INTERPOL alerts can seek access to the information being disseminated through INTERPOL's channels and request deletion of INTERPOL alerts which do not comply with INTERPOL's own rules; and (c) the interpretation of its Constitution which requires INTERPOL to respect political neutrality and human rights. In recent years, INTERPOL has made significant positive reforms in all three areas, but we believe there is ample room for further improvement.

Internal Review of Red Notices and Diffusions (ex-ante reviews)

15. Red Notice requests and Diffusions are reviewed for compliance with INTERPOL's rules by a specialist team set up in 2016, known as the 'Notices and Diffusions Task Force' within the General Secretariat. Staffing levels vary, but our understanding that the task force consists of about 30 to 40 staff members.

16. It is difficult to ascertain how effectively INTERPOL is able to identify and weed out Red Notice requests that do not comply with its rules. It does not, for example, publish statistics on how many Red Notice requests are refused by the Notices and Diffusions Task Force, and there is still no clarity on how its *ex ante* review mechanism operates (including, for example, what sources of information it consults to figure out whether a Red Notice request is politically motivated).
17. Fair Trials has continued to come across cases that indicate that the review procedures are far from perfect, and certain countries continue to get Red Notice requests approved against political activists, human rights defenders, and others in need of international protection. Recent examples include the following:
 - a. Dogan Akhanli, a German writer of Turkish origin, who fled Turkey and was granted asylum in Germany in the 1990s, was arrested in Spain in August 2017, reportedly on the basis of a Turkish Red Notice. Akhanli had a public profile as a renowned critic of Turkey's human rights record and an advocate for the recognition of the Armenian genocide. Turkey's use of the Red Notice against Akhanli was heavily criticised, including by German Chancellor Angela Merkel.³
 - b. Hakeem Al-Araibi, a Bahraini footballer with refugee status in Australia, was arrested in Thailand last month, and continues to be detained pending the outcome of his extradition proceedings. Al-Araibi's refugee status means that under INTERPOL's own policy, a Red Notice or Diffusion issued against him by Bahrain is, as a general rule, not permitted. The Red Notice has now been deleted, but this did not immediately halt the extradition process.⁴
2. It is not known how many Red Notices are reviewed on a yearly basis by the Notices and Diffusions Task Force but this number is clearly in excess of the 13,000 new Red Notices issued each year.⁵ In addition, the Task Force also reviews Diffusions, which are now being issued at a rate of more than 50,000 per year.⁶ There are also over 47,000 Red Notices currently in circulation, the majority of which are likely to have been disseminated before the more stringent review procedures were introduced. These existing Red Notices will also need to be reviewed, further adding to the Task Force's already heavy workload. In this context, it is implausible that INTERPOL would be capable of checking each-and-every Red Notice request thoroughly.

³ Reuters, 'Merkel attacks Turkey's 'misuse' of Interpol warrants' (20 August 2017), Available at: <https://www.reuters.com/article/us-eu-turkey-election/merkel-attacks-turkeys-misuse-of-interpol-warrants-idUSKCN1B00IP>

⁴ New York Times, 'Thai Court Holds Bahraini Soccer Star Who Escaped Persecution' (11 December 2018), Available at: <https://www.nytimes.com/2018/12/11/world/asia/thailand-bahrain-hakeem-al-araibi-soccer.html>

⁵ INTERPOL, Annual Report 2016

⁶ Statistics recently obtained by the German Broadcaster ARD in 'Interpol: Unschuldung in Haft', Video available at: <https://www.daserste.de/information/politik-weltgeschehen/europamagazin/videos/interpol-unschuldig-in-haft-video-100.html>

3. We also have serious concerns to Diffusions, which can be sent directly between member countries. INTERPOL does review Diffusions, but only after a request for cooperation has already been circulated. We have concerns that this makes Diffusions a convenient alternative to Red Notices that are subject to less stringent checks, even though their impact can be just as devastating.
4. By the time INTERPOL checks a Diffusion for compliance, the information about the wanted person would have already been shared with police forces across the world. If information regarding a wanted person is made accessible to police forces of Member States, this information can be copied or downloaded, and subsequently stored on national police databases, even if INTERPOL advises NCBs not to rely on the information. Currently, INTERPOL does not have effective mechanisms of preventing abusive requests for arrests from entering national databases through its systems by way of Diffusions, and it also has no effective means of deleting or recalling such data from national databases if it has been found to violate INTERPOL's rules.

Reviews by the Commission for the Control of INTERPOL's Files (ex-post reviews)

5. Fair Trials is not aware of any cases to date in which individuals have successfully challenged INTERPOL's decisions in national courts. This is because INTERPOL does not have a physical presence in most countries, and in countries where it does have a presence, such as in France, the United States, and Singapore, it is protected from the jurisdiction of national courts by formal immunity agreements and national laws.⁷
6. For many, the only way in which they are able to challenge or obtain information about a possible Red Notice or Diffusion is through the CCF. The CCF was initially set up as a supervisory body, but its role has since evolved, and it is now also responsible for handling requests from individuals who wish to gain access to, and seek deletion of, information concerning them which is stored on INTERPOL's files. Although in theory, individuals affected by INTERPOL alerts should be able to seek redress from the countries that issued the alert, this is not a realistic option for many, who may, for example, be facing persecution, or be dealing with a legal system with little regard for the rule of law, that offers no realistic hope of justice.
7. The CCF has been subject to serious criticism for failing to provide an effective avenue of redress for those affected by abusive Red Notices and Diffusions. In the past, it was staffed solely by technical and data protection experts with no expertise to make determinations on matters relating to human rights or political motivation, and its processes were mostly opaque, with complainants having little to no information about the Red Notice they were trying to challenge and the arguments put forward by NCBs to defend them. It was not unusual for complainants to have to wait several years

⁷ For example, Agreement between the International Criminal Police Organisation – INTERPOL and the Government of the French Republic Regarding INTERPOL's Headquarters in France (24 April 2008), and International Organisations (Immunities and Privileges) (ICPO-INTERPOL) Order 2012 (Singapore) (20 August 2012)

to get a decision from the CCF, and even when they did, they were not reasoned, and they were not even binding.

18. In recent years, INTERPOL has taken a number of steps to address these concerns. Most significantly, INTERPOL adopted a set of new measures in 2016 that introduced significant changes to its information processing mechanisms. These include a new Statute of the CCF (**'the Statute'**), which came into force in March 2017, and amendments to the Rules on the Processing of Data, which contain substantial reforms to the CCF and its procedures. In addition, the CCF adopted a new set of Operating Rules, which largely reiterate the relevant provisions in the CCF Statute and the RPD, and detail how the CCF functions. These were also adopted in March 2017.
8. On paper, these reforms bring the CCF's procedures closer in line with international due process standards, and they ensure the CCF's effectiveness as a redress mechanism by making its procedures more transparent, effective, and efficient. These reforms included greater independence and powers for the CCF; improvements to the CCF's capacity and expertise; better transparency and respect for the equality of arms; introduction of timeframes to ensure that complaints are handled expeditiously; and the availability of reasoned decisions.
9. We have been encouraged by a number of positive results in various cases, that illustrate that there have been real changes:
 - a. Dolkun Isa, a German citizen of Uyghur origin, first found out that he was subject to an INTERPOL Red Notice in 1999. Isa had fled China in the 1990s due to his fear of persecution on account of his political activism that called for greater autonomy for Uyghur people in northwest China. He eventually obtained refugee status in Germany, but his Red Notice compromised his ability to advocate for his cause, as the Chinese authorities used to Red Notice to justify labelling him as a 'terrorist', and he risked arrest every time he travelled overseas. After years of trying, Isa's Red Notice was deleted by the CCF in February 2018.⁸
 - b. Maxime Azadi, a French journalist of Kurdish origin, was arrested in Belgium in December 2016 because of a Red Notice issued at the request for the Turkish authorities. Azadi's arrest was heavily criticised, particularly given that he was the Director of Firat, an Amsterdam-based news agency known for its stance critical of President Erdogan. Azadi's Red Notice removed by the CCF in May 2018, and his extradition proceedings were discontinued shortly thereafter.
10. Fair Trials have been speaking with lawyers and NGOs to understand their perceptions of how well the CCF reforms are being implemented. Their responses have mixed – whilst acknowledging that the CCF procedures are far more efficient than they used to be, the following concerns have been raised:

⁸ Fair Trials, 'INTERPOL deletes Red Notice against persecuted Uyghur dissident Dolkun Isa' (23 February 2018), Available at: <https://www.fairtrials.org/news/interpol-deletes-red-notice-against-persecuted-uyghur-dissident-dolkun-isa>

- a. Transparency: One of the most promising changes in the CCF Statute were the new rules governing the disclosure of information. Under the previous rules, no information regarding a Red Notice or Diffusion was disclosed to individuals unless the NCB that is responsible for the alert gave the CCF permission to do so. This seemed to change under the CCF Statute, which appeared to create presumption of disclosure, allowing NCBs to prevent disclosure if it had good reasons for doing so.⁹ Lawyers who have spoken to us have commented that in practice, little has changed, and there are still relatively few instances in which any meaningful disclosure is made by the CCF. Furthermore, the rules do not explain precisely what happens if the NCB does not give good reasons for refusing disclosure.
 - b. Written Decisions: While the availability of written decisions is a major positive change, but we have spoken to lawyers who question the quality of the written decisions. They do not contain sufficient reasoning, and they do not always make it clear how a decision was reached.
11. Individuals are still denied the right to appeal against the decisions made by the CCF either internally, or through an external complaints mechanism. It is important that, even with the significant improvements to the CCF's expertise, individuals are able to question how the CCF interprets the relevant rules, and how they are applied in specific cases. Furthermore, in the absence of an appeals mechanism, there is no effective quality control of the CCF's decisions, and no way of ensuring that its decisions are being made consistently.
 12. Fair Trials also has some doubts about the CCF's capacity to implement these reforms, given the current level of staffing and resources. The requirement to make decisions within a specified time and to produce reasoned decisions no doubt require significantly more resources and manpower than the CCF needed under the previously rules. We are also aware that as more and more lawyers become more familiar with the CCF's work and INTERPOL's rules, the CCF is likely to face a heavier workload. We were therefore disappointed to learn that at the last General Assembly, the CCF's budget was decreased by 130,000 Euros between 2018 and 2019, although its staff increased by one.¹⁰

Interpretation of INTERPOL's rules

19. On paper, Articles 2 and 3 of INTERPOL's Constitution help to ensure the organisation's reputation as a trustworthy facilitator of international cooperation by enshrining its commitment to human rights and its neutrality. While the text of the Constitution and supplementary rules appear satisfactory, Fair Trials has recognised that there are problems, or at least a lack of clarity, in the way these are implemented.

⁹ CCF Statute , Article 35

¹⁰ INTERPOL General Assembly Resolution GA-2018-87-RES-13, cf. General Assembly Resolution GA-2017-86-RES-15

This lack of clarity not only makes it difficult for individuals affected by abusive Red Notices or Diffusions to challenge them before the CCF, they also make it easier for member countries to break INTERPOL's rules, knowingly or not.

20. Fair Trials has been concerned particularly about the lack of clarity on the interpretation of Article 2 of INTERPOL's constitution, which relates to the organisation's commitment to respect human rights. INTERPOL's General Secretariat was given powers in 2014 to create a 'Repository of Practice' to clarify how Article 2 is interpreted,¹¹ but we are not aware of any progress on this document.

Refugee Policy

21. One noteworthy positive development regarding INTERPOL's interpretation of its rules is the adoption of the 'Refugee Policy'. In May 2015, INTERPOL announced the policy under which the organisation regards Red Notices and Diffusions invalid if it is against a person recognised as a refugee under the 1951 Convention and the Red Notice or Diffusion was issued by the country from which the refugee sought asylum. We regard this as a very positive change that provides a relatively straightforward process for challenging politically-motivated Red Notices and Diffusions in the most obvious cases of abuse. Fair Trials has been impressed with the speed and efficiency which the CCF has processed complaints that engage the Refugee Policy, but a number of challenges still remain.
 - a. The precise text of the Refugee Policy still 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 Red Notices from making use of it. INTERPOL's failure to publish its Refugee Policy only highlights its lack of transparency, and it needs to do a better job of communicating how its rules are applied and interpreted.
 - b. The scope of the Refugee Policy is limited. In particular, it does not strictly cover other forms of international protection granted on the basis of *non-refoulement* (for example, under Article 3 of the European Convention on Human Rights, or Article 3 of the UN Convention Against Torture). This is a particularly pertinent question, because INTERPOL Red Notices could be the very reason why an individual might be excluded from the protection of the 1951 Refugee Convention, and in certain countries like Australia, it is an explicit lawful basis on which immigration status can be refused.¹² Our understanding is that in practice, the CCF does delete Red Notices and Diffusions where the individual affected has other types of protected status under international law, but it would be

¹¹ Resolution No. 18, [AG-2014-RES-18](#), and Art. 34(4), INTERPOL's Rules on the Processing of Data.

¹² Annexe A, section 10, Direction No.65, Migration Act 1958 – Direction under section 499, Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA; and section 7, 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)

helpful if this was clarified way of a written policy or rule. We are also aware that the policy does not extend to refugees that subsequently lose their status through naturalisation.

22. While we have seen that the Refugee Policy has been implemented effectively in the context of *ex-post* review procedures, the same cannot be said for *ex-ante* reviews. Examples that Fair Trials has seen in recent years, including that of Hakeem Al-Araibi (mentioned above) imply that in many cases, INTERPOL's Notices and Diffusions Task Force is simply unable to identify whether or not an individual is a refugee. This challenge is, to a degree, understandable, given that most countries rightly regard the grant of refugee status as sensitive information that cannot be shared freely with external bodies. However, INTERPOL's inability to identify recognise refugees, even where the information about their status is on the public domain also highlights that this is also a question of the effectiveness of INTERPOL's processes.

Recommendations

23. We appreciate the Commission's interest in helping to ensure that INTERPOL is protected from misuse, and in particular, the effective implementation of the reforms adopted by the organisation in the past 4 years. We would like to invite the Commission to support our recommendations to INTERPOL, which are outlined in our latest report 'Dismantling the Tools of Oppression'. In summary these are:
 - a. Reform Diffusions: INTERPOL needs to make sure that Diffusions, much like Red Notices, are subject to reviews before the information is made visible to other countries.
 - b. Improve *ex-ante* reviews of INTERPOL alerts: INTERPOL needs to clarify how the Notices and Diffusions Task Force carries out its reviews, so that the challenges can be identified, and possible solutions can be found. The Notices and Diffusions Task Force also needs to be adequately funded.
 - c. Ensure the effectiveness of the CCF reforms: The CCF should develop and publish a strong position on how the NCBs' refusal to disclose data affects its decisions. The CCF and INTERPOL also need to develop ways of ensuring better compliance with the CCF's decisions and directions, especially regarding the deletions of data.
 - d. Enhance protections for refugees and others in need of international protection: INTERPOL should be encouraged to publish the refugee policy, and also consider expanding the policy so that it covers a wider category of individuals who are at risk of refoulement.
 - e. Improve transparency: INTERPOL should be asked to disclose data that would help to illustrate how effective its review mechanisms are. These include statistics on how many requests for Red Notices are received and refused each year.

24. We acknowledge however, that INTERPOL cannot prevent the injustices caused by the misuse of its systems alone. Support from member countries, including the United States of America are crucial. We are calling on member countries to:
- a. Work with the CCF: by complying with the CCF as much as possible, and to respect its decisions. This also means that where the CCF has decided to delete a Red Notice or Diffusion, countries should comply with this decision fully by ensuring that all copies of the data in their national databases are also deleted.
 - b. Protect refugees and other vulnerable individuals: Member countries should become better aware of the dangers of over-reliance on data being circulated through INTERPOL's systems, including in relation to decisions to arrest, and those that relate to refugee status determinations. In addition, we believe that member countries can also help INTERPOL to remove abusive Red Notices used against refugees and others that need international protection. This could be done, for example, by sharing information about their status (with their consent) with INTERPOL so that INTERPOL can make the right decisions in individual cases.
 - c. Fund INTERPOL: It is our belief that institutions within INTERPOL that help to prevent the misuse of its systems, and in turn, strengthen the organisation, are badly in need of additional funding and resources. We would encourage countries to provide ring-fenced funding to the CCF and the Notices and Diffusions Task Force so that these bodies can function in the best possible way.

Fair Trials
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