

**Tom Lantos Human Rights Commission
United States Congress, 114th Congress
Briefing: 'Allegations of misuse of the INTERPOL Red Notice process'
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Written statement of briefing to the Commission
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1. Thanks to the Commission for inviting me to speak at this briefing. I am Senior Legal & Policy Officer at Fair Trials (www.fairtrials.org), which is a human rights organisation with offices in London and Brussels and as of last week, now here in Washington, working for protection of the right to a fair trial according to internationally-recognised standards of justice.
2. We pursue our mission in three ways. We provide assistance, through our expert casework practice, to people arrested outside their own country. We also address the root causes of injustice through broader research and campaigning, and build local legal capacity through targeted training, mentoring and network activities. In all our work, we collaborate with our Legal Expert Advisory Panel, a group of over 120 criminal defence experts from 28 EU Member States.
3. Since 2012, Fair Trials has engaged in a committed campaign for the reform of INTERPOL, drawing on extensive casework, research, and advocacy and I am grateful for the opportunity to inform the Commission of both the human rights risks presented by weaknesses in INTERPOL's processes, as well as current opportunities for reform within INTERPOL.
4. Police and prosecutors need international cooperation mechanisms to combat serious cross-border crime effectively. As the largest international police organisation with electronic networks spanning nearly every country in the world, INTERPOL provides valuable tools for them to do so. With no powers to arrest, investigate or prosecute crimes, one of INTERPOL's key functions is to provide secure communications and information-sharing channels for its members. Its 'wanted person' alert system – comprising of Red Notices and Diffusions – plays a key role, and in recent years use of those alerts has increased steadily, from just over 3,000 new Red Notices published in 2008 to 10,718 in 2014.
5. Unfortunately, as it has become easier for countries to obtain INTEPROL alerts, they have at times been used by certain states as a means of pursuing dissidents beyond their borders, and with limited resources to effectively review the increasing number of alerts, INTERPOL has not effectively prevented this from happening.

6. Fair Trials has highlighted and challenged a number of cases of injustice caused by unchecked abuses of INTERPOL's Red Notice and Diffusion systems. We define 'abuse' by reference to INTERPOL's own rules and its Constitution, which requires it to act within the "spirit of the Universal Declaration of Human Rights" and to avoid "any intervention or activities of a political, military, religious or racial character." We have challenged Red Notices from a wide variety of countries -- Turkey, Indonesia, Azerbaijan, Uzbekistan, Venezuela – which were used to persecute human rights defenders, political opponents, journalists and refugees, based on criminal proceedings which violate international human rights standards.
7. In 2013, Fair Trials published a report, *Strengthening respect for human rights, Strengthening INTERPOL*¹, which lays out in detail all of our main conclusions and recommendations to INTERPOL in order to assist it in protecting its systems against abuse. We have also made a recent submission to INTERPOL in relation to its current working group on internal reforms².
8. We are also engaged in ongoing constructive dialogue with INTERPOL, meeting several times with senior personnel within the General Secretariat and the Committee for the Control of Interpol's Files (the CCF), which is INTERPOL's data protection body.
9. In parallel, we have engaged in extensive dialogue with other institutional actors, including within the European Parliament, the European Commission, the Parliamentary Assembly of the Council of Europe, exile groups, national legislatures, national law enforcement, legal practitioners and NGOs in various countries, giving us a good idea of the policy landscape.
10. Of course, we are of the view that INTERPOL itself has no intention to abuse people's rights or to facilitate the pursuit of individuals deserving of international protection. However, as it stands, its systems are not robust enough to prevent them from being misused. Our interest in protecting human rights and INTERPOL's interest in retaining its credibility and its legal immunity mean that consensus has grown that reform of INTERPOL's information systems is an urgent priority for all stakeholders and member states.
11. The problem is two-fold – lack of review prior to the issuance of alerts, and a lack of due process in providing effective redress for abusive Red Notices once they have been issued. Prior to the

¹¹ 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-INTERPOL5.pdf>

² Fair Trials, *Written submission to INTERPOL's Working Group on the Processing of Information*, June 2015, available at: https://www.fairtrials.org/wp-content/uploads/GTI-Submission_Fair-Trials-2.pdf

publication of an alert, INTERPOL's General Secretariat does not do enough to satisfy itself that the Red Notice or diffusion is appropriate. One of Fair Trials' cases illustrates this problem.

12. **Bahar Kimyongür** is a Turkish-Belgian activist who interrupted the meeting of the Turkish Foreign Minister to a European Parliamentary meeting in 2000. Turkey then circulated an INTERPOL Red Notice for him some years later, alleging that that action, together with other peaceful acts of support for Turkish dissidents in Belgium, evidenced his membership in a terrorist organization, DHKP-C. Belgium had considered similar claims against Bahar in its own domestic courts and acquitted him in 2009. Nonetheless, on the basis of the Red Notice, Bahar was arrested three times in three different countries, spending over 100 days in detention all together. Each country – the Netherlands, Italy, and Spain – refused to extradite him on the basis that his exercise of free speech did not make out an element of belonging to a terrorist organization. Still, the Red Notice remained throughout these extradition refusals until the CCF finally agreed to delete it months later after repeated communications from Fair Trials and Bahar himself.
13. Bahar's case demonstrates how INTERPOL permits the publication of red notices even in cases that bear clear features that should trigger further review by INTERPOL, like indications of political motivation, acquittals on cases featuring the same facts, and refusals of extraditions.
14. However, even if INTERPOL did have better ex ante review mechanisms, some cases of abuse would inevitably slip through the net; therefore an effective avenue of redress is required so that individuals can challenge and seek deletion of those Red Notices. Furthermore, INTERPOL's immunity as an international organisation is predicated on the efficacy of its internal redress mechanism. Despite the fact that it is the sole body with the power to provide recourse for wrongful Red Notices, the ex post facto redress offered by the CCF is not effective and falls well short of meeting basic procedural standards. Historically, communicating with the CCF has too often been like shouting into a black hole:
 - a. First of all, the CCF would often take months or years to respond to complaints, both due to inadequate financial and human resources, and because it lacks the authority to hold member states to reasonable timeframes in providing information.
 - b. When it did make decisions they would contain only a few sentences of justification with little reasoning, making it impossible to determine whether or not its decision-making is sound. We don't know, for example, how the CCF interprets INTERPOL's obligations

under Articles 2 and 3 of its Constitution to respect human rights and to avoid actions of a political nature, respectively.

- c. The CCF also fails to ensure equality of arms between a complainant and the country in question when considering requests, with the imbalance in access to information clearly favouring the requesting country.
 - d. Finally, its decisions have no binding power – though the General Secretariat usually follows the CCF’s recommendations, it is not obliged to.
15. Problems with the ex post facto review mechanism provided by the CCF are exemplified by the case of **Petr Silaev**, a Russian anti-fascist activist who participated in a demonstration in relation to a dispute over development of the Khimki forest outside Moscow. When police started arresting people who had been involved in the protest, Petr fled and was recognised as a refugee by Finland. Nonetheless, he was later arrested in Spain on the basis of an INTERPOL Red Notice from Russia seeking his arrest for “hooliganism.” After a period of detention, the Spanish court refused to extradite Petr, but he was still stranded in Spain for months while Fair Trials repeatedly appealed to the CCF to remove the Red Notice.
16. At one point, the CCF notified Petr that the Red Notice would be blocked pending further investigations into its validity, but then unblocked it subsequently without notifying him. Petr only learned about the Red Notice being unblocked through an update on a Russian government website. The CCF finally responded to our applications in a decision less than one page long taking the view that the Red Notice should remain, with no reference to the facts of the case or its approach to INTERPOL’s rules. Petr’s Red Notice was only eventually removed after Russia amnestied Petr.
17. The cases of Petr Silaev and Bahar Kimongur are unfortunately exemplary of a string of similar cases of recognised refugees and other political exiles from around the world that demonstrate that the INTERPOL alert system is long past time for reform. Thankfully, there are signs that INTERPOL is at last listening.
18. One key reform has been the introduction of a very welcome policy that INTERPOL will remove Red Notices if it can verify that the person has been recognised as a refugee under the 1951 Refugee Convention. Fair Trials has seen this policy being implemented fairly effectively, with Red Notices deleted fairly swiftly following our alerting the CCF as to the refugee status of the person concerned.

19. There are still however a number of ongoing practical challenges to this policy, for example, around how to ensure that (a) all refugees subject to alerts are able to make use of the policy; (b) national authorities confirm that asylum grants exist where necessary; (c) the confidentiality of the refugee's whereabouts is always protected; and (d) that those who are de facto refugees but have not been formally recognised or whose asylum request is pending are still protected, as well as non-refugees who are protected under the UN Convention Against Torture or other human rights instruments.
20. Besides the refugee policy, the appointment of Nina Vajic, a former judge of the European Court of Human Rights, as Chair of the CCF has brought a number of improvements to CCF practice. The number of days for which the CCF meets each year has been increased from six to twelve, and the CCF Secretariat now processes some straight forward cases in between sessions, so we are seeing some cases being resolved much more quickly than in prior years. Fair Trials has also noted a trend toward longer and more detailed reasoning in the CCF's decisions.
21. Most significantly however, an internal working group of INTERPOL – the 'GTI' -- has been conducting a comprehensive review of the work of the CCF since July 2015. And it has already had impact. In November 2015, the General Assembly adopted a resolution on the basis of interim recommendations from the GTI, and we expect final recommendations to be presented and voted upon by the General Assembly when it meets in Bali in November of this year.
22. The GTI presents an unprecedented opportunity for all member states, including the United States as one of INTERPOL's most influential members – and funders – to contribute to reform of what has been a notoriously opaque and undemocratic institution. Fair Trials has submitted a detailed paper setting our recommendations for improvements to CCF procedures which could provide a guide as to the kind of reforms member states might support. These include, (a) increased funding to the CCF and an improved structure to deal with complaints and to provide an effective appeals process, (b) improved transparency in relation to both the substance of data held on individuals who are subject to INTERPOL alerts and in relation to the CCF's own procedures, (c) improvements in timelines for responding to requests for information or complaints, (d) better reasoning in decision-making, and (e) a more effective system of remedies for affected individuals.
23. We are really at a key juncture in the campaign for reform of INTERPOL, a once-in-a-generation opportunity for change that those of us concerned with human rights protection cannot squander. In addition to supporting the reform process already underway, all of us and all

member states must ensure that whatever comes of consideration of the GTI recommendations at the General Assembly in November is comprehensive and effective, and crucially that it is effectively implemented, with sufficient resourcing, both by INTERPOL's own bodies and by its members.

24. Thank you for listening, and I would be more than happy to provide further information, including additional cases and more detail on our recommended reforms, at any point.