

Our vision:

A world where every person's right to a fair trial is respected.

Submission

Reform of the Commission for the Control of INTERPOL's Files and its data processing procedures

Submission to the Working Group on the Processing of Information

10 December 2015

Fair

Trials

About Fair Trials International

Fair Trials International (**Fair Trials**) is a non-governmental organisation that works for fair trials according to internationally recognised standards of justice and provides advice and assistance to people arrested across the globe. Our vision is a world where every person's right to a fair trial is respected, whatever their nationality, wherever they are accused.

Fair Trials pursues its mission in three main ways: by helping people to understand and defend their rights through our casework practice; by fighting the underlying causes of unfair trials; and by building an international network of fair trial defenders.

Fair Trials has campaigned for simple changes to help make INTERPOL a more effective crime-fighting tool. We believe that INTERPOL can and must do better at filtering out abuses of its systems before information is sent out to police forces across the globe. When abusive 'wanted person' alerts do slip through the net, victims should have redress through an open and impartial process.

Since 2012, Fair Trials has worked to highlight the misuse of INTERPOL. We have:

- i. Helped individuals who have been subject to abusive INTERPOL alerts, their lawyers, and other NGOs, by providing information and referrals, and in dozens of cases, by assisting with their applications for the deletion of Red Notices;
- ii. Worked constructively with INTERPOL to gain a better understanding of the cause of such problems, and we produced a major report in 2013, (*'Strengthening respect for human rights, Strengthening INTERPOL'*) in which we set out our proposals for reform;
- iii. Organised events to raise awareness of the problem amongst policy-makers, including the Parliamentary Assembly for the Council of Europe, the European Parliament, and the United Nations Committee against Torture;
- iv. Highlighted cases of injustice, and generated press coverage across the world; and
- v. Engaged directly with INTERPOL to discuss the ways in which the Red Notice system could be reformed, including through meetings with Secretaries General Ron Noble and Jürgen Stock, and by contributing to the Working Group on the Processing of Information in July 2015.

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Executive Summary

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. Law enforcement authorities need effective mechanisms for cooperation in order to tackle serious cross-border crime.

INTERPOL's political impartiality and respect for fundamental rights, as protected under its constitution, are instrumental in its success as an effective crime-fighting tool. However, weaknesses in INTERPOL's data processing rules and the Commission for the Control of INTERPOL's Files ('CCF') have left INTERPOL vulnerable to the misuse of its systems, and have compromised its ability to enforce these rules and principles.

The failure to update data processing procedures and the CCF could prove most costly for INTERPOL, and its mission to 'make the world a safer place' by facilitating international police cooperation could be endangered by a lack of trust in its alert systems and by reputational damage. INTERPOL also risks losing its immunity and exposing itself to the threat of litigation unless it is able to establish an effective internal redress mechanism.

Fair Trials' aim is to make INTERPOL stronger and more effective by proposing realistic reforms that will help to ensure that the CCF and its rules comply with international standards. We believe, in particular, that INTERPOL can build more robust mechanisms to enforce its own rules by adopting principles established under internationally-recognised standards of justice, and by making the CCF's procedures more transparent, adversarial and efficient.

We recognise that INTERPOL is not the only international body that faces these challenges, and we have looked into the practices and procedural rules of various international organisations and comparable bodies, such as Europol, to provide helpful comparative examples.

Fair Trials provides the following recommendations:

a) Composition and Structure (paras. 21-31): The current composition of the CCF lacks the expertise needed to determine complaints, particularly in cases raising arguments under Articles 2 and 3 of INTERPOL's constitution. The irregularity of its meetings contributes to delays to its procedures.

The CCF should be divided into three separate entities, each with specialist expertise:

- **a Data Protection Office**, which advises and monitors INTERPOL on data protection matters, and processes requests for access to INTERPOL's files;
- **a Complaints Committee**, which includes 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
- **an Appeals Panel** which hears appeals from the Data Protection Office and the Complaints Committee.

The constituent bodies of the CCF should meet with sufficient regularity in order to ensure that requests and complaints are processed within specified procedural timeframes.

b) Funding (paras. 32-36): The inadequate funding of the CCF weakens its effectiveness and efficiency, and it is a growing problem, given its increasing caseload. The proposed reforms to the

CCF and its procedures will have cost implications, but this will be an important investment for the strengthening of INTERPOL, and we would also recommend the greater use of video-conferencing technology, for example, to make savings.

- c) Individuals without Legal Representation** (paras. 37-45): Given the lack of publicly funded legal assistance, individuals with limited financial means are disadvantaged in their ability to seek redress before the CCF. There should be greater information available to the general public on procedures for making data access requests and complaints. This should include more detailed, accessible information online as well as template documents that can be used by unrepresented individuals. The CCF should also help unrepresented individuals by, for example, using simpler language in correspondence, and taking into consideration the particular challenges they face when applying procedural rules.
- d) Data Access Requests** (paras. 46-70): There is currently a presumption of secrecy in the CCF's data processing procedures that restricts access to data even for individuals who have good reasons to believe they are subject to an INTERPOL alert. Data processing procedures are also subject to lengthy delays, often due to the reluctance of NCBs to respond promptly to the CCF's requests.

There should be a general rule that individuals who believe they are subject to an INTERPOL alert be given access to information about the existence of such an alert, subject to narrowly defined exceptions, such as security grounds and for the protection of conducting effective criminal investigations.

Data access requests should be subject to tighter deadlines. If NCBs fail to respond to requests within specified timeframes, the data should be either blocked or deleted.

- e) Complaints Procedures** (paras. 71-95): The CCF's current procedures for handling complaints are not clearly defined in INTERPOL's rules, and they are often subject to lengthy delays. The CCF's complaints procedures also lack transparency due to the restrictions on the disclosure of information.

The 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 before the CCF. Subject to exceptions, arguments and information put forward by the NCB and the individual should be disclosed to one another. As with data access requests, complaints procedures should be subject to specific deadlines. Oral hearings should be made available with the use of video-conferencing technology, where appropriate.

- f) Decisions** (paras. 96-120): The CCF's decisions are brief, unspecific, and they contain no reasoning, making it difficult for individuals and NCBs to understand how the decision was made, and how the CCF interprets INTERPOL's rules. Until recently, the CCF's decisions have also not been binding, and this has undermined its perceived independence from the General Secretariat.

Decisions on complaints should be fully reasoned, and they should include 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 be made public subject to redactions, where necessary, and they should be binding on the General Secretariat.

- g) Appeals** (paras. 121-132): Decisions made by the CCF are not subject to further review in the absence of newly discovered facts, and given INTERPOL's immunity, these decisions cannot be challenged before external judicial bodies. This means that even in cases where important issues about the interpretation of INTERPOL's rules have been raised, the CCF's decisions are not subject to further scrutiny.

Decisions on both data access requests and complaints should be appealable to an Appeals Panel. Appeals procedures should be established enable an effective exchange of arguments between the NCBs and individuals, and they should be subject to specific timeframes.

h) Remedies:

- i. Interim Remedies (paras. 133-139): The CCF's powers to issue interim relief in relation to data subject to its review are not clearly defined. The CCF should be able to issue caveats explaining that the data is subject to review and block alerts in cases where NCBs fail to comply with its directions in the context of data access requests and complaints.
- ii. Deletion of Data (paras. 140-143): If 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 and anonymisation), notify all NCBs, and issue a letter to the individual to confirm the deletion. This should be done to minimise difficulties caused by undeleted downloaded data in NCBs' databases.
- iii. Addenda (paras. 144-152): The overuse of addenda can be interpreted as a symptom of the CCF's reluctance to make concrete decisions, and it can interfere with effective judicial cooperation. Fair Trials recommends that addenda should be used only as interim remedies, or as a way of advising NCBs on alerts that might comply with the rules, but where there are good reasons to demand a more cautious approach. 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 or refoulement (as previously recommended by Fair Trials), this might include cases in which there have been refusals of extradition. Addenda should appear on public alerts, and they should be available automatically to other NCBs.

A. Introduction

1. Fair Trials welcomes this opportunity to make a written submission to INTERPOL's Working Group on the Processing of Information ('the **GTI**'), further to our submission dated 10 June 2015, and delivered orally at the GTI's first meeting on 3 July 2015.¹
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. The recent series of terror attacks in Europe, Africa, and the Middle East are stark reminders of this.
3. The effectiveness of INTERPOL's activities is highly dependent on its reputation as an essential tool in the global fight against crime, and the level of confidence placed on its systems. INTERPOL's credibility is reinforced by its own rules, which include provisions that it must remain politically neutral, and respect fundamental rights. Under Articles 2 and 3 of INTERPOL's constitution, INTERPOL's activities have to be carried out 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.
4. The substance of the rules shows INTERPOL's commitment to make sure that its activities comply with international standards, and that they respect fundamental rights. However, INTERPOL currently lacks effective mechanisms to ensure compliance with its rules and principles. In order for INTERPOL to prevent the misuse of its systems, it must not only have robust forms of internal checks and balances in place to prevent member states from using its systems in breach of its rules, but it must also be able to provide effective forms of redress for those who believe that they are subject to Red Notices and/or Diffusions (collectively, '**INTERPOL alerts**').
5. The perceived misuse of INTERPOL's alerts and the lack of effective internal redress mechanisms have undermined its reputation, and have, for example, resulted in court decisions in Canada and the United Kingdom, in which the reliability of its alerts has been questioned.² These are worrying signs that INTERPOL's indispensable work could be compromised by the weaknesses in its data processing procedures and complaints mechanisms. As remarked by the CCF's Drudeisha Madhub at the 84th General Assembly:

'... stagnation and failure to react can prove most costly for INTERPOL. However, with an open mind to continued evolution and a commitment to maintain the progress made, there is no reason why INTERPOL in cooperation with the NCBs cannot be at the forefront of

¹ Written Submission to INTERPOL's Working Group on the Processing of Information (http://www.fairtrials.org/wp-content/uploads/GTI-Submission_Fair-Trials-2.pdf, and http://www.fairtrials.org/wp-content/uploads/GTI-Submission_Fair-Trials-Annex-2.pdf)

² *Rihan v. Minister of Citizenship and Immigration* [2010] FC 123, and *Leke Prendi aka Aleks Kola v. Government of Albania* [2015] EWHC 1809 (Admin), respectively

*addressing issues of basic human rights and ensuring the appropriate controls of information in its files, while maintaining its fight against international crime.*³

6. INTERPOL's own commitment to reform is evidenced by a number of positive changes to its procedures and policies in the past year, which build in further safeguards to its systems and improve its respect of fundamental rights. We are especially pleased that the recommendations we made with respect to refugees who are subject to Red Notices, and on *ex ante* reviews have been largely adopted by INTERPOL, by the introduction of its new refugee policy, and of the 'pause mechanism' that restricts the visibility of INTERPOL alerts subject to compliance checks by the General Secretariat.
7. Fair Trials believes that the work of the GTI provides an invaluable opportunity to make INTERPOL a stronger crime-fighting tool, by strengthening its respect for human rights, and we strongly welcome INTERPOL's recognition of the crucial role of the GTI in reforming INTERPOL.⁴ As recognised by Secretary General Jürgen Stock during his speech at the 84th General Assembly:

*'... 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.'*⁵

Fair Trials' recommendations

8. In our report *Strengthening respect for human rights, Strengthening INTERPOL ('Strengthening INTERPOL')*,⁶ we provided detailed conclusions and recommendations about the ways in which INTERPOL could be protected from the misuse of its systems, and we identified the procedures for processing data and the CCF as key areas in need of reform. Our recommendations for reform included the following:⁷
 - a. INTERPOL should seek to enhance the competence and expert role of the CCF, and develop its procedures to be more effective;
 - b. INTERPOL should explore the possibility of creating a separate chamber of the CCF, responsible for handling complaints; and
 - c. There should be reforms to the complaints procedures, including:
 - i. A functioning disclosure system;
 - ii. A right to be heard in appropriate cases;
 - iii. Binding and reasoned decisions, which should be published subject to necessary anonymisation; and

³ Ibid., at para. 29, see also at para. 4

⁴ Resolution No. 9, AG-2015-RES-09

⁵ Directional Statement by Jürgen Stock, 2nd November 2015, Kigali, Rwanda

⁶ <http://www.fairtrials.org/wp-content/uploads/Strengthening-respect-for-human-rights-strengthening-INTERPOL4.pdf>

⁷ 'Strengthening INTERPOL', at page 65

- iv. A requirement for National Central Bureaus ('NCBs') to cooperate so as to achieve reasonable timeframes for proceedings.
9. We have tried to ensure that our proposals for the reform of the CCF and its data processing procedures are realistic, workable, and capable of remedying the CCF's most serious and noteworthy shortcomings. In this submission, we build on our previous recommendations, aiming to provide more specific, detailed suggestions for reforms of the CCF in the context of the GTI's work.

INTERPOL's immunity and the case for reform

10. The case for the reform of INTERPOL's data processing procedures and of the CCF is further strengthened by INTERPOL's desire to protect its immunity from civil litigation. INTERPOL has, until now, been able to avoid external judicial scrutiny, thanks to the agreements that it has entered into with the governments of France and the United States of America.
11. There is however, a growing consensus that international bodies that are not subject to the jurisdiction of external judicial bodies need to be able to demonstrate that they have internal mechanisms capable of providing effective remedies. In this context, as an international body itself, INTERPOL's immunity cannot be guaranteed, unless it is able to show that it has an adequate redress mechanism to compensate for the lack of external judicial scrutiny.
12. The threat to INTERPOL's immunity was rightfully recognised by the Secretary General, at the 84th General Assembly, in which he remarked on the importance of ensuring compliance with '*international standards*' as an essential way of protecting INTERPOL from litigation.⁸
13. The Secretary General's concerns are well-founded, particularly in the context of the Court of Justice of the European Union ('CJEU')'s decision in *Kadi*,⁹ in which the Court refused to give effect to the sanctions imposed by the UN Security Council ('UNSC'). This was due primarily to the fact that there were no effective forms of redress for individuals who wished to challenge their inclusion on the sanctions list. It is significant that the CJEU had particular concerns about the absence of 'guarantees of judicial protection', and that it was highly critical that individuals were denied the right to present their defence and were not given sufficient disclosure of relevant information, effective remedies, and reasoned and binding decisions.
14. Fair Trials does not expect the CCF to become an international human rights tribunal, and we are mindful of INTERPOL's reluctance to set up a 'judicial' body responsible for hearing complaints about the misuse of its systems. We also note that the courts of certain countries, such as the United States of America, have demonstrated reluctance in adjudicating on the motivation of international arrest warrants.¹⁰

⁸ Directional Statement by Jürgen Stock, 2nd November 2015, Kigali, Rwanda

⁹ Joined Cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351. See also C-584/10 P, *Commission and Others v Kadi* [2010] ECR II 5177 ('*Kadi II*')

¹⁰ Ann Powers, '*Justice Denied? The Adjudication of Extradition Applications*', 37 Tex. Int'l L.J., 277, 290 (2002)

15. However, in light of the *Kadi* judgments, it is abundantly clear that if INTERPOL wishes to maintain its immunity, it must be able to provide a complaints mechanism that adopts judicial characteristics, and complies with international standards of justice. This means that INTERPOL should be able to provide procedures of redress that are transparent, adversarial, and effective, as well as efficient.

Recent Developments

16. Since 2014, we have been made aware of a number of changes to the CCF that seek to address some of its main weaknesses. These include the decision to increase the number of CCF sessions each year from three to four, and a pilot scheme set up to reduce delays in the processing of data access requests and complaints.
17. These are no doubt positive developments, but as recognised by the CCF in the 2015 General Assembly, these are just the '*first steps*' towards addressing challenges faced by INTERPOL.¹¹ In order to make the CCF a fair and effective complaints mechanism that complies with international standards, there will need to be more substantive reforms to its procedures and structure.

Methodology

18. This submission is largely based on Fair Trials' own observations from assisting individuals who have experienced difficulties making requests and complaints to the CCF. We have also sought the opinions of specialist legal practitioners across the world, who were consulted in order to get a better understanding of their concerns about the CCF, and about their experiences with the data access requests and complaints procedures in the past year.
19. We have also formed our opinions based on the following sources:
 - a. The existing rules and principles contained in INTERPOL's constitution and internal rules, including:
 - i. The Rules on the Control and Access to INTERPOL's files ('**RCI**'), which contain provisions regulating the work of the CCF;
 - ii. The Rules on the Processing of Data ('**RPD**'), which regulate INTERPOL's and NCBs' processing of information; and
 - iii. The Operating Rules of the Commission for the Control of INTERPOL's Files (the '**Operating Rules**'), which sets out the procedures for the CCF's key functions;
 - b. The rules and practices of international organisations and bodies whose status and role are comparable to that of INTERPOL. As explained in paragraph 11 above, international bodies are required to provide effective internal complaints mechanisms in order to justify their

¹¹ Speech by Drubeisha Madhub on behalf of the CCF, 84th INTERPOL General Assembly, para. 28

immunity from external judicial scrutiny. Fair Trials has found the procedural rules of the following organisations, in particular, to be informative comparative examples:

- i. The Office of the Ombudsperson of the UN Security Council's 1267 Committee, which is responsible for reviewing requests from individuals and other parties seeking to be removed from the al-Qa'ida Sanctions list of the UNSC's Sanctions Committee;
 - ii. The United Nations Dispute Tribunal ('**UNDT**'), which is responsible for disputes concerning administrative decisions made by UN decisions, with regard to the employment of the UN's staff;
 - iii. The United Nations Appeals Tribunal ('**UNAT**'), which acts as an appellate court that reviews the judgments of the UNDT;
 - iv. The Human Rights Advisory Panel ('**HRAP**'), which examines allegations of human rights violations committed by or attributable to the United Nations Interim Administration Mission in Kosovo ('**UNMIK**');
 - v. The Human Rights Review Panel ('**HRRP**'), which reviews allegations of human rights violations the European Union's Rule of Law Mission ('**EULEX**') in Kosovo; and
 - vi. The Joint Supervisory Board ('**JSB**') of Europol, which acts as Europol's independent data protection advisor, similar to the CCF's relationship with INTERPOL.
- c. Internationally-recognised standards on procedural rights, as interpreted by international treaties and supra-national human rights tribunals. While we understand INTERPOL's reluctance to make the CCF into a judicial body, international standards on fair trial rights in criminal and civil proceedings provide the most instructive guidance on the standards of due process and procedural rights that the CCF needs to adopt in order for it to become an effective redress mechanism.
20. Fair Trials is grateful to INTERPOL and the CCF for the help they have provided to improve our understanding of the CCF and its procedures.

B. Composition and the Structure of the CCF

Relevance

21. It is a basic requirement of complaints mechanisms that they should be fit for their purpose. This not only means that they must have the relevant expertise to fulfil their tasks, but they must also have the capacity to carry out their activities effectively.

Current Position

22. There are two main flaws in the present structure and organisation of the CCF and its meetings:
 - a. Its composition, and the range of expertise covered by its members; and
 - b. The irregularity of its meetings, which we believe is a main cause of procedural delays.

Composition of the CCF

23. In its current form, the CCF is composed of five members:
 - a. a chairperson, who has held senior judicial or data protection posts;
 - b. two data protection experts;
 - c. an electronic data processing expert; and
 - d. an expert with experience in police matters, in particular international police cooperation.¹²
24. Fair Trials recognises that the CCF's primary role is to monitor how INTERPOL processes personal data, and that its task of processing requests and complaints from individuals is just one of its broad and varied activities. There is little doubt that the CCF requires expertise in the fields of data protection and international police cooperation, particularly in its capacity to advise INTERPOL on data protection matters on a horizontal basis.
25. However, in its capacity to make decisions on individual complaints, the visible range of the CCF's expertise is clearly inadequate. In particular, the current structure and composition of the CCF seems to lack sufficient competence to handle requests engaging Article 3 of INTERPOL's Constitution, which reflects aspects of asylum and extradition law. The CCF recognises its role in protecting '*fundamental rights in a police environment*',¹³ but its current composition leaves doubts as to its ability to fulfil this role.
26. Fair Trials welcomes the appointment of Nina Vajić in October 2014 as the chairperson of the CCF. As a Human Rights Law professor and a former judge at the European Court of Human Rights ('**ECtHR**'), we believe that Vajić brings in much needed rights-focused experience and direction to the CCF. This however, is a temporary solution to the shortcomings of the CCF, and there will need to be long-term, structural changes to the CCF in order to strengthen its capacity to handle a wide range of complicated complaints, including those that raise Article 3 arguments.

¹² Article 2(a), Rules Relating to the Control of Information and Access to INTERPOL's Files ('**RCI**')

¹³ Speech by Drubeisha Madhub on behalf of the CCF, 84th INTERPOL General Assembly, para. 5

Frequency of the CCF's meetings

27. As of 2015, the CCF meets on four occasions each year, and each session lasts three days. This is twice the number of days the CCF has met from previous years, and the increase is a clear recognition of the need for more resources and time to be given to the CCF in order to carry out its activities effectively.¹⁴ Fair Trials believes that the infrequency of CCF meetings is a strong contributing factor to the CCF's delays in processing requests, and that the short duration of each meeting interferes with its ability to make thorough, well-reasoned decisions.
28. The recent increase in the number of CCF sessions per year is a very significant improvement, but whilst the number of days of the CCF's meetings has doubled, the number of requests it has received has risen five-fold in the last 7 years to almost 600 in 2014, amongst which nearly 40% were complaints.¹⁵ This means that on average, the CCF makes decisions at the rate of almost 50 cases per day. Fair Trials has been informed that there are mechanisms in place that enable CCF members to work in coordination with the CCF secretariat to make decisions between sessions, but we are not yet aware of exactly how this system operates in practice.
29. Even with the recent changes, the CCF will continue to face difficulties handling its caseload, particularly given the exponential increase in the number of requests in recent years, and demands to improve the quality of its decisions, without changes to its structure, and a further increase in the frequency of its meetings.

Recommendations

30. The CCF should be restructured in order to reflect the diversity of its activities. This should include significant changes to its composition and structure, in order to safeguard the fairness of proceedings, and to ensure that requests are handled by bodies with relevant expertise.
31. Fair Trials proposes that the CCF be divided into two distinct chambers, in order to concentrate its specialist expertise, with the addition of a separate entity responsible for handling appeals. The establishment of a separate body for appeals is similar to the procedures of Europol, whose decisions can be appealed to the Appeals Committee of the JSB, and the UNAT, which serves as the appellate tribunal for the UNDT:

a. The Data Protection Office

- i. The Data Protection Office (the 'DPO') should assume the CCF's core functions as defined in the RCI,¹⁶ as INTERPOL's independent data protection expert. Its main responsibilities should be:
 - o To act as an independent monitor and advisor to INTERPOL on data protection matters; and

¹⁴ Ibid.

¹⁵ According to the CCF's 2014 annual report, there were 109 requests in 2007, compared to 575 in 2014.

¹⁶ Article 1, RCI

- To process requests for access to INTERPOL's files.
- ii. The DPO should be composed to reflect expertise in data protection, police cooperation and in the judiciary, similar to the current composition of the CCF.

b. The Complaints Committee

- i. The Complaints Committee (the '**Committee**') should be set up as a separate chamber of the CCF and be responsible for handling requests on the following matters:
 - Requests for the deletion of information; and
 - Requests for the amendment or addition of information (including the inclusion of addenda).
- ii. Expertise in human rights will be crucial for members of the Committee. According to the CCF's 2014 annual report, complaints engaging Article 3 of INTERPOL's constitution amounted to 38% of all complaints received by the CCF, and the Committee needs to include expertise to handle requests raising complicated matters regarding the interpretation of international human rights standards.
- iii. The Committee should be composed of at least 3 members.¹⁷ Fair Trials recognises that due to the CCF's budgetary constraints, and the current size of the CCF, it may be unrealistic to expect the Committee to consist of more than 5 members.¹⁸ Members of the Committee should collectively possess experience/expertise in the following areas:
 - Human rights, with a particular focus on extradition and asylum law;
 - Policing and security, with a particular focus on international police cooperation; and
 - A senior post in the judiciary.
- iv. Drawing on current practice, Committee members should be selected amongst candidates put forward by Member States, and selected by the Executive Committee.¹⁹
- v. The Committee should be able to make decisions on at least a monthly basis, to prevent delays in the decision-making process. Fair Trials appreciates that this could be logistically and financially challenging for the CCF, but it could be facilitated, for example, by the use of video-conferencing.

¹⁷ The Human Rights Appeals Panel ('**HRAP**') has 3 judges in its panel (Art 4, Reg. No. 2006/12), as does the World Bank Inspection Panel and the Human Rights Review Panel ('**HRRP**').

¹⁸ By comparison, the UN Disputes Tribunal ('**UNDT**') has 5 panel members, and the Joint Supervisory Body ('**JSB**') of Europol has one from each Member State.

¹⁹ The current practice is in line with most other complaints mechanisms studied, as well as the European Court of Human Rights ('**ECtHR**'). Cf. HRAP's panel members are selected on the proposal of the President of the ECtHR.

c. The Appeals Panel

- i. The Appeals Panel (the '**Panel**') should be set up to handle appeals from the DPO and the Committee, relating to both data access requests and deletion requests. Further recommendations about the appeal procedures before the Panel can be found at paragraphs 127-132 below.
- ii. Both the individual and the NCB should have the right of appeal to the Panel.
- iii. The composition of the Panel should reflect the broad range of requests handled by both the main body of the CCF and the Complaints Committee, and in particular, it should have visible competence to handle complicated appeals on data protection and human rights issues.
- iv. The Panel should consist of at least 5 members, who possess the following qualifications:
 - Expertise in data protection;
 - Expertise in human rights, with a particular focus on extradition and asylum laws;
 - Expertise in policing and security, with a particular focus on international police cooperation; and
 - A senior post in the judiciary.
- v. The Appeals Panel should meet at least 4 times a year, depending on its caseload.

C. **Funding**

Relevance

32. Any reforms to the CCF will only work if the CCF is given the capacity to implement the changes, and it is allocated the funding that it needs to carry out its duties to a high standard. Fair Trials appreciates that many of our recommendations, including the restructuring of the CCF, obligations to give reasoned decisions, and the introduction of tighter deadlines, will have cost implications.

Current Position

33. Under Article 8 of the RCI, the CCF's annual budget is decided by the General Secretariat, '*as necessary to enable it to perform its duties*'.
34. During the period between 2010 and 2012, the CCF's budget amounted to €120,000, or 0.2% of INTERPOL's operating income.²⁰ While it has not been possible to obtain up-to-date budgetary information, it is apparent that the CCF is operating on very limited resources, and that

²⁰ Fair Trials' understanding is that CCF members are not remunerated for their positions.

shortages in funding could have a major impact on its ability to operate efficiently and make decisions of a consistently high standard. In light of the increasing caseload before the CCF, the funding of the CCF is likely to become an increasingly challenging issue for INTERPOL, but Fair Trials believes that financing of the CCF is a crucial form of investment into INTERPOL's own work, and its long term strategy of protecting its reputation and immunity.

Recommendations

35. Fair Trials appreciates that decisions on budgeting need to take into account a broad range of factors, and INTERPOL itself is therefore in a much better position to decide how much funding should be allocated to the CCF. However, when determining the suitable budget for the CCF, INTERPOL may wish to consider the amount of funding received by complaints mechanisms of similar organisations. For example, the Inspector General's Office of the UN High Commissioner for Refugees ('UNHCR'), which is responsible for handling complaints about alleged misconduct of the UNHCR's staff, is due to receive 0.74% of the UNHCR's total budget in 2017, which was proposed to be close to 6.4 billion US Dollars.²¹
36. We would also recommend the use of video conferencing technology to reduce the CCF's costs and logistical difficulties. This could, for example, help the CCF to make decisions on a more regular basis and enable it to hold oral hearings, where needed.

D. Legal Assistance

Relevance

37. Legal assistance is a crucial way of facilitating the exercise of individuals' rights. Unless individuals are able to understand their rights, they are significantly compromised in their ability to exercise them. This explains why the right to legal assistance is considered as a key aspect of the right to a fair trial in both criminal and civil proceedings.²²

Current Position

38. The role of legal representatives is recognised in the Operating Rules, as is their capacity to attend hearings and sessions,²³ so long as they have power of attorney from the individual they represent.
39. Although there are many individuals who file their requests and complaints with the assistance of specialist lawyers, these individuals no doubt represent a relatively small minority of

²¹ Biennial programme budget 2016-2017 of the Office of the United Nations High Commissioner for Refugees, p.37, <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=55dc778d9&query=biennial>

²² Art 14(3)(d), International Covenant on Civil and Political Right; ECtHR has recognised that in certain cases, states may have a positive obligation to facilitate access to a lawyer in civil proceedings, *Airey v. Ireland* (App. No. 6289/73)

²³ Art 10(c)(d)(e), Art 22, and Art 37(3), Operating Rules

individuals who are subject to INTERPOL alerts. The costs of legal assistance can be prohibitively expensive, and in the absence of legal aid schemes that cover requests and complaints to the CCF, most individuals will have difficulty understanding and exercising their rights before the CCF.

40. The position of unrepresented claimants is made more challenging by the lack of comprehensible information available to them about the procedures for making requests and complaints. The CCF does not, at present, have its own website, and information about CCF complaints procedures on INTERPOL's website is scattered and incomplete. There is, for example, no clear guidance on the grounds on which INTERPOL alerts can be challenged, and very little information on how applications should be served on the CCF.

Recommendations

41. The CCF should provide helpful, comprehensible information for individuals and their representative about its role and its procedures, as a way of compensating for the lack of legal aid for CCF proceedings.
42. Fair Trials is aware that the CCF has very limited funding, and any additional resources made available to the CCF should be prioritised to improve its effectiveness and the quality of its decisions. While there are some international complaints mechanisms, such as the UN Disputes Tribunal, which have adopted legal assistance schemes for individuals who are unable to appoint lawyers privately,²⁴ Fair Trials recognises this may not be workable option for the CCF at this stage.
43. There are few substitutes for specific legal assistance from legal professionals who have expertise of INTERPOL and its rules. However, if neither the General Secretariat nor the CCF is capable of providing legal assistance to individuals, the CCF should at least provide adequate information to assist those who do not have the financial capacity to pay for private legal representation.
44. Fair Trials would recommend, in particular, that INTERPOL's (or the CCF's) website is updated to include:
 - a. Clear, accessible information about the procedures for making data access requests and complaints. Although Fair Trials has its own publication intended to help members of the public to understand how to make requests to the CCF,²⁵ we believe that the primary responsibility of providing general information about complaints mechanisms should not be on civil society, but on the CCF itself, as this is the best way of ensuring that the information is accurate and as accessible to as many people as possible; and
 - b. Pro-forma forms, including a template for powers of attorney and application forms for complaints, in order to help individuals make requests that comply with the CCF's procedural rules.

²⁴ The 'Office of Staff Legal Assistance'

²⁵ <http://www.fairtrials.org/wp-content/uploads/INTERPOL-Red-Notices-and-Diffusions-Apr-2014.pdf>

45. The CCF should recognise the challenges faced by unrepresented individuals, when considering their requests and complaints. This could be done, for example, by:
 - a. Using more accessible language in written correspondence;
 - b. Directing the individual making the request or complaint to INTERPOL's website for information about procedures; and
 - c. Applying some flexibility on the application of procedural rules, including deadlines.

E. Data Access Requests

Relevance

46. Disclosure of information has been reported to be a major source of frustration for practitioners, who have consistently complained to Fair Trials about the difficulties in obtaining information being held on INTERPOL's systems.
47. Fair Trials recognises that law enforcement authorities often have legitimate reasons to refuse to let a person know whether or not they are being sought, for example, in the interests of security, or in order to ensure effective criminal investigations. However, the right for an individual to access data being held by public authorities is a fundamental human right. For example, the ECtHR has recognised that in certain cases, states have a positive obligation to provide access to data, and to provide effective procedures to enable such access.²⁶
48. It is also axiomatic in the context of judicial proceedings, whether criminal or civil in nature, that the parties to the proceedings should be given the opportunity to have knowledge of and comment on the observations of the other party.²⁷ The right to have access to the information being used against oneself is a defining aspect of the principle of the equality of arms, and it is one that is fundamental to the right to a fair trial. This position was adopted by the CJEU, which in the *Kadi* case was particularly critical of the way in which the complainants were refused disclosure of the evidence against them, and were accordingly not in a position to defend themselves.²⁸

Current Position

49. Accessing data held on INTERPOL's databases is complicated by the fact that the data is not owned by INTERPOL, but by the source of that data, usually an NCB. This means that the CCF will normally need to seek permission from the NCB to disclose even the most basic information about the information being held.²⁹

²⁶ *Roche v. United Kingdom* (App. No. 32555/96), at paras. 161-162

²⁷ ECtHR: *Ruiz-Mateos v Spain*, App. No. 12952/87, at para. 63; and *Jasper v United Kingdom*, App. No. 27052/85, at para. 51

²⁸ Joined Cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351, at paragraphs 346 and 348

²⁹ Art 14(1), Operating Rules

50. The experience of Fair Trials and of specialist practitioners is that access to data is much too restricted, and that the CCF has refused disclosure after several months, even where the INTERPOL alert is public. This is despite Article 14(5) of the Operating Rules, which suggests that data may be disclosed without permission from the NCB, where the individual has provided sufficient evidence that there is information about him/her held in INTERPOL's files. This practice is unsatisfactory and unsustainable, particularly in light of the CJEU's criticisms in *Kadi*.
51. The CCF has also faced criticisms for its slow procedures, and although the CCF's most recent annual report claims that requests are processed on average within 6 months,³⁰ Fair Trials has itself worked on cases in which individuals have had to wait in excess of 24 months for the outcome of their data access request. Given the limited resources and capacity of the CCF and its heavy caseload, the delays in its processing of requests and complaints are unsurprising.
52. Fair Trials is aware that delays are not always attributable to the CCF itself, but more often to the NCBs who are reluctant to respond to the CCF's requests in a timely manner. Although the CCF is able to set deadlines for NCBs to respond to its requests, and assume that the NCB has no objection to disclosing the data if it fails to comply with the timeframes,³¹ it is questionable how effective this system is. There is a clear case for giving the CCF more extensive powers to issue sanctions in order to enforce the NCBs' compliance with their requests.

Recommendations

53. There should be a presumption that data held in INTERPOL's systems should be disclosed to the individual, and subject to narrowly defined exceptions, individuals should be given as much information as possible about the data, in order to enable them, where necessary, to challenge the data.
54. The CCF should be given more extensive powers to impose sanctions against parties failing to comply with its directions, including by blocking and deleting data, in order to promote the speedy processing of data access requests.

Presumption of Disclosure

55. Fair Trials makes distinctions between the types of information that can be disclosed as a result of data access requests:
 - a. The simple fact that an alert of any description exists;
 - b. The alert itself, including the precise classification of that alert; and
 - c. Any data provided in support of the alert.
56. There should be a presumption in favour of disclosure, subject to exceptions, which have to be defined narrowly. This appears to be the position taken by Europol's JSB,³² and it is also

³⁰ Annual Report of the CCF 2014, at page 20

³¹ Art 15(2), Operating Rules

³² Art 30, Council Decision 2009/371/JHA and Art 7 Rules of Procedure, see also HRAP (Rule 39bis, Rules of Procedure)

consistent with the ECtHR's view that there needs to be proportionate justifications for withholding data from the individual.³³

57. The DPO may decide not to disclose data at the request of the NCB, or on its own motion, on the following grounds:³⁴
 - a. To protect security/public order, or to prevent crime;
 - b. To protect the rights and freedoms of third parties; and/or
 - c. To ensure that ongoing criminal investigations are not jeopardised.
58. The NCB should be required to demonstrate that there is a significant risk that at least one of these interests would be threatened as a result of the disclosure, with reasons and supporting evidence. Exceptions should be applied narrowly and if they only apply to certain information, the rest should be disclosed.³⁵
59. If the individual is able to show that s/he has good reasons to believe that s/he is subject to an INTERPOL alert, the Committee should at least confirm the existence of the data, irrespective of whether any of the grounds for refusing disclosure apply. This should cover instances where, for example, there have been public statements made about the existence of the alert, and in cases where the existence of the alert has been revealed by national courts in extradition proceedings.

Data access procedures

60. Data access requests should be directed to the DPO. The DPO should acknowledge receipt of the access request as soon as reasonably practicable, and within two weeks of receipt of the request, and request any further documents/information required to make admissibility decisions.³⁶
61. The DPO should make a decision on admissibility as soon as possible, and no later than one calendar month after a) it acknowledged receipt of the access request; or b) it received the additional information needed to make the admissibility decision.
62. If the DPO has declared the request as admissible, it must immediately consult the NCB to determine whether or not disclosure should be made.
63. The DPO should give the NCB one calendar month to respond to its request.³⁷ If it does not do so within this period:
 - a. the data should be blocked;

³³ *Segerstedt-Wiberg v. Sweden* (App. No. 62332/00)

³⁴ E.g. Europol (Art 30(5), Council Decision 2009/371/JHA) (Art 7(4), Rules of Procedure), and HRAP (Rule 39bis (2), Rules of Procedure)

³⁵ E.g. Europol (Art 7(6), Rules of Procedure)

³⁶ According to Art 6 of the Operating Rules, the current timeframe for this is one calendar month, but it is our understanding that the CCF is usually able to acknowledge receipt within 2-3 days.

³⁷ Art 7(12), Rules of Procedure of the JSB

- b. any alert that has been published should be removed from INTERPOL's website; and
- c. the NCB should be given a warning that it has failed to comply with the Committee's request.

64. If the NCB fails to respond to the DPO's request within two calendar months from the date of the initial request, the data should be deleted and the individual should be notified of this decision. This is comparable to the CCF's current practice of destroying information in the context of 'spot checks' where the NCB fails to respond to requests for further information.³⁸ While this measure may appear to be harsh, Fair Trials believes that tough sanctions are needed to ensure compliance with procedures, and to ensure the effectiveness and efficiency of the DPO.
65. If the DPO decides to extend any of these deadlines, it must notify the individual and give reasons for so doing.

Outcome of Data Access Requests

66. The decision on data access requests should be made as soon as possible after the NCB has responded to the DPO's request, and no later than 3 months after the request was declared admissible. The individual should be notified of the outcome of the data access request within one month after the decision has been made.
67. If the individual is unhappy with the decision, s/he should be able to take this matter to the Appeals Panel within one calendar month of receipt of the decision.³⁹ This timeframe is comparable to the deadline of 20 days given to individuals to challenge Europol's data access decision before the Appeals Committee of the Joint Supervisory Body.⁴⁰
68. The recommended procedures for appealing against data access request decisions are detailed in paragraphs 130-132 below.

Decisions

69. Fair Trials acknowledges that in cases where disclosure of data is refused, the CCF may not be in a position to provide detailed reasoning for the decision without undermining that decision. If disclosure is refused, the CCF should at least confirm to the individual that it has carried out the necessary procedures.⁴¹
70. In cases where access to data has only partially been refused, the CCF should notify the individual that there is data that has not been disclosed, and to the extent that it is possible to do so without disclosing the data itself, it should communicate to the individual the grounds on

³⁸ CCF's Annual Report 2013, para. 53

³⁹ This is similar to the way in which decisions on data access requests at Europol can be challenged at the JSB.

⁴⁰ The comparable timeframe for the JSB is 20 working days (Art 7(13)).

⁴¹ This is similar to the position adopted by Europol (Art 30(7), 2009/371/JHA)

which the access was refused. This should be done in order to enable the individual to challenge the decision.

F. Complaints Procedure

F1 Applications for the Deletion or Correction of Data

Relevance

71. The effectiveness of the CCF's complaints procedure is a key component that will determine whether or not INTERPOL's immunity is justified, particularly in light of the CJEU's *Kadi* judgments, referred to in paragraph 13 above. The aspects of the UN Sanctions Committee's complaints mechanism that attracted the criticism of the Court included the restrictions on disclosure of the evidence being used against the individuals, which undermined their ability to defend themselves.⁴² The *Kadi* decisions strongly suggest that, in order for a complaints mechanism to be perceived as an effective one, it must be sufficiently transparent, and it must allow individuals adequate facilities to present their arguments.
72. We recognise that the CCF has a limited remit in assessing factual matters, and that in particular, it has no role in determining whether or not the individual committed the offence that forms the basis of the alert. However, we believe that in certain types of complaints, particularly where arguments on Articles 2 and/or 3 of INTERPOL's Constitution are made, the CCF will be required to make a thorough factual assessment, including by considering evidence, and by subjecting the arguments of opposing sides to in-depth scrutiny.

Current Position

73. The CCF is responsible for handling complaints from the public about information held in INTERPOL's systems, but this role is not made explicit in the RPD or the RCI, and there is relatively little explanation or description in the rules on complaints procedures.
74. The CCF's handling of complaints has been subject to criticisms, particularly given the lack of transparency in the complaints procedures. This is largely attributable to the restrictions on the disclosure of information to the individual as highlighted above (paragraphs 49-52). The lack of transparency not only compromises the individual's ability to challenge the data in question, and undermines the principle of equality of arms, but it also interferes with the CCF's ability to make well-informed decisions.
75. The CCF needs to be able to make decisions on complicated matters of fact and law, but unless it is able to facilitate an effective and open exchange of views and observations, and adversarial scrutiny of the arguments put forward, it will have a difficult time carrying out a thorough, carefully reasoned assessment on complaints.

⁴² Joined Cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351.), at paras. 346-348

76. As is the case with data access requests, concerns have been raised about delays in complaints procedures, and the unresponsiveness of the CCF. According to the 'FAQs' section of the website,⁴³ the individual should reasonably expect to receive a wide range of communications from the CCF following their request, including an '*interim reply to inform the individual of the request's current status*' and an '*explanation of applicable procedure pending the study of the request*'. However, in Fair Trials' experience, individuals can realistically only expect minimal correspondence with the CCF following the submission of their requests, and it is usually very difficult to get helpful updates on the progress of applications.

Recommendations

77. Applications for the deletion or amendment of data should be made to the Complaints Committee.

78. The Committee should acknowledge receipt of the deletion request as soon as reasonably practicable, and no later than two weeks after receipt, and request any further documents/information required to make admissibility decisions.⁴⁴ The Committee should acknowledge receipt, even if the DPO had previously acknowledged receipt of a data access request on the same file.

79. Individuals should be able to limit disclosure in protection of their interests, in the same way that the NCB are able to do so for valid reasons. The individual can request the Committee not to disclose information to the NCB:

- a. For personal safety (this may, for example, include the individual's current whereabouts, and the details of his/her new identity); and/or
- b. To protect the rights and freedoms of third parties.

80. The individual should be required to show that there is a significant risk that these interests could be threatened by the disclosure, with reasons and supporting evidence.

81. The Committee should make a decision on admissibility as soon as possible, and no later than one calendar month after a) it acknowledged receipt of the application; or b) it received the additional information needed to make the admissibility decision.

82. The Committee must immediately consult the NCB to request its observations and counter-arguments to the complaint. It can also invite the General Secretariat to make its own observations.

83. The Committee can give the NCB one or two calendar months (depending on the complexity) to respond. If the individual has made an arguable case for the deletion of his/her data, and the NCB fails to comply with the CCF's directions:

⁴³ <http://www.interpol.int/About-INTERPOL/Structure-and-governance/CCF/FAQs>

⁴⁴ The current timeframe for this is one calendar month, but it is our understanding that in practice, the CCF is able to acknowledge receipt within two or three days.

- a. The data should be blocked and the NCB should be issued with a warning; and
 - b. If the NCB fails to respond within one month of the warning, the data should be deleted, and the individual should be made aware of this decision.
84. Individuals should be informed if NCBs are failing to respond to the Committee’s requests and this is causing delays.
85. The additional information and counter-arguments made by the NCB should be disclosed to the individual, subject to the following exceptions:
- a. To protect security/public order, or to prevent crime;
 - b. To protect the rights and freedoms of third parties; and
 - c. To ensure that ongoing criminal investigations are not jeopardised.⁴⁵
86. The NCB should be required to demonstrate that there is a significant risk that at least one of these interests would be threatened as a result of the disclosure, with reasons and supporting evidence.
87. The Committee should give the individual one or two calendar months (depending on the complexity) to respond to the observations, if necessary.⁴⁶ If the individual fails to comply with this direction, the Committee should proceed to make the decision without the individual’s additional comments.
88. The Committee should reach a decision on the application within 6 months from the date the admissibility decision was made. Any failure to meet the 6 month deadline should be notified to both parties, along with reasons for non-compliance.
89. The individual should be notified of the decision within one month after it has been finalised. The notification procedure falls outside the 6 month timeframe described above.
90. If the individual is unhappy with the decision, s/he should be able to appeal to the Appeals Panel, within three months of receipt of the decision.⁴⁷

F2 Oral Hearings

Relevance

91. There are clear benefits of oral hearings in certain cases, particularly where there are important factual disputes that need to be settled, and in procedures concerning the interpretation of an important or complex aspect of INTERPOL’s rules. In such cases, oral hearings can facilitate an effective exchange of views that cannot be fulfilled by paper proceedings. Oral hearings also

⁴⁵ E.g. Europol (Art 21, Rules of Procedure)

⁴⁶ Cf. The ‘Dialogue’ period for the Office of the Ombudsperson of the UNSC 1267 Committee usually lasts up to 2 months; the UN Appeals Tribunal (‘UNAT’) gives respondents 60 days to respond.

⁴⁷ This is the JSB’s deadline to appeal (Art 18(1), Rules of Procedure). Cf. The appeals from the UNDT need to be submitted to the UNAT within 60 days of the decision (Article 7(1)(a), Rules of Procedure).

promote transparency, and further openness in CCF proceedings could help to reinforce the public's trust in the CCF. This is reflected in internationally-recognised standards on the right to a fair trial, which recognise that there is an expectation that both criminal and civil proceedings should take place in the form of a public hearing.⁴⁸

Current Position

92. The CCF has the power to meet requesting parties in '*exceptional cases*' if it considers this to be necessary,⁴⁹ and the Operating Rules also provide for the possibility of '*inviting*' persons who are subjects of the request or their representatives to the CCF's meetings.⁵⁰ Fair Trials' understanding is that the CCF has never used its powers to hold oral hearings or to invite individuals or their legal representatives to any of its meetings.

Recommendations

93. Fair Trials acknowledges that, given INTERPOL's international remit, as well as the CCF's limited resources compared to its caseload, the CCF cannot be expected to conduct oral hearings for the majority of complaints it receives. INTERPOL's current practice of processing requests mostly through paper procedures is not incomparable with the position of other international complaints mechanisms, including international judicial bodies, such as the ECtHR.
94. However, the current rules' insistence that oral hearings are limited to '*exceptional cases*' is too restrictive, and it could interfere with the CCF's ability to assess complaints thoroughly. This is particularly so in cases where the complaint concerns the application of Article 3 of INTERPOL's Constitution and the CCF is asked, for example, to assess whether or not an alert is politically motivated.
95. Fair Trials recommends as follows:
- a. Oral hearings should be available for complaints procedures before the Committee in cases where it is '*deemed necessary for the examination of the case*'.⁵¹
 - b. The individual should be able to request an oral hearing to take place. Similar provisions exist in the rules of procedure of Europol's JSB, the HRAP and the HRRP.⁵² Fair Trials believes that by enabling the individual to make applications for oral hearings, the Committee will be encouraged to make a more thorough assessment of the need for an oral hearing to take place.
 - c. Oral hearings should take place in public, but they could be closed⁵³ at the request of the individual or the NCB, or on the Committee's own motion:

⁴⁸ E.g. Art 14(3)(d), International Covenant on Civil and Political Rights; *Göç v. Turkey* (App. No. 26590/97, ECtHR)

⁴⁹ Article 22, Operating Rules

⁵⁰ Ibid. Article 37(3)

⁵¹ This wording is not a significant departure from what is already in use in Article 22 of the Operating Rules, and it resembles the wording using in the Rules of Procedure of the JSB, HRAP and HRRP.

⁵² Europol JSB (Art 22, Rules of Procedure), HRAP (Rule 34(2) Rules of Procedure), HRRP (Rule 33(3) Rules of Procedure)

⁵³ Europol JSB (Art 22(2), Rules of Procedure), HRAP (Rule 40, Rules of Procedure)

- i. For the purpose of safeguarding public security;
 - ii. To protect the privacy of the individual; or
 - iii. If publicity could prejudice the proper determination of the complaint (only to the extent that it is strictly necessary to do so).⁵⁴
- d. Where possible, the Committee should make use of video-conferencing facilities to host oral hearings in order to cut down on costs, and to minimise logistical challenges.⁵⁵
- e. If the Committee decides that an oral hearing is appropriate, it should be up to each party to meet their own costs.⁵⁶

G. Decisions

G1 Content of decisions

Relevance

96. It is an individual's basic right, as recognised by international standards of justice in both criminal and civil proceedings, to be given reasons for decisions.⁵⁷ Giving reasons for decisions is likely to foster decisions of a better quality, as it encourages the decision-maker to scrutinise arguments from all parties, and to give clearly reasoned justifications and explanations on how the decision was reached. The requirement to provide reasons for decisions is an essential form of protection against arbitrariness, and it can provide assurance to all parties involved in the proceedings that their arguments were taken into consideration, and that the decision was not made simply at the whim of the decision-maker.
97. The need for reasoned decisions is further amplified in the context of appeals and re-examinations. Parties to complaints proceedings have no meaningful right to challenge the decision if they are not told how it was made.

Current Position

98. The Operating Rules state that the CCF should give reasons for decisions on admissibility,⁵⁸ but there are no rules requiring the CCF to provide specific reasons for any other types of decisions, and there are no provisions that require the CCF to issue decisions in a particular form. In practice, this means that decisions made by the CCF are usually brief (consisting of three to four

⁵⁴ Europol JSB (Art 22(2), Rules of Procedure)

⁵⁵ This appears to be the practice adopted by the UNDT (Rishi Gulati, 'The Internal Dispute Resolution Regime of the United Nations: Has the Creation of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal Remedied the Flaws of the United Nations Administrative Tribunal?', *Max Planck Yearbook of United Nations Law*, 15 (2011), pp.489-538 (p.524), [http://www.mpil.de/files/pdf3/mpunyb_11_Rishi_151.pdf])

⁵⁶ Cf. the UNDT is responsible for the costs of its own oral hearings (Ibid.); at the ILO Administrative Tribunal, it is up to parties in the dispute to meet the costs of oral hearings (<http://www.ilo.org/tribunal/advice-to-litigants/lang--en/index.htm#D>)

⁵⁷ ICTR (Art 22(2), Rwanda Statute); ICTY (Art 23(2) Yugoslavia Statute), HRC (General Comment 32, para. 29); IACHR (*Apitz Barbera et al. v. Venezuela* (2008), para. 78); ECtHR (*Hirvisaari v. Finland*, App. No. 29684/99, para. 30)

⁵⁸ Article 12, Operating Rules

sentences on average), formulaic, and generalised, making it impossible for the individual to understand the basis on which the CCF reached the decision.

99. For example, in response to a 2013 complaint requesting the deletion of a Red Notice, in which Fair Trials raised arguments about non-compliance with Article 3 of INTERPOL's constitution, and highlighted the individual's refugee status and a failed extradition attempt, the CCF produced a brief one-page decision, in which the only 'reasoning' given was:

'there is no reason to believe that the retention of information in INTERPOL's files would not be in compliance with INTERPOL's rules.'

100. There was no mention of what arguments were considered, no explanation of how INTERPOL's constitution was interpreted, and almost nothing in the decision that was specific to the individual, apart from his name at the top of the letter.

101. This practice appears to have changed little, if at all. In November 2015, the CCF produced the following decision in response to a deletion request, which included arguments that the Red Notice was incompatible with INTERPOL's obligations under Article 2 of its constitution:

'After a careful study of all the elements in its possession, the Commission concluded that the data registered in INTERPOL's files concerning your client was not compliant with INTERPOL's rules. Consequently, the Commission recommended that INTERPOL deletes the data concerned.'

102. This is a clearly a 'copy and paste' decision that could have been made in response to any complaint on any grounds. The deletion of the Red Notice was certainly welcomed by the individual, but he has been left unable to understand the reasons for a decision on an issue that has enormous implications on his life.

Recommendations

103. The CCF should provide fully reasoned decisions, so that all parties to complaints proceedings are made aware of how the decision was reached, and to enable them, where necessary, to challenge the decision.

104. The CCF's current position of providing no reasoning for its decisions can be contrasted with the rules and practices of the complaints mechanisms of international and supra-national organisations, including the JSB, HRAP, and the Ombudsperson of the UN Security Council's 1267 Committee, which all state explicitly that decisions must be reasoned.⁵⁹

Complaints

⁵⁹ <https://www.un.org/sc/suborg/en/ombudsperson/procedure>

105. Decisions made by the Committee and the Appeals Panel should at the minimum contain the following to ensure that they are specific to each case, and to ensure that parties to the complaints proceedings have sufficient information to enable them to challenge the decision:
- a. Name of the parties concerned (including the details of their representatives);⁶⁰
 - b. Names of the members of the Commission taking part in the decision;⁶¹
 - c. Presentation of the facts of the case;⁶²
 - d. Account of the procedure followed;⁶³
 - e. Summary of arguments made by the individual and the NCB;⁶⁴
 - f. Summary of key evidence presented by the NCB and the individual;
 - g. Relevant provisions of law, and/or rules governing INTERPOL or the Commission;⁶⁵ and
 - h. Reasons for the decision with reference to INTERPOL's internal rules.⁶⁶

Repositories

106. In addition to providing reasoning for its decisions, Fair Trials would also recommend the CCF work towards publishing further guidelines on how it interprets INTERPOL's rules, and to help individuals to better understand how their decisions were made and to test the merits of the CCF's decision.

107. Fair Trials welcomes the development of INTERPOL's Repository of Practice on Article 3, which provides some helpful guidance, and we look forward to the development of a Repository of Practice on Article 2. However, Fair Trials believes that there is some room for improvement on the existing Repository of Practice, and we recommend that it be reviewed to include further details that would make it easier for individuals to assess whether or not their complaints would engage Article 3 of INTERPOL's Constitution.

G2 Publication of Decisions

Relevance

108. In order for INTERPOL to gain and sustain the public's trust, the CCF must be able to show that it is fulfilling its role as its redress mechanism. Transparency is a key aspect of safeguarding due process, and it is necessary to ensure adequate external scrutiny of proceedings.

Current Position

109. The CCF does not publish any decisions that contain 'personal information', but it does publish an annual report, which contains statistics about individual complaints and provides

⁶⁰ E.g. Europol JSB (Art 26(4), Rules of Procedure), HRAP (Rule 36(1)(c), Rules of Procedure)

⁶¹ E.g. Europol JSB (Art 26(4), Rules of Procedure), HRAP (Rule 36(1)(a), Rules of Procedure)

⁶² E.g. Europol JSB (Art 26(4), Rules of Procedure), HRAP (Rule 36(1)(e), Rules of Procedure)

⁶³ E.g. HRAP (Rule 36(1)(d), Rules of Procedure)

⁶⁴ E.g. HRAP (Rule 36(1)(f), Rules of Procedure)

⁶⁵ E.g. HRAP (Rule 36(1)(h), Rules of Procedure)

⁶⁶ E.g. Europol JSB (Art 26(4)), HRAP (Rule 36(1)(g), Rules of Procedure)

anonymised examples of the cases in which the CCF has made decisions. In its 2014 report, the CCF confirmed that it had received 226 new complaints that year, but it included just 3 case studies, which contained very few details about the specifics of each case.⁶⁷

110. There do not appear to be any other means by which members of the public can obtain decisions on individual cases, even in redacted form, with all personal information omitted.

Recommendations

111. All decisions on complaints made by the Committee and the Appeals Panel should be published, subject to necessary redactions and anonymisation. The current practice of publishing a handful of anonymised case studies each year in an annual report falls far below the level of transparency required for the public to gain confidence in the CCF's role as an independent complaints mechanism.

112. Publishing decisions will also help to ensure that the CCF's interpretation of INTERPOL's rules are better communicated and understood by individuals (and their representatives) and the NCBs. The benefits of improved understanding of the CCF's decisions could reduce the likelihood of NCBs issuing alerts that do not comply with INTERPOL's rules, but it could also deter individuals from filing requests that are manifestly unmeritorious.

113. Fair Trials also believes that published decisions could be highly beneficial for the General Secretariat and help it to apply the rules more effectively, particularly for the purpose of carrying out ex-ante reviews of INTERPOL alerts.

114. Our specific recommendations on the publication of decisions are as follows:

- a. Decisions should be published promptly,⁶⁸ and within one month of being communicated to the parties.
- b. Published decisions should also be accessible to the public, ideally through INTERPOL or the CCF's own website. This appears to be the practice adopted by similar international complaints mechanisms.⁶⁹
- c. Decisions should be published in redacted form removing all personal information and should be anonymised, unless the individual requests otherwise.⁷⁰ The CCF may, on its own motion, or at the request of the other parties to the complaints proceedings, decide to refuse the individual's request on the following grounds:

⁶⁷ This can be contrasted with the 2015 annual report of the Ombudsperson of the UNSC's 1267 Committee, which listed 61 cases in which decisions had been made (http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/80)

⁶⁸ E.g. Europol JSB (Art 26(4), Rules of Procedure), HRAP (Rule 45, Rules of Procedure, Section 17.2, Reg. No. 2006/12)

⁶⁹ E.g. Europol JSB (<http://www.europoljsb.europa.eu/appeals-committee/appeals-committee---decisions.aspx?lang=en>); UNMIK Human Rights Advisory Panel (<http://www.unmikonline.org/hrap/Eng/Pages/Cases.aspx>); UN Appeals Tribunal (<http://www.un.org/en/oaj/appeals/judgments.shtml>)

⁷⁰ E.g. UNAT (Arts 10(9), 20(1)(2), Rules of Procedure); Europol JSB publishes decisions on its website with names of individuals redacted

- i. For the purpose of safeguarding public security;⁷¹ and/or
- ii. To protect the interests of a child.⁷²

115. We would also recommend that the CCF's annual report include the following information to further incentivise NCBs to comply with the CCF's directions, and to ensure that alerts are in full compliance with INTERPOL's rules:

- a. Information about how many complaints each countries received against their alerts;
- b. How many of these complaints were upheld or rejected; and
- c. Identifying which NCBs were responsible for causing delays to the procedures.

G3 Binding nature of decisions

Relevance

116. In order for the CCF to be perceived as a credible, independent, and effective complaints mechanism, it should be able to demonstrate that its decisions have real consequences, and that they are enforceable.

Current Position

117. The CCF makes 'recommendations', as opposed to binding decisions with regard to requests made by individuals. The General Secretariat is under no obligation to follow the CCF's recommendations, and is only required to explain to the CCF why it considered it was unable to follow the recommendation.⁷³ Fair Trials is aware that, in practice, the General Secretariat does implement the recommendations made by the CCF.

118. The CCF is well aware of the criticisms it faces on account of its ability to issue only non-binding decisions, and that it creates the perception that the CCF is neither independent nor capable of challenging the General Secretariat where disagreements arise between the two bodies. Given that the General Secretariat normally accepts the recommendations made by the CCF, there has been recognition from the CCF itself that there is a strong case for formalising this relationship, and making CCF decisions binding.⁷⁴

119. Fair Trials welcomes the recent resolution from the 84th session of the INTERPOL General Assembly,⁷⁵ which decided pending the work being carried out by the GTI, that the General Secretariat will '*continue to implement findings and recommendations made by the CCF with regard to requests submitted in accordance with Article 1(c) of the Rules on the Control of Information and Access to INTERPOL's Files*'. This represents a positive step towards a permanent formal arrangement in which the CCF's powers are strengthened to issue binding

⁷¹ E.g. HRRP (Rule 41, Rules of Procedure).

⁷² ICTY (*In the case against Seselj*)

⁷³ Art 6(b), RCI

⁷⁴ Speech delivered by Billy Hawkes, Chairman of the Commission, to INTERPOL's General Assembly (82nd session, October 2013)

⁷⁵ Resolution No. 9 (AG-2015-RES-09)

decisions, but it falls short of establishing a long term solution to the perceived weakness of the CCF.

Recommendation

120. Decisions made by the CCF should have binding effect, and this should be enshrined in INTERPOL's rules.⁷⁶ Fair Trials believes giving the CCF the powers to make binding decisions will not in itself amount to a significant change in the relationship between the CCF and the General Secretariat, but it will play a significant role in safeguarding the CCF's independence both in reality and in the public's perception.

H. Appeals

Relevance

121. It is an important aspect of due process and procedural rights to ensure that decisions are subject to effective scrutiny. This not only helps to promote the quality of decision-making, and a thorough assessment of issues where important matters of law are questioned, and to cases where the implications of a miscarriage of justice are particularly serious. This would explain why, in criminal proceedings, it is widely accepted that there should be a right to have the decision of the first-instance court reviewed by a higher judicial authority.⁷⁷

Current Position

122. There is currently no systematic external review of decisions made by the CCF, which are treated as final, and not subject to review, unless on the basis of newly discovered facts. Fair Trials is aware that there is a procedure by which decisions of the CCF could be challenged via the Executive Committee and then the General Assembly. We are aware of one case in which the findings of the CCF were overturned by a majority vote at the General Assembly, but this appears to have been an exceptional case.⁷⁸ This position can be contrasted with that of comparable organisations that have specialised appellate bodies, such as the UNDT, whose decisions can be appealed to the UNAT, and the decisions of Europol, which can be appealed to the Appeals Committee of the JSB.

123. Given the devastating human impact of the misuse of INTERPOL alerts, and the need to provide effective remedies, it is crucial that the decisions of the Complaints Committee are appealable to an independent body. Fair Trials appreciates that INTERPOL may be reluctant to introduce judicial proceedings to INTERPOL, or subject the CCF to the scrutiny of external judicial bodies, but these very concerns should justify the need for a particularly robust complaints mechanism that includes additional checks and reviews.

⁷⁶ Europol JSB (Article 9, Rules of Procedure); this position is comparable with the binding effect of decisions made by the UNDT (Art 11(3), Statute), UNAT (Art 10(5)).

⁷⁷ E.g. Article 14(5), ICCPR; Article 16(7), Arab Charter on Human Rights; Article 2(1) of Protocol 7, European Convention on Human Rights; and Section N(10)(a) of the Principles on Fair Trial in Africa

⁷⁸ <http://www.interpol.int/News-and-media/News/2002/PR031>

124. Neither the General Assembly nor the Executive Committee is suitable as an appellate body. The interpretation of INTERPOL's rules should be left to independent bodies, and not be subject to political or diplomatic procedures.

125. The need for an appeals procedure is particularly pressing, given that a large proportion of individuals approaching the CCF to request the deletion of their data have no other fora in which to seek effective remedies. This problem is amplified by the fact that INTERPOL is considered to be immune from civil litigation, so individuals cannot seek redress from national or international judicial bodies.

Recommendations

126. The Appeals Panel should receive appeals against the decisions of both the Complaints Committee (on complaints) and the DPO (on data access requests).

Complaints

127. Decisions made by the Committee should be subject to an appeals procedure. The individual and the NCB should be able to appeal decisions of the Committee to the Appeals Panel that is independent and separate from both the Committee and the General Secretariat.

128. In order to appeal against a decision made by the Complaints Committee, the appellant needs to show that the Committee:

- a. Erred on a question of law / interpretation of INTERPOL's rules relevant to the complaint; or
- b. Made a material factual error that would have affected the outcome of the complaint.⁷⁹

129. The procedures for appeals procedures should be as follows:

- a. The appellant should submit its appeal, inclusive of grounds of appeal within three months of receipt of the decision.⁸⁰
- b. The Appeals Panel should have the power to refuse the appeal, if it finds that the application does not engage either of the grounds for appeal. Neither the Appeals Committee of the Joint Supervisory Body nor the UNAT have provisions which require the appellant to get permission to appeal. Fair Trials recognises, however, that there may need to be procedures in place to strike out manifestly unmeritorious appeals.
- c. If the Appeals Panel decides that the appeal is admissible, it must immediately notify both the appellant and the respondent. The respondent should be given a copy of the appeal, with any further information submitted by the appellant (subject to the same exceptions to

⁷⁹ These grounds are comparable to the grounds of appeal before the UNAT (Article 2(1), UNAT Statute), and the grounds on which the ILO Tribunal could review decisions (Judgment 442 (http://www.ilo.org/dyn/triblex/triblexmain.fullText?p_lang=en&p_judgment_no=442&p_language_code=EN))

⁸⁰ This is the same as JSB's deadline to appeal (Art 18(1), Rules of Procedure). Cf. The appeals from the UNDT need to be submitted to the UNAT within 60 days of the decision (Article 7(1)(a), Rules of Procedure).

disclosure in data access and complaints proceedings), and the respondent should be given up to 3 months to respond to the appeal.

- d. The Appeals Panel should disclose the respondent's counter arguments to the appellant, who should be given a calendar month to make further observations.
- e. If either party to the appeal fails to comply with the Appeals Panel's directions, the appeal proceedings will continue regardless in the absence of further representations.
- f. The Appeals Panel may decide, at the request of the appellant or on its own initiative, to have a hearing in order to determine the appeal. Oral hearings should take place under the same conditions and format as those before the Complaints Committee, as described in paragraphs 75-77 above.
- g. Decisions of the Appeals Panel should be specific to the appeal and fully reasoned, as explained in paragraph 87 above.
- h. Decisions should be notified to the individual within one month of being finalised.

Data Access Requests

130. Individuals may appeal against the non- or partial disclosure of data by the DPO to the Appeals Panel in writing within one calendar month of their receipt of the decision.

131. The right of appeal should be automatic. This is because the nature of non-disclosure decisions could be such that there is not enough information on the basis of which the appellant can formulate detailed arguments. The Appeals Panel will carry out a second review of the data access request, following the DPO's procedures on processing requests.

132. If the Appeals Panel decides that the data can be disclosed to the individual, it should notify the NCB in advance of doing so, and give it the option of deleting the data or disclosing it to the subject.

I. Remedies

I1 Interim Measures

Relevance

133. The CCF's authority to issue interim measures to block access to data is an important one, given that it can take the CCF several months to process an access request or a complaint, during which time the individual could be subject to irreparable harm, and/or be trapped in whichever country s/he is in.

Current Position

134. Fair Trials understands that if the CCF receives requests that raise doubts about the compliance of the data with INTERPOL's rules, caveats can be added to that data, and in certain cases, access to information by NCBs can be blocked. There have also been reported instances where

public Red Notices on INTERPOL's website have been removed pending the determination of deletion requests.

135. There are no provisions in INTERPOL's rules that define the CCF's powers to grant interim relief, and the criteria according to which the CCF determines that information should be blocked pending the determination of requests is unclear.

Recommendations

136. The CCF should have the authority to issue interim measures on its own motion, or at the request of the individual. Decisions on interim measures should be made as soon as possible, and if made at the request of an individual, it must be made no later than one calendar month from the date of admissibility.

137. If the individual is subject to a public Red Notice, the public Red Notice should be removed from INTERPOL's website following a request for deletion by the individual, so long as the individual has made an arguable case for deletion. There should be a prohibition on making any alert public while it is subject to a complaint, in order to prevent reprisals against the individual bringing the complaint.

138. If the NCB does not respond to the CCF's requests for information with regard to the data that is either subject to an access request or a complaint within the specified timeframes as set out in paragraphs 60 and 72 above, the data should be blocked. Any alert that has been published on INTERPOL's website should also be removed, if this has not already been done.

139. If the CCF decides not to block the information subject to a complaint, or if the data has already been accessed and downloaded by NCBs, it should be accompanied by a caveat that explains that the data is subject to review, and information about the basis of the complaint. This should be done in order to enable NCBs to take a cautious approach when determining what action to take vis-a-vis an individual determined to be subject to such an INTERPOL alert.

I2 Deletion of Data

Relevance

140. Deletion of data is the most obvious remedy that can be given by the CCF, where data in INTERPOL's systems is found to have been published in violation of its rules. However, the human impact of INTERPOL alerts can be varied as well as serious – these include reputational harm, employment issues, and travelling restrictions, for which deletion of the alert is not, in itself, an adequate remedy. In particular:

- a. Individuals who have had their INTERPOL alert removed may still continue to have difficulties when travelling internationally, on the basis of downloaded information kept in domestic databases; and

- b. In cases where an alert has been made public either through INTERPOL's website, or via the media, there is a real likelihood that information about the alert will remain in the public domain, even after it has been deleted.

Current Position

141. If the General Secretariat has reasons to believe that the data in question does not meet the minimum conditions for recording, it requests the NCB responsible for the data to delete it,⁸¹ and all copies of the data stored in INTERPOL's Information System are also deleted '*unless express consent is given by the National Central Bureau, national entity or international entity that initially recorded the data*'.⁸² The General Secretariat is also required to take active steps to ensure that the data is inaccessible, or to indicate that it should be considered non-existent, if it is not possible to delete the data.⁸³
142. NCBs are explicitly required to update downloaded data, and to delete it where necessary,⁸⁴ and the General Secretariat is responsible for ensuring that NCBs comply with the rules on downloaded data. However, it is not clear to Fair Trials how this is enforced in practice, and what penalties, if any, the NCBs would face for failing to delete downloaded data in accordance with the General Secretariat's directions.

Recommendations

143. The CCF should be able to provide remedies other than the deletion of the INTERPOL alert in order to reduce the continuing reputational harm and the restriction of free movement suffered by the individual. In particular:
- a. It should ensure that decisions on complaints are made public (subject to necessary anonymisation and redactions, as explained in paragraphs 111-114 above); and
 - b. It should provide written confirmation of the deletion of the alert that can be used by the individual, in the event that s/he faces difficulties caused by the 'residual' INTERPOL alert. This is particularly crucial in the event that the published decision is anonymised to remove any personal data relating to the individual. Fair Trials is aware from its own experience that these letters are provided by the CCF from time to time, but not consistently.

I3 Addenda

Relevance

144. Addenda (or 'caveats') have been used by the CCF as a 'compromise' solution to alerts which raise doubts, particularly with regard to compliance with Article 3 of INTERPOL's Constitution. They often reflect extradition refusals, and in the past, they have also reflected the grant of refugee status.

⁸¹ Article 51(4), Rules on the Processing of Data ('RPD')

⁸² Article 51(6), RPD

⁸³ Article 51(7), RPD

⁸⁴ Article 56(1)(g), RPD

145. In previous years, the General Secretariat has expressed reservations about the use of addenda, highlighting concerns that they can give mixed messages to law enforcement authorities, and interfere with effective police cooperation. The General Secretariat's concerns are understandable – the CCF should be in a position to determine whether or not the Red Notice is politically motivated and thus prohibited under Article 3, instead of shifting this responsibility to national law enforcement agencies. While addenda can provide useful explanations to 'questionable' INTERPOL alerts, if overused, they could cause difficulties both for NCBs and individuals, by creating unnecessary uncertainty and confusion.

146. Fair Trials has also been informed of some of the possible benefits of addenda. We have been told, in particular, that in some cases, an addendum could be an effective remedy to an abusive alert, more so than a full deletion, because it keeps NCBs on notice of relevant issues, which would not have been available to them if the notice had been deleted, and bilateral arrangements were used instead.

Current Position

147. Addenda are not explicitly mentioned in the RCI, RPD, or in the Operating Rules, but INTERPOL has recognised that they could be used to notify other NCBs of extradition refusals,⁸⁵ and according to the CCF's most recent annual report,⁸⁶ addenda were used in almost half the cases where the CCF found data to be compliant with the rules. It makes sense therefore, that there should be some rules and guidance clarifying the use of addenda.

148. Practitioners have reported to Fair Trials that despite the prevalent use of addenda by the CCF, information about addenda on individual files, and in particular, the specific wording of addenda is usually difficult to access. Practitioners have also reported that even the NCBs may need to make specific requests in order to see the content of an addendum which has been added to an alert.

Recommendations

149. Fair Trials believes that there are two circumstances in which addenda should be used:

- a. In order to reflect the fact that the data is under review, as described in paragraph 139 above; and
- b. At the discretion of the CCF, in cases where data was reviewed but was found to be compliant with INTERPOL's rules. Addenda can also be requested by the individual.

150. We recognise that addenda can serve a useful purpose in advising NCBs on Red Notices that might comply with the rules, but where there are good reasons to demand a more cautious approach. 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 or refoulement (as previously

⁸⁵ Resolution No. AGN/53/RES/7

⁸⁶ CCF's Annual Report 2014, at page 21

recommended by Fair Trials), this might include cases in which there have been refusals of extradition.

151. Addenda should contain unequivocal and detailed information that would allow law enforcement authorities to make informed views on how to act on an alert. These could include:

- a. Details of extradition refusals, including the country that refused extradition;
- b. Information about the grant of international protection (for example, refugee status or humanitarian protection);⁸⁷ and
- c. The nature of the complaint, including a summary of the basis of the complaint.

152. Addenda should be made visible on public INTERPOL alerts. This is because the existence of an addendum could help to mitigate the reputational damage caused by alerts. The full content of the addendum should also form part of the data automatically accessible to NCBs. There should be no need for NCBs to make specific requests for access.

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December 2015

⁸⁷ We would assume that most individuals under this category would now be covered by INTERPOL's asylum policy (IPCQ dated 18/02/2015 - LA/51489-4/5.1)