

REDRESS

Ending Torture. Seeking Justice for Survivors

FAIR TRIALS INTERNATIONAL

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To
Commission for the Control of INTERPOL's Files
200 Quai Charles de Gaulle
69006 Lyon
France

26 January 2015

Dear Sir / Madam,

We write on behalf of Mr Djamel KTITI. Please find attached a copy of Mr Ktiti's passport and an authorisation for REDRESS and Fair Trials International to act on his behalf. The Commission's Secretariat is kindly asked to send further correspondence to REDRESS at the address indicated above.

SUMMARY

Mr Ktiti, a French national, is the subject of information on INTERPOL's files circulated by the National Central Bureau (NCB) of Algeria. He has twice been arrested on this basis – in Morocco in 2009, and in Spain in 2013 – and held in provisional detention for extended periods of time.

On both occasions, the States concerned have declined to extradite Mr Ktiti to Algeria, pursuant to a decision of the United Nations Committee Against Torture (the "Committee Against Torture" or "Committee") that such extradition in this case would violate the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "UNCAT"). The Committee held both that (i) any extradition ran an unacceptable risk of being based on evidence obtained by torture, contrary to Article 15 of the UNCAT, and (ii) Mr Ktiti faced an unacceptably high risk of torture if he is returned to Algeria, contrary to Article 3 of the UNCAT.

The enclosed application includes:

- A request for access to information on INTERPOL's files pursuant to Article 18 of the Rules on the Processing of Data ('RPD'), including access to information and for ongoing disclosure;
- A request for the Commission to apply precautionary measures on an interim basis pending final deletion of the file if this is not immediate; and
- A request for deletion of the information concerning Mr Ktiti, on the basis that:
 - The publication of the red notice is not "of interest for the purposes of international police cooperation" (RPD Art. 83(1)(a)(iii)) and cannot lawfully be used "for the purpose of extradition" (RPD Art. 82) as the decision of the Committee Against Torture excludes any possibility of cooperation by other States;

- The red notice risks prejudicing the Members' interests (RPD Art. 77(2)(c)), as any action taken pursuant to it will lead to wasted costs and resources; and
- The publication of the red notice is contrary to Article 2 of INTERPOL's Constitution, as it leads INTERPOL knowingly to participate in a potential violation of international law.

I – FULL FACTUAL BACKGROUND

1. Mr Ktiti is a French national who was born on 29 June 1974. He was arrested on 14 August 2009 in Tangiers, Morocco, by the Moroccan police on the basis of a red notice issued by INTERPOL, pursuant to an arrest warrant ordered by the Algerian judiciary on 19 April 2009 (the “Arrest Warrant”).¹

The Arrest Warrant

2. The Arrest Warrant concerned charges of “forming an organized gang for the unlawful export of narcotics”, an act punishable under articles 17 and 19 of the Code for the Prevention and Punishment of the Use and Unlawful Trafficking of Narcotics and Psychotropic Substances (25 December 2004), and liable to life imprisonment.²
3. The Arrest Warrant was issued after a person known as “MK”, who was arrested on 7 August 2008 in Algeria for possession of cannabis, referred to Mr Ktiti’s name during interrogation.³ MK’s brother was able to visit him in detention, and alleges that MK was tortured and ill-treated in police custody to extract a confession and the names of accomplices. The Views of the Committee Against Torture record that:

According to statements by M.K.’s family, he was beaten at the Algerian border, then held captive naked in a cell for two days, where he was tortured. His torturers beat him round the head and on the rest of his body. He was also electrocuted. He was tied to a chair, suffocated and forced to swallow water in an attempt to drown him. He was then sodomized with a bottle. When his family visited him in prison, they say he had a black eye, his brow and lips were split and he was covered in bruises (on his arms, legs and back). The purpose of the torture was to force him to confess to the acts of which he was accused and to reveal the names of his accomplices. During a telephone conversation with ACAT in April 2010, M.K.’s family confirmed that he had been savagely tortured following his arrest, but did not wish to put it in writing for fear of reprisals against him by the Algerian authorities, since he had not yet been tried.⁴

Detention in Morocco

4. Following his arrest on 14 August 2009, Mr Ktiti was held in police custody until 15 August 2009, when he was brought before the Crown Prosecutor of the court of first instance in Tangiers. The Crown Prosecutor informed him that he had been arrested under an international arrest warrant issued by Algeria, and ordered his provisional detention at Tangiers prison pending Mr Ktiti’s transfer to Salé prison. On 7 October 2009, the Supreme Court of Morocco handed down decision No. 913/1, authorising Mr Ktiti’s extradition to Algeria. On 14 January 2010, his lawyers appealed against the decision before the same court, on grounds of irregularities in the arrest warrant. On 7 April 2010, the Supreme Court dismissed the appeal against the extradition order.⁵

¹ Committee Against Torture, *Ktiti v Morocco*, Comm. No. 419/2010, 26 May 2011 (“CAT Views”), (Annex 1). para. 2.1.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*, para. 2.2.

⁵ See further *ibid.*, para. 2.3.

Conviction in absentia

5. Despite Mr Ktiti's arrest and the authorisation granted by Morocco for his extradition to Algeria, the Court in Constantine proceeded to try him in absentia and sentenced him to life imprisonment on 28 January 2010.⁶

Case before the UN Committee Against Torture

6. A week after the dismissal of the Supreme Court appeal in Morocco against the extradition order, Mr Ktiti's brother, Yousri Ktiti, brought a case on his behalf to the Committee Against Torture under the individual communication mechanism.⁷
7. On 19 April 2010 the Committee notified Morocco of the communication and urged it not to proceed with Mr Ktiti's extradition while the complaint was under consideration.
8. On 26 May 2011 the Committee issued its views in the case, **finding that Morocco "would be in violation of Article 3 of the Convention if the complainant was extradited to Algeria", and that "the facts brought to its attention constitute a breach of Article 15 of the Convention"**.⁸
9. The Committee added that: "because Djamel Ktiti has been in detention for 21 months despite no charges having been laid against him, the State party is obliged to release him or to try him should charges be brought against him".⁹
10. On the basis of the Views adopted by the Committee, Morocco released Mr Ktiti from detention on 2 February 2012, and he returned to his home in France.

Subsequent arrest and extradition proceedings in Spain

11. In July 2013, Mr Ktiti travelled to Spain on a holiday. On 28 July 2013 he was arrested in the city of Granollers pursuant to an alert issued by or at the request of Algeria, concerning the Arrest Warrant.¹⁰
12. On 29 July 2013 Mr Ktiti's pre-trial detention was authorised by the *Juzgado de Instruccion No. 1* (first instance criminal court) of Granollers, and this was ratified by Court Order of the *Juzgado Central de Instruccion No. 2* (Central Court of Investigation No. 2), on 5 August 2013. Judicial proceedings followed to determine whether Mr Ktiti would be extradited to Algeria.¹¹

⁶ *Ibid.*, para 2.4.

⁷ The Committee Against Torture is an independent body established under the UN Convention Against Torture to supervise its application. Under the individual complaints mechanism, the Committee can receive and consider complaints brought by individuals who allege to be victims of a violation of the UNCAT by states that have accepted the competence of the Committee in that regard: see the UN Convention Against Torture, Article 22 (**Annex 2**). Morocco accepted the competence of the Committee to receive individual communications on 19 October 2006.

⁸ CAT Views, para. 9 (emphasis added).

⁹ CAT Views, para. 10.

¹⁰ See decision of the *Juzgado Central de Instruccion No. 2, Audiencia Nacional* of 23 October 2013 (**Annex 3**), where the Court indicated that extradition proceedings were commenced on 29 July 2013 at the request of Algeria in accordance with the 19 April 2009 Arrest Warrant. The Release Order of 15 January 2014 (**Annex 4**), states that Mr Ktiti was arrested pursuant to an arrest warrant dated 5 August 2013 issued by the Constantine Court, however it is clear that this is a mistake. All other documents in the court file refer to the Arrest Warrant of 19 April 2009, and the list of documents submitted by Algeria in the Judgment refers only to the Arrest Warrant of 19 April 2009.

¹¹ See Release Order of 15 January 2014, Pleas of Fact, Second.

13. Mr Ktiti was represented by counsel in the proceedings, and argued that he could not be extradited to Algeria, because the Committee Against Torture had already ruled that such extradition would violate the UNCAT. The Judge requested an authenticated copy of the Committee's decision from the Committee Against Torture, and this was sent to the Court by the Committee Against Torture.¹²

Decision of the Spanish Court

14. On 15 January 2014 the Third Section of the Penal Division of the *Audiencia Nacional* ruled that Mr Ktiti could not be extradited from Spain on the basis of the Arrest Warrant issued by Algeria, and ordered his release. It based its decision on the Views of the Committee Against Torture in the case concerning Morocco. The Committee had found that the extradition of Mr Ktiti to Algeria would constitute a violation of Article 3 of the Convention, and that relying on the information underlying the arrest warrant and using it as evidence in the extradition proceedings amounted to a violation of Article 15 of the Convention.¹³

15. The Court referred to Spain's obligations under the Convention Against Torture, and Spanish jurisprudence concerning the protection of the fundamental rights of persons subject to extradition proceedings in Spain.¹⁴

16. Following the decision Mr Ktiti was released from detention in Spain on the same day.

The impact of the red notice on Mr Ktiti

17. Mr Ktiti has now been arrested twice on the basis of the red notice concerning the same set of charges in Algeria. The first time he was held in detention for nearly two and a half years before eventually being released on the grounds that he could not be extradited to Algeria. The second time he was held in detention for nearly six months while extradition proceedings took place, again reaching the conclusion that he could not be extradited to Algeria without violating the Convention Against Torture.

18. Aside from the impact of the time spent in detention, Mr Ktiti now fears travelling to other countries because of the serious risk that he will again be detained on the basis of the red notice, and held in detention for an extended period and/or extradited to Algeria in violation of international law.

II – REQUEST FOR ACCESS TO INFORMATION

19. We seek access to personal information concerning Mr Djamel Ktiti stored on INTERPOL's files pursuant to Article 18 of INTERPOL's Rules on the Processing of Data.

20. Further to Article 14(5) of the Commission's Operating Rules, this requirement for authorisation from the source of the information does not apply where the person who is the subject of the request has provided sufficient evidence showing that he/she knows that there is information about him/her in INTERPOL's files.

21. This exception applies in this case. The Views of the Committee Against Torture issued under the individual complaints procedure of the UNCAT in *Ktiti v Morocco* (CAT/C/46/D/419/2010, 26 May 2011), state that Mr Ktiti's arrest in Morocco on 14 August 2009 followed "a request by the International Criminal Police Organisation (Interpol) pursuant to an international arrest warrant

¹² *Ibid.*, Points of Law, Fifth.

¹³ CAT Views, paras. 8.7 and 8.8.

¹⁴ Release order of 15 January 2014, Points of Law, Sixth and Seventh.

issued by the Algerian judiciary on 19 April 2009”.¹⁵ The 23 October 2013 decision of the *Juzgado Central de Instruccion No. 2* also referred to the international arrest warrant issued by the Algerian judiciary on 19 April 2009, and required that INTERPOL be notified of the judgment.¹⁶

22. Accordingly, as the condition in Article 14(5) of the Operating Rules is met, we request that you grant Mr Ktiti access to all information concerning him stored on INTERPOL’s files, without consulting the NCB of Algeria. This includes, but is not limited to:
- a full copy of any red notices/diffusions;
 - a description of the charges and underlying facts with the dates of the relevant judicial decisions;
 - details of any renewals, updates or reinstatements of the red notice / diffusion;
 - a copy of any arrest warrant or judicial decision against Mr Ktiti available on INTERPOL’s files.
23. We ask the Commission to apply rule 19(2) of the Operating Rules and provide access to this information now, independently of the processing of the request for deletion contained in Part C of this application.
24. Thereafter, in order to ensure the fairness and effectiveness of Mr Ktiti’s challenge to the validity of the information, the Commission is asked to provide access to the following information:
- The text of any questions asked of the NCB of Algeria relating to the validity of the information on INTERPOL’s files (which is not covered by the principle of national ownership);
 - The conclusions of any preliminary study carried out by the General Secretariat (which again is not covered by the principle of national ownership);
 - Any responses of any NCB as a result of the request for deletion contained in this letter, complete with any evidence (these should be disclosed in order to ensure equality of arms).

III – REQUEST FOR INTERIM MEASURES

25. For the reasons set out in Part IV below, the red notice / diffusion concerning Mr Ktiti should be deleted immediately. However, if removal is not immediate, given the seriousness of this matter we request that interim measures be adopted as a matter of urgency under Article 129 of the RPD. In particular, we ask that, pending consideration of the request for removal, the Commission recommend to the General Secretariat that it:
- (A) attach the decision of the Committee Against Torture to the red notice(s) as an Addendum;
 - (B) suspend the red notice(s) to which Mr Ktiti is subject, and takes steps to ensure that the information systems of national entities reflect this suspension;
 - (C) inform Mr Ktiti of any changes in the status of the red notice(s) concerning him.
26. We underline that – if used at all – these should only be interim measures, and the appropriate course of action is complete removal of the information from INTERPOL’s files, and notification to NCBs that the red notice has been deleted.

¹⁵ CAT Views, para. 2.1.

¹⁶ Decision of the *Juzgado Central de Instruccion No. 2, Audiencia Nacional* of 23 October 2013 (**Annex 3**).

IV – REQUEST FOR DELETION OF INFORMATION FROM INTERPOL’S FILES

27. The Commission is invited to recommend that INTERPOL delete the information held on its files concerning Mr Ktiti on the following grounds:

- (A) The publication of the red notice is not “of interest for the purposes of international police cooperation” (RPD Art. 83) and cannot lawfully be used “for the purpose of extradition” (RPD Art. 82) as the decision of the Committee Against Torture excludes any possibility of cooperation by other States;
- (B) The red notice risks prejudicing the Members’ interests (RPD Art. 77(2)(c)), as any action taken pursuant to it will lead to wasted costs and resources;
- (C) The publication of the red notice is contrary to Article 2 of INTERPOL’s Constitution, as it leads INTERPOL knowingly to participate in a potential violation of international law;
- (D) Deletion is the appropriate remedy and an addendum cannot be used instead.

(A) The information is not “of interest for the purposes of international police cooperation” and the red notice is not serving a lawful purpose

28. To meet the minimum criteria for publication under Article 83, a request must be “of interest for the purposes of international police cooperation” (RPD Article 83(1)(a)(iii)). Article 77(2)(b) specifies that “this interest is assessed in light of the possibility that the request could be processed by all the Organization’s Members”. In addition, Article 82 provides that a red notice seeks the location of a wanted person “for the purpose of extradition”, which presupposes that extradition is a lawful possibility.

29. As explained below (i) Mr Ktiti’s extradition is prohibited under international law, and (ii) accordingly, other members could not cooperate with the Algerian request; the information is therefore not of interest for police cooperation and the red notice has no lawful purpose.

(i) Mr Ktiti’s extradition is prohibited under international law

30. The Committee Against Torture has established that Mr Ktiti’s extradition to Algeria on the basis of the arrest warrant(s) underlying the red notice is prohibited by international law. This finding means that other states party to the UNCAT cannot extradite him to Algeria in relation to those arrest warrants. It follows from the existence of the risks identified by the Committee Against Torture that Mr Ktiti’s extradition is also barred under other treaties and customary international law.

The Committee Against Torture’s findings

31. The Committee Against Torture has clearly established that the extradition of Mr Ktiti to face charges or to serve the sentence of imprisonment to which the red notice relates would violate Article 3 and Article 15 of the UNCAT. As the independent body established to supervise the application of the Convention, the views of the Committee on what will amount to a violation must be given great weight.¹⁷

32. Article 3, which enshrines the principle of *non-refoulement*, provides that:

¹⁷ ICJ, *Case concerning Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, ICJ Reports 2010, p. 639 (referring to the similar status of the Human Rights Committee in interpreting the International Covenant on Civil and Political Rights).

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

33. In relation to Article 3, the Committee Against Torture found that there was a real risk that Mr Ktiti would be subjected to torture if he was returned to Algeria, and that any such return would therefore be in violation of the UNCAT.¹⁸

34. Article 15, which enshrines the 'exclusionary rule', provides that:

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

35. In relation to Article 15, the Committee Against Torture found that there was a real risk that the arrest warrant and subsequent conviction in Algeria were based on evidence obtained under torture. Consequently, any national court must assess that risk, and could not "base its decision to extradite [Mr Ktiti] on statements which, according to the complainant, were obtained under torture".¹⁹ This means that the information underlying the arrest warrant cannot be used in extradition proceedings without violating the exclusionary rule.

State parties to the UNCAT cannot extradite Mr Ktiti to Algeria or rely on the information underlying the red notice in extradition proceedings.

36. Although the Committee's views related specifically to Morocco, and are therefore technically not binding on other state parties, the facts on which the decision is based remain the same regardless of which country seeks to extradite Mr Ktiti. Its reasoning is therefore equally applicable to any other country which acts on the red notice.

37. Other states party to the UNCAT (currently 155 states) are therefore prohibited under the UNCAT from extraditing Mr Ktiti to Algeria, and from relying on the information underlying the red notice, for the same reasons that Morocco was prohibited from doing so. This has been borne out by the decision of the Audiencia Nacional in Spain. In its judgment, the Audiencia Nacional stated that:

The file contains an authentic copy of the Decision of 26th May 2011 of the Committee Against Torture, issued on the grounds of the extradition request of Algeria to Morocco (international order of detention of 19th April 2009) for the same facts here analysed. The Decision stated that (...) the extradition of Djamel Ktiti to Algeria would constitute a violation of Art. 3 of the Convention, and that the facts under which the defendant was subjected are a violation of Art. 15 of the Convention, after having asserted that Djamel Ktiti would be at risk of been subjected to torture in Algeria, adding that Act of Accusation of 7th October 2009 against the witness M. K. – who incriminated the defendant - mentions that the witness confessed after being subjected to torture. The Moroccan authorities did not accept the extradition of Djamel Ktiti, whose freedom was agreed.²⁰

38. On the basis of the Committee's decision, the Court declined to order the extradition of Mr Ktiti and instead ordered his release.

¹⁸ CAT views, para. 8.7.

¹⁹ CAT views, para. 8.7.

²⁰ Release Order of 15 January 2014, Points of Law, Fifth (unofficial translation).

The extradition of Mr Ktiti is prohibited under the International Covenant on Civil and Political Rights and regional human rights treaties

39. The *non-refoulement* principle and exclusionary rule are also part of human rights obligations that States must uphold under other international treaties, including the International Covenant on Civil and Political Rights (“ICCPR”) and regional human rights treaties. Under the ICCPR, for example, the UN Human Rights Committee has made it clear that the exposure of a person to a danger of torture by extradition would be a violation of Article 7 of the ICCPR.²¹ Similarly, the Committee has stressed that under Article 7 the law must prohibit the use in judicial proceedings of statements or confessions obtained through torture or other prohibited ill-treatment.²² The same position has been adopted by regional human rights courts under their respective human rights treaties.²³
40. In addition, regional human rights jurisprudence, including that of the European Court of Human Rights, also prohibits the extradition of individuals to countries where they are at risk of being subjected to a trial (or are imprisoned on a conviction) breaching “one of the most fundamental norms of international criminal justice, the prohibition on the use of evidence obtained by torture”.²⁴ Where it can be shown that there is a real risk of that occurring – as the Committee Against Torture has specifically found in this case – any extradition will be in violation of the right to a fair trial guaranteed under those Conventions.²⁵

The extradition of Mr Ktiti is prohibited under customary international law

41. Furthermore, under customary international law no state can lawfully extradite Mr Ktiti, on the facts as found by the Committee Against Torture.
42. The prohibition of torture is part of customary international law, with the status of a peremptory norm.²⁶ It includes, “as a fundamental and inherent component, the prohibition of *refoulement* to a risk of torture”.²⁷ Customary international law therefore “imposes an absolute ban on any form of forcible return to a danger of torture which is binding on all States, including those which have not become party to the relevant instruments”.²⁸
43. Similarly, the exclusionary rule, by which statements or confessions obtained under torture cannot be used as evidence in any proceedings, is also widely accepted to form part of customary

²¹ Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 9.

²² *Ibid.*, para. 12. See further Human Rights Committee, General Comment No. 32: Article 14 (the right to equality before courts and tribunals and to a fair trial), CCPR/C/GC/32 (2007), para. 6.

²³ See further: ECtHR, *El Haski v Belgium* (2012), App. No. 649/08, 25 September 2012; ACHPR, *Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt* (2011) Communication 334/06, 1 March 2011; IACtHR, *Cabrera García & Montiel Flores v Mexico* (2010) Judgment on Merits, Reparations and Costs of 26 November 2010, Series C, No. 220, para. 165.

²⁴ See, eg. ECtHR, *Othman (Abu Qatada) v United Kingdom*, App. No. 8139/09, para. 285.

²⁵ *Ibid.*

²⁶ ICJ, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, 20 July 2012, para. 99.

²⁷ UN High Commissioner for Refugees (UNHCR), ‘Advisory Opinion on the Extraterritorial Application of *Non-Refoulement* Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol’ (Advisory Opinion) (2007), p. 11. See also Rodley & Pollard, *The Treatment of Prisoners Under International Law*, 3rd ed. (2009), p. 172; Lauterpacht & Bethlehem, ‘The scope and content of the principle of non-refoulement’ in Feller, Türk and Nicholson (eds), *Refugee Protection in International Law: UNHCR’s global consultations on international protection* (2003), pp. 155-64.

²⁸ UNHCR, Advisory Opinion, above, p. 11.

international law.²⁹ Any extradition of Mr Ktiti to Algeria, or reliance on the information supporting the red notice in extradition or other judicial proceedings, is therefore prohibited and would be incompatible with states' obligations under international law.

(ii) Accordingly, other members of INTERPOL cannot cooperate with the request, and the requirements of Articles 82 and 83 of the RPD are not met

44. The above summary shows that (i) no state can lawfully extradite Mr Ktiti pursuant to the red notice, and (ii) reliance on the information supporting the red notice in extradition or other judicial proceedings will give rise to a violation of the exclusionary rule under Article 15 of the Convention against Torture, other international and regional treaties, and customary international law.

45. Given that the red notice cannot lead to any extradition and cannot be relied upon in extradition or other judicial proceedings, the publication of the notice no longer meets the conditions of Articles 82 and 83 of the RPD. There is no conceivable purpose which the red notice can serve, as the evidence on which it is based has been found by the Committee Against Torture to have been at risk of having been obtained by torture, and all states are prohibited from extraditing Mr Ktiti to face the charges to which it relates. Instead, the continued publication of the red notice unnecessarily diverts resources and frustrates such cooperation.

46. Two states have now arrested Mr Ktiti and released him on the ground that he cannot be lawfully extradited. In both cases Mr Ktiti was held in detention for an extended period of time before being released because the arrest warrant could not be acted on. Given the facts authoritatively established by the Committee Against Torture, this will be the outcome any time he is detained under the red notice.

47. As such, the red notice no longer meets the minimum criteria for publication under Article 83 of the RPD, as the request is not of interest for the purposes of international police cooperation. It also follows from the prohibition of Mr Ktiti's extradition that the red notice cannot be "with a view to extradition" in accordance with its statutory purpose under Article 82 of the RPD.

48. This being so, the red notice should be cancelled by the General Secretariat under RPD Art. 81(3)(c), which provides that "the General Secretariat shall cancel a notice if ... the notice no longer meets the conditions for publishing a notice ...". The terms of Article 81(3)(c) are mandatory; where the minimum requirements are no longer met, the notice must be cancelled.

(B) The continued publication of the red notice risks prejudicing National Members' interests

49. Article 77(2)(c) of the RPD provides that the General Secretariat may not publish a notice if "publication of the notice could prejudice the Organization's or its Members' interests".

50. It is clear from the Committee Against Torture's decision that any state that acts on the red notice by (i) extraditing Mr Ktiti, or (ii) relying on the documents supporting the red notice in judicial proceedings, will be in violation of obligations under key human rights treaties including the UNCAT, and customary international law. The continued publication of the red notice therefore gives rise to a serious risk of prejudice to INTERPOL's members.

51. Aside from any prejudice arising from actual extradition or reliance on the documents in judicial proceedings, any Member which detains Mr Ktiti, and starts extradition proceedings, will suffer

²⁹ See 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez', A/HRC/25/60, 4 March 2014, para. 17; Tobias Thienel, 'The Admissibility of Evidence Obtained by Torture under International Law', 17(2) European Journal of International Law (2006) 349-367 at 363-365.

significant prejudice by way of wasted costs and resources, when there is no conceivable way in which he can legally be extradited to Algeria.

52. As such, Article 77(2)(c), which is cast in mandatory terms, provides a further ground under which the red notice must be cancelled.

(C) Continued publication of the red notice is contrary to INTERPOL's Constitution

53. Finally, the continued publication of the red notice is contrary to Article 2 INTERPOL's constitution. This provides that, among the aims of INTERPOL, is to:

ensure and promote the widest possible mutual assistance between all criminal police authorities *within the limits of the laws existing in the different countries and in the spirit of the "Universal Declaration of Human Rights"* (emphasis added).

54. The prohibition of torture is a peremptory norm of international law, and is enshrined in Article 5 of the Universal Declaration of Human Rights, which is specifically referred to in UNCAT's preamble. Given the importance that the international community attaches to the protection of individuals from torture, inherent in the prohibition is the requirement to forestall its occurrence.³⁰ The prohibition of *refoulement*, and the exclusionary rule are part of customary international law having attained the status of *jus cogens*. These aspects of general international law must apply to international organisations as well as states.³¹

55. Where the key UN body tasked with interpreting and applying the UNCAT has found – after a full examination of the facts – that an individual cannot be extradited pursuant to a red notice because they face a real risk of torture if this occurs, the red notice must be cancelled. Continued publication of the notice – the purpose of which is to obtain the extradition that has been ruled illegal and which would breach a peremptory norm of international law – cannot be seen as being in the spirit of the Universal Declaration of Human Rights.

(D) Deletion is the appropriate remedy

56. In such a clear case, continued publication of the red notice by INTERPOL is in the interests of neither the Organisation, nor its members. For the reasons outlined above, we request that the General Secretariat cancel the red notice applicable to Mr Ktiti, and take steps to ensure that the records of NCBs are updated to reflect this cancellation.

57. The inclusion of an addendum or caveat on the file would not be a sufficient remedy. First, an addendum merely acknowledges doubt about the validity of information on INTERPOL's files, but the invalidity of the information concerning Mr Ktiti is categorically established. The Spanish court has given consideration to the most up-to-date situation and considered itself bound by the CAT decision. This being so, there is no doubt that the information currently on INTERPOL's files is incompatible with the prohibition of torture. Secondly, that prohibition being absolute and unqualified, there cannot be any question of 'balancing' it against other interests, the usual function of an addendum.

58. Finally, the Commission is asked to note that Mr Ktiti is aware of the possibility that, once the red notice is deleted, bilateral requests could be made for his arrest outside INTERPOL's channels,

³⁰ ICTY, *Prosecutor v Furundzija*, Trial Chamber Judgment, IT-95-17/1-T, 10 December 1998, para. 148.

³¹ As the International Court of Justice has found: 'International Organizations are subject to international law, and as such, are bound by any obligations incumbent upon them under general rules of international law': ICJ, *Interpretation of the agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion of 20 December 1980, ICJ Reports 1980, p. 73, para. 37. As to compliance with peremptory norms of international law, see further International Law Commission, 'Draft articles on the responsibility of international organizations, with commentaries' (2011), Article 26 and its commentary.

and that the arresting authority would not in that case have the benefit of any addenda as they would with a red notice if the latter remained valid with an addendum. Mr Ktiti nevertheless invites the Commission to recommend the total deletion of the information and will assume for himself any residual risks that may remain.

V – CONCLUSION

59. For the reasons set out above, the Commission is asked to recommend the permanent deletion of the information concerning Mr Ktiti and the communication, to all INTERPOL members, that this has been done.

60. We look forward to hearing from you and remain at your disposal for further information via REDRESS, whose contact is supplied in the power of attorney.

Carla Ferstman
Director, REDRESS

Jago Russell
Chief Executive, Fair Trials International

List of Annexes

1. Committee Against Torture, *Ktiti v Morocco*, Comm. No. 419/2010, 26 May 2011 (“CAT Views”)
2. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
3. *Juzgado Central de Instruccion No. 2, Audiencia Nacional*, (Spain), Decision of 23 October 2013
4. *Audiencia Nacional*, Third Section (Spain), Release Order of 15 January 2014, with unofficial translation