

## HASSAN DIAB SUPPORT COMMITTEE (HDSC)



REPORT TO THE HUMAN RIGHTS COUNCIL  
WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW  
16<sup>th</sup> session, May/June 2013

REGARDING THE EXTRADITION CASE OF DR. HASSAN DIAB

TO BE CONSIDERED IN CONNECTION WITH THE PERIODIC REVIEW OF  
CANADA'S RECORD

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## **I. HASSAN DIAB SUPPORT COMMITTEE**

1. The Hassan Diab Support Committee (HDSC) thanks members of the Human Rights Council working group on the Universal Periodic Review for this opportunity to present our concerns regarding Canada's human rights record.

2. HDSC is a civil society advocacy group established in 2008 with the aim of promoting reform of Canada's extradition law to fully respect human rights and the principles of fundamental justice. HDSC consists of human rights activists and supporters of Dr. Hassan Diab who are particularly concerned about the treatment Dr. Diab has received under Canada's extradition process. This treatment has included rampant use of unsourced, unsubstantiated and uncircumstanced intelligence, withholding of key exonerating evidence, and acceptance of "very problematic" and "suspect" evidence that does not meet prima facie standards in Canadian jurisprudence.

## **II. CANADA'S EXTRADITION LAW**

3. According to Section 7 of the Canadian Charter of Rights and Freedoms, everyone has the right to life, liberty and security of the person and the right not to be deprived of these except in accordance with the principles of fundamental justice.

4. However, under Canada's extradition law, the individual sought does not enjoy the rights that are accorded to everyone else facing the deprivation of his or her liberty. Canadian standards of evidence are thrown aside, and the case against the individual sought is presumed to be reliable, regardless of how many inaccuracies, errors, omissions or contradictions occur in the case. The individual sought cannot present evidence to show his or her innocence, and the requesting state need not present any exonerating evidence it holds.

## **III. THE CASE OF DR. HASSAN DIAB**

### **A. Background Information**

5. In November 2008, the Republic of France requested the extradition of Dr. Hassan Diab in connection with a bombing near a Paris synagogue in 1980. Dr. Diab has steadfastly maintained that he is no way connected to the 1980 bombing and that he is firmly opposed to violence of any kind.

6. In their prosecution of Dr. Diab, French officials have relied heavily on anonymous and uncircumstanced intelligence that the Central Directorate of Interior Intelligence (DCRI, formerly known as Directorate of Territorial Surveillance or DST) received from unknown sources in 1999. France put forward handwriting analysis that claimed that there are similarities between the handwriting of Dr. Diab and that of the alleged perpetrator of the 1980 bombing. Dr. Diab's lawyers presented evidence from four internationally renowned handwriting experts who demonstrated that the French handwriting analysis is deeply flawed and has relied on

handwriting samples that were not even written by Dr. Diab. During the extradition proceedings, the defence handwriting experts testified that the handwriting analysis actually shows Dr. Diab's innocence.

7. Dr. Hassan Diab is a Canadian citizen of Lebanese origin who lives in Ottawa, Ontario, Canada. He holds a Ph.D. degree in sociology from Syracuse University in the United States (1995). Dr. Diab is an expert on Middle Eastern culture and society who has published and travelled widely. He has held teaching positions at various universities in Canada, the United States, and the Middle East. At the time of his arrest at the request of France in November 2008, he was teaching at the University of Ottawa and Carleton University.

8. Dr. Diab has no criminal record anywhere in the world. The Canadian extradition judge, Justice Robert Maranger, described Hassan as “a very well-liked individual” who “has a great deal of support in both the immediate community, and to some extent nationwide. Many of his friends and colleagues from Carleton University and elsewhere have provided unrelenting support”. Affidavits attesting to Dr. Diab's character (from people in Canada, the United States and the United Kingdom) were filed with both the Ontario Superior Court and the Ontario Court of Appeal affirming Dr. Diab's “non-violent” and “humanist” nature, and that he never held any racist or anti-Semitic views. He was described as “a gentleman and a scholar”, as “conscientious and dependable”, and as “a peace loving man, a devoted teacher”. Petitions in support of Dr. Diab have been signed by over a thousand people across Canada, the United States, and beyond, calling for an end to the extradition proceedings against him. [1]

9. Despite his serious misgivings about the “very problematic” and “suspect” nature of the evidence against Dr. Diab, Justice Maranger committed Dr. Diab for extradition in June 2011. The Canadian Minister of Justice, Mr. Robert Nicholson, ordered Dr. Diab's surrender to France in April 2012. Dr. Diab is currently appealing both the committal decision and the surrender order. In the meantime, he is living under virtual house arrest and is subject to very strict bail conditions. As part of his bail conditions, Dr. Diab is required to self-finance an electronic monitoring/GPS system that costs him about \$2000 per month. Failure to pay this monthly amount would result in his incarceration.

## **B. Human Rights Violations in the Case of Hassan Diab**

10. The extradition case against Dr. Hassan Diab raises numerous, serious human rights concerns. We highlight some of these concerns below.

### **(a) Reliance on Unsourced Intelligence Possibly Derived from Torture**

11. In seeking Dr. Diab's extradition, France has relied on unsourced, uncircumstanced, anonymous, and secret intelligence that was received by the Central Directorate of Interior Intelligence in 1999 in completely unknown circumstances.

12. No one – not even the French examining magistrate or the Canadian extradition judge – knows the sources of the intelligence, the conditions under which it was obtained, or its reliability. It is very troubling that this information may have been derived from torture. France's

willingness to use information derived from torture to prosecute terrorism related cases is well-documented. For example, see Human Rights Watch report “Preempting Justice: Counterterrorism Laws and Procedures in France”. [2]

13. The use of secret, unsourced intelligence for criminal prosecution violates the absolute and peremptory prohibition of torture and other forms of ill-treatment embodied in the United Nations Convention against Torture, and to which Canada and France are signatories.

14. It is disturbing that, while unsourced intelligence is not admitted in criminal trials held in Canada, Canada has failed to adequately protect its own citizen, Dr. Hassan Diab, from prosecution based on unsourced intelligence.

#### **(b) Limited Disclosure of Evidence by the Prosecution**

15. In accordance with the due process rights enshrined in the Universal Declaration of Human Rights (Article 11(1)), it follows that the defence must have full disclosure of all evidence held by the prosecution, including exculpatory evidence. In the case of Dr. Hassan Diab, however, evidence that points away from his involvement in the bombing was ruled inadmissible in the extradition proceedings.

16. For example, Dr. Hassan Diab’s palm prints and finger prints do not match those of the alleged bomber. These very important facts that point away from any potential culpability on the part of Dr. Diab were not given consideration by either the French or Canadian authorities.

#### **(c) Reliance on Faulty and Discredited Handwriting Analysis**

17. As part of their extradition request, French authorities submitted to the Canadian court extremely problematic and faulty handwriting analysis that was not even based on Dr. Diab’s handwriting.

18. Two French handwriting analysts compared five words written in simplistic block letters by the alleged bomber in 1980 with documents associated with Dr. Diab that were written in the late 1980s and 1990s. The analysts claimed that there is a resemblance between Dr. Diab’s handwriting and the handwriting of the alleged bomber.

19. Dr. Hassan Diab’s defence presented evidence that showed that the documents attributed to Dr. Diab were actually written by another individual, not by Dr. Diab. The Canadian prosecutors fought hard to prevent Dr. Diab from presenting this significant finding. Following a crucial ruling by Justice Maranger, the Canadian prosecutors withdrew their reliance on the two handwriting reports in question and submitted a “new” handwriting report that also claimed resemblance between Dr. Diab’s handwriting and the handwriting of the alleged bomber. Again, the Canadian prosecutors fought hard to prevent Dr. Diab from challenging this handwriting report.

20. Three internationally renowned handwriting experts for the defence – from Canada, the United Kingdom and the United States – testified at the extradition hearing that the “new” French handwriting report is wholly unreliable, biased, and unscientific.

21. In his committal decision, the extradition judge, Justice Maranger, noted that France had put forward a “weak case”, and that the French handwriting report is “very problematic”, “very convoluted”, “very confusing”, and “with conclusions that are suspect”. Justice Maranger stated that even though the “prospects of conviction in the context of a fair trial seem unlikely”, he is bound by Canada’s extradition law to commit Dr. Hassan Diab to extradition. [3]

22. Recently, two additional internationally renowned handwriting experts for the defence submitted to the Canadian Justice Minister and the Ontario Court of Appeal a report detailing the fundamental flaws and the extremely unreliable nature of the French handwriting analysis against Dr. Diab.

23. We are very concerned that in Canada an individual is deprived of his liberty and committed for extradition on the basis of evidence characterized as “very problematic”, “very confusing”, “very convoluted”, and “suspect”. Committal based on such evidence violates the rights to liberty, due process and fair trial that are protected in international law.

#### **(d) France Wants Diab Only for Questioning**

24. In the spring of 2012, while Justice Minister Rob Nicholson was considering whether to surrender Dr. Diab to France (a decision that the Minister eventually made in favour of the requesting state), it was revealed that the French authorities have not charged Dr. Diab with any crime, have no plans to put him on trial, and are seeking Dr. Diab’s extradition merely for questioning.

25. Agreeing to send an individual to a foreign country when he is wanted merely for questioning amounts to an abuse of Canada’s extradition law. It is an unwarranted deprivation of liberty that Dr. Diab should be torn from his home and sent to a foreign country where he may languish for years in detention while an investigation – that may not even lead to the prosecution of Dr. Diab – drags on.

#### **(e) Canada’s Refusal to Seek Assurances**

26. The Canadian Minister of Justice, Mr. Nicholson, has refused to seek assurances that, if a trial were held in France, unsourced and anonymous intelligence that cannot be challenged in court will not be used against Dr. Diab. Mr. Nicholson has also refused to seek assurances that Dr. Diab will be permitted to challenge the handwriting evidence presented against him at trial. This is despite the fact that the French authorities have informed Mr. Nicholson that the investigative dossier against Dr. Diab still includes the previous (discredited) French handwriting reports that are based on someone else’s handwriting (rather than on Dr. Diab’s).

27. Mr. Nicholson has also refused to ascertain or investigate whether the unsourced and uncircumstanced intelligence against Dr. Diab is the product of torture or cruel, inhuman or degrading treatment.

28. Absent such assurances, the extradition of Dr. Diab represents a serious violation of the principles of fundamental justice, due process, and fair trial. The right to fair trial is protected in international law. The 'UN Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism' has stated that extradition to face the risk of a manifestly unfair trial can violate the principle of non-refoulement. [4]

#### **IV. SUMMARY**

29. The extradition case against Dr. Hassan Diab raises serious concerns about human rights in Canada. The extradition process in Canada has deprived Dr. Diab of his liberty and committed him for extradition despite the fact that the requesting state (France) wants him merely for questioning. The case against Dr. Diab is anchored in secret, unsourced intelligence that may be the product of torture. Exonerating evidence (palm prints and finger prints) that point to Dr. Diab's innocence has been suppressed. The handwriting evidence on which the extradition committal is based is deeply flawed.

30. Furthermore, the government of Canada has refused to seek assurances that, if a trial were held in France, secret intelligence will not be used against Dr. Diab, and that Dr. Diab will be permitted to challenge the evidence presented against him.

31. Such an unjust extradition process may have been allowed to continue in part because of Dr. Hassan Diab's ethnic and religious background. In the name of an extradition treaty and comity between two states, Canada has violated Dr. Diab's rights. We are very concerned that this may lead to further unfair processes and injustices for persons suspected of crimes by foreign states.

#### **V. RECOMMENDATIONS**

32. We urge Canada to reform its extradition law and protect individuals in Canada from unjust and abusive extradition proceedings. We call upon Canada to refuse extraditions to requesting states that use secret, unsourced intelligence or intelligence that may have been derived from torture as trial evidence. Canadian standards of evidence should apply to extradition cases, and Canada should not extradite individuals when they are wanted merely for questioning. Canada's extradition law must take into account Canada's human rights obligations, including the presumption of innocence, the right to a fair trial, the right to disclosure of evidence, and all other due process rights.



## REFERENCES

1. This paragraph was part of the submission that Dr. Hassan Diab's lawyer, Mr. Donald Bayne, made to the Minister of Justice in August 2011.
2. Human Rights Watch report, "Preempting Justice: Counterterrorism Laws and Procedures in France, July 2008, <http://www.hrw.org/reports/2008/07/01/preempting-justice-0>
3. To read the committal decision by Justice Maranger, visit <http://ccla.org/wordpress/wp-content/uploads/2011/06/Diab-Decision-June-6.pdf>
4. Report by the Canadian Civil Liberties Association to the UN Committee against Torture, May 2012, <http://ccla.org/wordpress/wp-content/uploads/2012/05/FINAL-CCLA-UNCAT-MAY-2012.pdf>