



**BY HAND**

16 July 2018

Hon. Jody Wilson-Raybould, P.C., M.P.  
Minister of Justice and Attorney General of Canada  
House of Commons  
Ottawa ON K1A 0A6

**RE: Independent external review into the case of Dr. Hassan Diab**

Dear Minister,

We write in reference to the appointment of an independent external review of the case of Dr. Hassan Diab. With great respect, we are disappointed that the government has decided not to appoint a public inquiry under the *Inquiries Act* to fully and openly consider this matter. Our organizations have significant concerns about the scope of the review established by the government and the tools available to it.

In our open letter to you of May 2, 2018, we asked for an independent commissioner to be appointed to consider the issues raised by Dr. Diab's case, including:

- The actions of Canadian government lawyers throughout the extradition process, including the appropriateness of the assistance provided to the French government, the truthfulness of statements about the progress of the case that were made in Court and the reasons for decisions not to share exculpatory evidence with Dr. Diab's legal team (and, we add, not to make them available to the court).
- Possible reforms to the Extradition Act to address any statutory limitations or weaknesses that allowed this extradition to go ahead on an evidentiary basis that the presiding judge himself described as highly problematic.
- Whether Canadian officials acted quickly enough and with sufficient diligence as concerns emerged about Dr. Diab's lengthy period of detention without charge in France.

- Appropriate redress to Dr. Diab and his family, including an official apology and appropriate compensation, for actions or inaction of Canadian officials that may have contributed to the human rights violations and miscarriage of justice he experienced.

We consider that the review must examine all of the above issues in order to be credible. Your colleague, the Honourable Chrystia Freeland, Minister of Foreign Affairs, stated that she was pleased with this review being announced in late May in order to understand why Dr. Diab was sent from Canada to France. Unfortunately, there are a number of key issues that are not explicitly included in the scope of the review, and that we fear may be ignored with the result that a full picture of why Dr. Diab was sent from Canada to France may not emerge from this review.

### **Shortcomings in the Extradition Act must be considered as part of review**

The terms of reference for the independent external review do not appear to allow any consideration of whether reforms to the Extradition Act are needed in light of the fact that Dr. Diab was committed for extradition on the basis of evidence that the extradition judge deemed to be “suspect” but that nevertheless had to be accepted as presumptively reliable. Instead, the review will assess only whether the law and Department of Justice practices and procedures were followed. With respect, this is inadequate and, in fact, entirely misses one of the main reasons this review is necessary. The low evidentiary threshold and weak procedural safeguards of the Extradition Act made the egregious experience of Dr. Diab and his family possible. A review that fails to consider the limitations or weaknesses in the Act will provide an incomplete picture to the government of Canada, to Parliament and to the public of what may need to be fixed in order to prevent another Canadian from facing an ordeal like that which ensnared Dr. Diab.

### **France’s actions leading up to Dr. Diab’s committal for extradition must not be insulated from review**

We note that the reviewer may assess whether there are specific concerns that need to be addressed with France “with respect to Dr. Diab once surrendered to France,” and that in your letter of May 29, you note the need for reflection on Dr. Diab’s three-year period in custody in France. We appreciate that France’s actions after Dr. Diab’s handover will be within the scope of the review. We are concerned, however, that the terms of reference do not explicitly set out that the reviewer may consider France’s conduct prior to Dr. Diab’s surrender. While the reviewer may consider the correspondence between Canadian and French officials, France’s request, and the evidence that France provided in support of that request, it appears as though the

reviewer may not interview current or former officials in the French government who may be able to shed light on French conduct leading up to the committal.

As you are no doubt aware, subsequent to our letter of May 2, 2018, CBC News reported on June 20, 2018 that “France was aware of — and failed to disclose — fingerprint evidence that ultimately helped to clear Hassan Diab of committing a terrorist attack when it made its formal extradition request to Canada. [...] French officials did not share fingerprint comparison evidence in their possession with their Canadian counterparts. In fact, court documents show French prosecutors denied the evidence even existed.”<sup>1</sup> If the review is unable to consider or comment upon French actions or omissions in the process of cooperation with Canada on Dr. Diab’s extradition, is unable to consider documents that describe France’s involvement in this case that may go beyond the correspondence, request and evidence provided by France (such as those released to CBC), and is limited only to a review of correspondence and evidence received by Canada, the review is bound to produce an account of the events in this case that is at best incomplete and at worst misleading.

### **Reviewer’s access to documents and evidence in Canada’s possession must not be subject to France’s permission**

We note that you indicate to the reviewer that he will have the cooperation of Justice counsel and staff, and “full access to departmental files and correspondence respecting the Diab extradition, and any related mutual legal assistance request, subject to any limits required by law, including privacy or international relations obligations.” You further state that, should the reviewer request it, “waivers or consents respecting any such limits on access will be reasonably sought by the Department of Justice.” Dr. Diab’s case is one in which a Canadian family was significantly harmed by both Canada and France, working in collaboration with each other. In attempting to assess what happened in this case, it is unacceptable to us that the reviewer would be stymied by having documents in Canada’s possession withheld from him out of concern for “international relations obligations”. It is not clear to us how concerns for France’s preference to shield certain documents or evidence from disclosure to the reviewer might constitute a “limit required by law.” If CBC’s reporting that France acted unethically in this case is accurate, France may have a strong interest in objecting to the production of certain documents to the reviewer in order to obscure its conduct. The strong public interest in a full understanding and accounting of the events in Dr. Diab’s case, in our view, must supersede international relations concerns and any objection to production of documents expressed by France.

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<sup>1</sup> CBC News, “France told Canada key evidence did not exist in Hassan Diab terrorism case” (June 20, 2018) accessed at <https://www.cbc.ca/news/politics/hassan-diab-france-evidence-1.4714307>.

### **Lack of opportunity to cross-examine witnesses under oath may hinder the review's ability to establish the truth**

While your press release announcing the review indicates that the reviewer “will be given the tools, access and discretion necessary to conduct a thorough and independent review of the case”, we are concerned that the process that has been outlined will not be sufficient to uncover all relevant facts and does not permit sufficient testing of the statements that will be made to the reviewer. While the reviewer will be able to speak to Justice counsel and Global Affairs Canada, neither Dr. Diab nor anyone else will have the ability to cross-examine such individuals in respect of their claims. Documents obtained by the CBC described that Department of Justice counsel collaborated actively with France to generate new evidence against Dr. Diab, that they may have misled the Court, and that they withheld evidence from the Court and Dr. Diab. Especially in light of these contentious allegations, the ability to rigorously test statements under oath as part of a fact-finding process is crucial, and we are concerned that the reviewer has not been given the appropriate tools to ensure this testing occurs.

### **The terms of reference fail to require the result of the review to be made public**

In our letter of May 2, we called for a public inquiry into Dr. Diab's case. Neither the terms of reference for this review, nor your press statement, offer any assurance that the result of the review will be shared with the public or with Parliament. We hope that the failure to make this explicit was simply an omission of the obvious: the report must be provided to Dr. Diab and it must be made public. We expect that the statement in the terms of reference that the reviewer must make his own assessments and conclusions will mean that it is released without editing by the government.

In conclusion:

- We ask you to indicate how the government intends to ensure a review of the critically important question of how potential shortcomings in the *Extradition Act* played a role in Dr. Diab's case, if it is not to be a subject within the scope of the independent external review.
- We ask you to ensure that the reviewer may interview individuals under oath, that transcripts of that questioning be made available to Dr. Diab and his counsel, and that in the absence of an opportunity for cross-examination, Dr. Diab and his counsel be given an opportunity to provide questions to the reviewer that he may choose to put to interview subjects. Further, Dr. Diab and his counsel should be afforded an opportunity to suggest supplementary follow-up questions based on the initial interview transcripts.

- We ask you to confirm that France's actions leading up to the committal of Dr. Diab, and all relevant documents about those actions, are within the scope of the review.
- We ask you to confirm that all relevant documents and evidence in Canada's possession will be provided to the reviewer, regardless of France's possible preference to the contrary.
- We ask you to confirm that the reviewer's report will be made public.
- In addition, since the independent external review appears to have no ability to consider or to recommend redress to Dr. Diab and his family. We ask you to clarify how this important question will be dealt with.

Finally, we wish to point out that appointing a retired judge would have sent a clearer signal to the public as to the independence of this review. In stating this, we make no critique of Mr. Segal, whom we understand to be a public servant of high integrity and a highly-skilled lawyer.


Regardless of who has been appointed we are concerned that the scope and the tools that have been assigned to the reviewer will be an obstacle to his presenting a full picture of what happened in Dr. Diab's case, and to his formulation of recommendations that could help to ensure no Canadian is subjected to such treatment in the future.

We thank you for your time and consideration of this matter.

Sincerely,



Alex Neve  
Secretary General  
Amnesty International  
Canada (English Branch)



Josh Paterson  
Executive Director  
BC Civil Liberties  
Association