

Legitimizing torture

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This morning (<http://www.ottawacitizen.com/life/Former+professor+faces+extradition/4897574/story.html>), Ontario Superior Court Justice Robert Maranger signed a committal order for Hassan Diab's extradition to France (<http://www.cbc.ca/news/canada/story/2011/06/06/ott-hassan-diab-extradition.html>), based primarily on handwriting evidence that Mr. Justice Maranger himself described as “problematic” and “confusing”. As is usual in extradition proceedings, France’s request must be first reviewed by a judge and found reasonable before the Minister of Justice can authorize the extradition. During the extradition hearing, France’s position is put forward by the Canadian Department of Justice.



Darren Brown/QMI Agency

Mr. Diab, as readers of these pages may recall, is a former lecturer at Carleton University and the University of Ottawa whose extradition is being sought by the French, in connection with a bombing in Paris that took place over 30 years ago.

The primary evidence submitted in support of Mr. Diab’s extradition had consisted of the handwriting analysis and “intelligence” information from unidentified sources. (As outlined in [our earlier post](http://nationalecurity.bccla.org/2011/02/18/torture-in-the-court/) (<http://nationalecurity.bccla.org/2011/02/18/torture-in-the-court/>), the use of unsourced intelligence in judicial proceedings is extraordinarily problematic, given the very real possibility that the intelligence is information derived from torture.)

The handwriting evidence was vigorously challenged by Mr. Diab throughout the extradition proceedings. The first two handwriting experts offered by France to support its extradition request were so thoroughly discredited by the defence experts that France actually withdrew their evidence. And even though Justice Maranger eventually admitted the use of evidence tendered by France’s third “expert” on the subject, he acknowledged that the evidence was “problematic.”

In March, after the handwriting evidence was ruled admissible, the Department of Justice decided to withdraw the unsourced intelligence — likely to save itself the trouble of arguing for the admissibility of evidence whose provenance and reliability even the DOJ lawyers have no way of knowing. However, all this meant is that the unsourced intelligence wasn’t used to support Mr. Diab’s extradition. There was — and still is — no guarantee that Mr. Diab will not be tried and possibly convicted in France based on evidence from torture. To the best of our understanding, Canada has not sought assurances from France to prevent that from happening, not withstanding France’s [documented](http://www.hrw.org/en/reports/2008/07/01/preempting-justice-0) (<http://www.hrw.org/en/reports/2008/07/01/preempting-justice-0>) willingness

<http://www.hrw.org/en/reports/2010/06/28/no-questions-asked-0>) to use evidence derived from torture.

Why should France's willingness to use torture evidence cause us concern, if such evidence isn't being offered in a Canadian court?

First, Mr. Diab is a Canadian citizen, and it is troubling that Canada would permit one of its citizens to be extradited and prosecuted in a foreign jurisdiction that does not observe the same human rights safeguards that Canadian courts respect.

Second, the prohibition against the use of torture is universal and absolute. It is a principle enshrined in numerous international treaties and domestic laws, including Canada's *Criminal Code*. It is a principle that enjoys the same universal status as the prohibitions against genocide and slavery. But in order to give the absolute prohibition against torture meaning and effect, all activity related to the practice of torture must be likewise prohibited.

Permitting the use of evidence derived from torture is precisely the sort of legitimization of torture that cannot be allowed if we are to respect the anti-torture prohibition. So it is not enough to ensure that Canada doesn't engage in the act of torture. We must also make sure that Canada doesn't engage in conduct that would legitimize torture in any way.

Press reports indicate that Mr. Diab's lawyers are seeking to appeal today's decision. We'll be following this case as it develops and keep you updated.

Posted in National Security, News | Tagged Canada, Hassan Diab, Terrorism, Torture

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