

The Honourable Chrystia Freeland
Minister of Foreign Affairs
125 Sussex Drive
Ottawa, Ontario

The Honourable Jody Wilson-Raybould
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario

Omar Alghabra
Parliamentary Secretary to the Minister of Foreign Affairs (Consular Affairs)
House of Commons
Ottawa, Ontario

June 15, 2017

Dear Ministers Freeland and Wilson-Raybould, and Mr. Alghabra,

Amnesty International is alarmed at the continued detention of Lebanese-Canadian dual national Hassan Diab in Fleury-Mérogis Prison in France in the face of six orders from investigating judges that he be released on bail. We urge you to call on your French counterparts to take immediate steps to secure his release on bail.

Mr. Diab has been detained since November, 2014, when he was extradited from Canada to France to face criminal charges in connection with a 1980 bombing outside of a synagogue in Paris. Mr. Diab has consistently professed his innocence. On 24 April 2017, French investigative judges ordered Mr. Diab's release on bail for the sixth time, citing evidence that indicated that Mr. Diab was in Beirut during the Paris bombing and the lack of reasonable prospects for finding inculpatory evidence. Each time that Mr. Diab had previously been ordered released, the Court of Appeal quashed the release orders after appeals by the prosecutor. That is what has again transpired with this most recent release order. The prosecutor's appeal was granted on May 2nd. Mr. Diab remains in detention.

Concerns about the evidentiary basis for the accusations against Mr. Diab predate his extradition to France. In 2011 Justice Maranger of the Ontario Superior Court ordered Mr. Diab's committal for extradition despite expressing significant reservations about the reliability of the evidence and the prospects for his conviction.¹

¹ *Attorney General of Canada (The Republic of France) v. Diab*, 2011 ONSC 337 at paras 33, 93 & 191.

Prior to being surrendered to France, Mr. Diab's counsel challenged the extradition before the Ontario Court of Appeal on a number of other grounds, including the risk that Mr. Diab would be denied the right to fundamental justice by reason of France's alleged use of anonymous, unsourced and uncircumstanced evidence that may have been obtained by torture. Amnesty International applied for and was granted intervenor status before the Ontario Court of Appeal, to make submissions with respect to international human rights legal standards relevant to the concern that torture-tainted evidence might be in the extradition file.²

Amnesty International is concerned at the apparently arbitrary decisions to continue to block Mr. Diab's release on bail. The Court of Appeal has cited an apparent flight risk and a risk of "public disorder" as justifications for decisions to quash the release orders. Although accusations of grave offences can justify pretrial detention for reasons of public order for a limited period of time, the European Court of Human Rights has stressed that this ground must be "based on facts capable of showing that the accused's release would actually disturb public order."³

Mr. Diab's previous history of cooperation with Canadian and French authorities suggest that Mr. Diab would not in fact disturb public order and does not pose a flight risk. He respected bail conditions in Canada during legal proceedings in the lead up to his extradition. Similarly, in France in May 2016 after the prosecutor failed to immediately appeal a previous release order, Mr. Diab was released on bail for ten days and did not flee the country.

Moreover, the investigative judges' own doubts about the evidentiary basis of the investigation cast further doubt on the consistency of Mr. Diab's detention with international human rights norms.⁴

Amnesty International is also alarmed at the excessive length of Mr. Diab's detention without being formally charged or brought to trial. Those held in pretrial detention are guaranteed the right to a trial within reasonable period of time or to be released pending trial.⁵

² Amnesty International Canada (AI Canada) did not take a position on Mr. Diab's guilt or innocence, but did make extensive submissions on the proper legal test that the Court should apply. Specifically, AI Canada submitted that international human rights law requires Canada to refuse extradition in cases where there is a real risk of admission of evidence derived from torture at trial. The Ontario Court of Appeal accepted this standard, but found that in Hassan Diab's case Canada's Minister of Justice appeared to have been satisfied that there was no real risk of torture-derived evidence, despite not having expressly articulated this conclusion. See at *France v. Diab*, 2014 ONCA 374 at paras 246 & 272.

³ *Letellier v. France*, ECHR App. No. 12369/86, 26 June 1991 at para 51; *I.A. v. France*, ECHR App. No. 1/1998/904/1116, 23 September 1998 at para 104.

⁴ *McKay v. the United Kingdom*, ECHR App No. 543/03, Grand Chamber, 3 October 2006 at para 44 ("The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention").

⁵ *Convention for the Protection of Human Rights and Fundamental Freedoms* (adopted 4 Nov 1950, entered into force 3 September 1953) 213 UNTS 221, Eur TS 5, Art 5(3); *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art 9(3).

The UN Human Rights Committee and the European Court of Human Rights have not established a specific upper limit for pretrial detention and have instead adopted a contextual approach to establishing reasonableness of delays.⁶ However, the European Court of Human Rights has considered that “[q]uasi-automatic prolongation of detention” and a lack of sufficient reasoning in repeated decisions to prolong detention constitute violations of Article 5(3) of the European Convention on Human Rights.⁷ Amnesty International is concerned that appears to have been the case for Mr. Diab.

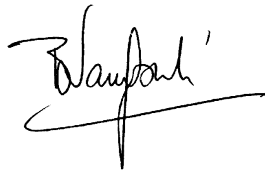
Hassan Diab has been held without charge, in pre-trial detention for 2 ½ years, despite six orders for his release on bail from the investigatory judge who has probed the case more thoroughly than any other official. Notably, we draw to your attention that were Mr. Diab still in Canada the pretrial delay would be deemed presumptively unreasonable according to the standards the Supreme Court of Canada outlined in *R v. Jordan*.⁸

Mr. Diab’s continuing detention in these circumstances contravenes France’s obligations under European and international human rights norms. The French Section of Amnesty International has raised our concerns about Mr. Diab’s case directly with the French government. Amnesty International urges the Canadian government to intervene with French authorities as well. We specifically urge that the Canadian government advocate for Hassan Diab’s release on bail without any further delay.

Sincerely,



Alex Neve
Secretary General
Amnesty International Canada
(English branch)



Béatrice Vaugrante
Directrice Générale
Amnistie internationale Canada francophone

⁶ *McKay v. the United Kingdom*, ECHR App No. 543/03, Grand Chamber, 3 October 2006 at paras 43-45; Human Rights Committee, *General Comment No 35: Article 9 (Liberty and security of person)*, UN Doc CCPR/C/GC/35, 16 December 2014 at para 37;

⁷ *Tase v. Romania*, ECHR App No. 29761/02, 10 June 2008 at para 40.

⁸ 2016 SCC 27.