Minister of Justice
and Attorney General of Canada

Ministre de la Justice
et procureur général du Canada

The Honourable / L'honorable Arif Virani, P.C., M.P. / c.p., député
Ottawa, Canada K1A 0H8

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Mrs. Lena Metlege Diab, M.P.
Chair
Standing Committee on Justice and Human Rights
House of Commons
Ottawa ON K1A 0H6

Dear Colleague:

Pursuant to Standing Order 109 of the House of Commons, I am pleased to respond on behalf of the Government of Canada to the Standing Committee on Justice and Human Rights' thirteenth report on *Reforming Canada's Extradition System*, which was tabled on June 7, 2023.

I would like to thank the committee for their study and thoughtful recommendations with respect to a wide range of issues in relation to the extradition regime in Canada. I would also like to express my sincere gratitude to all the witnesses who participated in this study.

Extradition regime in Canada
Before responding to the recommendations in the committee's report, some background on extradition in Canada might be helpful to provide useful context to inform that response.

Extradition is a critical tool to ensure the rule of law internationally, to combat impunity, and to protect people in Canada and internationally from criminal activity. It has become ever more important given the spread of transnational criminal organizations, including those involved in terrorism, drug trafficking, counterfeiting, and cybercrime. Canada uses extradition as a tool to return alleged criminals or sentenced persons back to Canada to face justice in our domestic justice system. Canada also uses extradition to help prevent our country from becoming a refuge and safe haven for persons accused or convicted of serious crimes in other states, while safeguarding the fundamental rights of those sought for extradition. Canada does so in a way that provides strong protection of the rights of the person, in keeping with the *Canadian Charter of Rights and Freedoms* and Canadian values.

Extradition internationally is founded on the principles of reciprocity, comity, and respect for differences in other jurisdictions. In Canada, extradition is largely based on treaties that establish reciprocal obligations between countries. These treaties are not directly enforceable in Canadian law but rather are implemented into domestic law through the *Extradition Act,* S.C. 1999*,* c.18 (the "Act"). The Act provides Canada with the legal basis upon which to extradite persons located in Canada, who are sought for extradition by one of Canada's extradition partners. It also provides the legal basis upon which Canadian competent authorities can seek the extradition of persons sought by Canada who are located in the jurisdiction of an extradition partner.

Extradition in Canada is conducted in conformity with the Act, Canada's international treaties, and the *Canadian Charter of Rights and Freedoms*. All individuals are afforded fair treatment and due process.

The Act came into force in June of 1999. It replaced the century old *Fugitive Offenders Act* that provided a process of rendition between Commonwealth countries and the then-existing Act, serving to consolidate all extradition under a single regime. It constituted a significant overhaul of the law governing extradition in Canada. The single comprehensive extradition scheme created by the Act ensured consistency with modern legal principles and international developments in the area of extradition. It enabled Canada to better cooperate with a variety of extradition partners, including those with a different extradition system. The Act was developed following external consultations with experts in extradition law, including academics, members of the Bar, as well as provincial representatives that assisted in developing the legislative proposals.

In addition to providing the legal basis pursuant to which Canada implements its international obligations under its bilateral and multilateral extradition treaties, the Act serves several pressing and substantial domestic objectives. As the Supreme Court of Canada has underlined on several occasions, these important objectives include protecting the public against crime through its investigation; bringing fugitives to justice for the proper determination of criminal liability; ensuring—through international cooperation—"that national boundaries do not serve as a means of escape from the rule of law"; and protecting the rights of the person sought through a careful balancing of the broader purposes of the Act with the individual's rights and interests at each stage of the process, including the Minister's decision to order surrender at the final stage.

Under Canada's extradition regime, the Minister of Justice is responsible for the administration of the Act and for implementing Canada's extradition agreements with its partners. In making and executing extradition requests, the International Assistance Group (IAG) in the Department of Justice Canada is responsible for exercising the Minister's delegated authority under the Act. The IAG reviews all extradition requests and authorizes the commencement of judicial proceedings in relation to incoming requests, as appropriate and in accordance with the Act. At the final stage of the extradition process, the Minister of Justice must personally make the decision whether to order persons surrendered in accordance with extradition requests. Extradition partners to which Canada can extradite under the Act are as follows:

- Countries with which Canada has an extradition agreement (bilateral or multilateral treaties);
- Countries with which Canada has entered into a case-specific agreement; or
- Countries or international tribunals whose names appear in the schedule to the Act ("designated partners").

Canada currently has 51 bilateral extradition treaty partners and 34 designated partners in the Act. In addition, Canada is a party to several multilateral treaties that also contain provisions on extradition, including the United Nations Convention Against Transnational Organized Crime (UNTOC); the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and the United Nations Convention Against Corruption (UNCAC). Canada is also bound by a number of United Nations Security Council Resolutions that compel international assistance from Member States, for instance, UNSCR 1373 (2001) and its requirements of denying safe haven to those who finance, plan, support, or commit terrorist acts and ensuring that such persons are brought to justice.

Upon receipt of a request from an extradition partner, it is reviewed by departmental officials to ensure that it meets the requirements of the applicable treaty, the Act and the Charter. Requests that clearly do not meet Canada's requirements are rejected at the outset. If an extradition request meets the required initial conditions of the Act, the applicable treaty, and the Charter, as determined by government officials, the next stage is judicial scrutiny. The Canadian courts play an important role in Canada's extradition process. At the committal phase of the process, the extradition judge is required to

determine what evidence is admissible under the Act, and, where the person is sought to stand trial, whether the admissible evidence is sufficient to justify the committal of the person for trial in Canada if the conduct had occurred in this country, including evidence of identification. If the person is sought for the imposition of a sentence, the judge must determine if the conviction was in respect of conduct that would be punishable in Canada.

Someone sought for extradition also has the right to invoke the doctrine of abuse of process during the committal phase of the proceedings. Specifically, the courts can stay the extradition proceeding where the conduct of the requesting state is so unfair to the person sought or disrespectful of the Canadian extradition process that to continue the proceedings would constitute an abuse of the judicial process. Importantly, the individual sought may appeal the decision of the extradition judge to the relevant court of appeal.

The courts also play an important role in reviewing the Minister's decision to surrender where the person sought is of the view that the decision is unreasonable. Should the person sought for extradition be of the opinion that the Minister's decision to order their surrender was unreasonable, they have the right to apply for a judicial review of the Minister's decision to the relevant court of appeal. If the court of appeal upholds the decisions of the extradition judge and the Minister, the individual may seek leave to appeal either or both decisions to the Supreme Court of Canada. The Supreme Court of Canada will hear appeals that raise issues of public importance.

Response to Committee report

With the above background as context, the Government has carefully reviewed the committee's recommendations and is pleased to say that it welcomes the constructive suggestions contained in it and, for many of the recommendations, is already moving forward with new or existing processes that respond to those recommendations. Grouping the responses thematically, the Government's responses are set out below.

Review of Canada's obligations at the International Level (recommendation 3)

The Government agrees that Canada's extradition law and processes be examined to ensure that these reflect international standards, and I am pleased to inform the committee that such an examination is carried out on a periodic basis. For instance, several international bodies undertake periodic reviews of Canadian implementation of obligations in the area of extradition, including under the UNCAC and the UNTOC, and in connection with the Financial Action Task Force (FATF) (the FATF includes most major countries in the world and leads global efforts to counter the threats of the abuse of the financial system by criminals and terrorists, and strengthens its capacity to respond to these threats that all countries face).

The successive review of Canadian implementation of its international obligations in the area of extradition through these mechanisms demonstrates that our existing extradition regime meets international requirements, such as the FATF requirement to constructively and effectively execute extradition requests (in relation to money laundering and terrorist financing) without undue delay; and to take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organizations. To date, Canada has been found to be compliant with these requirements. The ongoing nature of those reviews ensures that any changes to Canada's extradition system will also be subject to review going forward. FATF will next review Canada in 2025. Going forward, Canada will also be subject to review for its implementation of its obligations in the area of extradition established under the UNTOC through the Mechanism for the Review of the United Nations Convention Against Transnational Organized Crime and the Protocols thereto. I am pleased to note that this review mechanism includes parameters for engaging civil society to enhance the quality of the review process. This aspect of the review process was strongly supported by Canada during the negotiations to establish the Review Mechanism.

Review of the extradition regime, including the Act (recommendations 5, 6, 8-18, and 20)
The Act is a key component of Canada's commitment to the rule of law and a well-functioning extradition process that responds to the transnational nature of crime and provides safeguards for the person who is subject to an extradition request. It is an important tool of international co-operation used by Canadian and foreign police and prosecutors to fight serious crime domestically and at a global level.

The Government recognizes the importance of ongoing review of the Canadian extradition system. What is more, a comprehensive review of the extradition system, including the Act, could provide an opportunity to consider whether changes would be required or desired. Such a task could build on the regular review of Canada's extradition policies and legislation not only internationally, as noted above, but domestically within Government and by Canadian courts.

Canada's appellate courts, including the Supreme Court of Canada, have found Canada's extradition process, including the Act, to be fair and consistent with respect to the constitutional rights of the person sought for extradition. For example, the principles of comity and good faith and the roles of the Minister and the judiciary were addressed in *USA v Ferras*; *USA v Latty* [2006] 2 SCR 77; *Argentina v Mellino* 1987 [1987] 1 SCR 536; *USA v Burns* [2001] 1 SCR 283; *Kindler v Canada (Minister of Justice)*[1991] 2 SCR 779*;* the requirement of double criminality is considered in *Canada (Justice) v Fischbacher* [2009] 3 SCR 170; requirements governing disclosure and the admissibility of Canadian gathered evidence are addressed in *USA* v. *Dynar* [1997] 2 SCR 462, *USA v. Anekwu*, [2009] 3 SCR 3; the use of assurances in *India v Badesha* [2017] 2 SCR 127; the application of section 6 of the *Charter* to extradition (*USA v Cotroni* [1989] 1 SCR 1469; *Sriskandarajah v USA* [2012] 3 SCR 609); and discrepancies in sentencing regimes (*USA v. Jamieson*, [1996] 1 S.C.R. 465; *USA v. Whitley* 94 C.C.C. (3d) 99 (Ont. C.A.), aff'd by and reasons adopted at 1996 CanLII 225 (SCC).

In doing so, these courts have consistently upheld the Act's constitutionality. They have also provided important guidance on the core principles of extradition law and on how various provisions of the Act should be interpreted in order to ensure its implementation meets Canada's constitutional requirements and respects the Charter rights of those sought for extradition. Existing caselaw has addressed the issue of sentence disparity concluding that a disparity in sentence is only relevant to the extent that it would violate the Charter, such as the death penalty or corporal punishment. Importantly, the Government requires diplomatic assurances against the use of the death penalty in all cases in which the possibility of the death penalty arises, but recognizes that diplomatic assurances may not be sufficient to address concerns about torture. For this reason, Canada's legislative requirements, including subsection 44(1) of the Act that precludes the Minister of Justice from ordering the surrender of a person if satisfied that it would be unjust or oppressive to do so, having regard to all the circumstances, and constitutional requirements that extradition comply with the Charter, preclude extradition where there is a substantial risk of torture. Through Canada's extradition process, it is ensured that individuals' human rights and Charter rights are protected.

In making its recommendations, the committee gave particular consideration to the extradition case of Dr. Hassan Diab, which was the subject of an independent external review by Mr. Murray D. Segal, former Deputy Attorney General of Ontario, undertaken at the request of the Government. Mr. Segal's report, the *Independent Review of the Extradition of Dr. Hassan Diab*, was released in December 2019. It provides useful information about Dr. Diab's extradition proceedings, including explaining the complexities of the extradition process and the differences between the legal system in France and the system in Canada. Mr. Segal concluded that the Act and treaty obligations in this case were followed in Dr. Diab's extradition proceedings, and that Department of Justice counsel and the Minister acted in accordance with the law, as set out in the Act and interpreted by the courts. He nonetheless made 14 recommendations aimed at promoting fairness, efficiencies, and transparency in the extradition process. I am pleased to inform the committee that of the fourteen recommendations contained in the Segal report, all but one has been implemented. This includes the practice of disclosing any

exculpatory evidence in the possession of the government to the person sought for extradition. Work is ongoing to implement the final outstanding recommendation: updating the IAG's existing public-facing Deskbook. When completed, the updated Deskbook will serve to increase public awareness of the extradition regime and improve transparency.

Any broad comprehensive review of Canada's extradition system would need to make sure that perspectives across Canada and internationally are engaged. As extradition engages various stakeholders and partners including law enforcement, prosecutors, provinces and territories, Indigenous partners, and foreign partners, it would be important to ensure that such a review include them. A broad engagement would be important in ensuring that any future changes take into account opportunities and challenges for key partners and stakeholders, particularly those involved directly in the extradition process, including those noted above. Such a broad consultation would be important for ensuring that Canada's extradition system reflects international standards and that Canada is able to meet its obligations to its treaty partners to cooperate in the fight against serious crime while ensuring that human rights safeguards for the person sought for extradition are maintained.

Review of bilateral extradition treaties (recommendations 1 and 2)
The Government agrees that the review and modernization of treaties is important. Over the years, Canada has updated a number of its treaty relationships, both to reflect changed circumstances, as well as new developments in extradition practices globally. Most recently, Canada suspended the Agreement between the Government of Canada and the Government of Hong Kong for the Surrender of Fugitive Offenders shortly after China's enactment of new national security laws on Hong Kong in 2020.

Since 2020, the Government has been examining all its existing extradition partnerships and considering the viability of any potential new extradition partners as part of an initiative to ensure that Canada's treaties reflect modern practices and that Canada's treaty network reflects modern extradition practices and Government of Canada strategic priorities, including in the areas of law enforcement, national security, and foreign relations. These processes include an assessment of whether agreements align or would align with human rights obligations and other essential Canadian interests. As well, existing tools are available to evaluate the human rights records of foreign states, and these can be cross-referenced against a comprehensive list of Canada's extradition treaties to determine which treaties should be examined more closely with a view to determining the appropriateness of the treaty relationship in light of human rights considerations. For example, cross-referencing can be done against the list of countries upon which Canada has currently imposed sanctions for human rights violations under the *United Nations Act*, the *Special Economic Measures Act*, or the *Justice for Victims of Corrupt Foreign Officials Act*.

It is also worth noting that the existence of a treaty does not mandate the acceptance of a request for extradition. Requests from treaty partners can and have been rejected on the basis of human rights concerns which are considered in every case by the Minister before extradition is ordered.

The Minister of Foreign Affairs must approve the launch of negotiations for an extradition treaty with a particular country or jurisdiction. The Minister of Justice and the Minister of Foreign Affairs have jointly decided upon a list of priority countries with which Canada is, or will be, engaging to modernize the extradition treaty relationship. This is an ongoing process, and the priority list may be modified as the Department of Justice Canada assesses the legal and policy implications of a proposed treaty relationship and Global Affairs Canada assesses associated foreign policy considerations. While the treaty negotiations constitute confidential state-to-state communications, finalized agreements are subject to the *Policy on Tabling of Treaties in Parliament* (the "Policy"). The Policy is intended to ensure that instruments, governed by public international law and concluded by the Government of Canada, are tabled in the House of Commons following their signature or adoption by other procedure, and prior to their ratification.

Under the Policy, even if the treaty does not require implementing legislation, the Government will observe a waiting period of at least 21 sitting days after a treaty is tabled before taking the legal steps to bring the treaty into force. The Policy serves the important objective of ensuring that all instruments governed by public international law, between Canada and other states or international organizations, are tabled in the House Commons following their signature or adoption by other procedure and prior to Canada formally notifying that it is bound by the instrument. During the 21 sitting day period, members of Parliament can initiate a debate. Members of Parliament might also request a vote on a motion regarding the treaty in the House of Commons. The Government does not seek the legal authority to be bound by the instrument before this 21-day period has been observed.

With respect to the withdrawal from treaties, Canada considers the risks and benefits of withdrawing from a particular extradition treaty on a case-by-case basis, including through its existing processes that evaluate human rights records of States, including where sanctions have been levied.

Increased collaboration between departments within the federal government regarding diplomatic assurances (recommendation 7)

Recognizing that surrender must be refused if it would be unjust or oppressive or otherwise violate the principles of fundamental justice protected by section 7 of the Charter, the Government acknowledges the importance of federal departments working closely together, including with respect to diplomatic assurances. The Department of Justice Canada and Global Affairs Canada collaborate, as appropriate, in determining when a particular request for extradition necessitates seeking diplomatic assurances and in assessing whether these can be or should be relied upon in relation to both the well-being of the individual and compliance with Canada's international legal obligations. For example, diplomatic assurances might be sought to guarantee Canadian consular officials are granted regular access to the person following their surrender, or to ensure a certain standard of medical care, or confirm that the state seeking extradition will respect the "rule of specialty", meaning that it will not prosecute the person for offences other than those for which their surrender was ordered.

It is important to note, however, that other countries' criminal justice systems determine their own timelines for their domestic judicial proceedings. Just as Canadian courts would not appreciate attempts to dictate timelines to them, attempts to do so with other countries' courts would be unlikely to be fruitful and could negatively impact diplomatic relations. Global Affairs Canada monitors the adherence to assurances that have been provided in accordance with the Canadian Consular Services Charter.

Transparency, Public awareness building and GBA + training (recommendations 4, 18, 19)

The Government shares the view that transparency, public awareness building, and training in gender-based analysis (GBA) is important. Indeed, the Government has had a longstanding commitment to apply a gender-based analysis (GBA) in the development of policies, programs, and legislation beginning with early commitments following the United Nations' fourth World Conference on Women in Beijing in 1995. Since then, the scope and depth of the analysis has expanded from its original focus on mainstream gender considerations. GBA Plus (GBA+) is an evolution of the initial GBA and considers many other identity factors such as race, disability, sexuality, income, religion, age, gender identity, gender expression, language, and geographical location, and how the interaction between these factors influences the way individuals experience government policies and initiatives. It provides a rigorous method for the assessment of systemic inequalities, as well as a means to assess how diverse groups of people may experience policies, programs, and initiatives.

The Government of Canada is dedicated to ensuring that its activities are aligned with its commitments to GBA+ to help ensure that federal legislation, policies, programs, and other initiatives are responsive, inclusive, and reflective of the diverse experiences and realities of individuals in order to address inequities and barriers. I can confirm that all

officials at the Department of Justice Canada, including those in the IAG, are mandated to take GBA+ training. This supports the implementation of the Charter and the *Canadian Human Rights Act* in government action and furthers Canada's international and domestic commitments to consider gender and diversity in federal legislation, policies, and programs.

On the issue of transparency, the Government of Canada attaches a high priority to open government, as reflected by its membership in the Open Government Partnership, a global initiative that promotes open government principles and activities around the world, and its most recent National Action Plan on Open Government (2022-2024). With respect to increased transparency and improved public awareness of Canada's extradition regime, the Department of Justice Canada has been increasing the amount of statistical information related to extradition available on its website, and will continue to add to the information that is publicly available. Currently, the website provides statistics pertaining to extradition with Canada's most active extradition partner, the United States. It is of note that requests to and from the United States comprise approximately 80 percent of all extradition requests handled by the Department.

The Government does note that privacy, public safety, and other considerations limit the information on extradition that can appropriately be made publicly available, especially with respect to active extradition requests. Canada makes and receives only a small number of requests annually from countries other than the United States. As a result, publishing statistics on active requests for extradition from these countries comes with the significant risk of identifying sensitive ongoing investigations or undermining efforts to locate persons sought for extradition who may be actively fleeing from the jurisdictions seeking their extradition. Therefore, in determining what information can be made public and at what stage of the proceeding, consideration would need to be given to the privacy rights of individuals involved, Canada's ability to locate and arrest a person sought for extradition, or the impact on investigations and prosecutions of persons sought by Canada. Bearing this in mind, the Department is continuing to examine further possibilities around increasing the information available to the public about extradition and is actively working on increasing the statistical information made available to the public through the Justice Canada website.

Conclusion

The Government is committed to a fair, effective, and efficient extradition regime that prevents Canada from becoming a refuge and safe haven for persons accused or convicted of serious crimes in other countries, while safeguarding the fundamental rights of those sought for extradition. Reciprocally, such a regime also ensures that Canada is able to extradite back to Canada to face justice those alleged to have committed serious crimes in Canada. Given the nature of the committee's recommendations and the concerns expressed in the report, the Government intends to continue to carefully review the report and its recommendations and more generally to consider how to improve Canada's extradition system. This report will be very helpful in informing that process.

Sincerely,

The Honourable Arif Virani, P.C., M.P.
Minister of Justice and Attorney General of Canada