

PUBLIC

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Fear of forcible return/Fear of torture or other ill-treatment / Fear of unfair trial

SPAIN

Ali Aarrass (m),  
Mohamed el Bay (m)

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Ali Aarrass and Mohamed el Bay are at imminent risk of being extradited to Morocco, where they would be at risk of incommunicado detention, torture and other ill-treatment as well as an unfair trial. The Spanish national criminal court (*Audiencia Nacional*) approved the extraditions in late 2008 and they must now receive final confirmation from the Council of Ministers. If the extraditions go ahead Spain will be violating its obligations under international human rights law, including the UN Convention against Torture.

Ali Aarrass and Mohammed el Bay were arrested in the Spanish city of Melilla on 1 April 2008 on the basis of international arrest warrants requested by Morocco on 28 March 2008. The Spanish national criminal court authorised the extradition of Ali Aarrass to Morocco on 21 November 2008. The decision was confirmed on appeal on 23 January 2009, on the assurance from the Moroccan government that Ali Aarrass would not be sentenced to the death penalty or life imprisonment without parole. Ali Aarrass had claimed that his joint Belgian-Moroccan nationality should bar his extradition to Morocco, but the court rejected this argument.

According to Amnesty International's knowledge, Ali Aarrass has appealed to the Constitutional Court, but this appeal does not have any suspensive effect on the extradition process. The extradition request is now awaiting final approval by the Council of Ministers, which may happen at any time.

The National Criminal Court authorised Mohamed el Bay's extradition on 22 December 2008. This was confirmed on appeal on 12 March 2009, despite the fact Mohamed el Bay has lived in Spain since birth and has been a Spanish citizen since 1976. Under the 1997 extradition agreement between Spain and Morocco, the extradition of a state's own national is prohibited. However, the court relied on a Moroccan ID card in Mohamed el Bay's name, found at his home at the time of arrest, as evidence that he unlawfully held dual nationality and could therefore be legitimately returned to Morocco as a Moroccan citizen. According to Amnesty International's knowledge, Mohamed el Bay has not been formally stripped of his Spanish nationality. The extradition request is now awaiting approval by the Council of Ministers.

Both Ali Aarrass and Mohamed el Bay are wanted in Morocco on terrorism-related charges and are accused of belonging to a terrorist network headed by dual Moroccan-Belgian citizen Abdelkader Belliraj. In February 2008, Moroccan authorities arrested some 35 individuals and announced the dismantlement of the terrorist network headed by Abdelkader Belliraj which was allegedly plotting "terrorist" attacks. Ali Aarrass had been under investigation since 2006 by the Spanish National Criminal Court on terrorism-related charges, but on 16 March 2009 the court provisionally closed its investigation against him on the basis of lack of evidence.

Spain is a state party to several international treaties that expressly prohibit the return of anyone to a country where they would be at risk of torture, including the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## BACKGROUND INFORMATION

There was a sharp increase of allegations of torture and other ill-treatment of individuals suspected of terrorism following the bomb attacks in Casablanca on 16 May 2003. Judicial proceedings were brought against over 1,500 people suspected of involvement in the attacks or of planning or inciting other violent acts attributed to Islamist groups. Hundreds of those sentenced are alleged to have been tortured in custody, but the Moroccan authorities have failed to adequately investigate their complaints. Scores have received long prison sentences and over a dozen have been sentenced to death on the basis of "confessions" that they allege were extracted through torture and other ill-treatment.

While allegations of torture of individuals suspected of terrorism decreased in recent years after a peak following the Casablanca bombings in 2003, a number of individuals arrested in connection with the "Belliraj Cell" led by Abdelkader Belliraj (as is the case of Ali Aarrass and Mohamed el Bay) have reportedly been held incommunicado in secret detention centres and subjected to torture and other ill-treatment. Amnesty International received information that a number of individuals implicated in the "Belliraj Cell" case were arrested by the Directorate for the Surveillance of the Territory (Direction de la surveillance du territoire, DST). Reports indicated that a number of individuals arrested in connection with the "Belliraj Cell" case were taken to the Témara detention centre operated by the DST, despite the fact that according to the Moroccan Code of Criminal Procedure, DST agents are not authorized to arrest, detain or interrogate suspects as they are not members of the judicial police. It was reported that a number of detainees were held in garde à vue (pre-arraignment detention) for periods exceeding the 12-day maximum period allowed by Moroccan law. Furthermore, a number of detainees were reportedly held incommunicado for weeks without contact with the outside world in contravention of Moroccan legislation and international human rights law and standards. Amnesty International also received allegations that a number of the detainees faced torture and other ill-treatment during interrogation. In addition, a number of defence lawyers complained that the authorities failed to provide them with complete case files of their clients in breach of their right to an effective defence.

In the majority of cases where complaints about torture allegations have been made, investigations have either not been opened, have been dismissed or not adequately conducted, or have not resulted in perpetrators being prosecuted. To date, hundreds of Islamist detainees sentenced after the 2003 Casablanca bombings continue to demand a judicial review of their trials, which were tainted by unexamined claims of torture and other ill-treatment during questioning by the security forces.

### **RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in Spanish, English or your own language:**

- urging the authorities not to extradite Ali Aarrass or Mohamed el Bay to Morocco, as they would be at risk of incommunicado detention, torture and other ill-treatment, and an unfair trial;
- pointing out that the forcible return of Ali Aarrass or Mohamed el Bay to Morocco would be a breach of the principle of *non-refoulement* and a violation of Spain's obligations under the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **APPEALS TO:**

#### Minister of Justice

Excmo. Sr. D. Francisco Caamaño Domínguez

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**Fax:** +34 91 390 22 44

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**Salutation:** Dear Minister / Estimado Señor

#### Vice President

María Teresa Fernández de la Vega

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**Salutation:** Dear Vice President

and to diplomatic representatives of Spain accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.** Check with the International Secretariat, or your section office, if sending appeals after 2 June 2009.