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Communication No. 2008/2010

Views adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	Ali Aarrass (represented by counsel, Dounia Alamat, Christophe Marchand and Mohamed Ali Mayim)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	25 November 2010 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 26 November 2010 (not issued in document form)
<i>Date of adoption of Views:</i>	21 July 2014
<i>Subject matter:</i>	Extradition of a suspected terrorist to Morocco
<i>Substantive issues:</i>	Risk of torture and other cruel, inhuman or degrading treatment or punishment; arbitrary detention; double punishment; arbitrary or unlawful interference in private and family life; prohibition of discrimination
<i>Procedural issues:</i>	Non-compliance of State party with request for interim measures; other procedures of international investigation or settlement; failure to exhaust domestic remedies
<i>Articles of the Covenant:</i>	2, paragraph 3; 7; 9, paragraphs 1, 2 and 3; 10; 14, paragraphs 3 (a) and 7; 23; and 26
<i>Articles of the Optional Protocol:</i>	2; 5, paragraph 2 (a) and (b)



Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (111th session)

concerning

Communication No. 2008/2010*

Submitted by: Ali Aarrass (represented by counsel, Dounia Alamat, Christophe Marchand and Mohamed Ali Mayim)

Alleged victim: The author

State party: Spain

Date of communication: 25 November 2010 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 July 2014,

Having concluded its consideration of communication No. 2008/2010, submitted to the Human Rights Committee by Ali Aarrass under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Mr. Ali Aarrass, a Moroccan and Belgian national, born on 4 March 1962. He claims that his extradition to Morocco by the State party violated his rights under articles 2 (para. 3), 7, 9 (paras. 1–3), 10, 14 (paras. 3 (a) and 7), 23, and 26 of the Covenant. The author is represented by counsel.

1.2 On 25 November 2010, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, requested the adoption of interim measures under rule 92 of the Committee's rules of procedure, asking that the State party not extradite the author while the Committee examined his case. On 21 December 2010, the author's counsel informed the Committee that the State party had proceeded with the

* The following members of the Committee participated in the consideration of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvio, Mr. Dheerujall B. Seetulsingh, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.

author's extradition to Morocco on 14 December 2010, and that neither the defence counsel nor the author's family had received prior notification of this measure.

The facts as submitted by the author

2.1 The author was born in Melilla, Spain. As a teenager, he moved to Belgium to live with his mother. In 2005, he returned to live in Melilla to be near his father. In 2006, the National High Court launched an investigation into the author for the offence of joining a terrorist organization, for alleged membership in the Jihadist movement Harakat Al Moudjahidine Fi Al Maghrib ("Mujahideen Movement of Morocco") and for alleged involvement in the terrorist attacks on Casablanca, Morocco, on 1 May 2003. On 6 November 2006, the National High Court ordered his placement in pretrial detention and, on 7 November 2006, he was released on €24,000 bail and banned from leaving the country. Following various investigations over the ensuing months, the case was closed on 16 March 2009 for lack of evidence of an offence. Meanwhile, on 13 March 2008, the Appeals Court of Rabat, as part of a criminal trial known as the "*Belliraj* case", issued an international arrest warrant for the author for planning and committing terrorist acts in Morocco, among other offences. According to the Moroccan authorities, a terrorist network made up of members of the "Mujahideen Movement of Morocco" recruited the author in 1982. The author was suspected of maintaining ties in Algeria with individuals connected to the "Salafist Group for Preaching and Combat" and to Al-Qaida cells in the Maghreb, for the purpose of organizing paramilitary training camps in Algeria.

2.2 On 1 April 2008, pursuant to the international arrest warrant issued by the Moroccan courts, the author was detained in Melilla and brought before Investigating Court No. 5 in Melilla (the duty court). On 2 April 2008, the Court ordered his placement in provisional detention on the grounds that there was reasonable evidence that an offence had been committed and that he posed a flight risk. On 14 April 2008, the Court dismissed the author's appeal against provisional detention.

2.3 On 22 April 2008, Morocco requested that the Ministry of Justice of the State party extradite the author for the offences of setting up a criminal association, setting up an association for the organization and commission of terrorist acts as part of a conspiracy to severely undermine public order and assist anyone committing a terrorist act, pursuant to the Moroccan Criminal Code and Act No. 03/03 on combating terrorism.

2.4 On 30 April 2008, Investigation Court No. 1 of the National High Court (Court No. 1) authorized the author's provisional detention, without bail, pursuant to the international arrest warrant. The author appealed this decision. On 6 June 2008, Court No. 1 rejected the appeal and upheld his detention.

2.5 On 21 November 2008, the Second Section of the Criminal Chamber of the National High Court authorized the author's extradition to Morocco, provided that Morocco gave explicit assurance that he would not necessarily be sentenced to life imprisonment. The National High Court stated that the author could not be treated equally as a national of the State party — in other words, be spared extradition — on the basis that he was a Belgian national; that it was not for the Court to examine the evidence, only the formal criteria for authorizing or denying extradition; that the author had failed to demonstrate that the acts under investigation by Court No. 5 were the same as those for which extradition had been requested; that the allegations regarding Moroccan prison conditions had not been substantiated and were generic and based on media reports; and that, in accordance with

article 11 of the extradition treaty, the Moroccan courts could not sentence the author to death.¹

2.6 On 3 December 2008, the author filed an application for reconsideration of the decision of 21 November 2008.

2.7 On 23 January 2009, the Plenary of the Criminal Chamber of the National High Court upheld the decision of 21 November 2008 and, consequently, the authorization of the author's extradition, provided that it was carried out in compliance with article 11 of the extradition treaty. The National High Court considered, among other things, that the author's right to a defence had not been infringed by the rejection of his application for further enquiries given that the evidence revolved around facts that were common knowledge or irrelevant to the case. The Court had also studied an Amnesty International report on the human rights situation in Morocco, which mentioned, among other issues, the use of torture to obtain confessions and ill-treatment at the hands of prison staff and the security forces. However, the Court found that there was no proof that these violations were systematic or widespread or any evidence, even circumstantial, that the author ran a specific and real risk of inhuman or degrading treatment if he were extradited.

2.8 On 9 February 2009, the National High Court upheld the decision of 21 November 2008 and requested that the Ministry of Justice obtain from the Moroccan authorities the guarantees required in the decision of 23 January 2009.

2.9 On 23 March 2009, the author launched a remedy of *amparo* against the National High Court decision of 23 January 2009. He claimed that his rights to effective legal protection, to the use of relevant evidence for his defence, to the presumption of innocence, to equal treatment, to life and to physical and moral integrity had been violated, along with his right not to be subjected to torture and inhuman or degrading punishment and treatment.

2.10 By a note verbale of 14 April 2009, the Ministry of Justice of Morocco assured the State party that its judicial authorities were committed to observing the provisions of the extradition treaty. It recalled, however, that the treaty did not allow the requested State to make extradition subject to any conditions other than the exception provided for in the last paragraph of article 2, which did not apply in the case at hand.

2.11 On 14 August 2009, the National High Court stated that, in order to meet the condition set for the author's extradition, namely the receipt of guarantees, a declaration was required from the Moroccan authorities to the effect that they would observe article 11 of the extradition treaty. If no such declaration was received within 30 days, it would be assumed that the Moroccan authorities had not agreed to provide such guarantees, which would constitute valid grounds for refusing the author's extradition. By a note verbale dated 18 September 2009, Morocco reiterated the position of its judicial authorities as expressed in its previous note verbale.

2.12 On 30 September 2009, the author filed an appeal before the National High Court against the renewal of a request for guarantees, since Morocco had already refused to provide them.

2.13 On 9 October 2009, the National High Court decided to reply to Morocco, expressing its acceptance of the undertaking by the Moroccan judicial authorities to apply article 11 of the extradition treaty. However, it also made extradition contingent on an explicit undertaking, to be confirmed by the Moroccan authorities within 30 days, that if the author were sentenced to life imprisonment he would not necessarily be in prison for life.

¹ Article 11: "If the acts for which extradition is requested incur the death penalty under the legislation of the requesting State, that penalty shall be replaced with the penalty set out for the same acts in the legislation of the requested State."

2.14 The author filed an application for reconsideration of this decision and requested that extradition to Morocco be denied on the grounds that the guarantees requested by the National High Court on 23 January 2009 had not been given. He claimed that the National High Court's interpretation of Morocco's notes verbales was arbitrary and unfounded and that the notes could only be interpreted to mean that Morocco intended to implement the extradition treaty to the letter. Moreover, the request for further guarantees made by the National High Court on 9 October 2009 violated the principle of legality and legal certainty since it established a new condition that had not been included in the National High Court decision of 23 January 2009 and as such was an illegal and arbitrary revision of that decision.

2.15 By a note verbale dated 16 November 2009, the Moroccan authorities informed the State party that they undertook to observe the provisions of the extradition agreement, which "did not authorize any party to set conditions, except as provided in the last paragraph of article 2, which did not apply to the case at hand". They added that "the law provides that the Criminal Court may apply mitigating circumstances in accordance with article 147 of the Criminal Code", which states that "if the penalty prescribed by law is death, the criminal court shall impose life imprisonment or imprisonment for 20 to 30 years. If the penalty prescribed is life imprisonment, the court shall impose a prison term of 10 to 30 years". In addition, the convicted person could apply for a royal pardon.

2.16 On 24 November 2009, the National High Court dismissed the author's application for reconsideration of the decision of 9 October 2009. It stated that article 11 of the extradition agreement did not set forth any guarantees or conditions but had to do with commuting the death penalty, and that the actual condition for extradition was the one given in the National High Court order of 21 November 2008 and upheld by the Plenary on 23 January 2009.

2.17 On 25 November 2009, the National High Court ruled that, "in light of the explicit commitment [by the Moroccan authorities] to apply the mitigating circumstances provided for in Moroccan law (commuting capital punishment and life imprisonment to other penalties), this Court considers [the guarantees provided by Morocco in its note verbale of 16 November 2009] as adequate".

2.18 On 8 February 2010, the Constitutional Court found the author's application for *amparo* inadmissible on the grounds that the author had failed to demonstrate that the case had particular constitutional significance.

2.19 On 16 and 17 March 2010, the author submitted an application and a request for interim measures to the European Court of Human Rights, requesting that the State party stay the extradition process. In his application, he alleged violations of articles 6 (right to a fair trial), 2 (right to life), 3 (in respect of the prohibition of inhuman and degrading treatment), 5 (right to liberty and security) and 14 (prohibition of discrimination) of the European Convention on Human Rights and of article 4 (right not to be tried or punished twice) of Protocol No. 7 to that Convention. In particular, he claimed that, according to a report by the Spanish Ministry of Foreign Affairs on the situation of Spanish citizens held in Moroccan prisons, detainees lived in very bad conditions, with overcrowding, poor food, lack of medical attention and very poor hygiene. In addition, acts of violence and corruption were commonplace. There were thus sufficient grounds to conclude that the author would be subject to inhuman and degrading treatment in Moroccan prisons. The author also stated that, according to an Amnesty International report from 2008, hundreds of prisoners convicted after the attacks in Casablanca continued to request that their trials be reviewed and that many had been incriminated by means of statements that were never investigated to ascertain whether they had been obtained under torture. Those who were serving their sentences in Salé prison had gone on a hunger strike in protest at their conditions and at ill-treatment by the prison guards and security forces. Accordingly,

detention in Moroccan prisons would have adverse consequences that would last the rest of his life or, worse still, cost him his life. The author also claimed that he would not receive a fair trial in Morocco; that extradition would violate his right not to be tried twice, given that the facts used as grounds for extradition had been investigated by Court No. 5; that his right to liberty had been violated given that his provisional detention had been arbitrarily extended by the State party; that he had received discriminatory treatment in comparison with nationals of the State party, since the courts had refused to recognize his European Union citizenship as a Belgian national, which would have allowed the State party to deny extradition under article 3 of the extradition treaty; and that, during the extradition proceedings, Morocco had offered no guarantee that he would not be condemned to death or to life imprisonment; therefore, his extradition to Morocco put his life and physical and psychological integrity at real and present risk.

2.20 On 29 March 2010, the European Court of Human Rights rejected the author's application for interim measures. On 11 May 2010, the Court, in single judge formation, found the author's suit against the State party inadmissible "for failing to meet the requirements of the Convention", on the grounds that it did not disclose "any violation of the rights and freedoms guaranteed by the Convention or its Protocols".

2.21 On 19 November 2010, the Council of Ministers of the State party authorized the author's extradition to Morocco.

2.22 On 22 November 2010, the author once again filed a request for interim measures before the European Court of Human Rights with a view to staying his extradition to Morocco. The same day, the author filed an application for reconsideration with the National High Court, requesting a stay of extradition on the grounds that he would be at real and present risk of torture if his extradition went ahead.

2.23 On 23 November 2010, the European Court of Human Rights dismissed the author's request, stating that the circumstances did not warrant a ruling different from that of 16 March 2010. The Court invited the author to inform it, by 7 December 2010, whether he intended to file another petition against the State party, emphasizing that it would not consider a new petition that was essentially the same as that dismissed on 11 March 2010.

2.24 On 24 November 2010, the National High Court informed INTERPOL that it had ordered the author's immediate handover to the Moroccan authorities.

2.25 The author points out that the State party's legislation (Act No. 29/1998 on administrative jurisdiction), provides for the possibility of appealing the Council of Ministers decision to authorize extradition. However, he claims that it is an ineffective remedy because the administrative courts consistently dismiss such appeals on the grounds that authorizing an extradition request is an act of Government. Moreover, this remedy would not have made it possible to stay the contested measure or decision. Although Act No. 29/1998 provides for the petitioner to request protective measures, in practice this was not an option because, on the one hand, he would not have been able to invoke the formal extradition order, which had not yet been communicated to his attorneys, and, on the other hand, the request would not have been dealt with expeditiously.

2.26 Regarding the admissibility criterion set out in article 5, subparagraph 2 (a), of the Optional Protocol, the author claims that his application to the European Court of Human Rights was found inadmissible on procedural grounds, and that the Court had not considered the merits within the meaning of the Optional Protocol, which means the Committee is competent to consider this communication.

The complaint

3.1 The author claims to be the victim of violations by the State party of articles 7 and 14 of the Covenant.²

3.2 The author claims that his extradition to Morocco by the State party violates article 7 of the Covenant because, since 2003, the Moroccan authorities have systematically used torture in the so-called war on terrorism. These serious violations have been mentioned in human rights reports by States and recognized NGOs. Furthermore, the Human Rights Committee itself has stated that some aspects of Moroccan antiterrorism legislation conflict with the Covenant.³ In the author's case, his extradition was requested as part of the *Belliraj* case in which the individuals involved were suspected of terrorism. Many of them were arrested arbitrarily, held in secret places of detention, suffered ill-treatment and physical and psychological torture and sentenced to harsh penalties on the basis of statements obtained under torture. The acts of torture they suffered include electrocution, having their head held under water, sexual abuse and solitary confinement. Although the Moroccan authorities have been extremely reluctant to seriously investigate these practices, such practices cannot be considered isolated incidents and have often been used against political opponents. Therefore, it was reasonable to assume that, in Morocco, he would be tortured and sentenced to a prison term amounting to inhuman, cruel or degrading punishment.⁴

3.3 Regarding article 14 of the Covenant, the author claims that States parties must ensure that no one is extradited to States where there is a clear risk that they will not be given due process. He repeats that the persons convicted in the *Belliraj* case were not given due process. Many were convicted on the basis of statements and testimonies obtained under torture or unlawfully-obtained evidence. Moreover, they were unable to defend themselves fully and effectively. The author asserts that it is reasonable to assume that, if he were extradited, he would not be given due process and would be convicted on the basis of statements obtained under torture. The authorities of the State party conducted two criminal investigations into him, which were later closed because there was no evidence that he was a member of any terrorist groups.

State party's observations on admissibility and the merits

4.1 On 7 December 2010, the State party submitted its observations on the admissibility and the merits of the communication. It argues that the communication should be found

² On 14 February 2011, along with his comments about the State party's observations on admissibility and the merits, the author submitted further allegations of violations of articles 2 (para. 3), 9 (paras. 1, 2 and 3), 10, 14 (paras. 3 (a) and 7), 23, and 26 of the Covenant.

³ See the Committee's concluding observations on the fifth periodic report of Morocco (CCPR/CO/82/MAR), para. 15.

⁴ The author refers to, inter alia, the report of the Working Group on Enforced or Involuntary Disappearances on its visit to Morocco from 22 to 25 June 2009 (A/HRC/13/31/Add.1), paras. 20 to 24, and the following human rights reports:

(a) Human Rights Watch: reports on Morocco and Western Sahara, 2008 and 2010; "Morocco: End Abuses in Counterterrorism Arrests", 25 October 2010; "Morocco: 'Stop Looking for Your Son' – Illegal Detentions under the Counterterrorism Law", 25 October 2010;

(b) Amnesty International: "Morocco/Western Sahara: Torture in the 'anti-terrorism' campaign – the case of Témara detention centre", 2004; Amnesty International, Annual Report on Morocco/Western Sahara 2008, summary; "Morocco: Continuing abuses against individuals suspected of terrorism-related activities in Morocco", 16 June 2010; urgent action appeals for the author dated 21 April 2009 and 23 November 2010; and

(c) Arab Commission for Human Rights: "Rapport d'observation du procès des 'Six détenus politiques' au Maroc (Affaire Belliraj)", 10 December 2009.

inadmissible under article 5, paragraph 2 (a) and (b), of the Optional Protocol. It also requested that the Committee lift the interim measures of 25 November 2010.

4.2 The author lodged a complaint with the European Court of Human Rights, which was initially found inadmissible. On 22 November 2010, the author complained again, and the Court granted him until 7 December 2010 to explain whether this was a new complaint or a repeat of his earlier petition. Thus, at the time the communication was submitted to the Committee, the matter was still before the Court.

4.3 The State party claims that the author has not exhausted all domestic remedies given that the Council of Ministers decision of 19 November 2010 authorizing the author's handover was appealable before the Supreme Court and later, if necessary, before the Constitutional Court in the form of an application for *amparo*. There is no record that the author sought these remedies, whereby he could have alleged a violation of his fundamental right to physical integrity, recognized in article 15 of the Constitution. The Supreme Court ruled on 13 October 2010 that it is competent to consider whether the Government has exceeded its authority or failed to meet its obligations when the Council of Ministers authorizes extradition.

4.4 In the alternative, the State party argues that, should the Committee deem the communication admissible, it should then reject the author's claims on the merits. Regarding article 7 of the Covenant, the State party points out that a persistent pattern of gross, flagrant and mass violations of human rights in a country is not in itself sufficient grounds to assert that a specific person runs the risk of being tortured upon return to the country; other elements must be put forward to demonstrate that the individual would personally be in danger. In the extradition proceedings, the author's claims referred to prison conditions in Morocco and the possibility of being sentenced to life imprisonment. The National High Court considered these claims in its decisions of 21 November 2008 and 23 January 2009 and took note of the information submitted to it, including an Amnesty International report on the situation of human rights in Morocco which documented the use of torture to extract confessions and ill-treatment by prison officials and security forces. However, the National High Court found that there was no proof that the reported violations were systematic or widespread. Furthermore, there was no evidence, even circumstantial, of the author running a specific and real risk of suffering inhuman or degrading treatment in Morocco. In addition, the National High Court had ascertained that if a life sentence were imposed, it would not inevitably be for life and that if the death penalty was incurred, it would be commuted to whichever penalty was set out for the same acts in the legislation of the State party. The guarantee requested from Morocco is not merely a "diplomatic guarantee"; rather, it is explicitly provided for in the bilateral extradition treaty.

4.5 The State party claims that the burden of proof rests with the author regarding the real and personal fear of suffering treatment prohibited under the Covenant if he is extradited. The documentation provided by the author does not substantiate the existence of a real and personal risk of suffering torture or other inhuman or degrading treatment if he is extradited to Morocco.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 14 February 2011, the author responded to the State party's observations on admissibility and the merits.

5.2 The author claims that the State party violated its obligations under the Optional Protocol, defeating both its object and purpose, by extraditing him on 14 December 2010 despite the Committee's request for a stay of extradition while it examined his communication. The State party acted in bad faith when, on the one hand, it asked the

Committee, on 7 December 2010, to evaluate the appropriateness of extending the interim measures while, on the other, it went ahead with extradition without waiting for the Committee's decision.

5.3 The author points out that he was detained by the Moroccan police without being brought before a judge for the maximum period provided for in Moroccan law, in clear violation of his rights under the Covenant. During this period, the author was tortured and forced to sign statements written in Arabic, which he does not speak. He was prevented from sleeping for several days and was continuously questioned. He was injected with chemicals, given electric shocks to the genitals, raped and severely beaten. As a result, he lost his hearing and the feeling in his hands and feet, his lower limbs changed colour and he suffered from post-traumatic stress as well as memory and sleep problems. The detention conditions were very harsh and, in aggregate, amounted to torture. He was placed in isolation without contact with the outside world or access to television, radio, newspapers, or a telephone. He was not allowed access to reading or writing materials. He only had access to the courtyard, alone, for half an hour per day. The prison security personnel were not allowed to speak to him. At night, he was awakened for roll call, which made it hard to sleep. When he experienced health problems, inadequate medication was given, without the advice of a doctor, and he did not receive medical treatment for his epilepsy. He claims that there are irregularities in the criminal proceedings against him in Morocco and that the Moroccan authorities have no evidence against him.

5.4 Regarding the exhaustion of domestic remedies, the author repeats the claims made in his initial communication and argues that, in light of the urgency of the situation, it is unreasonable to expect him to appeal before the Supreme Court and then the Constitutional Court – particularly as neither remedy has suspensory effect and that those courts were highly unlikely to admit his appeal. An appeal before the Supreme Court would have been declared inadmissible under article 6 of Act No. 4/1985, on passive extradition, and article 69 (c) of Act No. 29/1998 on administrative jurisdiction, and the author's application for *amparo* was rejected by the Constitutional Court on 29 September 2009. The Supreme Court case law cited by the State party is an isolated decision which shows that the Court has the authority only to examine technical and procedural issues, such as violations of judicial guarantees established by the Constitution. Otherwise, Supreme Court case law clearly demonstrates that Council of Ministers decisions on extradition are generally not appealable.

5.5 Regarding article 5, paragraph 2 (a), of the Optional Protocol, the author claims that the State party's observations are inaccurate: his application to the European Court of Human Rights on 22 November 2010 was only a request for interim measures and was rejected on 23 November 2010, with a request for him to notify the Court by 7 December 2010 whether he wished to file another application. When he submitted his communication to the Committee, there was no action before the Court. He further states that the issues he submitted to the Court in March and November 2010 were not examined within the meaning of article 5, paragraph 2 (a), of the Optional Protocol. He was never given the opportunity to plead his case before the Court and he was not informed, even briefly, of the reasons why his application was found inadmissible. He only received three form letters, and they gave no information regarding the grounds for dismissal or for the rejection of interim measures.

5.6 Regarding article 7 of the Covenant, the author repeats the allegations made in his initial communication and claims that he has provided specific evidence that torture is used systematically in Morocco in the fight against terrorism, as reported by various international institutions and human rights NGOs. As such, the criminal trial on which the extradition request was based placed him in a particularly vulnerable category of individuals — those suspected of belonging to a terrorist group — therefore, it was

foreseeable that he faced a personal and real risk of being tortured. Although the facts he adduced were well-known and verifiable in public documents, the National High Court arbitrarily dismissed them in its decisions of 21 November 2008 and 23 January 2009.

5.7 Regarding article 14 of the Covenant, the author asserts that he submitted sufficient information to demonstrate that there was a foreseeable risk that, following extradition to Morocco, he would be criminally prosecuted without judicial guarantees and sentenced to a harsh penalty, on the basis of statements obtained under torture.

5.8 His extradition gave rise to other violations which he asks the Committee to examine.

5.9 The State party violated article 2, paragraph 3, of the Covenant by not providing an effective remedy enabling him to prevent a violation of his right to physical integrity, or more particularly to challenge the Council of Ministers decision authorizing his extradition. The courts of the State party merely conducted a cursory and formal examination of his allegations and did not take into account the Committee's request for interim measures. Moreover, facing imminent extradition, he was unable to lodge an appeal because on 25 November 2010 he was transferred to Madrid III Prison, and was not permitted to contact his attorneys to inform them that his extradition was going ahead.

5.10 His rights under articles 9 (para. 2) and 14 (paras. 3 (a) and 7) of the Covenant were also violated given that he was not informed promptly of the charges against him. The facts cited in the international arrest warrant issued by the Moroccan courts were extremely general and did not constitute offences. In addition, his extradition violated his right not to be prosecuted twice, since the facts on which the extradition was based had already been investigated by Courts Nos. 1 and 5, which eventually ordered the suspension of the case for lack of sufficient evidence. The National High Court dismissed this claim, simply stating that these proceedings and those in Morocco bore no relation to each other.

5.11 The State party violated articles 9 (paras. 1 and 3), 10 and 23 of the Covenant insofar as the provisional detention ordered by its courts while they considered the extradition request was arbitrary and contrary to the subsidiary nature of this type of detention. During the 2006 criminal investigation by Court No. 5, he was held in pretrial detention then released on condition that he paid bail and reported regularly to the authorities, which he did for two years. On that basis, holding him while the extradition request was examined, especially for 32 months, was unjustified. Furthermore, the particularly strict detention regime — isolation with limited communication opportunities — breached article 10 of the Covenant given that neither his behaviour nor the context suggested that the author might represent a danger to himself or others. The State party cannot have been unaware that police custody in Morocco under antiterrorism legislation, and prison conditions in general, violated these articles of the Covenant. As a result of the provisional detention and subsequent extradition, he was arbitrarily deprived of his right to family life, as defined in article 23 of the Covenant.

5.12 Regarding article 26 of the Covenant, the author alleges that he was discriminated against on grounds of nationality and was treated differently from citizens of the State party, despite the fact that he should have received the same treatment as a Spanish national by virtue of his European Union citizenship as a Belgian national, in other words, spared extradition. In fact, the Council of Ministers rejected a request to extradite to Morocco Mr. M.E.B., a Moroccan and Spanish citizen, who was in a similar situation to the author's — in connection with the *Belliraj* case — yet failed to explain why the two were given opposite treatment.

Additional State party observations

6.1 On 14 June 2011, the State party submitted additional observations to the Committee and repeated that the communication was inadmissible under article 5, paragraph 2 (b), of the Optional Protocol because the author could have appealed the Council of Ministers decision authorizing his extradition before the Supreme Court.

6.2 Regarding the Committee's request for interim measures of 25 November 2010, the State party states that the competent authorities duly considered the request in light of the circumstances of the case and eventually decided to proceed with the author's extradition, having taken into account, among other factors, that statutory limits on detention had been exceeded while he awaited extradition.

6.3 Regarding the place of detention, the State party states that the author was held for most of the time at Algeciras Prison. However, he was transferred to Madrid III Prison whenever the judicial authorities required his presence at a judicial proceeding. Once his extradition was authorized, the author was transferred to Madrid on 4 December 2010 to await the execution of the extradition order.

6.4 In response to the author's claims regarding detention conditions in Morocco, the State party asserts that there is no evidence that the events the author alleges actually took place.

Additional information provided by the author

7.1 On 9 May, 11 October and 18 November 2011 and 20 January, 7 February, 28 June, 9 October and 7 December 2012, the author submitted additional information to the Committee and repeated his arguments regarding the admissibility and merits of the communication.

7.2 The author argues that the purpose of the Committee's interim measures is to avoid irreparable harm to the victim of the alleged violation, therefore, the State party cannot justify the failure to apply these measures by the fact that provisional detention limits had been exceeded during the extradition proceedings. Furthermore, the State party's argument is an implied admission that his right to freedom and safety were violated.

7.3 The author informs the Committee that on 5 October 2011 he filed a complaint against Morocco with the Committee against Torture, for violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵ and repeats, with a detailed description, that he was subjected to torture and inhuman and degrading treatment at the hands of the Moroccan authorities. Notwithstanding his complaints to the Moroccan authorities, no effective and impartial investigation was ordered.

7.4 The State party did not reply to a number of his claims or submit observations on the new claims made to the Committee on 14 February 2011. The author requests that the Committee examine all his claims and that the State party be required to give full reparation for all its violations of the Covenant, including by: (a) taking effective measures as needed to ensure that the author is not tortured in Morocco and that a thorough and impartial investigation of his torture allegations is conducted in Morocco; (b) awarding the author adequate compensation for the harm suffered in Morocco, the detention period in Morocco and the arbitrary detention in the State party, the non-material damage resulting from the failure to fulfil the Committee's request for interim measures and the violation of his right

⁵ According to the copy of the complaint filed with the Committee against Torture, which the author annexed to this communication, the author alleged that upon arrival in Morocco he was detained by police and tortured (see paragraph 5.3).

to family life; and (c) covering all the travel costs incurred by his family in order to visit him in Morocco, as well as his legal expenses.

7.5 The author informs the Committee that he had the opportunity to present his case during the visit to Morocco by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment from 15 to 22 September 2012. In addition, on 1 October 2012, the Appeals Court of Rabat sentenced the author to 12 years' imprisonment. Regarding his complaints of torture, the Court merely stated that, according to the forensic medical report it had ordered, the author had not suffered acts of torture. However, the author argues that, according to opinions from two independent forensic doctors, the Court-ordered medical report was general, lacked content and did not meet the standards of the Istanbul Protocol. The author was detained at Salé II Prison.

Issues and proceedings before the Committee

Non-respect of the Committee's request for interim measures⁶

8.1 The Committee notes that the State party extradited the author although his communication had been registered under the Optional Protocol and a request for interim measures of protection had been addressed to the State party in this respect. The Committee recalls that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1).⁷ Adherence to the Optional Protocol obliges a State party to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination, to forward its views to the State party and to the individual (art. 5, paras. 1 and 4). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

8.2 Apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In the present communication, the author alleged that his rights under articles 7 and 14 of the Covenant would be violated should he be extradited to Morocco. Having been notified of the communication, the State party breached its obligations under the Optional Protocol by extraditing the author before the Committee could conclude its consideration and examination and the formulation and communication of its Views. It is particularly regrettable for the State to have done so after the Committee has acted under rule 92 of its rules of procedure, requesting the State party to refrain from doing so.

8.3 The Committee recalls⁸ that interim measures pursuant to rule 92 of the Committee's rules of procedure adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the rule, especially by irreversible measures such as, as in the present case, the author's extradition, undermines the protection of Covenant rights through the Optional Protocol.

⁶ See, for example, communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, *Maksudov et al. v. Kyrgyzstan*, Views adopted on 16 July 2008, paras. 10.1–10.3.

⁷ See, for example, communication No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000.

⁸ See communication No. 964/2001, *Saidova v. Tajikistan*, Views adopted on 8 July 2004.

Consideration of admissibility

9.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

9.2 The Committee notes that in March 2010, the author submitted an application and a request for interim measures to avoid extradition to the European Court of Human Rights. In a letter dated 11 May 2010, the author was informed that a single judge formation of the Court had found the application inadmissible, not having found any violation of the rights and freedoms guaranteed by the Convention or its Protocols. The author later submitted a new application for interim measures to the Court, and that was rejected on 23 November 2010. The author did not write to the Court again after that date. The Committee recalls that, when it ratified the Optional Protocol, Spain entered a reservation excluding the Committee's competence in matters that had been or were being examined under another procedure of international investigation or settlement.

9.3 The Committee recalls its jurisprudence regarding article 5, paragraph 2 (a), of the Optional Protocol to the effect that when the European Court of Human Rights bases a finding of inadmissibility not only on procedural grounds, but also on grounds arising from some degree of consideration of the substance of the case, the matter should be deemed to have been examined within the meaning of the relevant reservations to article 5, paragraph 2 (a), of the Optional Protocol; and the Court should be deemed to have gone beyond a consideration of purely formal criteria of admissibility when it finds an application inadmissible because it "does not disclose any violation of the rights and freedoms set out in the Convention or its Protocols".⁹

9.4 In this case, it is the Committee's view that the European Court of Human Rights considered not just the formal admissibility criteria, but the actual complaints presented by the author in his application to the Court. In this regard, the Committee recalls its jurisprudence to the effect that, for the purposes of article 5, paragraph 2 (a), of the Optional Protocol, the "same matter" should be understood as referring to the same author, the same facts and the same substantive rights.¹⁰ In this case, the Committee notes that, in his complaint of a violation of article 7 of the Covenant, the author refers to the risk of being subjected to torture and mistreatment if he were to be extradited. In this regard, the author claims that the Moroccan authorities have been using torture systematically since 2003 in their efforts to combat terrorism; that his extradition was requested as part of the *Belliraj* case, in which those detained were subjected to ill-treatment and physical and psychological torture and convicted on the basis of confessions obtained under torture; that those cases of torture were not isolated incidents; and that it was therefore reasonable to suppose that he too would be subjected to torture. The Committee notes that the author's complaint under article 7 refers to the risk of being held incommunicado and tortured to extract a confession, in application of Moroccan antiterrorist legislation, while his complaint under article 3 of the European Convention on Human Rights in his application to the European Court of Human Rights refers to prison conditions in general in Morocco, which the author maintained constituted inhuman or degrading treatment. The Committee also notes that the author's complaint under article 9, paragraphs 1 and 3, of the Covenant essentially refers to the duration of his provisional detention in the State party, including the period between the inadmissibility decision of the European Court of Human Rights and his extradition to Morocco on 14 December 2010. In light of these considerations, therefore,

⁹ Communication No. 944/2000, *Mahabir v. Austria*, inadmissibility decision of 26 October 2004, paras. 8.3 and 8.4.

¹⁰ Communication No. 998/2001, *Althammer et al. v. Austria*, Views adopted on 8 August 2003, para. 8.4.

and bearing in mind also the limited reasoning in the Court's decisions of 11 May and 23 November 2010, the Committee considers that, given the circumstances of the present case, the matter addressed in the complaints under articles 7 and 9 (paras. 1 and 3) of the Covenant is not essentially the same as that submitted to the European Court of Human Rights. Consequently, the Committee considers that, in accordance with article 5, paragraph 2 (a), of the Optional Protocol, it is not precluded from considering the author's complaints relating to articles 7 and 9 (paras. 1 and 3) of the Covenant.

9.5 The Committee takes note of the author's complaints under article 2, paragraph 3, that there was no effective remedy permitting him, in light of the interim measures requested by the Committee, to challenge the Council of Ministers decision authorizing extradition; his complaint of a violation of the right to family life under article 23; and his complaints under articles 10 and 26 of the Covenant. Given that these complaints did not form part of his application to the European Court of Human Rights or are based on provisions that are not fully congruent with the provisions of the European Convention on Human Rights and its Protocols, the Committee considers that it is not precluded from considering them under article 5, paragraph 2 (a), of the Optional Protocol.

9.6 Regarding the author's complaints under articles 9 (para. 2) and 14 of the Covenant, the Committee observes that they refer to essentially the same events and facts that were previously submitted to the European Court of Human Rights. Therefore, in the light of the State party's reservation to article 5, paragraph 2 (a), of the Optional Protocol, the Committee finds that it is precluded from considering these complaints.

9.7 The author invokes article 10 and claims that the detention regime imposed by the State party contravened this provision. With respect to article 23, he maintains that, as a result of his provisional detention and subsequent extradition, he was arbitrarily deprived of his right to a family life. However, on the basis of the documentation presented, the Committee is unable to find that the author has brought these issues before the domestic courts. Consequently, the Committee declares this part of the communication inadmissible for failure to exhaust domestic remedies, in accordance with article 5, paragraph 2 (b), of the Optional Protocol.

9.8 The Committee takes note of the author's complaints under article 9, paragraphs 1 and 3, that the provisional detention ordered by the State party's courts was arbitrary; that the measure was unjustifiable given the subsidiary nature of this kind of detention; all the more so since it lasted some 32 months. Nevertheless, the Committee notes that the author was detained under an international warrant issued by the Moroccan courts and that Investigating Court No. 5 in Melilla ordered provisional detention on the grounds that there was reasonable evidence that an offence had been committed and that he posed a flight risk. The author's appeals against this measure were all dismissed by the National High Court. In this regard, the Committee considers that these complaints are not sufficiently substantiated for the purposes of admissibility and finds them inadmissible under article 2 of the Optional Protocol.

9.9 The Committee notes the author's claim under article 26 of the Covenant, that he was discriminated against on grounds of nationality and treated differently from citizens of the State party: he should have been treated in the same way as a Spanish national because of his European Union citizenship as a Belgian citizen, i.e., not to be extradited. However, the Committee considers that the author has not sufficiently substantiated this complaint for purposes of admissibility and finds it inadmissible pursuant to article 2 of the Optional Protocol.

9.10 Regarding the author's complaints under articles 2 (para. 3) and 7 of the Covenant, the Committee considers that they are sufficiently substantiated for purposes of

admissibility. Given that no other impediments to admissibility exist, the Committee finds them admissible.

Consideration on the merits

10.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

10.2 The Committee takes note of the author's complaint that the State party did not properly assess the risk he would be exposed to if he was extradited to Morocco¹¹ and that it could reasonably be expected that extradition would place him in a particularly vulnerable situation and expose him to the risk of torture, as in fact occurred once he had been extradited to Morocco, where he was held incommunicado, in harsh conditions, and subjected to severe ill-treatment and torture.¹² The Committee also takes note of the State party's argument that the National High Court considered this claim by the author and took note of the information submitted to it; however, the National High Court found that there was no evidence, even circumstantial, that the author ran any real personal risk of being subjected to inhuman or degrading treatment in Morocco.

10.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant,¹³ which refers to the obligation on States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the country to which the author is deported or extradited. The Committee also recalls that it is generally up to the courts of the States parties to the Covenant to evaluate the facts and evidence in order to determine whether such a risk exists.

10.4 In the present case, the Committee notes that the author's extradition was requested in the context of proceedings in the *Belliraj* case for terrorism-related offences, in accordance with the Moroccan Criminal Code and Act No. 03/03 on combating terrorism. In the extradition proceedings, the National High Court took note of information mentioning the use of torture to extract confessions and ill-treatment at the hands of prison guards and security forces in Morocco, but it dismissed the author's claims regarding the risk of torture, stating only that the violations referred to could not be deemed systematic and widespread. The Committee, however, notes that reliable reports submitted by the author to the National High Court and information in the public domain showed that many individuals charged with terrorist-related offences in Morocco, notably in the *Belliraj* case, had been held incommunicado and subjected to severe beatings and torture.¹⁴ In this context, and in light of the author's personal circumstances as a person charged with terrorism-related offences, the Committee considers that the State party did not properly assess the risk to the author of torture and severe ill-treatment. Accordingly, the Committee considers that the author's extradition to Morocco by the State party constitutes a violation of article 7 of the Covenant.

10.5 In the light of its findings on article 7, the Committee will not further examine the author's claims under article 2, paragraph 3, of the Covenant.

¹¹ See paragraph 9.4.

¹² See paragraph 5.3.

¹³ See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40, (A/59/40 (Vol. I)), annex III, para. 12.*

¹⁴ See footnote 4.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the State party of article 7 of the Covenant.

12. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including by (i) providing adequate compensation for the violation of his rights, taking account of the acts of torture and ill-treatment to which he was subjected as a result of his extradition to Morocco; and (ii) taking all possible steps to cooperate with the Moroccan authorities in order to ensure effective oversight of the author's treatment in Morocco. The State party is also under an obligation to prevent similar violations in the future.

13. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2, of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the present Views and to disseminate them widely.
