

## English translation of key points from the report of the UN Working Group on Arbitrary Detention

<https://www.ohchr.org/EN/Issues/Detention/Pages/Opinions82ndSession.aspx>

40. The Working Group is grateful for the cooperation of the parties and is continuing to investigate the allegations in order to release its findings.

41. The rules of evidence are defined by the legal precedent of the Working Group. When the source establishes a suspicion of a violation of the constitutive international norms regarding arbitrary detention, the responsibility falls to the government to respond to the allegations (see A/HRC/19/57, paragraph 68). And as the Working Group has already often made clear, especially in matters concerning Morocco, it is not enough to offer a formal objection to the allegations: the State is in possession of all the elements of the proceedings and should be able to submit all the evidence needed to support each of their refutations. In this case, the government has brought together three documents of its observations: extracts of the military code, a document relating to sentences and the record of the visit of the parents of Mr Aliouat.

42. In the preliminary stage, the Working Group recalls that ‘the publicly established proceedings for the Human Rights Commission that conform with Resolution 1235 (XLII) of 1967 of the Economic and Social Council – for example, that which is governed by resolutions 1991/42 and 1197/50 of the Commission of the Rights of Man – do not prevent, as a condition the admissibility of a complaint (or demand), the previous exhaustion of internal resources’. This was confirmed by the jurisdiction of the Working Group on a number of occasions, and alluding to the admissibility of the communication in this manner should therefore be rejected.

43. In the first instance, the source tells how Mr Aliouat, detained on 4 March 2017, was not the subject of an arrest order, that he was not informed of the motives behind his arrest and that he was prevented from making any communication during this time and only appeared before a judge on 17 March 2017. However, the Government refutes this allegation and confirms that Mr Aliouat was not detained on 4 March but was driven directly, on 18 March 2017, to a military tribunal and that this was when his detention was ordered. The Working Group notes that the Government has not presented any written evidence to support this declaration despite their responsibility to do so. However, the Working Group does not remain convinced by the Government’s response that suggests that Mr Aliouat was detained without a detention order, and that he was quickly informed of the reason for his arrest and his detention and that he was detained without being able to make any communication during this time, in violation of Article 9 of the Treaty. Under these conditions, the arrest and detention are without legal basis and are therefore arbitrary according to category 1.

44. Furthermore, the source confirms that Mr Aliouat is a Saharawi and is a victim of reprisal for having exercised his right to freedom of expression in favour of the Saharawis. The Government has not refuted the fact that he is Saharawi, and the Working Group has no reason to doubt that. But the Government claims that the case brought against Mr Aliouat, a member of the Royal Armed Forces, has nothing to do with this fact but was instead related to the fact that he had committed the crime of treason and inciting others to associate with the enemy. It is then clear that the Government locates this matter in relation to the issues related to Western Sahara which has been the source of a decades-long crisis. The Working Group estimates that this is a partial corroboration given that the Government does not refute that Mr Aliouat is Saharawi, but remains silent regarding the exact reasons behind the accusations and the constitutive facts of the treason. However, the Working Group has been able to ascertain the consequences of the tension in the region during their visit to Morocco in 2013. There they reported that members of the Saharawi population were specific victims of violence and human rights violations in response to their demands for self-determination.

45. What is more, the Government has not apportioned anything to support their claim, except the fact that another soldier has been sentenced for the same crime, another soldier who is not Saharawi, which results that the Government has the responsibility of proof, finding whatever necessary evidence, in this case, the legal record. It is accurate, therefore, to give credit to the source, in order to say that the political expression exercised by Mr Aliouat on social media is the origin of the accusations against him, followed by his arrest and detention. Faced with this question, the Government specifies that Mr Aliouat is a member of the armed forces and therefore has restrictions on his freedom of expression, according to Article 19 of the Treaty. The Working Group recalls the terms of General Observation 10 according to which: "Paragraph 3 [relating to the restrictions of the freedom of expression] anticipates expressly that the exercising of one's freedom of expression has particular duties and responsibilities and that for this reason there are certain restrictions on this right and permitted, taking into account the interests of others and of the community in general. However, when a State imposes certain restrictions on a person's ability to exercise their freedom of expression, these restrictions cannot, in any way threaten the right itself. Paragraph 3 describes certain conditions and it is only under these conditions that restrictions can be put in place: 1) they should be 'determined by law'; 2) they cannot be ordered more than for one of the aims described in sections a and b of Paragraph 3; 3) the State must justify that they are necessary to meet one of their aims. In this case the Government has not presented texts on which they have based the restrictions of the freedom of expression of Mr Aliouat. The Working Group therefore finds that his arrest and detention were arbitrary in line with category II.

46. Given that the detention of Mr Aliouat falls into category II, it should never have gone to trial. But, from the moment that the trial took place and the source has presented

arguments on this matter, the Working Group will investigate their arguments under this additional point.

47. The source states that Mr Aliouat has been the subject of maltreatment and that when he was denied communication and was detained he was forced to make a confession. The Government contents itself with denying the maltreatment, arguing that the judge saw no evidence of this maltreatment nor were any complaints of the maltreatment made, which is refuted by the source in the additional observations. The Government remains silent with regard the confessions. The Working Group notes that a formal denial without the presentation of evidence is not enough and it is the duty of the State to provide, for example, documents that provide evidence of the well being of Mr Aliouat or documents showing that the authorities have launched a thorough investigation into the allegations. However, the Working Group have shown that 'torture and maltreatment are used to extract confessions and the agents of the public forces have used an excess of force'. Furthermore, the facts presented by the source coincide with this observation and the suggestion of a detention with the denial of communication makes it more believable that maltreatment took place. For these reasons the Working Group remains convinced by the source and concludes that Mr Aliouat's trial was therefore a violation of his right to a free trial. Moreover, Article 14 () (g) of the Treaty prohibits that the accused can be forced to incriminate themselves. However, the confessions resulting from violence are prohibited within this. Mr Aliouat's right to not be forced to give evidence against himself has therefore been violated. The Government has not produced anything which could be used to refute this allegation.

48. The source also refers to the fact that Mr Aliouat has not been authorised to have contact with lawyers at any point in the proceedings. The Government denies these claims, naming his lawyers and pointing to their petitions to the court. However, the point is not an absence of lawyers, but the fact that Mr Aliouat has not been allowed to communicate with them at any point in the proceedings. The Working Group considers that this right, laid out in article 14 (3) (h) of the Treaty has not been met, according to which all people accused of a crime should 'have sufficient time and the necessary facilities to prepare their defence and communicate their decisions with their lawyer'.

49. Furthermore, the Working Group takes note of the fact that on 20 March 2017, his family received false information about his trial, passed on by a military officer, meaning they could not attend his trial, except his father who watched from a viewing gallery. The Government denies these allegations stating that the trial was public and that the press could attend, without providing evidence. The Working Group is not convinced by this response and considers the allegation of the source credible and believes that his right to a fair trial, enshrined in article 14, has been violated.

50. Each of the violations is sufficient alone to invalidate the proceedings as a whole. Consequently, the Working Group considers the detention of Mr Aliouat an arbitrary privation of freedom, in relation to category III.

51. Furthermore, the Working Group, see a generalised abuse aimed at people, like Mr Aliouat, who are of Saharawi descent or who fight for the self-determination of the Saharawi people. The Working Group has seen this on a number of occasions. It is therefore a fair conclusion, in line with the source, that this situation is constitutive discrimination in violation of international rights, above all articles 1, 2 and 26 of the Treaty. The Working Group therefore concludes that Mr Aliouat's detention was arbitrary in relation to category V.

52. Finally, as is customary, the Working Group will pass this matter onto those dealing with allegations of torture.