

EU External Action Service
RP Schuman 9A
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Brussels
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To the attention of Vincent Piket
Head of the Maghreb Division in the EU External Action Service

Dear Mr Piket,

Thank you very much for your continued interest in hearing our views.

We were able to watch your intervention in the Parliament's INTA Committee, last 20 February. As stated before, we question the purpose of a consultation exercise on a trade arrangement for Western Sahara that has already been initiated with the wrong government, without even taking into account the people of Western Sahara's right to consent in such matters. However, the content of your presentation on the state-of-play of the EEAS' consultation work gave rise to comments and questions. Please allow us to share those.

First premise, is that we find it deeply worrisome that the EU has initiated a consultation process before the people of Western Sahara, through its representatives, have expressed whether they even want a trade arrangement. It is little likely that the Saharawis wish any deal between Morocco and the EU to be implemented so as to include Western Sahara. As you surely know, Western Sahara is not part of Morocco.

When it comes to the selection of 'interlocutors' for the 'consultation' (which never should have been initiated, as it comes on the back of a negotiation process which disregards the rights of the people of the territory), we are concerned that the overview of the EEAS' chosen interlocutors was quite nebulous and as such, misleading.

With regard to the first category of interlocutors – **political representatives and socio-economic institutions** – we find it troubling that these entities were represented as if they are "from Western Sahara" and thus somehow representative of the people of Western Sahara. This is however not the case. All named institutions did not emanate from the will of the people of Western Sahara. The opposite is true: these institutions – whether administrative, socio-economic or political in nature – were imposed by the Moroccan State in the part of Western Sahara that it holds under armed occupation.

There is no such thing as a development agency of Western Sahara. The Moroccan government has set up a council for the development of Western Sahara. There are also no Chambers of Commerce from venues inside Western Sahara, or the regional councils from Western Sahara. The Moroccan government has set up Chambers of Commerce and regional councils in Western Sahara, whether the people of Western Sahara wanted them or not. No consent was sought.

On the second category – **civil society organisations with a human rights focus** – you stated that it was important for the EEAS to only talk to human rights organisations registered in Morocco. In subsequent Universal Periodic Reviews by the UN Human Rights Council, Morocco has been criticized over its unwillingness to register Saharawi associations. Morocco has received recommendations to remove obstacles to non-governmental organisations seeking registration, including those advocating for the Saharawi people’s right to self-determination. Morocco refuses to take on board these recommendations.

As a result of previous criticism on the matter in the UN Human Rights Council in 2012, Morocco allowed *one* Saharawi organization to register: ASVDH. We understand that ASVDH has declined the EEAS’ invitation to a consultation meeting. Their reasons for doing so are shared by all Saharawi civil society organisations; some with many years of activity and working relations with reputable NGOs and trade unions, but not allowed to register by the Moroccan authorities and thus not considered an interlocutor by the EEAS. All these organisations co-signed a letter to the EEAS, where they reject the EU’s approach of engaging in talks to regulate trade with their homeland, without even asking the Saharawi representation – the Polisario Front – for their consent.

Through its condition of only speaking to organizations registered by the Moroccan authorities, the EEAS not only precludes practically all Saharawi organisations inside Western Sahara, but also those outside of their homeland. By the very nature of the conflict in Western Sahara, where a significant part of the people has fled the country, it would make sense to at least include these refugees in the talks: they too have, over the course of an exile of more than 4 decades, organized themselves in socio-economic and human rights associations. None of them were even considered as a stakeholder.

The people of Western Sahara are thus ignored twice. First, the EEAS and the Commission prefer negotiating a trade arrangement for Western Sahara with Morocco – which does not represent the people of Western Sahara. Then, when a deal has been agreed with Morocco, the EEAS will not even consider consulting the overwhelming majority of Saharawi civil society organisations, because they have not been registered by Morocco – the occupying power. Adding insult to injury.

With regard to **the Polisario Front**, which was mentioned in passing in the framework of civil society stakeholders, you stated that *“Polisario is also in our list of interlocutors and we met with them early in February”*. That the UN recognized representation of the people of Western Sahara is not asked whether they agree to the trade arrangement or not, is astounding. That they are considered a mere stakeholder, to be consulted once the deal has already been initiated with the occupying power, not only falls short with regard to the requirements set by the EU Court of Justice, but it is also an offense to the people of Western Sahara. As far as WSRW understands from the official press statements by the Polisario on your meeting of 5 February, they reiterated that they condemn the EU’s talks with Morocco, which are viewed as a violation of the people of Western Sahara’s right to consent – a manifestation of their right to self-determination. To create the impression that the EEAS has met with the Polisario as part of the consultation exercise, is deceptive.

We would be most grateful for an answer to the following questions:

- 1) The Court of Justice of the EU consistently refers to the need to obtain consent from the representative of the people. Why does the EEAS instead refer to a process of ‘consultation’? Does the EEAS consider ‘consent’ and ‘consult’ to be synonymous?
- 2) The EEAS states that *“We have selected for that purpose a list of interlocutors”*. On what legal basis have the EU and Morocco made such a list of ‘interlocutors’, considering that Western Sahara is not part of neither the EU nor Morocco?

- 3) The EEAS states that *“Moroccan authorities on their side will also be conducting a consultation exercise (...) of all in the external relations committee of the House of Representatives on a national level, and secondly, they’re going to call for votes in the regional councils of Western Sahara”*. On what legal basis can the EU claim that a Moroccan organized vote in Moroccan institutions are in line with the CJEU judgment that specifically states that Morocco is a ‘distinct and separate’ territory from Morocco?
- 4) The EEAS mentions it is itself seeking consultation from bodies elected in Moroccan elections in Western Sahara. Does the EEAS consider the Moroccan parliamentary elections in the occupied parts of the non-self-governing territory of Western Sahara to be in line with international law?
- 5) Does the EEAS consider that political and socio-economic bodies that the Moroccan government has set up in Western Sahara as representative of the people of Western Sahara?
- 6) Does Western Sahara have a ‘development agency’ as mentioned in the INTA committee? We’ve checked with the Polisario and they do not have such an agency.
- 7) If the development agency that the EEAS refers to is the Moroccan Economic, Social and Ecological Council (CESE) - which was instituted through the Moroccan constitution in 2011; operates as a state agency; with a composition that is controlled by the Moroccan monarch; whose president is a former Moroccan Minister of Finance and member of the Baraka family, (closely tied to the royal family) who condemned the UN Secretary General for his approach to Western Sahara and systematically refers to Western Sahara as the *“Southern Provinces”* – then why does the EEAS refer to this as a *development agency “of Western Sahara”* in a meeting with INTA Committee?
- 8) Of all the groups, bodies or associations included in the process, how many, if any, consider Western Sahara to be a non-self-governing territory where the people have right to self-determination?
- 9) How many, *if any*, of the institutions or individuals who openly oppose the agreement and who are tentatively or actually included in the consultation process knew before the meeting with EEAS that they were taking part in a consultation process itself that EEAS is now referring to in order to legitimize the negotiations?
- 10) EEAS mentions it is in a ‘consultation’ process with ‘NGO organisations that are very supportive of Polisario’. To our knowledge, all civil society groups in Western Sahara have refused to meet the EEAS over the matter, alternatively, they have met with the purpose to object without knowing that it was part of the consultation itself. Which associations supportive of Polisario have met with the EEAS as part of the consultation? Were these associations briefed in the meeting invitation that the representative body of Western Sahara had not given its consent to the EU to proceed with a consultation process?
- 11) Were the organisations that are negative to the EU operations in Western Sahara briefed that if they accepted to take part in a meeting, their mere participation in such meeting would be used by EEAS to legitimise the negotiations, irrespective of what their position on such deal was?
- 12) Was Polisario told, before or during its meeting with the EEAS on 5 February 2017, that the meeting would later be used in a context that gives the impression that Polisario took part in the consultation process alongside other ‘interlocutors’? Can the EEAS make public the meeting invitation it had sent to Polisario?
- 13) Has the meeting between the EEAS and Polisario been used by the EEAS to create an image of Polisario acceptance of the consultation process vis-a-vis third parties, for instance in correspondence to civil society in Western Sahara or with EU member states? Which

associations in Western Sahara, EU Member States or other bodies have received information claiming that Polisario is allegedly an ‘interlocutor’ (to a process that they condemn)?

14) Which “research institutions” did the Commission consult, and what is the relevance of these institutions to obtain consent from the Saharawis?

15) The UN urges the parties (Morocco and Polisario) to negotiate an agreement that provides for the respect of self-determination. Does the EU consider it could be complicating the UN peace efforts if it, together with Moroccan government, offers legitimacy to Moroccan institutions in Western Sahara as if these are other representatives of the territory than the one that UNGA has described in resolution 34/37, and which the CJEU refers to in its judgment?

16) In terms of methodology: considering that all Saharawi organisations that advocate for self-determination refuse to take part in a EU-Morocco consultation process regarding a trade agreement for which its representative body has not given its acceptance, and considering that no effort is made by the EEAS to engage with Saharawis living in non-occupied parts of Western Sahara nor in refugee camps, how valid would a conclusion be as to “whether there are any other objections to it, or other kinds of support for it”?

17) Why did the EEAS only carry out “consultations” in Rabat and in Brussels, and not in Western Sahara or the refugee camps where the people of Western Sahara live?

We look forward to hearing from you.

Sincerely,

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