

Email of Vincent Piket (EEAS) to Western Sahara Resource Watch, 30 January 2018.

Dear Madam, Dear Sir,

Following the judgment of the Court of Justice of the European Union of December 2016 on the EU-Morocco Agriculture Agreement, the European Commission and the European External Action Service (EEAS) have undertaken a process to see how to conform to the said judgment.

In this context, the European Council sent directives to the European Commission and to the EEAS to negotiate an amendment to the agreement with Morocco with a view to preserving the EU trade preferences hitherto applied to the products originating in Western Sahara, while conforming to the judgment of the Court of Justice and without prejudice to the respective positions of the European Union on the statute of Western Sahara and of the Kingdom of Morocco on the said region.

I would like to invite you to an informal meeting which should allow the EEAS to present the work realised so far to this end and to seek your views on the related benefits that could be derived for the population concerned by the agreement.

This meeting will take place on 6 February at 14.30 in the premises of the EEAS, [Rond-Point Schuman 9A](#), 1046 Brussels.

Please kindly confirm your presence to this meeting.

Yours sincerely,

Vincent Piket

Email of WSRW to Vincent Piket (EEAS) on 1 February 2018

Dear Mr Piket,

Thank you for your kind invitation, dated 30 January 2018, to have “an informal meeting” on 6 February 2018 on the state-of-affairs in relation to the EEAS’ work on setting up an arrangement for Western Sahara trade post-December 2016.

We were puzzled to hear that the technical agreement between the Commission and Morocco has apparently been signed yesterday, 31 January 2018.

Accordingly, and before a potential meeting, we would appreciate it if you could clarify the following questions:

- 1) What is the purpose of an informal discussion with WSRW as a civil society organization on the scope and effects of the agreement after it has already been signed?
- 2) It is clear that the representative body of the people of Western Sahara, Front Polisario, has not consented to the signing of the agreement covering the territory. Why have no efforts been made to obtain the consent of Polisario in this process, prior to the signing of the agreement?
- 3) It is our understanding that not a single civil society group from Western Sahara has been in talks with the EU over the agreement before it was signed. We have learned that at

least one Saharawi civil society group from the territory has received a similar invitation from the EEAS, with a similar purpose, to ours. How many and which Saharawi groups have been invited for input, and with which of them has the EEAS met prior to the signing of the agreement?

We also find it confusing that, as stated in your email to us, the EEAS would seek our input “on the related benefits that could be derived for the population concerned by the agreement”, as it doesn’t align with article 106 of the judgment, which considers it unnecessary to determine the benefits of the implementation of an agreement, but rather highlights the need of consent of the people, not the population, of Western Sahara.

In that perspective, we wish to be clear that Western Sahara Resource Watch (WSRW) does not represent the people of Western Sahara. We are an EU-based organization that advocates their right to self-determination, but we do not speak for them.

While we are interested to learn about the EEAS’ efforts, and we highly value the suggested dialogue with European civil society, we want to stress that in our view it is clear that any proposed trade arrangement for Western Sahara ought to obtain the consent of the representative body of the people of Western Sahara. Per United Nations and the CJEU, that is the Polisario Front.

As it is the people of Western Sahara (not Morocco, the EU or EU-based NGOs) who are to decide on all matters of trade from their territory, it is crucial for us not to engage in a process that risks undermining the requirement of obtaining consent from the representatives of the people of the territory, as a corollary of their right to self-determination. We ask you for your understanding that we will publish our correspondence to EEAS in relation to this important process in the history of the people of Western Sahara.

We wish to thank you for reaching out to us, and we look forward to your reply,

Kind regards,

Sara Eyckmans

Email by Vincent Piket (EEAS) to WSRW, 2 February 2018

Dear Ms Eyckmans,

Thank you for your e-mail of 1 February.

In reply I can inform you that the text that was initialled (not "signed", as mentioned in your e-mail) by representatives of the Commission services and Morocco on 31 January is a technical document marking the end of the technical work on a draft amendment to the EU-Morocco Agriculture Agreement. The initialled text is of no legal value. The next step is that the Commission, in association with the External Action Service (EEAS), will prepare its proposal to the Council of Ministers and the European Parliament. To this end, the EEAS is now engaging in an inclusive consultation exercise with a view to reaching out to a wide spectrum of stakeholders potentially concerned by the aforementioned amendment. Our exercise should be consistent with the Court ruling, be without prejudice to the UN process on Western Sahara and have the socio-economic development of the people living in Western Sahara in mind. It is

our intention to have contacts with as many interested parties as possible, each of them in their respective capacity.

I hope this clarifies the nature of the meeting and look forward to welcoming you.

Kind regards, Vincent Picket

Vincent Picket

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Email by WSRW to Vincent Picket (EEAS) of 5 February

Dear Mr Picket,

Thank you for your reply. We very much appreciate your invitation, yet regretfully, we will have to decline. Please allow us to elaborate – as we presume that in the spirit of consultation, we can at least state our reservations.

While the exercise of consulting concerned stakeholders is laudable, we fail to see the purpose of such a process given the current state-of-affairs.

The Court of Justice of the European Union established in its judgment of 21 December 2016 that consent of the representatives of the people of the territory must be obtained. From what we understand, the negotiations with the Government of Morocco are now finished, and the agreed text has been initialed. The Government of Morocco does not represent the people of the territory. It is clear that no consent has been received, as the Court required. We do not see the point of any consultation on a deal that lacks the approval of the people of the territory. On that, we refer to the letter of Saharawi CSOs unanimously condemning the EEAS and Commission's approach thus far.

That this process is supposedly centered on “the socio-economic development of the people living in Western Sahara” is furthermore remarkable, as that line of argumentation was found to be invalid by the Court. Article 106 underscores that there is no need to determine the benefits of the implementation of an agreement – what is important is that the people of the territory have consented to it. Please also note the difference between the concepts of the people of the territory – the original inhabitants - versus the people living in the territory; at present that consists of a large majority of Moroccans that were attracted to locate to Western Sahara by financial and economic incentives created by the Moroccan government.

WSRW does not want to contribute to what appears to be an attempt to legitimize a process whereby an agreement covering a territory's resources is initialed with a Government that has no legal claim to the territory, without as much as asking the people of that territory whether they agree or not at an appropriate time: namely before the start of the negotiation process.

Accordingly, as it stands, we will respectfully have to decline. Should the EEAS and Commission consider an approach that is in line with the people of Western Sahara's right to self-determination and in respect of their right to consent, we will be happy to meet.

Best regards,

Sara Eyckmans

Email of Vincent Piket (EEAS) to WSRW on 7 February 2018

Dear Ms Eyckmans,

Thank you for your reply.

While taking note of your considerations, I regret that it was not possible to have an in-depth exchange of views in person.

That is why I would like to reiterate my willingness to meet with you for a dialogue on the different issues at stake. An open agenda could enable us to address them from a broader perspective.

I look forward to your positive reply and remain,

With kind regards,

Vincent Piket

Email of WSRW to Vincent Piket (EEAS) on 27 February 2018

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 initialed 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,
Sara Eyckmans
Coordinator
Western Sahara Resource Watch