

# THE EU-MOROCCO TRADE AGREEMENT ON WESTERN SAHARA: THE EUROPEAN PARLIAMENT'S TRADE COMMITTEE DRAFT REPORT IGNORES THE PEOPLE OF WESTERN SAHARA AND BACKS THE ILLEGAL DEMOGRAPHIC ENGINEERING

5<sup>th</sup> November 2018

## Introduction

The EU's Court of Justice (CJEU) has twice (on [21 December 2016](#) and [27 February 2018](#)) ruled that Western Sahara is separate and distinct from Morocco, that Morocco has no sovereignty over the territory of Western Sahara and that the EU-Morocco agreements are not applicable to Western Sahara. The Court has also stipulated the *consent* of the people of Western Sahara is the principle pre-condition for the application of such agreements in Western Sahara as a non-self-governing territory.

The EU Commission introduced a so-called "consultation process" with the "local population" in order to replace *the consent of the people of Western Sahara* required by the Court. The Commission claimed that the CJEU did not specify how to achieve the consent of the Saharawi people who are represented at the UN level by the POLISARIO Front since the shameful departure of the Spanish colonial power.

The European Parliament through its International trade committee (INTA) considered it necessary to dispatch a "fact finding mission" to assess the situation in Western Sahara and gain an understanding of the different views of the people of Western Sahara. The mission to Western Sahara took place on the 3rd and 4th September 2018 and only visited the part of the territory which is under Moroccan occupation, excluding the Saharawi refugee camps in Algeria and the liberated territories from the mission program. Moreover, the mission was completely coordinated and controlled by the Moroccan authorities, the occupying power in Western Sahara.

It should be recalled that the CJEU explicitly stated that Morocco has no sovereignty over the territory of Western Sahara, and that the EU and its Member States do not recognize such sovereignty either. Even though this is explicitly mentioned in the Commission's accompanying report and the proposed amendments, the EU institutions have de facto contradicted this position by negotiating and dealing with Morocco when it comes to the exploitation of the natural resources in and trade with the territory of Western Sahara.

## The "fact finding mission" and its mission report

The main goal of the mission to Western Sahara as set by the European Parliament was to assess the situation at first hand and gain a better understanding of the different views of the people of Western Sahara.

We would like to highlight the following points regarding the so-called fact finding mission and its report :

- The mission only visited the part of Western Sahara illegally controlled by Morocco. Western Sahara is a non-self-governing territory awaiting formal decolonization and the people and the territory of Western Sahara are divided by the largest military wall (berm) in the world and millions of landmines. A comprehensive and meaningful fact finding mission should have dealt

with the territory of Western Sahara as a whole, without harming the principle of territorial integrity intrinsic to the process of self-determination which is yet to be exercised. Furthermore, the mission did not visit the refugee camps in Algeria, where a substantial part of the people of Western Sahara have fled 42 years ago.

- The visits and meetings planned during this mission were clearly unbalanced despite our full support and availability as Saharawi civil society to arrange meetings with the Sahrawi people on the ground. The majority of the meetings were with or facilitated by the Moroccan occupying authorities, which accompanied the delegation during their whole time in Western Sahara. Nearly 80% of the mission program was dedicated to meeting with the Moroccan authorities, many of which travelled to Brussels the week before the mission to actively lobby the EU institutions in favour of the Moroccan claims to Western Sahara, as well as with companies which contribute to the illegal exploitation of Western Sahara's natural resources and GONGOs (pro-Moroccan Government sponsored or related NGOs)
- The mission report openly went against the UN adopted terminologies by referring to Moroccan illegal authorities with terms such as "the official authorities" (2nd paragraph of the report's introduction) or "elected representatives" (1st paragraph of the summary account of meetings). These officials have been elected in elections organised by Morocco, which have no legal basis in Western Sahara as per international law. Moreover the EU and its Member states have never recognized the legality of Moroccan elections in relations to Western Sahara.
- The report created a fictitious division of civil society by referring to Saharawi human rights organisations as "organisations critical of the Moroccan authorities" while referring to those "NGOs" proposed by the Moroccan authorities as "organisations that were in favour of the proposed agreement, and one organisation focusing on more participatory inclusion in the local economy" (Page 4, paragraph 2 of the mission report).
- Agriculture producers: a list of all producing farms and its ownership details would be needed to assess and reach the right conclusions.
- Vague numbers: the report refers to numbers of investments that Morocco have conducted or "planning" to, jobs opportunities for the so called "locals" etc. we believe that a fact finding mission will be able to conclude the right recommendations to the European Parliament only when those recommendations are based on facts and proofs (including detailed data such as a list of employees benefiting from these jobs and the list of the infrastructure investments and their status reports followed with site visits).
- The report does not mention the protests taken place during the visit and ignores the violence of the Moroccan forces against protestors. It does not even reflect the use of force in attempt to prevent HR defenders from meeting with members of the delegation. Meeting the delegation had several consequences for those few who have met with the MEPs and expressed their rejection to the agreement, none of these consequences mentioned in the mission reports.

## The INTA Rapporteur's draft report

In addition to the above listed comments which are reflected also in the draft report of the INTA Rapporteur we would like to bring the following points to the attention of the members of the European Parliament, particularly the INTA members:

1. The draft report refers to the "consultations" carried out by the European Commission with elected officials and public opinion in Western Sahara (*Point H of the draft report*). As it has been explained, many of those officials have been elected in elections organised by Morocco in

Western Sahara, which have no legal basis according to international law. Furthermore, , the Commission did not set a foot on the territory of Western Sahara and all meetings were conducted in Rabat and in Brussels, making it impossible for the European Commission to have taken into account Sahrawi public opinion

2. the fact finding mission did not travel to the part of Western Sahara controlled by the POLISARIO Front, nor visited the refugees camps where half of the Saharawi people are living. We find it therefore impossible that the mission could fulfil its original purpose, to “assess the situation at first hand and gain an understanding of the different views of the people” (point I of the draft report)
3. the draft report and the proposed resolution is in contradiction with the UN and the international law. When stating “whereas the United Nations and the African Union recognize the Front Polisario as representative of the people, but neither the EU nor its Member States do” (point K of the draft report), the European Parliament goes against the adopted UN resolutions related to Western Sahara and directly undermine the UN efforts to find a final and lasting solution to the Western Sahara question . This language of the report is also fully and directly in contradiction with the obligation enshrined in the EU Treaties for all EU institutions, including the European Parliament, to respect the UN Charter, UN resolutions and international law.
4. Since the military invasion on 1975, Morocco has been subsidising Moroccans to settle in the territory of Western Sahara. The Saharawis are now minority in their own homeland. The draft report is not only ignoring the demographic engineering, which is considered a crime under international law, but it actively supports the settlements when defending the development of the “local population” which is totally different than the people of Western Sahara (conclusion 3 of the draft report). This approach will only contribute to consolidating Moroccan’s occupation and prolonging the suffering of the Saharawi people.
5. In relation to the consent of the people of Western Sahara, the report recalls that the CJEU did not specify how such consent can be expressed and considers that “some uncertainty remains as regards this criterion” (conclusion 5 of the draft report). However, the legal status of Western Sahara is highlighted by the CJEU in all its judgements, by the UN in all related resolutions, and by the legal services of the European Parliament in its recent legal opinion. The legitimate representative of the people of Western Sahara according to international law is the POLISARIO Front. The consent of the people of Western Sahara can be expressed only through its legitimate representative.
6. Even though there is a total absence of any data related to the products originating in Western Sahara and exported to the EU, the draft report still believes that the EU tariff preferences have had a positive impact on territory of Western Sahara (conclusion 7 of the draft report). Taking into account that there are no traceability mechanisms in place nor there is a will from the Moroccan authorities to make such data available, we wonder how the rapporteur could reach such conclusion. moreover, the report praise the economic development and investment in infrastructure, health and education (conclusion 8 of the draft report). From the program, we believe that there were no hospitals or universities included in the program to conclude such conclusions. What is maybe not known to the mission members is that there is no single university in the entire Western Sahara, and people still go to Morocco for basic health care and the infrastructure including roads were completely demolished after few drops of rain hit the region.
7. Concerning the human rights situation in Western Sahara: the occupied territories of Western Sahara has been inaccessible for the international human rights organizations and the UN special rapporteurs, who are not allowed by the Moroccan authorities to visit the territory to assess the

human rights situation. The daily human rights violations committed by the Moroccan forces against Saharawi civilians are increasing every day. Dozens of Saharawi political prisoners are still in Moroccan jails just because of their defence of Western Sahara's right to self-determination. The individual and collective freedoms and rights remain confiscated. The grave human rights situation in Western Sahara have been reported by international human rights NGOs for years, and none of the EU institutions have ever intervened to defend human rights and protect human rights defenders. Instead, the EU has only contributed to the illegal plunder on Western Sahara's natural resources. The EU presence through trade and investment will not improve the human rights situation in Western Sahara, especially when the planned engagement is limited to a "dialogue" as recommended by the draft report in its conclusion 14.

## Our conclusions and recommendations to the European Parliament

1. By excluding the territory of Western Sahara that is not controlled by Morocco, the proposed agreement is violating the territorial integrity of Western Sahara, which is intrinsic to its right to self-determination
2. Adopting the same wrongful conduct as the European Commission does not make the European Parliament (as the legislative power of the EU) exercise its power and take its responsibilities to protect the EU legality, the EU principles and the EU democracy.
3. As set by the CJEU, the consent of the people of Western Sahara is a key condition to legitimate the application of the EU-Morocco agreements in occupied Western Sahara. Yet, this condition remain unfulfilled.
4. The conclusions included in the draft report of MEP Lalonde favouring the application of the EU-Morocco liberalization agreement have no basis, in the absence of a profound and thorough investigation. The report is biased in favour of the Moroccan occupier and disrespects EU position of not recognizing Morocco's sovereignty over the territory and undermines international law and UN peace efforts.
5. We call on the European Parliament to suspend its consideration of the file, until after its trade committee has carried out a visit to the liberated part of Western Sahara and the refugee camps in Tindouf.
6. We call on the European Parliament to request that the UN Personal Envoy expresses his views on the proposed agreement and whether it will be compatible with the current UN efforts to secure the self-determination of the Saharawi people.

Signed by the Saharawi civil society NGOs:

Occupied territory of Western Sahara:

1. The collective of Saharawi Human Rights Defenders (CODESA)
2. Association for Monitoring of Resources and for Protection of the Environment in Western Sahara (AMRPENWS)

3. Saharawi Committee for the Defense of the Self-Determination of the People of Western Sahara (CODAPSO)
4. The Saharawi Association for Victims of Grave Violations Committed by the Moroccan State (ASVDH)
5. The Saharawi Association for the Protection and Dissemination of the Saharawi Culture and Heritage
6. Saharawi Media Team
7. National Television Team
8. The Saharawi Center for Media and Communication
9. The Association for the Protection of Saharawi Prisoners in Moroccan Prisons
10. Western Sahara Times
11. Bentili Media Center
12. Committee for Support the Peace Plan and Protection of Natural Resources in Western Sahara
13. Committee of the Mothers of the 15 Abductees
14. Association for Justice and Human Rights
15. The Saharawi Center for Save Memory
16. The Saharawi Observatory for the Child and Women
17. Forum for the Future of Women
18. Renunciation Moroccan Nationality Group
19. The field coordination of the unemployed Saharawi graduates
20. Bentili Media Center
21. Gdim Izic Coordinating for Peaceful Movement
22. Committee of Victims of the Agdaz and Magouna
23. Independent Media Commission
24. The Saharawi Association for Persons with Disabilities in Western Sahara
25. Committee of the Families of the Saharawiss Missing
26. The Saharawis Association for the Defense of Human Rights and the Protection of Resources in Bujdour
27. Freedom Sun Organization in Smara
28. Saharawis Committee for the Defense of Human Rights in Samara
29. Organization Against Torture in Dakhla, western Sahara
30. The Saharawi committee for the defence of human rights in Zag
31. The Saharawi committee for human rights monitoring in Assa
32. The Saharawi committee for the defence of human rights in Glaimim
33. The Saharawi organization for the defence of freedoms and dignity
34. El Ghad for human rights

Saharawi refugee camps:

35. Comisión Nacional Saharaui de Derechos Humanos (CONASADH)
36. Unión Nacional de Mujeres Saharaui (UNMS)
37. Unión Nacional de Trabajadores de Saguia El Hamra y Rio de Oro (UGTSARIO)
38. Unión Nacional de la Juventud de Saguia El Hamra y Rio de Oro (UJSARIO)
39. Unión Nacional de Estudiantes de Saguia El Hamra y Rio de Oro (UESARIO)
40. Unión de Juristas Saharaui (UJS)
41. Unión de Periodistas y Escritores Saharaui (UPES)
42. Observatorio Saharaui de Recursos Naturales
43. Asociación de Familiares de Presos y Desaparecidos Saharaui (AFAPREDESA)
44. Grupo Non-Violence Active (NOVA SAHARA OCCIDENTAL)
45. Asociación de Víctimas de Minas (ASAVIM)
46. Asociación de Abogados Saharaui (UAS)
47. Campaña Saharaui para la sensibilización sobre el peligro de Minas (SCBL)
48. The Saharawi campaign against the plunder SCAP

Saharawi Diaspora :

49. Saharawi association in the USA (SAUSA)
50. VZW de vereniging van de Saharawi gemeenschap in Belgie – Belgium
51. Association culture Sahara – centre de France
52. Association des femmes Saharawi en France
53. La league des jeunes et des etudiants Saharawi en France
54. Association de la communauté Saharaoui en France
55. Association culturelle franco-Saharaouie
56. Association des Sahraouis en France
57. Association des Sahraouis de Bordeaux
58. L'union des ingénieurs Sahraoui
59. Asociación de abogados saharauis en España
60. Asociación de médicos saharauis en España
61. La liga de deportistas saharauis en España
62. La liga de periodistas saharauis en España
63. Comunidad Saharaui en las palmas
64. Asociación de saharauis en Tenerife
65. Asociación de saharauis en Fuerteventura
66. Colectivo saharauí en Lanzarote
67. Asociación de saharauis en bal
68. Asociación ARDI HURRA en Sevilla
69. Asociación de saharauis en lebrija
70. Colectivo de saharauis en Jaén

71. Asociación de saharauis en jerez de la frontera
72. Colectivo sah en estepona
73. Comunidad Saharaui en Granada
74. Asociación amal centro Andalucía
75. Comunidad Saharaui en Murcia
76. Asociación de saharauis en alicante
77. Asociación de zamur Valencia
78. Comunidad Saharaui en Catalunya
79. Comunidad Saharaui en Aragón
80. Asociación de saharauis en valdepeñas
81. Comunidad Saharaui en Castilla la Mancha
82. Asociación de saharauis en Ávila
83. Comunidad Saharaui en Castilla y León
84. Asociación de saharauis en Navarra
85. DISABI Bizkaia
86. Sahara Euskadi Vitoria
87. Sahara Gasteiz Vitoria
88. Amal nanclares
89. Tawasol Iludio
90. Tayuch Amurio
91. Colectivo saharai en GIPUZKOA
92. La liga de estudiantes en España
93. Green Western Sahara Association