

19 April 2013
Brussels

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The Netherlands

To the attention of Ms Marie-Jo Char
Team Leader on the Trade Sustainability Assessment study EU-Morocco

Dear Ms Char,

Western Sahara Resource Watch (WSRW) respectfully offers three recommendations on the Draft Inception Report of 29 March 2013, on the Trade Sustainability Impact Assessment in support of negotiations of a Deep and Comprehensive Free Trade Agreement (DCFTA) between the EU and Morocco, prepared by ECORYS.

In Chapter 3 of the draft report, “Consultation plan and stakeholders”, ECORYS states that “during this inception phase, we have identified a diversified range of potential civil society organisations and representatives to ensure that all views on the DCFTA could be voiced”. Yet a review of the list of stakeholders included in annex A to the report, reveals that one particular directly affected party is not included – one whose voice is far too often ignored in the EU’s talks with Morocco: the Saharawi people.

As evident from the letter dated 2 August 2012 by the European Commissioner for Trade, Mr Karel De Gucht, the three quarters of Western Sahara that are occupied by Morocco are included in the geographical span of the proposed DCFTA. A copy of that letter is attached for your convenience. The Commissioner’s letter was sent in reply to 31 Saharawi organisations that had contacted him on 26 June 2012 to request the clear exclusion of their occupied country from the scope of the DCFTA with Morocco. That letter is also enclosed for your information.

As we stated in our letter to you on 28 March of this year (also enclosed), the United Nations consider Western Sahara to be a Non-Self Governing Territory, one without a legal administrative power in place. The International Court of Justice in its Advisory Opinion, the United Nations Charter, and over a hundred UN Resolutions of both the Security Council and the General Assembly, have all acknowledged the international status of Western Sahara as a Non-Self Governing Territory and the right of its people, the Saharawi, to self-determination. Thus, the international community has time and time again recognised that the Saharawi people have the right to determine the future status of the territory and its possessions; that their voice ought to be heard, as the original people of the territory. It is also worth noting that Morocco’s claims to the territory have been rejected by the International Court of Justice, and that no State in the world recognises Morocco’s self-proclaimed sovereignty over its southern neighbour.

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Western Sahara Resource Watch works to raise awareness of the illegal occupation of Western Sahara and to support the recognition of the Saharawi people's right to self-determination.

To negotiate a trade agreement with Morocco that will be operative not only in the internationally recognised territory of Morocco, but also in that part of Western Sahara it illegally and illegitimately occupies, is a flagrant violation of the Saharawi people's right to self-determination.

We acknowledge that the decision to include the territory of Western Sahara in a trade agreement with Morocco is not one made by ECORYS. That is entirely the responsibility of the European Union. But ECORYS has been contracted to "assess how the trade and trade-related provisions under negotiation could affect economic, social and environmental issues in the EU and Morocco (...) as well as in other relevant countries". Given the status of Western Sahara, and the fact that the European Commission does not wish to abide by international law by clearly barring the territory from its trade deals with Morocco, WSRW believes that the views of the Saharawi people should be regarded as relevant.

WSRW has 3 recommendations to ECORYS:

1) WSRW recommends ECORYS to include Saharawi organisations representative of the wishes of the Saharawi people - both those living in the territory occupied by Morocco, as well as those living in the refugee camps in Algeria - into the list of stakeholders.

WSRW believes that it is troubling that the Saharawi people may not be considered a stakeholder in the consultation process on a far-reaching free trade agreement that will directly affect their everyday lives and their fundamental right to self-determination. We recommend ECORYS seeks the views of the Frente Polisario as the single, accepted representative of the Saharawi people, with whom the UN deals on equal footing to Morocco in the UN mediated peace talks over the Western Sahara territory.

As correctly hinted on in your report, Morocco does not allow formal registration of "associations that are contrary to 'the integrity of the national territory'". During the Universal Periodic Review process in the UN Human Rights Council last year, Morocco rejected the recommendation that its government should apply international minimum standards for registration of civil society organisations, including for Saharawi organisations propagating respect for their basic human rights. Leading representatives of some of these organisations were recently sentenced to up to life imprisonment by a military court. The fact that Saharawi networks are not legal entities under Moroccan law, should, however, not constitute an obstacle to consult with these networks. Basically all civil society organisations of relevance to such a stakeholder process were co-signatories of the abovementioned letter to the Commissioner on 26 June 2012.

It should also be brought up that the UN Legal Counsel in a letter to the Security Council in 2002 concluded that natural resources activity in Western Sahara can only be in line with international law if undertaken in accordance with the wishes and the interests of the people of the territory; implying that the Saharawi people must be consulted, consent to and benefit from commercial and export activities in respect of Western Sahara's natural resources. In this respect, the failure to address the wishes of the Saharawi means that the agreement is *a priori* falling short in fulfilling the criteria expected for the agreement to be legal.

We would like to underline that in principle, the territory of Western Sahara should not have been included in this agreement to begin with (Non-EU states specifically exclude the territory from trade agreements). As it is in fact included, the Saharawi groups should have been given a seat at the negotiations table. Since they are not, the very minimum that can be expected is that they are considered a stakeholder for the territory that is theirs – and that the EU does not recognise as part of Morocco.

We take note of the fact that one organisation that ECORYS has identified as a stakeholder for the consultation process on the DCFTA with Morocco, is in fact located in Dakhla, in the southern part of Western Sahara. We would like to underscore that the *Association de Protection de l'environnement et du Consommateur Dakhla* cannot be regarded as representing the wishes and interests of the Saharawi people, if only because of its remit. In addition, it is worth pointing out that many organisations operating in the territory are not likely representative of Saharawi views, in part because of the aforementioned constraints on such organisations, as well as due to Moroccan government establishing its own organisations claiming to be of the civil society.

From our experience, there are a number of reasons why it is key to focus on the Saharawi people as a stakeholder, not only due to the legal implications but also because of their particular marginalisation they experience vis-à-vis other social groups in the territory. The Saharawi are today a minority and a vulnerable group in their own homeland, not only suffering the horrendous effects of a brutal occupation, but also from the social and economic exclusion from lucrative business conducted on the back of the illegal taking of their natural resources – an effect that is highly likely to be exacerbated by the DCFTA.

2) WSRW recommends ECORYS to undertake an assessment of the DCFTA's potential effects on the human rights situation in Western Sahara, and to specifically appraise whether negotiating a trade deal with Morocco that will apply to Western Sahara without seeking the consent of the Saharawi people is in itself in violation of their human rights.

The draft report rightfully cites the importance of “human rights issues, for which several civil society organisations have been involved in Morocco”. The report goes on to say that “the EU Delegation to Morocco mentioned the horizontal issues of corruption, competition and human rights as important topics in the DCFTA with Morocco”.

However, it appears that ECORYS does not anticipate assessing how the DCFTA could have an effect on human rights in the EU, Morocco, and affected countries. If no other institution has been contracted to that purpose, we respectfully ask you to categorise the human rights angle as part of the social assessment of the agreement. We ask that such an analysis devotes due attention to the fact that an evaluation of the human rights effects of the DCFTA in the territory of Western Sahara will necessarily differ from a human rights evaluation in Morocco proper, given the status of the territory and the Saharawi people's right to self-determination over the Non-Self-Governing Territory.

We also ask that the proposed human rights assessment will thoroughly contemplate whether the fundamental human right of the Saharawi people to self-determination has been violated through including three quarters of their land in a trade agreement with Morocco, regardless of whether they are considered to be a stakeholder or not to the consultation process on that agreement.

WSRW believes that the peoples' right to self-determination is a fundamental human right.

3) WSRW recommends ECORYS to make the distinction between the territory of Morocco and the territory of Western Sahara in the assessment it has set out to do.

In respect of the assessment that ECORYS has been contracted to undertake, an appraisal of the DCFTA's social, economic and environmental impact in the EU, Morocco and other relevant countries, we advise ECORYS to present the estimated social, economic and environmental impact in Western Sahara separately from the effects in Morocco.

The UN treats Morocco and Western Sahara as separate entities and territories. The EU should do no less, nor should assessments of the EU's trade agreements with Morocco.

We thank you for your consideration of our concerns and recommendations, and remain at your disposal should you require further information.

Best regards,

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