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Brussels

ECORYS Nederland BV

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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) wishes to share its comments to the Draft Interim Technical Report of 29 May 2013 (hereafter referred to as 'the Report') on the Trade Sustainability Impact Assessment in support of negotiations of a Deep and Comprehensive Free Trade Agreement (DCFTA) between the EU and Morocco, as prepared by ECORYS.

1. *We recommend ECORYS to devote due attention to the situation of Western Sahara, as the draft interim technical report is in some places linguistically and factually deficient in treating the matter*

The case of Western Sahara is sufficiently acute and so much a matter of international human rights law and international humanitarian law, that it needs particular treatment in the Report. We recommend ECORYS dedicates an extra paragraph to the issue, explaining that Morocco is still involved in an extra-terrestrial conflict over sovereignty of Western Sahara, and that its military imposed control over three quarters of the territory - not the entire territory - is not recognised by any country in the world, nor are their legal grounds supporting its presence there.

Furthermore, the well-established fact that Western Sahara is not recognised as part of Morocco should be consistently dealt with throughout the Report. See e.g. the paragraphs on the geographical coverage of the DCFTA (p.61 and also figure 4.3 on p. 70), where the specific matter of the DCFTA being "nation wide" is mentioned. Or see section 4.1.1. on p. 65, where the matter of Western Sahara is overlooked completely. Morocco does not, as a matter of law, share land frontiers with Mauritania, nor does it practically, as Morocco does not occupy Western Sahara to any point that touches on the frontiers of Mauritania. In this regard, see also e.g. on p. 60 ("potential improvement in the right to education and health may apply to all of Morocco and Western Sahara..."). The territory of Western Sahara is effectively divided in two parts, due to a military fortified wall erected by Morocco and surrounded by some of the world's densest mine fields: the area west of what has become known as 'the berm' is controlled by Morocco, the area to the east by the Frente Polisario.

In its current version, the Report fails to explain the situation, thereby unwittingly feeding into Morocco's discourse, presenting Western Sahara in its entirety as part of its national territory. A more balanced approach could be obtained through including an explanatory paragraph on the conflict.

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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.

- 2. We recommend ECORYS to clearly state whether or not their assessment extends to the part of Western Sahara that is under Moroccan occupation.*

In spite of its binding obligations under international law, the European Commission has decided not to exclude the occupied parts of Western Sahara from the scope of the envisioned DCFTA with Morocco. We understand from the final inception report that ECORYS will, consequently, also look at the DCFTA's potential impact in Western Sahara.

However, the draft Interim Technical Report does not mention whether or not its analysis encompasses Western Sahara. For the sake of clarity, we recommend it be stated explicitly in the Report whether ECORYS intends to assess the DCFTA for application to Western Sahara, to parts of Western Sahara, or only to the state of Morocco as it is defined under international law and recognized by the organised international community.

- 3. We recommend ECORYS 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.*

As it stands, the Report mainly mentions Western Sahara in connection to specific human rights abuses. See e.g. the references to Western Sahara as an example under some of the specific human rights violations included Table 3.5 on pp. 50-56: torture and ill-treatment; freedom of expression and media; freedom of association; children's rights.

However the main issue, the denial of the right to self-determination to an entire people, is not brought up under point 3.2.2. If the part of Western Sahara that is under Moroccan occupation is to be included in the analysis, then the Report ought to refer to the fact that Morocco does not allow the people of the territory to exercise their basic human right to self-determination.

We therefore reiterate our request submitted for the Draft Inception Report, namely that the human rights assessment would 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.

- 4. We recommend ECORYS to assess the legal and related economic risk for the European Union of extending a free trade agreement into the occupied areas of Western Sahara*

A free trade agreement cannot, as a matter of international law, apply to the territory of Western Sahara. A Report on the impacts and results of a free trade agreement does not necessarily have to recite the obligations of international law that are incumbent upon the European Union, such as e.g. the duty of non-recognition resulting from the 1975 advisory opinion of the International Court of Justice, the positive duty to ensure the right of the Saharawi people to self-determination is achieved, the law of occupation, etc. However, in our view, the draft (or a further) Report needs to mention the legal and so economic risk of free trade extending into Western Sahara while being prohibited under international law.

5. *WSRW recommends a differentiation between the territories of Morocco and Western Sahara be employed in the human rights assessment.*

As raised in our previous letter regarding the Draft Inception Report, we ask that the human rights 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.

The trade in resources from Western Sahara under Moroccan occupation has already resulted in social conflict and a degraded human rights situation for the Saharawi people. This has particular relevance for the implementation of a free trade agreement that will also cover the territory.

6. *We recommend ECORYS to consider how Morocco's subsidising and military spending in the territory of Western Sahara will affect the DCFTA*

The Report fails to note or point to any particularly or disaggregated data from the territory of Western Sahara. The matter is important for two reasons: first, the territory is under military occupation and its is a violation of law for the EU to extend free trade to it and, second, in economic terms the territory has a subsidised economy. How would a DCFTA be impacted by the phenomenon of exceptional state subsidy and military spending for Morocco's presence in Western Sahara, which includes direct and indirect settler incentives, and reduces tariffs (taxation) on industrial and consumer goods?

7. *WSRW recommends a more inclusive approach vis-à-vis the Saharawi people, and that Saharawi associations will be included as stakeholders to the further assessment process*

We applaud ECORYS for noting the need for a human rights impact assessment on the "Saharawi people in Western Sahara". We would like to suggest that this be changed to read the "Saharawi people of Western Sahara", in order to also include the diaspora and refugees displaced from Moroccan held Western Sahara. On a related note: will Ecorys also take into consideration the effect of the DCFTA on refugees displaced from Moroccan held Western Sahara?

Finally, we are grateful for ECORYS' positive reply to one of our comments to ECORYS' Draft Inception Report on the Morocco DCFTA, namely the recommendation to include in the list of stakeholders a Saharawi organisation 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. We would like to stress the importance of hearing the Saharawi people on an agreement that will profoundly impact part of their land and one that will have political implications for their struggle to self-determination. We note that ECORYS is very much aware of this need. As stated on p.62, regarding the challenge of engaging civil society to take part in public affairs, "caution is needed here as especially the vulnerable groups (e.g. minorities, small-scale domestic producers, women, Western Sahara) may suffer if not properly represented and / or listened to."

Given the status of Western Sahara as a Non-Self Governing Territory without a *de jure* administering power, and given the inclusion of part of the territory in the envisioned EU-Morocco DCFTA, the Saharawi people should rightfully take part in the DCFTA negotiations. To be regarded as a stakeholder in the public consultation of civil

society organisations on that agreement, is the bare minimum, but we sincerely hope ECORYS will make the effort. We repeat our willingness to share contact details of relevant Saharawi representatives, if that would be helpful.

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

Best regards,

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