

## Opening Statement by Erik Hagen, Chair of Western Sahara Resource Watch

### Tom Lantos Human Rights Commission Hearing: Human Rights Threatened, Self-Determination Deferred: the Status of Western Sahara

23 March 2016

Western Sahara Resource Watch (WSRW) is an independent, non-governmental organization based in Brussels with an international board of directors, operating in around 40 countries. Our principal purpose is to monitor and comment about the taking of natural resources from occupied Western Sahara, and to address related human rights and environmental protection issues.

International law is clear. Western Sahara is considered a Non-Self Governing Territory – a colony, and Morocco has not been appointed as the administering power of Western Sahara by the UN. As such, the sovereign rights to the territory and its resources remain with the people of the territory; the Saharawi people. In 2002, a UN Legal Opinion, triggered by the interests of US and French oil companies in Western Sahara, concluded that any exploration or exploitation of the territory's mineral resources ought to be in accordance with the wishes and the interests of the people of the territory. In October 2015, the UN Treaty Body reviewing States' conduct under the **Covenant on Economic, Social and Cultural Rights** called on Morocco to respect the principle of prior, free and informed consent of the Saharawi people with regard to resource-related activities in Western Sahara.

The legal qualification of Western Sahara is reflected in the **USA-Moroccan Free Trade Agreement**, which excludes Western Sahara from its territorial scope. This view is shared by Norway and Switzerland, which do not interpret the EFTA free trade arrangement with Morocco to apply in Western Sahara. This is different in the European Union; while the EU maintains to support the Saharawi people's right to self-determination and does not recognize Morocco's sovereignty claims to the territory, it has no problem concluding trade deals with Morocco that cover the area of Western Sahara that is under Morocco's military occupation. However, on 10 December 2015, the **Court of Justice of the European Union** ordered the annulment of the EU-Morocco Free Trade Agreement as it was being applied in Western Sahara. The Court stressed that Morocco has no international mandate to administer Western Sahara.

Nonetheless, Morocco continues to exploit the Western Saharan resources. WSRW contends that Morocco's interest in Western Sahara's economic potential is geared exclusively toward the purpose of **furthering acceptance of its illegal occupation** of the territory. We maintain that the taking of Western Sahara's resources is illegal because it is not directed towards assisting the Saharawi people in the exercise of their right to self-determination, but rather to the opposite: maintaining and strengthening its untenable claim over the territory. The problem here is three-fold: (i) the enrichment of Morocco through the sale of the territory's natural resources; (ii) Morocco's development of Western Sahara's resources to further acceptance of its illegal presence there; (iii) the decreased availability of non-renewable resources to the Saharawi people when they will eventually realize self-determination.

A tiny minority of Saharawi individuals actually profits from the exploitation of Western Sahara's resources. They are, without exception, persons who have sworn allegiance to the King of Morocco. All Saharawi groups and individuals that WSRW has contacted over the course of 10 years maintain that the overwhelming majority of the Saharawi people does not profit from Morocco's illegal exploitation from the territory's natural resources. Critically, the Saharawis residing in the refugee camps in Algeria do not receive the benefit of such revenues.

The vast majority of jobs created on the back of the territory's resource exploitation is given to Moroccan settlers, attracted to move into the territory by the promise of jobs, subsidies and tax exemptions. In 2010, Morocco's policy of social and economic exclusion of Saharawis resulted in thousands of Saharawis pitching their tents in the desert, in the peaceful protest camp called **Gdeim Izik**. The Moroccan army violently tore down the encampment in November 2010. In the aftermath, a Moroccan military tribunal condemned a group of Saharawi activists to harsh sentences, ranging from 20 years to life imprisonment, for allegedly having taken part in the camp. Their trial has been widely condemned for not adhering to the basic principles of a fair trial. The group is at present on hunger strike, as their request for appeal, issued three years ago, has still not been responded to.

The use of settlers is not only instrumental to Morocco in propagating the misconception that the exploitation of Western Sahara's resources is beneficial to the Saharawis, but also in creating the **false impression that the Saharawis have been consulted** about and agree to the exploitation. Central in this approach is the Economic, Social and Environmental Council (CESE), a Moroccan state agency that was instituted in 2011 and controlled by the Moroccan King. In October 2013, CESE published a report mapping out the development model for the Moroccan occupied parts of Western Sahara, which boasted widespread consultations and dialogue with representatives of civil society in the territory. None of the Saharawi groups, associations and individuals that WSRW has contacted was approached by the CESE. Nevertheless, the work of the CESE is increasingly used to try to legitimize Morocco's exploitation of Western Sahara's resources, as it creates an illusion that the Saharawis' views have been heard.

The Moroccan government has also retained several law firms to draft legal opinions that claim Morocco is lawfully exploiting the resources of Western Sahara, as it is to the benefit of the "local population". While these opinions are circulated to corporate and government entities implicated in the plunder, and their investors, they are kept from the Saharawis themselves.

A company that readily accepts and even promotes the Moroccan government's position to the conflict, is **Potash Corporation of Saskatchewan Inc.** (PotashCorp). PotashCorp operates a phosphoric acid plant in Geismar, Louisiana, USA, where phosphate rock from Western Sahara is imported and processed. The company imports via long-term agreements with the Moroccan state-owned OCP. Our analysis shows that in 2015, PotashCorp was the largest importer of phosphates from Western Sahara; the company purchased 474,000 tonnes to the tune of an estimated US \$56.5 million. PotashCorp has been purchasing Saharawi phosphate rock for two uninterrupted decades.

Similarly adopting the Moroccan government's stance, is **Kosmos Energy Ltd**, a Dallas-based oil company that operates in occupied Western Sahara under an oil license granted by the Moroccan government. In December 2014, the company carried out the first ever drilling operation in the history of Western Sahara under occupation. Kosmos announced having discovered hydrocarbons, though not in commercial quantity, and its intent to carry out further exploration work, including a potential second well-drilling, in its licensed area.

In defence of their actions, both PotashCorp and Kosmos refer profusely to the documents they have obtained from Morocco's contracted lawyers, stating that it is permissible to exploit Saharawi resources as long as the "local population" stands to benefit through the activity. Neither company has ever sought the consent of the Saharawis, and instead chose to only consult organisations that enjoy the Moroccan King's approval. Telling is that both companies misrepresent the conclusion of the UN Legal Opinion on the matter, by avoiding any reference to the word 'wishes' – the embodiment of the Saharawi people's right to self-determination; the right to state what they want.

The Saharawi people are clear; they do not consent to or benefit from the exploitation of their homeland's resources. All they want is to be heard, by exercising their right to self-determination.