

To the attention of the European Bank for Reconstruction and Development
Via moroccodraftstrategy@ebrd.com

Brussels,
16 January 2015

Re: EBRD Draft Strategy for Morocco

Dear Sir, Dear Madam,

We are writing to you following the European Bank for Reconstruction and Development's invitation to comment on its *Draft Strategy for Morocco*, as detailed on the Bank's website.

We commend the EBRD for allowing public comments in the matter and wish to congratulate the Bank on the useful strategic draft that it has produced. However, we call for more clarity on a point that merits particular attention, namely the EBRD's position about investments in projects implemented or partly implemented in the area of Western Sahara under Moroccan occupation.

In the *Draft Strategy for Morocco*, only one reference is made to Western Sahara. On page 38, in annex 1, under the subtitle "Political inclusiveness for women, ethnic and other minorities", which is placed under the title "Civil and Political Rights", the following three sentences are devoted to the subject:

"Morocco controls most of the disputed territory of Western Sahara, which remains the subject of UN resolution efforts that have yet to bear fruit. The Moroccan authorities made a proposal in 2007 to grant autonomy to this territory under Moroccan sovereignty, while the Polisario Front liberation movement requests the holding of a referendum on independence. There have been mutual accusations of human rights violations on both sides."

Though the paragraph is rather short, it evokes several questions and concerns.

First, we contend this place in the *Draft* document is not the right place to make mention of the Western Sahara conflict, which is ultimately about the continuing denial of the Saharawi people's well established right to self-determination.

As you will recall, Morocco invaded Western Sahara in 1975 and went on to occupy large parts of the territory. This occurred in blatant disregard of the then International Court of Justice's Opinion, stating there was no "tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity ... the Court has not found legal ties of such a nature as might affect the application of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory."

To this day, the United Nations considers Western Sahara as a case of unfinished decolonization, and continues to cite the right to self-determination as the cornerstone to the solution of the conflict. No

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State in the world recognizes Morocco's self-proclaimed sovereignty in Western Sahara, while there is an overwhelming consensus for the Saharawi people's right to self-determination.

Accordingly, it is erroneous to address Western Sahara under the label "Political inclusiveness for women, ethnic and other minorities" in the *Draft Strategy on Morocco*. Western Sahara is not part of Morocco, nor are the Saharawi people in Western Sahara an ethnic or other minority in Morocco. It is true that there is a Saharawi population in Morocco proper – mainly in the south of the country – which itself is subject to well-documented human rights violations. It is also true that Moroccan settlers and a large Moroccan armed presence today outnumber the Saharawi in Western Sahara proper. But that still does not make Western Sahara part of Morocco, nor its people a Moroccan minority.

Consequently, we recommend the EBRD characterize Western Sahara as a separate part of its political assessment (annex 1). None of the already-included chapters of the political assessment are suited for treating such a matter with its particular legal, political and ethical implications. While there is no reason for an elaborate section on the issue, Morocco's occupation of Western Sahara does remain a singular matter that merits separate mention, and should not be obfuscated by noting it in passing under a topic that deals with concerns about rights and freedoms in Morocco proper. In any event, addressing Western Sahara also means pointing out Morocco's illegal exploitation of the territory's natural resources. Morocco purports to sell Western Sahara's resources as its own, in violation of international law and a significant legal opinion prepared for the UN Security Council (S/2002/161) on the matter. The revenue from these resource sales and related activities will to a degree distort Morocco's economic figures, which is relevant information for investors.

On a related note, the political assessment in the *Draft Strategy* states that the Moroccan authorities are committed to improving political and human rights. While the Moroccan government may indeed make this claim, it is far from reality. A country that ferociously opposes adding a human rights monitoring component to the United Nations mission in Western Sahara cannot credibly note its commitment to human or political rights. A country that refuses to accept the inclusion of human rights safeguards in a fisheries agreement with the European Union – a standard practice of the Union since 2010 – is not a country that accords importance to human rights. To counterbalance information received from the Moroccan government or government instigated human rights bodies, we recommend the EBRD consider reports by Human Rights Watch, the Robert F. Kennedy Center for Justice and Human Rights, the United States Department of State, Amnesty International, Association Marocaine des Droits de l'Homme, the UN Special Rapporteur for Torture, among others.

Second, the paragraph about Western Sahara contains the somewhat oblique statement that "the Moroccan authorities made a proposal in 2007 to grant autonomy to this territory under Moroccan sovereignty, while the Polisario Front liberation movement requests the holding of a referendum on independence". While it is certainly true that Morocco is advocating its autonomy-proposal as a solution to the conflict and the Polisario Front aims for independence, it should be recalled that both parties, the Polisario Front and Morocco, have agreed to the holding of a referendum on independence as part of the UN sponsored agreement which they signed in 1991. To this effect, a UN mission was established in the territory; MINURSO – a French acronym for the United Nations Mission for the Organization of a Referendum in Western Sahara. Ever since, Morocco has not allowed the organization of said referendum, something well understood and commented upon by independent observers. To this day, the 1991 agreement and its promise of a full-fledged referendum on self-determination are central to the framework that governs the UN-led peace talks between Morocco and the Polisario Front.

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Finally, what is also missing in the paragraph about Western Sahara and in the rest of the document, is the position of the EBRD about potential investments in projects (infrastructure, services, enterprises, or other) in that area of Western Sahara under Moroccan occupation.

In 2013, several large investment banks and multinational investors clarified to the media that they would not finance projects based in Western Sahara, in order to maintain a neutral stance vis-à-vis the conflict. These statements came in the slipstream of revelations by our organization that Morocco was advertising specific European and international financing institutions as the main funders of its renewable energy program which contained plans to construct wind and solar plants in occupied Western Sahara. German state-owned bank KfW and multi-lateral lenders such as the World Bank, the European Investment Bank (EIB) and the European Union subsequently announced that they would not finance projects in Western Sahara. For your ease of reference, we include links to some media articles covering the statements:

<http://www.reuters.com/article/2014/01/02/us-morocco-solar-idUSBREA010KC20140102>

<http://uk.reuters.com/article/2014/02/04/morocco-solar-idUKL5N0L92J220140204>

http://www.euractiv.com/development-policy/report-renewable-projects-uphold-news-530020?utm_source=RSS_Feed&utm_medium=RSS&utm_campaign=EurActivRSS

With this position, KfW, EIB, the European Union and the World Bank follow the example of the United States Trade and Development Agency (USTDA) which has indicated it will not provide funding for Morocco's marketing of the oil industry in Western Sahara. Scandinavian export credit agencies have stated comparable positions on Western Sahara in general. Such position is in line with international law, which demands States – and therefore the EBRD – positively refrain from recognizing the occupation of Western Sahara, and do not assist to entrenching it.

We would welcome the EBRD's position on financing projects or development programs in occupied Western Sahara. We expect it to be in line with the above-cited examples. As such, we request the EBRD to include in its *Draft Strategy for Morocco* a clear and unambiguous statement that it will not financially support any project or activity in Western Sahara, as long as the conflict has not been settled.

We remain available for any further information or clarifications that you may require. We trust you understand that we consider this a matter of importance, and we thank you for giving our request due consideration.

With best regards,

Sara Eyckmans
Coordinator
Western Sahara Resource Watch
coordinator@wsrw.org

A copy of this letter was sent to:

- HE Ambassador Christopher Ross, UN Secretary-General's Personal Envoy for Western Sahara
- HE Kim Bolduc, UN Secretary-General's Special Representative for Western Sahara and Head of the United Nations Mission for the Referendum in Western Sahara (MINURSO)

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