

Mr. Joe Borg
EU Commissioner for Maritime Affairs and Fisheries
European Commission
B-1049 Brussels

30th December 2009

Dear Commissioner Borg,

With regards to your call for “a truly open, no-holds-barred debate with stakeholders, Member States and the general public”¹ on the reform of the EU’s Common Fisheries Policy, we write to you with our views and suggestions. We hope that the comments below will be useful for you and for your successor.

Your comment that the current reform of the fisheries policy “will require the active participation of all those who may be affected by its outcome”² is encouraging for us. We – the people of Western Sahara – are already seriously affected by the EU fisheries policy, as we will be in future. To date, we continue to suffer the negative consequences of the 2006 Europe-Morocco Fisheries Partnership Agreement, (FPA) which came into force in 2007. Indeed, you may recall a letter from the POLISARIO – the political representation of the Saharawi people - addressed to yourself before the signing of the FPA on 18th May 2005,³ in which their opposition to the aforementioned was expressed.

Western Sahara is treated by the UN as a Non Self-Governing Territory – the last colony in Africa. In 1975, it was invaded by Morocco. Many Saharawis fled to the Algerian desert to avoid the napalm and white phosphorus of the Moroccan army. There, they remain, living as refugees over three decades later. The rest of our people, which did not flee in 1975, live under a brutal Moroccan occupation. They suffer serious affronts to their human rights, which have been documented by many International NGOs, including Amnesty International and Human Rights Watch.⁴

By claiming that the Western Sahara is part of its territory, Morocco ignores the 1975 International Court of Justice Advisory Opinion, the UN Charter and numerous UN Security Council and UN General Assembly Resolutions, which have all stressed the current international status of the Western Sahara as a Non Self-Governing Territory and the right of the Saharawi people to a self-determination referendum.

This is of course relevant to the Fisheries policy due to the current EU-Morocco FPA, and the ambiguity over whether or not the waters of the Western Sahara are included in the Agreement. Prior to its entering into force, this was of concern to many NGOs, Member States such as Sweden, Finland, the Netherlands and Ireland⁵, the Saharawi people, over 200 MEPs⁶ and members of the general public. We were concerned since entering into a trade deal with a power illegally occupying a Non Self-Governing Territory in order to benefit from the latter’s natural resources is

¹ *The Common Fisheries Policy: A User’s Guide*, European Communities, Belgium, 2009, p. 36.

² *Ibid.*, p.5.

³ Letter of the POLISARIO Representative to the EU Commissioner Mr Borg, Brussels, 18 May 2005.

⁴ See for example Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, New York, 2008, available at <http://www.hrw.org/en/reports/2008/12/19/human-rights-western-sahara-and-tindouf-refugee-camps-0>, last accessed 9 November 2009.

⁵ Sweden voted against the FPA, Finland and the Netherlands issued statements and abstained, whilst Ireland voted for the FPA but issued a statement urging that the “Agreement is implemented to the benefit of all the people concerned and in accordance with the principles of international law.”

⁶ 167 MEPs voted against the Agreement, whilst a further 79 abstained.

against international law. We cannot help but wonder why – given the political, legal and ethical sensitivity of the issue – the EU did not simply preclude Western Sahara from the Agreement; just as the United States government has done in relation to its US-Morocco Free Trade Agreement in 2004.⁷

Furthermore, the EU Parliament's Legal Service, when assessing the legitimacy of the agreement, suggested that the Community could eventually enter into consultations with a view to suspending the agreement, should its implementation by Morocco disregard the interests of the people of Western Sahara.⁸ As a coalition of Saharawi human rights and grassroots organisations, including the Trade Union that is representative of Saharawi workers in the Occupied Territories, we feel that we are qualified to comment on the extent to which Morocco's implementation of the Agreement has benefited our people: the interests of the Saharawis have been totally ignored.

We would like to underline that at no point prior to the signing of the FPA, and at no point after it entered into force, have any of the undersigned organisations ever been consulted regarding the agreement. No representatives, neither of the EU nor Morocco, have asked whether we want the agreement or not, despite the fact that the agreement is today being implemented in a territory which belongs to our people.

It was highly regrettable to learn about the 9 October 2009⁹ statement, in which you chose to omit the most important part of international law when it comes to issues of self-determination versus natural resources exploitation in Non Self Governing Territories. You refer to the UN legal opinion from 2002, but regrettably gravely misrepresent its conclusion. The UN statement states that natural resources activities cannot take place in Western Sahara if said activities disregard the "wishes and interests" of the people of the territory. We can assure you that the Agreement is completely contrary to the wishes of our people, and that no consultation with the Saharawis has been carried out whatsoever. It is also worth pointing out that the EU has presented no evidence supporting the claim that the FPA is beneficial to the Saharawi people, nor that the agreement accords to their wishes. We therefore hope that with the impending reform, the Fisheries Commission will realize its objective of creating "a framework for the industry in which it pays to be responsible, rather than one where people can profit by ignoring the rules and putting themselves first, whatever the cost to others".¹⁰

We would also like to take this opportunity to remind you that on April 9th 2008, after 7 different written questions had been delivered to the European Commission, you finally confirmed that fishing had indeed taken place in Western Sahara during the calendar year of 2007, under the EU-Moroccan Fisheries Partnership Agreement.¹¹ The plunder of the natural resources of an Occupied Territory could have been avoided, if only the EU had clearly and transparently excluded Saharawi waters from the Agreement. In the light of this, we find the Commission's assertion that it "conducts its relations with third countries in total transparency"¹² hard to accept.

⁷ The 2004 US-Morocco Free Trade Agreement is available at http://www.moroccousafta.com/index_ang.htm, last accessed 9 November 2009.

⁸ Legal Opinion of the Legal Service of European Parliament, supra n. 50, para. 45.

⁹ <http://www.fishelsewhere.eu/index.php?cat=140&art=1005>

¹⁰ *The Common Fisheries Policy: A User's Guide*, European Communities, Belgium, 2009, p. 36.

¹¹ Parliamentary Questions, Answer given by Mr Borg on behalf of the Commission, E-1073/2008, 9 April 2008, available at <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2008-1073&language=EN>, last accessed 9 November 2009.

¹² *The Common Fisheries Policy: A User's Guide*, European Communities, Belgium, 2009, p. 25.

On the other hand, we wholeheartedly agree with the view put forward by the Commission in its Green Paper on the Reform of the Common Fisheries Policy that “external fisheries policies should better take into account in the food security strategies of third countries”¹³ (sic). For example, in the Saharawi refugee camps, Algeria, acute malnutrition has reached dire levels due to insufficient levels of food aid.¹⁴ Yet, as the international Fish Elsewhere campaign (www.fishelsewhere.eu) pointed out, through the EU-Morocco FPA, more money (€144 million) is paid to Morocco to take Saharawi resources than is given in multilateral humanitarian aid to Saharawi refugees.¹⁵

Before concluding this letter, we would like to take this opportunity to bid you farewell, and wish you luck in all your future endeavors. We understand that Ms Maria Damanaki will be taking over as Commissioner for Maritime Affairs and Fisheries in early 2010. We very much look forward to welcoming her in this role and we admire her courage, strength and personal sacrifice in actively resisting the repression of the military junta in Greece, 1973. Indeed, we are able to understand all too well the personal sacrifices that those who fight for free speech and democracy are sometimes forced to pay. Saharawis face torture, rape, false imprisonment, forced disappearance and death in the Occupied Territories. Two recent cases, two amongst hundreds, spring to mind. In early October, representatives of seven Saharawi human rights organisations were kidnapped and disappeared by Moroccan authorities as punishment for traveling to the Saharawi refugee camps in Algeria.¹⁶ Over November and December, the Nobel Peace Prize nominee Aminatou Haidar spent 32 days on hunger strike in Lanzarote airport, in protest at her forced expulsion from the Western Sahara for refusing to identify herself as Moroccan.¹⁷ These people have all been strong opponents of the EU-Moroccan fisheries cooperation.

In the Green Paper on Common Fisheries policy, the Commission asks how the current architecture of its FPAs can be revisited in order to better meet the needs of its partners in the developing world. It asks how the EU can strengthen its role in promoting better governance of fisheries. It asks how the social benefits of fisheries can be enhanced in third countries. It asks how the FPAs can have a significant impact on development and on fighting poverty.¹⁸ In response, we would recommend that:

¹³ Green Paper: Reform of the Common Fisheries Policy, European Communities, Belgium, 2009, p.19.

¹⁴ Office of the United Nations High Commissioner for Refugees, UNHCR-WFP team finds dire health conditions in Algerian refugee camps, 12 February 2007, available at <http://www.unhcr.org/news/NEWS/45d09ac14.html>, last accessed 28th September 2009.

¹⁵ Fish Elsewhere Campaign, The Agreement with Morocco is unethical, 30th January 2009, available at <http://www.fishelsewhere.eu/index.php?cat=149&art=0>, last accessed 11 November 2009.

¹⁶ Amnesty International, 13 October 2009, Morocco/Western Sahara: Sahrawi activists targeted for Tindouf visit, <http://www.amnesty.org/en/library/asset/MDE29/010/2009/en/48534990-f974-466d-ba8c-a7c0dbc50f14/mde290102009en.html>, last accessed 8 December 2009. The disappeared are: Ali Salem Tamek, first vice president of the Collective of Saharawi Human Rights Defenders (CODESA) and member of the Moroccan Association for Human Rights (AMDH); Brahim Dahane, president of the Saharawi Association of Victims of Serious Violations Committed by Morocco (ASVDH); Ahmad Anasiri, General Secretary of the Saharawi Committee for the Defence of Human Rights in Smara and president of AMDH – Smara Chapter; Dagja Lachgar, member of the executive office of ASVDH; Yahdih Ettarrouzi, member of AMDH – Laayounne Chapter; Saleh Lebayhi, president of the Forum for Protection of Sahrawi Children and member of the Laayoune Chapter of CODESA and AMDH and Rachid Sghayar, member of Committee Action against Torture.

¹⁷ Amnesty International, Morocco/Western Sahara: Expulsion of human rights defender reflects growing intolerance, 17 November 2009,

<http://www.amnesty.org/en/library/asset/MDE29/012/2009/en/9168fdcd-6f76-4f8f-949a-e3346239b061/mde290122009en.html>, last accessed 8 December 2009.

¹⁸ Green Paper: Reform of the Common Fisheries Policy, European Communities, Belgium, 2009, see in particular pages 19-20.

1) No fisheries agreements should be signed with occupying powers for fisheries in occupied territories, in disregard of the wishes and interests of the peoples of the territories.

2) No fisheries agreements should be entered into with foreign governments, covering maritime territories over which they have laid no maritime claim.

3) If entering into Agreements where the fisheries resources of an illegally Occupied Territory or of a Non Self Governing Territory are in danger of being exploited in contravention of international law, all measures are taken to avoid such an eventuality. This must be done by investigating whether the activities are respecting the wishes and the interests of the people of the territory. A clear and transparent strategy must be presented to make sure that the people of such territory is genuinely consulted, and that they give their consent to the process.

4) Specifically, in all future FPAs between the EU and Morocco, we would urge that the waters of the Western Sahara are clearly and explicitly excluded.

Anything less would unfortunately persuade us that the EU's apparent concern for fighting poverty, encouraging development, and promoting the rule of law with respect to the seas in third countries, is nothing more than lip service.

Yours sincerely,

Aminatou Haidar, President of the Collective of Saharawi Human Rights Defenders (CODESA)

El Ghalia Djimi, Vice President of the Saharawi Association of Victims of Serious Human Rights Abuses Committed by the Moroccan State (ASVDH)

Mustapha Abdaiem, President of the Saharawi Committee for the Defence of Human Rights in Zag, South Morocco, and Member of the UPES Executive Bureau, currently held as a political prisoner in Tiznit

El Mami Amar Salem, President of the Committee Against Torture in Dakhla, Western Sahara

Oulad Chikh El Mahjoub, President of the Committee Abductees Anonymous for Saharawi Self Determination

Sidi Mohamed Dadach, President of the Committee for the Defense of the Right to Self Determination for the People of Western Sahara (CODAPSO)

Sidi Ahmed Eddia, Union Confederation of Saharawi Workers in the Occupied Territories of Western Sahara (CSTS)

Sidi Essbaai, Representative of the Preparatory Committee of the Saharawi Observatory of Human Rights (OSPDH)

Abba Haissan, Secretary General of the Saharawi Jurists Union (UJS)

Brahim Ismaalii, President of the Centre for the Protection of Collective Memory in Western Sahara

Sultana Jaya, Vice President of the Forum for the Future of the Saharawi Woman (FAFESA)

Fakou Labeihi, President of the Saharawi Committee for the Defence of Human Rights in Smara, Western Sahara

Saleh Labeihi, President of the Saharawi Forum for the Protection of Children in Western Sahara, currently held as a political prisoner in Sale

Mohamed Cheikh Mohamed Lahbib, Secretary General of the Western Sahara General Union of Saguia El Hamra and Rio de Oro Workers (UGTSARIO)

Mahjoub Mleiha, President of the Saharawi Committee for the Defence of Human Rights in Gulmim, South Morocco

Gaici Nah, Representative of MUROMINASSAHARA (against the military wall and landmines in the Western Sahara)

Abdeslam Omar, the Association for the Families of Saharawi Prisoners and the Disappeared (AFAPREDESA)

Milemnin Swayah, Committee of the Families and Mothers of the 15 Disappeared

Ahmed Shaai, President of the Association for the Protection of Saharawi Prisoners in Moroccan Prisons

Mustapha Tamek, President of the Saharawi Committee for the Defence of Human Rights in Assa, South of Morocco

Abd Lhay Toubali, Vice President of the Committee for the Protection of the Natural Resources of the Western Sahara (CSPRON)

Aziz Haidar, President of the Saharawi Association of Landmine Victims (ASAVIM)

Malainin Lakhal, Secretary General of the Union of Saharawi Journalists and Writers (UPES)

Ahmed El Haimer, Representative of the Association of Saharawis in France

Bachir Moutik, Representative of Association for the Families of Saharawi Prisoners and the Disappeared (AFAPREDESA-France)

P.S. Please direct any correspondence to this letter to Malainin Lakhal, Secretary General of the UPES (Email: mellakhal@gmail.com).