

# **STOLEN FUTURE**

## **THE TAKING OF NATURAL RESOURCES FROM OCCUPIED WESTERN SAHARA**



## Executive Summary

The exploitation and export of natural resources in occupied Western Sahara has grave consequences for peace in the territory and the future of its inhabitants, the Saharawi people.

Natural resources targeted for exploitation include oil, phosphates, fish, and agricultural produce.

It is an international crime for an occupier to exploit and profit from natural resources in an occupied territory. The Saharawi people's exclusive sovereign right to benefit from Western Sahara's natural resources should be respected.

**Monitoring of natural resource exploitation should be included in MINURSO's mandate** when it is renewed later this month. The exploitation of natural resources in Western Sahara currently presents an obstacle to the resolution of the conflict, and is a human rights issue of concern.

## Introduction

The exploitation and export of natural resources in occupied Western Sahara has grave consequences for peace in the territory and the future of its inhabitants, the Saharawi people.

The export sale of natural resources, especially from the Atlantic Ocean fishery and phosphate mineral rock from an inland mine, provides revenues to Morocco as the occupier. None of these revenues are directly received by the Saharawi people as the indigenous inhabitants of Western Sahara.

Resource “development” activity in the territory also serves as a pretext to justify what is an illegal occupation, with continuing serious human rights abuses. These include resource industries being used for the employment of illegally settled Moroccan nationals into the territory.

The taking of natural resources from Western Sahara also serves to strengthen Morocco’s control over the territory by allowing it to build physical infrastructure.

## Legal Concerns

There are two reasons, or grounds, why the taking of natural resources from occupied Western Sahara is illegal. The first is that, in the circumstances of an occupation and what has been an international conflict – demonstrated by the 1990/91 ceasefire and referendum agreement for the Saharawi people brokered by the United Nations – it is a crime to exploit and realize revenue from the taking of the territory’s resources. This is clear under the Fourth Geneva Convention of 1949, and is something that is prohibited by the Rome Statute 1998 of the International Criminal Court, as being the war crime of pillage. A clearer case than Western Sahara at present is not to be found.

The second ground which prohibits the taking of resources from occupied Western Sahara – also well established in law and which is universally binding on all peoples and states – is that of the Saharawi people as the original and sole inhabitants of Western Sahara, for exclusive sovereign rights and control over their natural resources, pending their exercise of the right of self-determination. The former United Nations senior jurist, Hans Corell (the Under-secretary-General for Legal Affairs) noted this in an opinion for the Security Council, specifically addressing the development and proposed taking of Saharawi resources:

[I]f further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories. (29 January 2002)

This simple legal “test” requires two things. First, the exploitation of resources must benefit the Saharawi people. A corollary is that the activity must also not benefit Morocco as occupier, or those persons which it has allowed to illegally settle in Western Sahara. An additional requirement is that any such development of resources, while going to meet the needs of and serve to develop the social and

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economic circumstances of the Saharawi people, must not impede or be used to deny them their right of self-determination.

The second requirement of the test is that the Saharawi people must meaningfully consent to the development of their natural resources. While this is more or less impossible in the present circumstances of an occupation with demonstrated serious human rights violations, the Saharawi people, including through their government leaders and across a large number of independent civil society organizations have stated that they reject any consent or approval of the development of any resource. In any event, fully half the Saharawi people are not capable of realizing the benefits of resources from their territory because they are in exile in refugee camps.

Two other things should be recalled. First, the International Court of Justice, in its 1975 advisory opinion on Western Sahara, concluded (after a review of considerable evidence) that Morocco had no territorial claim or right to the territory, and that the Saharawi people enjoyed a clear right of self-determination, as people under colonial domination.

The second is that the ongoing taking of resources from Western Sahara both denies the Saharawi people an economic future (while contributing to the occupation of their territory) and undermines the ability of the United Nations to realize its 1990/91 agreements to ensure for the Saharawi people the exercise of self-determination. That is why the UN mission in Western Sahara, MINURSO, needs the mandate to oversee and to administer any development of natural resources.

## The Resources

### Oil

Potentially, the most alarming development of the Western Sahara conflict the last year has been Morocco's intention to drill for oil, in complete disregard of the 2002 UN legal opinion, above.

The drilling will be done by US oil company Kosmos Energy and is scheduled to begin in or about October 2014.<sup>1</sup> The operation will be done in partnership with rig company Atwood Oceanics by the mobile drilling ship, the m.v. *Atwood Achiever*.

The operation, in the coastal waters seaward of Cap Boujdour, will take place in one of several blocks that the Moroccan government is exploring. The French oil company Groupe Total SA announced in January 2014 its intention to proceed with further oil exploitation in the coastal waters of the territory.<sup>2</sup> Morocco has also awarded a number of other licences, offshore and offshore, but none are as advanced as those held by Kosmos Energy.<sup>3</sup>

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<sup>1</sup> Reuters, 13.01.2014, Simmering Saharan conflict stirred by offshore oil search, <http://www.reuters.com/article/2014/01/13/westernsahara-oil-idUSL6N0KN11120140113>  
Kosmos Energy, Morocco – oil and gas exploration, <http://www.kosmosenergy.com/operations-morocco.php>

<sup>2</sup> WSRW.org, Total confirms 1 year renewal of dirty deal in occupied Sahara, 03.02.2014, <http://wsrw.org/a105x2799>

<sup>3</sup> WSRW.org, 09.09.2013, French oil company Total SA in occupied Western Sahara, <http://wsrw.org/a106x2651>

## Phosphates

The largest financial income for the Moroccan government in the taking of resources from occupied Western Sahara is from the export of phosphate mineral rock. The production is done by a subsidiary of the Moroccan state phosphate company OCP. According to estimates made by Western Sahara Resource Watch, OCP produced approximately 2,2 million tonnes of phosphates last year, at a value of approximately US\$300 million. This equals around 10 times as much as the refugees from Western Sahara receive in multilateral humanitarian aid annually. Almost half the production in 2013 went to three companies: PotashCorp (US/Canada), Lifosa (Lithuania/Russia) and Innophos (Mexico/US).

## Fishing

Throughout 2013, Russian trawlers were observed fishing offshore Western Sahara. This was in violation of the EU-Russian agreement, which had stipulated that fisheries would only take place in the EEZ of Morocco.<sup>4</sup> The waters of Western Sahara have never been claimed by Morocco as its EEZ, and could not be as a matter of international law.

In November, images of highly unsustainable fisheries practices were revealed. One vessel, reportedly in use by the son of one of the Moroccan generals who control fisheries licences, was reported to have discarded 1000 tonnes of sardines during the year.<sup>5</sup> These practices were also evidenced in a report published by Greenpeace.<sup>6</sup>

The European Parliament and Council of Ministers approved a Fisheries Partnership Agreement in 2013 with Morocco to fish in the waters of Western Sahara. Several states voted against the agreement, noting it would be in violation of international law. Hans Corell is on record in recent years as stating that the EU through such practice violates international law and undermines the UN peace efforts. The new agreement is the first European Union fisheries partnership agreement since 2010 that does not have a separate Human Rights Clause.<sup>7</sup> All Saharawi civil society organisations have objected to the deal, but their concerns were not listened to.<sup>8</sup> Several Saharawi were injured by Moroccan police as Saharawi protesters demonstrated against the EU-Moroccan plans.<sup>9</sup>

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<sup>4</sup> WSRW.org, Russia once again violates its own fish deal with Morocco, 26.04.2013, <http://wsrw.org/a217x2576>

<sup>5</sup> WSRW.org, Saharaws: Check out your fish here, 19.11.2013, <http://wsrw.org/a106x2712>

<sup>6</sup> Greenpeace, Exporting Exploitation: How retired EU fishing vessels are devastating West African fish stocks and undermining the rights of local people, 26.11.2013, <http://www.greenpeace.org/sweden/se/rapporter-och-dokument/exporting-exploitation/>

<sup>7</sup> WSRW.org, Commission failed Council and Parliament instructions on human rights, 01.10.2013, <http://wsrw.org/a217x2667>

<sup>8</sup> WSRW.org, 267 organisations ask European Parliament to reject fish accord, 05.12.2013, <http://wsrw.org/a105x2742>

<sup>9</sup> AP, 10.12.2013, Western Saharans protest EU-Morocco fishing accord, <http://news.yahoo.com/western-saharans-protest-eu-morocco-fishing-accord-204809914--finance.html>

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The EU and Russia have not sought consent of the people of Western Sahara before entering into these agreements.

#### **Agriculture production**

There are today 11 plantations in the proximity of Dakhla producing agricultural products mainly for the European market.<sup>10</sup> All farms are owned by Moroccan conglomerates, by French multinational firms or by the company of the Moroccan royal family. No farms are owned by the local Saharawi, and not even by small-scale Moroccan settlers in the territory. The farms produce mostly cherry tomatoes, but also melons and some other vegetables, all produced on fields irrigated by non-renewable fossil water. Almost all the workers are reported to be from Morocco, being settled in new housing complexes on the occupied land.

#### **Conclusion**

**Monitoring of natural resource exploitation should be included in MINURSO's mandate** when it is renewed later this month. The exploitation of natural resources in Western Sahara currently presents an obstacle to the resolution of the conflict, and is a human rights issue of concern. International human rights law and the UN Charter clearly invest non self-governing peoples with permanent sovereignty of their natural resources.

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<sup>10</sup> WSRW.org, Report: Label and Liability, 17.06.2012, [http://www.wsrw.org/files/dated/2012-06-17/wsrw\\_labellability\\_2012.pdf](http://www.wsrw.org/files/dated/2012-06-17/wsrw_labellability_2012.pdf)