

Briefing 2017: Western Sahara and MINURSO

Summary

1. Setbacks for Morocco's strategy in Western Sahara offer hope for change:
 - embarrassment of Moroccan military adventure into the UN buffer zone – ended thanks to UN pressure;
 - Moroccan return to the AU alongside Western Sahara;
 - European Court of Justice block on Morocco exporting Western Saharan products to the EU.
2. Yet the grim reality of human rights abuses in Moroccan-occupied Western Sahara continues – despite MINURSO presence in the territory.
3. The Saharawi people's right to self-determination remains unrealised, a quarter century after the arrival of MINURSO to organise a referendum.

Recommendations

1. Set a date for a free and fair referendum to be carried out in Western Sahara with an option for independence on the ballot paper, consistent with the established international legal norm of self-determination. Morocco can be expected to protest, but should not be allowed to dictate to the United Nations.
2. Develop a robust plan under Chapter VII of the UN Charter to enforce the outcome of the referendum, if any of the parties do not respect the decision of the Saharawi electorate.
3. Grant the MINURSO peacekeeping operation the legal mandate to monitor and report on human rights in territories controlled by the Kingdom of Morocco and the Frente POLISARIO. This body must report its findings directly to the UN Security Council and be a permanent presence until the referendum.
4. Building on the important recognition by the Court of Justice of the EU of the Saharawi's rights to control their natural resources, demand an end to the extraction of natural resources from Western Sahara through deals which disregard the interests and wishes of the indigenous Saharawi.

Overview: cracks opening in Morocco's position

Several developments over the last year have weakened Morocco's political position regarding its occupation of Western Sahara. These give hope that, with continued pressure, progress towards a settlement of the conflict may be made.

Moroccan provocation

As has been widely reported, in August 2016, Morocco risked reigniting the armed conflict by sending its security forces into the neutral 'buffer zone' maintained by MINURSO, at a point near Guerguerat in the south of Western Sahara. Frente POLISARIO troops mobilised in response, and MINURSO was swiftly deployed to keep the peace. The standoff lasted for over six months until early March this year when, following pressure from the UN, Moroccan forces withdrew¹.

This extraordinarily irresponsible gesture by Morocco is hard to understand. It may have been a deliberately provocative move, designed to test the response of MINURSO and the Frente POLISARIO to a violation of the ceasefire arrangements. Or it may simply have been a miscalculation based on arrogance, resulting from years of Moroccan impunity for its actions in Western Sahara. In either case, it demonstrates how Moroccan power in Western Sahara is a source of instability for the region. The Security Council will also be well aware of Morocco's petulant reaction to the previous Secretary-General's discussion of the right of self-determination for the Saharawi people, and subsequent expulsion of many MINURSO personnel.

Change in Africa and Europe

In February this year, just weeks before the end of its Guerguerat adventure, Morocco rejoined the African Union, some 32 years after leaving its predecessor (the OAU) in protest at the admission of Western Sahara. In doing this, the government of Morocco has thus tacitly admitted that its boycott of the AU has not worked. The SADR has responded positively to Morocco's return and indicated its willingness to negotiate².

And in December 2016, the Court of Justice of the European Union ruled that the EU-Morocco trade agreement did not include Western Sahara – weakening the economic basis of the Moroccan occupation.

Nevertheless, the situation remains grave. Repression and human rights abuses continue in the areas of Western Sahara under Moroccan occupation, as detailed below. Further, despite the legal setback, Morocco continues its efforts to gain economically from the occupation of the territory.

Human Rights

Despite shifting sands at international level, for the Saharawi people, the day-to-day grim reality of stalemate persists. All continue to be denied the right to self-determination which the UN ceasefire agreement promised them some 26 years ago. Those living under Moroccan rule in the occupied portion of Western Sahara suffer repression of their freedom of expression³, with authorities having "systematically prevented gatherings supporting self-determination"⁴.

Human rights organisations report that in January this year an 11-year old boy was detained by Moroccan police for drawing a Western Sahara flag, and that in total 24 Saharawi juveniles were detained in relation to political protests in the last quarter of 2016⁵. Many of them report being beaten while in police custody.

Retrial for Saharawi political prisoners

One notable positive development has been the quashing of the convictions of the Gdeim Izeik prisoners, and the opening of a new trial. These were Saharawis convicted of violent offences during the Moroccan break-up of the Gdeim Izeik Saharawi protest camp in November 2010. Many were serving life sentences. They were convicted by a military court in 2013, largely on the basis of confessions – which they insist were extracted from them under torture.

From March to April 2016 many of the prisoners held a hunger strike. In July 2016 another Moroccan court declared the military convictions "null and void" and ordered a civilian trial. In December 2016 the UN Committee Against Torture condemned Morocco for the use of torture, and for not investigating allegations of torture made by Gdeim Izeik defendant Naama Asfari.

Preliminary proceedings have been held, in December 2016 and January 2017. However, there appear to be serious flaws in the trial process, including: defence lawyers unable to communicate with defendants, relatives of defendants threatened by Moroccan security personnel in the court building, and more⁶.

Morocco has continued its policy of deporting foreigners suspected of wanting to talk to Saharawi human rights activists. During January 2017, 57 people – mostly Norwegian – were expelled from Western Sahara⁷. These visits and expulsions coincided with the trial of the Gdeim Izeik prisoners discussed below. Further expulsions of foreign journalists and lawyers took place in autumn 2016⁸.

A clear role for MINURSO

The ongoing human rights abuses committed by Moroccan forces in Western Sahara are unacceptable in themselves; and they can only hinder a peaceful resolution of the conflict. It is therefore extraordinary that MINURSO is not mandated even to monitor the human rights situation in the territory.

The UN's own high level review of peacekeeping operations stresses the importance of missions acting to protect the human rights of civilians. In particular, it notes that:

“Human rights monitoring, investigating, and reporting by human rights officers and child and women protection advisers, and advocacy efforts, especially by senior mission leadership, contribute to ensuring greater accountability and prevention of human rights violations. Failure to address these violations contributes to a climate of impunity”⁹

In our recommendations we therefore once again highlight the need for MINURSO to be given a legal mandate to monitor human rights in Western Sahara.

Natural Resources

Moroccan attempts to profit from the natural resources of Western Sahara received a major setback in the Court of Justice of the European Union in December. The ruling recognises that Western Sahara has a “separate and distinct status” from Morocco; and therefore that the EU-Morocco trade liberalisation agreement is not applicable to trade involving Western Sahara. It also recognises that the consent of the people of Western Sahara would be needed for any trade agreements covering the territory – and that neither EU nor Morocco had sought their consent¹⁰.

This ruling will affect not only current Moroccan-controlled trade from Western Sahara to the EU –which is largely in fish, horticulture and phosphates – but also future diversification. Of particular note are the territory's energy resources. In a subsequent statement, the European Commission has clarified that the “separate and distinct status of the territory of Western Sahara under international law” would also affect future exports of energy, e.g. from Morocco's proposed solar power plants in the territory¹¹.

In short, the EU has sent a clear signal that a resolution of the conflict is necessary before the potential of the rich resources of the territory can be fully realised.

Economic development, particularly in the fields of clean and renewable energy, is in itself positive: but not at the expense of the rights of the Saharawi people. An economy led by and profiting a military occupation – and, it is believed, the King of Morocco personally¹² - will not lead to long term prosperity and wellbeing. Instead it will deepen inequalities in Western Sahara, and make the conflict yet harder to resolve.

Conclusions

The United Nations has shown, in its response to the Moroccan adventure near Guerguerat, that it is capable of taking firm action on Western Sahara; and that when it does, it gets results. Furthermore, the Committee Against Torture has shown that, when the UN receives information about human rights abuses, it can make important interventions.

Firm UN action does not threaten stability in Western Sahara. In fact it can enhance it. It can act to build confidence among the people of the region, especially the Saharawis, that law and human rights will be respected in the future of Western Sahara. Without that confidence, renewed conflict remains a possibility.

As the events of the last year have highlighted, it is unchecked Moroccan power and the prolongation of the Moroccan occupation of Western Sahara that brings instability to the territory. Our recommendations indicate action the UN could and should take.

The Western Sahara Action Forum

The Western Sahara Action Forum (WSAF) is an international advocacy organization focused on Western Sahara. WSAF advocates for the United Nations (UN) to live up to its legal and moral obligations to enable the UN mission there, MINURSO, to organize and implement a free and fair referendum in Western Sahara. Working with a range of governments, NGOs, trade unions, and human rights defenders, WSAF leads international campaigns and lobbying efforts, and provides information and resources for activists and policymakers around the world.

References

1. BBC (2017) Western Sahara: Morocco to pull out of UN buffer zone, <http://www.bbc.co.uk/news/world-africa-39103401>
2. BBC (2017) Western Sahara welcomes Morocco's African Union membership, <http://www.bbc.co.uk/news/world-africa-38808811>
3. Amnesty International (2017) Report 2016/17: the state of the world's human rights. (Morocco/Western Sahara chapter pp258-261.)
4. Human Rights Watch (2017) World Report 2017, Morocco/Western Sahara chapter.
5. Adala UK (2017) Boy detained by Moroccan police for drawing Western Saharan flags, <https://adalauk.org/2017/01/22/boy-detained-by-moroccan-police-for-drawing-western-sahara-flags/>
6. Moe, T. S. (2017) Trial Observation Report: proceedings against the "Group Gdeim Izik" in Salé, Morocco, 23rd to 25th of January 2017.
7. Norwegian Support Committee for Western Sahara (2017) 57 foreigners expelled from Western Sahara last five days, <http://www.vest-sahara.no/a49x2488>
8. Human Rights Watch (2017) World Report 2017, Morocco/Western Sahara chapter.
9. High-Level Independent Panel on United Nations Peace Operations (2015) Uniting Our Strengths for Peace – Politics, Partnerships, and People: Report of the High-Level Independent Panel on United Nations Peace Operations – page 23.
10. Court of Justice of the European Union (2016) The Association and Liberalisation Agreements concluded between the EU and Morocco are not applicable to Western Sahara, Press Release 146/16, Luxembourg.
11. European Parliament (2016) Question and answer - Subject: Installation of energy plants in the territory of Western Sahara, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bWQ%2bP-2016-009554%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>
12. Dudley, D. (2016) European Court Dismisses Morocco's Claim To Western Sahara, Throwing EU Trade Deal Into Doubt, Forbes online <https://www.forbes.com/sites/dominicdudley/2016/12/21/european-court-dismisses-moroccos-claim-to-western-sahara-throwing-eu-trade-deal-into-doubt/#5ae824604493>