



# ELDH European Association of Lawyers for Democracy & World Human Rights

EJDM Europäische Vereinigung von Juristinnen & Juristen für Demokratie und Menschenrechte in der Welt

EJDH Asociación Europea de los Juristas por la Democracia y los Derechos Humanos en el Mundo

EJDH Association Européenne des Juristes pour la Démocratie & les Droits de l'Homme

EGDU Associazione Europea delle Giuriste e dei Giuristi per la Democrazia e i diritti dell'Uomo nel Mondo

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## A CONSTRUCTIVE APPEAL TO THE MEMBERS OF THE UNITED NATIONS SECURITY COUNCIL

On the Draft Resolution of 20 October 2026 Concerning Western Sahara: Upholding International Law, the Agreed Settlement Framework, the Right to Self-Determination and Human Rights Protection

23 October 2026

### Summary of Key Concerns and Recommendations

The European Association of Lawyers for Democracy and World Human Rights (ELDH) welcomes efforts to advance a peaceful and negotiated solution to the question of Western Sahara. However, certain provisions of the draft United Nations Security Council resolution dated 20 October 2026 raise serious legal and institutional concerns.

Drawing upon the findings of its July 2026 fact-finding report, *Fifty Years Under Occupation*, ELDH respectfully calls upon Security Council members to reconsider the following issues:

- 1. Respect for the right to self-determination.** Any political settlement must remain consistent with the Sahrawi people's right to self-determination. Autonomy may be discussed as a political proposal, but Moroccan sovereignty and autonomy should not be established as the exclusive or predetermined outcomes of negotiations.
- 2. Preservation of the agreed settlement framework.** The referendum mandate of MINURSO derives from the United Nations–Organization of African Unity Settlement Plan accepted by the parties. Its removal, particularly without an agreed alternative mechanism for self-determination, risks undermining the foundations of the United Nations-led peace process.
- 3. Respect for the representative status of the Frente POLISARIO.** The Frente POLISARIO's established role as representative of the Sahrawi people and party to the settlement process must be respected. Consultations with civil society should complement, not replace or undermine, negotiations with the Frente POLISARIO.
- 4. Strengthening international human rights monitoring.** Any transformation or reduction of MINURSO should not deepen the existing protection gap. Independent, permanent and effective human rights monitoring must become an integral component of the United Nations presence.

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5. **A constructive and legally grounded political process.** The Security Council should pursue a balanced approach that preserves diplomatic momentum while respecting previous agreements, international law, human rights protection and the meaningful participation of the Sahrawi people.

ELDH encourages all members of the Security Council to address these concerns through constructive amendments to the draft resolution before its adoption.

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## A CONSTRUCTIVE APPEAL TO THE MEMBERS OF THE UNITED NATIONS SECURITY COUNCIL

The European Association of Lawyers for Democracy and World Human Rights (ELDH) expresses its serious concern regarding certain provisions of the draft United Nations Security Council resolution on Western Sahara dated 20 October 2026 and their potential consequences for the United Nations-led peace process, the right of the Sahrawi people to self-determination, and the protection of human rights in the territory.

ELDH recognises the importance of renewed diplomatic initiatives aimed at overcoming the prolonged political impasse and achieving a just, lasting and peaceful settlement. We support meaningful negotiations conducted in good faith under United Nations auspices and acknowledge the Security Council's responsibility to contribute to international peace and security.

However, diplomatic progress must remain firmly grounded in international law and respect the commitments and principles upon which the United Nations settlement process was established.

Our concerns are informed by the findings of the ELDH fact-finding report published in July 2026, *Fifty Years Under Occupation: Human Rights Violations, Settler-Colonial Transformation, and the Absence of International Monitoring in Western Sahara*. The report documents serious and persistent allegations of human rights violations, structural discrimination, restrictions on fundamental freedoms, demographic transformation and natural resource exploitation, alongside a significant absence of independent international human rights monitoring.

In light of these findings, ELDH respectfully calls upon the members of the Security Council to reconsider and amend certain provisions of the proposed resolution to ensure that the pursuit of a political solution does not undermine the applicable international legal framework, the integrity of previous agreements, or the rights of the Sahrawi people.

### 1. The Right to Self-Determination Must Remain the Foundation of the Political Process

Western Sahara remains a Non-Self-Governing Territory whose decolonisation process has not been completed.

The right of the Sahrawi people to self-determination is firmly established under the Charter of the United Nations, General Assembly resolutions 1514 (XV) and 1541 (XV), common Article 1 of the International Covenants on Human Rights, and the relevant jurisprudence of the International Court of Justice.

In its Advisory Opinion of 16 October 1975, the International Court of Justice concluded that the materials before it did not establish ties of territorial sovereignty between Western Sahara and Morocco or Mauritania capable of affecting the application of the principle of self-determination through the free and genuine expression of the will of the people of the territory.

ELDH is therefore concerned by provisions of the draft resolution that characterise autonomy under Moroccan sovereignty as the only feasible solution and establish Morocco's Autonomy Proposal as the exclusive basis for negotiations. The fundamental objection is that Morocco's proposal rests on its assertion of sovereignty over Western Sahara: it offers a form of self-government within the constitutional and territorial framework of the Kingdom of Morocco, thereby presupposing the very sovereignty that remains contested and has not been established under international law.

The issue is thus not whether autonomy could ever be one outcome freely chosen by a people exercising its right to self-determination. It is whether negotiations may be confined from the outset to an autonomy model founded on an unproven claim of sovereignty. To make Morocco's proposal the exclusive basis of negotiations would risk endorsing that claim by implication and reversing the legal sequence required by decolonisation: rather than allowing the Sahrawi people freely to determine the territory's political status, it would presume Moroccan sovereignty and limit their choice to the degree of autonomy offered within it. Autonomy may only be considered as one of the possible outcomes of a genuine process of self-determination, among other possible options freely chosen by the Sahrawi people, and cannot be imposed on the basis of Morocco's contested claim to sovereignty over Western Sahara.

Recognising Moroccan sovereignty before a genuine act of self-determination would risk foreclosing other possible outcomes and recasting an unresolved decolonisation question as an internal matter of separatism. This would have consequences not only for the exercise of a legal right but also for the Sahrawi people's collective political identity and ability to determine their future.

The diplomatic positions or recognition decisions of individual States do not, in themselves, resolve the international legal status of Western Sahara or extinguish the right of its people to self-determination.

The prohibition on the acquisition of territory through the threat or use of force, reflected in Article 2(4) of the United Nations Charter and the principle of territorial integrity, is also directly relevant. Any Security Council language that could be understood as validating sovereignty asserted following the use of force, without the freely expressed consent of the Sahrawi people, would raise profound questions about consistency with these foundational principles. It could also weaken the credibility of the United Nations in addressing other territorial disputes and conflicts.

**We consequently urge the Security Council to preserve an open negotiating framework that does not prejudice the final status of the territory and remains consistent with international law.**

Any proposed popular endorsement of an autonomy arrangement would need to meet the requirements of a free and genuine expression of the will of the people entitled to self-determination. A vote in which demographic changes or the inclusion of a predominantly settler electorate effectively displaced the Sahrawi people's choice could not, without more, be treated as satisfying that requirement. The electorate, safeguards and available options would therefore require careful agreement and independent scrutiny.

## **2. The Agreed Settlement Framework and MINURSO's Referendum Mandate Must Be Preserved**

ELDH expresses particular concern regarding the proposed renaming of the United Nations Mission for the Referendum in Western Sahara (MINURSO) and the termination of its existing peacekeeping mandate.

MINURSO was established by Security Council resolution 690 (1991) within the framework of the United Nations–Organization of African Unity Settlement Plan, accepted by Morocco and the Frente POLISARIO.

The organisation and supervision of a referendum on self-determination constituted a central element of that agreed framework.

The fact that the referendum has not been implemented does not extinguish the underlying right to self-determination, nor does it eliminate the legal and political significance of the commitments accepted by the parties.

ELDH recognises that the Security Council has the authority to review and adapt the mandates of United Nations operations. Nevertheless, changes to the institutional structure of a mission should not be confused with the abandonment of the substantive principles and commitments upon which the peace process was established.

The proposed removal of the reference to the referendum, particularly when combined with provisions identifying autonomy under Moroccan sovereignty as the only feasible solution, risks replacing a previously agreed settlement framework with a predetermined political outcome without the consent of both parties.

Such an approach could seriously undermine confidence in the impartiality and continuity of the United Nations-led process.

**ELDH therefore calls upon the Security Council to preserve MINURSO's name and its referendum-related mandate unless and until the parties reach agreement on an alternative mechanism that genuinely enables the Sahrawi people to exercise their right to self-determination.**

Any institutional restructuring should explicitly safeguard the continuity of the agreed settlement framework and should not prejudge the final status of Western Sahara.

### 3. The Representative Status of the Frente POLISARIO Must Be Respected

ELDH is equally concerned by the potential implications of the draft resolution's provisions concerning consultations with Sahrawi constituencies in the territory, refugee camps and diaspora.

We recognise the importance of broad and meaningful participation by Sahrawi civil society, women, young people, human rights defenders and other affected communities.

Such consultations can enrich the political process and ensure that the concerns and experiences of the population are adequately considered.

However, a fundamental distinction must be maintained between consultations with civil society and negotiations between the recognised parties to the conflict.

The Frente POLISARIO has been recognised within the United Nations decolonisation process as the representative of the people of Western Sahara, notably through General Assembly resolution 34/37 (1979). It is also a party to the United Nations–Organization of African Unity Settlement Plan and the established United Nations-led negotiating process.

Its representative role cannot be displaced or diluted through the establishment of parallel consultation mechanisms.

ELDH is concerned that, without explicit safeguards, the consultation provisions of the draft resolution could be interpreted or implemented in a manner that bypasses the Frente POLISARIO, fragments the negotiating process, or enables the selective identification of interlocutors whose positions support a predetermined political outcome.

This would undermine the credibility and legitimacy of the negotiations.

**Consultations with Sahrawi civil society must complement, not replace, negotiations with the Frente POLISARIO as the representative of the Sahrawi people within the United Nations decolonisation process.**

Such consultations must not be presented as an alternative mechanism for determining the collective political will of the Sahrawi people or as evidence of consent to a particular settlement.

We therefore call upon the Security Council to reaffirm explicitly the representative status and negotiating role of the Frente POLISARIO while supporting inclusive and independent civil society engagement.

### 4. Any Transformation of MINURSO Must Strengthen Human Rights Protection

The proposed termination of MINURSO's peacekeeping mandate and its transformation into a special political mission raise additional concerns regarding the future of international monitoring and civilian protection.

The July 2026 ELDH fact-finding report identifies the absence of a permanent, independent international human rights monitoring mechanism in Western Sahara as a major institutional protection and accountability gap.

The report documents recurring allegations of arbitrary detention, torture and ill-treatment, enforced disappearances, unfair trials, restrictions on freedom of expression and association, intimidation of human rights defenders and journalists, and obstacles to independent legal representation.

The absence of an explicit human rights mandate within MINURSO has contributed to inadequate international scrutiny of these allegations.

In these circumstances, a substantial reduction of the United Nations presence without adequate replacement safeguards risks further weakening international protection.

ELDH therefore proposes that any review or restructuring of MINURSO be preceded by an independent assessment of its consequences for ceasefire monitoring, civilian protection, humanitarian conditions and human rights.

Any future United Nations presence should include an explicit, independent and adequately resourced human rights monitoring and reporting mandate, with appropriate access to the territory and affected populations.

The Office of the United Nations High Commissioner for Human Rights should be enabled to undertake regular monitoring missions, and the Secretary-General should provide systematic reporting to the Security Council.

**The restructuring of MINURSO must not result in the dismantling of international safeguards at a time when independent monitoring and accountability remain urgently necessary.**

## 5. Human Rights and Humanitarian Protection Must Be Integral to the Peace Process

The ELDH report demonstrates that the human rights situation in Western Sahara cannot be separated from the unresolved decolonisation process.

The protection of fundamental freedoms, accountability for serious violations, access to justice, and the safeguarding of human rights defenders are essential elements of any credible and sustainable political settlement.

We encourage the Security Council to promote practical confidence-building measures, including the protection of civil society organisations, independent access for international observers, investigation of serious allegations of violations, and respect for international humanitarian law by all parties.

We also recognise the urgent humanitarian needs of Sahrawi refugees living in the Tindouf camps.

Measures concerning refugee registration and humanitarian assistance must comply with international refugee law, respect confidentiality and data protection, and preserve the voluntary character of durable solutions.

Humanitarian initiatives must not be instrumentalised to influence the political status of Western Sahara or undermine the rights of refugees.

## 6. Recommendations to the Security Council

In a spirit of constructive engagement, ELDH respectfully invites the members of the Security Council to consider the following recommendations when reviewing the draft resolution.

### **First — Preserve the right to self-determination as the foundation of the political process.**

The Security Council should reaffirm the right of the Sahrawi people to self-determination and ensure that negotiations remain open to a mutually agreed settlement consistent with international law, without imposing autonomy under Moroccan sovereignty as the exclusive or predetermined outcome.

### **Second — Respect the agreed settlement framework and MINURSO's original mandate.**

The Council should preserve the name and referendum-related mandate of MINURSO, recalling resolution 690 (1991) and the United Nations–Organization of African Unity Settlement Plan accepted by the parties.

Any alternative arrangement should be based on agreement between the parties and genuinely safeguard the exercise of the right to self-determination.

### **Third — Safeguard the representative status of the Frente POLISARIO.**

The Council should explicitly reaffirm the role of Morocco and the Frente POLISARIO as the parties to the United Nations-led settlement process and respect the representative status of the Frente POLISARIO.

Consultations with Sahrawi civil society should be encouraged as complementary mechanisms, without substituting for negotiations between the parties or undermining their established roles.

#### **Fourth — Strengthen independent human rights monitoring.**

The Council should establish a permanent, independent and adequately resourced human rights monitoring and reporting mechanism within the United Nations presence in Western Sahara.

#### **Fifth — Ensure continuity and accountability in the United Nations presence.**

Any institutional transformation should be gradual, evidence-based and subject to Security Council review, with adequate safeguards for ceasefire monitoring, civilian protection and international oversight.

#### **Sixth — Reinforce humanitarian protection and confidence-building measures.**

The Council should support increased humanitarian assistance, protect the rights of refugees, encourage practical confidence-building measures, and ensure that allegations of serious human rights violations are subject to independent investigation.

### **7. Appeal to the Members of the United Nations Security Council**

ELDH respectfully calls upon all fifteen members of the United Nations Security Council, permanent and elected, to exercise their responsibilities under the Charter of the United Nations and to give careful consideration to the legal and human rights implications of the proposed resolution.

We recognise the importance of diplomatic initiatives intended to overcome the longstanding impasse. However, the pursuit of political progress must not lead to the abandonment of previously agreed commitments, the weakening of the United Nations settlement framework, or the marginalisation of the recognised representative of the Sahrawi people.

We therefore urge Council members **not to adopt the draft resolution in its present form without substantial amendments addressing these fundamental concerns.**

In particular, we call upon members to preserve the right to self-determination as the governing legal principle, maintain the integrity of the settlement framework established through previous agreements, respect the representative status of the Frente POLISARIO, and strengthen international human rights monitoring and accountability.

These proposals are intended not to obstruct negotiations, but to reinforce their legitimacy, credibility and prospects for success.

More broadly, a decision perceived as legitimising territorial acquisition by force or predetermining the outcome of decolonisation could damage confidence in the Security Council's principled and impartial role, including in future efforts to resolve other territorial sovereignty disputes peacefully.

The Security Council has an opportunity to demonstrate that diplomatic engagement, respect for international law and the protection of fundamental rights are mutually reinforcing objectives.

### **Conclusion**

The question of Western Sahara remains an unfinished process of decolonisation governed by international law.

A durable settlement cannot be achieved by replacing previously agreed mechanisms with a predetermined political outcome, nor by substituting selective consultations for negotiations with the recognised representative of the Sahrawi people.

Likewise, a sustainable peace cannot be secured without effective human rights protection, independent monitoring and accountability.

The findings of the July 2026 ELDH fact-finding report underline the urgency of addressing these concerns.

**ELDH therefore calls upon the members of the United Nations Security Council to pursue a constructive revision of the draft resolution that preserves the integrity of the United Nations settlement process, safeguards the representative role of the Frente POLISARIO, ensures the continued exercise of the Sahrawi people's right to self-determination, and strengthens international human rights protection.**

A just and lasting peace in Western Sahara must be built upon the freely expressed will of its people, the faithful implementation of international law, and the credibility of the United Nations as an impartial guarantor of the principles upon which its peace efforts are founded.

ELDH stands ready to contribute its legal expertise and the findings of its fact-finding mission to constructive discussions with Security Council members and relevant United Nations institutions.