

Incitec Pivot Ltd
Level 8, 28 Freshwater Place
Southbank, Victoria, 3006
Australia

1 February 2016
Brussels

To the attention of James Fazzino
Managing Director and Chief Executive Officer

Request for comments - Report on Incitec Pivot Ltd's phosphate imports from occupied Western Sahara

Dear Mr Fazzino,

Western Sahara Resource Watch (WSRW) is again privileged to write to you. This letter is about Incited Pivot Ltd's phosphate imports into Australia from occupied Western Sahara in 2015.

In the coming weeks, WSRW will publish its annual "P for Plunder" report, documenting the phosphate trade from Western Sahara in the previous calendar year. Incitec Pivot Ltd (IPL), with its track record of importing from Africa's last colony, will be featured in the report.

Our research shows that IPL has received two shipments of phosphate rock mined at Bou Craa, Western Sahara, during 2015. Our calculations put the total volume of those shipments at about 65,000 tonnes. That is roughly 30% down from the 2014 imports, which totaled an estimated 94,600 tonnes.

In relation to IPL's 2014 imports, the company wrote to us in February 2015, stating that it "remain[s] satisfied that IPL is not in breach of either Australian law or international law in respect of the procurement of phosphate rock from Western Sahara".

There are some recent, notable developments that ought to be addressed in that respect.

You will have seen the Concluding Recommendations in the review of Morocco by the UN Committee on Economic, Social and Cultural Rights (CESCR), published in October 2015. The UN treaty body was very clear on the significance of the Saharawi people's right to self-determination, also with regard to Western Sahara's natural resources. The Committee recommended Morocco to "*guarantee respect for the principle of prior, free and informed consent of the Sahraouis, and thus that they are able to exercise their right to enjoy and utilize fully and freely their natural wealth and resources*". In the present circumstances, we know that this does not happen.

The Legal Opinion published by the African Union on 14 October 2015 takes the matter even further by avowedly referring to Morocco as "the occupying power" in Western Sahara. "Only the people of Western Sahara have the right to permanent sovereignty over their natural resources", the Opinion

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Western Sahara Resource Watch works to raise awareness of the illegal occupation of Western Sahara, and to support the recognition of the Saharawi people's right to self-determination and their right to dispose of their natural resources.

continues. The African Union called on companies to adhere to international obligations and refrain from business deals with Morocco pertaining to Western Sahara, as that leads to “perpetuation or legitimization of the colonial situation in Western Sahara”.

On 10 December 2015, the Court of Justice of the European Union annulled the EU-Morocco Free Trade Agreement as it applies in Western Sahara. In its judgment, the Court states that Morocco has no mandate by the United Nations or by any other institution for the administration of the territory.

In the fall of 2015, an upsurge in socio-economic protests was observed in occupied Western Sahara. What started out as regular demonstrations by unemployed Saharawi graduates in El Aaiun, has – particularly in recent weeks – spread to other parts of the Saharawi demographic and to other towns in the occupied territory. Saharawis protest against what they refer to as “Morocco’s policy of marginalizing Saharawis”. They no longer accept being treated as second class citizens, while Moroccan settlers receive employment on the back of Morocco’s illegal exploitation of the Saharawis’ homeland. Grievances are in particular targeted against your supplier of phosphate rock, *Office Chérifien des Phosphates SA (OCP)*. Demonstrations are taking place daily, and are being met with disproportionate use of force by the Moroccan police. On 22 January 2016, a group of Saharawis entered the headquarters of OCP in Casablanca, in Morocco proper, to demand their share of their land’s phosphates. As a side note, protests against OCP are also taking place throughout Morocco proper, especially with regard to the poor working conditions and health and safety concerns for phosphate workers.

In view of the above, we would be most grateful if, preferably before this February 20, IPL could clarify the following issues;

1. Is it correct that IPL received two shipments of phosphate rock from Western Sahara during 2015, amounting to approximately 65,000 tonnes?
2. What would explain the firm’s reduced need for/dependence on Saharawi phosphate in 2015, in comparison to 2014?
3. Does IPL agree that the people of Western Sahara have a right to self-determination as defined by international law and the 1990-91 referendum agreement of the UN, Morocco and the Frente Polisario?
4. Does IPL agree with the conclusion of the International Court of Justice that there are no ties to sovereignty between the kingdom of Morocco and the territory of Western Sahara?
5. Does IPL accept the 2015 conclusion of the UN Committee on Economic, Social and Cultural Rights (CESCR) about the principle of the prior, free and informed consent of the Saharawis in relation to the exploitation of Western Sahara’s natural resources? How will the company assure itself of a credible consent prior to importing from Western Sahara?
6. Does IPL accept the conclusion of the Court of Justice of the European Union that Morocco has no mandate to administer Western Sahara?
7. What does IPL say in reply to the legal opinion of the African Union about the exploitation of occupied Western Sahara’s natural resources?

WSRW remains of the view that IPL must not purchase phosphate rock from Western Sahara while the final status of the territory is pending. By ending all engagement in occupied Western Sahara, IPL can significantly contribute to the good faith needed to reach a just and lasting outcome of the UN peace talks. In the long run, this will benefit the entire Maghreb region.

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We remain at your disposal should you have any questions. We look forward to hearing from you.

Sincerely,

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 Personal Envoy for Western Sahara
- HE Kim Bolduc, UN Secretary-General Special Representative for Western Sahara and Head of the United Nations Mission for the Referendum in Western Sahara (MINURSO)
- HE Nkosazana Dlamini-Zuma, Chairperson of the African Union Commission
- HE Julie Bishop MP, Australia's Minister for Foreign Affairs
- HE Andrew Robb AO MP, Australia's Minister for Trade and Investment
- Ms Lyn Allison, President of the Australia Western Sahara Association

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