

Dr. Dipl.-Ing. Michael Suess
Mitglied des Vorstands der Siemens AG
CEO des Sektors Energy
Wittelsbacherplatz 2
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6 March 2012

Regarding: Western Sahara, Siemens and the UNFCCC-CDM Windfarm Project

Dear Mr. Suess:

We write to you out of our concern for your company's proposed supply of wind turbines, with associated technical support, to the El Oued Wind Power Plant in occupied Western Sahara. We note Siemens' adherence to the Global Compact initiative, and have a few questions as to how you perceive this engagement to be consistent with your company's commitments under Global Compact.

Western Sahara Resource Watch (WSRW) works in solidarity with the Saharawi people who are the original and rightful inhabitants of Western Sahara. A substantial part of the Saharawi people have lived in refugee camps in the Algerian desert since Morocco illegally invaded their homeland in 1975. Others remain in the occupied territories where they are subjected to serious human rights violations and excluded from the major economic activities of phosphate mining and fishing. More than 100 United Nations resolutions support the Saharawi people's right to self-determination, a right that Morocco is denying them.

WSRW consists of organisations and individuals from more than 40 countries, who together research the engagement of foreign companies in the resource rich country. We believe the occupation of Western Sahara will not stop as long as Morocco profits from it.

Western Sahara - Background

Western Sahara is known as Africa's last colony. Its people - the Saharawi - are ethnically, culturally and linguistically distinct from their neighbors. For more than 40 years, the people of the territory have been noted by the United Nations as having the right of decolonization (*i.e.* self-determination). When Western Sahara was abandoned by Spain in November 1975 the International Court of Justice had just upheld the right of the Saharawi people to self-determination. (We note the Court restated the right to self-determination in its 2010 Kosovo advisory opinion.) A United Nations mission has been present in Western Sahara for more than 20 years. This mission (MINURSO) is not a peacekeeping mission. It is one to ensure the Saharawi people will exercise of their right to self-determination as with South West Africa (Namibia) and East Timor (Timor-Leste) before.

After Spain left its colony, Mauritania and Morocco occupied Western Sahara. The occupation continues in violation of international law. UN resolutions called for the two states to leave the territory and for the Saharawi people to have their right to self-determination. On February 27, 1976, the representatives of the Saharawi people declared the independence of their state, now recognized by more than 75 countries including the African Union. In 1979 Mauritania left the territory after refusing to contribute any longer to what it called "an unjust war". Morocco then occupied a larger part of Western Sahara and carried on with settling the territory with its own citizens, who now outnumber the Saharawi people.

www.wsrw.org

Western Sahara Resource Watch is an international organisation working in solidarity with the Saharawi people. We advance their right to self-determination, protect their natural resources and promote their human rights.

International humanitarian law

The facts of Morocco's occupation of Western Sahara are well known. The occupation fails to meet basic requirements of the *Fourth Geneva Convention* and the *International Covenant on Civil and Political Rights*, treaties that almost all countries, including Spain and Morocco, have entered into and support. (These treaties were the basis in 2011 for the organized international community's UN-sanctioned intervention in Libya.) Morocco's occupation of Western Sahara has been declared illegal under the United Nations *Charter*, the law of self-determination for colonized (non-self-governing) peoples and, importantly for those who would support or assist Morocco in its continuing occupation, international criminal law. Critically, the taking of natural resources from the territory has continued. These include the Atlantic Ocean fishery and mineral resources from the Bou Craa phosphate mine.

The UNFCCC-CDM Project in Occupied Western Sahara

The "Clean Development Mechanism" (CDM) of the United Nations Framework Convention on Climate Change (the UNFCCC) recently decided to proceed with the financing of the "Foum El Oued Wind Farm Project". A Project Development Document (PDD) describes the construction and operation of "a 100 megawatt (MW) grid-connected wind farm in the municipality of Laayoune, 9 km east of the wharf in the south of Morocco [sic]" by NAREVA Holding (a Moroccan industrial and financial group). This location is inside the internationally recognized borders of the territory of Western Sahara. It is in that area of the territory occupied by Morocco. The location is not Moroccan territory.

We note that the PDD identifies Morocco as the "host country", while making no mention of the legal status of Western Sahara.

The Foum El Oued project is presented in the PDD as part of an ongoing intensification of the exploitation of resources in occupied Western Sahara, involving an increase in activity by Moroccan firms, supported by the Moroccan government. On page two the Wind Farm is said to supply electricity to both private and publicly owned companies.

The PDD states that the Foum El Oued project had been expected to start operating on 15 October 2011. However, according to the CDM update website (cdmpipeline.org) the project is still at "validation stage" and therefore has not yet been approved. According to the PDD (at page 12) CDM finance is necessary to make the project attractive to NAREVA by revenues from the sale of Certified Emissions Reductions (CERs). On page 31 the PDD states that "NAREVA stressed that a wind power project is only profitable with CDM revenues." The first crediting period for the sale of CERs is given as 7 years (at page 27). The PDD makes it clear that the CDM is facilitating the project, which would not take place without the support of the CDM via CERs. It is this financing which makes possible Siemens' material support for the project.

We have three general concerns about the Foum El Oued project. First, the project has not been consented to by the Saharawi people. It is an accepted principle of international law that development in a territory such as Western Sahara - occupied militarily and non-self-governing - cannot be done unless there has been the consent of the legitimate inhabitants of the territory and at least some benefit to them. We emphasize here that Moroccan nationals illegally settled in occupied Western Sahara do not qualify as "inhabitants" for purposes of the required consent for industrial and infrastructure development in the territory.

Second, building infrastructure in Western Sahara entrenches the occupation. Such activity gives the

appearance of normalcy and legitimacy to an occupation that is manifestly illegal and which, through building projects, the presence of a very large military force, and population resettlement continues to delay a self-determination referendum for the Saharawi people.

Third, the Saharawi people in exile at refugee camps inside Algeria will see virtually no benefit of the Fom El Oued Wind Farm Project. Most rely on very little electrical power that is not mains supplied. The irony of an occupying state benefitting from the provision of technology, while a displaced people remain without adequate electricity supplies should be lost on no one.

We take note of Siemens's adherence to the Global Compact (GC) initiative. The GC asks companies to support the 10 well-known principles "within their sphere of influence".

In that context, we are surprised to read statements given by your company to the Danish news service *DanWatch* on March 5 of this year, saying "Siemens's attitude is that Siemens supplies windmills, and it is the customer who decides where they are to be placed" (www.wsrw.org/a131x2263). By such statement, one could get the impression that Siemens chooses not to view its business partners – nor the end-use of its products – as within Siemens's own sphere of influence or corporate social responsibility policy. In the light of the installation and maintenance of key infrastructure in occupied Western Sahara, such a limitation of its responsibilities is, as we see it, highly regretful.

In this regard, WSRW has three questions for your company, which we hope will shed light on how Siemens interprets its commitments under the UN Global Compact initiative:

- 1) Does Siemens consider the human rights compliance of its business partners to be relevant in the context of fulfilling the principles of UN Global Compact?
- 2) Does Siemens consider that the human rights impacts of sales agreements or of maintenance contracts are relevant in the context of assuring human rights within its sphere of influence?
- 3) Does Siemens consider it relevant to engage in talks with the local communities affected by the company's operations?

Finally, we would like to request that Siemens AG not supply technical assistance and material technology to any wind farm (or other energy) project that may be built inside occupied Western Sahara.

We are grateful that you have taken the time to consider this letter, and we look forward to hear from you.

Yours sincerely,

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