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Canada

Brussels
22 January 2016

To the attention of Ms Denita Stann
Vice President, Investor and Public Relations

Dear Ms Stann,

Re: PotashCorp's imports of phosphate rock from Western Sahara

Western Sahara Resource Watch (WSRW) is writing to you with regard to PotashCorp's 2015 imports from occupied Western Sahara, and the November 2015 update of the firm's position paper 'Phosphate Rock from Western Sahara' (hereafter 'position paper'). We have comments and questions about both, and would be grateful for your response.

We've observed that PotashCorp's received eight shipments of phosphate rock from the occupied part of Western Sahara, amounting to a projected 474,000 tonnes, for the calendar year 2015. This makes the company the top purchaser for the year. We'd be grateful if you could confirm that the company indeed took such an estimated amount.

We take note that PotashCorp has updated its position paper 'Phosphate Rock from Western Sahara' in November 2015. It is ironic that a position paper which attempts to argue that PotashCorp is "an ethical but non-political company" uses fundamentally political arguments. This is apparent in the argumentation of the paper, and perhaps even more in what is not mentioned in the paper at all.

First, as in previous versions of the PotashCorp position paper, there is one inexplicable omission in the document; there is no mention of the Saharawi's people's right to self-determination, viewed by the United Nations as the cornerstone principle governing the Western Sahara peace talks – a process that PotashCorp by its own admission claims to support.

There is no need to digress by repeating what we've stated in our previous letters, even though these essentially remain unanswered by PotashCorp, save a one-sentence reply referring us to the position paper which was precisely the subject of our initial writing (13 February 2015). But for your ease of reference, a short overview of facts may be helpful; the International Court of Justice stated in 1975 that Morocco's claims of sovereignty over Western Sahara were unfounded, and that the people of Western Sahara have a right to self-determination. That right has since been repeated in more than a hundred Resolutions of the UN Security Council and General Assembly.

It is inconceivable that the legal opinions provided to you by Covington & Burling LLP, and by Dechert LLP and Palacio y Asociados have overlooked the legal requirement of self-determination. Though

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being law firms retained by OCP will, we note, impact the interpretation of said legal doctrine, ignoring it would be a deliberate distortion of the facts unworthy of any credible law firm. It is perhaps telling that these legal opinions are kept from the public, and only shared with corporations willing to invest in Morocco's annexation project in Western Sahara or their shareholders.

PotashCorp will surely have seen the Concluding Recommendations of the UN Committee on Economic, Social and Cultural Rights (CESCR) in October 2015 (E/C.12/MAR/CO/4). The CESCR was unambiguous on the significance of the right to self-determination in the context of the Western Sahara conflict, and called upon Morocco to: *"strengthen its efforts, under the auspices of the United Nations, to find a solution to the issue of the right to self-determination for Western Sahara, as established in article 1 of the Covenant, which recognizes the right of all peoples to freely determine their political status and freely pursue their economic, social and cultural development. The Committee recalls that States parties to the Covenant are obligated to promote the realization of the right of self-determination in Non-Self-Governing Territories and to respect that right, in conformity with the provisions of the Charter of the United Nations"*.

As the right to dispose of natural resources is the corollary of the right to self-determination, the UN Committee went on to recommend Morocco to: *"guarantee respect for the principle of the 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"*.

We also refer to the Legal Opinion issued by the African Union, published on 14 October 2015, which calls Morocco "the occupying power" of Western Sahara. "Only the people of Western Sahara have the right to permanent sovereignty over their natural resources", the Opinion continues. The African Union calls upon companies to adhere to international obligations and refrain from business deals with Morocco pertaining to Western Sahara, as that leads to "perpetuation or legitimation of the colonial situation in Western Sahara".

Second, PotashCorp goes out of its way to make the case that OCP's operations in Western Sahara are beneficial to the area, and therefore legal. In fact, this is the only argument used to support the firm's claim of acting within international law. The single legal reference, apart from references to the above-mentioned undisclosed legal opinions, is an incorrect reference to the UN Legal Opinion of 2002 regarding exploration and extraction of mineral resources in Western Sahara (S/2002/161). Your company's position paper claims that the UN Under-Secretary General for Legal Affairs concluded that exploration and extraction of mineral resources in Western Sahara would be illegal "only if conducted in disregard of the needs and interests of the people of that Territory". This is not the conclusion of the 2002 UN Legal Opinion, but part of a sentence of paragraph 21 of the Opinion, which describes the question put before the Legal Counsel by the UN Security Council. The actual conclusion of the Opinion can be found in paragraph 25 - the ultimate, or concluding, paragraph. It reads as follows: *"if further exploration or exploitation activities were to proceed in disregard of the interests and the 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"*.

PotashCorp goes out of its way to make the case that OCP's operations in Western Sahara are beneficial to the area, and therefore legal. This is however not what the UN Legal Opinion says. The word that PotashCorp keeps overlooking, is *wishes*; whether the people want the operations to take place or not. This is the very essence of self-determination, really. As such, the supposed benefits to Western Sahara that are listed in the position paper are, besides unproven, not relevant. To accept them as a ground for legality, would be to accept that Morocco's presence in Western Sahara is perfectly justified as long as "the local population" – note that this is an entirely different concept than

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the “people of the territory” – might obtain potential benefits of Morocco’s exploitation of the land, regardless of whether the people of the territory agree to its presence or not.

It is admirable that PotashCorp took the trouble of traveling to Western Sahara “to observe firsthand” the situation on the ground. We would however encourage PotashCorp to change or drop the word “firsthand”. The firm’s delegation may have visited Western Sahara, but its entire agenda and the execution thereof will have been carefully managed by your Moroccan partners. They have no interest in revealing the facts on the ground to one of the biggest importer of phosphate rock from occupied Western Sahara. As a result, it would be inaccurate to speak of “firsthand” observations as being done in circumstances that would allow truly independent inquiry.

Again, we note that it is apparently quite easy to visit Western Sahara when one has a financial or political engagement with the Moroccan government in the territory. This in stark contrast to the high numbers of people - including journalists, NGO staff and politicians - who are denied access or who are deported from the territory. Just in the last four days, Morocco has deported 68 people from Western Sahara, including a Canadian and a USA citizen. Coincidentally, the two were interested in the Western Sahara phosphate trade. They did not, however, enjoy the same courtesy as was granted to PotashCorp of freely entering Western Sahara.

For months now, Saharawis in the occupied territory have been protesting against what they call Morocco’s policy of marginalizing Saharawis. They no longer accept being treated as second class citizens, while Moroccan settlers get jobs created on the back of Morocco’s illegal exploitation of the Saharawis’ homeland. Grievances are in particular targeted against your partner, OCP. Demonstrations are taking place daily, and are being met with disproportionate use of force on the part of the Moroccan police. A group of 19 Saharawis is currently on hunger strike to demand their right to employment. Today, 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 taking place throughout Morocco proper also, especially with regard to the poor working conditions and health and safety concerns for phosphate workers. These issues contrast the claims asserted in your company’s position paper, which practically reads as a profile-raiser for OCP.

Here, again, PotashCorp’s favouring of Morocco’s narrative on Western Sahara becomes obvious. The position paper reads that “it is important to separate politics from the responsibilities of OCP as a company and its inability to influence or control the refugee situation, which was the result of an armed conflict”. OCP is a company that is owned by the State which caused and perpetuates the conflict in Western Sahara, one displacing many Saharawis. The company is selling resources as if it had an acceptable legal title to them. Interestingly, only in the context of the refugees does PotashCorp talk of OCP’s responsibilities “as a company”, whereas in the rest of the document it claims that the company’s actions have been assessed in light of the obligations for administering powers, and not as a matter of less stringent responsibilities of companies.

It is interesting that PotashCorp chooses to refer to the European Union’s trade agreements with Morocco to back up its claim that the legality of its involvement in Western Sahara’s natural resource exploitation is hinging on the potential benefits they might generate. 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.

Third, another telling omission is that of the existence of the Frente Polisario, recognized by the UN as the official representative of the Saharawi people, and even accepted as such by Morocco proper as

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partner in the UN-led peace talks and in the signing of the 1990 era ceasefire-referendum arrangements. This was affirmed in the foregoing judgment of the Court of Justice of the European Union. WSRW therefore does not quite grasp the sentence “PotashCorp is mindful of the dispute between the Kingdom of Morocco and parties who claim to represent the interests of the inhabitants of Western Sahara”. There is but one other party to the conflict; the Frente Polisario. Only referring to Morocco, and not even mentioning the existence of the Saharawi liberation movement is speaks volumes of PotashCorp’s stance with regard to the conflict; it is far from neutral. PotashCorp uses sympathetic terms for Morocco’s autonomy plan for Western Sahara, but does not mention that the Frente Polisario also submitted a proposal to the UN Security Council at the same time when Morocco put forward its autonomy plan. Why not mention the latter, if only for a purported balance? With the autonomy plan in mind, it may be insightful to read the above cited conclusions by the UN CESCR again; the autonomy plan falls short in view of the Saharawi people’s right to self-determination.

Finally, PotashCorp gives the impression that it has no other choice but to import from Western Sahara; inherited contractual relations oblige the company to do so. Yet at the same time, the firm wants to downplay the importance of the import and of the site where it is processed, in context of the firm’s business. The latter claim undermines the former; there is no need to maintain a contractual relation that is so insignificant to the company, particularly when it causes the company to actively aid and abet in the illegal occupation of a colony.

In view of the above, it is in our opinion incorrect to depict PotashCorp, with its long history of large scale imports from occupied Western Sahara, as “an ethical but non-political company” or “a company that remains out of the political arena, continues to support the efforts of the UN to broker a solution on the future governance of Western Sahara”. At present is the opposite; the company pays Morocco for a commodity taken from a territory to which Morocco has no claim or mandate, while the rightful owners of the land and its resources are languishing in refugee camps or under the yoke of a regime they did not choose.

The position paper states several times that the Western Sahara situation is complex. We disagree. It really is quite simple. The people of Western Sahara should be given the chance to exercise their right to self-determination, and decide whether they want to be part of Morocco or not. Until that time, the only ethical thing to do for any company is to stay clear from the territory. Any intervention will have profoundly political effects, as it disturbs the UN peace process by strengthening the position of one of the two parties to the conflict, while undermining the good faith of the other.

We would be grateful if PotashCorp could clarify some of the many questions that arise from its position paper.

1. Does PotashCorp agree that the people of Western Sahara have a right to self-determination as defined by international law and the agreement of the UN, the Frente Polisario and Morocco?
2. Does PotashCorp agree with the conclusion of the International Court of Justice that there are no ties of sovereignty between the kingdom of Morocco and the territory of Western Sahara?
3. Does PotashCorp agree with the 2015 conclusion of the UN Committee on Economic, Social and Cultural Rights (the 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 prior consent of the Saharawi people?
4. Does PotashCorp agree with the Court of Justice of the European Union that Morocco has no mandate to administer Western Sahara?

5. Does PotashCorp accept the legal opinion of the African Union on the exploitation of Western Sahara's natural resources?
6. Given the practical insignificance of Western Sahara's phosphate rock for PotashCorp's global business production, when will the firm terminate its import-agreement with OCP?
7. Is your company willing to meet with UN, NGO and Saharawi officials, including at the Tindouf refugee camps, on a continuing basis?

Evidently, we remain of the view that PotashCorp 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, PotashCorp can significantly contribute to the good faith needed to reach a just and lasting outcome of the peace talks. In the long run, this will benefit the entire region, and not just the few who at present profit from the unlawful and unethical taking of Western Sahara's resources.

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

A copy of this letter was sent to:

- HE Ambassador Christopher Ross, UN Secretary-General's Personal Envoy for Western Sahara
- HE Kim Bolduc, UN Secretary-General's 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
- The Honorable Chrystia Freeland, PC, MP, Minister of International Trade, Global Affairs, Canada
- Mr Mark Wiseman, President and Chief Executive Officer, Canada Pension Plan Investment Board
- Mr André Bourbonnais, President and Chief Executive Officer, Public Sector Pension Investment Board (Canada)
- Mr Peter Chapman, Executive Director of the Shareholder Association for Research and Education (SHARE)

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