

To the attention of Francesco Venturini
Chief Executive Officer of Enel Green Power

Brussels
27 September 2016

Re.: Enel Green Power's involvement in Morocco's renewable energy projects in Western Sahara

Dear Mr Venturini

Western Sahara Resource Watch is privileged to write to you. We are at present finalizing a report about Morocco's wind energy projects in occupied Western Sahara. Given Enel Green Power's connection to those controversial projects, your firm will be featured in the report. Accordingly, we would be grateful for your comments to the questions below, so as to allow us to accurately reflect EGP's views and position in the upcoming publication.

Enel Green Power (EGP), in collaboration with Siemens and Nareva, has been contracted by Morocco's National Office for Electricity and Water (ONEE) to construct five wind farms with a combined capacity of 850 MW. Three of those parks will be located in Morocco proper (Tangiers, Midelt and Jbel Hadid). The two other plants, accounting for almost half of the planned capacity, are to be constructed outside of the internationally recognized border of Morocco, but rather inside the part of Western Sahara that Morocco illegally occupies since 1975 – in Tiskrad and Boujdour.

Western Sahara is known as Africa's last colony. 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. A United Nations mission has been present in Western Sahara for more than 20 years, to ensure the Saharawi people will exercise of their right to self-determination. Morocco invaded its southern neighbor in 1975, and went on to annex large parts of the territory.

The facts of Morocco's occupation of Western Sahara are well known. The occupation fails to meet basic requirements of the *Fourth Geneva Convention*, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, treaties that almost all countries, including Morocco, have entered into and support. 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.

We have three general concerns about EGP's involvement in the construction of wind farms in Western Sahara. 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 would be most grateful for an answer to the following questions:

1. How has EGP assured itself of the consent of the Saharawi people, through their internationally recognized representative body, the Frente Polisario, for the construction of wind energy plants in Western Sahara?
2. How does EGP evaluate the construction of infrastructure on occupied land in view of its position on corporate responsibility?

In addition, it is worth noting that the General Court of the Court of Justice of the European Union (CJEU) on 10 December 2015 partially annulled the EU-Morocco agricultural agreement in so far as it applied to Western Sahara. The Court stated that Western Sahara “is not included in the recognised international frontiers of [Morocco]”, and “that the Kingdom of Morocco does not have any mandate granted by the UN or by another international body for the administration of [Western Sahara]” (points 232-233, Case T-512/12). As such, the CJEU echoes the 4 July 2014 Decision of Spain's High Court, the *Audiencia Nacional* which confirms that Spain, not Morocco, is the administering power over Western Sahara, and that the “territory cannot be considered Moroccan”(Case-Law Registry N° AAN 256/2014). Earlier this month, the General Advocate of the CJEU stated in his Legal Opinion that Western Sahara is not part of Morocco, and that no EU agreement with Morocco could apply to the territory (Conclusions de M. Wathelet, C-104/16).

Following these developments, we would welcome your reply to these additional questions:

3. How does EGP assess the Decision of the *Audiencia Nacional* that Spanish criminal law still applies in Western Sahara, as Spain has never formally decolonized?
4. How does EGP assess the views of the CJEU, that Western Sahara is not part of Morocco?

We would be grateful for your response before 4 October 2016. A reference to your response will be made in the mentioned report.

We welcome the opportunity to provide you with any additional information that you may require to study this matter more closely. We thank you for your consideration of our letter and look forward to your reply.

Sincerely,

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