

Dr. Michael Suess
CEO Energy Sector

19 June 2012
Brussels

Dr. Felix Ferlemann
CEO Wind Power Division

Siemens AG
Wittelsbacherplatz 2
80 333 München

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

Dear Doctors Suess and Ferlemann:

We are grateful for Doctor Ferlemann's letter of this May 8 in reply to ours of March 6.

We again request that Siemens AG not supply wind power turbines or technical support to Nareva Holding of Morocco for that company's construction of a wind power project at Foug el Oued in occupied Western Sahara.

The matter is one of grave importance. It goes to the question of corporate involvement that would entrench Morocco's presence in Western Sahara, perpetuating the conflict over the territory and further delaying the Saharawi people's right to exercise self-determination.

Before discussing your May 8 letter, we wish to emphasize that two bodies of international law govern the conduct of business in occupied Western Sahara. The first – the right of the Saharawi people to permanent sovereignty over their natural resources – has been much commented upon. It is not a right that is shared with settlers, here Moroccan nationals, which have been introduced to Western Sahara in increasing numbers since the occupation in 1975. It is exclusively that of the Saharawi people, including those refugees living inside Algeria. What Morocco is obligated to do as the occupying state (and administering power *de facto*) is ensure development of resources in the territory has the manifest consent of the Saharawi people, and that the benefits of such developments accrue to them. In the case of the proposed Foug el Oued project, it is land as such that is to be used as a natural resource. Land, in other words, is to be the basis for an energy production site.

The Saharawi people have themselves requested Siemens AG to not supply turbines to nor be involved with the Foug el Oued project. By any measure the prohibition against your company being involved with the project is clear.

The second area of law which applies to the occupation of Western Sahara is international humanitarian law. The *Fourth Geneva Convention*, to which Germany and Morocco are both signatories, requires an occupier to have regard for the security of the civil population, here the Saharawi, and to expressly not settle its own population into the territory.^[1] How does this relate to or causally engage Siemens AG's legal obligations? The answer is simple. The electrical power from the Foug el Oued project will go to the benefit of the occupying state, in two ways. First, some of the power is to flow to a national grid inside Morocco. Second, that electricity used directly (or by offset from the project) inside Western Sahara will be substantially to be benefit of an introduced settler population that outnumbers the Saharawi people, now, by two to one. (There are, we add, no assurances on record that electrical power from the project will not be used by Moroccan armed

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forces, more than 100,000 strong, in Western Sahara). Should the point be lost, it is electrification in Western Sahara that will make it increasingly possible to sustain an occupation and to continue the settlement of Moroccan nationals. The reasoning of the International Court of Justice in its 2004 Palestine Wall opinion applies directly to those who would consider material support for the ongoing occupation of Western Sahara:

Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end. In addition, all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.^[2]

Your May 8 letter outlined several reasons in support of supplying turbines (and *in situ* technical support) for the Foug el Oued project. It is useful to consider them. While we agree that wind generated electrical power is sustainable and, on its face, usefully provided to Western Sahara, that amenity is more than offset by the negative aspects of contributing to the infrastructure development of an area under military occupation and to supply increasing amounts of power than at present for a growing in-migration of illegal settlers, as we have discussed above.

We appreciate that the Foug el Oued project is not merely one in which Nareva Holding has contracted with Siemens AG for technology supply, but is to be enabled with Clean Development Mechanism (UNFCCC) funding. That in no way should be taken as validating or making the project more acceptable within the law or ethically. We have taken issue with the UNFCCC's consideration of an application for funding of the project.

As to the third point in your letter, we reject the premises of the assertion that the Foug el Oued project will contribute to the social and economic development of Western Sahara. The project will have the result of placing additional physical infrastructure into a territory over which Morocco has no right or title, and contrary to the express demand of the Saharawi people. In such circumstances, the project serves to exacerbate the problem of Western Sahara's occupation and the stalled right of its people to self-determination.

The fourth point of your letter suggests the project will provide indirect employment benefits for the local population. That may be true. However, such population is two to one Moroccan. And we submit that the economic marginalization of the Saharawi people, evident in the territory's natural resources industries, will result for them an even smaller share of any economic benefit that would result.

The conclusion that Siemens AG's participation in the Foug el Oued project "is permissible under the applicable laws and regulations and does not infringe the right of self-determination" of the Saharawi people is not correct. We have concluded that the supply of turbines and technical support is illegal as a matter of international law, and contrary to the domestic law of most European states which criminalizes the aiding and abetting of an illegal occupation in the circumstances of an international conflict. The supply of wind power turbines will result in a cascading effect: Additional infrastructure in Western Sahara, provided by a leading technology company in a developed state, secures the physical



presence of Morocco and adds to the legitimacy it seeks to create about its claim over the territory. The resulting electrical power will go to allowing greater electrification of the territory and therefore the ease of bringing additional settlers into it. There will then be the problem of ownership of the Fom el Oued wind power facility when Saharawi sovereignty is restored over all of Western Sahara.

We contend that, in supplying wind power generation technology into Western Sahara, Siemens AG would make a political statement about the problem of Western Sahara. Your company would be voting in effect with an occupying state for which no country recognizes its claim to the territory and in circumstances where its people have expressly asked for your restraint. Your statement that Siemens "does not intend to make a political statement" is strange, considering that your webpages still claim that the project is located in Morocco:

<http://www.siemens.com/press/en/pressrelease/?press=en/pressrelease/2012/energy/wind-power/ewp201201025.htm>

That is factually wrong, and constitutes a strong political statement in complete disregard of the opinion of both the UN and of the Government of Germany.

All this said, we find it surprising that Siemens wishes to be associated with a project, operated by the company owned by the Moroccan king, on occupied land. The investor community has over the last years reacted strongly against business activities in Western Sahara. The following statement was issued by the Norwegian government upon an exclusion of a petroleum company in Western Sahara from its Pension Fund:

"Morocco has for a number of years occupied Western Sahara despite strong UN condemnation. The [Government Pension Fund's] Council [of Ethics] found that Kerr-McGee through its exploration activities most likely will enable Morocco to exploit petroleum resources in the area. The Council regarded this as 'a particularly serious violation of fundamental ethical norms' e.g. because it may strengthen Morocco's sovereignty claims and thus contribute to undermining the UN peace process".

See the opinion here:

http://www.vest-sahara.no/files/pdf/kmg_divestment_norw_min_finance_release_05.pdf

We regret that you did not address the three questions in our letter of this March 6, questions meant to illuminate Siemens' commitment to UN Global Compact principles. The questions relate to your understanding of responsibility for human rights compliance in your company's sphere of influence, and the consultation with the people in the region where your firm is operating.

We again ask that Siemens AG carefully consider its decision on ethical, moral and legal grounds, and withdraw from supplying turbines and related technical assistance in Western Sahara.

It is our hope that we will hear from you about the concerns expressed above, and suggest that a meeting may be a productive way of fully engaging the matter.

Yours sincerely,

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[1] We note the 1977 Protocol I to the Geneva Conventions. Article I (4) particularly engages the responsibility of Germany's corporations and citizens in the circumstances of Western Sahara's occupation:

Article 1. General principles and scope of application

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.

2. In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience.

3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.

4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

[2] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136, para. 159.

Copy of this mail sent to:

- Global Compact
- Business and human rights department, Office of the UN High Commissioner for Human Rights
- Centre for Research on Multinational Corporations, the Netherlands
- Siemens Denmark