

To the attention of Edoardo Maffeis
Energy Manager of Italgen

Brussels
19 October 2016

Re.: Italgen's involvement in Morocco's renewable energy projects in Western Sahara

Dear Mr. Maffeis,

Western Sahara Resource Watch (WSRW) is privileged to write to you. WSRW's purpose is to preserve the natural resources in occupied Western Sahara for the usage of its people, the Saharawis.

WSRW is currently writing a report about the problematic aspects of energy infrastructure projects in Western Sahara, and would appreciate a comment from you latest 24 October.

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 to self-determination. When Spain abandoned Western Sahara in November 1975, the Moroccan army invaded and occupied Western Sahara claiming that territory despite the International Court of Justice had neglected any claim a few months before. The United Nations Mission for the Referendum in Western Sahara (MINURSO) was established and has been present in the territory for more than 20 years, to ensure that Saharawi people will exercise their right to self-determination.

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 ratified and supported. 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 the international criminal law.

From what we understand, Italgen took part in the construction of the wind farm next to the factory of Ciments du Maroc (CIMAR) in 2011. The mention of that participation is found on your website at this URL: <http://www.italgen.it/ENG/Our+projects/Laayoune/>

On the same page referred to above, your company refers to the location of this wind farm "in the South of Morocco".

On a different article on your website, your company illustrates Western Sahara as being part of Morocco: <http://www.italgen.it/ENG/Our+Company/>

We have three general concerns about Italgen's involvement in the construction of wind farms and cement factories in the part of Western Sahara currently under Moroccan occupation.

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 consent of the legitimate inhabitants of the territory.

Second, building infrastructures in Western Sahara entrenches the occupation. Such activity gives the appearance of normality and legitimacy to a colonization that is in itself manifestly illegal. It is pertinent to highlight that by supporting or assisting Morocco in its continuing occupation could be passible of legal persecution. The mere reference to Western Sahara as “in the South of Morocco” underlines how a company’s presence can take part in the legitimisation of Morocco’s baseless demands to that land.

Third, the Saharawi people in exile at refugee camps will see virtually no benefit of the farm or the cement factory in Western Sahara.

All things considered, we would be grateful for an answer to the following questions:

1. How has Italgas assured itself of the consent of the Saharawi people, through their internationally recognized representative body, the Polisario Front, for the construction of the energy infrastructure in Western Sahara?
2. How does Italgas 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 this additional question:

3. In light of the geographical descriptions and map on your website, how does Italgas assess the views of the CJEU, that Western Sahara is not part of Morocco?

We would be grateful for your response prior to the date indicated above. 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,

Anna Lucia Angelillo

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