

Brookstone Partners
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New York
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United States of America

Brussels
9 August 2018

To the attention of Mr Michael Toporek
Founder and Managing General Partner of Brookstone Partners

Re. Brookstone Partners' intention to build a wind farm in occupied Western Sahara

Dear Mr Toporek,

Western Sahara Resource Watch is privileged to write to you. We are writing with regard to media posts describing Brookstone Partners' intent to construct a 900 megawatt wind farm in Dakhla, and a statement issued by Soluna on the matter.¹

In the Soluna press release, the project is located in the wrong country. Dakhla is not at all situated in Morocco. It is situated on land under foreign military occupation: Western Sahara. Any agreement that Brookstone has signed with the Moroccan government for that particular area is thus null and void. The envisioned energy production is not at all sustainable, but rather strengthens Morocco's belief that it can violate international law and human rights in Western Sahara.

In the article published by Bloomberg on 27 July 2018, you are quoted as stating that Brookstone Partners has "exclusive rights to the area for a wind farm". As indicated above, there are reasons to assume that this is not the case, and that Brookstone Partners has been misled on the status of the area in question, and as such has stepped into a situation that comes with serious ethical, but potentially also legal, implications that your company can surely do without.

Dakhla is located in Western Sahara, a Non-Self-Governing Territory that is still to conclude the process of decolonization under UN auspices. In blatant violation of the Opinion of the International Court of Justice – establishing no ties of sovereignty between Morocco and Western Sahara - and Resolutions of the UN Security Council, Western Sahara was invaded in 1975 by Morocco. Morocco went on to annex large parts of the territory, until the UN was able to broker a peace agreement in 1991 between the two warring parties – Morocco and the Western Sahara liberation movement Frente Polisario.

Dakhla was occupied by Morocco in 1979, as Mauritanian occupying forces departed the Southern parts of Western Sahara. The UN General Assembly reacted to the Moroccan invasion of Dakhla by stating that it "deeply deplores the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco and the extension of that occupation to the territory

¹ Business Wire, Soluna is Launching the World's First Utility-Scale Blockchain Infrastructure Company Powered by Its Own Private Renewable Energy Resources in the Kingdom of Morocco, 27 July 2018, <https://www.businesswire.com/news/home/20180727005498/en/Soluna-Launching-World's-Utility-Scale-Blockchain-Infrastructure-Company>

recently evacuated by Mauritania", urging Morocco to "join the peace process and to terminate the occupation of the territory of Western Sahara".²

To date, Western Sahara is partitioned by a 2000 kilometer military fortified wall, surrounded by some of the world's largest minefields, erected by Morocco. Half the people of Western Sahara, the Saharawis, have fled their homeland, and survive in dire circumstances in refugee camps in the Algerian desert. The Saharawis still living in Western Sahara suffer the yoke of a brutal occupation: the grave human rights violations committed by the Moroccan authorities against Saharawis are well documented by reputable institutions and organisations such as the UN High Commissioner for Human Rights, Amnesty International, Human Rights Watch, etc. The direness of their situation has already resulted in calls for resumed armed conflict, particularly among younger Saharawi generations who are losing faith in the peacemakers of the world.

Since 2015, the Court of Justice of the European Union has issued three clear judgments concluding Western Sahara to be a territory that is "distinct and separate" from any country in the world, including Morocco. The Court set the legal requirement of obtaining the consent of the people of Western Sahara for economic involvement in the territory to be lawful.³ As such, the Court follows the UN Treaty bodies which have also stressed the need for "prior, free and informed consent" of the Saharawi people to any developmental projects and extraction operations in Western Sahara, when reviewing Morocco's performance under the International Covenants.⁴

Earlier this year, the High Court of South Africa pronounced itself on a cargo of phosphate rock shipped from the territory and held under detention in Cape Town since 1 May 2017. The Court stated that Morocco had no ownership over and thus no right to sell – the phosphate rock, over which "the Saharawi Arab Democratic Republic is the owner".⁵ The Frente Polisario has since brought legal action against two private companies (in Spain and in France) and threatens more legal proceedings against economic operators that violate the Saharawi people's right to self-determination.

We'd be most grateful if Brookstone Partners could provide answers to the following questions:

1. Can Brookstone Partners confirm that the media statement about its reported intention to build a wind farm in Western Sahara are accurate?
2. Who has granted Brookstone Partners "exclusive rights to the area"? Who are Brookstone Partners' contractual partners in Morocco?
3. How does Brookstone Partners assess the legal status of its plans?
4. Which steps has Brookstone Partners taken to obtain the prior, free and informed consent of the people of Western Sahara to its planned project in Dakhla?

Finally, we wish to appeal to your company to reconsider your involvement in Western Sahara. It is not in your interest to become associated with an ongoing occupation and colonization, with a continued

² UNGA resolution 34/37, <https://www.un.org/documents/ga/res/34/a34res37.pdf>

³ See e.g. ECLI:EU:C:2016:973, Judgment of the Court (Grand Chamber), 21 December 2016, Case C-104/16 P, <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30d5a57b201e09f24856b7bad0b327fbc322.e34KaxiLc3qMb40Rch0SaxyKbx10?text=&docid=186489&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=6228781>

⁴ UN Economic and Social Council, Concluding observations on the fourth periodic report of Morocco, E/C.12/MAR/CO/4, 22 October 2015, https://wsrw.org/files/dated/2015-12-09/cescr_morocco_2015_eng.pdf and UN Pacte international relative aux droits civils et politiques, CCPR/C/MAR/CO/6, December 2016, <http://ccprcentre.org/files/documents/CCPR:C:MAR:CO:6.pdf>

⁵ High Court of South Africa, Case No 1487/2017, 23 February 2018, https://wsrw.org/files/dated/2018-02-23/20180223_south_africa_ruling.pdf

high humanitarian cost. We urge you to look for another area to build the planned wind farm, and allow the UN process to run its course so that the people of Western Sahara can finally exercise their right to self-determination and decide the future course of their land.

Sincerely,

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Coordinator

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