

VINCI SA

Att: Xavier Huillard, Chief Executive Officer

1 cours Ferdinand de Lesseps

F-92851 Rueil-Malmaison Cedex - France

Brussels, 30.04.2021

## RE. VINCI SA'S BUSINESS ACTIVITIES IN OCCUPIED WESTERN SAHARA

Dear Mr Huillard,

Western Sahara Resource Watch (WSRW) and *Association des Amis du Peuple du Sahara Occidental* (APSO) are pleased to present you with its compliments. We hope this letter finds you well in the current phase of the COVID-19 pandemic.

We are writing in relation to the contract obtained by VINCI's subsidiary Cegelec from Morocco's national Office for Electricity and Drinking Water (ONEE) in February 2021, for the construction of a 400 kV extra high-voltage line between El Aaiún and Hagounia.

Both of those locations are however not in Morocco, but in the part of Western Sahara that Morocco has held under illegal occupation since 1975. That comes with ethical, political and legal implications, of which we hope your company is aware. We would be grateful for your answers to our questions on the matter, included below.

First, for your ease of reference, some background to the conundrum arising from the contract with ONEE. The UN continues to treat Western Sahara as a Non-Self-Governing Territory that is yet to achieve decolonisation – a colony. In 1975, the International Court of Justice confirmed that there are no ties of sovereignty between the territory of Morocco and that of Western Sahara, and that the people of the territory – the Saharawi people – have a right to self-determination.<sup>1</sup> Morocco invaded the territory and went on to annex parts of, in blatant disrespect of the ICJ and of the UN General Assembly and Security Council. Though the UN was able to broker a peace arrangement, foreseeing in an independence-referendum, between the warring parties in 1991, Morocco has continued to obstruct the process to this very day in spite of the right of the Saharawi people to self-determination being backed internationally. To date, the people of Western Sahara continue to suffer the yoke of a brutal occupation: many of them live as refugees in the inhospitable Algerian desert, while their kin left behind are subjected to some of the most gruesome human rights violations. In recent months, the situation on the ground in Western Sahara has changed dramatically. The ceasefire agreement between Morocco and Frente Polisario has come to a halt mid-November, and armed conflict has resumed in the territory.

The status of the territory comes with repercussions for business activities.-In four consecutive rulings, the Court of Justice of the European Union has concluded that Morocco has no sovereignty over Western Sahara, nor any international mandate to administer it, as the territory is separate and distinct from Morocco. As a consequence, the Court ruled, EU agreements with Morocco cannot be extended to Western Sahara in a lawful manner, unless with the explicit consent of the people of the territory – the latter being

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<sup>1</sup> International Court of Justice, Advisory Opinion of 16 October 1975, Western Sahara, <https://www.icj-cij.org/files/case-related/61/6197.pdf>

the natural corollary of the people of Western Sahara's right to self-determination.<sup>2</sup> We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights<sup>3</sup> and of the UN Human Rights Committee<sup>4</sup>, which have both emphasized the need of obtaining the Saharawi people's "prior, free and informed consent to the realization of developmental projects and [resource] extraction operations".

We submit that the legal implications are no different when it concerns non-renewable resources, such as wind or solar energy, or the transmission thereof. The construction of infrastructure for such purpose by an occupying power not only violates the right of non-self-governing peoples to self-determination, but also International Humanitarian Law, which prohibits extending an occupation - beyond security of the occupied place and the well-being of its inhabitants - through building infrastructure to secure the occupation or provide for an illegal settler (immigrant) population. Morocco's intention on connecting its renewable energy infrastructure in the occupied Western Sahara to Morocco's extra High Voltage grid, should be regarded in that light.

Investors are becoming increasingly sensitive regarding companies' involvement in the protracted conflict in Western Sahara. In recent years, companies that are associated to the phosphate trade or oil industry have suffered substantial divestments by private investors and government pension funds.

The practice of international investors on this matter can be for instance seen in the case of San Leon Energy, an Irish oil company that in 2016 undertook the first and only oil drilling onshore the occupied territory. San Leon was excluded from numerous international investors, including Norwegian Government Pension Fund, since it contributed to undermining international law. The drilling operation itself was undertaken by Entrepose, a subsidiary of VINCI. WSRW covered this matter on our website in 2015.<sup>5</sup>

We also noted that VINCI's subsidiary Cegelec in 2013 announced that it would take part in the construction of the controversial Fom El Oued wind farm, which supplies the Bou Craa phosphate mine with energy.<sup>6</sup>

In view of the above, we kindly ask you to answer the following questions:

1. Is VINCI SA aware that the contract it has signed with Morocco's national Office for Electricity and Drinking Water (ONEE) related to the El Aaiún-Hagounia high-voltage line is to be undertaken outside of Morocco's internationally recognised borders, and inside a territory over which it has no legal mandate; Western Sahara?
2. If so, how does VINCI SA assess the legal status of Morocco vis-à-vis Western Sahara?
3. Does VINCI SA consider Western Sahara to be part of Morocco?
4. How has VINCI SA obtained the consent of the people of Western Sahara, through their UN recognised representative, the Frente Polisario, for building energy infrastructure in Western Sahara?
5. Will VINCI SA introduce a policy clarifying that it will not engage in further operations in the territory, both regarding renewable and non-renewable resources?

We are convinced that it is not in the interest of any company to become associated with continued occupation and colonisation, and the plunder of resources. Accordingly, we ask that you refrain from undertaking activities on occupied land.

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<sup>2</sup> The Rulings for cases T-512/12, T-180/14, C-266/16 and T-275/18 can be accessed at the site of the EU Court of Justice, <http://curia.europa.eu>.

<sup>3</sup> UN Economic and Social Council, 22.10.2015, Concluding Observations on the fourth periodic report of Morocco, E/C.12/MAR/CO/4\*, §6, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fMAR%2fCO%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fMAR%2fCO%2f4&Lang=en)

<sup>4</sup> UN Human Rights Committee, 01.12.2016, Concluding Observations on the sixth periodic report of Morocco, §10, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/MAR/CO/6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/MAR/CO/6&Lang=en)

<sup>5</sup> <https://wsrw.org/en/archive/3241>

<sup>6</sup> [https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/71/600af01be68b4\\_Vinci-Group\\_2013.jpg](https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/71/600af01be68b4_Vinci-Group_2013.jpg)

WSRW is currently in the process of writing a report about Morocco's renewable energy plans in occupied Western Sahara. We would be grateful for your response before 15 May 2021. A reference to your reply will be made in the report or on our website. Please don't hesitate to contact us should you have any questions or require further information in relation to the above-raised issue: we'll gladly oblige.

We thank you beforehand for your consideration of our letter and look forward to your reply.

Sincerely

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