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Brussels
26 March 2020

To the attention of Mr John Belizaire
Chief Executive Officer of Soluna

Re.: Seeking comments for upcoming publication - Soluna's plans in occupied Western Sahara

Dear Mr Belizaire,

Western Sahara Resource Watch (WSRW) is privileged to present you with our compliments. We are writing following reports in Moroccan media that Soluna's plans to construct a wind farm in Dakhla have been given green light. Specifically, Soluna is reportedly permitted to kick-off the first phase of the farm, said to consist of a 36 MW farm to be financed by Soluna and Brookstone Partners. Soluna would be looking for institutional investors to cover the costs for the rest of the work on the envisioned 900 MW farm.

WSRW has several questions in that regard, and would appreciate your response.

We note that Soluna locates Dakhla in Morocco, both on its website as well as in documents pertaining to the so-called Harmattan Dakhla Wind Farm. In your position paper on Western Sahara, "A note on Dakhla, Morocco"¹ it says that "this region is also known as the disputed territory of Western Sahara". This Non-Self-Governing Territory - not region, as you write - is not "also known" as Western Sahara: that is its actual name, as internationally recognised. What is not internationally recognised at all, is the description of the territory as 'a region'. That depiction is only recognised in Morocco, and - judging by the position paper - is a narrative that Soluna has seemingly adopted.

The position paper contains several factual mistakes and telling omissions. Under the header "background on Western Sahara", Soluna refers to Spain's 1975 agreement with Morocco and Mauritania to hand over the administration of its former colony. The company however omits that this particular agreement, the Madrid agreement, is considered null and void. As asserted by the UN Legal Counsel in 2002: "The Madrid Agreement did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred."²

In those same background paragraphs, Soluna goes on to state that "Morocco assumed the administration of portions of the territory, and now administers close to 90% of the region". That is incorrect. Morocco did not assume administration: it invaded the territory, resulting in open war and many people fleeing the territory to set up make-shift refugee camps in the Algerian desert, where they and their descendants continue to live to this very day. Morocco does not administer a large part of the territory: it holds it under military occupation. We refer to the above statement of the UN Legal Counsel and to the rulings of the Court of Justice of the European Union concerning Western Sahara, which all concluded that Morocco has no sovereignty over

¹ <https://soluna.io/wp-content/uploads/2018/10/Disputedterritory.pdf>

² UN Security Council, 12 February 2002, S/2002/161, Available here: https://www.wsrw.org/files/dated/2008-10-22/un_report_on_legality_oil.pdf

Western Sahara or any international mandate to administer the territory. In fact, the Court argued, Western Sahara is a territory that is “distinct and separate” to Morocco.³

Another significant omission is that in briefly touching on the UN peace process, initiated in 1991, Soluna manages to leave out the cornerstone principle employed by the UN in this endeavour: that of self-determination. The people of Western Sahara have an internationally backed right to decide the political status of their land. The Saharawi people’s right to self-determination has been emphasized by the International Court of Justice, hundreds of UN Resolutions (of both General Assembly and Security Council), and even by Morocco in the 1991 Settlement Plan. While ignoring the concept of self-determination altogether, Soluna does mention Morocco’s autonomy plan, yet does not explain what that entails: a top-down, occupying State-conceived initiative offering a single option – that of regional autonomy - that can either be accepted or rejected. Independence will not be included as an option. As such, the autonomy plan falls well out of the principle of self-determination as provided for in the International Covenants, as it does not allow the people of the territory to freely decide the future political status of their homeland.

Further in the document, under the header “political and economic status of Non-Self-Governing Territories”, Soluna describes Western Sahara as having “the same status as the UN status of the British Virgin Islands or Cayman Islands”. We submit that there are fundamental differences.

The list of Non-Self-Governing Territories, and its appointed colonial powers are found on the UN website.⁴ As you will see, Western Sahara is the only UN-listed Non-Self-Governing Territory that does not have an administering power appointed to it. While in the case of the British Virgin Islands or the Cayman Islands, there has been acceptance by the people of the territories of the administering power, which is also recognised internationally. The people of Western Sahara have never accepted Morocco’s annexation of part of their land, and no country in the world recognises Morocco’s claim to the territory.

As such, your conclusion that “investment in the territory is usually allowed” needs to be mitigated. An occupying power can certainly use the resources of a territory, but on condition that such activities are geared towards to exercise of self-determination. Morocco does the exact opposite in Western Sahara: Morocco’s interest in the territory’s economic potential is geared exclusively toward the purpose of furthering acceptance of its illegal occupation of the territory. And Soluna is a useful pawn in that colonial settlement project.

Soluna’s position paper also misrepresents the 2002 UN Legal Opinion on exploitation and exploration of the resources of Western Sahara. Soluna writes that “It concluded that exploration and development of resources in non-self-governing territories are consistent with international law if they are in the best interests of people in those territories. Therefore, an investment by Soluna in Morocco administered Western Sahara is allowed by the UN and supported by international law”.

That is not the conclusion of the UN Legal Opinion. The conclusion can be found in the final, concluding paragraph of the Opinion.

It states that if activities were to proceed “in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law”. It is significant that Soluna chooses to exclude the notion of “wishes” – the literal translation of the concept of self-determination: do the people want the activity or not?

³ Judgment of the Court (Grand Chamber), 21 December 2016, ECLI:EU/C/2016/973, <http://curia.europa.eu/juris/document/document.jsf?sessionid=9ea7d2dc30d5a57b201e09f24856b7bad0b327f322.e34KaxiLc3qMb40Rch0SaxyKbx10?text=&docid=186489&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=6228781>

⁴ UN, List of Non-Self-Governing Territories, <https://www.un.org/dppa/decolonization/en/nsqt>

In this regard, it is useful to point to the UN Treaty Bodies on Economic, Social and Cultural Rights and on Civil and Political Rights, which have both called on Morocco to respect the right to prior, free and informed consent of the Saharawi people to the exploitation of their natural resources. The Court of Justice of the European Union has also concluded in consecutive rulings that it is irrelevant whether the people of Western Sahara stand to benefit from an economic activity – what matters is whether they have consented to the activity or not.

Soluna’s “A Note on Dakhla, Morocco” appears to have been crafted to suit a clear purpose: avert attention from the legal and ethical problems that arise from its intention to do business on occupied land.

We refer to our letter of 9 August 2018 to your partner *Brookstone Partners*, which was never answered yet is referred to in the “other resources” section of your position paper. Several of the questions raised then remain pertinent. In addition, new questions stem from recent developments.

1. Can Soluna confirm the media statements that it has received permission to commence construction of the first phase of its wind farm in Dakhla, Western Sahara?
2. In its White Paper, Soluna refers to the process of obtaining the necessary permits from the “appropriate regional and federal authorities”. Given that Morocco has no sovereignty over Western Sahara, or any international mandate to administer the territory, how would Soluna assess the value of such permits?
3. Who has granted Soluna “exclusive rights to the area”? Who are Soluna’s contractual partners in Morocco?
4. How does Soluna assess the legal status of its plans?
5. How does Soluna relay to investors the legal and financial risks related to constructing infrastructure on occupied land that is subject to a UN-led peace process?
6. Which steps has Soluna taken to obtain the prior, free and informed consent of the people of Western Sahara to its planned project in Dakhla?
7. On your website it says that Soluna’s approach to the project is driven by its ethics-driven philosophy, without any explanation of what that philosophy consists of. Could you elaborate on the pillars of that philosophy and explain how it aligns with undertaking business in the last colony in Africa that is also regarded as a veritable human rights black spot by well-regarded international NGOs?
8. Soluna cites “total transparency” as one of its core values. What steps is Soluna taking to ensure that the United Nations, which has a special responsibility for the territory given the lack of appointed administering power, are fully updated on all stages of its envisioned project?

We find it peculiar that your company uses our letter to Brookstone Partners as a “resource” as to legitimize your controversial operation in the territory. We ask you to add in a note that the letter – and the questions we asked – have not been responded to by Brookstone Partners.

We hope that your company will reconsider its involvement in Morocco’s colonial ambitions in Western Sahara. It is our conviction that it is not in Soluna’s interest to be associated to a brutal occupation.

We look forward to hearing from you.

Best regards,

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