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France

Brussels  
20 July 2020

To the attention of Mr Sébastien Clerc,  
Chief Executive Officer of Voltalia AG

## RE. Voltalia's business activities in occupied Western Sahara

Dear Mr Clerc,

Western Sahara Resource Watch (WSRW) and the *Association des amis du peuple du Sahara Occidental* (APSO) are privileged to be writing to you. We are writing to enquire about your company's plans to construct a wind farm in occupied Western Sahara.

WSRW understands that your subsidiaries Voltalia Maroc and VLT Investment 6 B.V. have set up a joint company "Parc Eolien de Ghrad Jrad SAS" with the purpose of developing, realising and exploiting a 75 MW wind farm in the so-called "province of Laayoune".<sup>1</sup>

As Voltalia has obtained a status of independent producer of electricity for the envisioned farm already three years ago, we assume that your company has undertaken due diligence and will be aware of the problematic nature of doing business in above-mentioned location.

The area that Morocco refers to as the "province of Laayoune" is land that part of Western Sahara, a Non-Self-Governing Territory that is yet to achieve decolonisation. The UN, which has a Mission on the ground (MINURSO), considers the territory to be 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>2</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. And yet, to date, no State in the world recognises Morocco's untenable claim to its neighbouring country, while the right of the Saharawi people to self-determination is backed internationally. Nevertheless, the people of Western Sahara continue to suffer the yoke of a brutal occupation: many of them live as refugees in the inhospitable

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<sup>1</sup> Conseil de la Concurrence du Maroc, 28.05.2020, Communiqué du Conseil de la concurrence relative au projet de concentration économique concernant la création d'une entreprise commune dénommée "Parc Eolien Ghrad Jrad S.A.S" par les sociétés Voltalia Maroc et VLT Investment 6 B.V, détenues à 100% par Voltalia SA <http://conseil-concurrence.ma/cc/wp-content/uploads/2020/05/Communiqu%C3%A9-du-Conseil-de-la-concurrence-relative-au-projet-de-concentration-%C3%A9conomique-Voltalia.pdf>

<sup>2</sup> International Court of Justice, Advisory Opinion of 16 October 1975, Western Sahara, <https://www.icj-cij.org/files/case-related/61/6197.pdf>

Algerian desert, while their kin left behind are subjected to some of the most gruesome human rights violations.

The status of the territory comes with repercussions for business activities. As established in 2002 by the UN Legal Counsel at the request of the Security Council, any economic activity in the territory would be in violation of international law if not undertaken in accordance with the wishes and the interests of the people of the territory.<sup>3</sup> 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 the natural corollary of the people of Western Sahara’s right to self-determination.<sup>4</sup> We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights<sup>5</sup> and of the UN Human Rights Committee<sup>6</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 energy. 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. The latter is clearly the case in Western Sahara. For example, the energy generated by the currently operational onshore wind parks in the territory, is used for industrial end-users, such as the Moroccan state-owned phosphate company OCP, which exploits the phosphate reserves in the territory. Only a handful of companies today still purchase phosphate rock from Western Sahara, as many companies have abandoned the trade following pressure from investors over concerns for international law and human rights.

WSRW notes that Voltalia in company presentations published on its website depicts the territory of Western Sahara as part of Morocco. See for instance this:

<https://www.voltalia.com/uploads/investor/highlights/Ambitions2023.pdf>

We would be grateful if you could respond to the following questions:

1. Has Voltalia obtained the consent of the people of Western Sahara, through their internationally recognised representative body, the Frente Polisario, to becoming an independent producer of electricity on the territory?

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<sup>3</sup> UN Security Council, 12.02.2002, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161, <https://undocs.org/S/2002/161>

<sup>4</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>5</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>6</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)

2. How does Voltalia assess the legal status of Morocco vis-à-vis Western Sahara?
3. Is the 75 MW wind farm part of the portfolio that Voltalia acquired upon its 2016 take-over of Alteryra Maroc?
4. How many more of the projects in Voltalia's wind and solar portfolio that are now still in conceptual stage, are intended for implementation in Western Sahara?

We have noted that your company has reported to be the 100% owner of subsidiaries called 'Alteryra Wind' and 'VMA Sahara'.<sup>7</sup> The subsidiaries are located at different addresses in Western Sahara's capital city of El Aaiun.

5. Under which country's laws do Alteryra Wind and VMA Sahara operate?

Additionally, we note that that MASEN and the Moroccan Ministry for Mines and Energy have tendered the first phase of the Noor PV II programme in January this year. This first phase foresees in installing 400 MW of photovoltaic solar capacity across nine potential sites, including Boujdour and El Aaiun (or "Laayoune", in Morocco's preferred spelling) in occupied Western Sahara. Voltalia had expressed an interest in the NOOR PV I programme, which also foresaw in the construction of solar plants in both Boujdour and El Aaiún.

6. Has Voltalia expressed an interest in the Noor PV II programme tendered by the Moroccan Ministry for Mines and Energy and MASEN in January 2020?

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 limit any cooperation with Morocco to the territory of Morocco proper, and refrain from undertaking activities on occupied land.

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 7 August 2020. A reference to your reply may be made in the report or on our website.

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

Sincerely,

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<sup>7</sup> [https://www.voltalia.com/uploads/investor/rapport/DDR2018\\_FR.pdf](https://www.voltalia.com/uploads/investor/rapport/DDR2018_FR.pdf)