

Brussels  
13 February 2015

To the attention of Ms Denita C. Stann,  
Vice President, Investor and Public Relations of PotashCorp

**RE: The export purchase of phosphate rock from occupied Western Sahara**

Dear Ms Stann,

Western Sahara Resource Watch (WSRW) is again privileged to write to you. We have observed that PotashCorp's imports of Western Saharan phosphates continued in 2014. We also take note of the changes made to the company's position paper "Phosphate Rock from Western Sahara" the latest version published in August 2014. We wish to enquire and make comments about both.

Since 1996, PotashCorp has been one of the biggest importers of phosphate rock from occupied Western Sahara. PotashCorp purchases phosphate rock from the Bou Craa mine located in the Moroccan occupied parts of Western Sahara through a contract with the *Office Chérifien des Phosphates SA (OCP)*, the Moroccan state-owned phosphate company.

Our research demonstrates that PotashCorp received three shipments of phosphate from the Bou Craa mine last year. We have determined that those shipments totaled about 186,000 tonnes, making the company a sizeable importer of phosphate rock from occupied Western Sahara in calendar year 2014.

WSRW is presently preparing a follow-up to its "P for Plunder" report published in June 2014. The revised edition will present information about the importing companies, and the estimated volume and market value of the imports. In addition, we aim to make sure to reflect the views of the importing companies on the matter. Given the estimated size of Potash Corp's imports, the company will surely be featured in the report.

From your position paper, we gather that PotashCorp attempts to present itself "as an ethical but non-political company" (p.7) whose purchase of a commodity from occupied Western Sahara is lawful. WSRW would argue that the company is rather the opposite: precisely because of its continuous imports of phosphate rock from occupied Western Sahara, despite having been repeatedly made aware of the ethical, political and legal implications of such actions, PotashCorp's involvement in the taking of Saharawi resources can only be described as extremely unethical, highly political and a violation of the Saharawi people's basic rights.

PotashCorp's position paper contains little legal reference to support the company's claim of acting within international law. The single such reference, apart from allusions to undisclosed legal opinions drafted by law firms retained by OCP, is an inaccurate quote from the UN Legal Opinion of 2002 (S/2002/161) on the legality of the exploration and exploitation of minerals resources in Western Sahara. On page 2 of the position paper, it reads:

"... where it was concluded that such activities would be illegal 'only if conducted in disregard of the needs and interests of the people of that Territory'."

This redacted reference comes from paragraph 21 of the UN Legal Opinion, which is indeed part of the concluding summary of the Opinion but describes the question put before the Legal Counsel by the UN Security Council, not the Counsel's actual conclusion. The full sentence from the UN Legal Opinion (to which the position paper ostensibly refers) reads as follows:

"The question addressed to me by the Security Council, namely, 'the legality ... of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara', has been analysed by analogy as part of the more general question of whether mineral resource activities in a Non-Self-Governing Territory by an administering Power are illegal, as such, or only if conducted in disregard of the needs and interests of the people of that Territory."

The preceding paragraph is not the conclusion of the UN Legal Opinion, found in paragraph 25 - the final paragraph of the Opinion - and which reads as follows:

"The conclusion is, therefore, that, while the specific contracts which are the subject of the Security Council's request are not in themselves illegal, if further exploration and exploitation 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 applicable to mineral resource activities in Non-Self-Governing Territories."

The essential point PotashCorp keeps missing is that of the "wishes of the people of Western Sahara". It flows naturally from the Saharawi people's right to self-determination as acknowledged by the International Court of Justice, countless Resolutions of the UN Security Council and the General Assembly, and the organized international community. Indeed, the entire concept of self-determination is a cornerstone in the UN *Charter* and international law in general. Its meaning is nonetheless simple: the right of a people to determine their future, including with it an option of independence. The *International Covenant on Economic, Social and Cultural Rights* explains the right to self-determination as a people's right to freely determine their political status and to freely dispose of their natural wealth and resources. That right remains with the Saharawi people, who were the sole original inhabitants of the territory before the invasion by Morocco (and at the time, Mauritania) in 1975.

As hollow as the references in earlier versions of the PotashCorp position paper may have been, it is telling that any mention of this notion, the right to self-determination, has now been dropped completely from the document. The previous version of April 2013 included the following sentence on page 2;

“We believe that PhosBouCraâ’s operations and investments in the region have significantly contributed to the development of Western Sahara and continue to provide substantial economic and social benefits to the Saharawi people, all of which make it more likely rather than less likely that they can effectively exercise their right to self-determination.”

That same sentence has now been altered to read as follows, on pages 2 and 3 of the August 2014 version of the position paper:

“We believe that PhosBouCraâ’s operations and investments in the region have significantly contributed to the development of Western Sahara and continue to provide substantial and sustainable economic and social benefits to the Saharawi population, all of which create enhanced opportunity for, and capacity building within, the local population.”

Instead of referring to the Saharawi people’s right to decide, to choose their destiny, PotashCorp chooses to devote ample space in its position paper to the potential benefits to the Saharawi “population” through Morocco’s exploitation of the Saharawi people’s resources. PotashCorp thus uncritically adopts the argumentation of the Moroccan government that its presence in the territory is warranted, as long as the “local population” – to use the Moroccan terminology when describing those currently living in Western Sahara – stands to obtain potential benefits of Morocco’s exploitation of their land, regardless of whether the people of the territory agree to its presence or not.

The company tries to back up such a stance by referring extensively to job opportunities, social benefits and community investments undertaken by OCP in Western Sahara. But even if OCP provided all those services to Saharawis, which is not at all proven, it is not really relevant. The crucial point is whether the Saharawi people want the exploitation and subsequent trade to take place or not. And that is the question that Morocco is not willing to have them answer, by denying them the chance to exercise their right to self-determination through a free and fair referendum that includes independence as an option.

We take note that members of PotashCorp’s senior management team have been able to visit Western Sahara, including the Bou Craa operations, and have witnessed the purported beneficial outcome of OCP’s presence in the territory “firsthand”. PotashCorp’s ease of doing business in the territory is in striking contrast to the numbers of visitors that Morocco impedes from visiting of Western Sahara every year. From interested journalists, European Parliamentarians, lawyers, scholars

to Saharawi sympathizers - the numbers of people that have been prevented from entering or deported from Western Sahara over the past couple of years are running high. Even the UN Special Representative and Head of United Nations Mission for Referendum in Western Sahara, the Canadian diplomat Kim Bolduc has been denied access to her post at El Aaiun in occupied Western Sahara, for nine whole because Morocco has insisted upon additional vetting in order to obtain clarifications on her stance in the matter.

Yet others, mainly those with a political or financial stake in the territory or its resources, and with a demonstrated pro-Morocco position vis-à-vis the conflict, have remarkably little trouble entering. And while there, taking the tour and attending the meetings that have been prepared for them by their Moroccan partners, they will not see any demonstrations or hear any dissenting voices that digress from to the official Moroccan rhetoric; that all is well in “its southern provinces”.

PotashCorp’s political support of the Moroccan government’s position in this protracted conflict with tremendous human cost is also evident from other changes made to the position paper. PotashCorp now openly praises Morocco’s autonomy plan for Western Sahara. Where the April 2013 position paper read:

“Like many interested parties to the dispute, we are looking forward to a peaceful United Nations (U.N.)-sponsored resolution and are encouraged that they continue to work towards this outcome.”

The revised version of August 2014 now reads:

“Like so many interested parties to the dispute, we are looking forward to a peaceful United Nations (U.N.)-sponsored resolution and are encouraged by Morocco’s autonomy plan for Western Sahara which has been well received by the international community.”

The change reveals that PotashCorp is taking an inherently political stance in this matter, and expresses a clear position as to whom should be the sovereign power in the Non-Self Governing Territory of Western Sahara. The company could have mentioned both parties to the conflict and to the negotiations process – thereby including the officially recognized representative of the Saharawi people, the Frente Polisario. It could have included a reference to “a just, lasting, and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations” as the UN now choses to frame its objective. But instead, it opts for endorsement of the proposal of one party to the conflict - the occupier no less – which is diametrically opposed to the Saharawi people’s right to self-determination, as it restricts their freedom to choose their political status to accepting a plan concocted by a state in clear illegal occupation of the territory.

Honesty has its merits. PotashCorp is a publicly traded company that has the objective to make profitable decisions that will benefit its shareholders. That is the main objective for its activities

around the globe. This remark is in no way meant to disparage; it is merely fact. Unfortunately, in its drive to thrive, PotashCorp has neglected what is ultimately basic courtesy, namely to verify whether all ethical and legal requirements are met before taking action.

We'd be grateful if PotashCorp could confirm, before February 20, whether our observation of its 2014 phosphate intake from Western Sahara - three shipments amounting to approximately 186,000 tonnes - is correct.

We repeat our appeal to PotashCorp to demonstrate its respect for the human rights of the Saharawi people and to cease its imports from occupied Western Sahara. Having observed that the company has not received a delivery of phosphate rock from the Bou Craa mine for some four months, since mid-November, it seems to be able to do without. We also request PotashCorp respect the Saharawi people's right to self-determination by engaging in dialogue with the democratic government of the Saharawi people, accepted as such by the UN, the Saharawi Arab Democratic Republic. As representing the rightful inhabitants of the territory from which you import, they have a right to at least be meaningfully consulted on the trade. We furthermore urge you to seek their consent, thus bringing your firm's conduct back in line with international law.

We look forward to hearing from you and remain at your disposal should you require any further information.

Sincerely,

Sara Eyckmans  
Coordinator  
Western Sahara Resource Watch

A copy of this letter was sent to:

- HE Ambassador Christopher Ross, UN Secretary-General's Personal Envoy for Western Sahara
- HE Kim Bolduc, UN Secretary-General's Special Representative for Western Sahara and Head of the United Nations Mission for the Referendum in Western Sahara (MINURSO)
- The Honorable Ed Fast, Canada's Minister of International Trade
- The Honorable Jason Kennedy, Canada's Minister of Foreign Affairs
- Mr Mark Wiseman, President and Chief Executive Officer of Canada Pension Plan Investment Board
- Mr John Valentini, Interim President and Chief Executive Officer, and Chief Financial Officer of Public Sector Pension Investment Board (Canada)
- Mr Peter Chapman, Executive Director of the Shareholder Association for Research and Education (SHARE)