



Gesto Energia S.A.
Miraflores Office Center
Avenida das Túlipas, n.º 6, Piso 5
1495-158 Algés
Portugal

12 July 2019, Brussels

For the attention of: **Miguel Barreto Caldeira Antunes**, Chief Executive Officer, Gesto Energia S.A.

Re: Gesto Energia S.A. (Gesto) potential involvement in occupied Western Sahara

Dear Mr. Barreto,

We, at Western Sahara Resource Watch and The International Platform of Jurists for East Timor, are privileged to present you with our compliments. We are writing to you regarding Gesto Energia S.A.'s potential involvement in the parts of the Non-Self-Governing territory of Western Sahara that are under illegal foreign military occupation.

It has recently come to our attention that Gesto has been awarded a new project by the Government of Morocco; this project is to “*identify and study areas with geothermal potential in the provinces of south of Morocco in an area of more than 140 000 km², corresponding to Moroccan Sahara*”¹, and that this project will “*comprehend hydrogeological, geochemical, geological and geophysical studies, with the goal to classify the different energy levels of the geothermal potential*”². According to Gesto’s website, this project will be under the working title “*Realisation d’une Etude des Potentiatites Geothermiques dans les Provinces du Sud*”. In the same press release on Gesto’s website, there are several photos, one of which has a map of Western Sahara and Morocco merged together. The press release also refers to the parts of Western Sahara that are under Moroccan military control as “*Southern Provinces*” or “*Moroccan Sahara*”.

As you may know, Western Sahara is often referred to as the last colony in Africa, and is treated as such by the United Nations. It is one of the last remaining Non-Self-Governing Territories – territories pending the process of decolonization – but it is unique in the sense that it is the only territory that does not have an administering power appointed by the UN. From a legal perspective, the administering power still resides with the former colonizer, Spain, which abandoned its former colony in 1975.³ Morocco does not have any sovereignty or international mandate to administer the territory.⁴ As a matter of international law, the case of Western Sahara is identical to the one of Timor Leste, occupied by Indonesia from 1975 to 1999.

¹ <http://gestoenergy.com/gesto-presents-northern-east-morocco-strategy-for-geothermal/>

² <http://gestoenergy.com/gesto-presents-northern-east-morocco-strategy-for-geothermal/>

³ See e.g. the decisions of the Spanish Criminal Appeals Court (Audiencia Nacional) of 4 July 2014 and 9 April 2015, confirming that Spain, not Morocco, is the administering power over Western Sahara. The official English translation of the July 2014 decision can be found here: wsrw.org/files/dated/2016-04-19/audiencia_nacional_4.7.2014_-_gdeim_izik.pdf

⁴ See e.g. The Judgment of the General Court of the European Union, 10 December 2015, case T-512/12: Frente Polisario v Council of the European Union, §233: “The Kingdom of Morocco does not have any mandate granted by the UN or by any other international body for the administration of [Western Sahara]”. Available via: www.curia.europa.eu

In violation of the Opinion of the International Court of Justice – which found no ties between Morocco and Western Sahara and stipulated the right of the Western Sahara people to self-determination - Morocco invaded the territory in 1975 and has gone on to annex large parts of the territory. Today, about three-quarters of Western Sahara are under Moroccan military control.

The part of Western Sahara that is under control of the Polisario Front – the Saharawi liberation movement – hosts the administrative institutions of the Saharawi Republic (the SADR), which is recognized by over 80 countries worldwide, and a full-fledged member of the African Union. Note that there is not a single country in the world that recognizes Morocco's claims to Western Sahara.

In 1991, the UN was able to broker a ceasefire agreement, and set up a UN Mission in the territory with a single mandate of organizing a self-determination referendum. That referendum has still not taken place, mainly due to Morocco's efforts to thwart the mission.

The lingering conflict continues to have a high human and humanitarian cost. During Morocco's violent invasion, many Saharawis fled to the neighbouring Algerian desert, which today still hosts the Saharawi refugee camps that are home to over 170,000 people. These refugees survive in harsh desert conditions and on dwindling humanitarian aid. Saharawi refugees are separated from their relatives who stayed in their homeland by a military fortified wall that is over 2000 kilometres long, and home to one the world's largest and densest minefields. Saharawis who live under the yoke of Morocco's occupation are victims of serious human rights violations that have been reported by the UN Human Rights Committee, in addition to credible international organisations such as Human Rights Watch, Amnesty International, and others.

Our organization monitors and comments on Morocco's taking of Western Sahara's natural resources – an activity that has been studied by the UN Legal Counsel in 2001. The UN Legal Opinion concluded that any such activity would be illegal if not carried out in accordance with the interests and the wishes of the people of the territory – as a natural corollary of their right to self-determination.

As a former high-ranking European official (having been Director General of Energy in Portugal), we assume that while carrying out a legal risk-assessment with regard to the operations of Gesto in a conflict area, you'll be aware that the United Nations, the International Court of Justice and the Court of Justice of the European Union all state that Morocco does not have any legal basis, sovereignty or international mandate to administer the territory. Legal opinions from the United Nations, as well as separate court rulings from the EU Court of Justice and the High Court of South Africa, and reports by the UN Human Rights Committee and the UN Committee for Economic, Social and Cultural Rights, also state that economic activities in Western Sahara have a paramount legal prerequisite to be fulfilled in order for trade activities inside or affecting occupied Western Sahara to be permissible under international law: consent must be sought from the Saharawi people. This means that the Saharawi people (through their internationally recognized representative the Polisario Front) must consent to any commercial activity taking place on their occupied homeland.

We would be grateful if you would answer the following questions:

1. As a corollary of the internationally recognized right to self-determination of the people of Western Sahara, and given the legal requirement of obtaining the prior, free and informed consent of the people of Western Sahara with regard to activities or projects in their land – as put forth by several UN Treaty bodies and the EU Court of Justice – what steps has Gesto taken to obtain the consent of
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the people of Western Sahara through their political representation, the Polisario Front, in order to carry out any kind of geothermal assessment in Western Sahara?

2. When Gesto decided to launch a bid for assessing the geothermal potential of areas in “Southern Morocco”, did it know that the Moroccan government holds no jurisdiction over the territory, and that in fact it’s a conflict area?
3. On its website, Gesto refers to Western Sahara by the Moroccan colonial terminology such as “Moroccan Sahara” or “provinces of south Morocco” in contradiction with the UN, the EU institutions and the Republic of Portugal. Why?
4. In a press release announcing Gesto being awarded the aforementioned assessment project, there is a map which lumps occupied Western Sahara in with Morocco. The map is not in line with UN maps. http://gestoenergy.com/wp-content/uploads/2019/04/Slide1_v3.jpg Why would Gesto choose to display such a map?
5. Does Gesto agree with the Ministry of Foreign Affairs of Portugal⁵, the World Bank, and the Court of Justice of the European Union in line with the UN, that Western Sahara is a Non-Self-Governing Territory pending a decolonization process?

We would also wish to submit that several countries where Gesto has current or past operations have bilateral diplomatic relations with the Polisario Front (represented by the Saharawi Republic or the SADR). Several of these countries have expressed strong opposition to foreign private companies profiting from the Moroccan occupation of Western Sahara, at the cost of the people of Western Sahara. These countries include, but are not limited to: Republic of South Africa, Republic of Angola, Republic of Botswana, Republic of Mozambique, Democratic Republic of East Timor, Republic of Kenya, Republic of Namibia and others.

We are convinced that it is not in the interest of Gesto to become associated with the continued colonization and occupation of Western Sahara.

We urge Gesto Energy to immediately withdraw from carrying out any (further) assessment, and we recommend Gesto to hand over any data collected from occupied Western Sahara’s geothermal potential to the Saharawi authorities and to the United Nations. If not, your organization risks becoming a pawn in the essentially political project of Moroccanising occupied Western Sahara, and that would be deeply unfortunate.

Please do not hesitate to contact us should you require any further information on the above-raised issues. We thank you in advance for your consideration, and look forward to your response.

A copy of this mail is sent to:

UN Secretary-General, Antonio Gutierrez.

The Portuguese Ministry of Foreign Affairs

Kind regards,

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⁵ <https://www.portaldiplomatico.mne.gov.pt/en/foreign-policy/multilateral-affairs/multilateral-political-organizations#multilateral-political-organisations>