

To the attention of Mr Paddy Padmanathan
President and CEO of ACWA Power
ACWA Power
Business Gate Office Complex
Building 5 P.O. Box 22616
Riyadh-11416
Kingdom of Saudi Arabia

Brussels
5 June 2020

Re.: ACWA Power's involvement in Morocco's solar projects in occupied Western Sahara

Dear Sir,

Western Sahara Resource Watch is again privileged to present you with its greetings. We are writing in view of our upcoming publication on Morocco's renewable energy projects in the part of Western Sahara that it holds under military occupation. Given ACWA Power's involvement in the Noor PV I project, installing solar plants in Boujdour and El Aaiun, your company will be featured in that report. Naturally, we would welcome your views on the matter, so that we may accurately reflect them in our publication.

We refer to our letter to you of November 2016, to which we have never received a response. Nevertheless, the concerns and questions contained in said letter remain relevant to date. Allow us to briefly summarize our main concerns, as framework for the questions included below.

In 2016, the Moroccan Agency for Sustainable Energy (MASEN) had selected ACWA Power for the construction and operation of 170 MW of photovoltaic capacity in Morocco. The so-called NOOR PV I project was implemented across three different sites: Ouerzazate, Laayoune and Boujdour. The latter two are located outside of the border of Morocco as internationally recognised. Boujdour and El Aaiun (or Laayoune, in Morocco's preferred spelling) are in 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.¹ 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 Algerian desert, while their kin left behind are subjected to some of the most gruesome human rights violations.

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

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.² 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.³ We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights⁴ and of the UN Human Rights Committee⁵, 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.

Our organization would be grateful for an answer to the following questions:

1. What steps has ACWA Power undertaken, if any, to obtain the prior, free and informed consent of the Saharawi people, through their internationally recognized political representation, the Frente Polisario, with regard to the construction of NOOR Laayoune and NOOR Boujdour?
2. How does ACWA Power consider the Saharawi people’s right to self-determination over the territory, and their right to decide over their own resources?
3. We note that ACWA Power consistently refers to Boujdour and El Aaiun as being located in Morocco. How does ACWA Power assess the legal status of Morocco vis-à-vis Western Sahara?

² 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>

³ 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>.

⁴ 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

⁵ 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

4. We note that the SESIA for NOOR Boujdour and NOOR Laayoune both state that land acquisition was “not within the scope of ACWA Power as MASEN is the owner of the land and will lease the allocated plot for the proposed project”.⁶ How does ACWA Power assess the legal foundation of MASEN’s claim to land in a territory held under Moroccan occupation?
5. We note that the SEP for NOOR Boujdour and NOOR Laayoune both state that “there are no indigenous groups in the project area”.⁷ How does ACWA Power qualify the Saharawi people who inhabited the territory – including the land where NOOR Boujdour and NOOR Laayoune are located – prior to the illegal invasion?

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 – again – Boujdour and El Aaiun in occupied Western Sahara.⁸

6. Has ACWA Power expressed an interest in the Noor PV II programme tendered by the Moroccan Ministry for Mines and Energy and MASEN in January this year?

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

With kind regards,

Sara Eyckmans
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⁶ The SESIA for NOOR Laayoune and NOOR Boujdour are available via <https://www.acwapower.com/en/projects/noor-pv-1/>

⁷ The SEP for NOOR Laayoune and NOOR Boujdour are available via <https://www.acwapower.com/en/projects/noor-pv-1/>

⁸ A copy of the tender can be found here: <https://www.wsrw.org/files/dated/2020-02-10/noor-pv-ii-ami-programme-400-mw-loi-13-09.pdf>