

Nordex SE

Att: José Luis Blanco, Chief Executive Officer

Langenhomer Chaussee 600

22419 Hamburg

Germany

Brussels, 31.10.2023

RE. NORDEX SE'S INVOLVEMENT IN RENEWABLE ENERGY PROJECTS IN OCCUPIED WESTERN SAHARA

Dear Mr Blanco,

Western Sahara Resource Watch is privileged to present you with our compliments. We are writing to inquire about Nordex SE's involvement in renewable energy projects in occupied Western Sahara.

A report published by the Moroccan government in relation to its 2024's Finance Bill details the size of the plots of land that have been accorded to the companies ORNX Boujdour and ORNX Laayoune, which both intend to install a wind farm and a green hydrogen production unit on said land.¹ Information released by the Moroccan Council for Competition describes Nordex SE as co-owner of both companies.²

Both ORNX Boujdour and ORNX Laayoune appear to be registered as a "Sociedad Limitada (SL)" in the Mercantile Registry of Navarra, Spain, in late June this year, at the same address as Nordex Spain Energy.³ ORNX Boujdour also has an office in El Aaiún, Western Sahara.⁴

Early in October, Moroccan media reported that ORNX has launched impact studies for both the project in Boujdour and in El Aaiún ("Laayoune", as spelled per the Moroccan authorities).⁵

As you will know, both Boujdour and El Aaiún are located in Western Sahara - a territory that the United Nations consider to be a Non-Self-Governing Territory without an administering power appointed to it, still to complete the process of decolonisation.⁶ The International Court of Justice has confirmed that Morocco has no sovereignty over the territory, and that the people of Western Sahara have a right to self-determination – the right to determine the future status of the territory.⁷ In 1988, the UN was able to broker a ceasefire arrangement between Morocco and the Western Sahara liberation movement, Polisario, in which both parties agreed to hold a referendum on self-

¹ Royaume du Maroc, Ministère de l'Economie et des Finances, October 2023, Projet de Loi de Finances pour l'année budgétaire 2024: Rapport sur le foncier public mobilise pour l'investissement, https://www.finances.gov.ma/Publication/db/2024/Rapport-FoncierPublic_Fr.pdf

² Conseil de la Concurrence, 13.05.2023, Communiqué du Conseil de la Concurrence relatif au projet de concentration économique qui concerne la prise du contrôle exclusif direct de la société « ORNX Boujdour SARL AU », par la société « ORNX Boujdour SL », à travers l'acquisition de 100% de son capital social et les droits de votes y afférents, https://conseil-concurrence.ma/cc/wp-content/uploads/2023/05/13-CP_Fr_OCE-2eme-operation-ORNX-Boujdour-SL.pdf

Conseil de la Concurrence, 16.05.2023, Communiqué du Conseil de la Concurrence relatif au projet de concentration économique qui concerne la prise du contrôle exclusif direct de la société « ORNX Laayoune 1 Industrial SARL AU », par la société « ORNX Laayoune 1 SL », à travers l'acquisition de 100% de son capital social et les droits de votes y afférents,

https://conseil-concurrence.ma/cc/wp-content/uploads/2023/05/16-CP_Fr_OCE-5eme-operation-ORNX-Laayoune-1-SL.pdf

³ <https://www.iberinform.es/empresa/10434839/ornx-boujdour> <https://www.iberinform.es/empresa/10434837/ornx-laayoune>

⁴ https://local.infobel.ma/MA100843310/ornx_boujdour-laayoune_m.html

⁵ Le Desk, 09.10.2023, <https://ledesk.ma/enoff/hydrogene-vert-ornx-lance-les-etudes-dimpact-pour-ses-projets-a-laayoune-et-boujdour/>

⁶ United Nations, Non-Self-Governing Territories, <https://www.un.org/dppa/decolonization/en/nsgt>

⁷ International Court of Justice, Western Sahara, <https://www.icj-cij.org/case/61>

determination.⁸ To that goal, a UN mission (MINURSO) has been deployed to the territory, but it has not been able to organise a referendum as Morocco continues to block any effort that offers a choice beyond integration.

While well over a hundred of UN Resolutions, and rulings by the International Court of Justice, the European Court of Justice⁹ and the African Court on Human and People's Rights¹⁰, all underline that Morocco has no sovereignty or administering mandate over Western Sahara, Morocco continues to militarily control about three-quarters of the territory. Incentivized by its exploitation of the territory's resources, Morocco has little interest to genuinely take part in the UN-mediated peace process. Meanwhile, the lingering conflict continues to have a high human and humanitarian cost: over 170,000 Saharawis are stuck in refugee camps in neighbouring Algeria, surviving in harsh desert conditions and dwindling humanitarian aid. 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, UN Working Group on Arbitrary Detention, the UN Special Rapporteur on Human Rights Defenders, in addition to credible international organisations such as Human Rights Watch, Amnesty International, and others. The UN High Commissioner for Human Rights recently lamented the fact that his Office has not been allowed to visit Western Sahara for the last eight years.¹¹

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.¹² In seven 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.¹³ We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights¹⁴ and of the UN Human Rights Committee¹⁵, 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".

As such, we'd be grateful if Nordex SE would provide an answer to the following questions:

1. Have ORNX Boujdour and ORNX Laayoune obtained the express consent of the people of Western Sahara, through their UN-recognised representative the Frente Polisario, for the projects they intend to undertake in Western Sahara?
 - a. If not, why?
2. How does Nordex SE assess the legal validity of acquiring land in Western Sahara through the Moroccan government, which has no sovereignty, administering power or jurisdiction over the territory?
3. Is it correct that ORNX Boujdour and ORNX Laayoune have launched impact assessments for the planned projects?
 - a. If yes, will these assessments take into account that the projects are located on occupied territory, and the legal validity of the agreements that the companies have signed with the authorities of the neighbouring country of Morocco?

⁸ The "settlement proposals" are included in the Report of the UN Secretary General on Western Sahara of June 1990, available here: https://minurso.unmissions.org/sites/default/files/unsg_report_18_june_1990.pdf

⁹ The Rulings can be accessed at the site of the EU Court of Justice, <https://curia.europa.eu>

¹⁰ African Court on Human and People's Rights, 22.09.2022, Ruling on Application N° 028/2018 <https://www.african-court.org/cpmt/storage/app/uploads/public/632e0f3ad/632e0f3ad580e748464681.pdf>

¹¹ OHCHR, 07.03.2023, GLOBAL UPDATE: HIGH COMMISSIONER OUTLINES CONCERNS IN OVER 40 COUNTRIES, <https://www.ohchr.org/en/statements-and-speeches/2023/03/global-update-high-commissioner-outlines-concerns-over-40-countries>

¹² 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>

¹³ See footnote 9.

¹⁴ 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

¹⁵ 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

We are convinced that it is not in your company's interest to become associated with the continued colonisation and occupation of Western Sahara. It is highly damaging for the UN peace process and in obvious disregard of the Saharawi people's right to self-determination. We demand that all such projects be terminated immediately, unless permission has been given by UN-recognised representation of the Saharawi people.

Thank you in advance for your consideration of our concerns and questions. We look forward to your reply, preferably before 15 November. To be transparent, we wish to inform you that we will publish this letter and your potential response on our website.

Sincerely,

Sara Eyckmans

Coordinator

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