
ENGIE' policy on Western Sahara

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Dear Ms Gabillet,

Thank you for your email of 21 January 2021, explaining that ENGIE has assigned Global Diligence for “consulting all the stakeholders involved in the project” - referring to ENGIE’s desalination facility in Dakhla, occupied Western Sahara.

As a matter of principle, WSRW is ready to assist in advising businesses that consider undertaking operations in the territory, as part of companies’ due diligence process. We are more sceptical, however, to give input to such a stakeholder engagement process as you mention, as we in general are concerned that our good name and input will be used by companies in an effort to legitimize operations that the Saharawis object to and hence are established in violation of international law.

In general, WSRW, as an international Europe-based organization, is hesitant to be defined as a stakeholder relating to corporate activity on the territory of Western Sahara, where the Saharawi people have the right to self-determination.

Global Diligence has contacted us with a request for a talk regarding a “stakeholder engagement”. We are deeply concerned over the misrepresentation of the UN Legal Opinion on oil exploration in Western Sahara (S/2002/161) that is seemingly used as a basis for such an exercise. Not only is the consultation based on a misrepresentation of said document, it also fails to take into account the legal clarifications and developments which have taken place since then and to thoroughly consider the applicable principles of international law, as summarized by the EU Court of Justice in four consecutive rulings so far. In fact, it bears the exact same flaws as the interpretation held by the EU Commission and Council for several years- an interpretation that has been thoroughly and explicitly dismissed by the EU Court of Justice.

As long as the consultation is based on a misreading of international law, we have to regret that we do not wish to take part in the process.

Based on ENGIE’s engagement, and Global Diligence’s approach to the matters of applicable international law, Western Sahara Resource Watch has a series of questions for your company. This will be part of an article we are planning to write on our website.

1. What is the purpose of the “stakeholder engagement”?
2. What are the Terms of Reference for the “stakeholder engagement”? In particular, what is the definition of a “stakeholder” in the Terms of Reference?
3. Will the Terms of Reference of the “stakeholder engagement process” be shared with the people of Western Sahara? If yes, how will these terms be shared? If not, why?
4. What is the timeframe for the “stakeholder engagement process”?
5. Will the results of the “stakeholder engagement process” be shared by ENGIE with the people of Western Sahara? If yes, how? If not, why?
6. Will Moroccan government/regional/municipal institutions or Moroccan politicians elected at Moroccan parliamentary elections or Moroccan research institutions or Moroccan organisations or Moroccan trade unions or Moroccan business interests be invited as ‘stakeholders’ for this process? If yes, why does ENGIE consider these as relevant ‘stakeholders’, considering Dakhla is not located in Morocco, and that the Court of Justice of the EU states that Western Sahara is a “separate and distinct” territory from Morocco?
7. Does ENGIE agree with the CJEU ruling of 21 December 2016, Article 106, which clarifies that the aspect of consent of the people of Western Sahara is a prerequisite for an activity affecting the territory to be considered lawful, and that the question of “benefits” is irrelevant?
8. How does ENGIE define the right to self-determination in the context of Western Sahara? Does it encompass the right to permanent sovereignty over natural resources, to national unity and territorial integrity?
9. How does ENGIE define the status of the people of Western Sahara? Are they an indigenous population or

- a colonial people? Do they enjoy the right to self-determination and independence?
10. Will this particular “stakeholder engagement” assess the Saharawi people’s right to self-determination in relation to the establishment of infrastructure projects on their land- and how ENGIE’s has related to this right?
 11. What is ENGIE’s assessment of the legal status of Western Sahara under international law?
 12. What is ENGIE’s assessment of the legal status of Morocco’s presence in parts of Western Sahara under international law?
 - a) Does Morocco have sovereignty over Western Sahara?
 - b) Is Morocco the administering power of Western Sahara as defined by the UN Charter? If yes, please explain how ENGIE has come to this conclusion.
 - c) Is Morocco occupying parts of parts of Western Sahara under international humanitarian law? If so, can Morocco act directly through its national administration in Western Sahara or does it have to establish a separate and distinct military authority as the Israeli government did in relation to the West Bank in 1967?
 13. In which legal capacity do the Moroccan authorities issue those permissions or sign contracts with ENGIE? Is Moroccan domestic law the applicable law to those permissions or contracts?
 14. How does ENGIE assess the legal validity of its agreements for a facility in Dakhla, considering that ENGIE’s engagement in the territory is made through permissions from the neighbouring country of Morocco?
 15. Has ENGIE carried out a human rights due diligence prior to engaging with the government of Morocco in Western Sahara, and did such due diligence include a study of the legal nature of the territory, of Morocco’s presence in the territory, and of the right to self-determination as a human right?
 16. The right to self-determination is a human right. This is well described by the Advocate General of the CJEU in 2018. <http://curia.europa.eu/juris/document/document.jsf?text=&docid=198362&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=518656> This is also why the CCPR in 2016 (wsrw.org/files/dated/2016-11-04/ccpr_c_mar_co_6_25813_f.docx) and the CESCR in 2015 (https://wsrw.org/files/dated/2015-12-09/cescr_morocco_2015_eng.pdf) so strongly urged Morocco to respect the Saharawi people’s right to consent in relation to business operations in the territory. Does ENGIE agree that the right to self-determination for the people of a Non-Self-Governing Territory in the process of decolonisation is a human right?

Thank you in advance for your consideration of our questions, and we look forward to hearing from you, both with answers to the questions, as well as with a copy of the complete Terms of Reference for the stakeholder engagement process, as described in question 2.

We want to be very clear that ENGIE’s project facilitates further infrastructure on the ground and influx of Moroccan settlers, and as such contributes to prolong the illegal occupation. We do not think any company would wish to be associated with such a business activity. A ‘consultation’ study by your company which includes Moroccan interests and groups supportive to the Moroccan position on the conflict also risks increasing social conflict on the ground in the short term.

We strongly recommend your company to study the relevant international law applicable to the decolonisation of the territory of Western Sahara, and not to proceed with a project that the Saharawi people have probably never asked you to carry out.

A copy of this mail has been sent to Mr. Andrew Ianuzzi at Global Diligence. A separate mail has today been sent to Global Diligence with questions that are partially overlapping the ones included above.

Note that we look forward to ENGIE’s answers to these questions above, independently of what Global Diligence might or might not respond to some of the same questions.

With best regards,

Sara Eyckmans

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Coordinator,
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