

Acciona S.A.

Att: José Manuel Entrecañales, CEO
Avenida de la Gran Vía de Hortaleza, 3
28033 Madrid
Spain

Brussels, 10.04.2025

REGARDING ACCIONA'S PROJECTS IN OCCUPIED WESTERN SAHARA

Dear Mr. Entrecañales,

Western Sahara Resource Watch (WSRW) is privileged to present you with its compliments. We are writing in relation to the recent confirmation by the Moroccan government that land would be accorded to the investor consortium ORNX for their ammonia production project.¹ As Acciona is one of the three partners in ORNX, we would be grateful for your answers to the questions included further below in this letter. Your views will allow us to accurately present your position in an upcoming publication.

It is our understanding that the ORNX partners plan projects green hydrogen and ammonia production in Boujdour and El Aaiún, through the establishment of the firms ORNX Boujdour SL², ORNX Laayoune 1 SL³ and ORNX Dakhla SL⁴, under Moroccan law.

Our previous letters to you, dated 2 July 2013⁵ and 12 December 2023,⁶ were left unanswered. We therefore reiterate the context for our query. The sites that Acciona and partners are envisioning for production – and for which the Moroccan government has decided to accord land – are all located in the part of Western Sahara that Morocco has illegally occupied since 1975. The United Nations consider Western Sahara to be a Non-Self-Governing Territory without an administering power in place. 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-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. In November 2020, the ceasefire collapsed after the Moroccan army seized a section of the UN buffer zone to break up a Saharawi protest.⁹

¹ Kingdom of Morocco, Head of Government, 06.03.2025, "The head of government chairs a steering committee meeting on the 'Morocco offer' for green hydrogen", <https://www.cg.gov.ma/en/node/12240>

² Royaume du Maroc, Conseil de la Concurrence, 11.05.2023, https://conseil-concurrence.ma/wp-content/uploads/2023/11/13-CP_Fr_OCE-2eme-operation-ORNX-Boujdour-SL.pdf

³ Royaume du Maroc, Conseil de la Concurrence, 11.05.2023, https://conseil-concurrence.ma/wp-content/uploads/2023/11/14-CP_Fr_OCE-3eme-operation-ORNX-Laayoune-1-SL.pdf

⁴ Royaume du Maroc, Conseil de la Concurrence, 11.05.2023, https://conseil-concurrence.ma/wp-content/uploads/2023/11/15-CP_Fr_OCE-4eme-operation-ORNX-Dakhla-SL.pdf

⁵ WSRW letter to Acciona, 02.07.2013, https://wsrw.org/files/dated/2013-07-03/2013.07.02_wsrw_-_acciona.pdf

⁶ WSRW letter to Acciona, 12.12.2023, https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/2183/67d424c0e1632_20231212WSRW-Acciona.pdf

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

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 WSRW, 19.11.2020, Saharawi gov calls for halt of all activity in Western Sahara over war, <https://wsrw.org/en/news/saharawi-gov-calls-for-halt-of-all-activity-in-western-sahara-over-war>

While well over a hundred of UN Resolutions, and rulings by the International Court of Justice, the European Court of Justice¹⁰ and the African Court on Human and People's Rights¹¹, 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. In 2023, 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.¹² Year after year, Western Sahara is ranked among the worst countries and territories in terms of political rights and civil liberties, on par with countries and territories like North Korea, Syria, Afghanistan and Crimea.¹³

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.¹⁴ We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights¹⁵ and of the UN Human Rights Committee¹⁶, which have both emphasized the need of obtaining the Saharawi people's "consent to the realization of developmental projects and [resource] extraction operations".

Recent years have witnessed an emerging body of law pertaining to Morocco's claim to the territory. Since 2015, in ten (!) consecutive rulings, the Court of Justice of the European Union has concluded on the following points as settled:

- The territory of Western Sahara constitutes a territory distinct from that of the Kingdom of Morocco.¹⁷
- Morocco has no sovereignty¹⁸ or administering mandate¹⁹ over Western Sahara.
- Consequently, the waters adjacent to Western Sahara cannot be regarded as part of the Moroccan fishing zone, territorial waters, exclusive economic zone, or any other notion used to describe Morocco's role vis-à-vis the waters off Western Sahara.²⁰
- The people of Western Sahara are to be regarded as a third party to the EU's agreements with Morocco, and that as such, no agreement can affect their territory without their consent, as a corollary of the right to self-determination.²¹
- The Court is clear that the right to consent resides with the people of Western Sahara, and not with the population of the territory.²² The Court stipulates that "a majority of the population of Western Sahara is not part of the people holding the right to self-determination, namely the people of Western Sahara. That people, which for the most part has been displaced, is the sole holder of the right to self-determination with regard to the territory of Western Sahara."²³ The Court adds that "there is a difference in that regard between the concept of the 'population' of a non-self-governing territory and of the 'people' of that territory."

¹⁰ All Rulings can be accessed at the site of the EU Court of Justice, <http://curia.europa.eu>.

¹¹ 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/632/e0f/3ad/632e0f3ad580e748464681.pdf>

¹² 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>

¹³ Freedom House, <https://freedomhouse.org/countries/freedom-world/scores>

¹⁴ 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>

¹⁵ 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

¹⁶ 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

¹⁷ Judgment of 21 December 2016, EU:C:2016:973, §92, and reiterated in the Judgment of 27 February 2018, EU:C:2018:118, §62, Judgment of 4 October 2024, EU:C:2024:833, §163, Judgment of 4 October 2024, EU:C:2024:839, §85 and Judgment of 4 October, EU:C:2024:835, §134

¹⁸ Judgment of 10 December 2015, EU:T:2015:953, §241. Considered a settled matter in subsequent rulings.

¹⁹ "Account must also be taken of the fact that the Kingdom of Morocco does not have any mandate granted by the UN or by another international body for the administration of that territory, and it is common ground that it does not transmit to the UN information relating to that territory, such as those provided for by Article 73(e) of the UN Charter." Judgment of 10 December 2015, EU:T:2015:953, §233. Considered a settled matter in subsequent rulings.

²⁰ Judgment of 27 February 2018, EU:C:2018:118, §67-85. Considered settled in subsequent rulings.

²¹ Judgment of 21 December 2016, EU:C:2016:973, §104. Reiterated and refined in subsequent rulings.

²² Judgment of 4 October 2024, EU:C:2024:833, §180-181. Judgment of 4 October 2024, EU:C:2024:835, §152-153.

²³ Judgment of 4 October 2024, EU:C:2024:833, §157. Judgment of 4 October 2024, EU:C:2024:835, §128.

The latter refers to a political unit which holds the right to self-determination, whereas the concept of 'population' refers to the inhabitants of a territory."²⁴

- The Court has firmly established the position of Front Polisario, the UN-recognised representation of the people of Western Sahara to be able to bring cases before EU Courts on behalf of the Saharawi people, and that it has access to the Court to defend their right to self-determination.²⁵
- In Case C-399/22, which specifically dealt with the labelling of products from Western Sahara, the Court again emphasised the separate and distinct status of the territory in relation to Morocco, and concluded that at the stages of import and sale to the consumer, the labelling of the goods from Western Sahara must indicate Western Sahara alone as the country of origin of those goods.²⁶

Against that backdrop, we have several questions about the decision to commence operations in the territory.

1. Does Acciona S.A. agree with the ICJ, CJEU, UN, and the African Court on Peoples' and Human Rights that Western Sahara is not part of Morocco?
2. How does Acciona qualify the status of Morocco vis-à-vis Western Sahara?
3. Does Acciona agree with the ICJ²⁷ that the right to self-determination of a people of a non-self-governing territory constitutes a fundamental human right?
4. How does Acciona assess the legal validity of the land allocation by the Moroccan government, given that the Moroccan government has no sovereignty, administering mandate or jurisdiction over the land it allocated?
5. Given that Morocco has no sovereignty or administering mandate over Western Sahara, what legal reasoning is behind the decision to establish companies under Moroccan law, intended for a project outside of Morocco?
6. What steps, if any, has Acciona taken to seek the consent of the people of Western Sahara, who have the sovereign rights to the territory in which it is seeking to carry out several projects?
7. How does Acciona assess the potential effects of its projects – carried out on land illegally occupied by Morocco – on the UN peace process, aimed at resolving the conflict in line with the people of Western Sahara's right to self-determination?
8. In its Human Rights Policy, Acciona writes that it "supports, respects, and contributes to the protection of internationally recognised fundamental human rights, making sure not to be complicit in any form of abuse or violation of those rights".²⁸ How does Acciona assess its business deals with the Moroccan government in Western Sahara to be in support, respect or protection of the Saharawi people's right to self-determination?
9. In the Human Rights Policy, Acciona writes that it "pledges to defend and protect those rights in all its activities and in the geographic areas where it works and to moreover promote the adoption of these principles and values at the companies in which it may have equity holdings, even without a controlling interest, as well as among its suppliers, contractors and collaborators."
 - a. What steps has Acciona taken to defend and protect the Saharawi people's right to self-determination, in relation to the projects it has planned on their land through deals with the Moroccan government?
10. In the Human Rights Policy, Acciona states that it "takes into account not only national laws and regulations but also local practices in the countries where it operates. In countries where national legislation or regulations may be conflicting with the observance of human rights, the company undertakes to establish the pertinent risk control and mitigation mechanisms."
 - a. Which national laws does Acciona consider to be applicable in Western Sahara?
 - b. Which risk control and mitigation mechanisms has Acciona established for its activities in Western Sahara?
 - c. Has it shared these risk control and mitigation mechanisms with the representative of the people of Western Sahara, the Polisario Front?

²⁴ Judgment of 4 October 2024, EU:C:2024:833, §158. Judgment of 4 October 2024, EU:C:2024:835, §129.

²⁵ Judgment of 4 October 2024, EU:C:2024:833, §96-138. Judgment of 4 October 2024, EU:C:2024:835, §70-109.

²⁶ Judgment of 4 October 2024, EU:C:2024:839, §89.

²⁷ International Court of Justice, Advisory Opinion of 25 February 1919: Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>

²⁸ Acciona, Human Rights Policy <https://www.acciona.com/content/dam/accionacom/media/yrrgwqch/human-rights-policy.pdf>

At the Acciona Annual General Meeting of 2022, Acciona's CEO described the war in Ukraine as a conflict "between two value systems: one that respects international law and one that believes might is right".²⁹ We believe this is well said. And we cannot help but notice the irony. The UN General Assembly has specifically called on your contractual partner Morocco to terminate the occupation of the location where your operations are to take place. With this in mind, it seems Acciona is more of the belief that might is right.

Thank you in advance for your consideration of our questions. We look forward to hearing from you.

Sincerely,

Sara Eyckmans

Western Sahara Resource Watch

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²⁹ Acciona, 23.06.2022, <https://www.acciona.com/updates/news/jose-manuel-entrecañales-renewable-generation-must-radically-strengthened>