

TOTALLY WRONG

Total SA in occupied Western Sahara

When the French oil company Total first signed an agreement for oil exploration in occupied Western Sahara, the UN Legal Office stated that further exploration would be in violation of international law. This report documents what Total has done and said since.



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Western Sahara Resource Watch (WSRW) is an international organisation based in Brussels. WSRW is working in solidarity with the people of Western Sahara, researching and campaigning against Morocco's resource plundering of Western Sahara.

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“As it is expressed in our Code of Conduct, ‘Total complies with all applicable laws, regulations and decisions of the United Nations and the European Union’ and respects the UN Business and Human Rights standards.”

Total, 14 December 2012.

TOTALLY WRONG

In 2001, Morocco for the first time issued oil licences in Western Sahara, a territory they had brutally invaded and occupied. One of the two licences was given to Total.

A few months after Total signed its agreement, the UN Legal Office stated that any further studies would be in violation of international law. Yet, time and again, Total has renewed its licence. The latest 12 month agreement was signed on 2 December 2012.

Total holds the biggest block of all the oil companies involved in occupied Western Sahara today, and has done the most advanced and expensive seismic studies. Total leads the way in the unethical oil business in the territory. The company has not tried to seek the consent of the Saharawi people,

and refuses to answer a series of questions with regard to their dialogue with the Saharawis. Total furthermore refuses to clarify its future plans in the territory.

Western Sahara Resource Watch recommends Total should apply, at least, minimum standards for Corporate Social Responsibility, and immediately terminate its oil exploration activities Western Sahara.

UN CALLS FURTHER OIL SEARCH ILLEGAL

In 2001, the new era of the Moroccan hydrocarbon search in Western Sahara started, as Morocco signed oil exploration agreements with the French company TotalFinaElf (currently known as Groupe Total SA) and Oklahoma based Kerr-McGee Corp (later purchased by Anadarko). Both blocks were located in the coastal waters of Western Sahara, under Moroccan occupation. The UN treats the territory as a so-called Non-Self-Governing Territory: a colony.

Shortly after the signing of the agreements, the UN Security Council asked its Legal Counsel, the UN Under-Secretary General for Legal Affairs, Ambassador Hans Corell, to assess the legality of the agreements signed by Morocco. Underlining that the people of the territory have the right to self-determination, the

Legal Counsel concluded in January 2002 that:¹

“while the specific contracts which are the subject of the Security Council’s request are not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the international law principles applicable to mineral resource activities in Non-Self-Governing Territories.”

From this sentence it “follows that Morocco would have to engage in proper consultations with persons authorised to represent the people of Western Sahara before such activities would be allowed, as was done by the United Nations in East Timor”, Ambassador Corell later stressed.²

Despite this, Kerr-McGee and Total proceeded in the summer of 2002 to conduct seismic seabed exploration. Two of the companies’ subcontractors refrained from further works in Western Sahara, after the people of the territory, governments and civil society organisations had expressed concerns about the

companies’ operations.³ Divestments from Kerr-McGee amounted to some 80 million dollars over the affair.

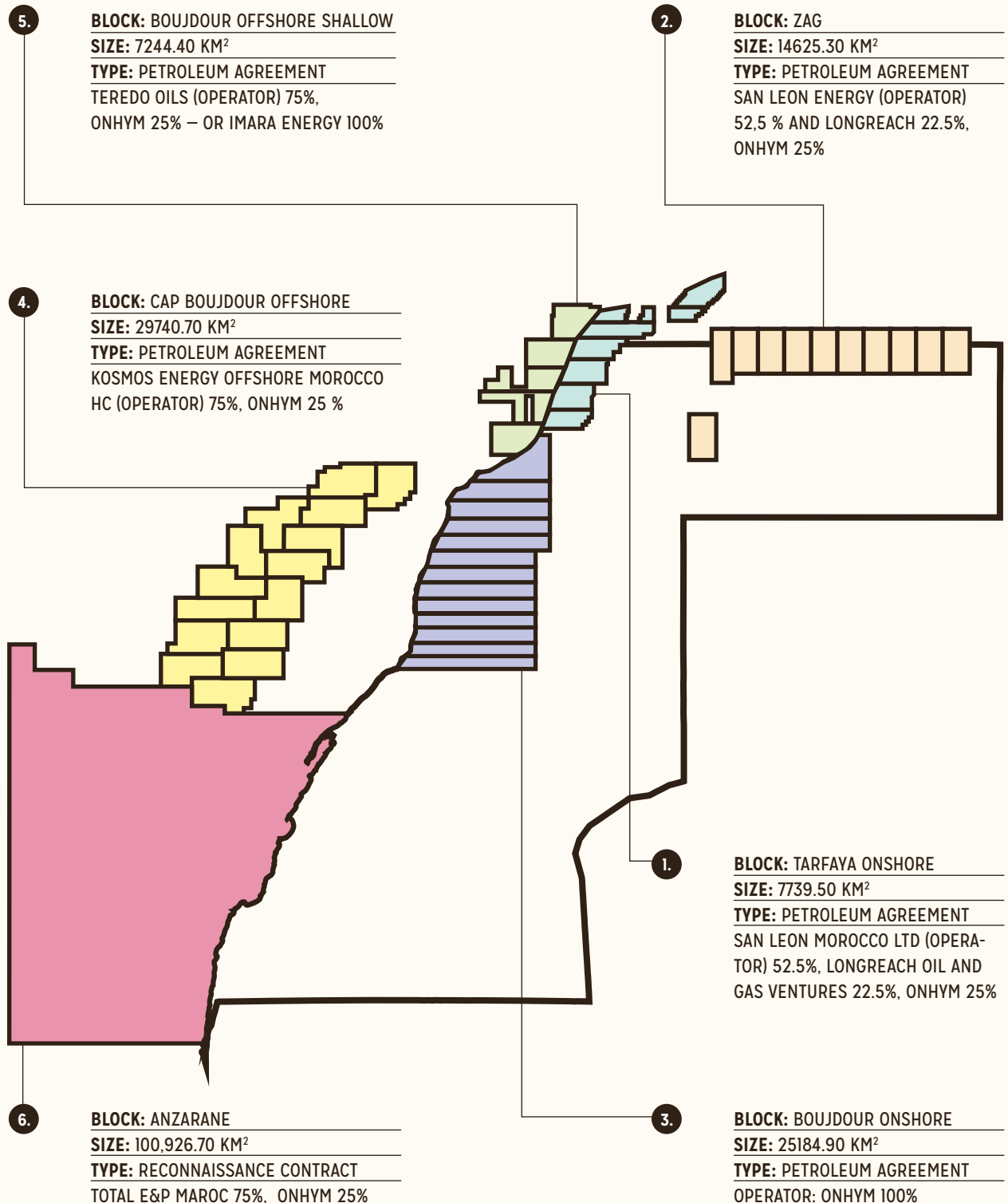
One of the several investors that excluded Kerr-McGee from its portfolios was the Norwegian Government owned Pension Fund, following a recommendation from its own Council on Ethics.⁴ Upon announcing the exclusion of Kerr-McGee from its funds, the Norwegian Minister of Finance summarised the problematic aspects of such oil exploration as follows:⁵

“Morocco has for a number of years occupied Western Sahara despite strong UN condemnation. The Council found that Kerr-McGee through its exploration activities most likely will enable to exploit petroleum resources in the area. The Council regarded this as ‘a particularly serious violation of fundamental norms’ e.g. because it may strengthen Morocco’s sovereignty claims and thus contribute to undermining the UN peace process.”

Total was at the time mostly left untouched by the investors, as the company had terminated its involvement in Western Sahara before the investor community discovered the importance of the issue.

MOROCCO'S ILLEGAL OIL HUNT

Despite the protests from Saharawis, Morocco has to this day continued its illegal oil programme, through the Moroccan state owned oil company Office national des hydrocarbures et des mines, ONHYM. There are currently six ongoing oil and gas programmes in Western Sahara. The agreements are signed with five or six different foreign companies. The blocks in this report are spelled as done by ONHYM.



1. The onshore **Tarfaya** is partially in Western Sahara, partially in Morocco proper. The area is reported to contain oil shale. A smaller section of the licence area is cut out for a pilot project, operated by San Leon/ONHYM only, and in which drilling was undertaken in 2011. This pilot area is fully or mostly located on the Moroccan side of the licence area. Last round of seismic was completed on the block in 2012. From 2013, the company is considering seeking partners for building a production plant and invites for a farm-in to the block in return for a drilling partner.⁷

2. According to the companies involved, the onshore **Zag** block could contain gas deposits. Finding natural gas in Western Sahara is not only important to Morocco in the perspective of meeting the country's expected energy demand. Gas will be particularly important for supplying any future processing of the phosphate mines in the area around Bou Craa/El Aaiun, in Western Sahara.⁸ The phosphate rock currently produced in Western Sahara by the Moroccan state owned phosphate company OCP is exported in its raw rock form, without processing it into more valuable products. A gas find on Zag could thus have wider ramifications for the wider Moroccan plunder of the territory, and increase the profits it attracts from its continued occupation. The companies on Zag mention of drilling first half of 2014.⁹

3. Seismic exploration operations on **Boujdour onshore** were observed on the block in 2011.¹⁰ Oil drilling was planned 28 km to the east of the coastal town of Bojador.¹¹

4. The subsidiary of Bermuda registered, NYSE listed Kosmos Energy Ltd, holds a licence on the same **Boujdour offshore** block that Kerr-McGee formerly held. Kosmos announced on 10 June 2013 that they had entered into an agreement for a rig with Atwood Oceanics for waters "off-shore Morocco". Drilling will start 2014.¹² Based on previous statements from Kosmos, WSRW believes there is a large chance that the rig would be used on the Boujdour block.

5. In August 2011, a "520km 2D survey was completed in the **Boujdour Shallow offshore** block". The exploration permit is said to have been signed by the UK company Teredo Oils in 2010 or 2011. A company related to Teredo, Imara Energy, also claims to control the block.¹³

6. A massive seismic survey exploration programme has been carried out by Total on the **Anzarane** offshore from July 2012 to July 2013. Total has been signing agreements for the block since 2001.

In addition, Morocco had carved out five more blocks in the occupied territory. According to ONHYM's webpages, four are open, while one is under negotiation. As of August 2013, no company has signed up for any of these blocks.

Moroccan state media and the Moroccan Ministry of Mines reported in 2007 and 2008 that the Libyan state owned oil company Tamoil had plans or agreements for oil exploration in Western Sahara. "The company denies emphatically some media reports about an oil investment deal in Western Sahara. It did not sign any agreement on oil exploration permits in Western Sahara and it has no plan to invest in any oil operations there", Tamoil stated to Reuters.¹⁴ Yet, the rumours resurfaced later,¹⁵ and the information about Tamoil's plans was still available on the webpages of the Moroccan Ministry of Mines as of 2013.¹⁶ In 2011, as Tamoil's parent company was under international sanctions, WSRW asked ONHYM to comment on the Libyan participation in their oil programme in Western Sahara.¹⁷ ONHYM never responded.

"I have no problem in stating, in retrospect, that it might have been a bad idea to take this assignment"

CEO of seismic services firm Spectrum ASA,
which had worked on reprocessing data for Longreach⁶

HUMAN RIGHTS AND NATURAL RESOURCES

In 1963, Western Sahara was included in the United Nations list of so-called Non-Self-Governing Territories.¹⁸ Since then, a number of General Assembly Resolutions have confirmed that the Declaration on the Granting of Independence to Colonial Countries and Peoples is applicable in the case of Western Sahara.¹⁹ For Non-Self-Governing Territories and their interim administrators, the principle applies that the interests of the people must be absolutely paramount.²⁰ The International Court of Justice has also confirmed that the conflict is a decolonization question and a matter of the right to self-determination.²¹ The 1975 Moroccan invasion was also a violation of the ban on the use of force in the UN Charter Article 2, and the *de facto* Moroccan control of Western Sahara lacks both legality and legitimacy. No state has recognised Moroccan sovereignty claims over Western Sahara. Mauritania, which also invaded and occupied the southern area of Western Sahara in 1975, admitted the wrongfulness of its actions in a 1979 peace treaty with the Saharawi people's representative organisation.

PRECARIOUS HUMAN RIGHTS SITUATION

Since 1975, when Morocco invaded Western Sahara, more than 500 Saharawis have forcefully disappeared. Regularly, international human rights organisations note a severe lack of basic human rights in the part of the territory controlled by Morocco.

Numerous reports and comments from the Human Rights Commission, the Committee Against Torture, Amnesty International, Human Rights Watch, the US State Department and several other institutions and organizations confirm the systematic pattern of human rights violations against Saharawis.

For instance, in Freedom House's 2013 Annual Report, Western Sahara was ranked as one of the worst places in the world in terms of political rights and civil liberties.²² Human Rights Watch's 2013 Annual Report cites severe repression of freedom of expression on

"Islam, the institution of the monarchy, or territorial integrity, that is, Morocco's claim on Western Sahara".²³ A delegation of the Robert F. Kennedy Center visiting Western Sahara in 2012 reported that "the RFK Center delegation considers that in Moroccan-controlled Western Sahara, the overwhelming presence of security forces, the violations of the right to life, liberty, personal integrity, freedom of expression, assembly, and association creates a state of fear and intimidation that violates the rule of law and respect for human rights of the Sahrawi people".²⁴ Moroccan authorities do not respect the right to form associations and to assemble to express opinions on the matter. In 2012, Morocco declared in the UN Human Rights Council that they do not wish to follow international minimum standards for allowing Saharawi organisations to register.²⁵ The UN Special Rapporteur on Torture noted after his visit to Western Sahara in the autumn of 2012 the severe conditions for prisoners in Moroccan jails.²⁶

The UN Secretary General in April 2013 said to the Security Council that the situation was so alarming that "given ongoing reports of human rights violations, the need for independent, impartial, comprehensive and sustained monitoring of the human rights situations in both Western Sahara and the camps becomes ever more pressing."²⁷ An initiative to introduce Human Rights in the mandate of MINURSO in 2013 was backed by the US and the UK, but effectively blocked by Morocco's nearest ally, France.

Saharawi refugees on the Canary Islands demonstrating against seismic surveys offshore Western Sahara. In the background, a supply vessel that took part in the 2009 studies on the Boujdour block.



Gdeim Izik protest camp in 2010 housed a large part of the Saharawi people. The demonstrators protested the marginalisation, unemployment and plunder of the territory.

RIGHTS TO NATURAL RESOURCES

By virtue of the right to self-determination, all peoples possess the right to advance their own economic, cultural and social development, including the freedom to govern their own natural resources.²⁸ It is also stated in the 1982 Convention on the Law of the Sea (UNCLOS) that coastal states have sovereign rights over natural resources on the continental shelf offshore their own territory. Morocco has no sovereignty over Western Sahara and therefore no right to explore and exploit its resources. Morocco ratified the UNCLOS in 2007, making Morocco's obligations to respect that convention even stronger. Regarding offshore hydrocarbon exploration, it should be noted that Morocco has not asserted any maritime claim over the area in which oil exploration is currently being carried out.

Article 73 of the UN Charter stipulates that the economic exploitation of resources in Non-Self-Governing Territories may only take place with the consent of the local people and must be in accordance with their economic interests. To trade or engage with Morocco's illegal exploration and exploitation of Western Saharan resources is manifestly a violation of international law. This was made clear in the advisory opinion from the UN Legal Counsel in 2002. It constitutes a contribution to consolidate the illegal occupation.

International humanitarian law, with its prohibition against the pillage of natural resources of a people under occupation, is also clear that there can be no development of resources in the present circumstances. Exploration for such resources is a part of this prohibition.

The relevant national legislation of the Saharawi Arab Democratic Republic states that there "shall be no exploration or economic exploitation of the natural resources of the exclusive economic zone by persons or vessels other than nationals of the Saharawi Arab Democratic Republic".²⁹

SAHARAWIS OBJECTING

Even today, before any viable hydrocarbon deposits have been proven in Western Sahara, it is clear that the territory is immensely rich in natural resources. Phosphates and fish stocks constitute the main resources. The waters off Western Sahara contain one of the richest areas in terms of fish stocks in the world. Approximately 80% of the Moroccan fisheries industry takes place in Western Sahara.



Simultaneously, Morocco is mining 2-3 million tonnes of phosphates every year from the Bou Craa phosphate mine south east of El Aaiun. The production has been steadily increasing since the occupation began.

It seems well documented that the Saharawis are in general neither benefiting from these industries, nor do they want them to take place before the conflict has been solved. Half of the Saharawi population has, since the Moroccan invasion, lived as refugees in Algeria and is not benefitting from the Moroccan exploitation in the territory. To the contrary, the Saharawi refugees are completely dependent on multinational humanitarian aid. In periods, one in four children suffers from malnutrition.³⁰ There is a stark contrast between the dire humanitarian situation that the refugees are living under on one side, and the substantial income that is generated from the natural resources in Western Sahara on the other.



In both the fisheries and phosphate sectors, Saharawis are referring to a process of exclusion since the Moroccan invasion.³¹ Some artisanal fishermen groups say they are not allowed to fish in their own waters,³² while others state that they are not employed on foreign vessels in Western Sahara.³³ Formerly employed workers regularly demonstrate in El Aaiun.

October-November 2010 saw the biggest mass demonstration of Saharawis since the ceasefire in 1991. Between 10,000 and 20,000 Saharawis peacefully pitched their tents in a protest camp, 15 kilometres south-east of the capital, El Aaiun. After some four weeks of silent protest, denouncing the Saharawi people's continual social and economic marginalisation in their own country, the camp was violently dismantled by the Moroccan police. Both Saharawi civilians and Moroccan police officers were killed in the clashes.

As the protest camp was torn down, and the protesters returned to the capital El Aaiun, Saharawi youth set fire to several offices of the Moroccan government. This included the premises of the Moroccan Ministry of Mines and Energy, which houses Morocco's state oil company, ONHYM. Also trucks transporting fish out of Western Sahara into Morocco, where the fish is processed for exports, were destroyed.³⁴

A group of 25 Saharawi activists was tried before a Moroccan military court on 16 February 2013, for having participated in the Gdeim Izik protest camp. Most of them received sentences ranging from 20 years to life imprisonment.

Even though Saharawi organisations are forbidden in Western Sahara, many networks of informal organisations work for the protection of human rights in the territory. All these networks have objected to the plundering of the territory.³⁵ The leader of the Saharawi Committee for Protection of Natural Resources, CSPRON, Mr. Sidahmed Lemjiyed was for instance arrested on 25 December 2010, accused of taking part in the setting up of the peaceful protest camp.³⁶ On 16 February 2013, Mr. Lemjiyed was sentenced to life imprisonment. To his defence, he quoted the UN legal opinion in the court, the same opinion that was made by the UN on Total's licence in Western Sahara. Both the High Commissioner for Human Rights, the Special Rapporteur on Torture and the UN Secretary General expressed their concern over the use of military courts for trying civilian Saharawis.³⁷

Demonstrations against the Moroccan and international plunder of natural resources in Western Sahara have taken place on numerous occasions. In periods, such peaceful demonstrations have been staged almost monthly. Many of these demonstrations have been carried out against the oil industry in particular, such as at University of Agadir,³⁸ and in front of Kosmos Energy's supply vessel at the Canary Islands.³⁹ Also hunger strikes against the oil industry have been reported.⁴⁰

The national liberation movement of Western Sahara, the Frente Polisario, has on a number of occasions since 2001 protested against the oil exploration in Western Sahara, both vis-à-vis the involved companies and the Security Council. Also several other groups of Saharawis have repeatedly and independently protested the different industries through letters and statements.

The vessel BGP Prospector, owned by a subsidiary of the Chinese national oil company CNPC, carried out seismic surveys for Total in Western Sahara for over half a year. Total might now have turned the Boujdour block into one of the most extensively explored blocks in Africa, even though the UN has said it would be in violation of international law. The Geo Service 1 is one of BGP Prospector's supply vessels.



TOTAL IN WESTERN SAHARA

In 2001, Total (then TotalFinaElf) signed an oil deal with the Moroccan government for an area located in the southern parts of the coastal waters of occupied Western Sahara, in the then called Dakhla block.

As a direct consequence of Total's contract, the UN Security Council asked its Legal Office to provide an opinion of the legality of the company's agreement with Morocco. The legal office concluded it would be in violation of international law if the exploration and exploitation continued in the disregard of the wishes and interests of the people of the territory.

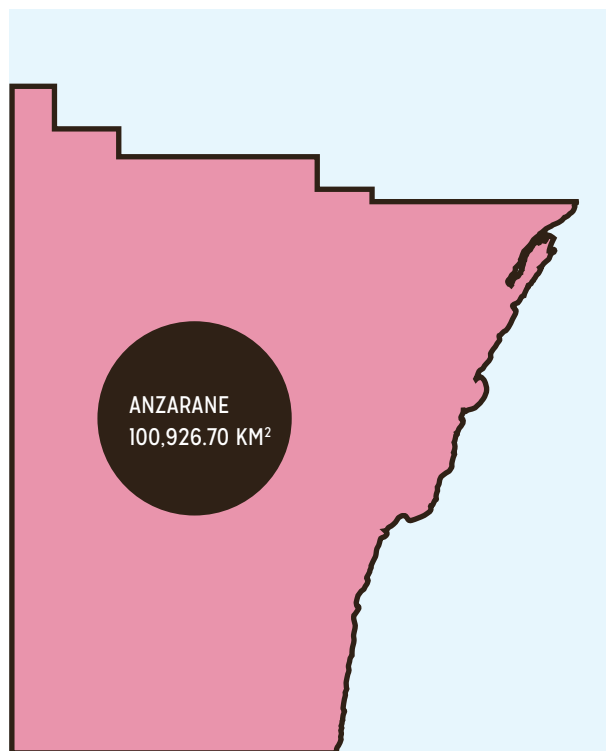
Seismic studies were undertaken in 2002, with the support by the Moroccan army.⁴¹ Payments were done to ONHYM as a part of the agreement, but the details of the financial aspects of the deal were never disclosed.⁴²

Prolongations of the agreement were signed in 2002 and 2003. End of November 2004, it was known that Total had decided not to prolong its operations, citing lack of oil potential. Their licence had expired the same month.⁴³

There were, however, from time to time rumours that the company wanted to return. Even though Total did not have a licence during the interim years 2004-2011, it did continue its research on the data they had collected, among others with the French research institute Ifremer.⁴⁴

Now the company has received renewed rights to the same area. The difference is that the licence area is far larger and the investments are bigger, as compared to 2001-2004.

On 2 December 2011, Total signed a 12 month "authorisation of reconnaissance" agreement with the Moroccan state oil company ONHYM.⁴⁵ The block, covering 100.926,70 square kilometres, was dubbed "Anzarane Offshore". The area is located in the southern parts of the coastal waters of Western Sahara. No announcement was done by Total or ONHYM at the time of signing, but the information of the block allocation was discretely added to a ONHYM licence map during first half of 2012.



Total's Anzarane block covers an astonishing 100,926.70 sq.km, an area larger than Portugal.

Total has done massive exploration during the time it has held its licence there. Seismic studies have been carried out in the area incessantly from July 2012 to July 2013. The initial study was done in July and August of that year by the UK marine survey company Gardline Shipping. From October 2012, BGP, a Chinese seismic company, carried out the exploration. BGP is a subsidiary of the Chinese state oil company CNPC. WSRW estimates the total costs of Total's seismic studies at around 75 million USD.

Total is said to hold an option for 6 months extension of the agreement, from 2 December 2013.⁴⁶

CONCERNS RAISED

SEVERAL GROUPS HAVE PROTESTED TOTAL'S ENGAGEMENT IN THE OCCUPIED TERRITORY OF WESTERN SAHARA.

– The government of the Western Sahara Republic sent a letter to the company on 6 December 2012, asking it to stay away from Western Sahara.⁴⁷ A letter of concern was also sent to Ban Ki-Moon on 30 March 2013.⁴⁸

– 26 Saharawi civil society organisations from the occupied territory, the refugee camps and France issued a statement on 7 February 2013, requesting Total to leave Western Sahara.⁴⁹

– 21 French organisations urged the company to pull out of Western Sahara on 6 December 2012. Their letter was not responded to.⁵⁰

– WSRW has asked Total to refrain from further exploration in the contested area, and issued in total five questions to the company, in letters sent on 7 December 2012,⁵¹ 21 January 2013, 15 March 2013.⁵² A response was sent from Total to WSRW on 2 April 2013,⁵³ but only one of the in total five questions have been vaguely responded to. WSRW's questions to Total are:

a. Does Total agree that the Saharawi people, as the sole and original inhabitants of Western Sahara until the occupation in 1975, have the permanent right of sovereignty to their natural resources?

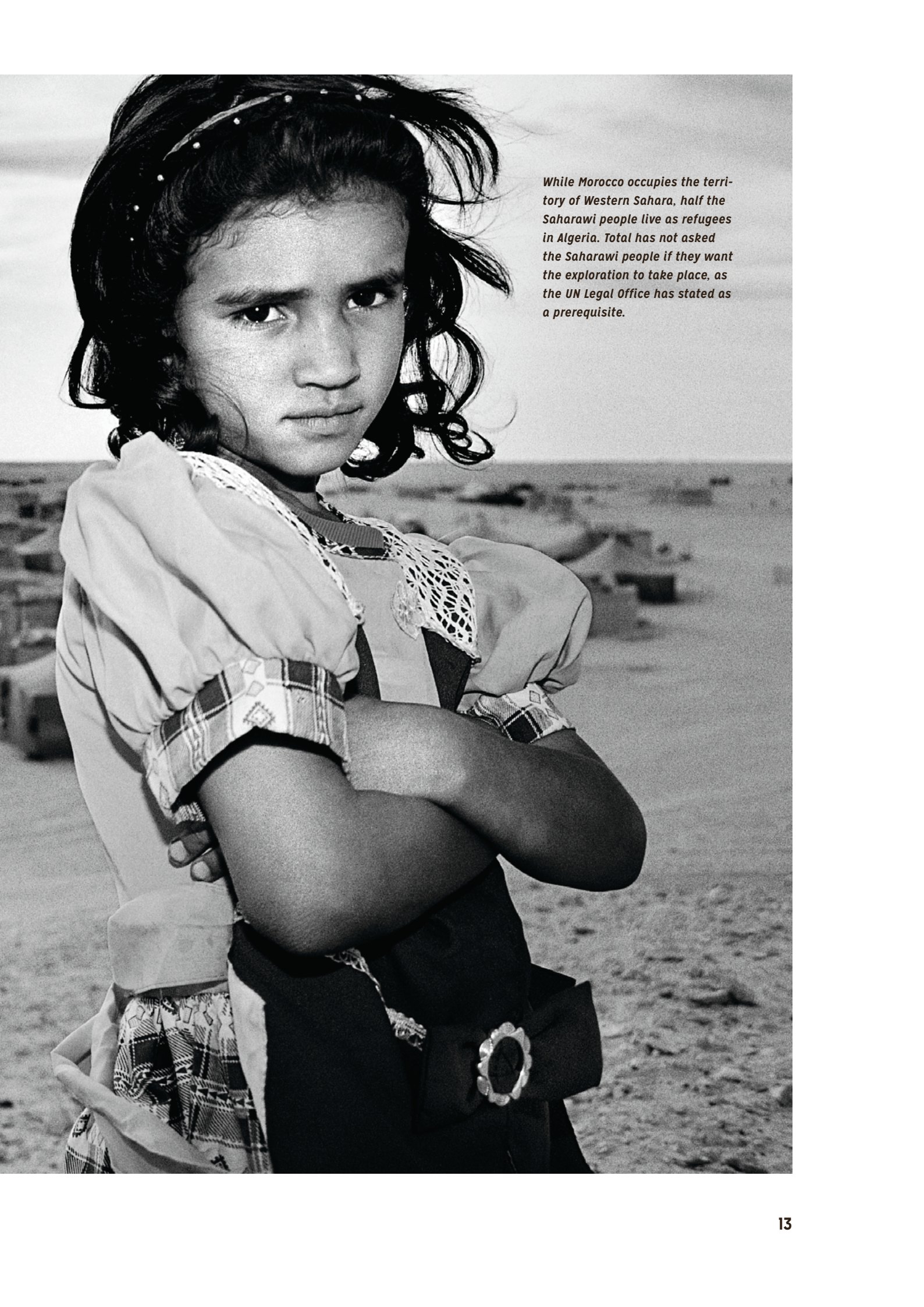
b. Does Total agree that the 2002 UN legal opinion, which your company refers to, establishes that the Saharawi people need to consent prior to the signing of further oil related exploration agreements in Western Sahara?

c. Has Total ever tried to seek the consent of the Saharawi people? If yes, how and when? If no, why not?

d. Does Total agree with concerned investors that signing such oil agreements risks undermining the UN efforts to solve the conflict in the territory?

e. Does the current reconnaissance licence include an option for future oil contracts?





While Morocco occupies the territory of Western Sahara, half the Saharawi people live as refugees in Algeria. Total has not asked the Saharawi people if they want the exploration to take place, as the UN Legal Office has stated as a prerequisite.

WHAT TOTAL SAYS

WSRW knows of the following two statements made by Total, since their renewed engagement was known end of November 2012.

TO THE WEBSITE BUSINESS & HUMAN RIGHTS, 14 DECEMBER 2012, TOTAL STATES THE FOLLOWING:⁵⁴

1. On December 2, 2011, Total E&P Maroc and ONHYM (Office National des Hydrocarbures et des Mines) were granted an Authorization of Reconnaissance covering the Anzarane Offshore area. The "Anzarane Offshore area relevant information" has been posted during the first quarter 2012 on the ONHYM web-site, as well as all the petroleum agreements, reconnaissance contracts and open acreages (See <http://www.onhym.com/HYDRO-CARBURES/PartenariatetCoop%C3%A9rationP%C3%A-9trole/Listedespartenaires/tabid/153/Default.aspx>)
2. During the first year of reconnaissance, our affiliate achieved various geological and geophysical studies and completed a marine survey during summer 2012. ONHYM and our local affiliate have applied for a one year extension in order to process and interpret- the on-going seismic acquisition.
3. Our local affiliate conducted evaluation works in the same area 10 years ago. Emergence of new ideas on hydrocarbons potential of the area, and improvement of seismic technologies lead us to apply for an new Authorization of Reconnaissance on the same area.
4. It is important to remind that an Authorization of Reconnaissance is neither an exploration contract nor an exploitation contract. It allows evaluation works and surveys of geological and geophysical nature with a view to assessing the petroliferous nature of the sub-soil, and it excludes exploratory drilling. This type of Reconnaissance authorization is common in the Oil and Gas industry, especially in the countries or areas where existence of hydrocarbons has not yet been demonstrated.
5. Our affiliate has been working in the aforementioned offshore area in accordance with the provisions of the letter dated 29 January 2002 from the UN Legal Counsel addressed to the President of the UN Security Council, which states that such contracts for oil Reconnaissance and evaluation "are not in themselves illegal". Should the reconnaissance period results be

encouraging, any further exploration and exploitation activities will be conducted in compliance with "the principles of international law applicable to mineral resources activities in the Non-Self-Governing Territories" and not "in disregard of the interests and wishes of the people of Western Sahara" (see <http://access-dds-ny.un.org/doc/UNDOC/GEN/N02/249/87/PDF/N0224987.pdf?OpenElement>) . Globally speaking, as it is expressed in our Code of Conduct, "Total complies with all applicable laws, regulations and decisions of the United Nations and the European Union" and respects the UN Business and Human Rights standards.

IN A LETTER TO WSRW, 14.05.2013:⁵⁵

Thank you for your letter dated April 11th and for your acknowledgement that you took good note of our statement posted on "Business and Human rights" on December 14th, 2012.

As far as other questions are concerned, they exceed our domain: Total, as an Energy Company, does not deem itself legitimate to have views on political or diplomatic subjects that belong to the United Nations and that are still being debated within the relevant international institutions.

On the contrary, our position is to abide by the existing international legal framework; while we exert our due diligence to have the best assessment of the environment of our activities, it is not within our scope nor competences to anticipate, frame or dictate which solutions should eventually be chosen.

You will therefore understand my refraining from further answering your questions.
Yours, sincerely,

The BGP Prospector and its supply vessel Geo Service 1 lie at anchor in the port of Las Palmas in July 2013, as Total's massive 12 months surveys had come to an end. The BGP Prospector had been carrying out seabed exploration for Total in the waters of occupied Western Sahara since October 2012.



From the first round of exploration, in 2001-2004, the following public statements are known.

TO THE MAGAZINE PESA NEWS, APRIL/MAY 2003:⁵⁶

"The contract dated October 2001 between the Moroccan agency ONAREP and TotalFinaElf aims at evaluating the possible petroleum potential offshore Western Sahara. The United Nations Under-Secretary-General for Legal Affairs, after a thorough review, has made a statement to the Executive President of the Security Council on January 29th 2002. According to this statement, this contract is not illegal under prevailing practice of States or international law. The Under-Secretary-General for Legal Affairs stated also that it could be considered as unlawful in case of development decision, if it did not take into account the interests and will of the Saharawian people. Morocco and Polisario representatives accepted this statement publicly. TotalFinaElf's operations are therefore in full agreement with the international law and the positions of the political stakeholders of the area. It is clear that, in case of discovery, the situation could have to be re-examined in close connection with the United Nations. We are

currently performing reconnaissance and seismic activity as contemplated under the reconnaissance permit we have with ONAREP."

TO THE MAGAZINE VERDENSMAGASINET X, NOVEMBER 2004:⁵⁷

"There are no oil or other hydrocarbons that can be exploited in this area. [...] We are engaged in business activities only. And in either case we did not find anything viable. We do not engage in political questions in the countries in which we operate", Total stated, two weeks after its licence ended November 2004.

WSRW'S ASSESSMENT OF TOTAL'S POSITION AND OPERATION

1. Total's most important argument is that there is a distinction between reconnaissance and exploration activities. Total only claims to do the former. By drawing the distinction between reconnaissance and exploration, it follows in Total's chain of arguments that the company deems it unnecessary to seek the consent of the people of the territory. The UN states that further exploration would be in violation of international law.
2. Total's claimed distinction between reconnaissance and exploration is not a normal division made in the oil industry. Total's agreement and seismic studies to the highest degree qualify as "any further exploration" as described by the UN 2002 Legal Opinion on Western Sahara. Such operations would be in violation of international law if the people of the territory do not consent to it. Total thus today operates in violation of the UN Legal Opinion by failing to engage with the people of the territory. As the basis for Total's argument is wrong, their conclusion is invalid.
3. It is not even possible to separate out the exploration from extraction in a simple way. In practice, agreements of this nature usually reserve to the holder of that licence the right of first refusal of exploitation. "It is obvious that the purpose of the activity is extraction of natural resources", concluded a Norwegian shareholder in June 2013, divesting its 52.6 million Euro investment from Total due to the company's lack of ethics in Western Sahara.⁵⁸ WSRW sees it as a high risk that Total considers exploiting the natural resources in Western Sahara.
4. Total fails to respond to questions on future options for the block. In the light of the large investments done by Total over the last year, and the repeated interest that Total has shown for the block, its lack of response regarding future plans is particularly worrisome.
5. Total refuses to reply to questions regarding seeking consent from the Saharawi people, saying the company "does not deem itself legitimate to have views on political or diplomatic subjects that belong to the United Nations". While the company claims to operate legally and in line with the UN Legal Opinion, it thus does not want to relate to the conclusion of the same Opinion.
6. 12 December 2012, Total stated that they had prolonged the licence with 12 months "in order to process and interpret the on-going seismic acquisition". That was, in retrospect, an understatement of what they actually did. The major activity that the company has done since the renewal is to carry out further seismic shooting, through a chain of prolonged seismic acquisition rounds. Seismic has been done non-stop since the renewal of the licence in December 2012. The lack of interest in seeking consent from the local stakeholders is in stark contrast to the principles on which the UN Global Compact and the UN Guiding Principles on Business and Human Rights are based – initiatives Total claims to support.
7. Legal considerations set aside, Total's operations have highly damaging political implications:
 - a. Total states it "does not deem itself legitimate to have views on political or diplomatic subjects that belong to the United Nations" and that it does engage in politics. That is astonishing. To explore for oil in partnership with the Moroccan government, assisted by the Moroccan royal navy, paying fees to the Moroccan Ministry of Mines and Energy in a territory that the UN does not consider part of Moroccan territory, is a particularly strong and problematic political statement. Total's presence in the territory enabled through the Moroccan government is a *de facto* recognition by Total of an illegal occupation. Its statement on not engaging in politics constitutes a poorly developed view on Corporate Social Responsibility. In conflict areas, such as Western Sahara, business is politics.
 - b. Morocco benefits politically and morally from the operation. Morocco benefits from fees, bonuses, right to obtain data and all related benefits from the exploration process. Total has acknowledged in the past paying fees to Morocco for agreements covering this territory. This consequently undermines the UN peace efforts and encourages Morocco to persist in its intransigence to and defiance of the UN and the international community. What interest would Morocco have in engaging in serious peace talks while Total looks for oil offshore the coast of Western Sahara?
8. From WSRW's point of view, Total expels a particularly serious breach of basic Corporate Social Responsibility principles, since the company:
 - a. breaches the basic rights of a people that have the sovereign rights over the natural resources that the company is exploring.
 - b. refuses to accept demands from local stakeholders;
 - c. does not respond to civil society requests for information.
 - d. misrepresents the nature of its operations and plans to the public and its owners.
 - e. apparently fails in carrying out basic due diligence before entering a new licence.

RECOMMENDATIONS

WSRW RECOMMENDS TOTAL:

- to demonstrate its commitment to international law, human rights and basic Corporate Social Responsibility standards by immediately and publicly withdrawing from its involvement in Western Sahara and not to renew activities until the dispute over Western Sahara is resolved. The company should also make sure to deliver to the government of the Saharawi Republic or the United Nations a copy of the data collected.
- to respond to questions concerning what the company has done so far to seek the consent of the people of Western Sahara, as international law requires.
- to respond to questions regarding future plans in Western Sahara.

WSRW RECOMMENDS SHAREHOLDERS OF TOTAL:

- to urgently raise the Western Sahara issue with the management of the company, demanding an immediate halt of the Western Sahara operations. Should Total not respond or comply, WSRW urges investors to terminate their involvement in the company. If Total renews its licence in December 2013, shareholders should divest.

WSRW RECOMMENDS WORKERS, BUSINESS PARTNERS AND OTHER STAKEHOLDERS OF TOTAL:

- to raise the matter with the company and communicate that such business practice is unacceptable: Total must immediately terminate its operations in Western Sahara.



BGP Prospector at Las Palmas harbour after finished a series of assignments for Total in the nearby waters offshore Western Sahara in 2012 and 2013. UN stated in 2002 that further oil exploration in Western Sahara would be in violation of international law unless the people of the territory had consented. The oil programme undermines the UN peace efforts, according to several investors.

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“The Court’s conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.”

International Court of Justice, 16 Oct 1975