

JOINT STATEMENT BETWEEN THE NORWEGIAN SUPPORT COMMITTEE FOR WESTERN SAHARA AND SJØVIK AS (2 JULY 2013)

1. BACKGROUND

On 5 December 2011 the Norwegian Support Committee for Western Sahara (hereinafter referred to as NSCWS) brought a complaint against Sjøvik AS under the OECD Guidelines for Multinational Enterprises relating to the company's fishery activities in Western Sahara.

The Norwegian National Contact Point (NCP) offered to mediate between NSCWS and Sjøvik AS (hereinafter referred to as the Parties), which both Parties accepted. On the basis of a public tender, the NCP appointed former Supreme Court Judge Lars Oftedal Broch as mediator. The Parties met on 11 October 2012, 9 November 2012 and 31 May 2013 for mediation led by Mr. Broch. Written proceedings have also taken place. During mediation Mr. Broch referred to relevant provisions of the OECD Guidelines, UN resolutions on Western Sahara, statements from the Norwegian authorities on Norwegian business operation in the area and information provided by the Parties. The Parties agreed as follows:

2. THE PARTIES' POSITIONS

- a) **NSCWS** pointed out that Morocco does not exercise internationally recognised sovereignty over Western Sahara and that Morocco's claim to this territory has been rejected by the International Court of Justice in The Hague. NSCWS also referred to the UN's statements that the Saharawis' rights, wishes and interests must be respected,¹ and is of the view that the activities of Sjøvik AS are in violation of the Saharawis' right to control their own natural resources, and must therefore be discontinued. NSCWS emphasised that, since no state has responsibility for the administration of this territory in accordance with Article 73 of the UN Charter, the Saharawis are in a particularly vulnerable situation.
- b) **Sjøvik** supports and respects the protection of internationally recognised human rights. The company has not taken a position on the views expressed by NSCWS, as this would be incompatible with its presence in the territory. However, Sjøvik maintains that its investments in the Moroccan company concerned are focused on the management of renewable resources and create jobs and promote development to the benefit of the local population, including the Saharawis. It also maintains that, among other things, it is contributing to better infrastructure and to exchange of expertise, which benefits the Saharawis. Sjøvik does not consider itself a political actor and does not wish to take a position on the status of the territory in relation to Article 73 of the UN Charter.²

¹ Letter from UN Legal Counsel Hans Corell to the Security Council (S/2002/161), and the annual UN resolutions on « Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories»; see A/RES/66/83.

² Charter of the United Nations, Chapter XI Declaration Regarding Non-Self-Governing Territories, Article 73: « Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories.»

- c) Despite their divergent starting points, the Parties agree, on the basis of the mediation process facilitated by the Norwegian NCP following a complaint brought by NSCWS under the OECD Guidelines,³ that:

3. RECOMMENDATION TO THE NORWEGIAN AUTHORITIES

- a) According to the UN Guiding Principles on Business and Human Rights, states should clearly express their expectations that businesses are to respect human rights in all their operations.⁴

The Norwegian authorities have advised Norwegian companies on the particular situation in Western Sahara. However, the advice given has varied.⁵

- b) The Parties request the Norwegian authorities to give unambiguous advice to businesses operating in conflict areas. The Parties interpret the information on Western Sahara published on the Government's website differently.⁶ The Parties request the Ministry of Foreign Affairs to clarify what type of activities are included in the Government's advice and why. If the Government's view is that no business activities should be carried out in Western Sahara at all, the Parties request that this is expressed more clearly.

4. RISK AND ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS

- a) The Parties agree that the recently endorsed UN Guiding Principles and the new chapter on human rights in the OECD Guidelines provide a good platform for efforts relating to human rights and the environment. If the *de facto* authorities for any reason or at any time are prevented due to practical or legal concerns to fulfil their responsibility to protect, companies bear a particular responsibility for complying with international norms on the exploitation of resources and respect for human rights. Under the OECD Guidelines, companies are required to carry out risk and environmental and social impact assessments / due diligence, so that they can be sure and can document that they are not violating, or aiding and abetting other actors in the violation of, human rights or environmental norms.⁷

³ 45 countries adhere to the OECD Guidelines, including Morocco and Norway.

⁴ The UN Guiding Principles on Business and Human Rights were adopted by consensus of all the UN member states, including Morocco and Norway, on 16 July 2011 (A/HRC/17/31).

⁵ For example in bilateral talks with individual companies (as referred to, for example, in an interview with P.C. Rieber on 2 March 2012 in the weekly management journal «*Ukeavisen Ledelse*»), and more general statements, for example in chapter 4.1 of Report No. 10 (2008–2009) to the Storting, and the Foreign Minister's response to an interpellation on the matter in the Storting on 4 May 2010, www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/referater/Stortinget/2009-2010/100504/3/ (Norwegian only) and the article on Western Sahara published on the Government's website on 12 September 2007, http://www.regjeringen.no/nb/dep/ud/tema/naeringslivssamarbeid_samfunnsansvar/naeringslivssamarbeid/vest-sahara.html?id=480822. (Norwegian only).

⁶ See, for example, the article in the Norwegian newspaper *Aftenposten* on 12 October 2011, <http://www.aftenposten.no/nyheter/iriks/article4148359.ece> compared with the response to *Written question no. 181* of 15 November 2007, <http://www.stortinget.no/no/Saker-og-publikasjoner/Sporsmal/Skriftlige-sporsmal-og-svar/Skriftlig-sporsmal/?qid=38485>. (Both Norwegian only).

⁷ The OECD Guidelines Chapter II (10 and 11) and chapter IV, for instance Commentary 45: «Paragraph 5 recommends that enterprises carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon

- b) Sjøvik will carry out an environmental and social impact assessment for its activities based on the principles set out in the OECD Guidelines and the recently enacted UN Guiding Principles on Business and Human Rights.⁸
- c) The impact assessment report is to be published in accordance with chapter III of the OECD Guidelines.⁹
- d) When assessing what is material information concerning activities in Western Sahara, special account must be taken of the status and vulnerability of the territory.¹⁰
- e) Sjøvik will publish “codes of conduct”, including requirements for partners and suppliers, particularly those relating to human rights and the environment.

5. FOLLOW-UP

- a) Sjøvik will maintain an internal grievance mechanism for dealing with both internal and external concerns and suggestions for improvements.
- b) Sjøvik will ensure that the grievance mechanism is to meet the requirements set out in the OECD Guidelines.¹¹ The mechanism is to be scaled in proportion to the size of the company and designed so that it is able to receive notifications from anyone affected by the company’s activities.¹²

Notifications of matters of concern via the grievance mechanism are to be dealt with by the company’s internal audit system. Every attempt should be made to resolve

the findings, tracking responses as well as communicating how impacts are addressed» and chapter II of UNGP «The Corporate Responsibility to Respect Human Rights».

⁸ See in particular chapter II A 14: Enterprises should: «Engage with relevant stakeholders in order to provide meaningful opportunities to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.» See also commentary 14: «For the purposes of the *Guidelines*, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems», and chapter VI 2 b on the inclusion of stakeholders in environmental issues.

⁹ See the disclosure requirements set out in the OECD Guidelines chapter III . Also UNGP chapter II A.11, Commentary: «The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.» In Chapter II B.21, Commentary: «The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors. (...) Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts.»

¹⁰ "Material Information" is defined in Commentary 30 of the Guidelines as «information whose omission or misstatement could influence the economic decisions taken by users of information.». Also see Commentary 33

¹¹ See chapter IV (e.g. 5 and 6) and commentary 46 of the OECD Guidelines. This chapter is based on UN Guiding Principles 29–31. See also the International Finance Corporation Performance Standards (IFC PS) recommendation on the establishment of grievance mechanisms, especially IFC PS 1 and 7, and IFC Good Practice Note: Addressing Grievances from Project-Affected Communities. Guidance for Projects and Companies on Designing Grievance Mechanisms. September 2009:7, p. 6.

¹² The grievance mechanism should be able to reject complaints that do not relate to the company’s operations.

complaints through dialogue. If it is deemed appropriate to involve an independent third party, this should be agreed specifically in each individual case on the basis of what is needed in the particular situation for Sjøvik to seek to resolve the matter.¹³

- c) The mechanism is to be in place by the end of 2013. Everyone who works for Sjøvik including its employees is to be informed about the mechanism and how it works, and information on how to use the mechanism is to be published on the company's external website as soon as it has been set up.

6. SIGNING

- a) The chair of the board of each Party will sign the joint declaration.
- b) Upon the signing of this joint declaration, NSCWS will withdraw its complaint against Sjøvik of 5 December 2011.

Molde, 2 July 2013

Bjarne Dæhli

Chair of the Board, NSCWS

Odd Kjell Sjøvik

Chair of the Board, Sjøvik AS

Lars Oftedal Broch

Mediator on behalf of OECD NCP Norway

¹³ See commentary 8 on General Policies in the OECD Guidelines: «The Principles call on the board of the parent entity to ensure the strategic guidance of the enterprise, the effective monitoring of management and to be accountable to the enterprise and to the shareholders, while taking into account the interests of stakeholders.» Sjøvik will maintain its current routines whereby the board deals with complaints and notifications of issues of serious concern that relate to both Sjøvik AS and its subsidiaries.