

Att: Piotr Woźniak,
President of the PGNiG Management Board
PGNiG

Brussels, 27 June 2016

Dear Mr. Woźniak

PGNiG and oil exploration in occupied Western Sahara

Western Sahara Resource Watch (WSRW) is deeply concerned to learn that a subsidiary of PGNiG, Geofizyka Kraków, started seismic studies on the Lemsid block in Western Sahara, under Moroccan occupation.

In 2015, as the Moroccan state owned oil company ONHYM opened for a tender for the Lemsid block, WSRW called on "all companies to not engage in the Lemsid block, or any other petroleum exploration in Western Sahara until a solution to the conflict has been found". ONHYM claimed that the block was located in "Morocco", which is not the case. <http://wsrw.org/a240x3238>

The Norwegian Support Committee for Western Sahara (NSCWS) sent a fax to Geofizyka Kraków as early as 27 May 2003 requesting that the company not get engaged in Western Sahara. "The Norwegian Support Committee for Western Sahara strongly encourages Geofizyka Kraków z.o.o. not to sign any future contracts with Morocco in this disputed area, without the explicit endorsement from the Saharawi exile government on behalf of its people", NSCWS wrote. This was shortly after Morocco first issued its first ever oil licences in Western Sahara, and NSCWS contacted all seismic companies in the world, asking them to abstain from such work. Geofizyka Kraków did not answer the request at the time. Find a copy of the fax NSCWS sent here http://wsrw.org/files/dated/2016-06-08/norway-geofysika_27.03.2003.pdf

Our purpose in writing to you now is to express in the strongest terms the necessity of PGNiG immediately withdrawing from the exploration agreement it holds in the illegally occupied Western Sahara.

Over the past decade, WSRW (and other credible, independent non-governmental organizations) have insisted that the Saharawi people of Western Sahara, defined by the UN as the last case of required decolonisation in Africa, are sovereigns to their resources. We have insisted that the threshold to enter into development, trade or export of the territory's resources is simply the clear consent of the Saharawi people to such activities, and a corresponding benefit to them. The sad reality of 2016 is that these resources, a rich ocean fishery and phosphate mineral rock chief among them, continue to be plundered while the annexation of the territory continues apace.

A UN Legal Opinion in 2002 on the matter of oil exploration in Western Sahara, in its closing paragraph (para. 25 S/2002/161), notes that continuing petroleum exploration in Western Sahara would be illegal – contrary to international law – unless carried out with the consent of and with benefit to the people of Western Sahara.

The African Union Peace & Security Council's 27 March 2015 statement about Western Sahara and the AU legal opinion of the following October are very clear. As you may know, the African Union, of

which the Saharawi Arab Democratic Republic is a full member, stated that companies active in Western Sahara are not welcome elsewhere in the union. We trust your company to take this into consideration, when evaluating its plans for possible future international operations.

Then there is the confirmed extension (that is, the uninterrupted continuity) of international criminal law in Western Sahara as a result of two decisions of Spain's criminal appeals court, the *Audencia Nacional*, on 4 July 2014 and 9 April 2015. To be clear, and to avoid sensationalism, the second of the two decisions approves the continuing investigation (as a matter of Spanish criminal law and therefore the International Criminal Court process) into allegations of war crimes and crimes against humanity in the early occupation of Western Sahara by Morocco. WSRW urges a close reading of the two decisions.

Yet another development in recent months is the 10 December 2015 decision of the Court of Justice of the European Union in *Frente Polisario v. European Council*.

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=172870&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=164110>

The judgment is readily explained. In a 2012 case brought by the Polisario Front, the Court has struck down the European Council's decision to extend an EU free trade arrangement with Morocco to goods originating in Western Sahara. There are two things in the judgment which are notable. The Court confirmed that Morocco has no international mandate and is not recognized by the international community as being properly present in Western Sahara. The inexorable result of this conclusion is that Western Sahara is *occupied*. The territory, in other words, has no other status as a matter of law. (Its people, of course, have the status both of being non-self-governing, and that half of them in coastal Western Sahara, being occupied.) Quite aside from the 2002 UN Legal Opinion, occupying states have no right, title or legitimacy to offer up resource exploration licenses, and much less to assure interested third party corporations that they can be assured of legal protection when resource development is pursued.

Second, the Court accepted the evidence of a nexus or connection with resource development in Western Sahara and human rights abuses of the Saharawi people under occupation. We commend to you a reading of the judgment in this respect. Here is a part of what the Court concluded: the exploitation of resources in the territory is a "part of the goal to change Saharawi society." (See paragraphs 237 ff of the judgment.) Any casual, disinterested observer would understand this. That is because the cost to occupy Western Sahara far outstrips any economic return or rent Morocco – or indeed some or all of the people, Saharawi and illegal settlers alike, receive from resource activities in the territory. (The cost to Morocco's treasury of the military occupation alone is probably more than three times the gross annual revenue from all resources in recent years, as academic observers have found.)

As with the International Court of Justice's 1975 conclusion in the *Western Sahara Advisory Opinion*, we have in the CJEU judgment a clear reasoning that Morocco is not lawfully present in Western Sahara. It follows that what Morocco promises about the durability (setting aside the ethical aspects) of licenses and permissions and a promised eventual return for resource development is illusory; a chimera.

Capping these developments, we refer you to most recent report of the UN Secretary-General, in April this year, to the UN Security Council, about Western Sahara. There can be no question, in reading the report, of concluding that Morocco has failed to meet its obligations under international law. *More than this, and necessarily of concern to PGNiG*: Morocco has clearly defaulted in the commitment it made in 1991 to the holding of a referendum for the Saharawi people to exercise

their right of self-determination. You can see this in the record of the time, including the terms of the agreement – for an agreement it was – between the UN, Morocco and the Polisario Front to conduct a referendum under UN management. Our point is that a Morocco so evidently acting outside of international law is a Morocco also outside of its own declared commitments. We think that would give cause for concern to any contractual counterparty seeking to explore resources in Western Sahara.

You may know that, in making a periodic review of Morocco's human rights performance under the leading international treaty concerned, the *International Covenant on Economic, Cultural and Social Rights*, the treaty body's Committee (the CESCR) concluded in October 2015 that Morocco is obligated to "guarantee respect for the principle of the prior, free and informed consent of the Saharouis, and thus that they are able to exercise their right to enjoy and utilize fully and freely their natural wealth and resources." (para. 6 E/C.12/MAR/CO/4) This is not how they have proceeded on your Lemsid block.

We would like to express our astonishment regarding the terminology of Geofizyka Kraków, when it announced on its webpage on 23 March 2016 that it had started "a new project in Morocco". Neither the UN, the EU, the AU, the International Court of Justice nor the Government of Poland consider this land as being part of Morocco. <http://www.geofizyka.krakow.pl/newsroom-1/news/gk-in-africa-again>

We regret to say that such systematic representation of the territory does suggest Geofizyka Kraków having studied the matter of the conflict before signing the agreement.

Numerous protests have been made by Saharawi civil society organisations and from the liberation movement of Western Sahara in relation to the plunder of the territory. None of the companies involved in the sector take into account the wishes of the Saharawi people. We believe that you have already noted the protest expressed by The Association for the Monitoring of the Resources and for the Protection of the Environment in Western Sahara (AMRPENWS), who first revealed the presence of your subsidiary in the occupied territory. The organisation urged Geofizyka Kraków "to pull out from the territory and to take its business elsewhere", underlining that "the people of Western Sahara remain the sole proprietor of the resources of Western Sahara". <http://sahararesources.org/the-polish-company-geofizyka-krakow-starts-its-operations-in-western-sahara/>

Apart from the legal issues outlined in this letter, we strongly believe that Morocco will be in absolutely no interest to support the difficult UN peace efforts for the territory if it encounters oil. PGNiG, through its seismic study activities, places a serious obstacle to the UN peace process. This has serious consequences both for the refugees who have fled from the occupation, languishing in refugee camps in Algeria, as well as those living under Moroccan repression today.

We seek to know what PGNiG or its subsidiary has done, if anything, to ascertain that this work is carried out in line with the wishes of the people of Western Sahara.

In the meantime, we urge your company to immediately terminate all operations relating to seismic studies in Western Sahara.

It is our hope that PGNiG can speedily reply to us in this most consequential of matters.

Sincerely,

/sign./

Erik Hagen

Board member,
Western Sahara Resource Watch

c: His Excellency Ambassador Christopher Ross
Personal Envoy of the United Nations Secretary-General for Western Sahara

His Excellency Witold Waszczykowski
Polish Minister of Foreign Affairs

His Excellency Robert Tyszkiewicz
President of the Foreign Affairs Committee of Polish Parliament

Mr. Piotr Antonik,
Chief Executive Officer, Geofyzika Kraków

Mr. Rafał Pazura, PGNiG Communications department

Ms. Katarzyna Mróz, PGNiG Sustainable Development and Corporate Social Responsibility
Strategy Team,