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Brussels

In the matter of Kosmos Energy's statements about its operations in Western Sahara

Dear Mr Inglis,

Western Sahara Resource Watch seeks again to engage Kosmos Energy in the important matter of your company's exploration for seabed petroleum on the Atlantic seacoast of occupied Western Sahara. This letter is in response to yours of 14 April 2015, given in rejoinder to ours of 3 March 2015.

WSRW notes that Kosmos Energy has not yet corrected the a grave misrepresentation on its website, www.westernsaharaoil.com, about the conclusion of UN 2002 Legal Opinion on the exploration and exploitation of mineral resources in the Non-Self Governing Territory of Western Sahara (S/2002/161). As we noted in our above letter, Kosmos's webpage states that the Opinion "concluded that exploration and development of resources in non-self-governing territories are consistent with international law if they are in the best interests of people in those territories". That is not correct. The Opinion's conclusion, found in paragraph 25 of the Opinion – the final and concluding paragraph - reads:

"The conclusion is, therefore, that, 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 principles of international law applicable to mineral resource activities in Non-Self-Governing Territories."

As such, we must observe that Kosmos did not only fail to change the misrepresentations of the UN document, but also did not address the misrepresentation in its 2015 letter to us.

It is our considered view that the approach of Kosmos in Western Sahara centres on – is built upon - this omission: The seeking of the prior consent of the Saharawi people as the original people of Western Sahara. Petroleum exploration cannot take place in Western Sahara without being in clear concordance with the wishes of the people of the territory. That people is the Saharawi people, of course, and not others introduced or whom have been allowed to migrate into a territory under armed occupation since 1975.

The apparent lack of a commitment to relate to the right to self-determination and the seeking of consent from the Saharawis is nowhere as visible as in a letter from Kosmos Energy dated 12 November 2014 to a collective of the eight most prominent civil society groups in the occupied territory. The civil society organisations had called on Kosmos energy to respect their right to manage their own resources, and

Kosmos's answer was, regrettably, a mere "we understand and appreciate your desire for self-determination".

After so many cases of decolonization, in Africa and in other places, we are compelled to note that self-determination is not only a desire the Saharawi people express. It is a core right among peoples everywhere in a world not quite free of colonial domination.

In this regard, we can usefully note some aspects of international law which have developed since our last correspondence, most importantly the 10 December 2015 judgement of the Court of Justice of the European Union, the October 2015 Legal Opinion of the African Union, as well as the Polisario Front's 2015 accession to the *Geneva Conventions*. These have been described in detail in the *Recommendation of Exclusion of Kosmos Energy*, written by the Norwegian Government Pension Fund. Such rights appertaining to the Saharawi people are furthermore spelled out in the 2015 UN Human Rights Council's Committee on Economic, Social and Cultural Rights, in a recommendation for Morocco to "guarantee respect for the principle of the prior, free and informed consent of the Sahraouis, [such that] they are able to exercise their right to enjoy and utilize fully and freely their natural wealth and resources."

WSRW observes that Kosmos's comments on its website, as with your company's letters, do not analyse the rights of the people of Western Sahara to resources over which they have sovereign ownership.

We would be grateful for answers to the following questions. They are ones we ask in light of your company's most recent statement on www.westernsaharaoil.com.

In such statement, Kosmos expresses its disappointment over the Norwegian Pension Fund exclusion of Kosmos from its portfolios. In its argument, under the heading «The decision to divest is based on an outdated geopolitical and local understanding», Kosmos Energy company emphasizes that «*The Council remains fixed on a position it adopted in 2005 and appears unwilling to change its view, despite the many positive developments since then concerning Western Sahara. The Council's decision fails to recognize that people in Western Sahara – whom we have met in hundreds of face-to-face conversations – want the economic opportunities that come from increased foreign investment. In our experience, this desire cuts across demographics and political affiliations.*»

- 1) According to Kosmos Energy, which are the geopolitical developments that have taken place since 2005 which alter the understanding of the ethics or legality of such operation on behalf of the Moroccan government in the coastal waters of Western Sahara?
- 2) In what ways, if any, does Kosmos believe that geopolitical developments are relevant for the understanding of international law applicable to the case of Western Sahara?
- 3) In what ways, if any, do Kosmos believe such change in geopolitics have changed the fundamental rights of the Saharawi people to self-determination, including in respect of their land and resources?
- 4) In what ways, if any (and providing Kosmos agrees to the premise that the Saharawis have a right to self-determination), does Kosmos believe such change in geopolitics have changed the necessity of Kosmos first seeking the consent of the people prior to signing any petroleum agreements in the territory?
- 5) This comment on Kosmos Energy's view on geopolitics makes us recall a statement of William Hayes, Kosmos Energy's senior vice president of government affairs to Foreign Policy on 25 June 2014 (<http://foreignpolicy.com/2014/06/25/nowhere-land/>) where it is noted that "We feel good about the knowledge base we've got, we understand the other side of the position, and we honest to God feel like we are doing the right thing in partnering with Morocco. [...] We encourage the peace process to go on, and may the best party win». What does Kosmos Energy mean by "the best party", and how does such a view fit with the UN approach that a solution to the conflict has to provide for the Saharawi people's right to self-determination?

We are troubled to read that Kosmos believes that there have been “many positive developments” in Western Sahara since 2005. It is worth noting that there have been massive clamp-downs on civil society, life prison sentences have been passed to human rights defenders (including to our colleague Sidahmed Lemjiyed who is the secretary-general of the organisation CSPRON which monitors the natural resource exploitation in the territory), an expulsion of UN staff by Morocco, a total rejection of UN led peace talks by Morocco, a total refusal by Morocco to accept any solution that opens for the people’s right to self-determination. All this has happened since 2005, during the period Kosmos Energy has been present in the territory under a Moroccan licence.

Let us, finally, offer a few objections.

WSRW was not surprised to read that Kosmos Energy claim that: «people in Western Sahara – whom we have met in hundreds of face-to-face conversations – want the economic opportunities that come from increased foreign investment». It shows so clearly that Kosmos has only met with people positive to its presence, while failing to seek out or listen to representatives of the Saharawis. As we have expressed on numerous occasions in the past, Kosmos has used Moroccan officials and NGOs in its mapping exercises. It is more concerning that the company fails to mention the massive protests against the same operations. We note that Kosmos does not refer to the fact that *all larger civil society groups* in Western Sahara have objected to your operations, and that the government and Western Sahara condemn your operations. It is inappropriate of Kosmos to avoid mentioning in such a context that basically all civil society groups from Western Sahara have at one time or another urged the company to leave.

Your statement claims that «From the beginning of our exploration offshore Western Sahara, we have viewed the 2002 U.N. Legal Opinion as our touchstone and continue to adhere to its principles». We find that incorrect. On one hand, Kosmos today systematically misrepresents the legal opinion. The clearest is that it fails to take into account the wishes of the people above. But there are also other grave misinterpretations. For instance, on your website it states that «the United Nations Legal Advisor’s Opinion in 2002 made clear that Morocco is the de facto administering power of the territory». That is not correct. Furthermore, it took Kosmos seven years - from it first entered into Western Sahara on 28th October 2004 until the year it registered as a publicly traded company on the New York Stock Exchange in 2011 - before it even admitted operating in Western Sahara. Until then it had systematically referred to the territory as being in «Morocco». You can find copies of company presentations, website screenshots and press releases from your own company on our website.

It is worth keeping in mind that investors have concluded that the case for excluding companies working offshore Western Sahara from its portfolios is even stronger today than it was in 2005: drilling is a more severe violation of the UN Legal Opinion than seismic studies. One investor mentions that Morocco’s ratification of the UNCLOS also makes oil drilling in Western Sahara more controversial in matters of international law.

It is alarming to read that Kosmos Energy in its letter 18 May 2015 to the Council on Ethics of the Norwegian Pension Fund claims that the Council is misreading the United Nations position. In that context, we would like to point you to the clarifications regarding Kosmos Energy’s operations made in an article by the author of the UN Legal Opinion, former UN Legal Counsel, in the International Judicial Monitor, Winter 2015:

“The latest development with respect to natural resources is a contract between Morocco and two companies, Kosmos and Glencore, relating to oil exploration and exploitation in the Cap Boujdour area off the coast of Western Sahara. I can see from the web that the two companies maintain that this contract is in conformity with my 2002 legal opinion. Regrettably, it is not. Already signing an agreement in which Morocco refers to Western Sahara as “the southern provinces of the Kingdom of Morocco” is at variance with Corporate Social Responsibility and the principles Protect, Respect and Remedy.”

WSRW finds it deeply disturbing to read in Upstream Online 15 April 2016 that Kosmos Energy is in the process of signing a new agreement offshore Western Sahara. We observe that no news about this has been published yet. And we also note no seeking of consent seems to be taking place this time either. It is our opinion that Kosmos Energy's engagement with the Kingdom of Morocco over such licensing outside of the internationally recognised borders of Morocco should be stopped immediately.

Please let us know if our questions above are not clear, or if you require additional information to respond to them. WSRW looks forward to hearing from you at your early convenience.

Yours sincerely,

/sign./

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