

WSRW REPORT – OCTOBER 2014

# A PLATFORM FOR CONFLICT

Kosmos Energy's drilling  
for oil in occupied  
Western Sahara

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WSRW

WESTERN SAHARA  
RESOURCE WATCH

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Western Sahara Resource Watch (WSRW) is an international, independent non-governmental organisation based in Brussels. WSRW works in solidarity with the Saharawi people of Western Sahara, researching and campaigning against Morocco's resource plundering of the territory.

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*The drillship 'Atwood Achiever' here seen at the shipyard in South Korea. The ship is on its way in the Indian Ocean and will arrive occupied Western Sahara in few weeks.*





# EXECUTIVE SUMMARY

The newly built drillship 'Atwood Achiever' is moving at a steady pace around the south coast of the African continent. It is on its way to undertake a highly controversial operation.

In only a few weeks from now, the rig will be anchoring off the coast of Western Sahara, a territory largely under Moroccan occupation. In waters about 2135 meters deep, it will commence the first drilling operation in Western Sahara's history under Moroccan foreign rule.

Exploration of oil offshore occupied Western Sahara is considered to be in violation of international law. Furthermore, it undermines the UN peace process in the territory, is highly unethical since it contributes to supporting Morocco's unfounded claims to sovereignty over the territory and disrespects the wishes of the indigenous Saharawi people. No state in the world recognises Morocco's self-proclaimed sovereignty over the territory.

The rig is chartered by the US oil company Kosmos Energy Ltd which operates under a licence granted by the Moroccan state oil company ONHYM, in partnership with Scottish company Cairn Energy PLC.

Neither Kosmos, Cairn, nor the owner of the drillship, Atwood Oceanics have ever sought the consent of the Saharawis, who are the indigenous people of the territory. Instead, in 2014 the companies involved carried out a duplicitous consultation process whereby they met pro-Moroccan groups to support their plans. Carrying out protests against the planned drilling has brought real risk to the safety and freedom of the people involved. In recent years, activists have been handed lifetime sentences in a Moroccan military court for protesting against the resource plunder, and severely beaten by police for peacefully expressing opposition to Kosmos.

The drilling programme in Western Sahara is unique. It will be the first time since 1999 that drilling will take place offshore an occupied part of a Non-Self-Governing Territory. When that previously happened under Indonesia's occupation of East Timor, the activities were widely condemned and universally acknowledged as illegal. In such unclear waters, who will be responsible if anything happens to the environment?

WSRW urges Kosmos, Cairn and Atwood to immediately and unconditionally halt the oil exploration and recommends that all investors withdraw their shares from the companies unless they commit to leaving occupied Western Sahara.

Anything else would risk reigniting the conflict in Africa's last remaining colony.

## List of Abbreviations

CESE	Conseil Economique, Social et Environnemental
CNPC	China National Petroleum Corporation
EEZ	Exclusive Economic Zone
ONHYM	Office National des Hydrocarbures et des Mines
SADR	The Saharawi Arabic Democratic Republic
UNCLOS	UN Convention on the Law of the Sea
UN	United Nations
US \$	United States Dollar

TOOK TO THE STREET TO  
PROTEST AGAINST KOSMOS:

# CUT WITH RAZOR BLADE BY POLICE



Alouat is the director of an institution for the disabled in El Aaiun. He is himself handicapped, and an eager defender of his people's legitimate right to self-determination. As demonstrations are forbidden, he took to the street on his own, alone, with two posters asking Kosmos to stop drilling. A few minutes later he was stopped by the police, who cut him with razor blades.<sup>1</sup> The incident took place in June 2014.



***“We know that some have reservations about any companies investing in Western Sahara. Among the questions we have faced from some stakeholders, including ethical investors, are concerns about whether our activities in the region include consultation with the people of the territory and, further, will such activities be for their benefit? We have been clear about that: our activities have been, and will always be, conducted in a manner that is both fully inclusive and for the benefit of all the local population, without exception.”***

Kosmos Energy, Corporate Responsibility Report 2013<sup>2</sup>



To the attention of Mr Andrew G. Inglis  
CEO of Kosmos Energy Ltd  
C/O Kosmos Energy LLC  
8176 Park Lane  
Suite 500  
Dallas, Texas 75231

**Open letter to Kosmos Energy Ltd by the Saharawi civil society groups from occupied Western Sahara**

Dear Mr Inglis,

We, the undersigned, are all Saharawi organisations from the occupied territory of Western Sahara. We wish to make our position known on Kosmos Energy's presence and activities in our country that is currently under Moroccan occupation. We urge Kosmos and your partner Cairn Energy to withdraw your plans to drill for oil in our territorial waters.

Since Kosmos or Cairn do not seek our opinion on its plans in our homeland, but rather chose to take the word of the Moroccan occupying regime and consult only with groups and individuals appointed by that government, we see no other alternative than to send you this letter. None of the undersigned have ever been approached, directly or indirectly, by Kosmos, Cairn or the Moroccan government to ask whether the oil exploration is in line with our people's wishes. We represent basically all groups that support the Saharawi right to self-determination inside the territory under Moroccan control.

We are the people of Western Sahara. Since 1975, we suffer the consequences of Morocco's invasion and occupation of a big part of our country. Part of our people had to flee during the war. They still live in refugee camps in the Algerian desert, surviving on declining humanitarian aid and suffering malnutrition and poor living conditions. Those that stayed behind are now forced to face oppression and gross human rights violations. We, the Saharawi people living in the territory where you seek to exploit oil, are not allowed to organise, we are not allowed to express our culture, we are not allowed to vocalise our political views – it will only result in inhumane treatment; kidnapping, beatings, rape, torture, arbitrary detention, unfair trials resulting in unfounded prison sentences, etc.

Some of us have protested against the activities of your company, and of companies like yours. Instead of being heard, we were beaten, arrested and put in jail. Some of our colleagues are serving a lifetime sentence for speaking out against the illegal exploitation of our land and waters by companies like yours in collaboration with the regime that oppresses us.

Precisely by siding with the Moroccan government, driven by your own economic interests, you are destroying our future. We have a right to self-determination, as stated by the International Court of Justice, repeated over and over by the United Nations and recognised by the entire international community. We have the right to choose the political future of our country. It is our decision – not yours, not the Moroccan government's. Only after we have made our decision known, will it be clear to you with whom you should do business. Not before.

We do not want Kosmos Energy or Cairn Energy or any other company to drill for oil in our country before we have had the chance to exercise our right to self-determination. We ask for your support for that right. You have a unique chance to create peace; by refraining from drilling until the voice of the Saharawi people has been heard. But if you decide to go ahead, without respect for our rights, you will only aggravate an already horrific situation. We, who have suffered the Moroccan repression for decades, are afraid that the future human rights situation will be even more intense should you find oil.

We do not care for the social projects you promise; the schools or the English courses. We want to live in a country that is ruled by a government of our choice, with respect for our human rights and culture.

Your activities are only to the benefit of the people that are undermining our rights; the king of Morocco, the Moroccan government in Rabat and the Moroccan settlers in our homeland. Not to our benefit – rather to the contrary; they take away all that is dear to us: our rights, our future, our voice. For the sake of peace, for the sake of our children, we ask you: do not drill for oil in occupied Western Sahara, until our right to self-determination has been put into practice. The future of our people depends on it.

Signed,

Aminatou Haidar, President of the Collective of Saharawi Human Rights Defenders (CODESA)

Brahim Dahane, President of the Saharawi Association of Victims of Serious Human Rights Abuses committed by the Moroccan State (ASVDH)

El Mami Amar Salem, President of the Committee against Torture in Western Sahara

Hamad Hammad, Vice-President of the Committee for the Defence of the Right to Self-Determination for the People of Western Sahara (CODAPSO)

Sultana Khaya, President of the Saharawi Association for the Protection of Human Rights and Natural Resources

Sidi Ahmed Eddia, Secretary-General of the Confederation of Saharawi Workers (CSTS)

Lahcen Dahlil, Vice-President of the Committee for the Protection of the Natural Resources of Western Sahara (CSPRON)

Mohamed Lamine Elidrisi, President of the Gdeim Izik Coordination Committee

Fakou Lebeih, President of the Saharawi Committee for the Defence of Human Rights in Smara

# UN CALLS FURTHER OIL SEARCH ILLEGAL

In 2001, the 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 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, 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:<sup>3</sup>

***“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 conclusion 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.<sup>4</sup> He has also underlined the political implications: “The more resources are found in Western Sahara and its maritime zone, the less will be the incentive for Morocco to fulfil the UN resolutions and international law”.<sup>5</sup>

Nevertheless, 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.<sup>6</sup> Divestments from Kerr-McGee amounted to approximately 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.<sup>7</sup> 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:<sup>8</sup>

***“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.



Saharawis in Bojador town, March 2014. “Kosmos go home, Leave Western Sahara. Atwood, don’t come here”, the banners read. Among the people demonstrating, seen on the images, is a human rights activist who is blind in one eye following a police beating some years ago.



“Dear chairman of Kosmos Energy. Today I tried to film a friend holding a banner objecting to your company’s activities in my occupied country. The Moroccan police responded by hitting me. Here you see how my eye looked afterwards. How should we protest against your presence in our country?”, wrote 18 year old Elfayda Khayya from Bojador in a letter to the chairman of Kosmos Energy in April 2014, underlining that demonstrations are not allowed.<sup>9</sup> The company replied that it had forwarded her complaint to the Moroccan government.



**“Not legal under international law, which is confirmed in the 2002 opinion. [It is] frankly unethical”.**

Francesco Bastagli, former UN special representative to Western Sahara.<sup>11</sup>

**“Western Sahara remains occupied as matter of international law and so the taking of petroleum is clearly a war crime”.**

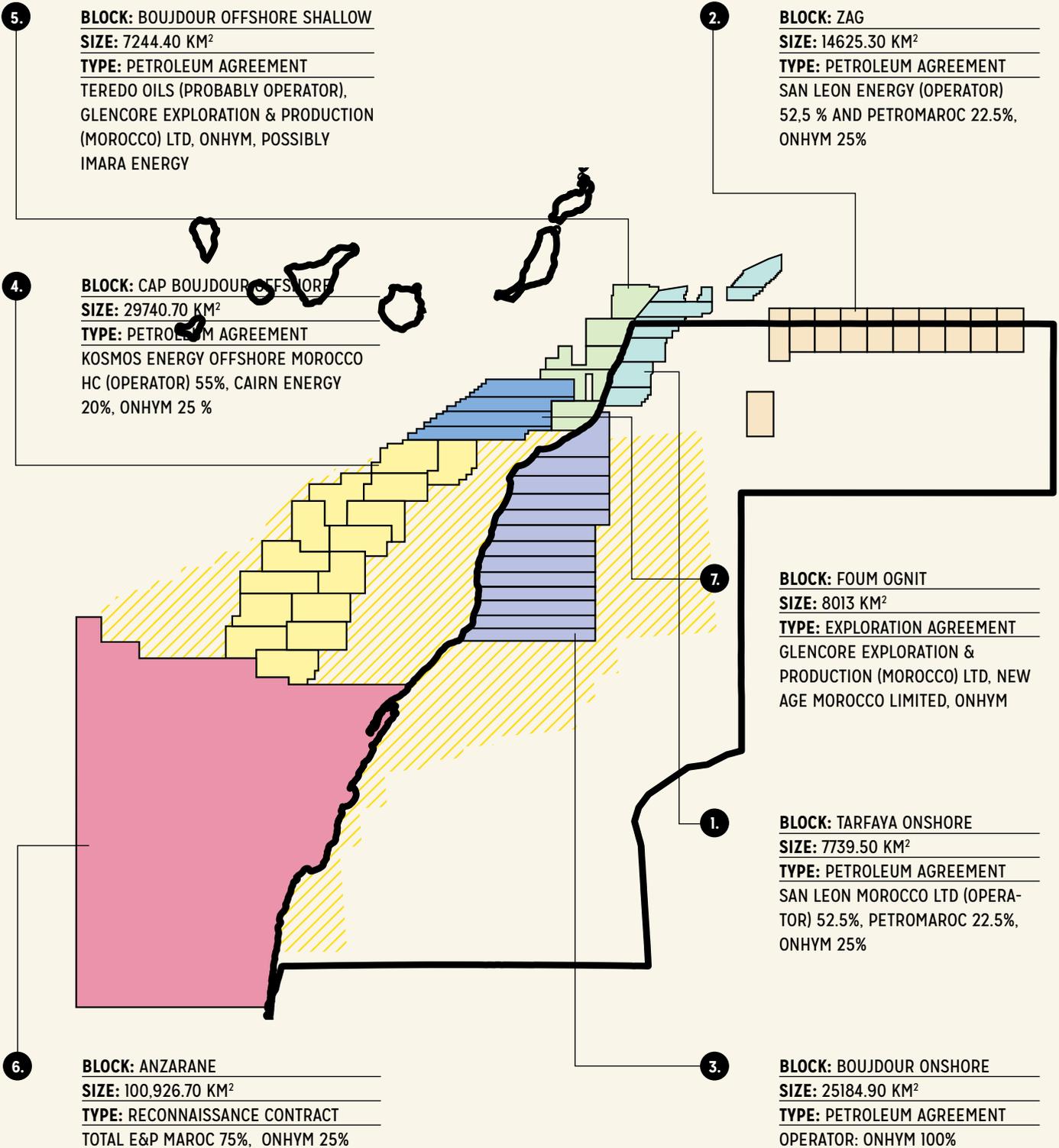
Emhamed Khadad, Polisario Front official<sup>10</sup>

**“We feel good about the knowledge base we’ve got [...] 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”.**

Kosmos Energy vice president, William Hayes.<sup>12</sup>

# 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. Seven oil and gas licences have so far been awarded in Western Sahara. The names of the blocks in this report use ONHYM's spelling.



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 evaluation 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.<sup>14</sup> From 2014 there were rumours of that drilling was to start from the same year.

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.<sup>15</sup> 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 had previously mentioned they would do first drilling on Zag in 2014.<sup>16</sup>

3. Seismic exploration operations on **Boujdour onshore** were observed on the block in 2011.<sup>17</sup> Oil drilling was planned 28 km to the east of the coastal town of Bojador.<sup>18</sup>

4. The subsidiary of Bermuda registered, NYSE listed Kosmos Energy Ltd, holds a licence on the same **Cap Boujdour offshore** block that Kerr-McGee formerly held. Kosmos announced on 10 June 2013 that it had entered into an agreement for a drillship with Atwood Oceanics for waters "offshore Morocco". Drilling is to start in December 2014, and the rig is on its way to the territory.<sup>19</sup>

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.<sup>21</sup> Glencore entered into the block in last part of 2013.<sup>22</sup>

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.

7. The offshore licence called **Foum Ognit** was discretely awarded to the subsidiaries of Glencore Exstrata Plc and New Age (African Global Energy) Ltd in February 2014.<sup>20</sup>

In addition, Morocco had carved out four more blocks in the occupied territory, opened up for new oil companies. As of October 2014, 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.<sup>23</sup> Yet, the rumours resurfaced later,<sup>24</sup> and the information about Tamoil's plans was still available on the webpages of the Moroccan Ministry of Mines as of 2013.<sup>25</sup> 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.<sup>25</sup> ONHYM never responded.

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***"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 PetroMaroc<sup>6</sup>

# HUMAN RIGHTS AND NATURAL RESOURCES

In 1963, Western Sahara was included in the United Nations list of so-called Non-Self-Governing Territories.<sup>27</sup> 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.<sup>28</sup> For Non-Self-Governing Territories and their interim administrators, the principle applies that the interests of the people must be absolutely paramount.<sup>29</sup> The International Court of Justice has also confirmed that the conflict is a decolonization question and a matter of the right to self-determination.<sup>30</sup> 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 had 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, the Frente POLISARIO. The RFK Center delegation considers that

## PRECARIOUS HUMAN RIGHTS SITUATION

Since 1975, when Morocco invaded Western Sahara, more than 500 Saharawis have been forcibly 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 Council, the Committee Against Torture, Amnesty International, Human Rights Watch, the US State Department and several other institutions and organisations confirm the systematic pattern of human rights violations against Saharawis.

For instance, in Freedom House's 2014 Annual Report, Western Sahara was ranked as one of the worst places in the world in terms of political rights and civil liberties.<sup>31</sup> 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".<sup>32</sup> A delegation of the Robert F. Kennedy Center visiting Western Sahara in 2012 reported 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".<sup>33</sup> Moroccan authorities do not respect the right to form associations, to assemble, or to express opinions on the matter of Western Sahara. In 2012, Morocco declared in the UN Human Rights Council that

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*Saharawi refugees on the Canary Islands demonstrating against Kosmos Energy's seismic surveys offshore Western Sahara, 17 March 2009. In the background, a supply vessel that took part in the company's seismic studies on the Cap Boujdour block.*



*Gdeim Izik protest camp in 2010 comprised a large number of the Saharawi people living in El Aaiun, the main city in occupied Western Sahara. The demonstrators protested against their marginalisation and unemployment, and also the plunder of the territory.*



it does not wish to follow international minimum standards for allowing Saharawi civil society organisations to register.<sup>34</sup> The UN Special Rapporteur on Torture noted after his visit to Western Sahara in the autumn of 2012 the severe conditions for Saharawi prisoners in Moroccan jails.<sup>35</sup>

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.”<sup>36</sup> This call was repeated in 2014.<sup>37</sup> 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 closest ally, France.

### **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.<sup>38</sup> 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, and so became even more obliged to respect the Convention. When it comes to seabed rendering obliged 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 of the UN Legal Counsel in 2002. It constitutes a consolidation of 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 of such resources form 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.”<sup>39</sup>

## 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 on the coast of 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.<sup>40</sup> It is 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, been living 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. Studies show that in periods of aid shortage, one in four children suffers from malnutrition.<sup>41</sup> There is a stark contrast between the dire humanitarian situation that the refugees are living on one side, and the substantial income that is generated by Morocco 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.<sup>42</sup> Some artisanal fishermen groups say they are not allowed to fish in their own waters,<sup>43</sup> while others state that they are not employed on foreign vessels in Western Sahara.<sup>44</sup> 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 desert 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 protestors 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.<sup>45</sup>

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.<sup>46</sup> 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.<sup>47</sup> On 16 February 2013, a Moroccan military tribunal sentenced Mr. Lemjiyed to life imprisonment. In his defence, he quoted the UN legal opinion in the court, the same opinion that was made by the UN on the licence later given to Kosmos Energy 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.<sup>48</sup>

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 the University of Agadir,<sup>49</sup> and in front of Kosmos Energy's supply vessel in the Canary Islands.<sup>50</sup> Hunger strikes against the oil industry have also been reported.<sup>51</sup>

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. Several other groups of Saharawis have also repeatedly and independently protested against the different industries through letters and statements.

# KOSMOS ENERGY IN WESTERN SAHARA

2001. US oil company Kerr-McGee first receives a licence to explore the seabed in the coastal waters offshore the town of Bojador, Western Sahara.

January 2002. The UN Legal Counsel informs the UN Security Council that “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”.<sup>53</sup>

2002-2003. Norwegian seismic survey company TGS-NOPEC is commissioned to carry out the first studies of the Sahara seabed. TGS-NOPEC later regretted its involvement, stating it appreciated “the complexity of the political issues in the area [...]. As a result, the Company has decided not to undertake any new projects in Western Sahara without a change in political developments. Further, the Company is committed to improve its procedures for risk evaluation on potential projects in disputed areas of the world.”<sup>54</sup> Also the Danish company responsible for the supply ships to TGS-NOPEC expressed regret over its involvement.<sup>55</sup>

29 October 2004. A subsidiary of the US private owned company Kosmos Energy partners with Kerr-McGee for the ‘Boujdour block’, with a 30% share.<sup>56</sup> Kerr-McGee pulls out of the territory in 2006.

7 November 2005. Kosmos Energy first states that it plans to drill off the coast of Western Sahara.<sup>57</sup>

3 June 2006. Kosmos Energy signs an agreement for the operatorship of the ‘Boujdour block’.<sup>58</sup>

26 June 2006. Kosmos Energy’s so-called ‘Boujdour Offshore Petroleum Agreement’ enters into force. The agreement was valid for eight years, including an initial exploration period of four years and eight months followed by the first extension period of one year and the second extension period of two years and four months.<sup>59</sup>

2009. Kosmos Energy commissions 2D seismic services from the Dutch company Fugro NV as part of an agreement with Morocco.<sup>60</sup> In 2009 it is mentioned in the media on the Canary Islands that Kosmos considers



2009: The Moroccan Ministry of Agriculture and Fischeies requests the Moroccan navy base in the occupied territory for collaboration on Kosmos Energy's seismic study programme

**“[Fugro NV] is often involved in oil and gas exploitation in areas where the local population has not been consulted. For that reason, [Fugro NV] has for instance stopped its involvement in Western Sahara”.**

Arnold Steenbakker, CEO, Fugro NV after doing seismic studies for Kosmos Energy<sup>52</sup>

constructing industry on the islands as part of the Boujdour project.<sup>61</sup> This project has not been mentioned in the media or by the company since.

September 2010. Kosmos signs a Memorandum of Understanding with ONHYM to enter a new petroleum agreement covering the highest potential areas of this block under essentially the same terms as the original license.

2010. Fugro-Geoteam AS, which did the 2D seismic for Kosmos in 2009, regrets its involvement. “Fugro-Geoteam AS has decided to abstain from any further involvement in Western Sahara until the political situation has been resolved”.<sup>62</sup> The CEO of the parent company Fugro NV, also admitted that consultation had not taken place.

2013. Kosmos approaches potential partners for the drilling project off Western Sahara, but at least one company refuses due to legal doubts.<sup>63</sup>

10 June 2013. The US rig company Atwood Oceanics Ltd announces that its drillship ‘Atwood Achiever’, then being built in South Korea, had been awarded a drilling contract with Kosmos Energy “in Morocco”.<sup>64</sup>

25 October 2013. Kosmos signs an agreement with Capricorn Exploration & Development Company Limited, a wholly-owned subsidiary of Cairn Energy PLC to partner on the Boujdour project. Kosmos announces that it has identified three prospects, the largest of these, called Gargaa, at 2135 meters depth. The name of the block is changed to ‘Cap Boujdour Offshore’.<sup>65</sup>

February 2014. A Kosmos company presentation states that the ‘Atwood Achiever’ will be used in Western Sahara.<sup>66</sup>

March 2014. Aker Solutions AS, which had been responsible for building and installing the drilling system on the ‘Atwood Achiever’, states that “if we had known that the equipment would be used in Western Sahara, we would not have signed this agreement” and that “we often sign agreements of service and spare parts to equipment which we have already delivered, but in such agreements we state we will not deliver such equipment if the rig will

be used in a territory where we don’t want to do business, such as Western Sahara”. The company cancelled the maintenance contract it had on the drillship.<sup>67</sup>

June-August 2014. BGP, a subsidiary of the Chinese national oil company CNPC, carries out the last geological surveys of the seafloor on the Cap Boujdor Block.

2013-2014. Kosmos conducts a sham consultation process with pro-Moroccan groups. According to the company, the consultation is done by a Moroccan governmental institution, the *Conseil Economique, Social et Environnemental* (CESE) and the needs assessments by High Atlas Foundation, and the institute AMIDEAST.<sup>68</sup> Board members of the two latter groups are on the payroll of the Moroccan government. The High Atlas Foundation in particular is deeply defensive of the Morocco’s claim to Western Sahara.<sup>69</sup> A campaigner of the Moroccan government’s position in the conflict who has spent the last decade campaigning against the rights of the Saharawi to self-determination, took part in the writing a Social Impact Assessment (not yet published by Kosmos).<sup>70</sup>

15 October. The drillship is *en route* to Western Sahara, sailing around the coast of southern Africa. The ship carries a Marshall Islands flag, and is certified by DNV-GL.

Early December 2014. The rig is scheduled to arrive in the coastal waters of occupied Western Sahara.<sup>71</sup> The drilling will take place in disregard of the wishes and interests of the people of the territory, and is thus illegal.

# HOW KOSMOS EXPLAINS IT



*Kosmos Go Home: Saharawi refugees in Algeria oppose Morocco's illegal oil drilling programme. Half the people of Western Sahara have fled from the territory after the brutal Moroccan invasion in 1975.*

***“Even though it’s a complicated situation, we think there is a right course here and that we are on it... Morocco has the right to issue these [drilling] licenses.”<sup>72</sup>***

The first six years of Kosmos Energy’s operations in Western Sahara, when it was still a private company, the company did not answer to requests from civil society. Most media requests were also not answered. At the time, it systematically referred to Western Sahara as Morocco’s “Southern Provinces”. After Kosmos registered on the stock exchange in 2011, its relations to the public changed fundamentally, with a higher degree of response. Yet, there is nothing new in the company’s approach to Western Sahara from 2005 until today.

Kosmos’ main position on Western Sahara today is outlined in a handful of documents: its reports to the New York Stock Exchange, its so-called Joint-Declaration of 19 December 2013 which it signed with ONHYM relating to oil production in “the Sahara region”<sup>73</sup>, and its Position statement on Western Sahara of February 2014.<sup>74</sup>

#### **IN TOTAL, THE COMPANY’S KEY ARGUMENTS ARE:**

1. Kosmos underlines it is only exploring, and if exploitation were to proceed it would be in line with international law.
2. The company has signed a joint commitment with the Moroccan government’s oil company ONHYM regarding the oil exploration and production in which it stresses that a) the people in Western Sahara will benefit from its activities; b) the activities will be in line with the UN Charter; c) its activities will be in line with the UN Legal Opinion from 2002. Kosmos Energy is quoted that it believes exploration offshore Western Sahara is “fully consistent with international law and the 2002 UN Legal Advisor’s Opinion”,<sup>75</sup> and that the Moroccan government will keep its side of the agreement by making sure that revenues, if exploration is successful, benefit the people of “the region”.<sup>76</sup>
3. The Joint Declaration states that “local populations and their representatives are involved and consulted”, but is vague as to who will carry out this consultation. It appears from other sources that it expects the Moroccan government to do so. “In our discussions with ONHYM [the Moroccan national oil company] regarding our exploration activities, it is evident to us that Morocco is paying increasing attention to consultation, transparency and resource governance models,” the company stated.<sup>77</sup> French company Total says the same on their website: that the consultation is the responsibility of Morocco.<sup>78</sup>
4. Kosmos claims that the on-the-ground process has so far demonstrated that benefits are already flowing to the people of the territory and that the Moroccan institution CESE has already ensured consultation with stakeholders. Kosmos has through what they call “local partners” assessed the local needs they want to address. “Much of our on-the-ground work has focused on stakeholder engagement and social investment, consistent with how we conduct our business everywhere we operate.”<sup>79</sup> The result of the needs assessments is to appear in a forthcoming Social Impact Assessment by Kosmos Energy, and has already led to the establishment of some smaller on-the-ground projects.
5. On a political level, the company claims that its presence is contributing to solving the conflict – or at least to creating development. “It is our view that responsible resource exploration and, if successful, development in Western Sahara can and should occur in parallel with the U.N.-led discussions on the region’s future,” Kosmos stated. “We do not believe our activities will prejudice those negotiations or the outcome of that process,”<sup>80</sup> but rather “some experts believe a discovery may be the catalyst to lead a resolution of the conflict”.<sup>81</sup> Kosmos insists that “Not only is exploration legal, but responsible resource development has the potential to create significant long-term social and economic benefits for the people of Western Sahara”.<sup>82</sup>

# WSRW'S ASSESSMENT OF KOSMOS' EXPLANATIONS

## FROM THE PERSPECTIVE OF WSRW, THE ARGUMENTS OF KOSMOS DO NOT HOLD WATER.

1. Kosmos has inked the agreement with the wrong government. Morocco is not in a position to sign such agreements. No state in the world, or the UN<sup>83</sup>, recognises Morocco as the administering power of Western Sahara, and Morocco itself refuses to be regarded as such. In all its statements, Kosmos underlines that its partner is the Moroccan government – not the Saharawis. Morocco deals with Western Sahara as if it were part of its own national territory, what is particularly clear in the “New Development Model for the Kingdom’s Southern Provinces” published by the Moroccan institution CESE. Kosmos Energy has not explained how it has come to the conclusion that Morocco has authority to sign such agreements for waters which Morocco has never claimed.
2. Kosmos states that the “populations” or “people” will be “consulted”. But the correct and complete conclusion of the UN Legal Opinion is that any such activities would be illegal if they “were to proceed in the disregard of the interests and wishes of the people of Western Sahara”. Consequently, not only must the people of Western Sahara – who are the Saharawi people who alone lived in the territory before it was invaded – *be asked* for advice, but one also needs to act *in line with what they want*.
3. Kosmos relates to the Saharawis as a “stakeholder [...] consistent with how we conduct our business everywhere we operate”. That is the core of the problem. The Saharawis are not a stakeholder like any other. They are the sovereign people of Western Sahara, as established by the International Court of Justice in 1975 at the time when Morocco invaded the territory to UN condemnation. Kosmos has never, in a single context, mentioned the right to self-determination of the Saharawis. This is particularly clear from Kosmos Energy’s correspondence with WSRW.<sup>84</sup>
4. Kosmos has purportedly placed the responsibility of consulting (not seeking consent) upon Morocco. It is important to note that the international community does not view the Moroccan government as representing the people of the territory. Nor would the Moroccan government have the competence to seek such consent. The idea that Moroccan government institutions are going to seek the permission of the Saharawi people – at the same time as Morocco’s entire Western Sahara policy is based on blocking the Saharawi people’s right to self-determination – appears rather ironic. In an interview with Reuters this year, the Moroccan government even dismissed all criticism: “We don’t have to take into consideration what Algeria or another country thinks about what we do in our provinces,” Morocco’s Mines and Energy Minister stated<sup>85</sup>.
5. As such, neither the involved companies nor the Moroccan government through CESE or its other institutions have ever initiated any discussion with the Saharawis so as to inquire whether they want the further exploration to take place in the first place.
6. Even if Morocco had wished to seek the Saharawi people’s consent, it would be close to impossible to set such process in the occupied territories in motion, as all associations, trade unions, parties etc. which stress the right to self-determination are forbidden to exist under Moroccan law. Western Sahara ranks as the least free territory or country in the world on international indexes.<sup>86</sup>
7. The on-the-ground efforts so far, about which Kosmos Energy has reported extensively through its website, are done through associations without legitimacy. WSRW has revealed that the three associations or councils that Kosmos is using to assess the local “needs” are all either Moroccan governmental associations, or directed by board members on the Moroccan government’s payroll.<sup>87</sup> The people that these organisations meet are not the Saharawi associations representing the wishes of the people. Instead, Kosmos Energy’s partners and Kosmos itself has been meeting solely with pro-Moroccan groups – which are the only ones allowed to exist.<sup>88</sup> WSRW has revealed that a Moroccan PR spin-doctor was contracted by Kosmos to assess the local impact. She has been engaged for a decade in working against the rights of the Saharawi people, and has said herself that the Western Sahara issue is her main work task. Her campaigning has been in line with the Moroccan government’s position, stating that Western Sahara is part of Morocco, that Saharawis are “Moroccans”, and that the refugees in Algeria are in fact kidnapped Moroccans.<sup>89</sup>
8. The Joint Declaration which Kosmos Energy signed with the government of Morocco is self-contradictory. Key in the declaration is the UN Charter. Article 1 of the Charter requires states respect the right to self-determination and refrain from acts of aggression. The

Charter also stresses the protection of the rights of peoples in Non-Self-Governing Territories. Oil drilling in an illegally annexed Non-Self-Governing Territory in partnership with a state that sabotages a self-determination process, without even listening to the political aspirations of the people of the territory, is in clear violation of the principles of the UN Charter. Morocco has failed to respect the Charter since 1975.

9. The Joint Declaration's statement that the exploration and production will be in accordance with the Moroccan Kingdom's constitution means that it would treat Western Sahara as if it was part of Morocco. A state cannot rely on the apparent legality of its domestic law to continue or justify a violation of international law.
10. The Joint Declaration's claim that the exploration and production "will be" in line with the Corell opinion must be read in context with Kosmos' repeated statement that the exploration already "is" in line with these principles. As such, it is difficult to expect any new information from the companies as to what steps they have taken to seek the consent of the people. It must be recalled that the only people who can give such consent are the Saharawi people, who alone were the exclusive inhabitants of what was Spanish Sahara until 1975.
11. Kosmos Energy's political argument, that drilling is constructive for the peace talks, is only tenable from a purely Moroccan perspective. If drilling had been pursued with both parties together, alternatively with the representative of the people of the territory, it might possibly be argued as being constructive. But since drilling is conducted in a sole partnership with the government of Morocco, such argument is without merit. "The more resources are found in Western Sahara and its maritime zone, the less will be the incentive for Morocco to fulfil the UN resolutions and international law", the author of the UN Legal Opinion, Hans Corell, stated recently.<sup>90</sup> Investors, such as the government of Norway, have stated that the oil search on the Boujdour Block is "undermining the UN peace process"<sup>91</sup>.
12. No Social or Environmental Impact Assessments have yet been published, even though the drillship is already chartered and on its way. That does not strengthen the credibility of those still unpublished documents. Its conclusions have already been drawn, and in an untransparent and highly questionable manner.



Even though Kosmos has taken a new media approach after its registration on the New York Stock Exchange in 2011, there is nothing new in its approach and activities in Western Sahara. The company still holds a licence issued by the Government of Morocco. Not a single credible initiative has been taken to assure that the oil search is in line with the Saharawi people's wishes, interests and right to self-determination.

There is also nothing new in the damaging political consequences Kosmos' activities have had and will have on the peace process.

# UNCLEAR LIABILITY IN CANARY BACKYARD

The drilling programme in Western Sahara is unique. Who will be responsible if anything happens to the environment?

The government of the Saharawi Arab Democratic Republic (SADR) in January 2009 laid claims to the coastal waters and seabed of the territory<sup>92</sup>. Since SADR is not a member state of the UN, the SADR's demands have not been universally recognised.<sup>93</sup> Morocco has never formal claim to the Saharan offshore - including the waters covering the 'Cap Boujdour Offshore' block. For all purposes, the coastal waters and seabed must be viewed as Saharawi national waters or as international waters. One thing is certain, and it is that they are not part of Morocco's Exclusive Economic Zone.

Only on one previous occasion has a post-colonial occupying power undertaken oil drilling in an occupied territory - in the case of East Timor under the 1989 Australia-Indonesia *Timor Gap Treaty*. In terms of international law, the case is almost identical to that now unfolding in Western Sahara. Seabed petroleum production in East Timor was condemned and universally acknowledged to be illegal.

Some obligations to better govern seabed oil exploration could have resulted if Morocco was actually the administrative power of Western Sahara. But Morocco is not considered by the UN as the administrative power over the territory - nor does Morocco consider itself as such. As an occupier, it would have environmental obligations, but Morocco does not consider itself as such either. So what if anything will happen?

Some areas to the east of the Canary Islands are declared by the UNESCO as biosphere reserves. There has been widespread outrage since the Spanish government awarded drilling permits for those waters to the oil company Repsol. Yet, a few kilometres away, the drilling

that is to begin in December will in some ways be even more controversial. It is simply not clear who will be legally liable if the 'Cap Boujdour' oil exploration damages the Western Sahara/ Canary coast, marine life or fish stocks. It is also unknown which government and response agency would address a large-scale marine oil spill, such as that caused by a blowout of wells in the Gargaa drilling.

In addition, there is a clear financial insurance liability point in these waters. In case of accident it is unclear who would foot the bill: Would Morocco be responsible for that - in waters which in the end are not Moroccan? There are today no international mechanisms to compensate victims and pay for remediation, clean-up operations (environmental damage) but also economic damage (fishermen). In the waters off Western Sahara - with the unresolved conflict still going on - this would be even more complicated.

The oil exploration in the Saharawi/Canary waters poses a high risk. One challenge is the seismic movements and earth quake risks in the region. As Repsol published its environmental risk assessments, independent experts found them to be highly under-communicative of the actual risks involved.<sup>94</sup> If Repsol misrepresents the risks involved in its public reports, then how does Kosmos Energy fare? No Environmental Impact Assessment has ever been discussed with the Saharawis, or been shared with the people of the neighbouring Canary Islands. Kosmos operates in a rush - its last seismic studies were completed only two months ago - and as the rig is on its way to the territory. Yet, no Environmental Impact Assessment has been published.

# RECOMMENDATIONS

## **WSRW RECOMMENDS THAT KOSMOS ENERGY AND ITS PARTNER CAIRN ENERGY:**

- demonstrate their commitment to international law, human rights and basic Corporate Social Responsibility standards by immediately and publicly withdrawing from their involvement in Western Sahara and not renewing activities until the dispute over Western Sahara is resolved. Both companies should also deliver to the government of the Saharawi Republic or the United Nations a copy of the geological data collected.
- respond to questions concerning what the companies have done so far to seek the consent of the Saharawi people, as the original people of Western Sahara, as international law requires.

## **WSRW RECOMMENDS THAT DRILLSHIP OWNER ATWOOD OCEANICS:**

- abstain from sending the drillship 'Atwood Achiever' to the occupied territory.

## **WSRW RECOMMENDS THAT COMPANIES SERVING THE 'ATWOOD ACHIEVER' (SUCH AS NATIONAL OILWELL VARCO):**

- immediately apply any potential human rights clauses in their contracts, and abstain from offering any further services and parts to the rig until the rig has terminated its possible activity in Western Sahara.

## **WSRW RECOMMENDS THAT THE CERTIFYING COMPANY DNV-GL:**

- immediately withdraw the seaworthiness-operating certificate given to the 'Atwood Achiever'.

## **WSRW RECOMMENDS THAT SHAREHOLDERS OF KOSMOS AND CAIRN:**

- urgently raise the Western Sahara issue with the management of the companies, demanding an immediate halt of the Western Sahara operations. Should Kosmos and Cairn not respond or comply, WSRW urges investors to terminate their involvement in the company. If Kosmos and Cairn choose to proceed with the planned oil drilling, shareholders should divest.

## **WSRW RECOMMENDS THAT WORKERS, BUSINESS PARTNERS AND OTHER STAKEHOLDERS OF THE INVOLVED COMPANIES:**

- raise the matter with the involved companies and communicate that such business practice is unacceptable.

## **WSRW RECOMMENDS THAT THE GOVERNMENT AND PEOPLE OF THE CANARY ISLANDS**

- issue their strongest opposition to Kosmos Energy's oil drilling in the coastal waters of Western Sahara, in light of the complete lack of transparency and debates over the environmental risk.

## **WSRW RECOMMENDS THAT THE UNITED NATIONS**

- ensure the rights of the people of Western Sahara are protected, by exerting pressure on Morocco to accept a self-determination process in Western Sahara and by intervening to prevent the Moroccan government's provocative oil programme in the occupied territory.
- immediately delist companies involved in the exploration or exploitation of oil in Western Sahara from its Global Compact initiative, so as to be in line with its own Legal Opinion on the matter. The lack of consent from the Saharawi people of the territory (who, it is again noted, were the sole inhabitants of Western Sahara when it was invaded in 1975) is clearly documented, and none of the companies involved in these oil practices have bothered to seek their consent or respect their wishes.

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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

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