

Brussels  
27 March 2017

Atlas Copco AB  
SE-105 23 Stockholm, Sweden  
Att: Mr. Ronnie Leten  
President and Chief Executive Officer

**Request for comments and clarifications  
Regarding Atlas Copco's role in phosphate production in occupied Western Sahara**

Dear Dr. Leten,

In the near future, Western Sahara Resource Watch will publish two reports which will mention Atlas Copco. Both will address your company's deliveries and supplies to the Moroccan state owned company OCP SA (OCP) for the purpose of mining in occupied Western Sahara. We write in order to seek clarifications and comments to include in these reports.

The first report is our annual report "P for Plunder", in which we expect to outline the companies involved in the production and trade of phosphates from the territory. The report is to be published in April 2017, with support from the Swedish NGO Emmaus Åkvarn. The report will outline the volumes and values of the trade for the year 2016. For comparison, the report for 2015 can be accessed here: <http://www.wsrw.org/a243x3438>

The second report is a study done in partnership with Emmaus Stockholm, on the commercial relations between Sweden and the occupied territory in view of the Court of Justice of the EU judgment of 21 December 2016. The findings of that report will probably be made public in July or September.

Our questions relate to Atlas Copco's understanding of international law, what your company has done so far, and the plans you have on this issue.

Before we get to that, allow us first to summarise the correspondence that we had with your company in 2013, after we had discovered and considered Atlas Copco's provision of material support to the controversial mine:

- On 25 May 2013, our organisation sent a letter to your company outlining our concerns about equipment deliveries to OCP (and that company's operating subsidiary in occupied Western Sahara), and we suggested a meeting. In a meeting we had hoped to go through all aspects of the controversy, including the legal aspects, strategy forward, and certain errors on your website.
- On 5 June 2013, we received a response from your Vice President Corporate Responsibility that some of the errors on your website were acknowledged, and that our offer to meet was welcomed. Atlas Copco stated it would be practical to have a meeting in which the Swedish Western Sahara Association was also to be present. On 19 June 2013, we agreed on meeting on the 22 August 2013. WSRW bought tickets to Stockholm.
- In a mail on 8 July 2013, Atlas Copco informed that "We are organizing a formal stakeholder dialogue and have confirmation from several key investors and Amnesty international. The objective is to first get a clear understanding of the political, human rights and business situation and then develop an action plan." Atlas Copco expressed regret that the meeting scheduled for 22 August 2013 therefore could not take place.
- WSRW suggested on 8 July 2013 that our association could meet with Atlas Copco outside of the scope of your wider consultations. WSRW also expressed concern about calling a meeting with Swedish NGOs a "stakeholder meeting", as these groups are not really affected by the trade. We also expressed that your suggested meeting partners may well have competence on human rights, but that we could not guarantee how much they knew about the matter of phosphate mining in the non-self-governing territory of Western Sahara which we had initially contacted you about. We insisted that WSRW and

Atlas Copco should still meet, underlining that WSRW will be in Stockholm for the dates for which we had bought tickets. We also offered to meet elsewhere.

- On 5 August 2013, Atlas Copco wrote that it “is organizing this dialogue as the first step towards addressing the situation regarding West Sahara and hopes to use the insight of all participating parties to develop an action plan. A brief one-on-one meeting as you propose does not afford the complex issue the time or type of discussion that would result in a concrete and constructive way forward. In the interest of having a productive and completely transparent dialogue on the way forward, Atlas Copco has decided to decline any requests for one-on-one meetings regarding West Sahara, including the one we have scheduled for the 22nd. We do however value your expertise and insight, and sincerely hope you will be able to join the stakeholder dialogue.”
- On 10 August 2013, WSRW asked why Atlas Copco, as a matter of principle, would decline requests for one-on-one meetings. We expressed regret over your company’s unwillingness to meet after first having agreed it would do so. We asked for clarifications on the purpose of the proposed stakeholder dialogue, and accepted that we could meet up on parts of the larger consultation your company was undertaking. We asked for input to how to connect online, but never heard back.

An article on Atlas Copco’s website called “Business near occupied and Non-Self Governing territories” elaborates on your position on Western Sahara. The article was originally published in 2013 and is found here. <http://www.atlascopcogroup.com/sustainability/living-by-the-highest-ethical-standards/complex-markets/occupied-territories>

Some errors on that website were corrected following our 2013 observations, but it has seemingly remained unchanged since. Other errors remain to this date.

Several developments in international law and Western Sahara have taken place since that year. In 2015 the CESCR committee of the UN Human Rights Committee and the African Union each expressed concern that Morocco is exploiting resources without first seeking the consent of the people of the territory.

Most importantly, however, is the 21 December 2016 judgement of the Court of Justice of the EU (CJEU) in the case *European Council v. Front Polisario (C104/16P)*. The judgement clarifies that Western Sahara is to be treated as a third country in the EU-Morocco relations, and that no trade agreements can be legal for the territory unless first having sought the consent of the representatives of the people of the territory.

The judgement is clear in § 106 that the discussion of benefits is irrelevant: the test is whether the representatives of the people of the territory have consented. This aspect was a key point in our first letter to you on 25 May 2013.

Since Atlas Copco has not been willing to meet with us, we hope that questions which we had wanted to address can be addressed in writing instead.

#### **Regarding the contract**

1. What kind of spare parts and services have been provided to the mining operations in Western Sahara since its sales in 2008?
2. For how long is Atlas Copco obliged to deliver such parts and services in Western Sahara?
3. What has been the value of these parts and services since 2008?
4. When did Atlas Copco last have people on the ground in Western Sahara for maintenance and service?

#### **Regarding Atlas Copco’s interpretation of international law**

5. Atlas Copco states that it complies with the law. Considering the judgment of the Court of Justice of the EU, clarifying that Western Sahara is a distinct and separate territory from Morocco: which *national* laws, according to Atlas Copco, apply when carrying out business engagement in Western Sahara?
6. Atlas Copco states that it is “legally obligated to sell spare parts and services to mine in Western Sahara and all other mines owned by the Moroccan customer”. From this sentence, one gets the impression that it is Atlas Copco’s opinion that the mine is legally owned by the Moroccan customer, OCP. What does Atlas Copco conclude on the question of the legality of OCP’s operation in Bou Craa, Western Sahara?

7. Does Atlas Copco agree that the consequence of the principles outlined in the CJEU judgement is that the company need to seek the consent of the representatives of the people of Western Sahara?
8. Has Atlas Copco any evidence to suggest that OCP has sought the consent of the people of Western Sahara upon undertaking the production and export of phosphates?
9. On its website, Atlas Copco writes that “the United Nations Legal Counsel states that all foreign economic activity in Non-Self-Governing-Territories such as Western Sahara must ‘first, be for benefit of the people of those Territories; and second they must be carried out on their behalf, or in consultation with their representatives’”. It is our observation that this is a selective reading of the 2002 legal opinion, and does not represent the content of the conclusion of that much referred UN document. Will Atlas Copco now, following the clear result of the 2016 CJEU judgment, amend the references to the UN Legal Opinion so that it correctly reflects the conclusion of the Corell opinion?

### **Regarding your company’s approach since 2013**

10. Your website states that “Atlas Copco will schedule a stakeholder dialogue [...] to determine the way forward.” We believe you here refer to the “stakeholder dialogue” undertaken on 19 August 2013. What was decided from Atlas Copco as the way forward?
11. Are more such dialogue meetings scheduled, or will Atlas Copco amend the website article so that it does not longer claim to have a plan to engage with stakeholders (in Sweden)?
12. Did anyone from Western Sahara take part in the so-called “stakeholder meeting”?
13. Atlas Copco’s Vice President Corporate Responsibility wrote in a mail on 9 July 2013 that the NGOs (in Sweden or internationally) “are not the ultimate or most important stakeholder in this issue (which the Sahrawi people are)”. Did your company approach the representatives of the people of the territory before or after the stakeholder meeting?
14. Does Atlas Copco’s mentioned decision to not have one-on-one meetings regarding Western Sahara apply to the owners of the phosphates – the Saharawi people?
15. Has Atlas Copco’s position on not having one-on-one meetings regarding Western Sahara changed following the judgement from the CJEU stating that the representatives of the people of Western Sahara first need to consent?

Please let us know if our questions above are not clear, or if you require additional information to respond to them. In the interest of having a productive and completely transparent dialogue on the way forward, we will publish this letter, and the response that you provide.

We look forward to hearing from you.

If your response is to be included in the report, we request your reply prior to 10 April 2017. A reply can be sent to [erik@wsrw.org](mailto:erik@wsrw.org)

Yours sincerely,

/sign./

Erik Hagen  
Board member,  
Western Sahara Resource Watch