

The complaint: The Norwegian Support Committee for Western Sahara (NSCWS) and Sjøvik AS concluded with a negotiated joint statement on 2 July 2013

Reflections made by the secretariat of the Norwegian National Contact Point (NCP) before the follow-up meeting on 15 May 2014

The NCP refers to its final statement of 3 July 2013 with a summary of the process and the NCP's role in the case. We wish to gain wisdom from the case and are grateful for subsequent contributions. We emphasise the following four matters for the following-up meeting on 15 May 2014:

*1) Uncertainty about the hired consultant's role*

The NCP has established a practice of hiring a consultant pursuant to the Public Administration Act Section 11 to assist the secretariat in meeting its duty to provide guidance. The consultant's role is to provide advice and guidance to the parties as necessary, but not to speak on behalf of or represent any of the parties at meetings. When such consultants are hired in the future, the NCP should make it even more clear to the parties what role the consultant should have as an adviser and, if relevant, participant at meetings.

*2) Disagreement about the use of lawyers*

In the future, the NCP will further emphasise that the parties are encouraged to engage in non-judicial dialogue in cases where it is not the intention that lawyers speak on behalf of the parties. This is not an obstacle for the parties being assisted by a lawyer or other form of counsel if this is deemed expedient. The NCP will consider changing its procedural guidelines to underline this.

*3) Follow-up measures – challenges for the NCP*

The parties have agreed on measures for following up the negotiated joint statement. An agreement of this kind, entered into under the auspices of the NCP, is not legally binding. It is up to the parties to make the agreement as precise as possible, using mediators and guidance from the NCP/secretariat or hired consultants as necessary. For example, this can apply to both which measures are to be implemented and to how and when the parties are to document their implementation. This is important for ensuring that both parties trust that the measures agreed on will be implemented.

The NCP's possibility of assessing the parties' respective follow-up of the agreement depends on what follow-up the parties have agreed on and what information the parties are willing to share with the NCP. For future negotiated joint statements (using an external mediator), the NCP will further encourage the parties and mediator to be as specific as possible, particularly with regard to the type of follow-up of the measures agreed on, how they will be followed up, and what documentation of the follow-up, if any, will be presented, when and to whom. The NCP will also consider emphasising the importance of such clarification of expectations in relation to following up negotiated cases in our procedural guidelines.

*4) Unintended 'ripple effect' of the negotiated joint statement*

The NCP has seen that the negotiated joint statement in this case has been referred to by other companies as evidence that the OECD/the NCP has 'approved' financial activities in the Non-Self-Governing Territory of Western Sahara. This is not the case, and in the NCP's aforementioned final statement, we have attempted to underline the scope/precedent impact of the parties' agreement. We now see that this could have been made even clearer and that it preferably should have been underlined in the agreement itself. For future negotiated joint statements, the NCP will encourage the parties and

mediators to more clearly state what the agreement does *not* cover, particularly if significant matters related to the complaint to the NCP that formed the basis for dialogue/mediation are not covered.