

Statement from the Norwegian Contact Point for OECD's Guidelines for Multinational Enterprises.

Complaint from the Forum for Environment and Development on the activities of Aker Kværner in Guantanamo Bay

On the 20th June 2005, the Norwegian Contact Point for the OECD's Guidelines for Multinational Enterprises received a complaint from the Forum for Environment and Development (ForUM) concerning the activities of Aker Kværner in Guantanamo Bay. The ForUM is of the opinion that Aker Kværner, through its ownership of the daughter company Kværner Process Services Inc. (KPSI), breaches Chapter 2 point 2 of the Guidelines, on respect for human rights, by giving technical assistance to the prison facilities at Guantanamo Bay.

Background:

The OECD's Guidelines for Multinational Enterprises give recommendations from the governments of the OECD countries to multinational enterprises operating in or out of these countries. They contain voluntary principles and standards for responsible business practices that cover many areas, and give instructions as to how a company should behave in the countries where it sets up business. The Guidelines aim at promoting sustainable development through challenging trans-national enterprises to respect human rights, take responsibility for the environment and social development, and counteract corruption.

The actual clauses this case rests on come from Chapter 2 point 2 that states that enterprises should: "respect the human rights of all those affected by their activity, in agreement with the international commitments of the host government". The National Contact Points for the Guidelines are responsible for disseminating knowledge of the guidelines, answering questions arising from them, and contributing to the solving of disputes that are brought before the Contact Point concerning the implementation of the guidelines. The Contact Point can, for example, offer a forum for discussion among interested parties, discuss situations that come in under the guidelines, and solve problems that arise between companies and their employees or others that come under the auspices of the guidelines.

In Norway the National Contact Point consists of representatives from the Ministry of Foreign Affairs, the Ministry of Trade and Industry, the Confederation of Norwegian Enterprises and the Norwegian Confederation of Trade Unions. The Contact Point had meetings with Aker Kværner and ForUM on the 5th of September and the 26th of October to discuss ForUM's complaint and to assist the partners to come to a solution.

The activities of the company:

Through its ownership of its American daughter company Kværner Process Services Inc. (KPSI), Aker Kværner has been carrying out work for the American Ministry of Defence on the large American marine base of Guantanamo Bay, Cuba since 1993.

According to information received the tasks carried out by KPSI at the marine base are maintenance tasks including ensuring that electricity and water supplies and sewage services function. After the 11th of September 2001 an internment camp for terror suspects was built in connection with the marine base, the so called x-camp for the internment of individuals taken captive in connection with military operations in Afghanistan. Other companies through separate contracts with the American authorities built the camp. KPSI does not have a contract for the running of the prison, but has assisted with repairs of water pipes, electricity lines etc. that are common both to the prison and the marine base. KPSI's contract expires in a short time. The company put in an offer for further work on the Guantanamo Bay base in the spring of 2005, but did not win the contract. The company's engagement in Guantanamo Bay will therefore be terminated by March of 2006, and as a result of this KPSI will be closed down.

The Arguments of the Parties:

ForUM is of the opinion that Aker Kværner, through its ownership of KPSI, carries out an activity that is in violation of the OECD Guidelines Chapter 2 point 2. ForUM refers to the fact that the International Red Cross Committee, Human Rights Watch and Amnesty International have all drawn attention to the fact that the prison is run in ways that violate international standards both of human rights and humanity. These

violations include torture and other forms for gruesome, inhumane or humiliating treatment or punishment. The camp also violates the protection of basic legal rights and guarantees. ForUM challenges Aker Kværner and KPSI to end their engagement at Guantanamo as a consequence of these issues.

Aker Kværner claims that the company has continuously evaluated the ethical aspects of its activities, but has found no arguments of sufficient weight to abort its activities at the marine base. They refer to the fact that the prison facilities were built ten years after KPSI started working on the marine base. The company has no part in the running of the prison. Because the maintenance and supply functions are common to both base and prison however, KPSI has in periods worked on request with electricity, water and sewage supply maintenance in the prison facilities, including in the cells. Aker Kværner is of the opinion that this is not a violation of the OECD Guidelines.

The evaluation of the Contact Point:

This case is not about whether Aker Kværner has violated human rights. Only States are directly committed to the Human Rights Convention, and companies cannot be held responsible for breaches of human rights. However companies can, through their actions or their lack of actions, be accessories to or profit from the fact that States commit violations of human rights. Chapter 2 point 2 is founded on an ethical evaluation of these issues. The question that must be asked in relation to this case, then, is whether the company through its activities has or has not "respected the human rights of those that are affected by their activities in agreement with the international commitments of the host government".

The Contact Point refers to a number of reports from international organisations that express extreme concern that the prison facilities at Guantanamo Bay are run in a fashion that violates human rights. Although the activities at the marine base are not a target of this criticism, the changes that the prison has brought to the total picture in the last few years are well known.

Aker Kværner/KPSI is primarily engaged at the marine base, but in periods has contributed on request to the maintenance of supply functions that are common to prison and base. The OECD guidelines state that enterprises should "respect the human rights of those affected by their activities". It is the opinion of the Contact Point that the activities that the company has carried out can be said, at least partly, to have affected the inmates of the prison. The running of the prison is dependent on the type of infrastructure maintenance that KPSI has carried out.

The Contact Point notes that there is confusion about both the type and extent of Aker Kværner's activities in Guantanamo. In the course of the handling of this case the company has been repeatedly requested to present documents that shed light on its activities in Guantanamo Bay. It is the Contact Point's opinion that Aker Kværner could have delivered a great deal more documentation without compromising customer confidentiality. Neither has the company presented any documentation showing what ethical evaluations were made internally in respect of the activities in Guantanamo Bay, nor any form for discussion of the problem on the Board of Directors. No documentation has been produced showing what type of formalised concrete framework, guidelines or similar measures exist that can be utilised under the evaluation of the ethical aspects of activities. It is however confirmed that OECD's guidelines have not been the basis for Aker Kværner's ethical evaluations.

The Contact Point emphasises that it is important that Norwegian enterprises continuously evaluate their engagements in relation to human rights. The delivery of goods or services under conditions such as those characterising the prison on Guantanamo make special demands of the awareness of the company in relation to its social responsibility. With this in mind, it would have been natural for the company to have given the ethical aspects of continued activity a thorough documented evaluation in connection with its offer for contract renewal in 2005.

The Contact Point has noted that the company does not appear to have drawn up ethical guidelines for its activities. The Contact Point strongly encourages the company to draw up such guidelines, and to use them in all countries where Aker Kværner is active. The Contact Point emphasises that the norms that are quoted in OECD's Guidelines for Multinational Enterprises, Chap.2 point 2 are international, and therefore have equal relevance and weight in all countries.

For OECD's guidelines for multinational enterprises, see:

http://www.oecd.org/topic/0,2686,en_2649_34889_1_1_1_1_34529562,00.html