

C2 - Internal Use Only***Greens PQ - Holdings in Potash Corp and FMC Corp******What is the Issue?***

Both Potash Corporation and FMC Corporation¹ have received significant amount of negative coverage lately for sourcing phosphate from Western Sahara, a territory which is not self-governed and which has no recognized administrator. In 1975, the International Court of Justice ruled that Morocco has no legal claims to Western Sahara and is consequently not entitled to exploit natural resources belonging to Western Sahara for its own profit.

The Norwegian Pension Fund excluded both Potash Company and FMC Corp (December 2011) because it views exploitation of the phosphate resources of Western Sahara constitutes a gross violation of norms. This is not only because of the fact that the local populations are not receiving the benefits, they believe the current manner of exploitation is also contributing to maintaining an unresolved situation, and consequently Morocco's presence in a territory over which it does not have rightful sovereignty.

GNZS Position

There are some differences between the Guardians and Norway's approaches to responsible investment – we exclude some stocks the Norwegians do not and vice versa – and this is for clearly stated reasons arising from legislation, investment mandates or both.

When determining our RI position relative to sovereign states, including whether we should engage with a company on sovereign issues, our interpretation relies a lot on official policy views and actions of the New Zealand Government. NZ currently doesn't have any trade sanctions against Morocco. Should this position change, for example as a result of the application of sanctions, we would of course take it very seriously.

GNZS plans to send a letter of engagement – to both the companies that when companies operate in conflict zones – we expect them to do in accordance with the *UN Guidance on Responsible Business in Conflict-Affected and High-Risk Areas: A Resource for Companies & Investors* (http://www.unpri.org/files/Guidance_RB.pdf).

¹ Potash Corporation is a Canadian company – one of the world's largest fertilizer company. FMC Corporation is a US based diversified chemical company. It manufactures insecticides, termiticides, lithium, alginates, carrageenan, microcrystalline cellulose, alkali chemicals, soda ash, hydrogen and a range of other types of chemicals

From: Sarah Owen
To: [REDACTED]@parliament.govt.nz"; [REDACTED]
Cc: Tim Mitchell; [REDACTED]
Subject: Background to Parliamentary Question - FMC Corporation and Potash Corporation of Saskatchewan- 2012 February
Date: Tuesday, 14 February 2012 4:50:54 PM

Dear [REDACTED]

Below is the PQ and some background information from Tim Mitchell, General Manager Corporate Strategy, sent to ensure that we comply with our 'No surprises' obligations. [REDACTED] is currently on leave so I have sent this to you.

Please contact me should have any questions and I can follow up with the relevant person.

Kind regards
 Sarah

Parliamentary Question: 10 February 2012 – Russell Norman

Does the New Zealand Superannuation Fund have an investment in FMC Corporation and/or Potash Corporation of Saskatchewan; and if so, what is the current value in New Zealand dollars of the investment(s)?

Answer

At 8 February 2012 the New Zealand Superannuation Fund had the following holdings in FMC Corporation and Potash Corporation of Saskatchewan:

| Security | Number of Shares | Value in NZD |
|------------------------------------|-------------------------|---------------------|
| FMC Corporation | 2,038 | 231,779 |
| Potash Corporation of Saskatchewan | 25,900 | 1,442,951 |

Background information about Potash Corporation and FMC for Treasury and Minister of Finance

Both Potash Corporation of Saskatchewan (Potash) and FMC Corporation (FMC) manufacture fertilisers and other types of agricultural chemicals. Both have received negative media coverage for sourcing phosphate from Western Sahara, a territory which is not self-governed and which has no recognized administrator. Since 1975, 85% of the territory of Western Sahara has been occupied by Morocco.

In December 2011 the Norwegian Ministry of Finance, on the recommendation of the Council of Ethics for the Government Pension Fund Global (GPF), directed the GPF to exclude both Potash Corporation of Saskatchewan and FMC Corporation. In announcing this the Ministry made the following statement:

Potash and FMC purchase phosphate from the Moroccan company Office Cherifien des Phosphates (OCP). OCP extracts phosphate in Western Sahara, a territory which is not

self-governed and which has no recognised administrator. In 2002, the UN's legal adviser issued a general legal opinion on the legality of mineral resources extraction in territories which are not self-governed, which also included a specific assessment of this issue with regard to the situation in Western Sahara. The opinion stated that mineral resources extraction in territories which are not self-governed is only acceptable if it benefits the local population of the territory. The Council on Ethics takes the view that the interests of the local population are not served by OCP's operations, and that it is this unacceptable situation which constitutes the core of the breach of ethical standards in the present case.

Further, the Council on Ethics wrote that not every company which purchases phosphate from Western Sahara must also necessarily be said to be acting unethically. In its evaluation of this issue, the Council on Ethics considered various matters, including the companies' knowledge about and specification of the source of the phosphate, the interchangeability of the phosphate, and the companies' contractual ties with OCP. In its decision to adopt the recommendation of the Council on Ethics, the Ministry of Finance has attached particular weight to the fact that the companies know the origin of the phosphate, that they specify that they want phosphate from the particular Western Saharan mine in question, and that it appears likely that the companies will continue to purchase this particular phosphate for the foreseeable future.

Whenever one of the Guardians significant peers excludes a company we add that company to a watchlist (if it is not already on that watchlist) for potential future engagement. How and whether to engage with the companies on that watchlist is determined by a number of factors outlined in our Responsible Investment Framework: <http://www.nzsuperfund.co.nz/index.asp?pageID=2145879296>

Regards
Tim Mitchell
General Manager Corporate Strategy

Western Sahara

- WSRW report 2017 on the export of Phosphate: http://www.wsrw.org/files/dated/2017-04-24/p_for_plunder_2016_web.pdf

Political Controversy

Morocco claims sovereignty over Western Sahara however it is not recognised by any state not the UN. Accordingly, its claim was rejected by the International Court of Justice.¹ 16 October 1975: The International Courts of Justice publishes its advisory opinion on the status of the Territory before colonization by Spain. "... the Court has not found legal ties of such nature as might affect the application of resolution 1514 (XV) in the decolonisation 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."

Morocco built a sand wall along the length of the Sahara to mark its territory. Many Saharawi families have been separated since and reside in refugee camps.

Morocco's exports of phosphates from the occupied Western Sahara

What is Phosphorus rock?

Phosphate rock contains the chemical phosphorous (or *P*) which is essential for life. *P* found in Phosphate rocks are mainly used for fertilising. In 1947, Western Sahara's phosphate reserves were discovered in a place called Bou Craa, south East of El Aaiun. The discovery of those phosphate reserves was a first potential source of mineral revenues for Spain.

The issue

Phosphate rock is the main source of income for the Moroccan government who illegally (under international law) hold territory of the Western Sahara. OCP which is Morocco's national phosphate company manages the operation of the Bou Craa mine. The main concern on the international stage is for the Saharawi people who were colonised by the Moroccans in 1975 (after transfer of power from Spain). The Saharawian people also receive no benefits from the 'exploitation' of *P* and have consistently opposed the trade and continue to fight for their political self-determination in Western Sahara.

According to the WSRW Report 2017, an estimated 1.86 million tonnes, with an estimated value of \$213.7 million was exported from Western Sahara in 2016. Morocco has sold all of the high quality top layer phosphate and have begun mining the second layer.

Reported conflicts

- 1976: Fighting breaks out between Morocco and Front Polisario Groups after the Spanish colonial administration of the territory ended.

1

- Aminatou Haidar, a Saharawi human rights defender from El Aaiun, capital of Western Sahara. Aminatou has campaigned since her late teens for Saharawi rights, paying the price with imprisonment, torture and becoming a disappeared person for 4 years from the age of 20. Again in 2005 she spent 7 months in prison, 178 members of the European Parliament, among many others, signed a petition for her release.
- 2008: King of Rai aka Algerian pop star Cheb Khaled was assaulted for his views of sympathy towards Polisario and Western Sahara conflict. He wore a Saharawi flag on his shoulders during concert. People were throwing glass bottles at him. Suffered a minor leg injury and continued on stage
- 2009: Aminatou Haidar began her protest at the airport at Lanzarote on Spain's Canary Islands, after Morocco denied her entry into her native Western Sahara in mid-November.
- 2010: clashes between the Moroccan security forces and Saharawi protestors resulting in a number of deaths and injuries.
- Build-up of refugee camps near Tandouf where there have been reports of human rights abuses that MINURSO forces are turning a blind eye to.
- Morocco uses intimidation and harassment to silence the Saharawis in the occupied areas. Hundreds of Saharawis continue to languish in prison while the fate of about 500 Saharawi civilians and 151 Saharawi prisoners of war is still unknown. Morocco continues to restrict the access of journalists and independent observers to Western Sahara.

International Response

- ICJ 197: There is no established tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. It urges the decolonisation of Western Sahara and in particular the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.
- MINURSO is the only UN mission established since 1978 without a human rights mandate.
- MINURSO – the U.N. Mission for the Referendum in Western Sahara created in 1991- leave it to the people to vote on whether they want independence or control by Morocco.
 - UN Security Council Resolution 1979 on Western Sahara passed by the Security Council for the first time recognises the need to improve human rights in the disputed Territory, but failed to respond to South Africa and Nigeria's calls to establish human rights monitoring.
 - Security Resolutions on Western Sahara:
<http://www.un.org/en/peacekeeping/missions/minurso/resolutions.shtml>
- The UN Mission for Referendum in Western Sahara (MINURSO) was established in 1991 to oversee a referendum in which the people in Western Sahara would choose between independence or integration with Morocco. Despite the previous publication of UN approved voter lists Moroccan objections to voter lists has meant the referendum has never taken place.

- 30 July 2002: The UN Security Council Resolution S/RES/1429 (2002) states that is ready to consider 'any approach which provides for the self-determination' of the people of Western Sahara.
- Security Council Extends Mandate of UN Mission for Referendum in Western Sahara until 30 April 2012, Unanimously Adopting Resolution 1979 (2011). The UN Security Council continue to call the Polisario Front and Morocco to continue to negotiate and resolve the current political situation in good faith. It further called for continued negotiations without preconditions and in good faith, taking into account efforts made since 2006, with a view to achieving a just, mutually acceptable political solution that will provide for the self-determination of the people of Western Sahara.
- Security council again extended their UN mandate in 2013 for another year with the same mission to monitor ceasefire in Western Sahara and organising a referendum on self-determination for the people of the territory. The SC has applauded PF, Morocco, Algeria and Mauritania's efforts at working towards an acceptable political solution.
- In a 2017 statement by the Saharawi government, they say that "The Saharawi people have patiently supported the commitment of the United Nations to a self-determination process in Africa's last colony. They could no longer give themselves to such a process while remaining indifferent to the rule of law in the international order. If the Saharawi people aspire to be a responsible member of the international community, then they have a role to play in improving the legal framework for the decolonization of Western Sahara."
- France in particular which has done more than turn a blind eye. It has used its threat of a veto twice before to prevent the inclusion of human rights monitoring in MINURSO's mandate. France, a champion of human rights in many contexts, and which could have the greatest influence with Morocco if it chose to use it, has turned its back on support for human rights for Saharawis.

The social impact of phosphate mining

Phosboucraa is the fully owned subsidiary of OCP. Their main activities are the extraction, beneficiation, transportation and marketing of the Phosphate ore in the Bou Craa mine. They also a loading dock and treatment plant on the Atlantic Coast at El Aaiun.

OCP claims that they have created many social benefits:

- Phosboucraa is the largest private employer in the area.
- Phosboucraa has around 2,100 employees
- Phosboucraa more than half of its employees are locals
- Phosboucraa is the major provider of economic viability and well-being of the region's inhabitants
- It provides pensions to retirees, medical and social advantages to employees, retirees and their families.

But the Saharawi people contest the belief that the mining and exportation of phosphate rock was somehow a benefit to the people in Western Sahara. The refugees have not also seen anything form the trades: "Consider this: A high quality phosphate rock for agricultural fertilizer is sold at a profit and benefits the nutrition of children in countries such as Canada and New Zealand. Meanwhile, the rightful owners of the resource, including Saharawi children, face poor food security in refugee camps. The injustice of this situation could not be more apparent."

NZ

The WSRW claim that 2 NZ companies are involved in importing/exporting from the Western Sahara. This is based on data of ships entering and leaving the El Aaiun harbour. The two NZ companies are Ravensdown Co-op Ltd and Ballance Agri-Nutrients Ltd. The WSRW calculated the value of imported phosphate to NZ was at 25 million in 2015 and increased to 40.1 million in 2016.

Ballance is a New Zealand fertiliser company that imports hundreds of thousands of tonnes of phosphate every year from an illegal mine in a brutally occupied territory called Western Sahara.

Ravensdown and Ballance are the (only) two member companies of the Fertiliser Association of New Zealand and supply 98% of all fertiliser used in New Zealand, a \$2billion market share.

Seizure of cargo destined for NZ

On May 1 2017, the government of the Saharawi Arab Democratic Republic (the SADR) and the Saharawi national liberation movement, the Polisario Front, obtained a civil court order to detain a cargo of phosphate mineral rock transiting through South Africa, illegally exported from occupied Western Sahara in April. The 54,000 metric tonnes cargo, purchased by the New Zealand fertilizer company Ballance Agri-Nutrients Limited, has a value estimated at more than \$7 million (NZD). In June, the High Court of South Africa has affirmed the correctness of the May 1 order and that the cargo had been obtained on proper grounds. There is now a civil suit re ownership rights of the cargo. Over the years, virtually every phosphate purchasing company had been warned of the risks of importing the commodity, including that ownership rights to it could not be transferred because of the illegal occupation of Western Sahara. The South African court noted that "Morocco has no claim to sovereignty over Western Sahara ... Furthermore, it acquired the territory by force" and that "we conclude that howsoever Morocco's presence in Western Sahara may be described, it does not exercise sovereignty over the territory".

The Saharawi government is seeking to protect its natural resources of Western Sahara while the territory continues to be occupied by Morocco. The court particularly noted that the consent of the Saharawi people was needed for the trade or otherwise agreements concerning such things as natural resources.

Fish

Western Sahara became news because of the announcement that a New Zealand company, Sealord, is involved in the exploitation of resources from this region by importing fish from Moroccan companies operating in this occupied country.

A business perspective on the issue:

- Ravensdown says Moroccan phosphate is better than others because of its lower cadmium and other toxic element content
- Morocco and Western Sahara produce three quarters of the world's phosphate exports, and phosphate is essential for plant growth. The implication is that because global, and New Zealand agriculture in particular, is dependent on international phosphate trade from a few sites, including Western Sahara, we should accept current oppression as collateral damage. It's the price we pay for our meat and milk.
- Phosphate is essential to growing our food

- But we need a different agricultural model that doesn't demand intensive fertiliser inputs that come with a human rights abuse price tag.
- "Federated Farmers, the Fertiliser Association, and their constituent parts continue to inflict self-interested, market driven externalities on communities and the environment both here and in Western Sahara. As usual, social and environmental injustices are linked. Just as our milk and cheese and meat are linked to nutrient pollution in our waterways, so are they all linked to oppression in Western Sahara."- The Daily Blog NZ

Claims of Human Rights breaches

Alleged HR abuses:

- Denial of the right to self-determination
- Denial of civil and political rights
- refusal to allow peaceful demonstrations
- arbitrary arrest and detention
- torture, degrading treatment and death
- Illegal exploitation of the natural resources of the Saharawi people

In 2015, unemployed Saharawian graduates protested against OCP's employment policies. For over a month, there were demonstrations on the streets of El Aaiun and protests have continued since. In March 2017, 60 unemployed Saharawian's took control of a bus owned by Phosboucraa and threatened to self-immolate in protest of the "systematic marginalisation of Saharawi's by the Moroccan regime.+

The 2011 Resolution includes the following:

"Stressing the importance of improving the human rights situation in Western Sahara and the Tindouf camps, and encouraging the parties to work with the international community to develop and implement independent and credible measures to ensure full respect for human rights, bearing in mind their relevant obligations under international law,

"Welcoming the establishment of a National Council on Human Rights in Morocco and the proposed component regarding Western Sahara, and the commitment of Morocco to ensure unqualified and unimpeded access to all Special Procedures of the United Nations Human Rights Council,

"Also welcoming the implementation of the enhanced refugee protection program developed by the Office of the UN High Commissioner for Refugees in coordination with the Polisario Front, which will include human rights training and awareness initiatives,"

In the SG's report on WS:

The Secretary-General recommends extending the mandate of MINURSO for a further 12 months, while noting, however, that since the Mission was established 20 years ago, the situation in Western Sahara remained unresolved and challenges to the Mission's freedom of movement and operations

during the reporting period illustrated the erosion of its ability to implement its 1991 mandate. Morocco continues to promote its autonomy plan.

UN peacekeeping force in Western Sahara must urgently monitor human rights (published by Amnesty on 18 April 2017: ahead of the UN Security Council vote to renew the WS mandate, AI are calling for the UN to prioritize human rights monitoring across the borders in Tindouf and Algeria where refugee camps are located. Human rights abuses are being committed by both the Moroccan authorities and the Polisario Front. "Enabling the UN peacekeeping mission to monitor human rights in Western Sahara and the Tindouf refugee camps is crucial for ensuring that abuses committed far from the public eye are brought to the world's attention, holding those responsible to account, and improving respect for human rights," said Heba Morayef, research director for Amnesty International in North Africa.

Over the past year, Amnesty International has continued to document human rights violations, and in particular arbitrary restrictions on peaceful protesters and activists supporting self-determination for Western Sahara, as well as breaches to their right to a fair trial and to the prohibition on torture or other ill-treatment.

The organization is also following the new civilian trial of 24 Sahrawis, including human rights and political activists, who had previously been sentenced to heavy prison terms following a grossly unfair military trial. The defendants were detained in 2010 in connection with violent clashes that led to the death of 11 Moroccan security force members and two Sahrawis, after the forcible dispersal of a protest camp in Gdim Izik near Laayoune, Western Sahara. The media blackout imposed by Moroccan authorities on the events at the time, and the controversy that surrounded the clashes, is a clear example of the urgent need for impartial, authoritative human rights monitoring in the region.

In November 2010, clashes erupted as Moroccan security forces dismantled a protest camp in Gdeim Izik outside Laayoune where thousands of Sahrawis had gathered to make a series of social and economic demands. Hundreds were arrested and 25 were later convicted by a military court, 21 of whom remain imprisoned. In 2015 Morocco amended its military justice law to end trials of civilians before military courts, in line with international human rights standards. But they are now retried in a civil court.

*** Ravensdown chairman: Mr Henderson said the New Zealand Government, the United Nations and independent legal advice all said accepting the phosphate was legal and Morocco reportedly compliant with United Nations mandates.

"We really see this as an issue for the United Nations to sort out."

Future

- There are large plans to expand the Phosboucraa plant. See WSWR report
- Since 1976 there have been many international calls for the UN to create an Human rights mandate for the Western Sahara. The current MINURSO who is the UN's peacekeeping mission has no HR mandate.

Recommendations from Groups concerned

- The WSWR recommends in their 2017 report that the Australian, Canadian, Columbian, Lithuanian and New Zealand governments assess trade in phosphates originating in Western Sahara. They recommend that these governments engage with the companies concerned to end the trade.
- Morocco had developed the 2007 autonomy plan for Western Sahara to offer an honorable compromise to settle the dispute. The plan includes Sahrawi control over most executive, legislative and judicial functions. But the Frente Polisario's position is that the territory's final status should be decided in a referendum on self-determination that includes independence as an option.

Media Search on the Western Sahara region

| Source | Date | Topic | Author | Accessed via |
|--------|------------------|---|---------------------------------------|---|
| Scoop | 13 May 2008 | Where is Western Sahara? | Human Rights Film Festival | http://www.scoop.co.nz/stories/PO0805/S00182.htm |
| Scoop | 11 June 2008 | King of Rai Latest Western Sahara Casualty (Western Sahara Supporter) | Wikileaks | http://www.scoop.co.nz/stories/WL0806/S00239.htm |
| Scoop | 19 October 2009 | Prime Minister Emphasizes Western Sahara | Wikileaks | http://www.scoop.co.nz/stories/WL0910/S01481.htm |
| Scoop | 21 December 2009 | Activist's Return To Western Sahara | United Nations | http://www.scoop.co.nz/stories/WO0912/S00525.htm |
| Scoop | 27 April 2010 | Security Council Under Pressure In Western Sahara | Australian Western Sahara Association | http://www.scoop.co.nz/stories/WO1004/S00504.htm |
| Scoop | 9 November 2010 | Western Sahara Talks Begin Amid Clashes On Ground | United Nations | http://www.scoop.co.nz/stories/WO1011/S00122/western-sahara-talks-begin-amid-clashes-on-ground.htm |
| Scoop | 21 February 2011 | Abuse, Torture, And Arbitrary Imprisonment In Western Sahara | Kamal Fadel | http://www.scoop.co.nz/stories/WO1102/S00680/abuse-torture-and-arbitrary-imprisonment-in- |

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|----------------------|-----------------|---|--|---|
| | | | | western-sahara.htm |
| United Nations | 27/04/2011 | Security Council Extends Mandate of UN Mission for Referendum in Western Sahara until 30 April 2012, Unanimously Adopting Resolution 1979 (2011) | Security Council 6523rd Meeting (AM) | http://www.un.org/press/en/2011/sc10234.doc.htm |
| Scoop | 29/04/2011 | Security Council accused of hypocrisy over Western Sahara | Western Sahara Campaign | http://www.scoop.co.nz/stories/WO1104/S00652/security-council-accused-of-hypocrisy-over-western-sahara.htm |
| Scoop | 11 April 2012 | Human rights for Western Sahara – the time is now! | Australian Western Sahara Association | http://www.scoop.co.nz/stories/WO1204/S00206/human-rights-for-western-sahara-the-time-is-now.htm |
| U.S State Government | 19 April 2013 | U.S Department of State: Western Sahara | U.S Bureau of Democracy, Human Rights, and Labor | https://www.state.gov/j/drl/rls/hrrpt/2012/nea/204390.htm |
| Scoop | 26 April 2013 | UN Mission in Western Sahara Extended For One More Year | UN News | http://www.scoop.co.nz/stories/WO1304/S00398/un-mission-in-western-sahara-extended-for-one-more-year.htm |
| Scoop | 20 October 2014 | New report on Kosmos Energy in occupied Western Sahara | Western Sahara Resource Watch | http://www.scoop.co.nz/stories/WO1410/S00138/new-report-on-kosmos-energy-in-occupied-western-sahara.htm |
| NZ MFAT | 28 April | Delivered by Gerard van Bohemen Permanent Representative of New Zealand to the United Nations, 28 April 2016. NZ abstains from adoption of the Council resolution | NZ MFAT | https://www.mfat.govt.nz/en/media-and-resources/ministry-statements-and-speeches/un-security-council-the-situation- |

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|-----------------------|---------------|--|-------------------------|---|
| | | | | concerning-western-sahara/ |
| The Daily Blog NZ | 14 May 2017 | Fertiliser causes social injustices in Western Sahara and environmental injustices here | Christine Rose | https://thedailyblog.co.nz/2017/05/14/fertiliser-causes-social-injustices-in-western-sahara-and-environmental-injustices-here/ |
| Amnesty International | 27 July 2016 | Retrial in a civilian court for Sahrawis jailed over Gdeim Izik clashes after grossly unfair military trial | Amnesty International | https://www.amnesty.org/en/press-releases/2016/07/retrial-in-a-civilian-court-for-sahrawis-jailed-over-gdeim-izik-clashes-after-grossly-unfair-military-trial/ |
| Amnesty International | 18 April 2017 | UN peacekeeping force in Western Sahara must urgently monitor human rights | Amnesty International | https://www.amnesty.org/en/latest/news/2017/04/un-peacekeeping-force-in-western-sahara-and-refugee-camps-must-urgently-monitor-human-rights/ |
| Scoop | 27 April 2017 | NZ now second biggest importer of plundered phosphate | Western Sahara Campaign | http://www.scoop.co.nz/stories/PO1704/S00287/nz-now-second-biggest-importer-of-plundered-phosphate.htm |
| Scoop | 4 May 2017 | Seizure of a cargo of phosphate rock destined for NZ See the judgment: http://www.saflii.org/za/cases/ZAE/CPEHC/2017/31.pdf | Polisario | http://www.scoop.co.nz/stories/WO1705/S00006/seizure-of-a-cargo-of-phosphate-rock-destined-for-nz.htm |
| Scoop | 6 May 2017 | Phosphate importer faces questions after ship impounded | Western Sahara Campaign | http://www.scoop.co.nz/stories/BU1705/S00244/phosphate-importer-faces-questions-after-ship-impounded.htm |

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| Newsroom | 11 May 2017 | Dobson: Western Sahara's suffering guided by NZ hands | Newsroom | https://www.newsroom.co.nz/2017/05/11/26556/nz-ripping-off-western-sahara |
| Scoop | 20 May 2017 | The detention of a vessel carrying a cargo of phosphate | AWSA | http://www.scoop.co.nz/stories/WO1705/S00056/the-detention-of-a-vessel-carrying-a-cargo-of-phosphate.htm |
| Scoop | 16 June 2017 | Saharawi on the detention of phosphate rock for NZ | Saharawi Government | http://www.scoop.co.nz/stories/PO1706/S00230/saharawi-on-the-detention-of-phosphate-rock-for-nz.htm |
| Scoop | 16 June 2017 | Ballance phosphate cargo detained | Western Sahara Campaign | http://www.scoop.co.nz/stories/PO1706/S00231/ballance-phosphate-cargo-detained.htm |
| | | Good link for accessing stories on Western Sahara | | https://www.hrw.org/middle-east/n-africa/morocco/western-sahara |
| | | Another good link to reports of HR abuses across the Western Sahara | | https://westernsahara.crowdmap.com/reports/index?sw=-13.325287%2C27.087123&ne=-13.167885%2C27.156112&s=1233446400&e=1367366399&z=8 |

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ITEM RESEARCH ON THE WESTERN SAHARA

By: [REDACTED]

Date: February 2018

Summary of findings

It has been 42 years since the Western Sahara (WS) sovereignty dispute began between Morocco and the Polisario Front (Saharawi representatives), but there's been no plausible international solution to-date. Given that Morocco's claim to sovereignty over the WS is unrecognised by the United Nations, many in the international community argue that Morocco's ongoing exploitation of the territories natural resources is violating international law, and that global companies shouldn't be party to it. However, Morocco opposes such accusations and continues to affirm their territorial integrity to the region.

Saharawi Human Rights Groups have condemned the investments in, purchases of, and support for the trade of natural resources without the consent of the Saharawi people. The Western Sahara Resource Watch (WSRW) states that *"the illegally exploited phosphate rock is the Moroccan governments main source of income from the territory [Morocco] holds contrary to International Law"*. Phosphate rock is **one** WS natural resource being traded, which has been mined since 1972. Phosphate rock is of high demand internationally as it is turned into fertiliser, which all agricultural production and life on the planet depends on. The WS people and NGO's argue that the trade of such natural resources is wrong given the unresolved sovereignty dispute.

However, Europe and NZ have taken different approaches to the sovereignty dispute. Europe sees the issue from an international law perspective, which recognises the WS as a 'non-self-governing territory', in the process of decolonisation. Therefore, Morocco's current status over WS is only as 'occupying power' and pursuant to Article 73 of the UN Charter, occupying powers must ensure that resource development is done without disregard of the interests and wishes of the people of that territory.

New Zealand takes a slightly different stance, offering full support to the United Nations Mission for the Referendum in Western Sahara (MINURSO mission), to allow the people of WS to determine its future through a referendum. The UN brokered a ceasefire in the region in 1991 based on the premise of holding a referendum of self-determination – which has never taken place. **UNSC are still split on the issue.**

[REDACTED]

The WS situation has come onto the radar of NZSF because, in 2016 and previously (see Appendix 8 for investor activity in WS), a number of international funds divested from companies operating in the region based on an assessment of the risk of particularly serious violations of fundamental ethical norms. These include, for example, the Norwegian Government Pension Fund, NEST (UK) and the BMO Global Asset Management Responsible Investment Funds. In addition, in 2016, [REDACTED] due to its continued extraction of phosphate from WS.

Given this, the Responsible Investment team reviewed the situation in order to determine if any action was needed. Some ideas for next steps include:

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- GNZS to investigate whether New Zealand companies that buy phosphate from the WS area (Ballance and Ravensdown) have appropriate mechanisms in place to ensure consent from the Saharawi people is given before purchasing phosphate. *See Appendix 2*
- GNZS to consider engagement with international companies operating in the WS (see Appendix 6) to ensure they have appropriate mechanisms in place to gain consent from the Saharawi people before selling resources acquired from the WS - would be a useful influencing factor (note that NBIM has been unsuccessful).
- GNZS to consider the use of phosphate on farms in light of the issue – what alternatives are out there?

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Appendix 1: Timeline of events

This historical reference is necessary in order to understand the complexities of the current situation in the WS.

- 1884: Spain is recognised as the colonial power of the territory of WS considered *res nullius* (nobody's property), although there was a present population.
- 1947: WS' phosphate reserves are discovered in Bou Craa, near El Aaiun. This was the first potential source of mineral revenues for Spain.
- 1962: Instituto Nacional de Industria (INI), a Spanish public company gains ownership of the mine.
- 1963: The UN Special Committee on Decolonisation declares WS a “non-self-governing territory to be decolonised” in accordance with General Assembly resolution 1514 (XV) of 14 December 1960. Resolution 1514 (XV) calls for the decolonisation of Non-Self-Governing Territories. WS wasn't 'nobody's property' in 1884 as claimed by Spain, as there were a resident population there. The Organisation of African Unity (OAU) is also established.
- 1966: The UN General Assembly requests Spain to organise, under UN supervision, a referendum on self-determination (General Assembly resolution 2229, 1966). The demand is repeated each year from 1967 to 1973, without success.
- 1968: Phosboucraa (later managed by Moroccan company OCP Group) is established to operate the mine.
- 1972: Spain starts to operate the Bou Craa mine. Many Spaniards and Saharawi people find employment opportunities there.
- 1973: The Polisario Front (PF) is founded for the purposes of establishing independence for WS. The PF is led by Saharawi activists.
- 1975: Growing international pressure to decolonise WS forces Spain to come up with a withdrawal strategy. Between May and June that year, the UN Decolonisation Committee visits the Territory of Spain, Morocco, Algeria and Mauritania. In October, the Decolonization Committee issues a report requesting the UN General Assembly to enable the local population to choose their future in free and fair circumstances. In October, the International Court of Justice (ICJ) also publishes an advisory opinion on the status of the WS territory before Spain colonised it. The ICJ were of the view that there was no tie of sovereignty between the territory of Western Sahara and the Kingdom of Morocco. The ICJ upheld the United Nations (UN) resolution 1514 for the decolonisation of WS as a Non-self-governing territory, in order to promote the self-determination of the native people. In November, Morocco launches the “Green March” where about 350,000 Moroccans marched across the border into WS. A week later, Spain, Mauritania and Morocco sign the Madrid Accords ceding administrative control of WS to Morocco (85%, 15% to Mauritania). The WS population begin to leave the cities for the open desert inland. In December, the first Moroccan troops arrive in El Aaiun and fighting erupts between the PF and Moroccan forces.
- 1976: The Madrid Accords come into effect and Spain withdraws from administration. The first refugee camps are established in the Tindouf Province of Algeria. These camps are governed by Polisario. OCP takes over management of the Bou Craa mine.
- 1979: Conflict between PF and the Moroccan and Mauritania forces continue from 1976. Mauritania signs a cease-fire with PF in 1979 and Morocco takes control of most of that territory occupied by Mauritania.
- 1980: The SADR (PF) formally apply for membership in the OAU. WS is the only African colony yet to be decolonised. Morocco withdraws its OAU membership.

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- 1981: Morocco builds the Berm wall stretching over 2700km to protect their WS territory. The construction of the wall finishes in 1987.
- 1985: A joint effort by the UN and OAU results in the presentation to Morocco and the PF of the 'settlement proposal' for a peaceful resolution of the conflict. This proposal is later adopted by the UN Security Council's (UNSC) Resolution 690, 1991. This became known as the 'settlement plan'.
- 1989: PF launches a massive attack against Moroccan troops at the centre of WS.
- 1991: MINURSO is established by the UNSC resolution 690. A few days before the ceasefire, Morocco launches attack against the PF. A ceasefire was announced in September with both sides suspending military operations.
- 1991-2001: a compilation of procedures is set in motion for the referendum. People undergo identification processes and registrations. After 8 years of delay, Morocco states that it doesn't support a referendum after all (2000). In 2001, PF reject the Secretary General's (SG) report for the integration of WS into Morocco.
- 2002: The UNSC Resolution 1429 states that it is ready to consider any approach which provides for the self-determination of the people of WS. Negotiations continue. That same year, Spain sells its 35% ownership of Bou Craa mine.
- 2003: The SG presents the Baker plan II (S/2003/565). The UNSC Resolution 1495 reaffirms the Baker Plan II as the 'optimal political solution' and urges Morocco to accept and implement it.
- 2004: Morocco rejects the Baker Plan II, rejecting the transition arrangements and the option of independence for WS.
- 2006: The UNSC reaffirms in its Resolution 1675 their commitment to assist the parties to accept a mutual political solution. In that year, Morocco also calls an UN OHCHR report, which was critical of its human rights record in WS, biased in favour of PF.
- 2007: Both parties submit their settlement proposals to the UN. The UNSC voted unanimously on Resolution 1754 which calls on the parties to have direct talks in "good faith and without preconditions". The parties talk through to 2009. Morocco presents an 'autonomy plan' which vests sovereignty in the Kingdom of Morocco. PF decline it.
- 2010: Clashes between Moroccan and Saharawi activists take place. The 24 Saharawi's who were material to the protests for economic and social demands remain imprisoned after an unfair trial. In 2015, Morocco amended its military justice law to end trials of civilians before military courts to make it consistent with international human rights standards. In 2016, the civilians were granted a retrial in the civil court due to the unfair trial in the military court. However, the civilian court of Salé in 2017 upheld the severe sentences issued by the military tribunal.
 - o Oil, Fish, Energy, Salt and Phosphate contracts continue to be made between Morocco and external companies.
- 2012: The European Union (EU) end a fishing agreement with Morocco, which included WS waters, due to concerns that it violated international law.
- 2016: 84 UN civilian staff are expelled from Morocco/WS making it more difficult to carry out the MINURSO mandate.
- In a judgement on the 21 December 2016, [the Court of Justice of the EU confirmed](#) that the territory of WS is distinct and separate from Morocco, and that the Saharawi people's right to self-determination meant that one has to seek the consent from the people of the territory (See *Appendix 3* on the differences in views between NZ and Europe on the WS situation.)
- 2016: [NZ abstains](#) from voting to adopt Resolution 690 as it has failed to achieve its objective. NZ believes that there has been no meeting of minds on the preparation of

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Resolution 690 (See *Appendix 3* on the differences in views between the NZ and Europe on the WS situation.)

- 31 January 2017, the EU Commissioner for Climate Action and Energy confirmed that due to the separate and distinct status of WS, energy produced in WS cannot be imported into Europe.
- 2017: MINURSO is still in force. No referendum has been held to date.

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Appendix 2: New Zealand - an importer of phosphate from WS

In a 2016 report from the Western Sahara Resource Watch (WSRW), NZ was identified as one of the largest importers of phosphate rock from WS. There are two NZ companies that import phosphate: Ballance Agri-Nutrients Ltd and Ravensdown Co-op Ltd who are fertiliser companies, the only two member companies on the Fertiliser Association of NZ (FANZ) and supply 98% of all fertiliser used in NZ. FarmRight which is GNZS's farm manager only sources fertiliser from Ballance – no actual figure is provided as to how much WS phosphate rock is used by Ballance (although an estimated 50-70% is used in Superphosphate manufacture).

- Ballance was previously known as BOP Fertiliser but changed its name in 2001. As BOP Fertiliser, it purchased plants and bought shares in other NZ-based fertiliser companies. For example, in 1999 it bought a 20% share in Fernz who at the time was already a long term client of Bou Craa phosphates. [REDACTED]
- The [WSRW](#) have been tracking Ballance phosphate shipments from WS. There were 3 shipments in 2016 worth about **US\$18.5 million**.
- Ballance is conscious of the WS situation and have taken their lead from the UN. [REDACTED] They have also been doing business with OCP for about 30 years and have engaged with OCP personally to complete due diligence. In addition to product quality, Ballance feel they have seen first-hand the economic development, community support, environmental and healthcare initiatives that OCP has underway in the area (see *Appendix 5*).
- Ravensdown's [position statement](#) on WS is available on their website. Ravensdown average about 35-40 shipments of phosphate rock from all over the world including from Vietnam and Christmas Island. With regards to WS shipments, Ravensdown deal directly with OCP and conduct due diligence processes with them. Ravensdown and Ballance don't reveal revenues from their use of phosphate rock from WS.
- The WSRW calculated the value of imported phosphate to NZ at \$25 million in 2015, which increased to \$40.1 million in 2016.
- There are no reports that Ballance and Ravensdown commit human rights abuses in WS. The only criticism is that they're supporting Morocco's economy by exploiting the extraction of natural resources in WS, a territory which Morocco unlawfully occupies but economically benefits from.
- According to OCP, over 73% (as at 2015) of the world's known reserves (production of about 30 billion MT currently) of phosphate rock are in Morocco and WS combined, however, **only around 2%** of the national reserves are found in WS (see *Appendix 7*).¹
- Ravensdown's position is that *"We're not convinced that the actions of two farmer-owned co-operatives on the other side of the world will change a 40 year-old political stalemate that the UN has so far failed to resolve."*

On 1 May 2017, the PF successfully obtained a civil court order to detain a cargo of phosphate rock transitioning through South Africa. This cargo was heading for Ballance and had an estimated value of NZD\$7 million. The High Court of South Africa affirmed the order in June and a civil suit regarding ownership was in progress. However, OCP, who were defending its

¹ See OCP Group's Annual Report (2015) on (pp. 22-23, 31, 184-185). Accessed via: <http://www.ocpgroup.ma/sites/default/files/alldocs/RA%20OCP%202015%20VUK.pdf>.

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rights to the cargo announced it would no longer proceed with the matter. The latest court ruling was for the cargo to remain in SA, whilst activists sue for compensation.

Ballance CEO Mark Wynne was quoted on Radio NZ saying “The determination from the court means the vessel is likely to stay in South Africa for a very long time unless we discharge cargo or pay a bond. That’s the next step.” Fifteen days after the original cargo was detained, Ballance ordered another 50,000 tonnes of phosphate rock to be put on the Greek-flagged bulk carrier, the Common Spirit, which avoided the South African territory. This shipment arrived in Tauranga on 25 June.

[REDACTED] In 2008 before the Government change-over, the then Minister of Trade, Phil Goff, wrote a letter stating that he was told by Morocco that the local community was benefiting from trades in WS. “Whatever the rights and wrongs of Morocco’s approach, the responsibility is Morocco’s. New Zealand companies breach no laws in importing phosphate extracted from WS, or marketing fish caught off its coast”.

FANZ said in a statement in 2016 that:

“We continue to actively monitor any developments in this area. At present, we do not consider there is any reason to alter our position: that we are not acting illegally, under either domestic or international law, by sourcing rock phosphate from the territory of Western Sahara, pursuant to arrangements with OCP.” FANZ is confident that domestic and international law permits the importation of phosphate rock into NZ from WS.²

GNZS and Ballance

Ballance continues to source phosphate rock from the WS as the minerals found in them are required for fertiliser used on NZ farms. According to Ballance, around 50-70% of the phosphate rock used in Superphosphate manufacture comes from Western Sahara, and this won’t be changing in the near future.

[REDACTED]

Sourcing of phosphate rock from a range of suppliers is an option – however these are blended to meet a range of criteria. Due to supply chain and manufacturing constraints, it is impossible to manufacture superphosphate from a specific / requested phosphate rock source. In addition, some of these rocks are unsuitable for use in isolation, or even as major components of a blend.

Ballance does import a range of different phosphate fertilisers, some of which are derived from phosphate rock sources other than the Western Sahara (e.g. DAP from China, Yara compound NPK fertilisers from Europe). However continuity and availability of supply can be an issue – hence why there is a need to have all sources.

GNZS engaged with Fonterra on these matters. Consistently, they support the position that the UN are the only influencers in the sovereignty dispute. Regarding Cadmium, Fonterra

² Fertiliser Association, Newsletter-Fertiliser Matters, Issue 71 (November 2016). Accessed via: http://www.fertiliser.org.nz/Site/resource_center/newsletter_fertiliser_matters/default.aspx

³ Also see Topical Issues Papers for more info on Cadmium and Phosphorous Fertilisers, FANZ, http://www.fertiliser.org.nz/Site/resource_center/Topical_Issues.aspx

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agrees that NZ requires lower levels of Cadmium in its soil, which is achieved by mixing minerals with phosphate rock from WS. Therefore, OCP (Moroccan SOE) appears to be the best supplier for the level of phosphate required in NZ soil. Fonterra also believes that pursuant to the UN Guiding Principles on Business and Human Rights, companies need to be careful when withdrawing from suppliers in the operating country as they may have a worse impact on the relationships.

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Appendix 3: New Zealand's position on the WS situation

After engagement by the Responsible investment team with MFAT in December 2017, GNZS are more clear on NZ's position on the region. MFAT has provided GNZS the following statement summarising NZ's policy position:

New Zealand views the situation in Western Sahara as a 'frozen conflict', but one which will continue to threaten international peace and security as long as the root causes of conflict remain unresolved. New Zealand supports the UN process in Western Sahara, including the holding of a genuine act of self-determination by the Saharawi people, as called for by the UN Security Council.

Further dialogue between MFAT and GNZS is found [here](#).

In 2016, Gerard van Bohemen, Permanent Representative of New Zealand to the UN, abstained from voting to extend Resolution 690. Bohemen was of the view that there was no common commitment in preparing the resolution and that in New Zealand's view, the resolution fell short of what the Council should be doing to discharge its responsibilities in WS.

He states that:

"A resolution that truly reflected the gravity of the current crisis over MINURSO and the magnitude of the challenge inherent in the full discharge of the MINURSO mandate should have done the following things:

•First, the resolution should have stated the reality that the expulsion of the civilian component has seriously compromised the Mission and its ability to discharge its mandate. These facts have been repeatedly stated by the Secretariat in their briefings to the Council over the past month.

•Secondly, the resolution should have called for the immediate restoration of the full functionality of the Mission and provided for the Council's continued engagement to ensure that a return to full functionality is achieved in the near future.

•Thirdly, on the core political direction of the mandate, the Council should have taken up the sensible and appropriate advice of the Secretary-General – reiterated in this week's consultations by the Personal Envoy of the Secretary General, Christopher Ross, and Under Secretary General Herve Ladsous – that the time has come to engage in "serious negotiations without preconditions in good faith to reach a mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara." And that mutually acceptable solution should include resolution of the dispute over the status of Western Sahara, including through agreement on the nature and form of the exercise of self-determination."

NZ still reiterates its full support for the MINURSO mission, to allow the people of WS to determine its future. Abstaining representatives believed that the wording of the mandate should have been more stern (as opposed to its 'soft manner') with Morocco by giving them a deadline to allow MINURSO to resume full operations. On April 2017, the UNSC renewed the MINURSO mandate for another year and emphasised the urgent need for it to return to full functionality.

NZ in comparison to the EU view

The UNSC's current⁴ position on the WS region is as follows.

⁴ As at 28 April 2018.