Morocco’s exports of phosphates from occupied Western Sahara

International fertilizer companies import controversial phosphate rock from Western Sahara, under illegal Moroccan occupation. This report uncovers which of them were involved in the trade in 2020.
All life on the planet, and so all agricultural production, depends on phosphorus, P. The element is found in phosphate rock and turned into fertilizers. For the people of Western Sahara, their P does not grow into benefits. It’s rather the opposite.

For the eighth year in a row, Western Sahara Resource Watch publishes a detailed, annual overview of the companies involved in the purchase of phosphates from occupied Western Sahara. The illegally exploited phosphate rock is one of the Moroccan government’s main sources of income from the territory it holds contrary to international law. The Saharawi people have been consistently outspoken against the trade, both in the UN, generally, and to specific companies.

The list we present in this report is complete for calendar year 2020, naming all shipments of phosphates from occupied Western Sahara. A total of 22 vessels departed the territory with 1.1 million tonnes of phosphate rock, approximately the same level as in the record-low 2019. To compare, Morocco’s average export from the occupied territory during the years 2012-2018 was 1.8 million tonnes.

The trade to OCP’s joint venture in India and to two farmer cooperatives in New Zealand remains relatively stable from the year before, representing 64% and 20.4% of the entire trade, respectively.

After vessels transporting Western Saharan phosphate were detained in Panama and South Africa in 2017, still no shipment has gone via Cape of Good Hope or through the Panama Canal.

Two of OCP’s key suppliers to the Bou Craa mine, Continental and Epiroc, have both in 2020 ended their long engagement in the territory after pressure from investors.

After a review of sources in importing countries, WSRW has concluded that the price that Morocco earns from the trade could be approximately twice as high as we have reported in previous editions.

WSRW calls on all companies involved in the trade to immediately halt all purchases and all shipments of Western Sahara phosphates until a solution to the conflict has been found. Investors are requested to engage or divest unless action is taken.
Morocco’s claim to Western Sahara has been rejected by the International Court of Justice. To date, the UN considers Western Sahara to be a Non-Self-Governing Territory – a colony – without an administering power. According to the UN, “the permanent sovereignty over natural wealth and resources is a basic constituent of the right to self-determination.”

The UN Legal Office has analysed the legality of petroleum exploration and exploitation in Western Sahara, a resource extraction activity that is of a similar nature to phosphate mining. The UN concluded 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 international law principles applicable to mineral resource activities in Non-Self-Governing Territories.”

The UN Treaty Body on Economic, Social and Cultural Rights and the UN Human Rights Committee have both emphasized the need of obtaining the Saharawi people’s “consent to the realization of developmental projects and (resource) extraction operations.”

Yet, only weeks after the 1975 invasion of the territory, the phosphate rock of the Bou Craa mine in Western Sahara was being exported to fertilizer companies overseas. The Bou Craa mine is managed by the Office Chérifien des Phosphates SA (OCP), now known simply as OCP SA. Morocco’s national phosphate company and its illegal occupation. An official Moroccan government document leaked in 2014 literally states that Morocco “extracted volumes, and around 20% of its total export of phosphate rock.”

OCP claims that the Bou Craa mines represent only 2% of all phosphate reserves exploited by Morocco. The exceptionally high quality of Western Sahara’s phosphate ore makes it a much coveted commodity for producers of fertilizers.

However, that tale could be coming to an end. The Bou Craa phosphate deposit consists of two layers. OCP’s own reports from 2014 and 2016 contradict themselves whether only the top layer is being exploited or if the mining has already proceeded to the second layer which is of lower quality. What is clear, is that Morocco has practically sold all of the high quality phosphate that ought to have been available to the Saharawi people upon realizing their right to self-determination.

OCP claims that Phosboucraa is the largest private employer in the area, citing 2,029 employees in 2019 – and 75 percent are said to be “locals” (without specifying whether they are Saharawis or settlers). It also alleges that Phosboucraa is a major provider of economic viability and well-being of the region’s inhabitants. OCP equally boasts the social impact of Phosboucraa in terms of providing pensions to retirees, medical and social advantages to employees, retirees and their families, etc. OCP presents the purported economic and social benefits as a justification for its exploitation of phosphate mines outside of Morocco’s long-settled internationally recognized borders.

Morocco uses the Bou Craa phosphates for its political lobby-work to gain the support of other countries for its illegal occupation. An official Moroccan government document leaked in 2014 literally states that Western Sahara’s resources, including phosphate, should be used “to implicate Russia in activities in the Sahara.”

The document goes on to say that “in return, Russia could guarantee a freeze on the Sahara file within the UN.”

**Western Sahara has been under Moroccan occupation since 1975 and is on the United Nations’ list of non-self-governing territories that should be decolonised. The UN’s legal counsel stated in January 2002 that exploration of mineral resources in Western Sahara without local consent would be in breach of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.”

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**“Human rights violations in Western Sahara”

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In 2020, 1.12 million tonnes of phosphate rock was transported from Western Sahara. WSRW traced the entire flow. After the detention of vessels in South Africa and Panama in May 2017, no vessels have taken those traditional shipping routes.
The Moroccan take-over of Bou Craa mine

1942 Western Sahara’s phosphate reserves are discovered 150 km southeast of El Aaiún in a place called Bou Craa. The discovery of phosphate reserves is the first potential source of mineral revenues for the colonial power: Spain.22

July 1962 The Empresa Nacional Minera del Sahara is founded in order to operate the mine, which is owned by a Spanish public industrial sector company.

May 1966 The company is renamed Fosfatos de Bucraa S.A. also known as Phosboucraa or Dos Bucraa.

1972 Spain starts to operate the mine. Many Spaniards find employment in the mines as did the Saharwis, the native population of the Spanish Sahara, as the territory was known at the time.

1975 Mounting international pressure to decolonise forces Spain to come up with a withdrawal strategy from Spanish Sahara. A UN mission that was sent to Spanish Sahara in view of an expected referendum predicts that Western Sahara could very well become the world’s second largest exporter of phosphates. "After Morocco, maintaining a claim to the phosphate deposits is a key consideration for the colonial power. Failing to decolonise Western Sahara properly, by allowing the people of the territory to exercise their right to self-determination, Spain strikes a deal through the Madrid Accords. It illegally transfers administration over the territory to Morocco and Mauritania, while retaining a 35% share of the Bou Craa mine. As state in the world, the UN nor the people of Western Sahara recognises the transfer of authority from Spain to the two states. Mauritania withdraws in 1979, admitting it had been wrong to claim and to occupy the territory. At the same time in 1975, recouping his authority after two failed coups d’état, Morocco’s King Hassan II orders the Moroccan army to invade Western Sahara. The King may have hoped that this would give Morocco as much leverage to determine world phosphate prices as OPEC has over oil prices.23"

1 January 1976: The Madrid Accords come into effect and after a transition period of 16 months OCP would take over the management of the mines.24

2002 Spain sells its 35% ownership of Bou Craa

2014 OCP files for public subscription on the Irish Stock Exchange an inaugural bond issue of USD 1.55 billion25 as well as start to operate the mine in occupied Western Sahara. The company is founded in order to do so. OCP is the world’s biggest phosphate reserves and is the second largest exporter of phosphates in the world.26

Large plans

For years, OCP has been announcing that it will modernise the Bou Craa mine, exploit deeper phosphate layers, create higher added-value products for export, increase the El Aaiún harbour capacity for phosphate activities and expand alleged social and sustainable development projects in the Bou Craa area.27

OCP states that it plans to invest USD 2.2 billion in Phosboucraa. The aim is to diversify Phosboucraa’s operations from exporting raw material to producing intermediary products and phosphate-based fertilizers by 2022.28

The stated main objective is to develop its industrial capacity, by working on three axes: the mining site itself, the construction of a chemical plant, and work on the port infrastructure. A production capacity of one million tonnes of fertilizer per year is envisioned. The new chemical plant will include a sulfuric acid production unit, a phosphoric acid unit and a granulation unit. In addition, new extraction methods will be introduced. A washing unit will be built and storage facilities will increase. The investment also includes a new sheltered port and a wharf.29

As of 2019, construction work in the port of El Aaiún is reported to be taking place. OCP also reports that it is rolling out a reverse flotation process in Bou Craa to enrich phosphate that is of low phosphorus content, to make them economically more viable and exploitable.30

Phosboucraa is also the driving force behind the Technopole project, a scientific hub located in Foum El Oued on a 660 ha plot of land.31 According to Phosboucraa, the Technopole will be devoted to the development of the ‘Southern Regions’ and especially to the development of Phosboucraa itself.32

Peak P

Phosphate is a vital component of the fertilizers upon which much of the global food production and food security depends. For some time now, there has been concern about the world population’s reliance on a finite supply of phosphorus and the implications of this for agricultural productivity, food prices and nutrition, particularly in developing countries. The term ‘peak phosphorus’ has joined the concept of ‘peak oil’ in the lexicon of 21st century scarcity. There are no substitutes for phosphorus in agriculture.

Morocco, with or without Western Sahara, controls the world’s biggest phosphate reserves and is the second largest producer of phosphates in the world.33

The increasing global need for phosphate rock and fertilizers was a contributing factor in the oddly fluctuating market price of the commodity in 2008. As global food demand and food prices have increased, there has been an added demand for phosphate.

The world’s largest conveyor belt transports the rock from the mineyard out to the sea. Continental and Siemens are key partners for this belt. The Siemens windmills built in 2013 provide all energy needed for the belt system.
The Exports

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exported amount of phosphate</td>
<td>1,123,000 tonnes</td>
<td>1,038,200 tonnes</td>
</tr>
<tr>
<td>Value of exported phosphate</td>
<td>$170.8 million</td>
<td>$180.6 million</td>
</tr>
<tr>
<td>Value of largest single shipment from the territory</td>
<td>$9.6 million</td>
<td>$12.6 million</td>
</tr>
<tr>
<td>Value of smallest single shipment from the territory</td>
<td>$1 million</td>
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<td>Number of ships that departed with phosphate from the territory</td>
<td>22</td>
<td>20</td>
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<tr>
<td>Average amount of phosphate exported in each ship</td>
<td>$1,050 tonnes</td>
<td>$1,900 tonnes</td>
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<tr>
<td>Average value of phosphate exported in each ship</td>
<td>$7.76 million</td>
<td>$9.52 million</td>
</tr>
<tr>
<td>Average annual phosphate price of Bou Craa rock (per tonne)</td>
<td>$152.1</td>
<td>$175.92</td>
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</table>

Methodology

This report is based on data gathered through continuous vessel tracking. The amounts of phosphate loaded into ships were ordinarily calculated to be 9% of the ship's overall cargo (and stored capacity expressed in deadweight tonnes (DWT)). Ships were tracked and expressed in deadweight tonnes. Where possible, estimated loaded amounts were checked against official documents in importing countries. WSRW believes that it has detected tracked and accounted for all vessels departing from El Aaiún harbour for 2020. However, WSRW cannot exclude a possibility that one or more vessels have gone undetected.

Adjusted price estimates

WSRW has in previous editions of the P for Plunder report, most likely, applied a price estimate for Bou Craa phosphate rock that was too low. For lack of better sources, WSRW until last year applied the value of phosphate rock as referred to by index Mundi. However, WSRW has for a while speculated that the price could be far higher. WSRW’s calculations for recent years are confirmed in OCP’s own reports. Until 2006 the export of phosphate rock averaged 1.1 million tonnes annually, considerably less than the production capacity of 2.6 million tonnes. In the late 1970s, production stopped for three years during armed conflict in the territory, only gradually achieving 2.0 million tonnes by the late 1990s. WSRW started daily monitoring in 2011. Our first report put OCP’s exports of phosphate mined in Bou Craa at 1.6-2.2 million tonnes in 2012-2019. WSRW’s projection of 2.1 million tonnes of exported phosphate rock from Bou Craa in 2019 was confirmed in the volume of ‘processed’ phosphates as mentioned in an OCP prospectus. After the unusually low level of exports in 2015, the 2016 volume was more in line with the levels we have observed in the past. WSRW’s approximations regarding the exported volumes for 2015, 2016 and 2017 are confirmed to be in the ballpark by OCP’s latest Prospectus, issued in 2018.

Errors in P for Plunder 2020

In general, WSRW’s calculations for recent years are confirmed in OCP’s own reports. Until 2006, the export of phosphate rock averaged 1.1 million tonnes annually, considerably less than the production capacity of 2.6 million tonnes. In the late 1970s, production stopped for three years during armed conflict in the territory. WSRW has now reason to assume that the little vessel Maliy, which departed El Aaiûn harbour on 14 August 2019, arriving at the port of Moji, Japan, on 24 September 2019, indeed carried phosphate rock. The vessel most likely contained 10,000 tonnes of rock at a value of 22.2 million USD.

Trade data from importing countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Imports per importing country 2020</th>
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<th>Clients per nationality of (parent) company 2020</th>
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<th>Value per importing country 2020</th>
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<td>China</td>
<td>$126.100</td>
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<td>China/Morocco</td>
<td>India/Morocco</td>
<td>$12.58 million</td>
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Figures in USD

Imports per importing country

Probs.

- Philippines
  - 29,700
- China
  - 39,500
- Japan
  - 16,600

Clients per nationality of (parent) company

- Brazil
  - 70,600
- India
  - 59,600
- New Zealand
  - 331,050
- Japan
  - 10,500

Value per importing country

- Brazil
  - 12.58 million
- New Zealand
  - 58.24 million
- India
  - 88 million
- Japan
  - 70.400

Errors in P for Plunder 2020

In general, WSRW’s calculations for recent years are confirmed in OCP’s own reports. Until 2006, the export of phosphate rock averaged 1.1 million tonnes annually, considerably less than the production capacity of 2.6 million tonnes. In the late 1970s, production stopped for three years during armed conflict in the territory. WSRW has now reason to assume that the little vessel Maliy, which departed El Aaiûn harbour on 14 August 2019, arriving at the port of Moji, Japan, on 24 September 2019, indeed carried phosphate rock. The vessel most likely contained 10,000 tonnes of rock at a value of 22.2 million USD.
"Companies buying phosphate from Western Sahara are in reality supporting Morocco's presence in the territory, since the phosphate is sold by the state-owned Moroccan company OCP and it must be assumed that the revenues generated by the operation largely flow to the Moroccan State. In its present form, OCP's extraction of phosphate resources in Western Sahara constitutes a serious violation of norms. This is due both to the fact that the wishes and interests of the local population are not being respected and to the fact that the operation is contributing to the continuance of the unresolved international legal situation, and thus Morocco's presence and resource exploitation in a territory over which it does not have legitimate sovereignty."

Council of Ethics of the Norwegian government’s pension fund, upon excluding Innophos Holdings Inc. from its investment universe Innophos Holdings Inc. in January 2015.39
Key suppliers pulled out

The 12-year long practice of Swedish companies supplying drilling equipment to the operation of the controversial Bou Craa mine in occupied Western Sahara came to an end in 2020.

EPIROC/ATLAS COPCO ‘We do not have any agreements for maintenance or supply for the Bou Craa mine in Western Sahara and we have no plans to supply the mine in the future.’ Epiroc wrote WSRW.10 This has since been verified from several sources.

Epiroc is a rather new Swedish company, established in 2018. The company was created as a result of a decision of the Swedish company Atlas Copco to split out its former business of mining equipment. At the time of the split, Atlas Copco had been selling and servicing equipment to the controversial mine in Western Sahara for several years. Its first sales to the operation took place in 2006 and the deal was revealed by WSRW only in 2021.11 Though Atlas Copco and Epiroc did not comment on the matter for a long time after Epiroc’s establishment, it was a common understanding among the owners of both companies that the contract with OCP had been taken over by Epiroc, as was the case with other Atlas Copco contracts. A letter to Epiroc in November 2019 was not responded to but when confronted by Business and Human Rights Resource Centre earlier this year, the company stated that it was ‘looking into this issue at present’.

Also Atlas Copco confirmed that it is not involved in the mine: ‘Atlas Copco has no operations in Western Sahara. The customer for the Bou Craa mine and Atlas Copco has agreed that there will be no new orders for delivery of equipment, spare parts and service to Western Sahara. Atlas Copco wrote WSRW in a mail on 18 September 2020. This was confirmed to the Business and Human Rights Resource Centre in a letter 9 March 2020: ‘Atlas Copco has no operations in Western Sahara. The mining equipment business is now part of a separate publicly traded company, Epiroc AB. [ ... ] There is no service performed by Atlas Copco personnel in Western Sahara.’ The company wrote.12

CONTINENTAL The German company Continental is no longer supplying OCP with key parts for its 140 km long conveyor belt that carries phosphate rock from the phosphate mine to the coast. The exit came as a consequence of Continental’s subsidiary ContiTech not renewing its agreement with OCP. The announcement was made in a correspondence with Western Sahara Resource Watch (WSRW) in February 2021.14 The contract, arranged for ContiTech to supply replacement parts to the conveyor installations of OCP had already expired on 30 June 2020. Continental and OCP had been in dialogue for well over a year to renew the contract. In January 2020, the company confirmed to WSRW that talks were ongoing and that the issue of Western Sahara would be addressed in the negotiations.

WSRW has been in dialogue with Continental since 2011. With the time, other groups picked up our concerns over the company’s involvement. Several German NGOs appealed to the company in March 2020 to ‘comply with its corporate responsibility and not to provide economic support for Morocco’s occupation of parts of Western Sahara in violation of international law’. Continental furthermore responded to shareholder questions around the issue at its 2020 AGM.15 Continental’s involvement in Western Sahara started in 1971. In the 1990s, the territory was still colonised by Spain. In that year, ContiTech delivered an ST 2500 Stahlcord conveyor belt to a plant manufacturer that was contracted by the mine operator. After Morocco had invaded and annexed parts of the territory, ContiTech entered into a framework agreement with OCP to ensure replacement demands for the conveyor belt when needed. The agreement covered all OCP’s sites, including the phosphate mine in occupied Western Sahara.

SIEMENS German engineering company Siemens has delivered installed and commissioned 22 wind turbines to the 50 MW Foum el Oued wind park in occupied Western Sahara in 2015. The park was commissioned by Morocco’s national agency for electricity. Océane. Siemens collaborated with the Moroccan wind energy company NAREVA – owner of the King of Morocco – for its work on the Foum el Oued farm, which supplies nearby Phosphoboucraa’s energy needs. OCP today boasts that Phosphoboucraa is entirely – rock – wind powered.16 In other words: all energy required for the exploitation and transport of the phosphate rock in Western Sahara is generated by wind mills delivered by Siemens. The green energy production is thus making Morocco’s plunder of the territory even more lucrative.17 In 2018, Siemens confirmed to WSRW that it has extended the maintenance contract for the Foum el Oued park for a further 15 years.18 WSRW has asked Siemens several times – in writing and at its AGMs – to clarify whether the people of Western Sahara have consented to their operations – a legal requirement put forth by the EU Court of Justice. The company never responds to that question yet claims that its work is to the benefit of the local population. At the same time, Siemens says it ‘refrains as a matter of policy from taking positions or making judgments on questions of international law’, which is hard to square with the act of engaging in business deals with a state that has no legal mandate to be in Western Sahara.19

WORLEY In 2009, the Australian company Worley Ltd took over the Energy Chemicals and Resources Division of the American firm Jacobs Engineering Inc. and as such inherited the ownership of a 50/50 joint-venture company with OCP called JESA (Jacobs Engineering Services). The latter is described as a Moroccan construction and engineering firm. JESA has projects in Morocco and in other African countries. JESA is also connected to OCP’s projects in occupied Western Sahara including through the provision of civil engineering to the Foum el Oued Technopole project near El Aaiún.20 This project envisions the development of the ‘Southern regions’, in particular through the industrial development of Phosphoboucraa.21

The German company Siemens is providing all the energy needed at Morocco’s illegal phosphate mining operation in Western Sahara. Refugee Khadja Beldiati confronted Siemens during its 2019 and 2020 Annual Meetings of Shareholders, but the company did not respond to her questions.

The German company Siemens is providing all the energy needed at Morocco’s illegal phosphate mining operation in Western Sahara. Refugee Khadja Beldiati confronted Siemens during its 2019 and 2020 Annual Meetings of Shareholders, but the company did not respond to her questions.

Worley has last written to the company in March 2021, but has not received a response.22

CATEPILLAR Trucks of the US company Caterpillar have been observed transporting phosphate rock in occupied Western Sahara. The trucks are of the type M70C, made by a company called Unit Rig, which in 2011 was taken over by Caterpillar. An official licensed Caterpillar agency was established in El Aaiún in the occupied territory by Tractaflac Equipment Corporation in 2013. Tractaflac is a subsidiary of French group Groupe which is part of the Moroccan holding agency SNI, primarily owned by the Moroccan royal family. The company claims on its website that ‘Laayoune’ (French spelling of El Aaiún, as adopted by Morocco) is located in Morocco.23 WSRW has sent letters to Caterpillar – the last in March 2021 – asking for clarifications about the company’s equipment in the Bou Craa mine, but has never received any reply.24

THYSSENKRUPP The German industrial conglomerate informed in a mail to WSRW on 22 February 2021 that ‘thyssenkrupp Mining Technologies has refurbished three stackers and two reclaimers on the phosphate stockyard of the Bou Craa site, which involved an inspection and the engineering supply and construction of components to be replaced to extend the operational lifetime of the machines’.25 The company added that there are no further activities and ongoing projects regarding the Bou Craa site. While forthcoming on past activities in the territory, thyssenkrupp does not respond as to whether it will refrain, as a matter of policy, from being involved again. The company’s approach seems to be that ‘there were no embargoes or other export restrictions on the EU for deliveries to the Western Sahara region at the time and there are still none’. WSRW calls on the company to issue a statement that it will not undertake further activities in the territory while it remains under occupation.

OCP’s helpers at the mine

The German company Siemens is providing all the energy needed at Morocco’s illegal phosphate mining operation in Western Sahara. Refugee Khadja Beldiati confronted Siemens during its 2019 and 2020 Annual Meetings of Shareholders, but the company did not respond to her questions.

The German company Siemens is providing all the energy needed at Morocco’s illegal phosphate mining operation in Western Sahara. Refugee Khadja Beldiati confronted Siemens during its 2019 and 2020 Annual Meetings of Shareholders, but the company did not respond to her questions.

OCP has no operations in Western Sahara. The customer for the Bou Craa mine and Atlas Copco has agreed that there will be no new orders for delivery of equipment, spare parts and service to Western Sahara. Atlas Copco wrote WSRW in a mail on 18 September 2020. This was confirmed to the Business and Human Rights Resource Centre in a letter 9 March 2020: ‘Atlas Copco has no operations in Western Sahara. The mining equipment business is now part of a separate publicly traded company, Epiroc AB. [ ... ] There is no service performed by Atlas Copco personnel in Western Sahara.’ The company wrote.
The case of the looted goods

On 17 May 2017, a maritime court in Panama court released vessel AM Nomikos.

The charterer of the transport vessel to New Zealand was Furness Withy. A London/Melbourne based dry cargo ship operating through its subsidiary, Phosphates de Boucraa S.A. It is OCP that claimed to own the cargo in the South African court.

On 17 May 2017, an incident took place in South Africa that is highly relevant even to this date. That day, the bulk vessel AM Cherry Blossom was detained in Port Elizabeth under court order, on the application of the Saharawi Arab Democratic Republic (SADR). The vessel had only planned a brief visit in order to take on fuel for the long journey from Western Sahara to New Zealand. But a short time after it had entered port, the SADR government made application to the South African High Court, claiming the 55,000 tonne cargo was illegally mined and exported from Western Sahara by the Moroccan government.

On 15 June, a three-judge panel of the High Court in Port Elizabeth confirmed the acceptability of the order of 1 May 2017, and decided that the case was to continue to a trial. The central legal issue for the Court was the question of rights to the cargo – Who owns it; and could the New Zealand importer have acceptably purchased it after it had been warned of the Saharawi authorities?

OCP SA, Morocco’s state-owned phosphate company, bought back the cargo from the importing company Ballance Agri-Nutrients, thus acting as the owner in the legal proceedings. That July however, OCP decided to drop defending its right to the cargo, accusing the South African court of rendering “a transparently political opinion” and committing “a serious abuse of power”, as such allegedly undermining “the UN resolution process”.

On 23 February 2018, the High Court confirmed that the SADR was the owner of the entire cargo aboard the AM Cherry Blossom, and that the ownership was never lawfully vested in OCP SA or Phosphates de Boucraa SA who were not entitled to sell the phosphate rock to Ballance Agri-Nutrients.

It is the first such case regarding the pillage of the territory’s resources. It illustrates the increased legal and financial risk of companies taking part in Morocco’s illegal plunder. This risk had already augmented after the judgment of the Court of Justice of the EU on 26 December 2016 concluding that Western Sahara has a “separate and distinct” status in the country in the world including Morocco. The value of the AM Cherry Blossom’s cargo was around 5 million USD. To compare, the 2020 budget of UNHCR Algeria, which manages humanitarian aid to the refugee camps in Algeria, whose inhabitants are the real owner of the rock, is USD 37 million.

In 2017, while waiting for the legal case to proceed, the charterer had complained to the court about the financial loss caused to the shipping company for the delay. From what WSRW has obtained from court records, the firm Furness Withy Chartering alleges that the costs of the vessel’s detention amounted to 10,000 USD/day. The vessel was finally released in May 2018, after 370 days of detention. The charterer lost around 3.5 million USD.

The stop-over in South Africa was a one-off incident for the New Zealand-based importer Ballance Agri-Nutrients. All New Zealand-bound vessels had normally travelled westwards via South America and the Pacific. To WSRW’s knowledge, ships to New Zealand had never before travelled via South Africa and the Indian Ocean. After the detentions of vessels in South Africa and Panama, no vessels have taken these routes.
A massive change has taken place in the client base since 2011.

The number of importing companies dropped from 15 in 2011 to 7 or 8 by 2020.

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<td>Nutrien incl. Agrifim/PotashCorp until 2018</td>
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<td>Amount of total export (tonnes)</td>
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<td>2 187 000</td>
<td>2 058 400</td>
<td>1 415 000</td>
<td>1 858 250</td>
<td>1 591 840</td>
<td>1 928 000</td>
<td>1 027 818</td>
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The effect of Nutrien’s exit from the trade is tremendous. The termination of Nutrien’s purchases on 31 December 2018 means that OCP lost the client that received 50% of all purchases from Bou Craa.

India now accounts for over half of the trade.

The two New Zealand importers (Ravensdown and Ballance Agri-Nutrients) have been relatively stable over the entire period, now constituting 20% of the trade.
“We bought the vessel Golden Keen with charter party attached early 2017 and regretfully West-Sahara was not excluded in the charter party we assumed. The vessel was time chartered out to a third party for the remainder of 2017, and therefore we were not in a position to stop the trade out of West Sahara on this particular vessel. For new charter contracts we enter into we include an exclusion of West Sahara. [...] We have also included in our policy to exclude cargoes from West Sahara, expanding beyond standard contract clauses.”

Golden Ocean Management AS, in February 2018, regarding a 79,000 tonnes shipment to the USA in August 2017.67

“Being headquartered in Asia, we confess we knew nothing about Western Sahara. We have only had this one charter ... but now that we understand the issue we will not directly contract any more business out of there”

Jinhui Shipping to South China Morning Post regarding a New Zealand-bound shipment, 2008.68

“We have a separate clause excluding trade in Western Sahara”

Seven Seas Carriers, 201569

“An unfortunate mistake”

Uplands Rederi regarding a transport done by a chartering company in 201570

“We do not want our vessels to be used in Western Sahara”

Wagle Chartering, 2009, after revelation71

On 23 June 2020 protesters in Christchurch, New Zealand, blocked roads to prevent trucks from transporting phosphate rock from occupied Western Sahara to the fertiliser factory of Ravensdown.21

The bulk vessel NM Cherry Blossom (IMO 9703655) was detained in South Africa for 370 days for carrying phosphate rock from occupied Western Sahara. This was the last vessel to take the route from Western Sahara around the south tip of Africa.72

The company undertook transports in 2015 and 2017. The photo shows the company’s headquarters.

Seven or eight companies and co-operatives were involved in the imports of Western Sahara phosphates rock in 2020.

Companies involved in the trade

O.C.P SA (Morocco/Ireland)

OCP SA is a Moroccan state-owned company, which since 1975 has been in operation of the mine in Western Sahara. The work is carried out through its subsidiary Phosphates de Boucraa SA.

A primarily state-owned company, it is not possible for foreign investors to buy shares in OCP.

However, OCP bonds have been offered to Moroccan investors via the Casablanca Stock Exchange since 2011, and to international investors through the Irish Stock Exchange since 2014. Several institutional investors have since blacklisted OCP from their portfolios for its involvement in Western Sahara.

OCP’s affairs at the Irish Stock Exchange are managed by Barclays, Morgan Stanley and JP Morgan, multinational financial services corporations based in the UK and USA.

The company has commissioned the firms SenateSHJ, DLA Piper, Covington & Burling, Palacio y Asociados, Edelman and Dechert LLP to advocate the suppository legality of OCP’s operations in Western Sahara. Besides carrying out lobbying campaigns, the mentioned companies also write reports that allege the legal solidity of the Bou Craa exploitation on the grounds of being supposedly beneficial to the Saharawi people. None of these reports have been made available to Saharawis or to WSRW.

Saharawi refugee Senia Bachir Abderahman on 1 February 2020, for the twenty-third time asked OCP for copies of reports commissioned by OCP which the importing companies have claimed document the legality of their operations. She has received no reply.
Paradeep Phosphates Limited (PPL) produces, markets and distributes phosphate-based fertilizers and by-products for agricultural use. The company was established in 1936 as a joint venture of the government of India and the Republic of Kauai. In 1995, the government of India took complete ownership of the company. Due to significant losses near the end of the nineties, the government of India decided to divest 75% in February 2002. That stake was bought by Zuiar Maroc Phosphates Pvt Ltd, a 50-50 joint venture of Zuiar Agro-Chemicals Ltd (a subsidiary of Adventz Group of India) and Maroc Phosphate SA – a wholly owned subsidiary of OCP. Today, PPL operates as a subsidiary of Zuiar Maroc Phosphates, which holds 45.5% stake, while the government of India holds the remaining 54.5%. In other words, PPL is owned by the Government of Morocco, an Indian private conglomerate (Adventz Group) and the Government of India. PPL is headquartered in Bhubaneswar. India and receives its phosphate rock at the port city of Paradip, approximately 120 kilometers to the east.

According to WSRW’s research, PPL received 14 shipments of phosphate rock from occupied Western Sahara throughout 2020, totaling 795,156 tonnes worth an estimated USD 109.38 million. This is a 6.5% increase from the year before.

Due to the termination of exports to North America, Paradeep was in 2019 and 2020 by far the biggest importer of phosphate rock from the territory. The company purchased 64% of the Bou Craa production during 2020. 2020 is the fifth year of regular imports by PPL, though the firm has imported from occupied Western Sahara before. WSRW has traced a previous purchase from Phosboucraa during the financial year 2011-2012.

Ballance Agri-Nutrients Limited manufactures, markets and distributes fertilizers and related products in New Zealand. The company has two phosphate manufacturing plants, one in Mount Maunganui and the other in Awarua, New Zealand. It is a farmer-owned cooperative, and not a phosphate manufacturing company. Ballance claims that its “executives and Board members visit the Western Sahara on a regular basis.”

During the course of 2020, Ballance received three shipments of phosphate rock illegally excavated in occupied Western Sahara. The cargoes have an observed combined volume of 177,000 tonnes worth around USD 26.9 million. The 2020 imports are slightly lower than in 2017-2019. Ballance’s 2016 imports of 160,000 tonnes were consistent with the firm’s imports of 2012 through 2014, with a decrease to 104,000 tonnes in 2015. WSRW has annually contacted Ballance from 2015 but never received an answer to its questions. In 2015, Ballance did write to WSRW that ‘The United Nations does not prohibit trade in resources from Western Sahara. Nor does such trade contravene a United Nations legal opinion.’

The company however, has a short statement on its website in explanation of its imports from Western Sahara. Here, Ballance compares Western Sahara to the small island of Tokelau – an incorrect parallel, as Tokelau is indeed listed by the UN as a Non-Self-Governing Territory yet its people have so far voted twice in favour of being administered by New Zealand. Ballance furthermore states that it is operating in unspecified ‘UN expectations’ and is as such comfortable that they are legally and ethically sourcing from Western Sahara. WSRW wrote to Ballance in March 2021 asking for clarifications about these UN expectations, but did not receive a response.

Three shipments, with a combined cargo of an estimated 100,000 tonnes of phosphate rock from occupied Western Sahara, were transported to Brazil in 2020. WSRW has tracked the vessels all the way to the port of Santos, located in the State of São Paulo in the south of Brazil, and further to the port from an industrial site in Cubatão, located 12 kilometers inland from Santos port. The cargo was loaded over to a fleet of large trucks on the Santos port, ending up through the gates of the closed industrial site, where two companies are located: Cesari Fertilizantes (Cefértil), part of Grupo Cesari, and Copebras, a subsidiary of the Chinese group China Molybdenum (CMCO). Independent sources in Santos told WSRW that the cargo was destined for Cefértil and Copebras.

WSRW has contacted both companies to ask whether the conflict mineral was destined for their plants. Neither responded. A Brazil newspaper was slightly more successful when contacting the firms. The Brazilian Cesari group owner of Cefértil, replied that Cefértil does not use Saharan phosphates for its formulations. ‘In addition to this, our industrialization and storage contracts contain specific clauses in which the customer is responsible for the origin of the product’, the company explained. Grupo Cesari’s large industrial area in Cubatão offers storage facilities to more than one company, including companies that are not part of Cesari’s portfolio. One such company is Mosaic Fertilizantes, the Brazilian subsidiary of Mosaic Company, the US’s largest phosphate-based fertilizer producer. In 2019, Mosaic informed that it would no longer import phosphate from Western Sahara. That position has also been confirmed to WSRW in 2019. There was no response from Copebras Indústria Ltda, a phosphorus miner and phosphate fertilizer producer that is wholly owned by the Chinese mining company China Molybdenum Co Ltd, listed in the Hong Kong and Shanghai stock exchange.

The trade to Brazil is new, having commenced in 2019, after the large imports to North America had stopped. Brazil is the world’s fourth largest consumer of phosphate-based agricultural fertilizers. OCP SA Morrocco state-owned phosphate company that illegally operates the Western Sahara phosphate mine has set up office in the country in 2010 and is keen on expanding its operations. OCP has operations all over Brazil, including in the State of São Paulo.
Ravensdown Fertiliser Co-operative Limited is a producer of agricultural fertilizers that operates as a farmer owned co-operative that is not listed on any stock exchange. The company imports to its plants in Christchurch, Napier and Dunedin, New Zealand.

WSRW tracked one shipment to Ravensdown during 2020, containing an estimated cargo of 39,000 tonnes with a net value of around USD 8.36 million. That is a decrease of around 60% as compared to the 137,825 tonnes of the previous year – already a significant decrease of the 215,500 tonnes in 2018. However, Ravensdown’s import levels have fluctuated over the years, ranging between 100,000 tonnes and 215,500 tonnes from 2014 to 2018. The pre-2014 import levels averaged at around 188,000 tonnes. WSRW last contacted the company about the trade on 7 March 2021, but received no answer.

In its 2020 Integrated Report, Ravensdown wrote in relation to the imports from Western Sahara that ‘to manage supply risks, we continued to explore additional sources of phosphate rock’ and that they were trawling several different types of rock. WSRW has asked the company whether its objective is to have such sources as back-up supply or whether it is looking to replace the Western Sahara imports as advised by the New Zealand government but has not received a reply.

The company’s position on importing from Western Sahara however appears unchanged. The company keeps referring to an unsourced ‘UN Framework’ for ‘managing resources in territories like these’, supposedly dictating that the operations should promote economic advancement and provide direct and indirect benefits to the inhabitants of the territory and to the territory itself. Working conditions should be non-discriminatory. The operations should be conducted rationally and sustainably to ensure long-term access to resources.

WSRW knows of only one UN Framework that is specifically applicable to the exploitation of mineral resources in Western Sahara, and that is the UN Legal Opinion of 2002. That opinion clearly concludes that any exploitation of the territory’s resources is to be done in line with the wishes and the interests of the people of Western Sahara in order to be lawful. It is the element of wishes – the corollary of the right to self-determination – that has been translated by different UN Treaty Bodies and the EU Court of Justice to the need for prior, free and informed consent. It is this key-element that Ravensdown keeps ignoring and concealing.

 amy Dream captured entering the port of Dunedin, New Zealand, on 14 August 2019. During the calendar year 2020, Ravensdown only took in one cargo from the occupied territory.

In 2020, for the second time in two years, a very small cargo vessel undertook the long journey from the phosphate harbour in El Aaiún to Moji, Japan. On 24 May 2020, the vessel Beata arrived with what WSRW suspects is 6,600 tonnes of phosphate rock.

WSRW has reason to consider Itochu Corp as responsible for the imports. WSRW and Friends of Western Sahara Japan have sent a letter to the company on 8 February 2021, but no response has been received.

In 2020, a total of 29,700 tonnes of phosphates arrived in the country related to the same industrial group. WSRW has written a letter to that group on 17 March 2021, and has not yet received an answer.
Companies under observation

Some companies have in the past been identified and named as importers. The following companies have not been involved in the trade during recent years, but WSRW sees a risk that they would resume purchasing.

INCITEC PIVOT LTD
(Australia)

Incitec Pivot Ltd, also referred to as IPL, is an Australian multinational corporation that engages in the manufacturing, trading and distribution of fertilizers. The company’s fertilizer segment includes Incitec Pivot Fertilisers (IPF), Southern Cross International (SCI) and Fertilizers Elimination (Elim).

Incitec Pivot has imported from Western Sahara for three decades. Since 2003, when Incitec Pivot emerged from a merger between Incitec Fertilizers and Pivot Limited, the company had been importing continuously.

Incitec Pivot has its headquarters in Melbourne, Victoria, Australia, and is registered on the Australian Securities Exchange. Today, Incitec Pivot is the largest supplier of fertilizer products in Australia, but also markets its products abroad such as in India, Pakistan and Latin America. IPL manufactures a range of fertilizer products and used the Saharawi phosphate for its so-called superphosphate products produced at plants in Geelong and Portland.

The last shipments observed to Incitec Pivot were in 2016, when the firm procured three consignments of phosphate rock from Western Sahara, totaling 105,000 tonnes, worth an estimated USD 12.1 million. That was a substantial increase from its 2015 imports of 63,000 tonnes of Saharawi phosphate, as confirmed by the company.

Incitec Pivot told the Australian Western Sahara Association in December 2017 that there had been no imports since December 2016, as it now sources its phosphate rock in Togo. WSRW has indeed not tracked any shipments to the company since then.

WSRW last wrote IPL on 3 December 2019, without reply.

*Ithaki spotted off Las Palmas harbour on 20 May 2015, where it bunkered shortly after departure from El Aaiún harbour. The vessel subsequently set sail for Australia.*
LIFOSA AB
(Lithuania/Switzerland/Russia)

The vessel SBI Flamenco seen upon discharging Western Sahara phosphates at the port of Klaipeda, in October 2016. Lifosa took in this single shipment in 2016, after having promised it would halt all further imports.

The Venezuelan government has traditionally been involved in the trade in two different ways: through imports to Bahrain and to Venezuela. For more about the imports to Puerto Cabello, Venezuela, please see P for Plunder 2016.

On 6 March 2019, a vessel carrying 59,600 tonnes of Western Sahara phosphates departed El Aaiún. It arrived at the port of Visakhapatnam, where the importer must have been yet another company. This incident is covered in P for Plunder 2014.

Lifosa AB is a producer of phosphate mineral fertilizer based in Kedainiai, Lithuania. The company was previously listed on the NASDAQ OMX Vilnius Exchange. Lifosa AB became a subsidiary of the privately Russian-owned Swiss based EuroChem Group in 2002. The company received its Western Sahara phosphate rock at the harbor of Klaipeda, Lithuania.

The company took in its last shipment on 8 October 2016, in spite of a promise by EuroChem in February that same year that “the Group does not intend to purchase phosphate rock from Western Sahara in 2016 or at any time over the foreseeable future.” The cargo was destined for Lifosa’s managing director admitted to Lithuanian media that EuroChem confirmed to WSRW on 23 March 2017 that its subsidiary had indeed imported 68,250 tonnes on board the SBI Flamenco.

EuroChem believes in vertical integration for economic and strategic reasons, and thus remains the case. We aspire toward the goal of raw material self-sufficiency and our investments in Kazakhstan and Kowdeisky were intended to help us become self-sufficient in the production of phosphate rock. The production of our own raw materials from these two investments has progressed at a slower rate than projected and so we continue to require third-party supplies of phosphate rock, the company wrote.

WSRW has been in dialogue with both Lifosa and its owners EuroChem Group since 2011. But the company’s initial reluctance to thoroughly respond to WSRW’s questions resulted in its 2011 removal from the list of companies adhering to the UN Global Compact.

Ever since Lifosa/EuroChem has actively sought ways to maintain its dialogue with WSRW and conduct further due diligence with regard to importing from Western Sahara while under occupation. The company stated in March 2014 that it was seeking to implement ways to diversify external purchases. In 2013-2014, the trade was around 400,000 tonnes annually. WSRW has not observed any shipments to Lifosa since October 2016.

NUTRIEN/SINOFERT
(China/Canada)

On 28 November 2018, the Chinese company Sinofert Holdings Limited, imported to the Chinese port of Lianyungang a shipment from Western Sahara. Sinofert is the largest fertilizer producer and distributor in China. This is described in P for Plunder 2019. The Chinese government-owned Sinochem Group holds a 53% interest in Sinofert, while the Canadian company Nutrien Ltd holds 22%, and the remainder is listed on the Hong Kong Stock Exchange. WSRW has written a letter to Sinofert on 22 January 2019, questioning their new involvement in the controversial trade. The company has not responded.

On 6 March 2019, a vessel carrying 59,600 tonnes of Western Sahara phosphates departed El Aaiún. It arrived at the port of Visakhapatnam, where the importer must have been yet another company. This incident is covered in P for Plunder 2014.

The Venezuelan government has traditionally been involved in the trade in two different ways: through imports to subsidiaries in both Colombia (Monomerco) and Venezuela. The related companies have been importing from the occupied territory for decades.

Since May 2017, when Saharawi phosphate shipments were detained in South Africa and Panama, no transports to Colombia and Venezuela have been observed. The Colombian Company Monomerco Colombo Venezolanos S.A is a petrochemical company fully owned subsidiary of the Venezuelan state owned petrochemical company Pequiven (Petroquímica de Venezuela SA). The company used to import to Barranquilla. The last proven import incident to Monomerco was a single shipment in calendar year 2017 totaling approximately 17,000 tonnes. The imports have thus reduced dramatically in 2016. Monomerco imported 58,000 tonnes.

WSRW on several occasions raised the matter with both Monomerco and its parent company Pequiven, as well as the Venezuelan government. None of them responded to any of our letters. The Venezuelan importer Tripolivan in 2015 denied importing from Western Sahara, which later proved to be incorrect.

For more about the imports to Puerto Cabello, Venezuela please see P for Plunder 2016.

31

THE GOVERNMENT OF VENEZUELA
(Colombia/Venezuela)

The Venezuelan government has traditionally been involved in the trade in two different ways: through imports to subsidiaries in both Colombia (Monomerco) and Venezuela. The related companies have been importing from the occupied territory for decades.

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For more about the imports to Puerto Cabello, Venezuela please see P for Plunder 2016.

31

INDIAN IMPORTERS

On 6 March 2019, a vessel carrying 59,600 tonnes of Western Sahara phosphates departed El Aaiún. It arrived at the port of Visakhapatnam India. On 3 April, WSRW expects the importer to be Coromandel International Ltd, the same company that imported a shipment to Visakhapatnam a year earlier. The company is registered on the National Stock Exchange of India, and has several large international investors among its owners. WSRW sent letters to Coromandel on January 2019 and February 2020 to ask whether it had fulfilled the legal requirement of

obtaining prior consent from the representatives of the territory for such trade, and whether this was a one-off import. No reply was received.

No transports have been observed to Coromandel since 2019. An earlier shipment was made in March 2014 to the port of Tuticorin, where the importer must have been yet another company. This incident is covered in P for Plunder 2014.

31

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Companies no longer involved

Some companies have in the past been identified and named as importers. These have not been involved in the trade since 2012 or have publicly stated they’d halt all further purchases, and WSRW sees little risk that they would resume purchases.

Impact Fertilisers Pty Ltd
(Australia/Switzerland)

Impact Fertilisers in Tasmania has not imported since the arrival of Alycia in Hobart harbour on 7 August 2012.

Nidera Uruguaya S.A.
(Uruguay/The Netherlands)

The Uruguayan company Nidera Uruguaya S.A., subsidiary of Dutch trading company Nidera NV, received one vessel containing phosphate rock from Western Sahara in 2009. WSRW confronted Nidera Uruguaya with the information about the 2009 vessel in a letter 21 June 2010.105 As no answer was received, new letters were sent to the parent company in The Netherlands in October 2011. The outcome of the following correspondence with Nidera was a statement from the company underlining that “If our subsidiary in Uruguay again needs to import phosphate rock in the future, the matter which is now brought to our attention is something we shall definitely take into consideration.” The company at the time also stated that its subsidiary in Uruguay had not received any phosphate rock from Western Sahara during the years 2007, 2008, 2010, 2011.106

Australian phosphate importer Impact Fertilisers imported phosphates from Western Sahara, at least from 2002 through 2012. The company imported the rock to Hobart, Tasmania. In 2010 the company became part of Ameropha Group, a Swiss privately owned grain and fertilizer trading company. Western Sahara groups in both Australia and Switzerland campaigned against the company for many years. In 2013 Impact announced it had halted the imports from Western Sahara. WSRW has not observed shipments to Impact since August 2012.
A Mexican subsidiary of the US registered company Innophos Holdings was for many years a key importer of Western Sahara phosphate rock. Yet since 2015, WSRW has not observed any shipment into Innophos’s plant in Coatzacoalcos, Mexico. In 2016, Innophos confirmed that its plant in Geismar, Louisiana was dependent on phosphate rock from Western Sahara. sold to them via a pipeline from the neighbouring plant of PotashCorp.

As part of Innophos’ commitment to overall social responsibility and good corporate stewardship, Innophos will no longer indirectly participate in a raw material supply chain which sources phosphate rock from the Western Sahara region in Africa, an area from which the Company has not directly purchased raw materials for more than three years. Innophos Holdings wrote in a press release on 2 July 2018.107

The PotashCorp plant, which had provided Innophos with Saharawi phosphate, was closed by the end of 2018 by Nutrien, the merger of PotashCorp Inc. and Agrium Inc.108

WSRW has no indications that Innophos today uses phosphate rock originating from Western Sahara.

From 2010 to 2018, WSRW sent Innophos six letters about the company’s purchases from the occupied territory, without receiving a reply.109 Innophos has been the subject of multiple divestments. A lengthy analysis for the ethical exclusion of the firm was prepared by the Council on Ethics of the Norwegian Government Pension Fund in 2013. For the same reason, the company has also been kicked out of the portfolios of the Luxembourg Pension Fund and Danske Bank, among others.110

Mosaic Company is headquarters in Minnesota, USA, and listed on the New York Stock Exchange. WSRW confirmed 15 shipments from occupied Western Sahara to Tampa, Florida, USA in the period from 2000 to 2009. Tampa is home to the headquarter of Mosaic’s phosphate operations and many of the firm’s phosphate production facilities. On 25 August 2009, Mosaic informed WSRW that it had received its last shipment of Western Sahara phosphate rock on 29 January 2009 and that it ‘has no plans’ to import from the territory again.111 Mosaic confirmed to the Swedish investor and shareholder Nordea that it had halted imports. Mosaic has now disclosed that they have discontinued their purchase of phosphate from Western Sahara, which also has been independently confirmed. The company has acknowledged the human rights issues involved with importing phosphate from Western Sahara, Nordea wrote.112

Wesfarmers Limited is one of Australia’s largest public companies, headquartered in Perth, Western Australia. The company is listed on the Australian Securities Exchange. Its fertiliser subsidiary Wesfarmers Limited is one of Australia’s largest public companies, headquartered in Perth, Western Australia. The company is listed on the Australian Securities Exchange. Its fertiliser subsidiary Wesfarmers had on numerous occasions since shown a will to phase down imports from Western Sahara, but has not committed categorically to completely stop imports. As the de facto imports seem to have stopped, some investors have returned to the company. WSRW has not observed any shipments to Wesfarmers since it started daily monitoring of vessels in October 2011.

Some companies that have previously been on WSRW’s observation list, were later moved over to the list of companies that are no longer involved. The reason for this is that such a long time has passed since a shipment took place that we expect them not to be engaged again. These are Petrokemija PLC from Croatia (last shipment in 2006), Tata Chemicals from India (last shipment in 2008), Zen Noh from Japan (last shipment in 2006) and Agropolyphos AD from Bulgaria (last shipment in 2008). None of these companies have responded to requests from WSRW.
Lobbying law firms

In defense of their phosphate imports from Western Sahara, several companies have referred to legal opinions by different law firms retained by OCP. These legal opinions are systematically used by the international phosphate importers to legitimize their imports vis-à-vis shareholders. The confidential analyses are said to establish that the local people benefit from the industry. However, the local people—the owners of the phosphates—are themselves not allowed to see the opinions, and are thus unable to assess their veracity. All aspects related to Terms of Reference, methodology, or findings are thus impossible for the Saharawis to question.

As the opinions allegedly have found Morocco’s exploitation of the Saharawi people’s resources lawful, WSRW believes that there is little reason to withhold them from the Saharawis.

Four international lobbying law firms are behind such undisclosed opinions. Covington & Burling LLP is an international law firm with offices in Europe, USA, and China, which advises multinational corporations. Among its clients is OCP. Both the Belgian importer BASF and the Spanish importer FMC Foret referred to Covington & Burling’s legal opinion made for OCP, but neither wished to disclose the report. BASF at the time (November 2008) urged WSRW to contact Covington & Burling for further questions. WSRW had contacted the firm in February 2008, but received no reply. When phoning the company to ask for a meeting, Covington & Burling replied that they “would not engage with you at all regarding anything at all. You’re not my client, and as far as I can see you have no interest or stake in our company.”

It should be noted that Covington & Burling will travel around the world to defend the unethical trade to shareholders looking into divesting from any of the companies that import phosphate from Western Sahara.

More recently, the law firm DLA Piper teamed up with the firm Palacio y Asociados to provide OCP with another legal opinion to justify the trade. Based on statements from the importing companies, this second opinion seems to follow the analysis of the Covington & Burling opinion, citing potential benefits to the ‘local population’ as a validation for the exploitation and subsequent trade to take place. As part of the work on the legal opinion, DLA Piper had also commissioned KPMG, a professional service company, to study the economic and social impacts of OCP’s operations, and their sustainability, in the region.

DLA Piper is an international law firm that has offices in around 30 countries throughout the Americas, Asia Pacific, Europe, and the Middle East. Palacio y Asociados is headed by Spain’s former Minister of Foreign Affairs and former MEP Ana Palacio, and has offices in Madrid, Brussels, and Washington.

WSRW contacted both firms with the request to share their legal opinion with the Saharawi people. DLA Piper replied that it could not share the opinion that was written for the benefit of Phosphates de Boucraa S.A. and its holding company, Office Chérifien des Phosphates S.A. due to legal privilege. Ana Palacio, head of Palacio y Asociados, wrote back to express her disagreement with WSRW’s analysis and also cited legal privilege. Palacio herself sits on the international advisory board of OCP.

In November 2015, PotashCorp named the firm Dechert LLP and Palacio y Asociados as co-authors of a legal opinion. Dechert LLP is an international law firm headquartered in Philadelphia, USA, with offices in 14 countries. Up until August 2014, PotashCorp had named DLA Piper as the partner of Palacio y Asociados. It is not clear whether the Dechert-Palacio opinion is different from the DLA Piper-Palacio opinion. The missing link between the two could be Myriam González Durántez, wife of Britain’s former Deputy Prime Minister Nick Clegg, who represented OCP when working at DLA Piper, but who is said to have taken the OCP contract with her when she moved to Dechert. OCP has reportedly paid an estimated USD 15 million for work carried out by both Dechert and DLA Piper.

Dechert replied to WSRW’s letter of 6 February 2016 that it could not disclose its legal opinion for OCP due to client confidentiality. WSRW has asked Dechert and Palacio y Asociados whether their client would consent to waiving privilege, as the confidentiality of the legal opinions has already been given up by making their existence public. WSRW never received a reply to that request.

From 2019, a New Zealand lobby firm, SenateSHJ, started representing OCP in New Zealand, handling the Moroccan company’s public relations in the country. WSRW wrote SenateSHJ on 11 February 2020.

OCP has failed to answer requests from Saharawis to share copies of the reports.

The Bou Craa reserves are a gigantic open-cast mine, where the phosphate rock is scraped from the surface by excavation machines.
Morocco lobbies for more toxics in EU farmlands

In the spring of 2019, the European Parliament and the European Council adopted a Regulation limiting the amount of contaminants such as cadmium contained in fertilisers. The aim is to limit the EU population’s exposure to this heavy metal due to its adverse health effects, particularly in terms of its potential of causing cancer. Phosphate fertilizers are responsible for 60% of current cadmium deposits to crops and soils within the EU, as documented in a February 2017 study by the European Parliament’s Policy Department.

The Regulation now caps the cadmium level at 60 mg/kg. Starting from 16 July 2022, the sale of phosphate-based fertilizers containing more than 60 mg of cadmium per kg of P2O5 will be barred throughout the EU. Further tightening of restrictions on cadmium will be considered in July 2026.125 Member States are still permitted to use stricter limitations, which is already the case in countries like Germany, Finland, Denmark, Czech Republic, Hungary, Netherlands, Sweden and Slovakia.126

The original proposal by the EU Commission was stricter: a 60 mg/kg of phosphate at the date of the deal application, 40 mg/kg three years later, and 20 mg/kg after another 12 years. This proposal was accepted by the European Parliament, albeit with an adjusted timeline (40 mg/kg in six years after date of application, 20 mg/kg in 16 years).

But Member States such as Spain, Italy, Poland, Portugal and the UK opposed any limits below 60 mg/kg, while the fertilizer industry mounted tough opposition. Ferocious counter-lobby however also came from Morocco.

The phosphate rock managed by OCP – thus including the Western Sahara rock – is said to contain on average between 29.5 to 72.7 mg/kg.127 The European Parliament’s Policy Department paints an even bleaker picture, citing levels of 38-200 mg Cd/kg.128

Since the initially proposed regulation would have resulted in the nullification of that sales figure over time, OCP unleashed an intense counter-lobby. OCP argued that there is not enough scientific proof to underpin the idea of limiting cadmium levels, and suggested the EU to even raise cadmium levels to 80 mg/kg, far higher than the suggestion of the EU Commission. On 11 May 2016, OCP sent a letter to the Commission, stating it disagreed with the proposal. OCP also lamented that “major fertilizer producers […] had not been consulted”.129 The irony is that OCP itself refuses to seek the consent from the people of Western Sahara upon plundering the territory’s phosphate rock.

OCP retained Dechert and the PR firm Edelman to lobby against the EU proposal.130 Edelman has worked for the Moroccan government in the past, as it is on the payroll of the Moroccan American Center for Policy (MACP), a registered agent of the Moroccan Kingdom.131

While the final Regulation will thus not result in a complete market loss for OCP, it does seem that Western Sahara phosphate rock will no longer be welcome on the EU market. There is consensus among researchers that the cadmium content in phosphate rock from Bou Craa is considered around 100 mg/kg.132

Cadmium levels from the Khouribga mine, in Morocco proper, is estimated at around 46-63 mg/kg, while those from rock coming from Youssoufia, also in Morocco, is considered to be higher than 120 mg/kg.
To the Government of Morocco:
- To clearly state to the involved importing companies that they should refrain from imports from Western Sahara and to assist these businesses in diversifying their supply base.
- To immediately end all purchasing of phosphate illegally exploited and exported from occupied Western Sahara.
- To respect the right to self-determination of the people of Western Sahara, through cooperating with the UN for a referendum for the people of the territory.
- To compensate the Saharawi people for the benefits it has accrued from the sales of phosphate rock from the illegally occupied territory.

To the shipping companies transporting phosphate rock out of Western Sahara:
- To refrain from shipping commodities out of Western Sahara.
- To install a provision in shipping contracts preventing the use of vessels for transporting commodities out of the territory.

To investors:
- To engage with the mentioned companies, and divest unless action is taken to halt the imports.

Notes
- To the United Nations:
  - To create a UN administration to oversee or otherwise administer Western Sahara’s natural resources and revenues from such resources pending the self-determination of the Saharawi people.

- To Covington & Burling, Dechert, DLA Piper, Senatashi, RPMG, Edelman and Palacek and Associates: To publish all reports written for OCP which aim to justify OCP’s activities in occupied Western Sahara and the illegal export trade in Saharawi phosphate.

- To refinance from Morocco’s plunder of the territory by stopping the undertaking of assignments to legitimize its industrial activities.

- To the European Union:
  - To access trade in products originating in Western Sahara and adopt policies that ensure that such trade is consistent with the Court of Justice of the EU judgment of 21 December 2016 and with the duty on States under international law not to recognize Morocco’s sovereignty over the occupied Western Sahara.
  - To develop business advisory guidelines warning of the legal and reputational risks of doing business with Moroccan interests in the territory.

- To Euro-Med Monitor and other European companies adhere to the principles established in the Court of Justice of the EU judgment of 21 December 2016, assuring that EU companies do not purchase phosphates from Western Sahara.

- To the United Nations:
  - To create a UN administration to oversee or otherwise administer Western Sahara’s natural resources and revenues from such resources pending the self-determination of the Saharawi people.
### Annex 2:

#### The shipping companies behind the controversial phosphate transports, 1 January 2020 to 31 December 2020

WSRN has contacted most of the operators representing the 22 vessels. Letters from WSRN and answers are found on https://www.wsrw.org/WSRW/en/news/shipping-company-responses-to-p-for-plunder-2020

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<td>IMO</td>
<td>Flag</td>
<td>Departure from Western Sahara</td>
<td>Arrival</td>
<td>DTW</td>
<td>Estimated cargo (tonnes)</td>
<td>Reg. owner</td>
<td>Reg. owner address</td>
<td>Reg. owner nationality of registration</td>
<td>Group owner</td>
<td>Group owner – nationality of registration</td>
<td>Group owner – nationality of controlling interest</td>
<td>Operator</td>
<td>Operator nationality of control</td>
<td>Operator nationality of registration</td>
<td>Operator email</td>
<td>Operator company website</td>
<td>Paid Club</td>
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<td>56362</td>
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<td>U-Ming Marine Transport (Shanghai)</td>
<td>08 Dr. Comex Industrial Building 5. Little Singapore</td>
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<td>Taiwan</td>
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<td><a href="mailto:taiwan@u-ming.com.tw">taiwan@u-ming.com.tw</a></td>
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<td>14</td>
<td>Maria</td>
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<td>Paradip (Paradip)</td>
<td>9/12/2020</td>
<td>55705</td>
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<td>C/O Hyundai Glovis Co Ltd</td>
<td>S12, Yeongdong-daero, Gangnam-gu, Seoul</td>
<td>South Korea</td>
<td>Hyundae Glovis Co Ltd</td>
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<td><a href="mailto:webmaster@glovis.net">webmaster@glovis.net</a></td>
<td>North of England P&amp;I Association</td>
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<td>15</td>
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<td>9774458</td>
<td>Panama</td>
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<td>3/9/2020</td>
<td>60279</td>
<td>58400</td>
<td>C/O Island View Shipping</td>
<td>01-01, 200 Cantonment Road Singapore</td>
<td>Singapore</td>
<td>Island View Shipping Group</td>
<td>Singapore</td>
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<td><a href="mailto:info@glovis.com">info@glovis.com</a></td>
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<td>5872</td>
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<td>71, Nihonbashri, 2-chome, Chuo-ku, Tokyo</td>
<td>Japan</td>
<td>Chiba Shipping Co Ltd</td>
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<td>Japan</td>
<td>Willy-Brandt-Allee 6, 23554 Luebeck, Germany</td>
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<td><a href="mailto:foot@oldendorff.com">foot@oldendorff.com</a></td>
<td>Britania Steam Ship</td>
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<td>18</td>
<td>Mistral</td>
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<td>65356</td>
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<td>Blvd. Siret Broad St., Monrovia, Liberia</td>
<td>Liberia</td>
<td>Primenee Shipping Co Ltd</td>
<td>Greece</td>
<td>Greece</td>
<td>route de Florissant 13, 1206 Geneva, Switzerland</td>
<td>Unknown</td>
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<td>57569</td>
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<td>C/O Abu Dhabi Marine Operations &amp; Services Company LLC (ADNOC Logistics &amp; Services)</td>
<td>14th Fl., ZADCO Tower, PO Box 61, Abu Dhabi, UAE</td>
<td>United Arab Emirates</td>
<td>ADNOC Logistics &amp; Services</td>
<td>United Arab Emirates</td>
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<td><a href="mailto:mb@adnoc.ae">mb@adnoc.ae</a></td>
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<td>Building B Monumental Plaza, 44 Kifissias Ave, Maroussi, 51025 Athens, Greece</td>
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<td>C/O Ciner Gemi Acente (Iskender) Sanayi ve Ticaret AS</td>
<td>Istanbul, Turkey</td>
<td>Han Yu 5 Ltd</td>
<td>Istanbul, Turkey</td>
<td>Istanbul, Turkey</td>
<td>Istanbul, Turkey</td>
<td><a href="mailto:Sheep@adnoc.ae">Sheep@adnoc.ae</a></td>
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<td>C/O Ciner Gemi Acente (Iskender) Sanayi ve Ticaret AS</td>
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<td>Han Yu 5 Ltd</td>
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<td>Istanbul, Turkey</td>
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</table>

* The vessels Glovis Maria and Star Mistral most likely departed Paradip without having offloaded their entire cargos. WSRW believes that Glovis Maria carried 29,700 tonnes to Isabel, Philippines, and that Star Mistral carried approximately 39,400 tonnes to Fengcheng, China.
“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