

Tuhana Consulting Ltd  
Att: Mr. Tim Gibson, Managing Director  
707/141 Pakenham Street West  
Wynyard Quarter  
Auckland 1010  
New Zealand

Brussels, 09.04.2026

## RE. TUHANA CONSULTING'S ASSESSMENT ON SOURCING PHOSPHATE ROCK FROM OCCUPIED WESTERN SAHARA

Dear Mr Gibson,

We are writing in relation to the *Statement of Findings*<sup>1</sup> issued by Tūhana Business and Human Rights (TBHR) of 18 March 2024 concerning the sourcing of phosphate rock from the Boucraa mine in occupied Western Sahara by New Zealand fertiliser companies.

At the outset, we note with regret that our previous letters to Tūhana, dated 16 March 2023<sup>2</sup> and 21 February 2024<sup>3</sup>, were never substantively answered, aside from a single sentence stating that “the work with our clients is ongoing and we will be in touch with stakeholders in due course”. Our follow-up questions - seeking clarification as to whether this meant Tūhana intended to respond, and whom Tūhana considered to be “stakeholders” - also went unanswered.<sup>4</sup>

For a consultancy that publicly presents itself as having expertise in business and human rights, the absence of engagement on questions relating to the extraction and import of non-renewable resources from an occupied territory widely recognised as a serious human rights concern is, frankly, disappointing.

We have now reviewed TBHR's Statement of Findings in detail. We find the assessment to be deeply flawed in law, method, and substance. Although framed as an analysis under the UN Guiding Principles on Business and Human Rights (UNGPs), it systematically sidelines the central and determinative issue in Western Sahara: the Saharawi people's right to self-determination under international law.

In our view, your assessment contributes to conduct that is inconsistent with, and risks facilitating violations of, the UNGPs.

Below, we set out our principal concerns and a number of questions which we strongly encourage TBHR to answer publicly, in the interest of transparency, accountability, and responsible business conduct. We intend to publish an article on TBHR's findings on our website and will include any response you provide. TBHR's involvement will also be referenced in the next edition of our *P for Plunder* report series. We would appreciate receiving your reply by **23 April 2026**.

### 1. Systematic Marginalisation of the Right to Self-Determination

TBHR repeatedly characterises the denial of self-determination in Western Sahara as a *background political dispute* that “predates and transcends” business activity. This framing is incompatible with international law and authoritative guidance on responsible business conduct.

The right to self-determination is not a peripheral political issue; it is a peremptory norm of international law (*jus cogens*), an *erga omnes* right, and a foundational principle of the UN Charter. It is enshrined as Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The International Court of Justice has confirmed that no sovereign

<sup>1</sup> <https://www.fertiliser.org.nz/sourcing/due-diligence/>

<sup>2</sup> [https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1366/641237b829003\\_20230216WSRW-Tuhana.pdf](https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1366/641237b829003_20230216WSRW-Tuhana.pdf)

<sup>3</sup> [https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1687/65f17db0e0f46\\_20240221WSRW-Tuhana.pdf](https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1687/65f17db0e0f46_20240221WSRW-Tuhana.pdf)

<sup>4</sup> [https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1368/641761a385276\\_Tuhana-WSRW.jpg](https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1368/641761a385276_Tuhana-WSRW.jpg)

ties exist between Morocco and Western Sahara that would negate this right. The Court of Justice of the European Union has repeatedly held that Western Sahara is a territory separate and distinct from Morocco, and that the consent of the Saharawi people is a legal prerequisite for economic activities affecting their land and resources.

By treating the non-implementation of self-determination as an external context rather than a core adverse impact, TBHR effectively strips the UNGPs of their normative force in situations of occupation.

1. *On what legal basis does TBHR consider the denial of self-determination to fall outside the scope of adverse human rights impacts under the UNGPs?*
2. *How does TBHR reconcile its position with UNGP Principle 12, which covers the right to self-determination among internationally recognised human rights?*

## **2. Misapplication of “Cause, Contribute, Directly Linked” Framework**

TBHR concludes that New Zealand importers are not causing or contributing to adverse impacts, and are merely “directly linked” in the sense of UNGP 17. This conclusion is asserted rather than demonstrated.

The extraction and export of phosphate from an occupied, non-self-governing territory without the consent of its people is not a neutral commercial act. It provides material support, revenue, and international legitimacy to an occupying power’s unlawful administration of the territory. Numerous UN bodies have warned that economic activities in occupied territories can entrench unlawful situations.

3. *How does TBHR define “contribution” in the context of prolonged occupation and resource extraction?*
4. *What weight did TBHR give to the role of phosphate revenues in sustaining Morocco’s presence and infrastructure in the occupied territory?*

## **3. Consent Replaced by Consultation**

TBHR acknowledges limitations on freedom of expression and assembly in Western Sahara, yet still relies on consultation processes conducted under Moroccan control, by a Moroccan state-owned company, to support its conclusions. This approach conflates *consultation* with *consent*.

International law is clear: the consent required must be that of the people of the territory, expressed through their UN-recognised representative, Frente Polisario. Consultation exercises conducted in an environment of repression, and excluding the UN-recognised representative of the people, cannot meet this standard.

5. *How does TBHR distinguish between consultation and consent in non-self-governing territories?*
6. *Why was Frente Polisario not treated as a mandatory interlocutor in the assessment?*
7. *Which parties were part of the consultation process?*
8. *Has Tūhana travelled to the territory?*
9. *Has Tūhana itself conducted consultation exercises in the territory?*
10. *If so, how does Tūhana square its ability to do so with the inability of UN Special Rapporteur to have access to the territory, over a decade?*

## **4. Harm Framed as Economic Dependency**

TBHR suggests that cessation of phosphate mining could lead to adverse human rights impacts due to loss of employment and community investment. This argument mirrors well-established narratives used to justify continued exploitation of occupied territories.

Economic dependency created through unlawful exploitation cannot be invoked to legitimise that exploitation. International law does not permit the balancing of an inalienable right to self-determination against short-term economic benefits distributed under occupation.

11. *Does TBHR accept that economic benefits generated under occupation can never substitute for lawful self-determination?*
12. *How does TBHR avoid reinforcing structural dependency created by an unlawful situation?*

## 5. Omission of International Legal Context Beyond UNGPs

TBHR explicitly states that its findings are not legal advice. However, responsible human rights due diligence cannot be conducted in isolation from applicable international law.

The assessment fails to engage meaningfully with the legal status of Western Sahara as a non-self-governing territory, and the growing body of jurisprudence rejecting economic activity without Saharawi consent.

13. *Why was international humanitarian law and the law of occupation excluded from the analytical framework?*
14. *How can an assessment be credible when it disregards the legal status of the territory concerned and the product exported from the territory?*

TBHR's Statement of Findings provides comfort to importers while offering no meaningful protection to the rights of the Saharawi people. By isolating business conduct from the legal and political reality of occupation, the assessment risks normalising and perpetuating a serious and prolonged violation of international law.

WSRW calls on TBHR to respond publicly to the questions raised in this rebuttal, to disclose its methodology in full, and to reconsider whether its advice is consistent with the spirit and purpose of the UN Guiding Principles on Business and Human Rights.

*A copy of this letter is sent to:*

- *The Fertiliser Association of New Zealand*
- *Ballance Agri-Nutrients*
- *Ravensdown*

Sincerely

Sara Eyckmans

Coordinator, Western Sahara Resource Watch

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