



Western Sahara Representation to Australia  
and the South Pacific

7 September 2022

Ellipsis Mining Pty Ltd  
35 Chestnut Street  
Cremorne  
Victoria 3121

Dear Messieurs Canaris and Cross,

**Re. Ellipsis Mining and Mining Exploration in Occupied Western Sahara**

We write to call for the end of your company's mining exploration ("reconnaissance") activity in that part of Western Sahara which is illegally occupied by Morocco. A review of the records of Morocco's state governing entity for petroleum and minerals development, ONHYM, together with field reports confirms Ellipsis Mining was granted a reconnaissance permit in recent months, in an area southeast of the coastal city of Dakhla.

That Morocco is unlawfully present in a part of Western Sahara has been confirmed over the years by leading international courts, including the International Court of Justice (1975, concluding Morocco did not have "any" claim to a then decolonizing Spanish Sahara), the High Court of South Africa (2017-18, concluding Morocco has no sovereign rights to resources in the territory) and the European Court of Justice (the CJEU) (2018, determining Morocco is not competent to make agreements with third parties concerning Western Sahara).

In March 2022, New Zealand High Court declared that "The transfer of administrative authority over the territory to Morocco and Mauritania in 1975 [by Spain] did not affect the international status of Western Sahara as a Non-Self-Governing Territory" and "Morocco... is not listed as the territorial administering Power [of Western Sahara] in the United Nations list of Non-Self-Governing Territories". In addition, the African Union and the United General Assembly have declared Western Sahara to be an occupied territory.

It is possible to pursue mineral exploration in Western Sahara. But it must be with prior approval of our government pursuant to the SADR 2011 *Mining Code* and in compliance with the 2018 SADR *Natural Resources Sovereignty Protection Act*. Other reputable international enterprises currently follow such requirements.

Let us be clear about the risk entailed in a continued holding and application of a reconnaissance license (and related activity) in the circumstances. The risk is three-fold. First, a tacit support to an illegal occupation - one with continuing notorious human rights abuses occurring during a time of armed conflict - damages reputation. The case of the New Zealand fertilizer businesses Ravensdown and Ballance is instructive in this regard. Second, developing a mineral prospect toward eventual extraction and export is a colorably criminal activity, if not directly the war crime of pillage then its aiding and



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abetting in the circumstances of occupation. Here, the jurisdiction of Australian courts, and those of countries subscribing to universal criminal jurisdiction principles (and of course the International Criminal Court) can be recalled.

Third, exploring and developing minerals in the occupied area of Western Sahara brings, inexorably, civil liability. The 2017 phosphate seizure cases “NM Cherry Blossom” and “Ultra Innovation” in South Africa and Panama exemplify this risk. And, further, a reconnaissance and development license itself would be a dead letter, incapable of being traded upon or employed for financing.

We have little doubt an occupying Morocco made representation or implied exploration activity would somehow be lawful. That is unfortunate. In our experience, when parties come to know the nature of Western Sahara’s status in international law, they move readily to end their involvement. The seabed exploration company Fugro NV is an example.

We invite your reply to this letter. We specifically call for your company to cease activities in and in respect of Western Sahara. To the extent you have data about mineral prospects, we ask that it be provided to us, having been obtained unlawfully.

We look forward to hearing from you.

Yours sincerely,

Kamal Fadel  
Representative to Australia and Roving Ambassador  
To the South Pacific

C: Senator the Hon Don Farrell  
Minister for Trade and Tourism  
Special Minister of State

Ms. Sylvia Valentin  
Chair, board of directors, Western Sahara Resource Watch

Ms Lyn Allison  
President, Australia Western Sahara Association