

To TÜV Rheinland
Am Grauen Stein
51105 Cologne
Germany
Att: Dr. Michael Fübi, CEO

Brussels, 29.11.2024

REGARDING TÜV RHEINLAND'S CERTIFICATION OF ESTABLISHMENTS IN OCCUPIED WESTERN SAHARA

Dear Dr.Fübi

Western Sahara Resource Watch (WSRW) is privileged to present you with our compliments. We are writing to inquire about TÜV Rheinland's certification of companies that operate in occupied Western Sahara.

The background for our request is that we are publishing a report on the certification schemes involved in the problematic trade of fisheries products from Western Sahara on the websites www.vest-sahara.no and www.wsrw.org in approximately a month from now, and we are going to include references to TÜV Rheinland in the report.

We have observed that your company has certified a company in Western Sahara, the company K.B.Fish s.a, according to your website in "LAAYOUNE, Morocco".¹ K.B.Fish is given certificates of compliance with three ISO standards:

- ISO 14001: A standard for Environmental Management Systems.
- ISO 45001: A standard for Occupational Health and Safety.
- ISO 9001: A standard for Quality Management Systems.

Legal compliance is a fundamental part of the three above-mentioned ISO standards. The companies that are certified are expected to meet with the laws of the country where it operates.

On that basis, we fail to understand how TÜV Rheinland came to the conclusion that a company in the occupied territory could go through a compliance check at all. Secondly, we are surprised to see that the geographical location of the establishment above is «Laayoune, Morocco». The city of El Aaiún (also spelled 'Laayoune') is not located in Morocco.

The geographical error, failing to relate to the UN maps and rulings of international courts on the matter of Western Sahara, as we see it, could constitute an act of gross negligence.

We have some questions for TÜV Rheinland that we look forward to seeing responded to, outlined further below, prior to 15 December 2024.

Allow us to first contextualise our query. The United Nations consider Western Sahara to be a non-self-governing territory without an administering power in place. The International Court of Justice has confirmed that Morocco has no sovereignty over the territory, and that the people of Western Sahara have a right to self-determination – the right to determine the future status of the territory.² In 1988, the UN was able to broker a ceasefire arrangement between Morocco and the Western Sahara liberation movement, Polisario, in which both parties

¹ https://www.certipedia.com/companies/490480/system_certificates?locale=en Or download: https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1986/673f89e43f239_TUV_Rheinland_certificate_KBFish_21.11.2024.jpg

² International Court of Justice, Western Sahara, <https://www.icj-cij.org/case/61>

agreed to hold a referendum on self-determination.³ To that goal, a UN mission (MINURSO) has been deployed to the territory, but it has not been able to organise a referendum as Morocco continues to block any effort that offers a choice beyond integration. In November 2020, the ceasefire collapsed after the Moroccan army seized a section of the UN buffer zone to break up a Saharawi protest.⁴

While well over a hundred of UN Resolutions, and rulings by the International Court of Justice, the European Court of Justice⁵ and the African Court on Human and People's Rights⁶, all underline that Morocco has no sovereignty or administering mandate over Western Sahara, Morocco continues to militarily control about three-quarters of the territory. Incentivized by its exploitation of the territory's resources, Morocco has little interest to genuinely take part in the UN-mediated peace process. Meanwhile, the lingering conflict continues to have a high human and humanitarian cost: over 170,000 Saharawis are stuck in refugee camps in neighbouring Algeria, surviving in harsh desert conditions and dwindling humanitarian aid. Saharawis who live under the yoke of Morocco's occupation are victims of serious human rights violations that have been reported by the UN Human Rights Committee, UN Working Group on Arbitrary Detention, the UN Special Rapporteur on Human Rights Defenders, in addition to credible international organisations such as Human Rights Watch, Amnesty International, and others. In 2023, the UN High Commissioner for Human Rights lamented the fact that his Office has not been allowed to visit Western Sahara for the last eight years.⁷ Year after year, Western Sahara is ranked among the worst countries and territories in terms of political rights and civil liberties, on par with countries and territories like North Korea, Syria, Afghanistan and Crimea.⁸

The status of the territory comes with repercussions for business activities. As established in 2002 by the UN Legal Counsel at the request of the Security Council, any economic activity in the territory would be in violation of international law if not undertaken in accordance with the wishes and the interests of the people of the territory.⁹ We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights¹⁰ and of the UN Human Rights Committee¹¹, which have both emphasized the need of obtaining the Saharawi people's "consent to the realization of developmental projects and [resource] extraction operations". In this context, it is important to stress that the rights of the people of Western Sahara should not be viewed through the concept of FPIC, as they are not an indigenous people with a certain rights to a part of a territory in a state that they recognise as such - the people of Western Sahara are the holders of the sovereign rights to Western Sahara as a whole. Their homeland is in part under foreign occupation, but the right to self-determination - the right to decide the status of the territory as a whole, and of the resources harboured therein - lies with the Saharawi people. The UN treats the unresolved conflict in Western Sahara through the right to self-determination as the cornerstone principle, and does not regard this as an indigenous peoples issue.

Recent years have witnessed an emerging body of law pertaining to Morocco's claim to the territory. Since 2015, in ten (!) consecutive rulings, the Court of Justice of the European Union has concluded on the following points as settled:

³ The "settlement proposals" are included in the Report of the UN Secretary General on Western Sahara of June 1990, available here:

https://minurso.unmissions.org/sites/default/files/unsg_report_18_june_1990.pdf

⁴ WSRW, 19.11.2020, Saharawi gov calls for halt of all activity in Western Sahara over war, <https://wsrw.org/en/news/saharawi-gov-calls-for-halt-of-all-activity-in-western-sahara-over-war>

⁵ The Rulings for cases T-512/12, T-180/14, C-266/16, T-275/18 and combined cases T-344/19, T-356/19 and T-279/19 can be accessed at the site of the EU Court of Justice, <http://curia.europa.eu>.

⁶ African Court on Human and People's Rights, 22.09.2022, Ruling on Application N° 028/2018 <https://www.african-court.org/cpmt/storage/app/uploads/public/632/e0f/3ad/632e0f3ad580e748464681.pdf>

⁷ OHCHR, 07.03.2023, Global update: High Commissioner outlines concerns in over 40 countries, <https://www.ohchr.org/en/statements-and-speeches/2023/03/global-update-high-commissioner-outlines-concerns-over-40-countries>

⁸ <https://freedomhouse.org/countries/freedom-world/scores?sort=asc&order=Total%20Score%20and%20Status>

⁹ UN Security Council, 12.02.2002, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161, <https://undocs.org/S/2002/161>

¹⁰ UN Economic and Social Council, 22.10.2015, Concluding Observations on the fourth periodic report of Morocco, E/C.12/MAR/CO/4*, §6, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMAR%2fCO%2f4&Lang=en

¹¹ UN Human Rights Committee, 01.12.2016, Concluding Observations on the sixth periodic report of Morocco, §10, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MAR/CO/6&Lang=En

- The territory of Western Sahara constitutes a territory distinct from that of the Kingdom of Morocco.¹²
- Morocco has no sovereignty¹³ or administering mandate¹⁴ over Western Sahara.
- Consequently, the waters adjacent to Western Sahara cannot be regarded as part of the Moroccan fishing zone, territorial waters, exclusive economic zone, or any other notion used to describe Morocco's role vis-à-vis the waters off Western Sahara.¹⁵
- The people of Western Sahara are to be regarded as a third party to the EU's agreements with Morocco, and that as such, no agreement can affect their territory without their consent, as a corollary of the right to self-determination.¹⁶
- The Court is clear that the right to consent resides with the people of Western Sahara, and not with the population of the territory.¹⁷ The Court stipulates that "a majority of the population of Western Sahara is not part of the people holding the right to self-determination, namely the people of Western Sahara. That people, which for the most part has been displaced, is the sole holder of the right to self-determination with regard to the territory of Western Sahara."¹⁸ The Court adds that "there is a difference in that regard between the concept of the 'population' of a non-self-governing territory and of the 'people' of that territory. The latter refers to a political unit which holds the right to self-determination, whereas the concept of 'population' refers to the inhabitants of a territory."¹⁹
- The Court has firmly established the position of Front Polisario, the UN-recognised representation of the people of Western Sahara to be able to bring cases before EU Courts on behalf of the Saharawi people, and that it has access to the Court to defend their right to self-determination.²⁰
- In Case C-399/22, which specifically dealt with the labelling of products from Western Sahara, the Court again emphasised the separate and distinct status of the territory in relation to Morocco, and concluded that at the stages of import and sale to the consumer, the labelling of the goods from Western Sahara must indicate Western Sahara alone as the country of origin of those goods.²¹

Against that backdrop, we have several questions about the decision to certify companies operating in the territory.

Regarding international law:

1. Does TÜV Rheinland agree with the ICJ, CJEU, UN and the African Court on Peoples' and Human Rights that Western Sahara is not part of Morocco?
2. Does TÜV Rheinland disagree or agree with the CJEU that the waters offshore Western Sahara do not belong to Morocco's EEZ?²²
3. Does TÜV Rheinland disagree or agree with the ICJ that the right to self-determination of a people of a non-self-governing territory constitutes a fundamental human right?

Regarding the certifications:

4. Can you send us a copy of the certificates issued by your company to KB Fish?
5. Apart from KB Fish which other organisations/facilities, if any, have obtained TÜV Rheinland certification in the territory of Western Sahara? Can you send us these certificates?
6. Which countries' laws regulate the contracts between TÜV Rheinland and KB Fish, according to TÜV Rheinland?

¹² Judgment of 21 December 2016, EU:C:2016:973, §92, and reiterated in the Judgment of 27 February 2018, EU:C:2018:118, §62, Judgment of 4 October 2024, EU:C:2024:833, §163, Judgment of 4 October 2024, EU:C:2024:839, §85 and Judgment of 4 October, EU:C:2024:835, §134.

¹³ Judgment of 10 December 2015, EU:T:2015:953, §241. Considered a settled matter in subsequent rulings.

¹⁴ "Account must also be taken of the fact that the Kingdom of Morocco does not have any mandate granted by the UN or by another international body for the administration of that territory, and it is common ground that it does not transmit to the UN information relating to that territory, such as those provided for by Article 73(e) of the UN Charter." Judgment of 10 December 2015, EU:T:2015:953, §233. Considered a settled matter in subsequent rulings.

¹⁵ Judgment of 27 February 2018, EU:C:2018:118, §67-85. Considered settled in subsequent rulings.

¹⁶ Judgment of 21 December 2016, EU:C:2016:973, §104. Reiterated and refined in subsequent rulings.

¹⁷ Judgment of 4 October 2024, EU:C:2024:833, §180-181. Judgment of 4 October 2024, EU:C:2024:835, §152-153.

¹⁸ Judgment of 4 October 2024, EU:C:2024:833, §157. Judgment of 4 October 2024, EU:C:2024:835, §128.

¹⁹ Judgment of 4 October 2024, EU:C:2024:833, §158. Judgment of 4 October 2024, EU:C:2024:835, §129.

²⁰ Judgment of 4 October 2024, EU:C:2024:833, §96-138, Judgment of 4 October 2024, EU:C:2024:835, §70-109.

²¹ Judgment of 4 October 2024, EU:C:2024:839, §89.

²² Judgment of the Court (Grand Chamber) of 27 February 2018, ECLI:EU:C:2018:118, §67-69, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0266>

7. Particularly the ISO 14001 requires compliance to laws. Which country's laws does TÜV Rheinland believe apply in Western Sahara? On what legal grounds does TÜV Rheinland believe this be the case?
8. The company in question deals with processing and/or sales of fisheries products with Western Sahara origin.
 - a. To what extent does TÜV Rheinland consider the legality of the related fisheries practices in the waters off Western Sahara, under international law, taking into account that these waters are not Moroccan?
 - b. How does TÜV Rheinland consider Morocco's government's legal standing in terms of issuing fisheries licences in the waters offshore Western Sahara (particularly in view of the CJEU rulings Joined Cases C-778/21 P and C-798/21 P²³ of 4 October 2024 and of C-266/16²⁴ of 2018 (particularly paragraph 67-69) and that the Saharawi people have not consented to it)?
9. According to ISO 9001, the establishment is supposed to meet customer and regulatory requirements. Is this expectation compatible with KB Fish misleading the public about its geographical location vis-à-vis international clients?
10. According to the CJEU ruling of 4 October 2024, produce from Western Sahara cannot be labelled as from Morocco, but has to be labelled as from Western Sahara. What steps are TÜV Rheinland taking, if any, to ensure that the certification relating to companies trading with goods from Western Sahara does not contribute to supporting fraudulent country of origin labelling of the involved organisation?
11. What reputational risks does TÜV Rheinland consider it might have for the ISO Standards in question if the certified companies mislead the consumer about the real country of origin of the products while stressing that the organisation is certified?

Regarding the role of TÜV Rheinland:

12. To what extent is TÜV Rheinland's certification of companies in one country/territory under the laws of another compatible with the methodology and principles of certification bodies - for instance that legal compliance must be assessed?
13. To what extent is TÜV Rheinland bound by a code of ethics that obliges it to respect human rights?
14. On what grounds have the physical location of the city of El Aaiún (also: Laayoune) and the locality of the certified establishment been placed in Morocco on your website, to the contrary of UN maps and international court rulings?
15. As companies on the European market are now obliged to label goods from Western Sahara as from "Western Sahara", and specifically not from "Morocco", in accordance with the CJEU ruling in case C-399/22 of 4 October 2024²⁵, is there a risk that the application of this ruling in Europe is undermined by TÜV Rheinland's certification of companies that market Western Sahara products as Moroccan?
16. What is the risk that TÜV Rheinland's support to organisations that operate in accordance with the strategies of the Moroccan government, could cause damage to the Saharawi people who are the legitimate owners of the territory and resources?
17. Which steps will you take vis-à-vis the certificate and KB Fish organisations as a consequence of our request to you and as a consequence of the 4 October 2024 CJEU rulings?
18. Will TÜV Rheinland abstain from taking part in any further certification in the territory, unless it is being done in accordance with the Saharawi people's right to consent?

²³ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=290676&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=4034966>

²⁴ Judgment of the Court (Grand Chamber) of 27 February 2018.

Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs, ECLI:EU:C:2018:118, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0266>

²⁵ Judgment of the Court (Grand Chamber) of 4 October 2024, ECLI:EU:C:2024:839,

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=290679&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=106575>

We'd be grateful for your response. Any answer from your company will be included in the report. We'd appreciate answers prior to 15 December.

Looking forward to hearing from you,

Sincerely,

Erik Hagen

Western Sahara Resource Watch

erik@wsrw.org

www.wsrw.org