

GLOBALG.A.P

c/o FoodPLUS GmbH

Spichernstraße 55, 50672 Cologne

Germany

Att: Elmé Coetzer-Boersma, Managing director

Brussels, 30.11.2024

REGARDING GLOBALG.A.P CERTIFICATIONS AND THE OCCUPATION OF WESTERN SAHARA

Dear Mrs. Coetzer-Boersma

Western Sahara Resource Watch (WSRW) is privileged to present you with its compliments. We are writing to inquire about some aspects in relation to the GLOBALG.A.P's position on certification of establishments in occupied Western Sahara, and trade with products from the territory.

The background for our request is that we are publishing a report on the certification schemes involved in the problematic trade from Western Sahara on our websites www.vest-sahara.no and www.wsrw.org in approximately a month from now. We would hope to hear back from you **prior to 15 December 2024**.

We are particularly concerned about the allegation of the company Azura Group that claims to have GLOBALG.A.P certificate.

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.¹ In 1988, the UN was able to broker a ceasefire arrangement between Morocco and the Western Sahara liberation movement, Polisario, in which both parties agreed to hold a referendum on self-determination.² 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.³

While well over a hundred of UN Resolutions, and rulings by the International Court of Justice, the European Court of Justice⁴ and the African Court on Human and People's Rights⁵, 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

¹ International Court of Justice, Western Sahara, <https://www.icj-cij.org/case/61>

² 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

³ 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>

⁴ 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>.

⁵ 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>

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.⁶ 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.⁷

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.⁸ We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights⁹ and of the UN Human Rights Committee¹⁰, 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:

- The territory of Western Sahara constitutes a territory distinct from that of the Kingdom of Morocco.¹¹
- Morocco has no sovereignty¹² or administering mandate¹³ 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.¹⁴
- 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.¹⁵
- The Court is clear that the right to consent resides with the people of Western Sahara, and not with the population of the territory.¹⁶ 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."¹⁷ The Court adds that "there is a difference in that regard between the concept of the 'population' of a non-self-governing territory and

⁶ 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>

⁷ <https://freedomhouse.org/countries/freedom-world/scores?sort=asc&order=Total%20Score%20and%20Status>

⁸ 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>

⁹ 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

¹⁰ 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

¹¹ 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.

¹² Judgment of 10 December 2015, EU:T:2015:953, §241. Considered a settled matter in subsequent rulings.

¹³ "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.

¹⁴ Judgment of 27 February 2018, EU:C:2018:118, §67-85. Considered settled in subsequent rulings.

¹⁵ Judgment of 21 December 2016, EU:C:2016:973, §104. Reiterated and refined in subsequent rulings.

¹⁶ Judgment of 4 October 2024, EU:C:2024:833, §180-181. Judgment of 4 October 2024, EU:C:2024:835, §152-153.

¹⁷ Judgment of 4 October 2024, EU:C:2024:833, §157. Judgment of 4 October 2024, EU:C:2024:835, §128.

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.”¹⁸

- 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.¹⁹
- 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.²⁰

We have the following questions which we would appreciate your comments to:

Regarding GLOBALG.A.P and international law:

1. We notice that the world maps on GLOBALG.A.P’s website, are correct and in line with the UN maps²¹. Does GLOBALG.A.P 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 GLOBALG.A.P agree with the CJEU that the waters offshore Western Sahara do not belong to Morocco’s EEZ?²²
3. Does GLOBALG.A.P agree with the ICJ²³ that the right to self-determination of a people of a non-self-governing territory constitutes a fundamental human right?

The logo of GLOBALG.A.P is to be found on the website of Azura Group.²⁴ The company wrote in a report from 2019 that «we have grown to be a leading producer and employer in Morocco, where our headquarters, production and packaging sites are located. [...] All sites are subject to on-site audits, including SMETA, BSCI and GlobalGAP». ²⁵ Under normal circumstances, when a company refers to «Morocco», they tend to refer to the country as it is internationally recognised. But taking into account that Azura seemingly views Morocco’s borders from a different perspective, it can be interpreted that Azura claims that GLOBALG.A.P has undertaken audits in the Azura facilities outside of Morocco’s international borders, in Western Sahara. Regardless of where the audits were conducted, it is concerning if the allegation regarding Azura’s GLOBALG.A.P certification is accurate. In the case that it is correct that Azura Group today is certified by GLOBALG.A.P, WSRW has a series of questions:

4. Which GLOBALG.A.P standards are Azura certified to adhere to?
5. Which certification body undertook the compliance check?
6. Can you send us a copy of the signed certificate(s)?
7. Does the GLOBALG.A.P standard expect that the certified organisations comply with all applicable legal requirements in the countries where they operate?
 - a) If yes to the above, which country’s laws apply to Western Sahara, according to GLOBALG.A.P?
 - b) If national authorities are to be expected to have undertaken controls or sanitary checks as part of the standard, which legal validity does GLOBALG.A.P believe that these government inspections or approvals or certificates have if they are issued to establishments based in the non-self-governing territory of Western Sahara by an entity of the neighbouring country of Morocco?
 - c) If GLOBALG.A.P believes that the Moroccan government’s regulations, laws, checks or permits are legally valid even in Western Sahara, how does that match with the position of the ICJ and UN

¹⁸ Judgment of 4 October 2024, EU:C:2024:833, §158. Judgment of 4 October 2024, EU:C:2024:835, §129.

¹⁹ Judgment of 4 October 2024, EU:C:2024:833, §96-138, Judgment of 4 October 2024, EU:C:2024:835, §70-109.

²⁰ Judgment of 4 October 2024, EU:C:2024:839, §89.

²¹ E.g. this: <https://www.globalgap.org/what-we-offer/solutions/ifa-fruit-and-vegetables/>

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>

²³ <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>

²⁴ <https://www.azura-group.com/les-savoir-faire-azura/la-qualite-pivot-central-de-nos-actions>

²⁵ https://www.azura-group.com/images/actualites/pdf/AZURA_RAPPORT_2019_vFinal.pdf

- which do not regard Morocco as having sovereignty or an administering power capacity over Western Sahara, and as such do not consider Western Sahara to be part of Morocco?
8. GLOBALG.A.P General Requirements, paragraph 5.2.1 notes that «Cross-border (international) certification (i.e. where one certificate covers production in more than one country) is generally not allowed».²⁶ How does this criteria match with the dozen rulings from international court stating that the territories of Morocco and Western Sahara are separate and distinct?
 9. The same paragraph continues: «Where the certified producer is located in country #1 but has sites in country #2 (owned or rented), and country #2 allows this without creating a legal entity in/for country #2, these sites can be certified under the legal entity in country #1». Has the legal representative of the people and territory of Western Sahara been approached regarding this matter?
 10. In addition to agriculture products, Azura Group undertakes aquaculture in Dakhla. On its website, it refers to its production of clams in “Dakhla in the South of Morocco”²⁷. Taking into account the above-mentioned CJEU rulings, which country’s jurisdiction applies in the shallow waters of the Dakhla bay, according to GLOBALG.A.P?
 11. Does the GLOBALG.A.P Standard that Azura is certified to adhere to contain provisions (including to prevent food fraud) that require a certificate holder to correctly reflect the country of origin on its products?
 12. GLOBALG.A.P envisions “a world in which farms are recognized for their efforts to continuously produce enough safe food while safeguarding our environment and the welfare of farming communities.”²⁸
 - a. How does GLOBALG.A.P define a “farming community”?
 - b. Can “farming community” relate to a group of settlers illegally installed at a location in an occupied territory in violation of the Geneva Conventions, and in disregard of the right to self-determination of the people of that land?
 - c. Taking into account the clear distinction that the CJEU rulings drew on 4 October 2024 between the “population” and the “people” of Western Sahara, which of these two demographic groups does a “farming community” refer to in the Azura Dakhla case?
 - d. If GLOBALG.A.P and Azura refers to the “local population” near the plantation, to what extent does it consider that its vision might risk undermining international law and contributing to the ongoing injustice against the Saharawi people?
 - e. The CJEU court case on the fraudulent labelling of products from Western Sahara was initiated and won by the French agricultural association Confédération Paysanne after several years of legal battle. Does GLOBALG.A.P consider that certifying an industrial plantation in an occupied territory — run by foreign interests and employing settlers — risks undermining responsible farming communities in France, who are outcompeted by products that are falsely labelled in disregard of EU case law?

Regarding credibility of the standard:

13. Does GLOBALG.A.P, in general, consider it relevant that the certified establishments correctly reflect the country of production on its websites, marketing and products?
14. In view of the CJEU ruling on 4 October 2024, does GLOBALG.A.P in general consider that labelling products from Western Sahara as “Morocco” constitutes an act of Food Fraud?
15. Is it compatible with the GLOBALG.A.P standard if a company today labels Western Sahara products as from “Morocco” on its website, marketing material or products, in disregard of the CJEU ruling?
16. European consumers have the right to know the origin of the products that they purchase. The exporters in Western Sahara are falsely labelling the products with the wrong country origin, as is the case on the website of Azura Group. What reputational risks does GLOBALG.A.P consider it might have

²⁶ https://documents.globalgap.org/documents/220929_GG_GR_Rules_for_IP_v6_0_Sep22_en.pdf

²⁷ <https://www.azura-group.com/les-produits-azura/palourdes>

²⁸ <https://www.globalgap.org/about/>

for the standard that its certificates or the certificate holders are placing the certified establishments in clearly the wrong country, or that they label the products of being from the wrong country of origin?

Other questions:

17. In the cases where there are GLOBALG.A.P certified establishments in Morocco proper (such as in Agadir, Tan Tan etc) or in Europe that source products or raw materials for the agriculture and fisheries industry from Western Sahara.
 - a. How are these establishments ensuring legal compliance in the supply chain?
 - b. How are these establishments ensuring that the products are labelled correctly?
18. Does the GLOBALG.A.P standard expect human rights in general to be respected by the certified companies? If yes, is the right to self-determination among those rights?
19. We notice that Azura Group is a “member” of GLOBALG.A.P. What expectations or duties follow from such a membership, in terms of legal compliance, human rights, transparency, ethics etc?
20. Köster Marine Proteins writes on its website²⁹ that it is a “member” of GLOBALG.A.P - or at least, that it was a member in 2016. We cannot find KMP on the “Community member” registry on the GLOBALG.A.P website.³⁰
 - a. Is it correct that KMP is a “member” of GLOBALG.A.P today?
 - b. If not, will corrective measures be taken vis-à-vis the erroneous claim on KMP’s website?
 - c. WSRW wrote to KMP on 19 July 2018, on 21 September 2018, on 1 May 2019, on 14 September 2019, on 16 October 2020 and on 21 July 2023³¹, but we have not yet obtained a response. If KMP is a «member» of your network, do you happen to have the contact details of the responsible person in the member organisation?
21. According to a letter from Skretting Norway to the Norwegian Support Committee for Western Sahara in 2020, Skretting Turkey uses fishmeal from Western Sahara. Skretting Turkey informs on its website that it is certified in accordance with the GLOBALG.A.P General Rules, Compound Feed Manufacturing standard^{32, 33}. In general: is the ethics, legal compliance, human rights approach or due diligence practices relating in a company’s supply chain relevant for GLOBALG.A.P when deciding whether or not allow the certification of a company?
22. We have observed that some companies that source FMFO from Nouadhibou in Mauritania state that they are GLOBALG.A.P certified. We also notice how vessels fishing on Mauritanian licences sometimes cross over into Western Sahara waters to fish before returning to offload in Nouadhibou. How can GLOBALG.A.P ascertain that the raw materials that are used at the GLOBALG.A.P certified factories in Nouadhibou are not originating from Western Sahara waters, transported by sea or by land?
23. We notice that Bureau Veritas is among the certification bodies that are, in general, approved to do checks in accordance with the GLOBALG.A.P standards. Bureau Veritas has a highly political position on the conflict, recognising Western Sahara as part of Morocco. This is not in line with the international courts nor of the UN. The company refers to Western Sahara as Morocco’s “Southern Provinces”.³⁴ We cannot see whether it has similar positions on the occupations of other territories or countries.

²⁹ <https://www.kmp-fischmehl.de/de/qm>

³⁰ <https://www.globalgap.org/about/community-membership/>

³¹ 19.07.2018, WSRW letter to KMP, https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/2000/674383cf5dc22_WSRW-KMP_19.07.2018.pdf

21.09.2018, WSRW letter to KMP, https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/2005/67438531ef529_WSRW-KMP_21.09.2018.pdf

01.05.2019, WSRW letter to KMP, https://wsrw.org/files/dated/2019-05-01/20190501wsrw-kmp_fischmehl_naja.pdf

14.09.2019, WSRW letter to KMP, https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/2004/674385063ac97_WSRW-KMP_14.09.2019.pdf

16.10.2020, WSRW letter to KMP (dated wrongly 2010), https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/2003/674384b4d6209_WSRW-KMP_16.10.2020_wrongdateinPDF.pdf

21.07.2023, WSRW letter to KMP, https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/2001/67438401ea219_WSRW-KMP_21.07.2023.pdf

³² <https://www.skretting.com/tr-tr/sustainability/skretting-turkiye-sertifikasyonlar/>

³³ <https://www.skretting.com/siteassets/local-folders/turkey/downloads/global-gap-2023.pdf?v=49b691>

³⁴ <https://www.bureauveritas.ma/newsroom/bureau-veritas-morocco-africa-business-days> and <https://en.yabiladi.com/articles/details/156253/french-business-delegation-visits-dakhla.html>

- a. Taking into account that Bureau Veritas fails to relate to basic principles of law, how can Bureau Veritas be trusted in terms of certifications in general, if they are to assess aspects of legal compliance?
 - b. Will GLOBALG.A.P suspend accepting further certifications issued by Bureau Veritas until they have positions that align with international law and court rulings, by clarifying that the territory of Western Sahara is not part of Morocco?
24. Has GLOBALG.A.P ever sought to find out whether the issuing of certificates to Moroccan companies in occupied Western Sahara is something that the Saharawi people have consented to?
25. Which steps will you take vis-à-vis the certificates, the certification bodies and the certified establishments as a consequence of the 4 October 2024 CJEU rulings?

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

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