

Marine Stewardship Council

Marine House, 1 Snow Hill, London, EC1A 2DH, UK

Att: Rupert Howes, CEO

Brussels, 29.11.2024

REGARDING CERTIFICATION AND THE OCCUPATION OF WESTERN SAHARA

Dear Mr. Howes,

Western Sahara Resource Watch (WSRW) is privileged to present you with its compliments. We are writing to inquire about how MSC relates to the question of fisheries products from 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 most likely including references to MSC in the report.

We are pleased to note that, from what we can see from your directory¹, none of the MSC certified companies are located in Western Sahara itself.

We still have a series of questions in relation to the certification of a few companies, outlined further below, that we hope you will have a chance to respond to. **We would appreciate a response prior to 15 December 2024.**

The questions relate to the use of the MSC name, and whether these references are correct. These companies in question are primarily foreign fish food distributors sourcing from the occupied territory.

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 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

¹ <https://cert.msc.org/supplierdirectory/VController.aspx?Path=02d03d11-054d-44f5-9076-b1bd00a2ebdf>

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

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>

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:

- 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

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

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.

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.

1. We notice the important references MSC makes to food fraud. To misrepresent the country of origin of a product constitutes an act of fraudulent behaviour. The products from the companies in Western Sahara are systematically misrepresenting the country of origin. The CJEU ruled clearly on 4 October 2024 that products from Western Sahara cannot be labelled from "Morocco", but must be labelled "Western Sahara". On this basis:
 - a. What measures will MSC take to prevent that MSC-certified Moroccan or European enterprises who use Western Sahara fish in their supply chain, claim such products to be of "Morocco" origin?
 - b. Taking into account that around 70-75% of Morocco's fisheries take place in the waters off Western Sahara, and that a lot of the raw material is exported internationally via Morocco through road transport, does MSC take extra precautions in terms of certifications of companies in Morocco?
2. The Moroccan company Unimer Group claims in its ESG report of 2023 that it is in the process of obtaining an MSC certificate (page 76)²² The company writes that "Unimer Group has embarked on an initiative to obtain MSC (Marine Stewardship Council) certification for Moroccan fisheries to ensure the sustainability of its canned sardines and semi-preserved anchovies. This effort involves the ports of the Kingdom and requires the full mobilization of all stakeholders in the Moroccan fishing sector." Unimer Group has operations in Dakhla in the occupied territory.
 - a. Can you clarify whether MSC is in conversations with Unimer regarding certification?
 - b. If MSC has been in talks with Unimer regarding a certification:
 - i. What is the status of these conversations?
 - ii. Has the matter of Western Sahara been addressed?
 - iii. As Western Sahara is not part of Morocco, how is the matter of the legality of the fisheries operations in the occupied waters regarded by MSC?
 - iv. How will Unimer ascertain that all products it exports are in line with the CJEU ruling, by clearly labelling all products from Western Sahara in the correct manner, and that it does not mislead the public through its ESG reports, website etc?
 - v. What measures will Unimer take to first guarantee that their operations are in line with the Saharawi people's right to self-determination?
3. The Spanish importer 3 de Pulpo writes on its website that it uses "Dakhla Octopus, fished and frozen daily with artisanal techniques, is the most prestigious Moroccan variant of octopus worldwide" and

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 <https://unimergroup.com/i/rapports/2023/Rapport-Financier-Annuel-et-ESG-2023.pdf> or download here. https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1923/671f5130df473_UNIMERGroup-ESG-report-2023.pdf

that the octopus has been caught “in Morocco”.²³ It also notes that it is in the process of obtaining an MSC certificate.²⁴

- a. Can you clarify whether MSC is in conversations with 3 de Pulpo regarding certification?
- b. If MSC has been in talks with 3 de Pulpo regarding a certification:
 - i. What is the status of these conversations?
 - ii. Has the matter of Western Sahara been addressed?
 - iii. As Western Sahara is not part of Morocco, how is the matter of the legality of the fisheries operations in the occupied waters regarded by MSC?
 - iv. How will 3 de Pulpo ascertain that all products it exports are in line with the CJEU ruling, by clearly labelling all products from Western Sahara in the correct manner, and that it does not mislead the public through its ESG reports, website etc?
 - v. What measures will 3 de Pulpo take to first guarantee that their operations are in line with the Saharawi people’s right to self-determination?
4. The Spanish company Nuchar claims on its website, under the title "Purchase of sustainable raw materials" that "We are directly involved in the certification of two of the world's leading fisheries: Mauritania and Morocco."²⁵ The company is selling a wide range of octopus. No reference is made to Western Sahara, where the fisheries is most likely taking place. “We know how important it is to protect the seas and oceans to maintain healthy marine ecosystems and ensure the future of sustainable fishing, which is why we are MSC certified”. The company is, however, not to be found in the registry of the MSC.
 - a. Is Nuchar MSC certified, as it claims?
5. The Andorran company Congelats del Nord on its website describes the imports of octopus from “Dakhla, Morocco”. The geographical error is made systematically.²⁶ On the same page, immediately underneath, it comments that “We are part of a Fishery Improvement projects with the MSC (Marine Stewardship Council) to further provide sustainability options to the fishing industry”.²⁷
 - a. Does MSC have a FIP in which Congelats del Nord is taking part?
 - b. Where in the world is this FIP located?
 - c. Do you agree that it looks unfortunate that it can be interpreted from the website that MSC seems to take part in a FIP in Dakhla, Morocco?
 - d. If the MSC FIP referred to on the Congelats del Nord website has nothing to do with Western Sahara, will MSC request the website of Congelats del Nord be adjusted?
6. The Spanish company El Rey del Pulpo claims on its website to distribute octopus from “Morocco”. Right next to that statement, there is a video from octopus fisheries in Western Sahara, made by the company Discefa.²⁸ The latter sources octopus from Dakhla. Immediately underneath, it is written “MSC COLLABORATOR. Our company supports the Marine Stewardship Council, the blue label supporting certified fisheries, and sustainable fishing. We actively support certified octopus fisheries in the areas where we operate.” This gives the impression that the MSC is the one behind the certification of the octopus fisheries that the product is sourced from, including in Western Sahara. Will MSC request the website of El Rey del Pulpo be amended?
7. Following the ruling of the CJEU, finding the EU-Moroccan fisheries practices illegal as they violate the rights of the Saharawi people, the Moroccan industry is looking for other ways to move forward, inspite of international law principles. An article in Moroccan newspaper Les Eco on 23 October 2024, states

²³ <https://3depulpo.es/en/> Or download: https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1991/673f98c5c1051_3depulpo_website_21.11.2024.jpg and https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1992/673f99271c0c3_3depulpo_website_21.11.2024b.jpg

²⁴ <https://3depulpo.es/en/>

²⁵ <https://nuchar.es/en/quality/> Or download: https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/2011/6744bc6f1ec74_Nuchar_website_25.11.2024.jpg

²⁶ <https://congelatsdelnord.com/> Or download: https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/2006/6744b18e6e97c_Congelatsdelnord_website25.11.2024.jpg

²⁷ https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/2007/6744b229131f7_Congelatsdelnord_website25.11.2024b.jpg

²⁸ <https://www.elreydepulpo.com/en/sustainability/> Or download: https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/2010/6744bb156129e_ElReyDelPulpo_website25.11.2024_MSC.jpg

that the Moroccan fish industry association COMAIP have been busy trying to find other ways to continue the fisheries.²⁹ The newspaper writes (our translation): "Another notable initiative is the sector's commitment to obtaining Marine Stewardship Council (MSC) certification, ensuring sustainable fishing. This certification, although challenging to achieve, could "open new international markets" and reassure European partners, who are increasingly attentive to environmental concerns."

Has MSC been in conversations with COMAIP regarding certifications following the CJEU ruling? Has MSC specified that it can only cooperate with COMAIP for the territory of Morocco as recognised by international courts, and that it cannot cooperate with COMAIP regarding fisheries products sourced from Western Sahara?

8. We have repeatedly seen fishing vessels in Mauritanian waters, on Mauritanian licences, undertaking voyages into Western Sahara waters. How does MSC assure that FMFO produced in factories in Nouadhibou does not originate from stocks across the border from Western Sahara?

A final remark: We are slightly concerned regarding the Moroccan media report mentioned above. As the EU-Morocco fisheries were found illegal, and that Western Sahara fish products are no longer to be part of the EU-Morocco trade agreement, it would be problematic if a respected and serious organisation as MSC enters into a dialogue with the Moroccan industry in the territory. As long as Morocco fails to respect the Saharawi people's right to self-determination, we hope this will never materialise.

Feel free to reach out to us if you have any questions over the matter.

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.

A copy of this email is sent to the Western Sahara Campaign UK.

Looking forward to hearing from you,

Sincerely,

Erik Hagen

Western Sahara Resource Watch

erik@wsrw.org
www.wsrw.org

²⁹ <https://leseco.ma/maroc/dakhla-le-secteur-de-la-peche-sous-pression-apres-la-decision-de-la-cjue.html> Or download: https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/2008/6744b395b8d3d_LesEco_23.10.2024.pdf