

To 3 de pulpo

Brussels, 08.12.2024

REGARDING 3 DE PULPO AND THE OCCUPATION OF WESTERN SAHARA

Western Sahara Resource Watch (WSRW) is privileged to present you with our compliments. We are writing to inquire about some aspects in relation to sourcing and selling fisheries products from occupied Western Sahara.

We are currently in the process of writing a report on the different certification schemes involved in the problematic trade from the territory for the websites www.vest-sahara.no and www.wsrw.org. This larger report is to be published in approximately a month from now. We would hope to hear back from you **prior to 24 December 2024**.

The background of our request is that your company both claims on your website to be certified, and that you claim to import and distribute products from locations in Western Sahara.

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 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

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/unsr_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/632e0f3ad632e0f3ad580e748464681.pdf>

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

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.⁷ We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights⁸ and of the UN Human Rights Committee⁹, which have both emphasized the need of obtaining the Saharawi people's "consent to the realization of developmental projects and [resource] extraction operations".

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.¹⁰
- Morocco has no sovereignty¹¹ or administering mandate¹² 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.¹³
- 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.¹⁴
- The Court is clear that the right to consent resides with the people of Western Sahara, and not with the population of the territory.¹⁵ 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."¹⁶ 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."¹⁷
- 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.¹⁸
- 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.¹⁹

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 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>

⁸ 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

⁹ 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

¹⁰ 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.

¹¹ Judgment of 10 December 2015, EU:T:2015:953, §241. Considered a settled matter in subsequent rulings.

¹² "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.

¹³ Judgment of 27 February 2018, EU:C:2018:118, §67-85. Considered settled in subsequent rulings.

¹⁴ Judgment of 21 December 2016, EU:C:2016:973, §104. Reiterated and refined in subsequent rulings.

¹⁵ Judgment of 4 October 2024, EU:C:2024:833, §180-181. Judgment of 4 October 2024, EU:C:2024:835, §152-153.

¹⁶ Judgment of 4 October 2024, EU:C:2024:833, §157. Judgment of 4 October 2024, EU:C:2024:835, §128.

¹⁷ Judgment of 4 October 2024, EU:C:2024:833, §158. Judgment of 4 October 2024, EU:C:2024:835, §129.

¹⁸ Judgment of 4 October 2024, EU:C:2024:833, §96-138, Judgment of 4 October 2024, EU:C:2024:835, §70-109.

¹⁹ Judgment of 4 October 2024, EU:C:2024:839, §89.

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

1. Does 3 de pulpo 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 3 de pulpo agree with the CJEU that the waters offshore Western Sahara do not belong to Morocco's EEZ?²⁰
3. Does 3 de pulpo agree with the ICJ²¹ that the right to self-determination of a people of a non-self-governing territory constitutes a fundamental human right?
4. Your company has written on your website that it uses "Dakhla Octopus, fished and frozen daily with artisanal techniques, is the most prestigious Moroccan variant of octopus worldwide" and that the octopus has been caught "in Morocco".²² Why does 3 de pulpo refer to the locations in Western Sahara as part of Morocco?
5. According to your website, that it is in the process of obtaining IFS, BRC and MSC certificates.²³
 - i. What is the status of these three conversations?
 - ii. Has the matter of the legal status of Western Sahara and the waters off the territory been addressed in these conversations?
 - iii. How will 3 de Pulpo in these conversations with these three standards 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?
6. The IFS standard has strict requirements to avoid food fraud. Food fraud is defined by IFS to include erroneous country of origin declarations. In that regards, has the website marketing by 3 de Pulpo of its products from Western Sahara as «from Morocco» been addressed with IFS?
7. What measures, if any, has 3 de pulpo taken to comply with the CJEU ruling of 4 October 2024, and correctly label fisheries products from Western Sahara in its marketing and on its products?
8. Does 3 de pulpo import products from Morocco, or only Western Sahara? If 3 de pulpo imports from Morocco, which products does it import from Morocco?
9. Exactly which products does 3 de pulpo import from Western Sahara?
10. How is the octopus cargo transported from Western Sahara to Spain? Through which port and with which transportation method?
11. Which companies transport octopus for you from the occupied territories into Spain?
12. Will 3 de pulpo halt all imports from occupied Western Sahara that are undertaken on permits from the Moroccan government, without the explicit permission from the Saharawi people?
 - a. If no to question 12, will 3 de pulpo ensure that labelling of the products are in line with the CJEU ruling of 4 October 2024?
 - b. If no to question 12, will 3 de pulpo make sure to publicly report on the production volumes or values in Western Sahara separately from the Moroccan productions, in matters of transparency?

²⁰ 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>

²¹ <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>

²² <https://3depulpo.es/en/>

²³ <https://3depulpo.es/en/>

- c. If no to question 12, how will 3 de pulpo ensure the full transparency and traceability of its production in the occupied territory so that clients will not unknowingly purchase Western Sahara products mixed in with the ones made in Morocco?

We'd be grateful for your response. Any answer from your company will be included in the report. We'd appreciate answers prior to 24 December.

Looking forward to hearing from you,

Sincerely,

Erik Hagen

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