

Seafoodia

8, boulevard Edouard Herriot

13272 Marseille cedex 8

France

Att: David Sussmann, Seafoodia

Paris/Brussels, 02.12.2024

REGARDING SEAFOODIA AND THE OCCUPATION OF WESTERN SAHARA

Dear Mr. Sussmann

Western Sahara Resource Watch (WSRW) and the French association les Amis du Peuple du Sahara Occidental (APSO) are 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**.

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/unsrg_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>

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 noted how Seafoodia's supplier Seafoodexport Maroc, located at the premises of Dipromer in what it referred to as "Laayoune, Morocco" in 2020 was part of a certification by MarinTrust for complying with the Marine Ingredients Responsibly Supplied Chain of Custody Standard Issue 1.1.²⁰

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

1. Does Seafoodia 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 Seafoodia agree with the CJEU that the waters offshore Western Sahara do not belong to Morocco's EEZ?²¹
3. Does Seafoodia agree with the ICJ²² that the right to self-determination of a people of a non-self-governing territory constitutes a fundamental human right?
4. We notice that all the above mentioned MarinTrust certification refers to the location of Seafoodexport Maroc's location in Western Sahara being referred to as being in "Morocco". Has your company ever informed MarinTrust that the physical address of the above-mentioned establishment is incorrect, through placing the cities of El Aaiún within the country of "Morocco"?
5. Which countries' laws regulate the contracts between Seafoodia and Global Trust?
6. Did Global Trust travel to your supplier's location in the occupied territory as part of the MarinTrust certification?
7. What measures, if any, has Seafoodia taken to comply with the CJEU ruling of 4 October 2024 on labelling on goods from Western Sahara?
8. In the Global Standard for Responsible Supply of Marine Ingredients version 3.0²³, under the point "Eligibility criteria" it is established that: "To be eligible to apply for certification, facilities shall: [...] • be legally licenced in the country of operation • meet the legal obligations that are in place for the jurisdiction(s) where marine ingredients are produced and supplied". Does Seafoodia agree that the country of operation of the establishments in El Aaiún is in fact not Morocco?
9. In terms of social accountability, the Responsible Supply of Marine Ingredients version 2 requires applicants to "have a documented policy that demonstrates compliance with their national legislation to ensure that their marine ingredient products are manufactured in compliance to all relevant employment, welfare and safety requirements as stated in this sector". Which national legislation does Seafoodia consider to be applicable in Western Sahara?
10. In terms of reporting and recording of material, the Standard requires that recording of raw material includes proof of authorisation to engage in the specific fishing activity. Does Seafoodia consider authorisations accorded by the government of Morocco to be legally valid in occupied Western Sahara?
11. The Standard for Responsible Supply of Marine Ingredients, version 2, contains provisions on "responsible sourcing of legal, regulated and reported fishery material and avoidance of material sourced from IUU fishing activity". The Standard defines illegal fishing as "operating in a country's waters without permission". The people of Western Sahara, through their government in exile, have not permitted any of the current fishing activities in their land's waters. All fishing in the waters offshore Western Sahara takes place on the basis of licences accorded by the Moroccan government, which has no sovereignty, jurisdiction of administering mandate over Western Sahara or its waters. The provisions on responsible traceability further emphasize the importance that MarinTrust attaches to

²⁰ <https://www.marin-trust.com/sites/marintrust/files/2022-06/MTCOC133%20Seafoodia%20Certificate%202020-2023..pdf>

²¹ 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>

²² <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>

²³ <https://www.marin-trust.com/sites/marintrust/files/2023-11/STG-001%20-%20MarinTrust%20Global%20Standard%20for%20Responsible%20Supply%20of%20Marine%20Ingredients%20V3.0.pdf>

legally sourced material, in containing requirements that compliant marine ingredients are to be traced back to an approved fishery material, and that avoidance of IUU fishing should be demonstrated. If not IUU, how does Seafoodia qualify *the legal nature* of the Moroccan fisheries operations in Western Sahara?

12. The provisions on responsible manufacturing practices require packaging and labelling to display the country of production. Which country of origin is indicated on the labels of products supplied by Seafoodexport? Is this label kept upon exports to Europe? Is this label kept upon distribution in Europe?
13. The Standard contains requirements on community engagement. It expects the applicant to have a written evaluation of the potential impacts of direct operations on the local community.
 - a. How does Seafoodia define a “local community” in a situation of an illegal occupation?
 - b. Does Seafoodia here refer to groups 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. To what extent could Seafoodia, through a “local stakeholder” approach that documents benefits to local settlers, in fact risk undermining international law and contributing to the ongoing injustice against the Saharawi people?
14. We notice that your website refers to your company’s connections to IFS Broker, MSC, ASC, Friend of the Sea, EcoVadis, Certification Bio, Cosmos.
 - a. Which of these certifications are applicable to the supply chain of your products originating from Western Sahara or to the products from the territory?
 - b. Which exact standards are Seafoodia adhering to?
 - c. Can you send us copies of the certificates?
 - d. Which of these certification relate to your company’s performance or management on an overall level, and that therefore directly also relate to the supply chain?
15. Your website claims that «Our fishmeal is produced in Morocco».²⁴
 - a. Which are your suppliers of fishmeal in Morocco?
 - b. Which factory has produced the meal?
 - c. Through which port is this meal exported?
 - d. Into which port in Europe is this meal imported?
 - e. What is done, if anything, to ensure that the meal does not originate from Moroccan fisheries undertaken outside of Morocco’s EEZ, in Western Sahara?
16. According to the website of Friend of the Sea, Seafoodia is in the process of obtaining a certification regarding «Fish oil & Fish meal» based on fisheries in UNFAO zone 34.²⁵ The meal is, according to Friend of the Sea, under «own brand».
 - a. In which country’s maritime waters of UNFAO zone 34 is this fisheries taking place?
 - b. In which factory on which address is the fishmeal or fishoil from UNFAO zone 34 being produced?
 - c. Where to is this exported?
 - d. What country of origin is this labelled with upon exports?
 - e. The Friend of the Sea website suggests that you are having certified the fisheries of the fish species *Engraulis ringens* in UNFAO 34. Can we take for granted that this is incorrect, considering the species which is only found in the east Pacific Ocean?
17. Seafoodexport Maroc is located on the address of the Moroccan company DIPROMER. What is the relationship between Seafoodia and DIPROMER?

²⁴ <https://www.seafoodia.com/feed-2/?lang=en>

²⁵ <https://friendofthesea.org/company/seafoodia/>

18. Your website claims to sell sardines in can, from Morocco.²⁶ Which supplier do you have in Morocco?
19. Which companies supply Seafoodexport Maroc in El Aaiun with fish?
20. Exactly which products from Western Sahara is your company selling in Europe?
21. Which steps will you take vis-à-vis the certification bodies and the certification organisations as a consequence of the 4 October 2024 rulings?
22. Will Seafoodia halt operations in the occupied territory that are undertaken on permits from the Moroccan government, without the explicit permission from the Saharawi people?
 - a. If no to question 22, will Seafoodia ensure that labelling of the products are in line with the CJEU ruling of 4 October 2024?
 - b. If no to question 22, will Seafoodia make sure to publicly report on the production volumes or values in Western Sahara separately from the Moroccan productions, in matters of transparency?
 - c. If no to question 22, how will Seafoodia 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
Western Sahara Resource Watch
erik@wsrw.org
www.wsrw.org

Bernard Deglet
APSO
apsolument@yahoo.fr

²⁶ <https://www.seafoodia.com/produit/sardine-3/?lang=en>