

Brussels, 29.12.2024

To LSQA, S.A

Avda. Italia 6201, 11500 Montevideo

Uruguay

CEO: Ing. Jorge Arismendi

REGARDING LSQA'S CERTIFICATION OF ESTABLISHMENTS IN OCCUPIED WESTERN SAHARA

Dear Mr. Arismendi

Western Sahara Resource Watch (WSRW) and its member Austrian-Sahrawi Society are privileged to present you with our compliments. We are writing to inquire about LSQA's involvement of certification of companies in occupied Western Sahara.

Western Sahara Resource Watch (WSRW) is privileged to present you with our compliments. We are writing to inquire about LSQA's certification of a company that operates 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 LSQA in the report.

We have observed that your company is behind a rather problematic certificate in the GlobalG.A.P registry:

GGN: 4063651130485

Producer: "FMI NABIH AGRICOLE - Hay Salam Numero 1078 DAKHLA, 1078 , - Dakhla Morocco"

"The Certification Body LSQA S.A. declares that the production of the products mentioned on this certificate has been found to be compliant in accordance with the standard: GLOBALG.A.P."

Melons and Tomatoes. In accordance with "GLOBALG.A.P. IFA version 5.4-1 GFS"

GLOBALG.A.P. Risk Assessment on Social Practice (GRASP) - GRASP CPCC v1.3-1-I

Melon

Scheme GR: GLOBALG.A.P. GR version 5.4-1 GFS

Scheme CPCC: GLOBALG.A.P. IFA CPCC version 5.4-1 GFS

Countries of destination: CHE, DEU, EU, GBR, MAR, RUS

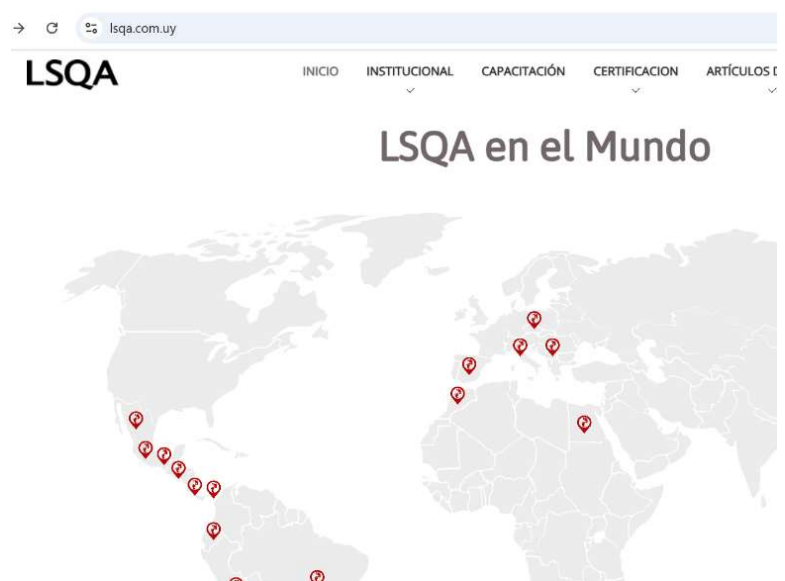
Tomato

Scheme GR: GLOBALG.A.P. GR version 5.4-1 GFS

Scheme CPCC: GLOBALG.A.P. IFA CPCC version 5.4-1 GFS

Countries of destination: CHE, DEU, EU, GBR, MAR, RUS

We are baffled to see that the geographical location of this entity in Dakhla to be wrong, particularly in view of the perfectly correct map (see to the right) on your website www.lsqa.com.uy.



As the compliance checks are to assess matters of law and regulations, we believe such failure to relate to the UN maps and rulings of international courts constitutes acts of gross negligence.

We have several questions in relation to the certification of these particular companies, outlined further below, that we hope you will have a chance to respond to, prior to 20 January 2025.

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 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

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/632e0f3ad580e748464681.pdf>

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

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 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

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

Regarding LSQA and international law:

1. Does LSQA 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 LSQA agree with the ICJ that the right to self-determination of a people of a non-self-governing territory constitutes a fundamental human right?
3. Apart from the establishments/facilities mentioned in this letter, which other certifications has your company undertaken in the territory of Western Sahara?

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.

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.

Regarding the certification:

4. Which countries' laws regulate the contracts between LSQA and the establishment located in Western Sahara?
5. Did representatives of your company physically travel into the occupied territory as part of the GlobalG.A.P certifications?

Regarding the standard:

6. LSQA refers to the certified establishments as fully compliant with GRASP General Rules v1.3-1-i.
 - a. Does a GRASP Interpretation Guideline for Western Sahara exist?
 - b. If no to question 6a: The rules establish that "In cases where a country does not have a GRASP Interpretation Guideline, the applicants (e.g. supplier, retailer, Certification Body) that are asking for the GRASP assessments need to hand in a project plan for the development of such interpretation guideline to the Secretariat" Was such a project plan submitted?
 - c. If no to question 6a, which country's interpretation guidelines was used for the compliance check?
 - d. If "Morocco" on question 6c, why does LSQA view Morocco as a relevant country, taking into account the separate and legal status of Morocco vis-à-vis Western Sahara?
7. GRASP General Rules v1.3-1-i, Annex V, Paragraph 3. General, notes the following: "The Grasp Country Risk Classification (GRASP CRC) will serve as the main reference document for current and upcoming changes in the GRASP concept. [...] a) The GRASP Country Risk Classification will be based on the latest Worldwide Governance Indicators (WGIs) developed by the World Bank [...] c) The use of the GRASP CRC is mandatory for the CBs and assessors assessing GRASP worldwide." Taking into account that the World Bank dataset that the WGIs are based on does not include Western Sahara, how was the mandatory exercise of a GRASP CRC carried out?
8. In view of the GlobalG.A.P standard, which country's laws apply to Western Sahara, according to LSQA?
9. If LSQA 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 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?

Regarding credibility of the standard:

10. Does LSQA consider it relevant that certified establishment is correctly reflecting the country where they operate on its websites?
11. European consumers have the right to know the origin of the products that they purchase. Declaring false country of origin generally constitutes acts of food fraud. The exporters in Western Sahara are falsely labelling the products with the wrong country origin. What reputational risks does LSQA consider it might have for the GlobalG.A.P standard that its certificates are placing the certified establishment in the wrong country?
12. What reputational risks does LSQA consider it might have for the standard that the websites of the certified company and the certificate issued by LSQA - mislead the consumer about the country of origin of the products that are being marketed?

Regarding your role:

13. Has LSQA 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?

14. Which steps will you take vis-à-vis the certificate, GlobalG.A.P and the certified establishment as a consequence of our request to you and 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 20 January 2025.

Looking forward to hearing from you,

Sincerely,

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