

Alliance for Water Stewardship

Att: Adrian Sym, Chief Executive Officer

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Brussels, 06.12.2024

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## REGARDING AWS CERTIFICATIONS AND THE OCCUPATION OF WESTERN SAHARA

Dear Mr. Sym,

Western Sahara Resource Watch (WSRW) is privileged to present you with its compliments. We are writing to inquire about the certification of farms in occupied Western Sahara by the Alliance for Water Stewardship (AWS). Specifically, we have questions about the certification of the Azura farms in Dakhla, operating under the entity Maraissa Dakhla. We would be grateful for your response to the questions outlined further below.

We are planning to include the information about AWS in an article we are working on regarding the controversial agricultural project in the occupied territory, for publication around 4<sup>th</sup> of January 2025, and would appreciate an answer from you **prior to 25 December 2024**.

Allow us to first contextualise our query: Dakhla is a town located along the mid-coast of the part of Western Sahara that Morocco has illegally occupied since 1975. 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

While well over a hundred of UN Resolutions, and rulings by the International Court of Justice, the European Court of Justice<sup>4</sup> and the African Court on Human and People's Rights<sup>5</sup>, 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

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

<sup>2</sup> 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](https://minurso.unmissions.org/sites/default/files/unsg_report_18_june_1990.pdf)

<sup>3</sup> 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>

<sup>4</sup> All Rulings can be accessed at the site of the EU Court of Justice, <http://curia.europa.eu>.

<sup>5</sup> 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>

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 recently lamented the fact that his Office has not been allowed to visit Western Sahara for the last eight years.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights<sup>9</sup> and of the UN Human Rights Committee<sup>10</sup>, 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.<sup>11</sup>
- Morocco has no sovereignty<sup>12</sup> or administering mandate<sup>13</sup> 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.<sup>14</sup>
- 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.<sup>15</sup>
- The Court is clear that the right to consent resides with the people of Western Sahara, and not with the population of the territory.<sup>16</sup> 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

<sup>6</sup> 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>

<sup>7</sup> 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>

<sup>8</sup> 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>

<sup>9</sup> 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](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMAR%2fCO%2f4&Lang=en)

<sup>10</sup> 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](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MAR/CO/6&Lang=en)

<sup>11</sup> 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

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

<sup>13</sup> "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.

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

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

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

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.”<sup>17</sup> 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.”<sup>18</sup>

- 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.<sup>19</sup>
- 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.<sup>20</sup>

The agricultural sector in Dakhla is quite small, compared to the sector in Morocco proper. There are around a dozen of sites that are being tiled, owned by a handful of operators that are either owned by the king of Morocco, by Moroccan business conglomerates, or by French companies such as e.g. Azura. Morocco has turned the agricultural industry in Western Sahara into a driving force for populating the territory with Moroccan settlers. As confirmed by a member of the Moroccan parliament who co-owns a farm in Dakhla, workers are brought in from Morocco.<sup>21</sup>

Against that backdrop, we have several questions about the decision to certify a company active in the territory.

*Regarding the Alliance for Water Stewardship (AWS) and international law:*

1. Does AWS 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 AWS agree with the ICJ<sup>22</sup> that the right to self-determination of a people of a non-self-governing territory constitutes a fundamental human right?
3. We note the statement “Changes to AWS Standard System resulting from Russia’s invasion of Ukraine”, announcing that AWS has suspended “all AWS conformity assessments in Russia, Ukraine and Belarus”. Why would it undertake assessments in another territory that has been invaded and illegally annexed?

*Regarding the certification report (AO-000994)<sup>23</sup>:*

The certification report lists Maraissa – Dakhla as located on an the following address: “Km 39 Route de Tiznit, Tin Mansour, Province Chtouka Ait Baha, MOROCCO.” Further on, it reads: “The scope of services covers the Initial certification audit for assessing conformity of Maraissa Dakhla against the AWS International Water Stewardship Standard Version 2. Azura’s crop production activities are named Maraissa (legal entity) in Dakhla and are composed of tomatoes production, the eight farms are considered as one site (Dakhla site). The site has a fully integrated management system from farms to packing (Azura’s own farms and central management system). The facility is in the Sakia El Hamra region. The audit was conducted onsite on 4-6 March 2024. The onsite site visit included the assessment of six tomato farms onsite.”

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

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

<sup>19</sup> Judgment of 4 October 2024, EU:C:2024:833, §96-138, Judgment of 4 October 2024, EU:C:2024:835, §70-109

<sup>20</sup> Judgment of 4 October 2024, EU:C:2024:839, §89.

<sup>21</sup> WSRW, 06.04.2013, Dakhla farms depleting underground water reserves?, <https://wsrw.org/en/archive/2557>

<sup>22</sup> International Court of Justice, Advisory Opinion of 25 February 1975, Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>

<sup>23</sup> Water Stewardship Assurance Services, Certification Report AWS, Audit Number: AO-000994 <https://a4ws.org/wp-content/uploads/2024/05/AWS-000544-Azura-Maraissa-Dakhla-Certification-Report-27-May-2024.pdf>

4. Why does the certification report not specify that the eight farms, including the six farms visited as part of the assessment, are not in Morocco? Particularly as the Standard V2.0 describes that “The focus of the Standard is the operational site”?<sup>24</sup>
5. Is that erroneous country description also to be found on the actual, signed, certificate?
6. Has the audit team of Water Stewardship Assurance Services indicated to AWS that the farms were in fact located in another country?
7. Which countries’ laws, according to AWS, regulate the contracts between the certification body and the establishments located in Western Sahara?
8. Has Azura/Maraissa Dakhla discussed with AWS the implications of the CJEU decisions that have a direct effect on the labelling of its products and on the understanding of the legality of its operations in Dakhla?

*Regarding the standard:*

9. Checklist item 1.1 requires that “the physical scope of the site shall be mapped, considering the regulatory landscape and zone of stakeholder interests”. Checklist item 3.2.1 requires implementation of a process to verify “full legal and regulatory compliance”.
  - a. Would AWS consider Moroccan laws and regulations part of the regulatory landscape in Dakhla? If so, on what basis does AWS come to this conclusion?
  - b. How does AWS consider the Moroccan government’s legal standing in the territory?
  - c. In which country or territory are the 8 farms that make up the site located, according to AWS? If any other response than “Western Sahara” to this question, how does AWS come to this conclusion?
10. Checklist item 1.2.1 requires that “Stakeholders and their water-related challenges shall be identified. The process used for stakeholder identification shall be identified.” In this regard, it is useful to keep in mind the clear distinction that the CJEU rulings drew on 4 October 2024 between the “population” and the “people” of Western Sahara. A large part of the people of the territory are today refugees, living abroad, following the occupation. The population, however, consists of individuals who Morocco has incentivised to move into the territory. It was exactly by applying a mistaken “stakeholder approach” that the EU Commission lost in the CJEU.
  - a. How does Azura define a “stakeholder” in a situation of an illegal occupation?
  - b. Does Azura 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. Are the people of Western Sahara considered a stakeholder by Azura/Maraissa Dakhla?
  - d. The people of Western Sahara oppose businesses on their land that operate in accordance with the strategies of the Moroccan government, such as Azura, described in the certification report as “a private Franco-Moroccan family group”. Does AWS consider the position of the people of Western Sahara relevant in relation Azura’s operations on their land?
  - e. The audit team found the Stakeholder list identified as relevant by the site to be incomplete, and provided methodology for relevant identification and evaluation of stakeholders. How does this methodology account for the rights of the people of the land on which Azura/Maraissa Dakhla is operating?
  - f. Will you share a copy of the stakeholder list that was provided by Azura to the audit team?
  - g. To what extent could Azura, through a “local stakeholder” or “farming community” approach that documents benefits to local settlers, in fact risk undermining international law and contributing to the ongoing injustice against the Saharawi people?

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<sup>24</sup> International Water Stewardship Standard, version 2.0, 22.03.2019, p.5, [https://a4ws.org/wp-content/uploads/2019/03/AWS\\_Standard\\_2.0\\_2019\\_Final.pdf](https://a4ws.org/wp-content/uploads/2019/03/AWS_Standard_2.0_2019_Final.pdf)

*Regarding credibility of the standard:*

11. European consumers have the right to know the origin of the products that they purchase. Taking into account that Azura systematically refers to its site in Dakhla as being in Morocco, on websites, reports, in marketing material and on the labelled products.: What reputational risks does AWS consider it might have for the standard that a certified company - and possibly also AWS certificates themselves - mislead the consumer about the country of origin of the products that are being marketed?

*Regarding your role:*

12. Has AWS 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?
13. As companies on the European market are now obliged to label goods from Western Sahara as from "Western Sahara", and specifically not from "Morocco", is there a risk that the application of this ruling in Europe is undermined by the issuing of AWS certificates claiming that geographical locations in Western Sahara are in fact located in Morocco?
14. Which steps will you take vis-à-vis the certificate, Water Stewardship Assurance Services and Azura Group as a consequence of our request to you?

Thank you in advance for your consideration of our questions. We look forward to hearing from you.

Sincerely,

Sara Eyckmans

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