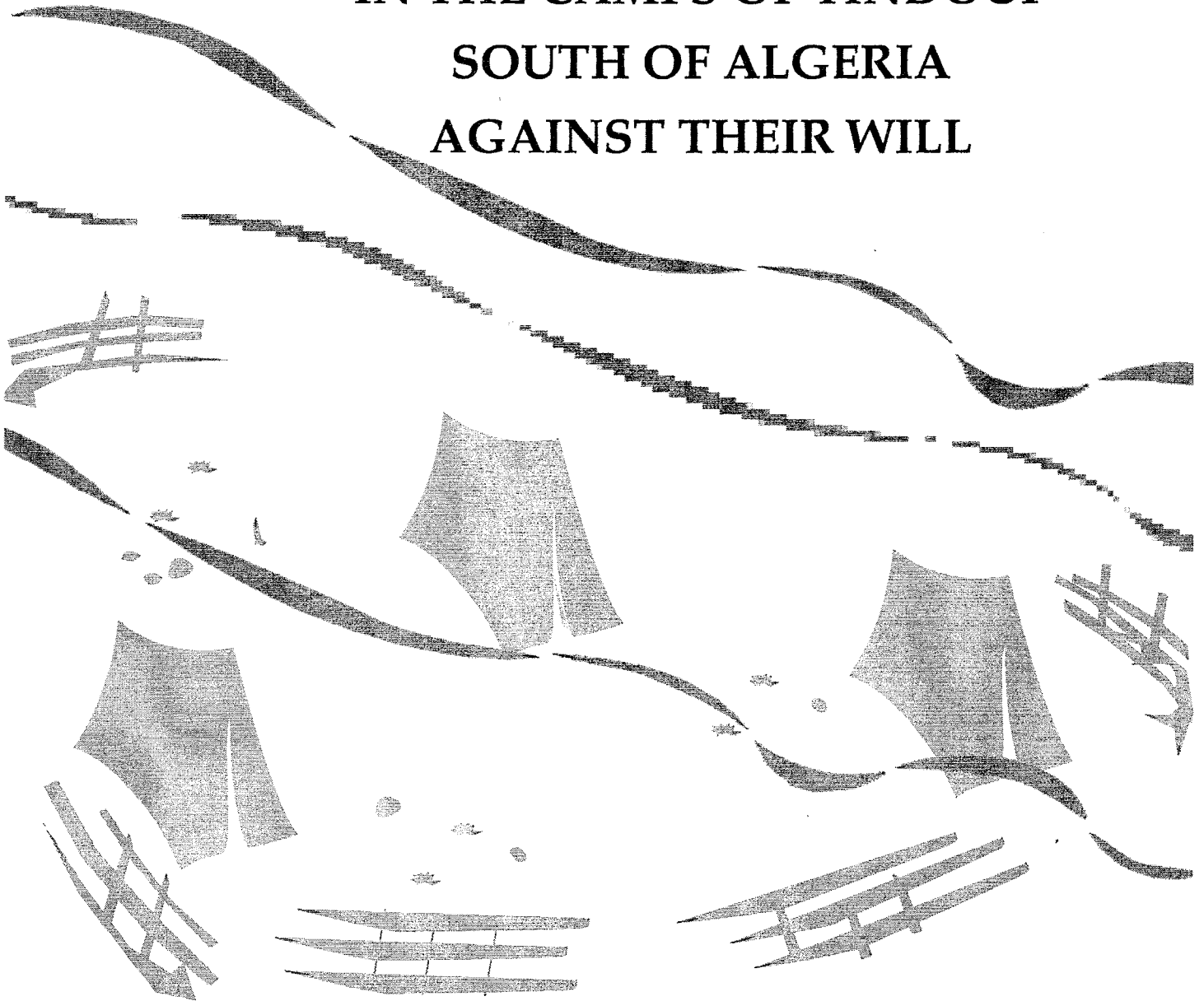


COLLECTIVE OF HUMAN RIGHTS ASSOCIATIONS IN THE SAHARA

**THE POLISARIO
DETAINS CONFINED POPULATION
IN THE CAMPS OF TINDOUF
SOUTH OF ALGERIA
AGAINST THEIR WILL**



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**THE POLISARIO DETAINS CONFINED POPULATION IN
THE CAMPS OF TINDOUF, SOUTH OF ALGERIA,
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THE POLISARIO DETAINS CONFINED POPULATION IN THE CAMPS OF TINDOUF, SOUTH OF ALGERIA, AGAINST THEIR WILL.

Introduction

The Polisario, protected by Algeria, flouts the most basic human rights, among which is the right of refugees to decide freely about returning to their homes in the Sahara.

For more than 27 years, the Polisario detains as confined populations - and against their will- a great number of Sahraouis and, in fact, makes of them "professional confined populations" for reasons having to do with propaganda, collecting humanitarian aid (a great part of which it embezzles), and with using them as a pressuring card and blackmailing means before the International Community. It subjects them to a dictatorial and tight surveillance, denies them freedom of speech and of movement, and forbids them -lest they are the object of reprisals- to attempt to adhere to an ideology other than its own.

The Polisario gives to international organizations the number of 165,000 confined populations while their number actually does not go beyond 50,000 (and this figure includes their armed forces).

For more than 20 years, the Polisario receives from international organizations and various charitable circles assistance aid for 165,000 people while it has only 50,000. The left-over aid is either embezzled or converted into money to be used in the war effort against Morocco.

Morocco has not ceased to appeal to the international community, and in particular the United Nations High Commissariat for Refugees (UNHCR), calling it to endeavour for a speedy repatriation of the confined populations in order to remove them from the agonizing situation in which they daily live while under the yoke of the Polisario.

Algeria, the country on the territory of which these confined populations are detained against their will, shoulders a clear responsibility in this regard. It must not only allow the HCR to do its job of establishing an exact count of the confined populations, but equally to put an end to the protection it affords the "thugs" of the Polisario and bring them to cease the exaction which they regularly perpetrate against the populations of the Tindouf camps.

1- Separating between the humanitarian and the political

The link that the Settlement Plan establishes between the political solution and the return of confined populations was predicated upon the speed with which the political solution of the question could be implemented. Ten years have elapsed with no implementation of the political solution. These are ten additional years of exile. The setting of such a condition as manifested in the aforementioned linkage- must be forgone because it has contributed to the denial, for the confined populations, of exercising their "right for return", a fundamental right recognized by Human Rights principles. At the same time, it has prolonged and aggravated their human martyrdom.

The mortgage-like stipulation made by the Settlement Plan on the mandate accorded the United Nations High Commissariat for Refugees must immediately be dispensed with. The humanitarian aspect of the mandate has been for 10 years a "hostage" of the Settlement Plan. Yet, what should have been done instead was to foster and facilitate the best solution, namely the voluntary repatriation of the confined populations.

Up to now, and in spite of Morocco's repeated appeals, the HCR continues to perceive its mission based upon a restrictive interpretation of the Settlement Plan. It has refrained from fulfilling its primary mission, which consists of protecting confined populations and favouring actions leading to their return to their places of origin.

The HCR must no longer invoke the eminent role of the MINURSO or the provisions of the Settlement Plan in order not to repatriate confined populations. It must favour actions leading to the return of confined populations to the contested territory. This is so because, if the common concern has to do with the security of the persons and with the improvement of their living conditions, it should be out of the question to settle them east of the protective wall in make-shift settlements and in an area which could be, judging from the polisario's declarations, a confrontation zone in case of the resumption of hostilities.

The HCR must also:

- Finalize the definitive list of confined populations and to distinguish these latter from other confined populations living in the same camp, making specific their Malian, Algerian or other nationality;
- Inform the confined populations, in an objective way, about the security conditions, the receiving facilities and the re-insertion services in the Sahara;
- Strengthen the representation of the HCR in the Tindouf camps in order to protect confined populations; this is in view of the fact that Morocco has agreed, since 1999, to the opening up of new representation units of the HCR in the Sahara;
- Start drawing a list of the confined populations' needs as concerns housing, schooling, employment in order for Morocco to complete its infrastructure realizations in anticipation of their repatriation ;
- Fulfil its humanitarian function by seeing to it that human rights are respected in the camps and that humanitarian aid is judiciously used so as to put an end to the embezzlements of parts of this aid and its selling outside the camps.

The separation between the humanitarian and the political aspects of the question will enable the HCR to resume playing its real role and to act within the confines of its separate mandate.

2- The right of return

It is one of the fundamental human rights. The Universal Declaration of Human Rights enshrines it in its article 13.2: "*Everyone has the right (...) to return to his country*". It is thus both an individual and universal right. Following this clear affirmation by the declaration of 1948, the International Pact on Civil and Political Rights of 16 December 1966 came to codify this right by stipulating in its Article 12.4: "*No one shall be arbitrarily deprived of the right to enter his own country*" Neither the country of asylum, nor the country of origin, nor a third State - and especially not a de facto authority- can oppose this universal right. This right is more important when the matter concerns confined populations because, by definition, these latter have been arbitrarily deprived of their "right to stay" at home.

3- Voluntary repatriation

Besides being a juridical notion, "voluntary repatriation" is also a concrete and long-lasting solution to the problems of confined populations. Consequently, it implies a cooperation between the concerned parties, for the purpose of enabling the confined populations to exercise their right of return.

It is in strict adherence to the philosophy and juridical instruments governing the International Community's action in what concerns seeking to implement lasting solutions to confined populations' problems that Morocco has always proposed a humanitarian partnership in order to facilitate and foster a speedy voluntary repatriation of Sahraoui confined populations. The same holds true for its considering that the Settlement Plan in no way constitutes a hindrance or an obstacle in the way of engaging in an immediate and concerted action for the voluntary repatriation of confined populations.

It is by now patently recognized that such an action will take on, henceforth, a humanitarian urgent character, and will not prejudice in any way the resolution of the political aspects of the Sahara problem.

In conformity with the letter and the spirit of Conclusion N° 40 (XXXVI) of 1985, drafted by the Executive Committee of the HCR, entitled "Freely consented repatriation", Morocco will endeavour to create and consolidate the most favourable conditions to receive repatriated people and foster the voluntary return of confined populations. It will make all the efforts necessary for the return of confined populations to take place in conditions ensuring the preservation of their dignity and the presence of security.

As a member of the HCR Executive Committee, Morocco shares the orientations of this organization and agrees with the kinds of action that it takes. Moreover, it wishes to establish a partnership with the HCR, one based on good faith, for the purpose of repatriation of the Sahraoui confined populations. Thus, Morocco will respect the voluntary character of repatriation since the confined populations will receive exhaustive and adequate information about conditions having to do with reception centers and their return. Such information is the kind that would enable them to take a decision that is independent, enlightened and devoid of any constraint or manipulation.

The right of access of the HCR to the Tindouf confined populations camps must, from now on, be not only scrupulously respected but especially exempted from any interference, violation and intimidation. Only under such conditions that an honest action of implementation and fostering of the

voluntary repatriation of the Tindouf confined populations could take place.

In exchange, and so as to ensure the success of this repatriation, Morocco is completely disposed towards cooperating with the HCR. It is ready to provide logistical and material help, as well as the guarantees and assurances, so that the exercising of the right of return by the confined populations will take place in conditions that preserve their dignity and ensure their security, in conformity with the terms consigned in paragraphs *b, e, k* and *i* of Conclusion No 40 (XXXVI)- 1985 drafted by the HCR Executive Committee.

4- Humanitarian partnership for repatriation

Morocco calls for an efficient and honest humanitarian partnership in order to foster and implement the voluntary repatriation of confined populations. Such a partnership would involve (a) the HCR, by virtue of its mandate and within the framework of its principles of action, (b) Algeria, the host of the confined populations, within the framework of its territorial sovereignty, and (c) Morocco, the confined populations' country of origin and of return.

5- Clarification concerning the HCR's mandate

a) The Mandate

The HCR is the organization of the International Community concerned with confined populations. Its statute, in *fact*, makes of it the depository of a universal mandate in their favour. Based upon the terms of Chapter *One*, Article 1 of the HCR Statute, its mandate comprises two aspects:

- 1- "functions of international protection".
- 2- "the search for permanent solutions to refugees problems".

Nowadays, it is universally acknowledged that the best permanent or durable solution is the freely consented repatriation. Article 2 of the same Chapter stipulate the following: "*The activity of the High Commissariat does not comprise any political character, (. . .)*" The functions and activities of the HCR are humanitarian and a-political. Based upon these last two articles of the HCR's Statute, the partnership for which Morocco calls is fully justified from the humanitarian point of view and well-founded from the judicial one. The deficiencies and failings of the past are out of place now. The approach suggested at the London meeting allows for the HCR to fully realize the terms of its own mandate and fulfil its universally recognized functions vis-a-vis

the Tindouf confined populations, in all independence from the Settlement Plan. The most urgent of these functions is voluntary repatriation.

b) The HCR's principles concerning voluntary repatriation

The HCR's doctrine and practice as concerns voluntary repatriation are detailed and developed; as such, they ought to be applied *mutatis mutandis* to the Tindouf confined populations. We have indicated above the most important parameters like security, dignity, the voluntary character of the repatriation, etc. Morocco insists, within the framework of these principles to which it fully adheres, upon clarifying the question of the "place of repatriation".

c) The Place of Repatriation

This issue has a particular importance for the Tindouf confined populations. The idea of a "pseudo repatriation" of these confined populations to areas east of the BERM (protective wall) takes after a political mystification and humanitarian tall story. In order to be convinced of this, let us quote paragraph b of Conclusion No 40 (XXXVI)- 1985: "...The need to effect repatriation in absolute conditions of security, preferably to the place of residence of the refugees in the country of origin, must be respected"

The places of residence of virtually all the Tindouf confined populations and those they originally came from are located west of the BERM (or protective wall). It would be irresponsible to "pseudo-repatriate" them to the zones that they have not come from, and doing it in violation of the HCR principles. Indeed, the zones east of the BERM are not only depopulated and precarious, but also far from "offering the conditions of security" required by paragraph b of Conclusion No 40. To move the confined populations to them would be, in fact, a "second forced exile" and a prolongation and aggravation of their ordeal. This is so because, not only are security conditions absent, but the humanly acceptable material and physical conditions are also non-existent.

Thus, the projected transfer would be in flagrant contradiction with the HCR's humanitarian principles and rules of action. The objective of the repatriation of the confined populations is to resolve the problem and not its geographical transfer and the prolongation of their suffering.

6- The role of Algeria, the host country

In virtue of the rules of International Law and of the principle of

territorial sovereignty, the host country is fully involved in any international action concerning confined populations residing in its territory; this includes repatriation. The humanitarian partnership which Morocco proposes can not overlook Algeria's role. The international practice establishes clearly the role of the host country. No judicial subterfuge, nor any political fiction could exclude nor exempt the host country from playing its role in the repatriation of confined populations.

In this regard, paragraph c of Conclusion No 40 of the HCR's Executive Committee affirms the following: "*The international action in favour of a freely consented repatriation, at the world or regional level, must benefit from the full support and cooperation of all the countries directly concerned. Fostering a freely consented repatriation as a solution to refugees' problems also requires political will, on the part of the directly concerned countries, in order to create the favourable conditions for a solution.*" The aforementioned Conclusion, this paragraph included, reflects the International Community's law and practice as concerns voluntary repatriation. The host country stands, therefore, to gain from being associated fully to the repatriation effort of the refugees.

Morocco is convinced that Algeria would not forgo the attributes derived from its territorial sovereignty. Like Morocco, Algeria is a member of the HCR's Executive Committee and could not shirk its international humanitarian obligations.

7- The responsibilities of Morocco, the country of origin

Morocco, the country of origin of the Sahraoui confined populations, is fully aware that its role is a cardinal one and that it must shoulder great responsibilities for the purpose of receiving the confined populations and fostering their repatriation. As it was previously indicated, Morocco is committed to offer the HCR its full and loyal cooperation for an immediate start of the implementation of the Sahraoui confined populations' right of return and for any intensive action geared towards the fostering of their repatriation.

It goes without saying that this cooperation will have to be offered, henceforth, in keeping with the stipulations of the HCR's independent mandate, following its rules and practices, drawing fully on its expertise. In this regard, Morocco draws strength from its proposals in three domains: guaranties and assurances for a repatriation with dignity and with security; a concerted action in the domain of material and logistical help for the return (of confined populations); a plan of action for an efficient promotion of repatriation.