

The Moroccan Charter for the Protection of Collective and Individual Rights over Lands, Forests and Natural Resources

Based on the Amazigh Common Law, the new Constitution, and Convention 169 relating to Indigenous and Tribal Peoples in Independent Countries

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This is a declaration of the signatories of the present Charter, taking part in the International Conference on Collective and Individual Rights over Lands, Forests and Natural Resources, organised in Agadir, Morocco, on 19 and 20 April 2014, by **Tamunt n'iffus Confederation and Tamaynut Organisation**, and attended by representatives of Amazigh cultural and development NGO's.

During this conference, presentations focused on diagnosing the different situations of the collective and individual rights over lands, forests and natural resources in various regions of Morocco, as well as the Amazigh customary laws, oral or written, in contrast with the laws passed during the French Protectorate period. Mechanisms and strategies necessary for the protection of the collective and individual rights over lands, forests and natural resources were also discussed, including a set of recommendations, partly based on previous meetings, attended by male and female researchers, scholars, judges, lawyers, engineers, heads of cultural and development NGO's, representatives of indigenous communities, human rights activists, gathered by the Amazigh Human Rights Committee of Tamaynut Organisation in Rabat from November 2013 through April 2014, along with the Rabat coordination of the Amazigh cultural and development NGO's.

Given that the 2011 Constitution was adopted to usher the country into a state of law where collective and individual rights over lands, forests and resources are recognised, in conformity with the developments in the International Law, namely with the adoption of Convention 169 relating to Indigenous and Tribal Peoples in Independent Countries, as well as the United Nations Declaration on the Rights of Indigenous Peoples.

Considering that the government's plan to appropriate 20 million hectares by the end of 2016 will inevitably deprive members of indigenous communities and tribal peoples of their collective and individual rights over land, forests and resources, supported by the local Amazigh customary law, the Constitution and International law, is in contradiction with the essence of the new constitution, which for the first time ever recognises the Amazigh cultural identity and the Amazigh language as an official language. This constitution is perceived by most Moroccans as protecting rather than denying those rights, bearing in mind that since Independence, members of indigenous communities have been illegally deprived of their collective and individual rights, while influential or authority-backed individuals easily grab thousands of hectares of land, forests and natural resources, in total disregard for "the right and principle of prior, free and informed consent". Moreover, rich individuals from the Gulf Arab countries and some local and foreign companies have readily been granted appropriation of thousands of hectares, thus making prejudice to the dignity of the members of indigenous communities and tribal peoples, guaranteed under the said Constitution.

Consequently, the participants agreed on a set of recommendations to be listed hereinafter and addressed to the King, pursuant to Article 42 of the Constitution, to the Government and other

institutions of Morocco, to the United Nations, and particularly to the United Nations Forum on Indigenous Issues, which will be held from 12 to 23 May 2014 in New York, as well as to the United Nations World Conference on Indigenous Peoples, scheduled for 22-23 September 2014.

Regional, national and international background:

Most historical and legal evidence confirms that the Amazigh peoples in Tamazgha land ¹ were among the first peoples who set laws to rule their societies organised in the forms of communities, tribes or tribal confederations, turning at times into mighty empires, kingdoms and principalities in ancient, medieval and modern history. Their organisation made of them some of the fiercest defenders against invaders. Even when central authority was in decline, communities and tribes quickly recovered their strength thanks to their solidarity and cooperation based on the system of collective ownership and the free election of their representatives, named "Imgharen", "Inflas", "Imzwaren" or "Ait kumraw", depending on regions.

While some oriental and Arabised Amazigh scholars considered the people's resistance against "Arab expansion" as an excuse for legitimising invasion and the expropriation of fertile lands while humiliating resistance, Amazigh tribes all along their history have never renounced their laws, regulations and customs, which form the basis of their system of collective and individual ownership of land, forests and resources.

Most experts in Moroccan laws, whether Moroccans or foreigners, argue that this system of collective ownership, based on oral tradition, engraved in tablets, or otherwise used by the tribes and communities, and especially their elected above-mentioned elected bodies, all prove that Amazigh tribes and communities were management units for local and regional governance.

That era, often trashed under the term "*siba*"², was in fact a time of effective self-government. "*Siba*" was meant to demean the system of collective ownership and management of lands, forests and resources through which those communities and tribes practised self-autonomy within national unity, as part of the Moroccan/North African age-old heritage, which enabled them to directly manage their affairs, territories, forests and resources according to the Amazigh written and oral laws, and on the basis of their traditions, know-how, technology, legal systems, and economic expertise, with total respect for national unity while opposing oppression, dictatorship and enslavement throughout history.

In their first survey of land property in Morocco, Colonial authorities confirmed that the indigenous communities and tribes of Morocco had collective rights over land, forests and resources secured by the Amazigh oral and written legal system.

¹ Tamazgha: is the Berber name for North Africa, the homeland of the Amazigh people, that stretches from the Canary Islands in the Atlantic Ocean to Siwa Oasis in Egypt and from the Mediterranean to the north to the Sahara in the south.

² "*Blad Siba*" literally anarchy territory, were autonomous Amazigh territories out of reach of the Sultan's control. In official history documents, the term is pejoratively used to refer to anarchy and the absence of law, which is not true as it is a form of autonomy by which tribes run their internal, economic, political and military affairs.

However, because the Amazigh tribes were the spearhead of resistance against both colonial invasion and oppressive central government, French colonisation, disguised as a protectorate, focused on undermining the inherited cultural and spiritual relationship binding the Amazigh people to their land, forests, and resources, which constituted the backbone of their survival, resistance and freedom in the face of central government tyranny and imperialism. The showdown resulted in the French colonial power abolishing the local autonomy so far enjoyed by the Amazigh tribes in their territories within the national unity of Morocco. The Act (*Dahir*) of 27 April 1919, setting the colonial collective property trusteeship, pays lip service to the rights of tribes and communities over their lands, forests and resources, as well as their right to maintain their traditional institutions.

In spite of the conflict situation, a large corpus of pre-colonial government as well as French documents, including colonial legislation, confirm that the Amazigh communities and tribes always had their own written and oral laws for managing collective and individual ownership of lands, forests and resources, and these laws continued to be in effect not only after the French Protectorate in 1912, but also up to the date of the Arabisation Act of 1965, and even till the 1990's, when the Amazigh Cultural Movement stood against a move by the authorities to refresh the attempt to delimit state property in accordance with measures taken by the French authorities in the framework of their strategy to crush the fight of the Amazigh tribes, and cancelled when the Amazigh fighters were needed to support France in the two great Wars. The Amazigh tribes particularly resisted Marshall Lyautey's 1922 Act relating to the land registration plan.

More recently, while the 2011 constitution was hailed for some of its advances, which for the first time in Moroccan history recognises the Amazigh culture and language, the authorities have in parallel devised an evil scheme to register as private state property 20 million hectares, between 2012 and 2016, in total disregard for legal procedures required in such matters, even procedures in effect before the 2011 constitution. The scheme follows the same methods used by the French colonial authorities to crush the Amazigh tribes' resistance between the two World Wars. Worse even, The Moroccan national authorities are reviving the colonial archives after the adoption of the new constitution.

It is indeed The post-2011 constitution Moroccan government³ that has adopted the said land conservation scheme enabling the “*Agence Nationale de la Conservation Foncière, du Cadastre et de la Cartographie*” (National Agency for Property Registry, Land Survey and Mapping), operating under the government's direct control, to conclude three secret agreements: one with the High Commissioner For water, Forests and Desertification Control (“*Le Haut Commissariat aux Eaux et Forêts et à la Lutte Contre la Désertification*”) in 2012; one with the ministry of Interior, in March 2013; and the last one with the “The State Property Administration” (“*la Direction des Domaines de l'Etat*”) in 2013. Those agreements, which have not been made public, all aim at expropriating and alienating the collective and individual rights of the Amazigh communities and tribes over their lands, forests and resources, in total breach of the legal procedures observed in property registration.

³ The Government headed by Abdel-Ilah Benkirane installed on 3 January 2012.

Also, since January 2013, The General Property Registrar instructed all regional registrars, through an ordinary administrative note, disregarding the new principles embodied in the 2011 constitution, such as The Code of Property Rights, to secretly hasten the process of registering property files prepared during the colonial era to expropriate lands, forests and resources. Through this procedure, the government is discretely breaking the registration procedures of the Code of Property Rights of tribal and community lands, forests and resources, on the basis of files prepared before 1934, when those tribes were busy waging resistance against colonial occupation. Clearly publicity is avoid to evade potential protests of ordinary peasants, who considered themselves rich as long as they enjoyed their inherited collective and individual rights over lands, forests and resources. Unfortunately, the first government under the new constitution, which formally guarantees all rights including the right to property⁴, is launching a discreet process aiming to deprive those indigenous peasants of their collective rights over the lands, forests and resources they have inherited from their ancestors and have safeguarded for thousands of years.

Initially, the colonial legal system partially recognised the Amazigh laws, the legal and judicial systems of the Moroccan indigenous communities and tribes, as legitimate owners of lands, forests and natural resources, and also recognised their right to the fifth of revenues resulting from the private or public exploitation of the lands, forests, resources, including the state's collective resources, as well as mineral resources; however, the national Moroccan state, has been waging an Arabisation campaign against the Amazigh written and oral laws, and undertaking with zeal to abolish the Amazigh judicial system, depriving those tribes and communities not only of their cultural and linguistic identity, but also of any of their collective and individual rights to property assets.

Since the early nineties of the last century, the state has launched an aggressive campaign, particularly following the emergence of the Amazigh Cultural Movement, in land mapping and registration already initiated by the colonial authorities in 1920, immediately after the first World War, but halted on the eve of the Second World War, when the colonial authorities needed to encourage tribes to take part in the War against Hitler to free France and the rest of Europe from Nazism.

The Protectorate administration resumed its land grabbing policy a few years before independence and power transfer to the modern national state, indeed liberated from French colonial rule through the resistance of those very autonomous indigenous tribes⁵. Despite their sacrifices, the independent national state set out to destroy every aspect of their autonomy, including all traditional political, cultural, economic and legal institutions. Thus, the Amazigh legal and judicial systems in place were abolished while others were maintained (the Islamic, the Jewish and the French), and the Amazigh language was excluded from the educational system while others were maintained (French, Arabic, Islamic, and Hebrew).

⁴ Article 35 of 2011 constitution: *"The right to property is guaranteed. The law can limit the extent and the exercise of it if the exigencies of economic and social development of the country necessitate it. Expropriation may only proceed in the cases and the forms provided by the law."*

⁵ The Amazigh territories, which are outside the control of the central government, autonomously run their internal, economic, social, political and military affairs. (See n° 2 above).

The new government and the policy of appropriation of 20 million hectares between 2012 and 2016:

Surprisingly, with complete disregard for the legal and human rights references enshrined in the 2011 constitution, the new government, instead of seeking to cancel its control over communities and tribes, excluded every Amazigh, national and international human rights standard, and adopted a policy similar to that of the Protectorate between the two Wars. It even now uses the colonial archives against the children of resistance tribes and communities, who freed France from Nazism, and the Moroccan state from French occupation.

In principle, the 2011 constitution, entitles and safeguards the individual right of property for all Moroccans. In fact, a tribe who has been living on the Moroccan soil for thousands of years, occupying well known lands and forests, having Amazigh laws, whether oral, or documented on tablets and later on paper, cannot register its collective rights over lands, forests and resources, as all its written deeds are rejected by the related public institutions, under the pretext that Argan or cedar trees grow on the land, in which case they are either considered woodlands or collective property. To prepare a property registry file for such a land, applicants face a vicious circle in that they must submit an official document, usually issued by notaries, who would produce it only if certified by an administrative authority (governor), who in turn will issue that document only if a certificate proves that the land is not a woodland or a collective property.

Indigenous communities or tribes in Argan or cedar areas are deprived of their right to register their collective property. Under this oppressive policy, an area with just one Argan or cedar tree is considered woodland, which is totally inconsistent with the new constitution, the Amazigh written and oral laws, as well as the international standards of collective and individual human rights.

Furthermore, no individual belonging to any indigenous group has the right to register his land exploitation rights under customary Amazigh law, colonial or national laws. On the other hand, any potentate could easily possess thousands of hectares belonging to the indigenous Amazigh communities and tribes dealing directly with the High Authority for Water and woodland Resources, before the 2011 constitution. Such practices are now even easier with the new Constitution.

Thus, people in or linked to government circles and Gulf princes have grabbed thousands of hectares of collective lands, forests and resources belonging to the Amazigh indigenous tribes and communities to the detriment of the members of communities and tribes, who are deprived of their rights in blatant disregard for *“the right and principle of prior, free and informed consent”*, as stipulated in the Moroccan civil law. In some cases so-called investors establish so-called natural conservation projects without the consent of the local communities and tribes, only to build private palaces with airfields among other amenities, surrounded with enclosures and barbed hedges.

Now, despite the symbolic recognition in the 2011 constitution of the Amazigh cultural dimension in the Moroccan identity and of Amazigh as an official language, the government plan to register 20 million hectares between 2012 and 2016 would result in total destruction of the relationship between the Amazigh culture and the land, as well as the spiritual bond joining

together the Amazigh indigenous communities and tribes with their lands. This symbiotic bond has throughout history mobilised them to defend their freedom and autonomy against the tyranny of the colonial hegemony, today in the form of foreign corporations and Gulf capital, or Moroccan family holdings linked to the ruling class.

To stand against this destructive scheme and wild offensive under the cloak of 2011 so-called “Constitution of Rights”, the Amazigh cultural and development NGO’s as well as all associations and organisations concerned with human rights, which have signed, joined or supported the present Charter declare their alliance, and join efforts to use every legal and legitimate means, at all levels, local, provincial, national, regional and international, to protect and defend their collective rights over their lands, forests and resources. They will take any actions and measures in every field, working with all partners to claim back and safeguard the collective rights of communities and tribes, partially or totally denied by public or private entities or institutions, in disregard for “the right and principle of prior, free and informed consent”.

Prompted by the consistent desire and fervent hope for a democratic interpretation of the spirit of the 2011 constitution, and with reference to the constitutionally recognised Amazigh legal systems, especially the collective property regime, and under the international standards of the individual and collective human rights, namely the United Nations Declaration on the Rights of Indigenous Peoples, the Convention 169 relating to Indigenous and Tribal Peoples in Independent Countries,

We set out the following recommendations addressed to the Moroccan constitutional institutions and the United Nations, which is holding the UN World Conference on Indigenous Peoples between 22 and 23 September 2014:

1-Recommendations addressed to the King, as the ultimate constitutional institution in Morocco, according to article 42 of the Constitution:

- To set up a panel of experts, ranking as high as the commission that drafted the 2011 constitution, to prepare an organic law in order to implement the constitutional recognition of the Amazigh language and culture (Article 4 of the constitution) as well as the Amazigh laws relating to the collective and individual ownership of lands, forests and resources.
- Activate article 42 of the 2011 constitution to protect the collective and individual rights over lands, forests and resources and repeal any legislation which runs counter to those rights.
- Ratify Convention 169 relating to Indigenous and Tribal Peoples in Independent Countries.
- Establish an Institute for Amazigh Legal Studies.
- Revise the report on Advanced Regionalisation, which has not taken into account the Amazigh laws relating to autonomy in indigenous and tribal territories in Morocco.

II- Recommendations addressed to the government and other public institutions:

- To adhere to the national standards of human rights pursuant to the new constitution, which ensures the collective rights over lands, forests and resources, following the democratic interpretation of the constitution and its recognition Morocco's Amazigh identity and culture, which includes the Amazigh written and customary oral laws, as well as the traditional forms of knowledge, which regulate collective property, in consistence with the international standards of human rights. Morocco took part in the adoption of the Convention 169 relating to Indigenous and Tribal Peoples in Independent Countries during the International Labour Conference held in Geneva in 1989. Morocco also adopted the Universal Declaration on the Rights of Indigenous Peoples of the 2007 UN General Assembly in New York.

- Adopt and implement the entire recommendations of all the sessions of the United Nations Permanent Forum on Indigenous Issues attended by both the Ambassador of the Kingdom of Morocco and representatives of the Amazigh cultural associations.

- Respect "the right and principle of prior, free and informed consent" which is a right guaranteed for individuals by civil law, and for indigenous peoples and tribal communities by international conventions and declarations, such as Convention 169 relating to Indigenous and Tribal Peoples in Independent Countries as well as the Universal Declaration on the Rights of Indigenous Peoples.

- Adopt a participatory approach involving all parties, provided that constitutional institutions carry out the following actions:

1- Consider all property registry and administrative delimitation operations conducted by colonial authorities as an illegal expropriation and a denial of property rights.

2- Cancel the ongoing property registry and administrative delimitation operations and review previous ones.

3- Lift government tutelage on all tribal and clan communities, and enforce their customary laws in consistence with principles of human rights and democracy, without any gender discrimination.

4- Return the lands, forests and resources to the communities, individuals and tribes who used to own or exploit them, before being expropriated during the Protectorate or independence eras, in disregard for the principle of the prior, free and informed consent of the owners.

5- Compensate justly and fairly the victims.

6- Subject the accounts of tribal and clan communities to the competent financial courts audits.

7-Set up a parliamentary commission to investigate the details of the financial resources run by the ministry of the interior, and publicise in all transparency, the sources of its funds and expenditures.

8- Create special departments at law faculties for the Amazigh legal system and its written and oral laws.

9- Integrate the Amazigh law and the history of Amazigh legislation into the curricula of the National Institute for Judiciary Training.

10- Set up regional centres (In collaboration with the land-owning communities and tribes and with the participation of their cultural, development, youth and women's organisations, without discrimination) for training in Amazigh laws and traditional legal systems (such as Tiwizi, Agudal, Tanast, elections), to promote development and sustainable exploitation of lands, forests and resources.

11- Provide regional funds to finance sustainable development for the indigenous communities and tribes while respecting collective and individual rights over lands, forests and resources.

III- Recommendations addressed to the United Nations:

Twenty years after the participation of a delegation of the Amazigh movement for the first time in the World Conference on Human Rights in Vienna in 1993, where a seminar was organised on the linguistic and cultural rights in North Africa, with the distribution of the memorandum of the Amazigh cultural associations in Morocco, while collecting support signatures for the "Agadir Charter" during the March of the One thousand Cultures on the banks of the Danube in Vienna;

Recalling that the Vienna Declaration and the action plan arising from the World Conference on Human Rights are being implemented through the nomination of the special rapporteur in 2000 to monitor violations of the rights of indigenous peoples, setting up the United Nations Permanent Forum on Indigenous Issues in 2001, the formation of the working group for drafting the final declaration with the participation of representatives of indigenous peoples' associations (including the representative of the Amazigh cultural movement in North Africa),

And finally, through the final adoption of the UN declaration on the rights of indigenous peoples by the General Assembly of the UN on 13 September 2007;

In view of the UN's decision to hold its World Conference on Indigenous Peoples in New York on 22-23 September 2014, to sustain progress and activate the Declaration's recommendations, and in particular to urge governments to implement the Declaration's recommendations;

Looking forward to the United Nations Forum scheduled from 12 to 13 May 2014, which will be attended by the Amazigh associations and organizations from different regions of

Tamazgha⁶ and by all the governments of North Africa, to debate the main topic of “Democratic governance” in every field, including governance in the field of “*the collective rights in culture, lands, forests and resources*”;

Further looking forward to participate in the World Conference on Indigenous Peoples with an Amazigh delegation in both events to affirm that Morocco and the world are in dire need for peaceful life, that can only be cherished through the preservation of the sacred relationship between human beings and their land and the adoption of democratic constitutions that endorse the principle of sharing values, wealth, resources and power.

Aware that this can only be achieved through democratic systems of government based on true regionalisation, enabling people to directly take part in running public affairs at the local, national, regional and international levels, endorsing equality between men and women, and between peoples and nations, big or small, without any discrimination against indigenous peoples,

Therefore the hereunder signatory associations recommend the United Nations institutions to take the following actions:

- 1- Adopt an international policy to provide financial, technical and training assistance to the organisations of indigenous peoples, and to their elected bodies, in conformity with their laws and principles of democracy, in order to implement the provisions of the United Nations Declaration on the Rights of Indigenous Peoples.
- 2- Urge all countries and governments which have failed to recognise the existence, the identities, the languages of the indigenous peoples and their rights over lands, resources and forests and all their collective rights as proclaimed in the Declaration on the Rights of Indigenous Peoples, to carry out constitutional reforms leading to democratic transition.
- 3- Endorse the recommendations of the World Summit on Indigenous Peoples, which aim to democratically implement the provisions of the Declaration on the Rights of Indigenous Peoples.
- 4- Declare a worldwide third decade for the implementation of the provisions of the Declaration on the Rights of Indigenous Peoples relating to the collective rights over lands, forests and resources, and the other collective rights, and push towards including these provisions in national constitutions all over the world.

(The present Charter shall be, **after completion of the list of signatures**, addressed to the Royal Cabinet, the premiership, parliament and the other institutions. It shall be published by every possible means and translated to be addressed to the United Nations and to its different bodies.)

⁶ Tamazgha: is the Berber name for North Africa, the homeland of the Amazigh people, that stretches from the Canary Islands in the Atlantic Ocean to Siwa Oasis in Egypt and from the Mediterranean to the north to the Great Sahara to the south.