



# CONGRES MONDIAL AMAZIGH

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International Pact on Civil and Political Rights

United Nations Committee for Human Rights

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**Algeria : the State of no right**

## **Foreword**

The Congrès Mondial Amazigh (CMA) is an International Non Governmental Organization grouping the Amazigh (Berber) associations of social, cultural, development and environmental protection in Tamazgha countries (North Africa and Sahara) and in the diaspora. The CMA was born from the desire of Amazigh citizens and organizations to have a structure of coordination and representation at the international level, independent of States and political organizations.

In order to prepare its alternative report on the implementation of the International Pact on Civil and Political Rights in Algeria, the CMA relied mainly on the reports of its members as well as complaints and information directly related to it, transmitted by victims of violations of their rights or witnesses. This information and individual complaints are verified by the members of the CMA in that country.

## **Introduction**

The CMA notes with regret that this fourth report submitted by the Algerian Government to the Human Rights Committee (CCPR) pursuant to Article 40 of the International Pact on Civil and Political Rights (ICCPR), is 7 years late as it was due in 2011.

Algeria ratified the Pact on September 12, 1989, as well as its optional protocol that recognizes the right of Algerian citizens to submit individual complaints to the UN Human Rights Committee.

In addition, article 150 of the Algerian Constitution stipulates that ratified international treaties are "superior to the law" and may be invoked before the Algerian courts. However, rights protected under the ICCPR are not incorporated into domestic law and the Pact is not disseminated or invoked before courts and administrative authorities. In addition, legal professionals (judges, lawyers, etc.) are neither informed nor trained in international human rights law. He remains excluded from the Algerian justice system. It is also important to mention the lack of human rights education in the education system and the lack of public support for human rights organizations.

Nearly twenty years after the state of emergency was declared, it was lifted in February 2011, but it did not bring any positive results for the exercise of fundamental rights and freedoms, including the freedoms of association, meeting and demonstration. On the contrary, the new laws adopted since 2012 marked a regression in terms of freedoms, in violation of international commitments made by Algeria, including the International Pact on Civil and Political Rights.

Although their identity is the fundamental social and cultural substratum of the country, the Amazighs have so far been victims of massive and systematic discrimination policies, led by a nation-state based on the dogma of Arab-Islamism. The negation of the Amazigh people, its history, its knowledge and know-how, its language and its multi-millennial civilizational values is still a reality. The diversity of the country remains denied and the Amazigh citizen has no civil and political rights, which contradicts all the basic texts of the UN and in particular the Pact on civil and political rights.

The claim of the cultural and linguistic plurality of Algeria carried by the Amazigh organizations, has always faced an institutional approach remained racist rejecting this reality inscribed in the

Algerian landscape from north to south and from east to west. As a result, every day Amazighs are victims of various aspects of institutionalized exclusion, segregation and violence.

The recognition by the Constitution in 2016 of the Amazigh language as an official language, did not bring anything positive because the constitutional provision linked the application of the official character of the Amazigh language to the adoption of an organic law. But it has never been born. And no explanation has been given by the government of Arab-Islamic obedience that continues to despise the Constitution and the Amazigh people of Algeria. The Arab-nationalist lobby that dominates the State administration hides behind this lack of law to block any initiative in favor of Amazigh. Indeed, the ideological referential of the State remains unchanged and anti-Amazigh discriminations remain the rule at all institutional levels. The country remains subject exclusively to a single language, a unique religion, a unique culture and finally a unique Arab-Islamic identity. This leaves the Amazigh component in permanent exclusion and conflict. In fact, the Amazigh (history, language, culture, traditions, values...) is put out of the law, confined in the private space and presented in a way that is both false, folkloric and racist, as an obstacle to the development of the country.

It is also important to note that the Algerian State has voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples but refuses to recognize the indigenous status of the Amazigh people of Algeria.

### **Right of peoples to self-determination and their wealth and natural resources (Article 1 of the Pact)**

Recognition of the right to self-determination is essential for the exercise of many other rights. Indeed, as stipulated in Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples, it is by virtue of this right that peoples can freely "determine their political status and freely pursue their economic, social and cultural development". For the Amazighs of Algeria, this implies the right to be autonomous, to administer themselves and dispose of their lands, their territories and resources in order to have the means to finance their autonomous activities. In its article 30, the Algerian Constitution recognizes the right to the self-determination of the peoples but it refuses obstinately even the opening of the debate on the question of the right to the self-determination of the Amazighs (Kabyles, Chawis, At-Mزاب... ). Worse than that, the Algerian government brutally represses and criminalizes individuals and organizations who wish to express themselves on this subject or who manifest this right. Activists of the Movement for the Self-Determination of Kabylia (MAK) and those of the Mزاب Movement for Autonomy (MAM), political movements that act peacefully, are accused of "undermining national unity" and are subjected to serious persecution resulting in arbitrary arrests and detentions, torture, prohibition of their meetings, threats, blackmail, deprivation of passports, invasion of private and professional life, etc.

Moreover, the Algerian State denies and refuses the indigenous character of the Amazighs and because of this it gives itself the legitimacy to violate the rights of Amazighs as indigenous people. Amazighs therefore have no right to claim, including their right to self-determination, their right to linguistic and cultural identity, their right to their lands and resources.

However, after decades of peaceful struggles and sacrifices, the Amazighs of Algeria have achieved symbolic cultural recognition since since 2016, the Amazigh language has attained the status of national and official language and that Yennayer, the Day of the Year Amazigh, was declared in

2017, national holiday day. But the Algerian Constitution insists that Algeria is a "land of Islam, an integral part of the Great Maghreb and Arab country..." and "the Arab remains the official language of the State". The same Constitution provides in its article 212 that the revision of the constitutional text can not harm a certain number of "constants" including "Islam, as religion of the State" and "Arab, as national and official language" but this article does not mention the Amazigh language.

The Algerian government, which has never concealed its submission to the Islamist and pan-Arabist ideology, is practicing a real discrimination between the Arab-Islamic identity which it assures of a high legal protection and the Amazigh identity, which it considers as secondary, negligible and therefore, Amazigh citizens are treated as second-class citizens.

### **Equality between men and women (article 3 of the Pact)**

The rise of fundamentalist movements in the 1970s, a product of the Algerian school and institutions, led to the adoption of the Family Code in 1984. Based on the Islamic Shari'a, it grants the status of "Minor for life" for the woman, especially as long as the latter is not married. The Algerian woman is obliged to have the authorization of her guardian, "wali", if she wishes to marry. In addition, polygamy is recognized and practiced, the woman can be "repudiated" by her husband and in inheritance, she is entitled to half of the man.

Article 336 of the Penal Code punishes the rape of five to ten years' imprisonment, but no definition of rape is available, which limits the filing of complaints and the prosecution of this crime. The woman is also a victim of restrictions on the right to abortion and lack of access to health services and psychological and material support.

The Amazigh woman suffers all these discriminations but she undergoes additional discriminations because she is not Arab. It is therefore subject to legislation that draws its sources only in Arab-Islamic cultural and ideological referents that are foreign to it but which impose on it.

In 2015, Algeria adopted a new law to better protect women against violence in the family, but the Algerian State has not yet lifted the reservations made during the ratification of the Convention against all forms of discrimination against Women (CEDAW) and has not ratified the Optional Protocol to the Convention.

### **Right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (articles 6, 7 and 9 of the Pact)**

During the spring of 2001 in Kabylie, the Algerian security services, including the gendarmerie, killed in the space of two months (April-May), 126 people, and wounded hundreds of others with gunshots. Many have sequelae for life. The report of the commission of inquiry notes that "the violence recorded against the civilians is that of a war, with use of ammunition of war" against peaceful demonstrators. Despite the fact that the body of the Algerian gendarmerie has been called into question by the report of the commission of inquiry, no legal proceedings or sanctions have been instituted against the perpetrators and those responsible for the Kabyles massacre.

In recent years, the Algerian police have been hunting down the activists of the Movement for the Self-Determination of Kabylia (MAK). Repetitively and completely arbitrary, they are arrested,

detained, interrogated, threatened and insulted, which constitutes psychological torture and degrading treatment.

In the Mزاب region (600km south of Algiers), a historical territory of the Amazigh At-Mزاب people, during the period 2013-2015, thirty-seven Mozabites were killed and hundreds more were wounded following attacks perpetrated by Arab militias of the Chaamba tribe, supported by police forces. The reports of human rights NGOs, testimonies and videos show the support provided by the Algerian security services to the Arabs in their attacks against the Mozabites.

In July 2015, the Algerian authorities made dozens of arrests of Mozabite citizens, including local elected officials and Kamel-Edine Fekhar, a human rights defender. During their two-year pre-trial detention, some of them, including Kamel-Edine Fekhar, Naceredine Hadjadj and Nordine Kerrouchi, claim to have been tortured and treated in a degrading manner (deprived of family visits, deprived of medication, hit...).

Three people, Baouchi Affari, Aissa Benchikh and Salah Gueddouh, Mozabite citizens died in prison (Laghouat and Ghardaia) due to lack of care and ill-treatment during their detention.

Dozens of Mozabites have fled abroad, especially in Europe where they have obtained political asylum (Salah Abbouna, Khodir Sekouti, Mohamed Dabouz, Hicham Bahamida ...). Their family and professional life was brutally broken, which is a serious attack on their moral integrity and that of their families who remained in Algeria.

### **Freedom of thought, conscience and religion (Article 18 of the Pact)**

As far as religious beliefs are concerned, all Algerian legislation as well as the institutional practices in force have been extensively and carefully elaborated to protect exclusively Islam and especially its Sunni Maliki branch. Article 2 of the Constitution states that "Islam is the religion of the state". Article 87 requires a candidate for the Presidency of the Republic to be a "Muslim denomination". Article 144 bis 2 of the Penal Code punishes anyone who "offends the prophet" and "denigrates the dogma or precepts of Islam"

Concerning the adoption (Kafala), the law n° 84-11 of June 09, 1984 relating to the family code, the non muslim people do not have the right to adopt an Algerian child.

Algerian women are also prohibited from marrying non-Muslim foreigners. Foreigners wishing to marry Algerian women must convert to Islam, provide proof of their conversion and a medical certificate attesting to their circumcision.

Every month of Ramadhan (month of Muslim fasting), it is strictly forbidden to eat or drink in public. However, even when people eat out of sight, in closed or isolated places, the police intervene to stop them. Many cases are reported each year.

In 2015, Slimane Bouhafis, a Christian Kabyle citizen, was arrested by the security services and accused of "attacking Islam and the Prophet Mohamed" on the basis of publications criticizing Islam posted on his Facebook page. He was sentenced to 3 years in prison.

## **Freedom of opinion and expression (Article 19 of the Pact)**

Whether by restrictive regulation, intimidation, proscription and severe sanctions, the Algerian authorities continue to lock the media landscape and "physically" prevent freedom of expression and opinion.

- "Literary cafés", places of exchanges and debates have been banned or prevented in recent years particularly in Kabylie (Vgayet, Tizi-Wezzu, Aokas ...)
- Ridha Belgasmi, a human rights activist and president of the Tamazgha Aurès association in Ain Djasser (Batna), is being sued in 2017, for remarks deemed outrageous to the president of the republic.
- Massinissa Benalioua, an artist Kabyle is sentenced to one year in prison and a fine of 50,000 DA by the court of Tizi-Ouzou for "apology of terrorism" following a comment posted on Facebook.
- The independent journalist Mohamed Tamalt was sentenced in July 2016 to two years' imprisonment for "insulting" the president and the institutions of the Republic, because of messages he posted on Facebook about corruption and nepotism in Algeria. He died six months later in prison.
- Touati Merzoug, a young blogger Kabyle, incarcerated in the prison of Vgayet since January 2017, was sentenced in May 2018 to 10 years in prison for having published on his blog, an interview with an Israeli citizen. He was accused of "intelligence with the enemy" and "incitement to rebellion".

## **Prohibition of racial hatred (Article 20 of the Pact)**

Naima Salhi, member of the Algerian Parliament and president of a party of Islamic obedience (party of fairness and proclamation), calls for racial hatred against Kabyles she deals with "Transvestites, dogs, traitors" and "Berber-Zionists". The complaints against her have never been successful and the requests for the waiver of parliamentary immunity have not been heard.

## **Right of assembly, association and peaceful protest (articles 21 and 22 of the Pact)**

Despite the international obligations to which Algeria is subject and the guarantees of the rights to freedom of expression and peaceful protest enshrined in the Constitution, the authorities continue to unreasonably prohibit meetings and peaceful demonstrations by relying a penal code which severely punishes participation in public events (Article 97) and criticism of public institutions (Article 146).

In 2017, the Algerian authorities banned and/or prevented the "literary café" in Aokas on the occasion of the Amazigh New Year, conferences on social issues with writers and historians in Bouzguene, Raffour, at the University of Tizi-Wezzu and Vgayet, Chemini, etc.

The creation and functioning of associations is conditioned by a large number of bureaucratic and even police actions (investigations and police authorization) that discourage citizen engagement.

The Women's Association of Kabylie and the Amazigh League for Human Rights have so far not received their approval ten years after the filing of their application to the Wilaya of Tizi-Wezzu.

## **Rights of the child (article 24 of the Pact)**

Algeria ratified the International Convention on the Rights of the Child in 1992. Several articles of this convention are flouted.

In the area of the right to education (Articles 28 and 29 of the Convention), the vast majority of Amazigh children are discriminated because they do not receive education in their mother tongue. Even in totally Amazigh-speaking territories as in Kabylia, the teaching of the Amazigh language is optional and not compulsory. In some parts of the country, it is taught from grade 4, which means that the Amazigh child is deprived of his mother tongue until he is ten years old. In other areas like Aurès or Aheggar, the Amazigh language is not taught at all.

Many Amazigh parents who have chosen Amazigh names for their children, are confronted with the administration which refuses to register the Amazigh first names because they would not be of "Algerian consonance", that is to say "arab-islamic".

When parents maintain their choice of an Amazigh first name for their child, it is not registered in the civil status and his parents can not benefit from family allowances and can not enroll their child in the nursery or at school. In several regions of the country (Tizi-Wezzu in Kabylie, Arris and Batna in Aurès and Annaba), Amazigh names like Gaya, Aylan, Winrigh, Tanila ... were refused by the Algerian administration.

On April 29, 2017, about 150 Mozabite children accompanied by their mothers made the trip Ghardaia-Algiers, 600 km by bus, to challenge through the media, the Algerian officials about the arbitrary detention of their dads, gathering in front of the press house in Algiers. The police violently dispersed them.

## **Observations and recommendations of the CERD**

At its 94th session, which took place from 20/11 to 8/12/2017 in Geneva, the Committee for the Elimination of Racism and Racial Discrimination (CERD) issued the following observations and recommendations with regard to Algeria (CERD / C / DZA / CO / 20-21):

1. The CERD Committee "regrets the absence in the State party's report of statistical and socio-economic data on ethnic groups existing in the country" and therefore reiterates its recommendation made to the State Party in its previous concluding observations (CERD / C / DZA / CO / 15-19, para 10) to provide it with all relevant data on the economic and cultural situation and living conditions of the country's population.
2. The Committee is "concerned by reports of racial hate speech by public figures, particularly with regard to certain Amazigh populations as well as to migrants". It therefore urges the Algerian State to condemn and distance itself from any speech or hate speech by a public person, as well as from certain Amazigh populations and from any group or vulnerable person. In addition, the Committee recommends that the State party take effective measures to ensure that any racist speech or act of violence, or incitement to such acts, directed against any race or group of persons of a different color, or of another ethnic origin, are subject to investigation, prosecution and punishment.

3. The Committee is concerned that Tamazight is not yet used in all administrations, courts, social services and other State services and that the organic law provided for in article 4 of the Constitution has not been used. not yet adopted. While taking into consideration the commitment made by the State Party to undertake the necessary efforts to harmonize Tamazight, the Committee notes that this official language is taught from the 4th year of primary school, is a optional language of instruction and that the Algerian Academy of Tamazight Language is not yet in place. The Committee is also concerned about the refusal of some families to register their children in civil status with Amazigh first names. The Committee is also concerned by reports that some historical sites of cultural value to the Amazigh have not been preserved (article 5). As a consequence, the CERD Committee requires the Algerian State:

- (a) To adopt, as soon as possible, the organic law provided for in article 4 of the Constitution;
- (b) To accelerate the effective introduction and use of Tamazigh as an official language in the administrations, courts, social services and other State services;
- (c) Establish the academy of the Amazigh language and provide it with the resources necessary for its operation;
- (d) Ensure that all registrars register Amazigh first names without discrimination; and
- (e) Take the necessary measures to protect the entire cultural heritage of the State Party, including historical and archaeological sites of cultural value to the Amazigh.

4. With regard to the socio-economic marginalization of the Amazighs, the Committee regrets that the Algerian Government did not provide information on the measures taken to reduce the regional disparities that continue to affect regions inhabited by the Amazigh, as well as the Committee had requested this in its previous concluding observations (CERD / C / DZA / CO / 15-19, para.15). It remains concerned at the continued marginalization of these regions and the information on administrative barriers to private investment in these areas (article 5). The Committee therefore reiterates its recommendation (CERD / C / DZA / CO / 15-19, para.16) to the State party in its previous concluding observations to increase its investment efforts in the most marginalized regions, especially those where the Amazigh populations live. In the light of its general recommendation No. 32 (2009) on the meaning and scope of special measures, the Committee recommends that the Algerian Government consider adopting special measures to bring the population living in these areas to the same level. of life than the rest of the population.

5. About the situation in the Mزاب territory, the Committee expressed its concern at the repeated violence between the Sunni Arab Chambas and Mozabites, which occurred in particular between 2013 and 2015, which resulted in deaths and the destruction of property, particularly the Mozabite community. The Committee is also concerned at reports of the involvement of security forces in this violence and the impunity that some groups would have received following these incidents. While noting the information received following the dialogue with the State party's delegation, the Committee nevertheless regrets the incompleteness of this information, particularly as regards the measures taken to investigate these events, to punish the persons responsible for these incidents, acts and measures taken to prevent their repetition (Articles 2, 5). The Committee recommends that the Algerian State inform it of the root causes of the violence in the Mزاب region in order to take the necessary measures to prevent their resurgence. It also recommends that the State inform it of the investigations carried out following the violence, the prosecution and punishment of the perpetrators and thus avoid any resentment of impunity on the part of certain groups. It further recommends that the State party request its security forces to provide protection in such clashes in order to avoid stirring up tensions and hatred between these groups.



6. With regard to racism and institutional discrimination, the Committee notes with regret that the State party has provided very little detailed data on complaints, prosecutions, sanctions and reparations relating to cases of racial discrimination since 2014 (Articles 2, 4, 6). The Committee reminds the Algerian Government that, according to its general recommendation No. 31 (2005) on racial discrimination in the administration and functioning of the criminal justice system, the absence of complaints and legal proceedings by the victims racial discrimination may reveal, inter alia, poor knowledge of existing legal remedies, insufficient willingness on the part of the authorities to prosecute perpetrators, lack of confidence in the criminal justice system or fear of reprisals for the victims. The Committee requests the State Party to:

- a) Facilitate the submission of complaints in a secure framework to prevent reprisals and provide in its next report, statistics on complaints received, prosecutions initiated, sanctions against the perpetrators of these crimes of racial discrimination and reparations granted to the victims;
- (b) Continue the training of judges, judges and prosecutors, and police on national legislation on racial discrimination;
- (c) Disseminate this legislation widely to the public, including migrants, refugees and people in remote areas to know their rights, including all legal remedies for racial discrimination.

7. Regarding obstacles to freedom of association, the Committee expressed concern at reports of administrative obstacles to the registration and accreditation of non-governmental organizations and associations, including those defending the rights of indigenous peoples. Amazigh (Article 5). The Committee recommends that the Algerian Government ensure the effective application of its legislation and ensure that administrative obstacles do not prevent the establishment and registration of non-governmental organizations and associations, including those rights of Amazigh people.

8. The Committee has also expressed its concern about human rights defenders subjected to intimidation, arrest, detention and the confiscation of passports of certain human rights defenders (article 5). The Committee calls on the Algerian Government to ensure that human rights defenders are not discriminated against, including intimidation, arrest, detention or confiscation of passports.

9. Finally, in accordance with article 9, paragraph 1, of the Convention and rule 65 of its rules of procedure, the Committee requests the State of Algeria to provide, within one year, detailed information on the concrete steps it has taken to implement the recommendations of the CERD Committee.

10. The Committee also recommends that the Government of Algeria make its reports available to the public as soon as they are submitted and also circulate the Committee's concluding observations in the official languages and other languages commonly used in the country.

To the best of our knowledge, none of these recommendations has been implemented to date.

**In conclusion, we present to the Human Rights Committee some recommendations that can be made to the Algerian Government:**

- Ratify the 2nd Protocol to the Covenant on Civil and Political Rights,
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- Authorize the United Nations Working Group on Torture to visit Algeria,

- Define torture in the Algerian criminal code, in accordance with the definition of the Convention against Torture and criminalize the torture without ambiguity,
- Strengthen the prerogatives of the defense and allow the defense attorney to attend the entire process of detention, trial and judgment and bring to the attention of the prosecutor and magistrates any failure to comply with standards concerning fair trials,
- Allow civil society organizations to freely observe trials and visit prisons and detention centers,
- Put an end to impunity and repeal Articles 45 and 46 of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation adopted in 2005,
- Repeal Article 2 of the Constitution which states that "Islam is the religion of the State",
- In Article 212 of the Constitution, which provides that "any constitutional amendment may not affect" a number of "national constants", add "Tamazight, national and official language",
- To lift in law all discriminatory provisions concerning in particular filiation, inheritance and access to positions of high responsibility of the civil service,
- Repeal Article 144 of the Criminal Code concerning the freedom of the press,
- Allow equitable access of public and private media to public aid and procurement,
- Allow the opening of private radio channels and associative radios,
- Repeal the prior authorization system for public meetings and events and replace it for a declarative regime,
- Alleviate the procedures for creating associations and remove all controls from their activities,
- Recognize and deliver the approvals of Amazigh associations,
- Allow international NGOs to settle in Algeria and establish partnerships with Algerian associations,
- Remove all administrative and regulatory obstacles to the creation of political parties and associations,
- Release all prisoners of conscience, including the Mozabites and Touati Merzoug,
- Lift all the prosecutions for offense of opinion against all the Amazighs
- Stop administrative, judicial and police harassment of human rights defenders,
- Put an end to the repression against the members of peaceful movements for the self-determination of Kabylia.