



Memorandum for lifting all forms of discrimination against the Amazigh and their language in justice sectors in Morocco

1- Preamble:

The Amazigh Network for Citizenship already conducted a national campaign during the years of 2006, 2007 and 2008, and it is still conducting it this year within the framework of a program aiming to lift all forms of discrimination against the Amazigh language in media, education, justice and public administrations. Accordingly, it has run several field studies and organized human rights and regional meetings all over the country (the north, the middle and the south) topped out by a national concluding meeting in which the content of the Moroccan legislation was compared with what is stipulated in the Convention on the Elimination of All Forms of Racial Discrimination.

Therefore, based on the conclusions that have been reached, showing the persistence of discrimination against the Amazigh and their language and on the occasion of the ongoing national debate on the issue of justice reform in Morocco, the Amazigh Network for Citizenship, although it was not summoned to the recently organized associative and official meetings thereof, which has caused the subject of linguistic and cultural justice to be absolutely excluded during the discussions, presents this memorandum to all people concerned with the issue of justice. The Amazigh Network hopes that this memo will receive the required support from the officials in our country, known for its linguistic and cultural diversity and also hopes for an end to the daily sufferings of the Amazigh in the sector of justice.

2- Overview of the tendency of the basic legal provisions which direct the legislative policy and confirm the discrimination against the Amazigh and their language:

- **In terms of legislation sources in Morocco:**

Apart from the procedures related to the labor lawsuits, we can see that the Amazigh positive laws are not adopted or used as a reference in the legislation or rules although they constitute an old and rich heritage for the Moroccan people.

- **In terms of constitutional legislation:**

The last century witnessed at least three important turning points in constitutional legislation which are as follows:

- a- The draft constitution of the year 1908 stipulates in its article No. 18 that illiterate people are absolutely not allowed to occupy public positions and that all officers should read and write Arabic very well.
- b- The preamble of the Constitutive Act of the Moroccan state of the year 1961 defines the national identity of the country and considers Morocco as an Arab state.
- c- In the preamble of the Moroccan constitution, as amended by virtue of the referendum of 13-09-1996, the same constitution still in force to date although it has been nearly ten years after it was adopted, we find the following sentence: "Morocco is an Islamic state whose official language is Arabic. The Kingdom of Morocco constitutes a part of the Great Arab Maghreb. As an African state, it has among its objectives the realization of African unity, and reaffirms its determination to adhere to the principles, rights and obligations arising from international conventions and to abide by the universally recognized human rights."

- **In terms of the Nationality Law, Dahir (decree) No. 250-58-1 published in the Official Gazette on 19-09-1958 and amendments thereto:**

Article 9: "Any child born in Morocco of a foreign father who himself was born in Morocco shall acquire the Moroccan nationality provided he or she gives express consent for it and provided his or her father belongs to a country whose most population is Muslim and speaks the Arabic language, taking into account the right of the Minister of Justice to reject it according to the requirements stipulated in articles 26 and 27."

Article 11: "Foreigners shall not be granted the Moroccan nationality unless they meet the following conditions (taking into account the exceptional circumstances provided for in article 12):

- They should prove that they have sufficient knowledge of Arabic."

- **In terms of the Dahir of Moroccanization, standardization and arabization issued on 25-01-1965:**

This Dahir obliges public administrations, institutions and authorities to use Arabic as an exclusive language in their deliberations and internal and external correspondences.

Those are the most important legislative provisions which clearly show the linguistic and cultural discrimination existing in Morocco. We consider them as the most principal ones because:

- 1- All the provisions that precede the writing of the constitution or come after it should comply with them and all legislative reforms should abide by the linguistic and cultural options stipulated in the aforementioned provisions.
- 2- The Nationality Law is interrelated with all the relevant legal provisions, including the laws which regulate the occupation of public and private positions, especially the judicial ones.
- 3- The law of Moroccanization, arabization and standardization issued in 1965 does not allow the use of any language apart from Arabic in justice sectors, public educational and administrative institutions and in other official institutions.

The aforesaid provisions show that the principles of diversity and multiculturalism for which Morocco is known are not respected as they deprive the Amazigh of their right of participation and prevent the Amazigh language from being used in official institutions, either with legal force or due to the ambiguity that characterizes the relevant Moroccan legislations.

Those provisions constitute a legal reference for the authorities who, according to the applicable law, can or rather should prevent the use of the Amazigh language in justice and, therefore, the absence of the Amazigh language in public spaces becomes logical. Moreover, preventing the use of certain Amazigh names of persons and places is another example of the discrimination inflicted on the Amazigh in Morocco.

3- An overview of the regulatory provisions which are interrelated with the said provisions:

Adopting the Arabic language as the only official language in the constitution and refusing to accept the Amazigh language as an official one is one of the forms of the discrimination which is universally prohibited and which takes in many cases the form of one linguistic and cultural class controlling another class, monopolizing power and refusing to recognize the other. This has had a bad impact on justice sectors in Morocco because the constitution stresses the equality of citizens before the law while it contains legislative provisions that do not abide by the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

The fact that the state adopts Arabic as the only official language and refuses to take any legislative, administrative, economic and social measures in order to eliminate discrimination against individuals and groups shows that it is determined to discriminate against the Amazigh. This is clearly illustrated by the following regulatory provisions:

- a- The statute of the judiciary: law No. 467-147 issued on 11-11-1974 requires knowledge of the Arabic language only without considering the Amazigh language to access to the judiciary.
- b- The law No. 08-29 issued on 20-10-2008 governing the bar refers in its article No. 5 regarding the subject of nationality to the Nationality Law referred to earlier and, therefore, it requires knowledge of the Arabic language only without considering the Amazigh language to access to the bar.
- c- Both the law No. 11-81 issued on 06-05-1982 related to the regularization of the justice plan and the receipt and writing of certificates and the decree No. 415-82-2 issued on 18-04-1983 regarding the appointment of notaries and the control of the justice plan require knowledge of the Arabic language only without considering the Amazigh language.
- d- Both the law No. 80-41 issued on 18-12-1980 regarding the establishment of the court clerk body and the decree No. 736-2-85 issued on 24-12-1986 regarding the establishment and regularization of the court clerk body require knowledge of the Arabic language only without considering the Amazigh language to access to the body.
- e- Both the law No. 00-45 issued on 22-07-2001 regarding the judicial experts and the decree No. 2824.11.2 issued on 17-07-2002 regarding the application of the provisions of the law regarding the judicial experts ignore the Amazigh language.
- f- The decision of the Minister of Justice No. 01-1081 issued on 03-06-2003 determines the types of experts in all languages except the Amazigh language.
- g- The law No. 00-49 issued on 22-06-2001 regarding the regularization of the profession of copying excludes the copying of contracts and other legal papers written in the Amazigh language.
- h- The law No. 00-50 issued on 22-07-2001 regarding sworn translators and the decision of the Minister of Justice No. 03-2185 issued on 22-12-2003 regarding the number of seats competed for in each language include the German, Portuguese, Dutch, Russian, Spanish, French and English languages and exclude the Amazigh language although the articles 120 and 318 of the Penal Code allow the judge to have recourse to an interpreter to interpret from the Amazigh language into Arabic before the court.

The Moroccan legislation does not allow judges to decide cases in lawcourts in other languages apart from Arabic. Therefore, the Amazigh are treated as if they are refugees or foreigners. No legislation has been enacted so far in this regard to redress wrongs done to the Moroccan Amazigh by allowing the Amazigh language to be used in administration and justice sectors.

The Moroccan legislator does not take the identity of the Amazigh into account. For example, when an Amazigh person appears before the court as a party in litigation, he or she is obliged to present his or her claims only in Arabic. The situation gets worse when the Amazigh person does not know Arabic. Therefore, he or she has to have recourse to a scrivener who may change the meaning of what he or she wants to say. In addition, Amazigh people's difficulties are exacerbated when appearing before judicial police officers, Public Prosecution and judges who call for the help of court guards who know the Amazigh language to do Arabic translations, which breaks the conditions of the fair trial. Accordingly, the relevant legislative provisions should be amended to comply with the articles 2 and 6 of the Convention on the Elimination of All Forms of Racial Discrimination. Those provisions include but not limited to:

- Article 73, paragraph 3, article 4 and paragraph 6 of the Penal Code regarding the appointment of an interpreter by the Public Prosecutor for any person who does not communicate well with the interrogated persons.
- Article 318 of the Penal Code: if the witnesses speak a language or a dialect which is not understood, the judge shall appoint an interpreter.
- Article 120 of the Penal Code: if the witnesses speak a language or a dialect which is not understood by the suspects, the individuals or the other witnesses, the judge shall appoint an interpreter.

So, in order to curb the aforementioned problems, we, the Amazigh Network for Citizenship, suggest the following solutions as a way to reform justice and especially the judicial authorities:

- ✓ Adopting the Amazigh language as an official language in a democratic constitution that separates powers.
- ✓ Adopting equality among languages, cultures and men and women, considering the Amazigh positive laws as one of the references of the legislation, eliminating all forms of discrimination stipulated in the national legislations and adopting legislations that comply with the international human rights treaties ratified and signed by Morocco.
- ✓ Applying the requirements of article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, the recommendations of the Committee Against Racial Discrimination in Morocco and also the recommendations of the Committee on Economic, Social and Cultural Rights that stipulate that the Moroccan state should officially recognize the linguistic and cultural rights of the Amazigh by adopting the Amazigh

language as an official language and allowing the students of the Higher Institute of Magistracy to study their courses in the Amazigh language.

- ✓ Institutionalizing the Amazigh language by standardizing it and maintaining an archive for the national Amazigh cultural, legal and artistic heritage as a first step towards the full incorporation of the Amazigh language into all justice sectors.
- ✓ Amending the following legislations and decisions in such a way as to make the Amazigh language the language of the judicial system and administration in Morocco:
 - The Dahir (decree) issued on 25-01-1965 regarding the Moroccanization, arabization and standardization.
 - Articles 9, 11 and 12 of the Nationality Law.
 - The statute of the judiciary: law No. 467-147 issued on 11-11-1974 requires knowledge of the Arabic language only without considering the Amazigh language to access to the judiciary.
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- Article 73, paragraph 3, article 4, paragraph 6, of the Penal Code regarding the appointment of an interpreter by the Public Prosecutor for any person who does not communicate well with the interrogated persons.
- Article 318 of the Penal Code: if the witnesses speak a language or a dialect which is not understood, the judge shall appoint an interpreter.
- Article 120 of the Penal Code: if the witnesses speak a language or a dialect which is not understood by the suspects, the individuals or the other witnesses, the judge shall appoint an interpreter.
- Canceling the amendments to the Special Penal Code which expressly prohibit the use of the Amazigh language before the court and also prohibit its incorporation into higher institutes like the Higher Institute of Magistracy.