

Rights to Land among *Amazigh* Peoples in Morocco

The Case of the High Atlas

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Introduction

Morocco sustains a rich diversity of cultures, languages, and livelihoods. Like in other countries, the social organization of the rural populations is closely linked to their historical relationship to land and to their immediate biophysical environment, as well as to centuries-old and ever-evolving demographic, legal, cultural, economic, and political transformations. In this chapter, we focus on *Amazigh* peoples living in the Moroccan High Atlas (see map, Figure 11.1), who have demonstrated resilience in the face of significant scarcity and uncertainty, through customary systems of natural resource governance – the *agdal* systems. Despite the many social, cultural, and legal shifts and its degradation or disappearance in many places, the *agdal* system still remains a robust institutional framework, which is not only a bulwark against the dispossession of communal lands but also sustains the cultural and economic relationships for stewarding resources among High Atlas populations.

Socio-cultural Context of Morocco

Morocco is home to a conglomerate of culturally diverse populations whose geographical or historical connections extend well beyond the country's borders into the wider Maghreb region, the whole of northwest Africa and the Iberian and Arabic peninsulas. This expansiveness gives life to a multiplicity of traditions, identities, languages, and dialects belonging to an immense array of cultural influences. However, in the

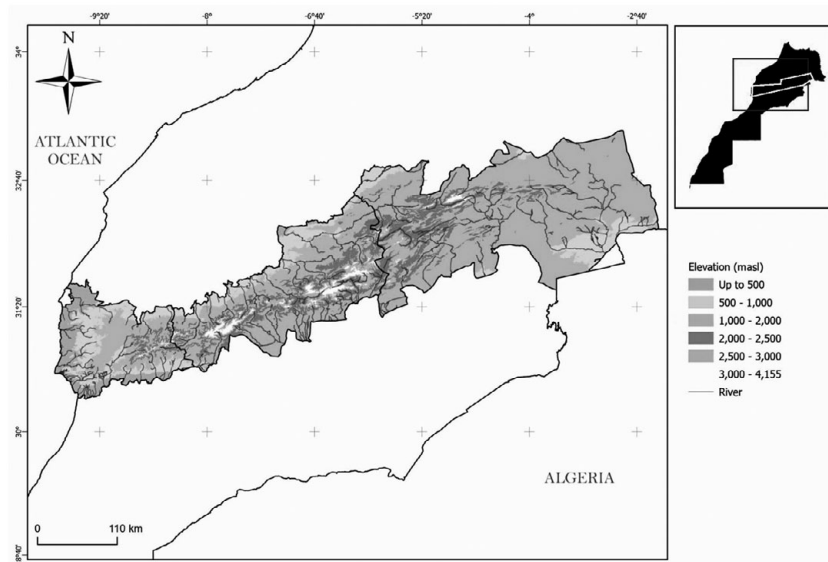


Figure 11.1 High Atlas within present-day Morocco: Giandanielle Castangia, High Atlas Cultural Landscapes project run by the Global Diversity Foundation and financed by the MAVA foundation and the Darwin Initiative (DEFRA)

High Atlas, a common macro-linguistic family can be identified, which connects with the wider *Berber/Amazigh* ethnicity. For a long time denominated as Berbers, especially by Europeans but not exclusively (Basset, 1908), in the last decades the term *Amazigh* has been used, especially by the *Berberist/Amazighist* movements. *Amazigh*, for many, means free or noble men (Chaker, 2004). The *Berber/Amazigh* peoples are often spoken of as the *aborigine* populations of northern and north-western Africa, in reference to the idea that many of their cultural traits were already present in the region before the Arab conquest of the seventh and eighth centuries AD.

However, the arrival of proto-*Berber/Amazigh* cultures to the Maghreb from the regions of the Red Sea can be dated to around the local Neolithic period (approximately 3,000–5,000 BC), and they were of course preceded by other cultures that disappeared or fused with their onset (Camps, 1995). Several millennia after their installation in the Maghreb, the first commercial colonies of other Mediterranean peoples appeared, first along the seacoast, which then moved into the hinterland. This was particularly the case with Greeks and Phoenicians, the latter

notably turning later into Carthaginians through their intermingling with local *Amazighs*. These were then followed by wider conquests by Romans, Vandals, Byzantines, Arabs, Ottomans, Portuguese, Spaniards, and French.

The first Arab arrivals came with the Islamic conquest of the seventh century AD, and continued through to the eighth century (Valérian, 2011). This was followed by new invasions of Arab Bedouin tribes coming from the Middle East, like the Beni Hilal and the Beni Sulaim toward the eleventh century (Camps, 1995). A few centuries later, populations of Arab or Arabized Muslims and Jewish peoples immigrated to the Maghreb from the Iberian Peninsula, escaping the Christian *Reconquista* of the fifteenth century (Zayas, 2017). So did populations from Nigerian West Sudan (*blad sudan*) immigrate, especially during and after the Moroccan invasion of the Songhai Empire in the late sixteenth century (Mouline, 2009). Moreover, there has also been a constant arrival of *chorfas* (descendants of the prophet) from the Arabian Peninsula at different moments during Morocco's history (Ferhat, 1999).

This movement of people created a significant ethno-linguistic diversity across Morocco. A significant portion of the Moroccans of the country's population speaks one of various *Amazigh* languages,¹ yet until the creation of the new Moroccan Constitution in 2011, and particularly Article 5 which recognizes the linguistic and cultural rights of the *Amazigh/Berber*-speaking populations, Arabic was the only state-recognized language and was the promoted identity (Aït Mous, 2011). As a result, since 2011, *Amazigh* languages (increasingly referred to as Tamazight in an effort to unify the diverse idioms and dialects that compose the *Amazigh* linguistic family), have been recognized as official, even if the relevant laws were only promulgated in September 2019,² and even if Arabic remains the language of the state administration, schools, business, and work (Benzakour, 2007).

Morocco can be roughly divided into two large ethnolinguistic segments, one Arabophone (to refer to those populations speaking Darija, the Moroccan Dialectal Arabic with many *Amazigh* imprints) and one Amazighophone (to refer to those populations speaking one of the three

¹ Unfortunately, official statistics for ethnic or language groups in Morocco are not available, despite the inclusion of questions about language usage in the 2014 official census.

² This organic law specifies the procedures and stages for recognizing the *Amazigh* language as official, detailing how it will be integrated into the educational system and various other public-life sectors.

main *Amazigh* linguistic variants as their mother tongue: Tarifit in the north, Tamazight around the Middle Atlas and Central High Atlas, and Tachelhit around the southern High Atlas and southern parts of Morocco). Arabophone populations constitute the majority of the population, and are concentrated mainly in the plains, generally in the most fertile areas, while Amazighophones are mainly concentrated in the mountains, in arid areas or in the south before the western Sahara, generally distant from the cities and the coast.

The 2011 Constitution recognizes in its preamble the Arab-Islamic, *Amazigh*, Saharo-Hassani, African, Andalusian, Hebrew, and Mediterranean components of Moroccan identity, demonstrating a progressive development toward the recognition of Morocco's great cultural diversity. Since Morocco's independence from France and Spain in 1956, the country's territorial organization has blurred traditional tribal and ethno-lineage distributions (Chanbergeat, 1961), although the reference to its tribal organization remains sociologically significant. However, in order to promote fraternity among the different groups in Morocco, and to avoid what could be unproductive *Indigenist* competitions, a broad agreement in Morocco emerged decades ago to speak of rural and local communities instead of "Indigenous Peoples." To respect this social contract, which is still held by the majority of Moroccans, we will treat terms such as common lands or local community lands as synonymous with Indigenous Peoples' lands. In addition, in order to be context-based, we will use the terms *Berber* and *Amazigh* according to the period of history discussed.

The Socio-cultural History of High Atlas Communities: The Resilience of Customary Systems

Until the time of independence, rural Morocco, and most particularly the High Atlas, was organized into tribal groups. High Atlas tribes implied a common real but also symbolic kinship ascendance, which, according to each situation and need, could conglomerate into greater social structures (tribal confederations) or smaller units connected by a system of alliances called *leff-s* or *çoff-s* (Lakhsassi & Tozy, 2000). These multifractal groups maintained relations with the *Makhzen* (the state or central power, the head being the King or Sultan of Morocco), but this varied according to the region and shifting political interests and hierarchies. (While these socio-political systems are largely deactivated today, they still have a certain functionality at the lower scales of the tribal system such as with

tribal subfractions, and the tribe is still very often a source of social and cultural identities.) At the same time, the populations of the cities were diverse, even if social groupings along ethnic and tribal lines could be found, especially through the crafts organized by certain social guilds (Massignon, 1925).

These frameworks of belonging and cooperation among tribal society cohered, case by case, permanently, punctually or ad-hoc, depending on the stakes of the moment, according to a model described by many anthropologists as segmental (Gellner, 1969). They mainly oscillated between basic structures like the *douar* (hamlet) and large tribal confederations passing through tribal fractions or cantons and tribes, nested as if a set of Russian matryoshka dolls.

While recognizing one way or another the primacy of the Sultan of Morocco, at least on the spiritual level, as well as Islamic law, and at the same time accepting the physical presence of political, administrative, or judicial personnel among them (e.g., *caïd*³, *adoul*⁴), the tribes retained a variable but generally quite important degree of autonomy, or even a *de facto* independence (Montagne, 1930). All tribes had community institutions in charge of local government, natural resource distribution and use, deliberation, and justice. In this sense, local customary law applied most prominently, without questioning the status of Islamic law, which remained in effect for certain areas like personal and moral conduct.

Although there were some common basic principles for these customary legal systems among all tribal groups and subgroups (e.g., cantons or tribal fractions) (Berque, 1978; Dresch, 1939), their provisions could vary greatly, especially across geographical distances. However, the institutions responsible for enforcing these laws did not have jurisdiction beyond the territory of each tribal grouping. Thus, parties settled inter-tribal issues either through force or more likely through negotiated pacts in order to avoid violence (Berque, 2001). In this context, while central power changed hands regularly over time, local High Atlas communities maintained a great customary diversity without really ever seeing a unified system imposed. Even the units of measurement linked to taxation under the prerogative of the *Makhzen* were never unified before the French and Spanish twentieth-century Protectorates (Hibou & Tozy, 2020).

³ Representative of the Sultan and *Makhzen* (the state) at the local level, mainly linked to the Ministry of the Interior today.

⁴ Traditional public notary.

In this context of highly diversified territorial autonomies, the *faqih*s (Muslim clerics) were also forced to adapt. Rural Berberophone populations displayed great ingeniousness in the interpretation of Islamic law or what is locally called the use of *hyal-s fiqhya*, meaning creative or crafty “*fiqhing*” (doing the *faqih*). These practices allowed for continuous syncretism between pre-Muslim and Muslim religious traditions in a way that always managed, nevertheless, to avoid a direct confrontation between the two, and somehow astoundingly maintained a generalized sense of the whole as being strictly Muslim. This great flexibility permitted the inclusion of very important rural contingents into the broader Moroccan Muslim community, building a solid base for future Moroccan political expansions or consolidations.

The Berber Policy: The Colonial Interpretation of the Moroccan Ethnicity

During the colonial period and most particularly in the French Protectorate that was the most prominent (1912–1956), the foreign powers reinforced different status and laws between Arabs, Berbers (Basset, 1908), old Jewish communities (Zafrani, 1999), and *Haratines*, the descendants of enslaved peoples from Sub-Saharan Africa (Ilahiane, 2001). The French Protectorate conveyed an image that there was only one government, the *sharifian* government, led by the Sultan of Morocco who was also its spiritual leader, and that the French “simply” assured its protection while supporting Morocco’s progress. However, the French also provided *de facto* internal and external control and guardianship over a reinvented and reconverted *Makhzanian* apparatus, the Arabic part of the state, still functioning under the Protectorate. The Protectorate monopolized the production of some of the most important norms, such as those concerning key economic affairs, international relations, and the rights and duties of the French citizens and of other nationals holding privileges in Morocco under treaties and international agreements prior to 1912 (notably the Treaty of Algeciras of 1906).

At the same time, the foreign powers took charge of the internal “pacification” process according to the colonial terminology (Ladreit de Lacharrière, 1936), which involved intense warfare to submit the different tribes that opposed the *Makhzen* and/or the Protectorate, and which took place mainly in *Berber* areas. This “pacification” was especially harsh in the High Atlas, and most particularly with the Ait Atta tribal confederation who were the last to be defeated in 1933.

The *Berber* tribes have been always the most important and permanent threat to Morocco's central powers. Therefore, the French Protectorate chose to institutionalize the *Berber* tribes to better control them, and it did so through the politics of the great *caids*, also called the *Berber policy* (Ageron, 1971). This policy reinforced the powerful men of the *Amazigh* areas, traditionally called *amghars*, often initially chosen by the tribes to represent them, in order to then turn them into state *caids*. The *caid* is a Moroccan traditional figure that, unlike the *amghars*, is designated by the *Makhzen* or Moroccan state to represent it. These *caids*, once reinforced with the help of the French powers (e.g., often they facilitated the rule of several tribes), intertwined with French interests, and were then mobilized to exercise an indirect French control over those same tribes.

There was also a shift in the 1930s, with the transition in these areas from a traditional Muslim policy – which prior to the Protectorate applied to all Morocco, at least in theory – to a *Berber* policy that provided an official and public state recognition of a second legal system within the country. This was formalized on May 16, 1930 with the *dahir* Berbère, and marked the beginning of a legal dualism in Morocco (Hart, 1997). This was formalized on May 16, 1930, with the *dahir* Berbère, and marked the beginning of a legal dualism in Morocco (Hart, 1997).

This new *dahir* officially granted customary law a regulatory function for local justice among the *Berber* tribes, thus paving a path, among other things, to avoiding the *mahkamas* (Islamic Courts) for the application of the *Chrâa* (Islamic Law). This shift toward legal dualism was a turning point, and built on previous reforms by the Protectorate, including the *dahir* of September 11, 1914, relating to the administration of the *Berber* tribes of the Empire; the Vizieral Decree of September 12, 1914, on the designation of tribes of *Berber* custom; and the *dahir* of November 21, 1916, recognizing the value of the traditional *j'maa* (tribal assemblies where each household had one vote and one voice for important decisions of the tribal group).

This legal dualism (two officially recognized legal systems within one country) triggered a great wave of opposition among the dominant Arabophone urban populations of the country, led by the nationalist elites of the country, who saw it as a divide-and-rule policy (Halstead, 1967). After independence, this dualism was pushed back. There was also a rejection of traditional local institutions and the discourse of pluralism. The Pan-Arab stance was motivated to develop a unified ideology for the nation. In the struggle for the liberation from colonial powers, the subtleties and nuances of Morocco's diversity were sacrificed (Rachik, 2003).

After independence in 1956, the new Moroccan state inherited this increased perception of mistrust and rejection toward *Berber* tribes, and turned it into policy (El Qadéry, 1998). This attitude lasted many decades, to the detriment of tribes' autonomy, and even if greatly diminished, it still continues today toward certain tribes and regions. The new state equated the existence of tribes with archaic tendencies and primitivism, and reinforced the consolidation of the exclusive power of the central state against any competition from local authorities. It also encouraged the prevalence of a unitary ideology favoring a sole national identity along with the unity of law, the centrality of law's production and its general application.

No Country for Tribesmen

In the post-independence context, *Berber* and High Atlas tribal institutions and customary systems were mainly framed by this new nationalist class as traitors and collaborators of the colons (El Qadery, 1995). This was most greatly symbolized by the role of the *Berber* tribal chief El Glaoui (one of the aforementioned great *caïds* of the High Atlas) in the deposition of Mohammed V's status as Sultan during the crisis of August 1953, which subsequently led to his exile first in France and then in Madagascar (Julien, 1978). This resulted in post-independence policies that marginalized Berbers in rural areas, with particularly violent repressions in Tafilalet in the eastern High Atlas regions and even more in the Rif mountains between 1957 and 1959 during and after the two respective revolts (Gellner, 1981). However, tribal communities of the High Atlas and other rural Moroccan populations maintained some of their traditional institutions of local governance through the principle of "non-intervention" implemented by the new independent state (often called the *laissez faire* policy), as long as peace was kept in these regions and there were no conflating interests.

Even for all this spiny history, within a twentieth-century state, there is still space for a certain autonomy of the tribal group according to its traditional regulatory practices for land management and natural resource governance. Nevertheless, this autonomy does not avoid the constant erosion and threat of arbitrary treatment by the state concerning land tenure and land use of *Amazigh* communities of the High Atlas and other regions of Morocco, depending on its interests at stake in each moment (Bendella, 2016). And of course, in such context, the Moroccan state has not yet endorsed the 1989 International Labour Organization

Convention on Indigenous and Tribal Peoples (ILO 169) or the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Survival of *Amazigh* Land Rights in the High Atlas

The main Moroccan laws governing access to rural lands and other natural resources, such as those held by the tribes of the High Atlas, date from a few years after the Protectorate in 1912. These have not changed much since then — and will not change much even if certain *nouveautés* are announced in the leadup to publication.⁵ Examples include the laws regulating the public domain, *habous* (mortmain, or lands and property held inalienably), registration of land, forest estates, collective lands, and the arganeraie (argan tree forests), among others. The *dahir* (Moroccan legal decree) of April 27, 1919, on collective lands, sought to meet the needs of colonialists and Berbers. Today, more than 100 years after this *dahir*, it poses a series of challenges, to which a recent amendment to this law has tried to respond, without questioning the basis of the original text.

This decree on collective lands largely ignores the notion of common property and provides only cursory mention of customary law (Bouderbala, 2013). Nevertheless, this regulatory system has been reappropriated and reinterpreted by different actors to recognize common property or land use rights for *Amazigh* communities. The state has also used this system to recognize its rights to use land and natural resources considered public property, like water, forests, arganeraie or extensive pastoral lands. The state has been able to use this decree to seize communal land for projects considered “of general interest” (the definition and content changing with political trends). *Amazigh* have only

⁵ The Moroccan government has recently released a draft legislation concerning the preservation and sustainable development of forests. If enacted, this legislation would replace and repeal the existing legislative framework governing forest areas in Morocco, including the 1917 *dahir* on forest exploitation and the 1925 *dahir* on Argan forests. The initial version of the legislation, open for public consultation, incorporates provisions for the usage rights of local populations, but especially for tribal members with traditional usage rights over Argan forests, comprising only a small part of Morocco’s local community lands (Article 26). Moreover, the participatory mechanisms in the legislation do not explicitly recognize traditional groups, tribes, or local communities as such, but rather focus on associations and user cooperatives.

been able to preserve the traditional management of lands and natural resources where no clashes with the “general interest” are found.

The tensions weighing on this delicate balance are accentuated by new forms of land grabbing (Mahdi, 2014), and new attitudes and political hierarchies in local communities that alter preferences from traditional communal lands to new systems (Kadiri & Er-rayhany, 2019). These new systems range from simple open access to the individualization and privatization of common lands.

In any case, the “title of occupation” (i.e., use right) varies, referring to a mere presumption of collective status, an administrative delimitation, or a collective land registration. The Ministry of the Interior oversees the identification and registration of the landowning communities and their lands, and ensures their preservation. The problem in practice is that the title, whatever its form (presumed collective, delimited administratively, or even registered as a collective), ultimately does not protect these lands. For example, see the case of the Gharb in western Morocco (Karsenty, 1988). The Ministry of the Interior has, in the last instance, the right of interpretation of these titles, and can ignore these as part of its “super-visory authority.”

Since 1919, the government has removed communal lands from the jurisdiction of the legislature and the judiciary. A law passed by the Moroccan Parliament in 2019⁶ governs the question of collective land, but like the 1919 decree that it replaced, it guarantees the exclusive control of the executive over communal lands. A joint circular from the Minister of Justice and the Minister of the Interior even prohibited the courts from hearing cases on collective land for some time.⁷ An article in the 1919 decree made it impossible to appeal to the courts against decisions of the Tutorship Council (an administrative arbitration commission chaired by the Minister of Interior), making it one of the only

⁶ The collective lands were governed by a royal decree adopted during the colonial period, in 1919. This text entrusted their exclusive guardianship to the Ministry of the Interior, with virtually no oversight by legislative or judicial powers. However, in 2019, a new code was adopted through a law voted on by the Parliament, which, while retaining the same previous mechanism, introduced two new provisions that will probably induce profound and lasting transformations: the admission of women as rights holders, and the possibility of transferring lands to private investors.

⁷ Joint circular from the Minister of the Interior and the Minister of Justice, addressed to magistrates and authority agents: “Circulaire interministérielle n° 8/62 sur les conflits de compétence en matière de propriété collective,” in Ministère de l’Intérieur, *Guide des terres collectives*, Rabat, 1995.

administrative authorities not subject to judicial review. While the 2019 reforms opened the door to judicial review on communal land decisions, these new provisions restrict the court from interpreting the rules of management of this particular type of property, which remains the exclusive responsibility of the executive power.

The type of property right decreed by the *dahir* of April 27, 1919, on collective lands is restrictive. It is a right exercised under the tutelage of the state, and it is inalienable (Guillaume, 1960). The state, in contrast, has the ability to appropriate a portion of these lands for projects of “general interest,” which can include everything from a dam for hydroelectric power and water provision to golf and tourist resort construction, military training grounds, and hunting grounds for Saudi clients. Ultimately these appropriations can mean the sale of traditionally common land to private investors. These transfers trigger resistance, but they generally succeed when they are fully backed up by the state. The recent land law reforms in 2019 have opened more possibilities for collective land sales to investors, and enabled further land-grabbing (Mahdi, 2014).

Land Governance by *Amazigh* Communities: The *Agdal* System

The contemporary legislative framework provides a precarious but nuanced layer of protection for High Atlas populations and their land rights. While the state can appropriate communal lands, there is a certain recognition of inalienable collective ownership, thus institutionalizing the communal dimension linked to the tribes, inherent in land and resource stewardship.

There is an intricate legal mosaic in the High Atlas, which includes individual private ownership (e.g., rights to fruit-bearing trees or live-stock), public or state dominion (e.g., over forests, pastures and hydro-logical resources), communal or collective usufruct rights (e.g., water management systems, pastoralism and certain forms of wood collection), along with recognized communal property rights over certain grazing lands. Central to the well-functioning of this interplay is the capacity of traditional communities to effectively enforce a customary regulatory framework and make it be respected by all the members of the community of users (e.g., the tribes or smaller parts of the tribes), by their neighbors and by the state, for which the existence of a well and strongly present community is always necessary.

This Indigenous governance mechanism is instrumental not only in the preservation of the different tribal identities, cultural norms, and

traditional land governance customs, but harmonizes relationships and often competing interests. The *agdal* system, historically and culturally integral to *Amazigh* High Atlas communal governance (Dominguez et al., 2010, embodies the complex intertwining between different human groups and actors, land and natural resources within a traditional legal context), embodies the complex intertwining between different human groups and actors, land, and natural resources within a traditional legal context.

Rooted in the cultural heritage of *Amazigh* peoples, these self-regulated *agdal-like* units can be counted by hundreds of thousands across the Maghreb region, but they are legally unrecognized in Morocco, yet they are still indispensable to sustainability and community-driven governance. They exemplify the resilience and adaptability capacities of High Atlas communities, crucial for maintaining socio-political and environmental equilibriums (Auclair and Alifriqui, 2012; Borrini-Feyerabend, 2010; Da Silva et al., 2020).

The Agdal Polyvalent Institution: The Example of Pastoralism

Agdals are island-like units at the local level, which are composed of an assembly of people who have a stake in the *agdal*, granting them a great deal of legitimacy in the eyes of the local population. *Agdals* are not built on a written legal or state-structured institutional framework (Gellner, 1969), which means they are based on a fragile consensus that can easily change depending on shifting alliances.

Of collective lands, 85 percent are rangeland in the High Atlas. Pastoral *agdals* typically involve assemblies of herders, who control or limit access to pasturelands during periods of the year, particularly in spring and early summer, to protect the most sensitive period for the growth and reproduction of plants (Dominguez et al., 2012). While herd ownership is usually private, grazing occurs on collective or public lands mainly considered state-owned forestland (*domaine forestier*), even if most of the time forest cover is nearly nonexistent. Communities manage and regulate pastoral activity in such areas according to different modalities, depending on the configuration of the pastoral social system and geographical scale. They engage in nomadism, moving livestock to locations of rainfall during the year, and transhumance, consisting of an annual movement of the herds between two complementary fixed areas of a group's territory. These collective property rights can be de facto divided among the lineages. Groups may, however, have grazing rights to rangelands in other communities, and communities may share some in common.

Water Turns

Water is public property in Morocco, but the law recognizes traditional rights of use acquired before the adoption, in 1914, of the present water law. Communities typically manage the equipment for collecting, storing and distributing water, as well as the social institutions that govern all the processes for their creation, maintenance, supervision and repair of irrigation systems. Communities typically manage the equipment for collecting, storing, and distributing water, as well as the social institutions that govern all the processes for their creation, maintenance, supervision, and repair of irrigation systems. These are directly linked to the communal cosmo-vision in which *agdals* and all High Atlas societies are rooted.

Communities also manage the distribution of water according to private collective property rights known as “water turns,” rights to successively withdraw water in a pre-established and negotiated order of priority. In this arrangement, water ownership is public and “water turns” are private, while the community plays a key role in the governance of this water and associated infrastructure.

Community management mobilizes the memory of rights and their transmission, adapted to the irregularity of the cycles and whims of nature. The transposition of rights, as water-withdrawal turns, are calculated with extraordinary precision to generate a robust scheme that takes into account the different contingencies. The scheme might involve rotations of the “turns” to avoid the same users always receiving their turn at inconvenient hours, splitting water turns of larger shareholders to avoid long waits for those who have small plots or simply smaller shares of water, or adaptation of the distribution to the physical morphology and imposed constraints. The management and monitoring of the network guarantees respect for the recognition of rights-holders, as well as the prevention and management of conflicts. Furthermore, the body responsible for water management can sanction offenders, ranging from assessment of payment in crops, animal products or money to the contribution of work to the community, the exclusion from the resource during a given period, or even exclusion from the community if the offense is taken too far. Furthermore, the body responsible for water management can sanction offenders, ranging from assessment of payment in crops, animal products, or money to the contribution of work to the community, the exclusion from the resource during a given period, or even exclusion from the community if the offense is taken too far. The governance body can mobilize the whole community when it comes to

exceptional, vital and urgent work. The governance body can mobilize the whole community when it comes to exceptional, vital, and urgent work.

Arboriculture

Arboriculture in orchards incorporates a significant share of collective farming and community management. For orchards, property regimes overlap among public (land and water), private (trees), and collective (water management and sometimes even grazing under the fruit trees or even “on” fruit trees as it happens in the argan forests of Southern Morocco), managed also through the *agdal* institution (Romera, 2021). Local oral legal agreements assure collective use and community regulation of fruit trees. Along with their integration into other agricultural activities and water management, such use and regulation ensure control and rationalization of resources and preserve the often-fragile ecological balance. This system of community regulation may also be applied to medicinal or other gathered plants, High Atlas forest or forest management for wood production (firewood or timber), or fodder, or other resources of the sort produced in local community lands.

Challenges to the Agdal System

Many *agdals* have disappeared, though stories and memories of them sometimes persist. Others are eroding fast (Dominguez & Benessaiah, 2017), but still many persist, and a few are even reborn or created. As a mechanism for managing natural resources and regulating their use, *agdals* integrate prohibitions and quotas, monitor resource use, and wield the possibility of sanctioning and enforcing them to make the system effective. Removing *agdals* can weaken systems where there is social conflict. However, the *agdal* is increasingly supplanted by the state, and the *agdals* are constrained in how they can deal with any conflict, for the state remains uncompromising in monopolizing ultimate control.

Oral Traditions and the Agdals

Amazigh laws are most commonly orally transmitted, negotiated, agreed, and renegotiated, generation after generation. These systems are socially constructed and adaptive, where a precedent is not always authoritative, and an analysis of each case is always necessary. The content of the rules varies from one community to another, and no community institution has the power to enforce judgments beyond its borders. However, within

each system, there is coherence as well as shared principles among the different groups participating in the individual ethnic-tribal-legal system (Mahdi & Tozy, 1990).

For some issues, such as water rights (Lazarev, 2005) or customary rights in argan forests, which are exceptionally valued today (Chamich, 2008), the provisions are extremely specific and detailed. The prescriptive rules regulating water use, for example, are generally formulated when a case is submitted for the deliberation to the competent authority, the *j'maa*, or deliberative assembly, where all household heads or rights holders participate with vote and voice. In these deliberations, general debates and close negotiations are bound by norms of consensus-based decision-making (Mahdi & Tozy, 1990), which can strengthen cooperation, trust, and accountability.

Recent socio-political transformations have weakened the collective, increasingly empowering certain members and diminishing enforceability of common decisions. Micro-local power struggles come into play, allowing decision-makers to bend the rules more than in positive or statutory law. However, cheaters, free riders, or ambitious members of local tribal assemblies who try to excessively bend the rules are brought into conformance through collective norms (Bendella, 2009). The *de facto* collective ownership to land is one of the strongest contributory elements to the maintenance of local communities' land and natural resource regulatory systems in Morocco. It is through this relative stability that intra-tribal cooperation occurs for the collective governance of resources that can today be observed almost daily in many regions of the High Atlas.

Discussion: From Dispossession to Preserving Cultural and Ecological Resilience

Since 1919, collective lands like those held and stewarded by the *Amazigh* in the High Atlas have been under the control of the executive powers, and the 2019 law affirms this. The state can, and has, appropriated these lands for reasons of "general interest" or public utility.⁸ The state today

⁸ Article 20 of 2019 Law 62.17 amendment details the conditions and procedures for the transfer and exchange of collective lands. It allows for the transfer of these lands through various forms of agreements, including sale and exchange, primarily to state institutions, public entities, and collective communities. Additionally, the law permits transfer to private operators under certain conditions, ensuring these transactions align with the public interest and are approved by the relevant supervisory councils.

considers the mobilization of a significant part of these communal lands as a national development priority by members of the communities (on an individual and private basis), or more often for the benefit of outside investors.

The existing legal framework threatens the survival of *Amazigh's* collective modes of social organization, and their lands and resource governance – for example, the *agdal* system. The challenge in the High Atlas today is not so much access to or recovery of land by *Amazigh*, but rather the preservation of what exists from appropriation. There are many forces at play that encroach on customary institutions, such as nationalism, the state bureaucracy, and other assimilative forces that focus on private interests and development. It is important to frame the cultural institutions, language, and rights of *Amazigh* as an essential part of the country's national heritage, central to the preservation of a cultural and linguistic wealth, and foundational to the resilient management of fragile natural resources in an environment characterized by harshness.

In considering future prospects for the peoples of the High Atlas, there are several opportunities that can be leveraged to move forward. A key opportunity lies in the increasing global recognition of the protection of Indigenous Peoples and local communities, and their customary practices, alongside Morocco's growing national and international commitments in this area. These international frameworks provide a robust foundation for advocating enhanced legal protections and greater autonomy in managing Indigenous Peoples' lands and resources. The alignment of Morocco's policies with these instruments presents an opportunity for the High Atlas communities to reinforce their traditional practices within a legal structure that recognizes and values their cultural and environmental contributions, and which is already being put into practice in collaboration with local, national, and international NGOs and other public and private development agents.

Additionally, there are opportunities in exploring community-led initiatives in sectors such as agroecology, which blends traditional agricultural practices with sustainable approaches to food production, or community-managed tourism or eco-friendly projects that capitalize on the unique natural and cultural assets of the High Atlas region. Such initiatives can not only contribute to local economic development but also promote social cohesion and environmental stewardship, while reinforcing *Amazigh* identity and cultural rights.

Conclusion

The recognition of *Amazigh* languages and identities in the 2011 Moroccan Constitution, and the importance of the High Atlas population in all of this, seems to be a significant step toward a more plural society. However, this recognition does not necessarily translate into practical and operational guarantees for *Amazigh* and their lands, and this connection must still be sought from both the macro (national and international) and the micro (local) perspectives. Indeed, communities such as those in the High Atlas have managed to preserve much of their identity, culture, and legal systems, particularly in respect to the land, and this despite facing numerous challenges throughout history, still exist today. Nonetheless, *Amazigh* culture, lands, and institutions remain largely unprotected by the state.

The protection and promotion of traditional ways of life and governance, as well as the preservation of languages and cultural practices, require tangible actions that go beyond symbolic declarations. Therefore, it is essential to develop integrated strategies involving *Amazigh* populations that reflect their values and priorities. There is also much to learn from the *agdal* system, which offers resilience in an increasingly uncertain world. These systems have been effective in sustainably managing resources in a harsh environment, and have supported very adaptive and dynamic societies able to transform themselves and maintain a strong local sense of identity and micro-political control of their lands, natural resources, and social affairs.

The role of the *j'maa* (the local assembly), the consensus-based nature of decisions, and the customary sanctions, are all based on oral law, which form the bedrock of rural *Amazigh* community governance. The oral laws of the High Atlas *Amazigh* peoples are deeply intertwined with their cultural and social fabric. Passed down and constantly evolving through generations, this oral tradition ensures that the laws are living, dynamic entities, adaptable to changing circumstances while retaining their core principles. Its effectiveness lies in its inclusive and participatory oral nature, embodying a form of direct democracy that takes into account the many voices of community members, and knows the key-stones of the local societies, while allowing for effective and dynamic negotiation. However, it must be remembered that women and younger generations are still excluded from the *j'maa*, since generally it is the male head of the household that speaks, negotiates, and votes in the name of all the household.

Future prospects for the High Atlas communities are relatively promising after decades and even centuries of conflict with the state and discrimination. Opportunities are now slowly appearing alongside Morocco's growing international commitments that can support the advocacy of national and transnational *Amazighs* movements.

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