

Due process violations form the core of Iran's human rights crisis

Ahmed Shaheed

Respect for due process rights is, in many ways, a litmus test for a country's commitment to the full realization of human rights. Due process rights are foundational and fundamental in nature and comprise the cornerstone of a society based on the rule of law, fair trial guarantees and the proper administration of justice. They allow for the right to remedy and safeguard against impunity by ensuring that no one is either above or below the law. In order to meet their obligation to guarantee due process rights, states must satisfy two types of requirements: an institutional component of setting up competent, independent and impartial tribunals; and procedural elements related to ensuring lawful arrests, detentions and fair trial rights. In my view, systematic due process rights violations and Iran's failure to address these concerns are at the heart of the human rights crisis that has plagued the country for many years now.

Indeed, the urgent need for fundamental reform of Iran's justice system, and the impact these reforms can have in dramatically improving the human rights situation are critical to understanding the degree and depth of the human rights situation in the country. The administration of justice, and especially criminal justice in Iran, suffer as a result of national laws that clearly violate Iran's international legal obligations, and the persistent failure to faithfully and properly implement, without impunity, laws that otherwise satisfy Iran's international legal obligations. Additionally, the independence, impartiality and competence of Iran's courts, and of the judges who preside over them, is seriously compromised by a judicial system that is closely tied to the office of the most powerful individual in the country: the Supreme Leader.

Before delving into the particulars of Iran's judiciary, however, it is helpful to remember that the primary factor leading to the re-establishment of a United Nations (UN) human rights monitor on Iran in 2011, after a nine-year hiatus, was the serious concern expressed by the international community over the egregious human rights violations committed by Iranian authorities to suppress widespread dissent in the aftermath of the presidential election in 2009. This crackdown was marked by the killing of several dozen demonstrators by security forces, mass arrests of peaceful protesters disputing the results of the election, and show trials of hundreds of dissidents, including political opposition members. I was appointed as UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran in June 2011.

In addition to my mandate, various human rights mechanisms at the UN have assessed Iran's systematic failure to abide by its due process obligations under international law. In 2010, the UN Human Rights Council reviewed the human rights situation in Iran during its first cycle of the Universal Periodic Review process (UPR). Iran received 212 recommendations from other member states, the second highest number for the 2010 cycle of the UPR. Fifteen of these recommendations related to the administration of justice, including a recommendation by the Netherlands to Iran to '[t]ake measures to ensure an effective and impartial judicial system, in conformity with ICCPR is guaranteed'. Iran only accepted eight of these recommendations, including the above.¹

The following year, in October 2011, the UN Human Rights Committee (HR Committee) had the opportunity to evaluate Iran's compliance with the International Covenant on Civil and Political Rights (ICCPR). In paragraph 22 of its Concluding Observations, the HR Committee recommended that Iran should:

*[E]nsure that all legal proceedings are conducted in full accordance with article 14 of the Covenant, including guaranteeing (a) the right to legal assistance of one's own choosing, including for pretrial detainees; (b) the right to be informed promptly of the nature and cause of the criminal charges; (c) the intervention and presence of lawyers in all cases, including during the investigation stage; (d) the presumption of innocence; (e) the right to a public hearing; and (f) the right to appeal a ruling.*²

In paragraph 23 of the same observations the HR Committee said that Iran 'should take immediate steps to ensure and protect the full independence and impartiality of the judiciary, and guarantee that it is free to operate without pressure and interference from the executive power and clergy'. The HR Committee also highlighted other elements that constitute due process such as, inter alia, the right to equality before the law, the principle of legality, and the protection against torture and arbitrary deprivation of liberty.

In the ensuing period, the Iranian government attempted to address at least some of these concerns by amending both their penal and criminal procedure codes. The due process rights deficit plaguing the

¹ UPR-Info, Database of Recommendations, www.upr-info.org/database/

² UN Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.IRN.CO.3.doc>

administration of justice in Iran is, however, deeply entrenched in both law and practice. More specifically, the structures, practices and culture that undergird the country's judicial institutions are intimately linked to the concept of *velayat-e faqih*, or the 'guardianship of the jurist', which requires a qualified jurist, known as the Supreme Leader, to lead the country and ensure that its laws are consistent with the state's official religion (Twelver Shi'ism). Pursuant to Iran's constitution, the Supreme Leader is the most powerful individual in the country. He directly controls the country's military, state-owned television and radio, and high-level appointees in the judiciary. He appoints the head of the judiciary who is vested with the powers to appoint, promote, transfer or dismiss judges. Judges are also subjected to intensive investigation and questioning by various bodies, including security services, regarding their beliefs and political leanings.

There are also serious problems with Iran's court system. Iran's revolutionary courts, initially established to prosecute former regime officials after the 1979 Islamic Revolution, are today mandated to try a range of offences including those related 'national security crimes' which are often nothing more than the peaceful exercise of fundamental rights. Human rights organisations have repeatedly noted that judges presiding over revolutionary courts are often unduly influenced by, or work closely with, security and intelligence units to prosecute political dissidents—an observation which was echoed by the HR Committee.³ Revolutionary courts also have jurisdiction to try drug-related offences which comprise the vast majority of death penalty cases (and executions) in the country and are often rife with fair trial abuses.

In addition to the lack of independence and impartiality, defendants prosecuted in revolutionary courts, and some ordinary criminal courts, are also denied basic due process rights provided to other defendants in less contentious cases. While the recent amendments to the Criminal Procedure Code⁴ fill a number of the old code's due process protection gaps, individuals charged with national security, capital, political or press crimes (and those accused of offences that incur life sentences) cannot select a lawyer of their own choosing and do not receive unfettered access to evidence gathered in support of the allegations against them. I have also noted efforts by the government, and the judiciary more specifically, to exercise institutional control over the Iranian Bar Association, whose independence and autonomy has increasingly come under threat.

Compounding serious flaws in the laws protecting due process rights is the authorities' failure to faithfully observe and properly implement laws that are in compliance with due process and fair trial standards. In my March 2016 report to the UN Human Rights Council⁵, I expressed concern that I continued to receive reports of individuals arrested without being shown a warrant, or are kept in unknown locations without their families and lawyers having any information regarding the circumstances of their arrest or their whereabouts. I also noted that despite protections afforded in Iran's constitution and recently amended laws, I received reports suggesting that it is not uncommon for defendants to go to trial without representation, take part in trials that last only several minutes, or be 'routinely subjected to blindfolding, harassment, ill-treatment, torture and coerced confessions during pre-trial detention and interrogations'.

While such abuses are often discussed within the context of national security-related cases, human rights groups have documented many cases where defendants charged with ordinary crimes such as murder, rape or drug trafficking have also been deprived of their fundamental due process rights. Equally troubling were the reports that few, if any of these cases have been investigated by the authorities, let alone the perpetrators brought to trial.

The institutional and procedural deficits that are, in many ways, built into Iran's system of criminal justice facilitate the abuse of other fundamental rights such as those that violate the guarantee of the freedoms of expression, association and peaceful assembly and freedom of thought, conscience and religion; and a host of other civil, political, economic, social and cultural rights. Indeed, many of the topics that I raised with the Iranian government during my mandate—discrimination suffered by women, members of the LGBT community, and religious and ethnic minorities; the imposition of the death penalty for non-homicide offences; and restrictions on the peaceful exercise of civil liberties—are directly or indirectly affected by the violation of due process and fair trial rights.

³ UN Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.IRN.CO.3.doc>

⁴ Iran Human Rights Documentation Centre, Amendments to the Islamic Republic of Iran's Code of Criminal Procedure -- Part 1, June 2015, <http://www.iranhrc.org/english/human-rights-documents/iranian-codes/100000602-amendments-to-the-islamic-republic-of-iran's-new-code-of-criminal-procedure.html>

⁵ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, (published) May 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/105/97/PDF/G1610597.pdf?OpenElement>

It follows, therefore, that the human rights situation in Iran cannot be adequately addressed without structural, substantive and serious reform of the country's system of administering justice, especially in criminal matters. Without such reform, including structural changes to a judiciary and court system that often sacrifice independence, impartiality and competence in return for political expediency and stability, we simply cannot conclude that Iran's government is committed to the full realization of the rights of its citizens.

