

Settling refugee disputes in Iran

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Legal systems are notoriously refugee-unfriendly. Are there alternative means of adjudicating refugees' legal disputes?

Can mediation systems be developed which are sensitive to the values of tribally-based cultures yet also in accordance with the judicial norms of the host country? Iran, host for two decades to one of the world's largest refugee populations, has been pioneering an approach which could be replicated by other host states.

Uncertainties and fears surrounding judicial processes are the norm among members of social groups lacking official legal status. They often suffer from high rates of illiteracy, poor access to social services and psychological instability born of depression, anxiety, post-traumatic stress disorder, paranoia and/or survival guilt.

Afghan refugees in Iran are no exception. So great are their doubts and uncertainties ("Do I have the right to claim?"; "Does my claim seem rational?"; "If I do not win, what will they do to me -lock me up, lash me, repatriate me?") that most are deterred from risking stepping inside any formal judicial arena. Coming from a society where disputes are mostly resolved by mediation by elders, they are unfamiliar with the concept of judicial action.

In Iran - a state with myriad political and judicial ambiguities - few can afford a lawyer. They are afraid of

being treated unfairly in court due to their dubious immigration status and their otherness. In the absence of any alternative to a judicial procedure, Afghans resign themselves to their fate or may embark upon actions which result in imprisonment or forcible repatriation.

The Special Legal Committees for the Settlement of Afghan Refugee Disputes (hereinafter, 'the committees') are a means of providing free legal advice to Afghan refugees who would otherwise be unable to reestablish their rights. They arose from recognition in the early 1990s that traditional provision of legal assistance to Afghan refugees was

impossible due to the costs involved in dealing with a vast number of cases.

As an affordable alternative, the notion of using Afghan refugees with legal or counselling skills to offer peer support was developed. In accordance with a tripartite agreement on repatriation procedures signed by UNHCR and the governments of Iran and Afghanistan, the first committees were established in Mashhad in 1993. Supported by the Hizb-i Wahdat (a coalition of Afghan Shi'a political parties forged by the Iranian government) the concept soon spread to other areas of Iran where Afghan refugees reside. In 1994 a second committee, based at the Afghan Embassy in Tehran, was established followed shortly afterwards by another administered by the Hizb-i Wahdat in the Iranian capital.

Afghan refugee merchant, Gulshahr bazaar, Mashhad, Iran





The majority of cases brought to the committees involve financial and family disputes. Penal cases and those involving refugees in dispute with the Iranian authorities are also heard.

The committees' objectives are to:

- provide refugees with unhindered access to information and advice to complement that provided by UNHCR
- detect legal problems, identify their origins and explore the possibility of mediation
- arrange negotiation meetings between the parties involved, write letters and give advice with the view to an amicable solution
- provide refugees with counselling on personal security and social welfare assistance
- refer cases requiring specialised legal advice.

All committee members are tertiary educated and there are several lawyers. Originally all committee members were men. In response to the rise in the number of family cases and the reluctance of Afghan women to raise personal or legal issues in the presence of a male legal advisor, a women's committee was established by the Afghan Embassy.

UNHCR provides managerial and coordination support. Some of the members are employed by UNHCR. In Mashhad a permanent UNHCR legal advisor attends all meetings. If members of the two Tehran committees cannot find a suitable solution, or if they judge that formal procedures must be invoked, a UNHCR legal advisor is called in to liaise with the relevant authorities. The UNHCR legal advisor plans to consolidate the activities of the Tehran committees into a registered NGO to give them legal and official status.

The Mashhad committee is located at the Bureau of Aliens and Foreign Immigrants Affairs (BAFIA). An Iranian judge chairs the committee and works with an Afghan cleric, a UNHCR-provided legal advisor and a BAFIA staff member. The committee meets once a week for four hours. Claimants submit cases and documentary evidence in writing. On receipt of complaints, the chairman formally invites both parties for mediation. Ninety per cent of those summonsed attend on time.

If the dispute is settled, a consent order is signed. If claimants are not satisfied with the outcome they may ask for a hearing in the Iranian courts. However, the fact that an Iranian

judge is a member of the committee deters many as they anticipate that the court would be likely to come to a similar judgment. The committee advises on procedural matters and points out the risk of litigation. It is up to the parties to decide whether they wish to go to court.

Conclusion

These committees present an ideal and cost-effective means of dispute resolution for those whose status in a host country is precarious. Committees retain local flexibility with regard to their membership structures, their relations with the government and how they go about resolving disputes. They fill a useful gap for communities in which people are not familiar with their citizenship rights and fear both the consequences of punishment from kinsfolk and discrimination suffered in the formal Iranian legal system.

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