

Rule of Law Toolkit

Chapter 6

Due Process

Facilitator's Notes for Due Process

Target Audiences: High School Students; University Students; New Law Students

Estimated Time: 40 minutes

Description of Section: Due Process

Participants will be asked to think about due process on an international and national level. The following major themes will be discussed:

- the definition of due process
- a brief history of due process
- international standards for due process
- the importance of international and national due process instruments
- strategies to protect, ensure, and promote due process

Key Learning Objectives

- Participants will become familiar with the concept of due process – what it means and how it applies in different situations
- Participants will become familiar with international and national standards for due process
- Participants will understand how due process is an integral part of the rule of law.

Glossary of Terms

- **Burden of Proof:** The obligation of a party in a lawsuit to demonstrate sufficient evidence necessary to prove a stated claim. For instance, in a criminal trial, the prosecution has the “burden of proof” to demonstrate the defendant’s guilt.
- **Due Process, also called “Due Process of Law”:** An established set of rules for judicial proceedings or other government activity designed to safeguard the legal rights of the individual. There are two types of due process, *procedural* and *substantive* due process.
- **Procedural Due Process:** An established set of clear legal procedures that are “fundamentally fair,” which the government must follow whenever it pursues criminal or civil charges against an individual. The following procedural rules illustrate this concept: the government must provide an individual *notice* of any criminal charges against him; the government must provide individuals with an opportunity rebut the charges against them in a meaningful way, such as at a hearing before an impartial judge; and in order to deprive an individual of his property or liberty, the government must present substantial and valid evidence that he committed a crime.

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- **Substantive Due Process:** The principle that the government cannot enforce laws or rules that violate basic, fundamental human rights. Substantive due process limits the types of laws that legislatures can pass, and requires certain courtroom procedures to safeguard individuals' rights. Whereas procedural due process rules are specifically named in laws or rules, substantive due process rules are not written down; they are "un-enumerated." Examples include: the right to representation by a lawyer at criminal hearings and the right to be considered innocent until proven guilty of a crime.
- **Equality:** The principle under which each individual is subject to the same laws, with no individual or group having special legal privileges.
- **Presumption of Innocence:** A person is considered innocent of a crime unless or until they confess to the crime, or the government proves their guilt by presenting evidence in a court of law.
- **Procedural law:** The legal rules that the court system and judges must follow in administering justice. For instance, procedural law controls the order in which the judge asks parties to present evidence at trial. Procedural rules are designed to ensure a fair and consistent application of due process to all cases that come before a court, both civil and criminal.

Handouts and Discussion

Handout I: Background Paper on Due Process

Handout II: Summary of the International Due Process Standards

Handout III: Due Process in Bahrain

Handouts will be used in discussion and group activities. They could be distributed and read prior to meeting as a group. You should modify Handout II to include information about the legal framework for due process in the country where the class is being held. Here, an example about Bahrain is provided as a model.

Introductory Activity: Brainstorm about Due Process

Materials: Handout I: Background Paper on Due Process

Explain the goals of the brainstorming session first: "The goal of our brainstorming session is to identify what we see as wrong or unfair in the following scenario." Articulate this task in full to the group and then note it down briefly as a title on the blackboard or sheet of paper.

Scenario: Ahmad is at shopping center waiting to meet some friends. He is waiting on a bench outside the shopping center when a police officer approaches him. "You are under arrest," the police officer says.

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Ahmad asks the police officer what he has done wrong. The officer says that Ahmad is breaking a law that says no boys are allowed to wait on benches. “But I have never heard of such a law,” Ahmad replies, “and there is nothing that says I cannot wait here.”

“I just made up the law, this minute” the police officer says, “and you have broken it. I sentence you to 30 days in jail.”

Inform participants that after they write down a list of their own ideas, they will each have a chance to discuss their suggestions and that the process of brainstorming is designed to generate as many ideas as possible, not to evaluate their quality. It is important to mention any time limits, so that the group knows how long they have to accomplish the task.

After brainstorming, organize and discuss each idea in a well-formed statement. If at some point the group stops generating new ideas, you facilitate the discussion by offering recommendations or comments.

Ask the participants to re-read Handout I: Background Paper on Due Process. Give them a few minutes to complete this task. You should:

1. Summarize the main points and ask if there are any questions.
2. Ask the participants to define “Due Process” quickly and then write a definition on the board stated by participants. Discuss the difference between procedural and substantive due process.
3. Remind students that due process is an important aspect of the rule of law.
4. Ask which rule of law elements are closely related to due process. Possible answers include: fairness, equality, protection of human rights, and transparency.
5. State that the participants will better understand the important aspects of due process and have an opportunity to discuss how it should best be promoted, after the group completes a few additional activities.

Activity 1: Identification of Due Process Standards

Overview: Due process is necessary to ensure that justice is administered fairly and equally to all individuals, without arbitrariness or discrimination. International standards of due process can be found in international law, including treaty agreements.

Objectives: Participants will:

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- identify violations of due process
- learn international standards for due process
- reflect on whether due process should be applied equally in all cases

Materials:

- Case Facts (on following page; to be copied and distributed during the activity)
- Handout II: Summary of International Due Process Standards

Step 1 - Case Facts:

Explain to the students that as a group we will look at a scenario and examine due process. Divide participants into small groups. Provide the information below to the students on a handout. Ask each group to read and discuss the facts of the following case scenario.

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Case Facts

1. Maher is a 35 years-old male.
2. Shadi is a 15 years-old male; he is the youngest son of a rich trading family. Maher knows Shadi because their sisters are friends.
3. On September 27, 2002, Shadi disappeared. He was reported to be last seen entering Maher's house.
4. A letter was delivered to Shadi's family saying that their son had been kidnapped. The letter demanded a \$100,000 ransom to be delivered within two days if the family "wanted to see Shadi again."
5. After informing the police, Shadi's family agreed to give the money to the kidnappers, with the assistance of the police. However, Shadi was not released after the ransom was paid. There was no further communication from the kidnappers.
6. Soon afterwards, the police arrested Maher as a suspect because Shadi was last seen entering Maher's house. It was also revealed that Maher was planning to travel abroad and had booked a one-way ticket.
7. Maher was taken to the police station and informed that he was a suspect in a kidnapping case. The police read him his rights as a suspect, informing him that he had a right to not speak until his lawyer arrived, and that a lawyer would be appointed to him if he could not afford representation.
8. In response, Maher began to tell his side of the story. He said that Shadi entered his house on September 27th to retrieve his sister's coat, which he had left by mistake at Maher's house. Shadi did not stay long, and Maher did not see him again.
9. Maher then requested to consult with a lawyer. The police got him a lawyer and adjourned the interrogation until the following day, when the lead investigator would resume questioning in the presence of Maher's lawyer.
10. The next day, before the lead investigator or Maher's lawyer arrived, another police officer began threatening Maher, saying that he would have Maher tortured if Maher did not cooperate and immediately tell him Shadi's location. The police officer hit Maher several times in the face and shoulder.
11. Because of his fear of being tortured and assaulted, Maher confessed to kidnapping Shadi. Maher said that he had kidnapped Shadi with a neighbor, but that he no longer knew where they were. The case was referred to court.
12. At trial, Maher withdrew his confession. Maher's lawyer submitted a motion to the court to exclude the confession as evidence because it was obtained under physical violence and the threat of torture, which are illegal procedures.
13. The prosecution responded that the police only engaged in those interrogation techniques for the benefit of the missing child, whose life was in danger. Therefore, the police were justified in exerting physical pressure on Maher to get him to confess.

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Step 2 - Discussion Questions:

After the groups have read the facts of the case, read the following questions aloud. Ask each group to discuss and agree upon their answers and recommendations. As they discuss, the groups should refer to Handout II: Summary of International Standards of Due Process. Ask each group to write out their response and recommendations.

1. Does the law allow the police to assault, torture, or threaten to torture an accused person?
2. What due process rights have been violated by the policemen?
3. What specific due process protections apply when the government investigates a case? During the interrogation process? During the search of a suspect's property?
4. What should happen to police officers who violate due process in the course of investigating a case?

Step 3 - Focus Questions:

Ask participants as a group to discuss ways of protecting and promoting due process rights. Guide the discussion with the following questions:

- In this scenario, what role can the judge play to ensure that due process is respected? What can a judge do to minimize due process violations?
- If the judge allows the confession into evidence, how do you think that will effect the way police conduct interrogations in the future?
- Do you agree with the prosecution that the police were justified in violating due process in this instance? Should special procedures be in place to address situations where there is an emergency, to ensure that due process rights are respected as much as possible?
- How could the state ensure that this example could not happen again?

Step 4 - Wrap-Up:

Facilitator wraps up and summarizes. Review the idea that due process needs to be applied equally and the same in all circumstances. Ask participants to share their own concluding thoughts about due process, and whether they believe due process exists or can be improved in their own jurisdictions.

Activity 2 - Case Study: Due Process in Bahrain

Materials:

- Handout III: Due Process in Bahrain (You must make copies and distribute to participants).

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Bahrain Case Study Exercise

In small groups, have the participants read and discuss Handout III. They should consider the following questions, and then present their conclusions to the entire group:

- What does due process mean in Bahrain?
- What are the most important aspects of due process in Bahrain?
- Do you think Bahrain's due process would tolerate a police officer assaulting a suspect to get a confession from someone accused of stealing property? Apply the standards of the Bahrain Constitution to the facts of the Maher and Shadi case example. Do you think Bahrain's due process would tolerate the police officer's treatment of Maher? Why or why not?

Debrief and Evaluation

Ask participants to list what they believe to be the five most important due process rights in Bahrain. Participants should share their answers and explain them to the rest of the group.

Ask participants to look back at the definition of due process written on the board. Ask if they would modify or amend the language. Review the shared concepts of due process and the rule of law: fairness, equality, protection of human rights, and transparency.

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Handout I:

Background Paper on Due Process

Due process is necessary for an effective and just legal system. Due process protects the legal rights of the individual from unfair government activity, including unfair judicial proceedings, unfair police conduct, or unfair legislation. In the case of a criminal prosecution, due process governs the way a case moves through the legal system. It governs how police are allowed to investigate and treat suspects, and prescribes rules that judges must follow in presiding over trials.

Due process applies in all circumstances, regardless of whether a person is suspected of committing a serious crime, such as murder, or a minor violation, such as a traffic ticket. Important examples of due process rights include the right to be notified of any criminal charges the government is bringing against you and the right to respond to allegations of criminal activity before an impartial judge. Due process safeguards personal freedoms by preventing arbitrary or excessive uses of power by those in positions of governmental authority.

The concept of due process is not new. Due process is mentioned in most of the ancient codes, such as the Code of Hammurabi, and it is evident in Islamic Shari'a. The *Magna Carta*, an important document in English legal history signed in 1215, is considered by many scholars to be the origin of the "modern" idea of due process because it required the King of England to abide by the law, especially laws protecting the rights of individuals from governmental abuses of power. The *Magna Carta* states, "No free man shall be seized, or imprisoned except by the lawful judgment of his peers, or by the law of the land. We will sell to no one, or deny to no one, or put off right or justice."¹ This notion of due process is echoed in The Bill of Rights, adopted by the British Parliament in 1689, and the Declaration of the Rights of Man and Citizen, the fundamental document of the French Revolution signed in 1789. The Constitution of the United States, adopted in 1789, also includes due process protections that restrict how the government may pursue criminal charges against individuals. The U.S. Constitution limits how and when law enforcement can search private property and detain suspects, prohibits "excessive bail", and guarantees that everyone accused of a crime is entitled to a fair opportunity to rebut the charges against them.

¹The *Magna Carta*, The UK Statute Law Database, <http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1517519>: Chapter 39.

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Jurisprudence in many cultures divides due process conceptually into two categories: procedural and substantive. Procedural due process focuses on the actual procedures of legal and judicial proceedings, and requires those procedures to be “fundamentally fair” and applied equally to all persons. Substantive due process refers to the principle that the government cannot make or enforce laws or rules that encroach on fundamental rights belonging to all individuals. Thus, substantive due process limits the types of laws that legislatures can pass.

Although there are diverse opinions on the specifics of due process, the idea that due process is an important safeguard against excessive governmental authority is accepted internationally. The International Covenant on Civil and Political Rights (ICCPR) is the preeminent instrument that sets forth international standards for due process. Currently, 164 countries are party to the ICCPR. From the Middle East and North Africa (MENA) region, Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Syria, Tunisia, and Yemen have all signed the covenant, although some states have asserted reservations about certain provisions.²

The box below offers a summary of important due process protections enshrined in the ICCPR:

² United Nations’ General Assembly, *International Covenant on Civil and Political Rights*, *Treaty Series*, vol. 999, p. 171 and vol. 1057, United Nations Office of the High Commissioner for Human Rights, 16 December 1966, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=322&chapter=4&lang=en>, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=322&chapter=4&lang=en>: 407.

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The International Covenant on Civil and Political Rights (ICCPR) sets forth due process protections that protect the rights of the individual from excessive or arbitrary governmental action.

Most of these protections are contained in Articles 9, 14, and 15. Article 9, Liberty and Security of the Person, emphasizes the need to respect procedures as established by law in instances of arrest or detention. Article 14 is entitled Procedural Due Process Rights in Civil and Criminal Trials, and Article 15 is entitled Prohibition Against Retroactive Criminal Laws.

In brief, under the ICCPR these rights include:

- *the right to liberty in criminal and non-criminal cases*
- *the right to learn of charges at the time of arrest*
- *the right to prompt judicial processing*
- *the right to review of the legality of detention; compensation for unlawful detention*
- *the right to equal access to a competent, independent, and impartial tribunal*
- *the right to a fair hearing with minimum requirements*
- *the right to a public hearing; the right to be presumed innocent*
- *the right to be informed of the charges against you;*
- *the right to establish a defense*
- *the right to court proceedings without undue delay*
- *the right to counsel*
- *the right to examine witnesses*
- *the right to translation*
- *the right to prohibition against compelled testimony*
- *the right to special consideration as a juvenile*
- *the right of appeal*
- *the right of compensation due to miscarriage of justice; prohibition against double jeopardy*
- *the prohibition against retroactive criminal laws*

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Handout II:

Summary of International Due Process Standards

The Universal Declaration on Human Rights (UDHR) of 1948 lays a legal foundation for due process rights. The UDHR establishes that there are certain undeniable due process rights that belong to all individuals, including the right to be presumed innocent of any criminal charges until proven guilty by a “fair and public” hearing by an “impartial tribunal” (Art. 10). The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, provides a more in-depth description of due process rights. As such, the ICCPR has become the international standard for due process rights. Article 14 is of particular importance because it sets forth the specific due process protections owed to litigants in criminal and civil cases. Other important Articles are Article 9, which discusses the conditions under which individuals may be detained by the state, and Article 15, which prohibits retroactive criminal laws.

Article 14 appears below. Certain sections are accompanied with analysis, as well as references to relevant case law decided by the United Nations’ Human Rights Committee (HRC), the international body of experts tasked with interpreting the ICCPR and monitoring state parties’ compliance with its terms.

Article 14: Procedural Due Process Rights in Civil and Criminal Trials

Section 1:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order, or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

This section (Section 1) outlines a series of basic due process procedures applicable in all stages of civil and criminal trials. First, its requirement that everyone be entitled to equal access to the

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courts prevents discrimination on the basis of race, color, sex, language, religion, or political opinion. For example, in *Ato del Avellanal v. Peru*, the HRC condemned the state of Peru's denial of court access to married women who sought to bring matrimonial property claims. Next, Section 1 requires all courts to be independent and impartial judicial bodies. Thus, the judiciary may not be subject to the control or influence of other branches of government, such as the executive or legislative branches. Judges must also be free from personal bias. They must decide cases without regard for their own social relationships and consider each case on its own merits.³ The HRC in *Karttunen v. Finland* defined this "impartiality" requirement to mean that "judges must not harbor preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties."⁴

Section 1 establishes that litigants are entitled to fair hearings that meet certain minimum requirements. The concept of what constitutes a fair trial is set forth in Articles 14(2) through 14(7) of the ICCPR, which the HRC has interpreted in greater detail. For example, the HRC has suggested that excessive backlogs of cases in the courts could possibly violate the right to a fair trial.⁵ Section 1 also establishes the right to a "public hearing." The HRC has interpreted this right broadly to mean that even in cases where the public is properly excluded from witnessing court proceeding, the *judgment* of the case "must, with certain strictly defined exceptions, be made public."⁶

Section 1 lays out core due process rights. Subsequent sections lay out the procedural requirements for a fair trial.

Section 2:

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Section 2 requires judges and public officials to consider everyone accused of a crime as being innocent of that crime, unless or until the government proves their guilt by presenting credible and sufficient evidence to a court. According to the HRC, the evidence required to overcome this presumption must establish guilt "*beyond a reasonable doubt*."⁷ In addition, the HRC has declared that the public, including government officials and ministers, must respect this burden

³ *Id.* 245-46.

⁴ "Karttunen v. Finland, Communication No. 387/1989," University of Minnesota: Human Rights Library, 5 Nov 1992, <http://www1.umn.edu/humanrts/undocs/html/dec387.htm:paragraph7.2>

⁵ "Reply of the Republic of Slovenia on the list of issues to be taken up in connection with the consideration of the second periodic report of SLOVENIA (CCPR/C/SVN/2004/2)," Office of the High Commissioner for Human Rights, 2004, <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/slovenia-writtenreplies.pdf>

⁶ Gen. Cmt. 13, ¶ 6.

⁷ Gen. Cmt. 13, ¶ 7 (emphasis added).

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of proof and not prejudice the outcome of a trial before a verdict based on the evidence has been rendered.

Section 3:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

This provision requires the government to notify individuals that they are being accused of a crime. The notice must clearly explain what law that the individual is accused of breaking (“nature”), as well as the specific factual circumstances of the case (“cause”). This notice must be provided “promptly,” which the HRC interprets as requiring that notice be given “as soon as the charge is first made by a competent authority.”⁸

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

Adequate time is interpreted on a case-by-case basis. In *Phillip v. Trinidad and Tobago* the HRC found that a weekend was not enough time for an experienced attorney to mount a defense in a capital case. The HRC has interpreted “facilities” to include “access to documents and other evidence which the accused requires to prepare their case, as well as the opportunity to engage and communicate with counsel.”⁹

(c) To be tried without undue delay;

According to the HRC, this right applies equally to “all stages” of trial.¹⁰

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

With this provision, the ICCPR guarantees certain basic rights to defend oneself against criminal charges, including the right to be present during one’s trial, to defend one’s self, to be informed

⁸ Id. paragraph 8.

⁹ Id. paragraph 9.

¹⁰ Id. paragraph 10.

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of the right to counsel, the freedom to choose one's counsel, and the right of criminal defendants to receive free legal counsel if they cannot afford it on their own.¹¹ The HRC has indicated that this right attaches at the time someone is *arrested* for a crime, and that it applies to all crimes, no matter how serious.¹²

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

This provision establishes the defendant's right to learn who will be testifying against him/her, and to examine those witnesses on an equal basis with the prosecution.¹³ The prosecution must tell the defense whom they intend to call as witnesses and in what order so that the defense has sufficient time to prepare a defense. The HRC has interpreted this right to mean that in certain circumstances, the state must bear the cost of producing witnesses – for example, the cost of transporting them to the courthouse – and of hiring experts to testify.

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

Section 4:

In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

States are responsible for deciding how best to try child defendants, but this provision requires states to “ensure that criminal trials against juveniles are conducted differently than those against adults.” According to the HRC, this provision also prohibits states from sentencing juvenile offenders to “life imprisonment without parole.”¹⁴

Section 5:

¹¹ *What is a Fair Trial? A Basic Guide to Legal Standards and Practices*, Lawyers Committee for Human Rights, March 2000, available at http://www.humanrightsfirst.org/pubs/descriptions/fair_trial.pdf; pdf: 16

¹² “UN Human Rights Committee: Concluding Observations of the Human Rights Committee, Slovakia,” *UN Human Rights Committee*, 4 Aug 1997, <http://www.unhcr.org/refworld/docid/3ae6b032c.html>; paragraph 19.

¹³ Gen. Cmt. 13, ¶ 12.

¹⁴ “UN Human Rights Committee: Concluding Observations of the Human Rights Committee, Slovakia,” paragraph 34.

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Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

This section establishes that each person convicted of a crime has the legal right to appeal that conviction. Appellate procedures must, at a minimum comport with the fair trial requirements in Section 1.¹⁵ This absolute right to an appeal is limited to one appeal, although if the domestic legal system provides for additional opportunities to appeal, all defendants must have equal access to these opportunities.¹⁶

Section 6:

When a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Section 7:

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

* * *

Regional legal agreements contain due process requirements similar to those found in the ICCPR. Examples include the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6); the American Convention on Human Rights (Article 8); and the African Charter on Human and People's Rights (Article 7). The similarities between the UDHR, the ICCPR, and regional instruments suggest that certain due process rights have achieved a near global consensus.

¹⁵ Id. paragraph 17.

¹⁶ Manfred 266-68.

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Handout III: Due Process in Bahrain

The Constitution of the Kingdom of Bahrain¹⁷ contains due process requirements that guarantee basic protection for individual liberty, health, and property. Article 20 of the Constitution states that these rules are:

- a. There shall be no crime and no punishment except under a law, and punishment only for acts committed subsequent to the effective date of the law providing for the same.
- b. Punishment is personal.
- c. An accused person shall be presumed innocent until proved guilty in a trial of law in which he is assured of the necessary guarantees to exercise the right of defense at all stages of investigation and trial in accordance with the law.
- d. It is forbidden to physically or mentally inflict harm to an accused.
- e. Every person accused of an offence must have a counsel to defend him with his consent.
- f. The right to litigate is guaranteed under the law.

Article 19 of the Constitution states that no person may be arrested, detained, imprisoned or searched, or otherwise have their freedom of residence or movement restricted, except as provided by law and under the supervision of a judicial authority. Article 19 also provides that no person shall be subjected to physical or mental torture, inducement, or undignified treatment. Government officials who commit acts of torture, inducement, or undignified treatment will be penalized under the law, and any statement or confession proved to have been made under such treatment, or the threat thereof, shall be rendered null and void.

Bahrain's statutory law is consistent with these constitutional principles. The Criminal Procedural Law states that no person may be arrested without sufficient evidence to sustain a criminal charge. Everyone who is arrested has the right to promptly rebut the charges against him before a judge. If the judge cannot establish a person's innocence within 48 hours, the person accused of the crime shall be referred to the public prosecutor. The prosecution has 24 hours to interrogate the person and decide whether to continue detaining or release him.

Furthermore, Bahraini law provides that no person may be apprehended or detained without an order from the competent legal authority. Every person detained must be informed of the causes

¹⁷ Available at <http://www.unhcr.org/refworld/category.LEGALBHR.48b54f262.0.html>

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for his apprehension and shall be entitled to communicate with any of his relatives. He is also entitled to have the assistance of counsel.

To guarantee that Bahrain's security and police forces follow the above rules, the law grants certain judges and prosecutors the right to inspect prisons at any time, for the purpose of ensuring that no person is detained illegally. These monitors are also authorized to examine prison logs and warrants of arrest and detention; they may also listen to any complaint raised by a prisoner.

Beyond national law, the Kingdom of Bahrain is obligated to protect due process rights in accordance with the international agreements to which it is a party. Bahrain ratified the International Covenant on Economic, Social and Cultural Rights in 2007, and the International Covenant on Civil and Political Rights in 2008. Thus, the provisions of these Covenants are binding on Bahraini authorities, except for noted reservations based on the observance of Shari'a.