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A legal manifesto for Iran's Green Revolution

Iranians deserve support of democrats, activists

By Chibli Mallat

As the world watches events in Iran, it is important to assess the moral and legal grounds for change. Democratic and human-rights principles should be met in the following order:

1. Violent deaths v. non-violent demonstrations. By end of the first week, between 20 and 40 people had been killed, and many more wounded. Responsibility for keeping order lies first and foremost with the government, headed by the president under the watch of the supreme leader (rahbar), Ayatollah Ali Khamenei.

The deaths mark a grave failure of the system. Under Article 27 of the Iranian Constitution, corresponding to the Universal Declaration of Human Rights and subsequent covenants, "public gatherings and marches may be freely held, provided arms are not carried and that they are not detrimental to the fundamental principles of Islam."

Doubts over the 'Islamic' nature of the revolt are hard to sustain when the shouts on rooftops evoke Islam. So far, no members of the security forces have been killed, and the demonstrations have been non-violent, including the impressive silence of marches conducted by supporters of presidential candidate Mir-Hossein Musavi, who has himself echoed the spirit of Gandhi.

If an effective enquiry into the deaths of non-violent demonstrators cannot be carried out by the executive branch, parliament should promptly establish one under Article 90 of the Constitution. Short of this, the international community should launch one: at the very least, a UN Special Rapporteur should be appointed to look into the deaths and arrests.

2. Election results and arbitration. When people in large numbers descend onto the streets with the support of two major candidates to question election results, their concerns cannot be brushed aside. Iranians need to get to the bottom of what happened.

So far, the arguments are hazy and cancel each other out. Two theses stand opposed. The Leader has asked the Council of Guardians (CG) to carry out its constitutional mandate under Article 99 of the Constitution to investigate if the elections were valid. But in his speech last Friday, Khamenei said that a victory of 11 million votes could not have been rigged. In fact, both he and two presidential candidates doubted that the CG could change the results: Khamenei on the grounds that the winner's majority was so large, Musavi and Mehdi Karrubi, because of their lack of trust in the CG. Ironically, they were both right.

Although a poll by two US groups around a month before the elections found Mahmoud Ahmadinejad in a substantial lead over Musavi, others have warned against extrapolating from a poll relatively early in the campaign and have highlighted strange features of the results. Working on official results, Dr Ali Ansari, from the University of Saint Andrews, has noted for example that Karrubi "won" just 5 percent of the votes in his native province of Luristan, where he took over 50 percent four years ago. The rot may be deeper. A leading Iranian democratic campaigner, Laland Boroumand, had underlined in 2005 people's misgivings about the first election of Ahmadinejad, quoting one of best connaisseurs of Iran, Bill Samii: "According to official figures, Ahmadinejad got 5.7 million votes in the first round and 17.2 million in the runoff. How did he gather an additional 11.5 million votes in one week? Even if turnout remained the same across rounds, and if Ahmadinejad received all the votes that went to the other hard-line candidates in the first round (Ali Larijani and Mohammad Baqer Qalibaf) that would only give him an additional 5.8 million votes. If in fact, as the regime admits, second-round turnout was actually lower than first-round turnout, how

could Ahmadinejad have almost tripled his total number of votes?"

Most troubling in 2009 were the warnings from within the establishment of preparations for vote-rigging, including a letter from officials of the Interior Ministry that was leaked shortly before the election. Such was the concern of Musavi and Karrubi over the letter that their campaign coordinators, in advance of the poll, referred it to Ayatollah Ahmad Jannati, head of the Council of Guardians.

A telling passage in the letter is worth quoting: "One of the messieurs of the hawza (religious circles) and head of the education institute of Qom provided ... in a secret (mahraman) meeting an interpretation of Koran 2: 249 (Al-Baqara) that allowed changing the vote to the advantage of the minority candidate and said: 'If there is a president of the republic who causes changes in the Islamic values prevailing today in Lebanon, Palestine, Venezuela and other parts of the world, voting for him is invalid and is prohibited (haram); to such a person we should not give our vote and we should make clear to the people that they should not vote for him, nothing less; as for those (officials) responsible for the elections, this is a matter of duty.'"

The passage cited relates the physical fight between minorities and majorities, with the minority (possibly King David in that passage) made to prevail by God. The operative sentence, 'kam min fi'atin qalilatin ghalabat fi'atan kathiratan ('often a small group has defeated a large group') is common in the Koran, but its misuse to induce election rigging is a matter of considerable concern.

This is the more so since the opinion is attributed to Ayatollah Mohammad Taqi Mesbah-Yazdi, a supporter and mentor of Mahmoud Ahmadinejad.

3. The Iranian constitutional system. The outcome of the tenth presidential election suggests that central traits of the Iranian Constitution should be re-examined. For a republic where citizens choose their leader, the Iranian Constitution fails two major tests.

The first is the Council of Guardians itself, which regularly vetoes presidential candidates (Art.110.9). In the current elections, over 450 Iranians presented their candidacy, and the Council rejected all but four. This is unsustainable in any democracy and the practice should be removed from the Constitution.

Then there is the supreme leader's role. Khamenei not only endorsed the elections before the Council of Guardians had ruled, he openly expressed his preference for Ahmadinejad in saying "the viewpoints of the president are closer to mine."

The partiality of the leader underlines a deeper malaise: the authority of the rahbar goes against the traditional system through which Shiite society chooses its leader. The leader emerged historically through a long process in which followers (muqallids) professed allegiance, as well as through peer recognition. But the legal expertise of Khamenei as the most knowledgeable Shiite scholar has long been doubted, including by Ayatollah Khamenei himself in a declaration of January 6, 1988. There is a wide discrepancy between the traditional way in which Shiite society chose a religious leader and the way it is done under the Iranian Constitution.

The overhaul required today should bring the Constitution up to accepted democratic standards. This could mean restoring the leadership council. Better still, it could honor the more democratic wishes of the Iraqi cleric at the origins of the Iranian constitutional system, the late Mohammad Baqer as-Sadr, executed by Saddam Hussein in 1980. For him, the leader cannot be chosen outside a consensus of society at large "in accordance with the normal means historically followed." This requires rethinking the institution in ways that shield the leaders from the pressure of everyday politics, much in the way Iraqis have shielded in the Constitution the immense authority of Ayatollah Sistani and the Najaf religious leadership.

It is up to the Iranians to correct their regime, and change it if necessary. But they deserve the support of democrats and human rights advocates in the rest of the world. Three central positions need to be acted upon: a proper investigation into the deaths on the street; a proper investigation of the election process; and a serious reexamination of the constitution, centered on the Council of

Guardians and the supreme leader.

*Chibli Mallat is the editor of **The Daily Star's** law page. Details on the Iranian constitutional system can be found in his "The renewal of Islamic law: Muhammad Baqer as-Sadr, Najaf and the Shi'i International", Cambridge 1993; and "Introduction to Middle Eastern Law", ed. Oxford 2009.*