

## The Importance of the Right to Litigation

### What is the right to litigation?

The right to litigation effectively ensures accountability. It allows injustices – violations of human rights and the fundamental rights granted by the constitution or by the law - to be addressed through the use of legal tools. It provides victims of human rights violations with justice through remedies.

Consequently, the right to litigation and thus to an effective remedy by a competent national tribunal, is the foundation of a just and fair society. Without remedies, all other rights are left without meaning or substance. The right to litigation secures outcomes.

### Why is the right to litigation important?

The right to litigation is the foundation for effective remedy and therefore the basis for all fundamental human rights. The accountability that is ensured through the right to litigation is, as the Centre for Constitutional Rights states, 'the cornerstone of any human rights agenda'.

The right to litigation allows for the competent bodies – the judge, jury or tribunal – to resolve disputes and place justice at the forefront of society. If a civil right is violated then the upholding of the right to litigation will allow redress of the violation; for example, litigation can be used to gain compensation for property and possession damage, to compel transparency in governmental institutions and ensure access to information, and to regulate commercial transactions.

### What makes the right to litigation important in the Conflict context?

Conflict puts human rights in severe jeopardy. Most obviously, conflict compromises the right to life, family and home, and the right not to be arbitrarily deprived of one's property. However, the right to litigation – which is the guardian of all rights as it provides for the redress of their violation – is jeopardised on a much larger, but less obvious scale.

In Iraq the invasion and subsequent conflict for example, has undermined the judicial system, which embodies the right to litigation. The result has been that certain groups have been denied access to justice and so are unable to obtain remedies. Whilst the legal system is in place to provide access to justice it is neither sufficiently available nor accessible, which is a problem that Legal Aid wishes to address.

In a conflict it is particularly crucial to uphold the right to litigation so that a semblance of law and order is maintained. If citizens are denied access to justice then resentment will grow and a feeling of marginalisation will fester, sentiments that are counter-productive to the re-building of society.

As the Centre for Constitutional Rights has written: 'Although a majority of states are legally bound to uphold their commitment to human rights, the actual protection of these rights on the ground in people's day-to-day lives is shockingly insufficient'. This is even more resounding in the context of conflict and therefore it is crucial that the right to litigation be upheld.

### Providing access to justice

Access to civil justice must be universal; it must be accessible, affordable and achievable for all citizens. The right to litigation therefore needs to be: easily accessible - knowledge of its availability must be widespread and not out of any individual's reach; affordable – that no person is denied their rights on grounds of their socio-economic standing; and achievable – embodied in the right to a fair trial, this concept is protected in international law and guarantees an equal entitlement to a fair and public hearing by a competent, independent, and impartial tribunal.

The availability of litigation rights will help rebuild ones faith and trust in the legal system. The law provides the bedrock of society and therefore must exist for all those that reside within that society.