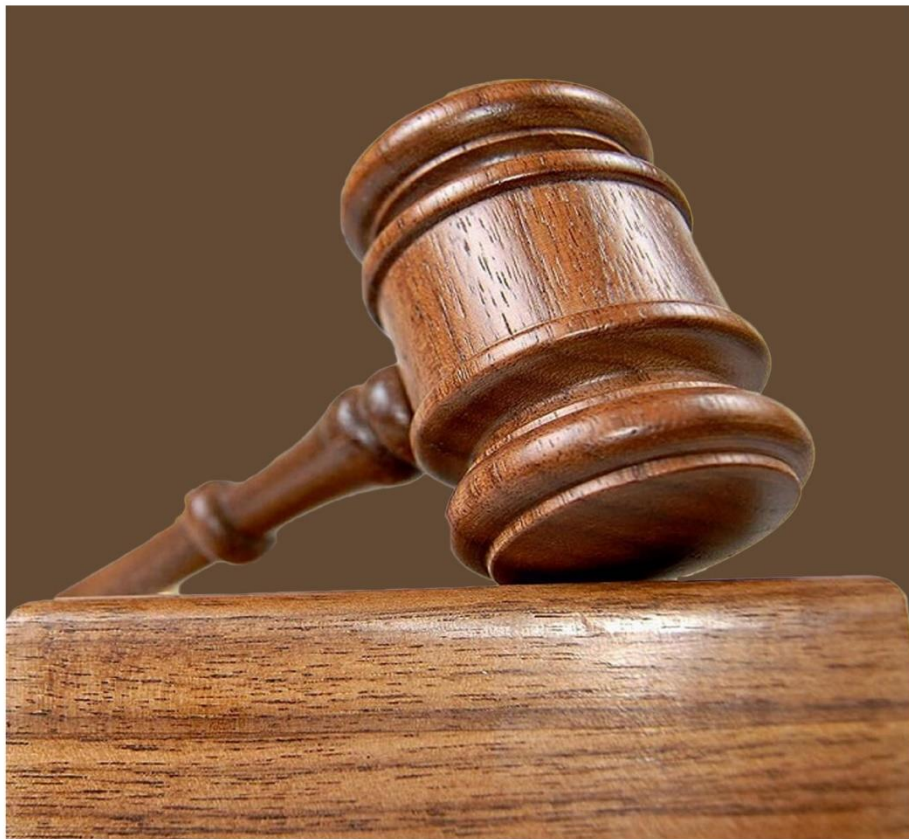




ماعت للسلام والتنمية وحقوق الإنسان  
Maat For Peace, Development, and Human Rights

## Article Eight of the Universal Declaration of Human Rights **Recourse to National Tribunals and the Right to a Remedy** — Alternatives & Challenges —



## Preface

When the adoption of the Universal Declaration of Human Rights was raised for discussion, some member states of the United Nations at that time, such as Mexico and Cuba, proposed granting the right to obtain effective compensation by seeking justice mechanisms, for every person in his own country or in another country if he is an immigrant or a refugee. The American Declaration of the Rights and Duties of Man, adopted in April 1948, that is, before the adoption of the Universal Declaration of Human Rights issued on December 10, 1948, served as a reference upon which these countries built their proposals.

Indeed, the proposal of these countries was approved, and Article 8 of the Universal Declaration of Human Rights was devoted to the issue of resorting to national courts to seek redress and compensation in the event of violation of the rights contained in the Universal Declaration of Human Rights. Within the framework of the 50×30 Human Rights for All campaign, which was launched by Maat for Peace, Development and Human Rights on the sidelines of International Human Rights Day on December 10, 2022, and which will continue until December 10, 2023, the date of the seventy-fifth anniversary of the adoption of the Universal Declaration of Human Rights, and within the framework of the definition With Article 8 of the Declaration, Maat has worked to issue this brief booklet listing a set of challenges that prevent the implementation of this article in the member states of the United Nations and proposed alternatives to enhance the right of every person to resort to national courts.

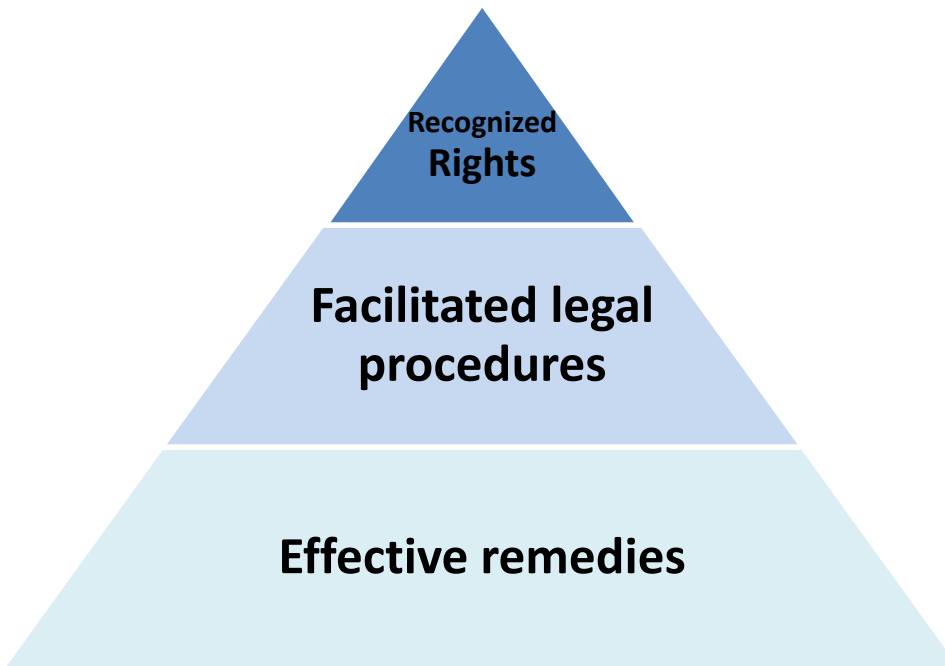
## What does Article Eight of the Universal Declaration of Human Rights say?

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.”



In other words, Article 8 of the Declaration makes it clear that when a person has a right, he must have sufficient means to defend that right, and be able to benefit from effective remedies in the event of an injustice to this right.

## Access to justice under Article 8 of the Universal Declaration requires:



To put it in other words, some may think that access to justice is limited to bringing a case before the court, but that definition seems deficient. Access to justice requires facilitated legal procedures and courtrooms headed by fair, just and independent judges as stipulated in most national constitutions and human rights treaties.



## What Are the Challenges that Prevent Access to Justice?

### First: Bureaucratic and Structural Obstacles to Accessing the Courts

The poor quality of translation and interpretation services, if provided, constituting a structural obstacle that impedes migrants' access to justice.

Excessive length of access to justice procedures, with no effective legal means to address delays in judicial proceedings

Stigmatization of vulnerable individuals in societies such as the poor, minorities, immigrants, and refugees when seeking justice and litigation mechanisms in its various stages

With regard to translation services: in Turkey, for example, 42% of women over the age of 15 are victims of domestic violence, most of whom are Kurdish women. These women face obstacles in filing complaints or accessing justice, due to the lack of sufficient interpreters to enable them communicate with the mechanisms of justice.

## Second: Practical Obstacles to Resorting to Courts

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In some countries, laws and regulations of institutions prevent a citizen from filing a lawsuit against any public official and entrust this right to a government agency, such as the Public Prosecution or Public Prosecution.

Poor knowledge of some groups in society about the mechanisms of access to justice, which makes them reluctant to file complaints or file lawsuits regarding the violation of their rights

Financial fees, for example, prevent the poor from seeking justice systems. In some countries, access to laws requires additional fees, which delays the filing of complaints

In addition to the above, it can be said that the failure to refer to the Universal Declaration of Human Rights, especially Article 8 in national courts and in local legislation may delay obtaining an effective remedy, including compensation. Some may argue that this is due to the fact that the Declaration is only a non-binding document. However, even the countries that have ratified the International Covenant on Civil and Political Rights, the Covenant that was originally based on the Universal Declaration of Human Rights, do not find themselves obligated to apply the provisions of the Covenant in national courts. In general, there is a clear lack of data regarding the reference or use of the Universal Declaration of Human Rights or even the International Covenant on Civil and Political Rights in national courts

UK, for example, indicated earlier that the approved treaties such as the European Human Rights Convention do not constitute part of the local law. In addition, they reject the arguments made by lawyers that the Declaration has precedence over local law.

The United Kingdom, for example, has previously held that ratified treaties such as the European Convention on Human Rights do not form part of domestic law, further rejecting the argument made by lawyers that the declaration takes precedence over domestic law.

In other specific cases, a decision made by the German Federal Administrative Court considered the Declaration provisions as non-general rules of international law, and it seems that national courts are still reluctant to rely in their rulings on the principles of the Universal Declaration of Human Rights, including its eight article.

## Conclusions and Alternatives:

In light of the foregoing, it is clear that without resorting to national courts, as stipulated in Article 8 of the Declaration, all rights will remain threatened, and the lack of use or reference to the provisions of the Declaration in local laws increases this threat. Maat believes that there are priorities that countries and international organizations may address, such as:

- ☛ Reviewing legislation and policies to ensure that victims of human rights violations have access to national courts to ensure their right to redress through restitution, compensation and rehabilitation, and ensuring that other violations or arbitrary practices are not repeated;
- ☛ Allocating sufficient budgetary provisions for legal aid services to ensure the provision of effective and prompt assistance services to all individuals residing within its territory;
- ☛ Establishing effective national institutions in order to provide redress and compensation, and for all employees to be trained on human rights violations;
- ☛ Ensuring that all persons have access to necessary information for the processes of seeking redress, compensation, and reparation;
- ☛ Ensuring that financial assistance is provided to those who cannot afford the costs of obtaining redress and ensure that any other obstacles to obtaining redress, whether financial or not, are removed;
- ☛ The United Nations can also contribute to facilitating access to justice in conflict zones by expanding support for the use of mobile and specialized dispute-resolution courts, especially in remote areas, as well as providing technical assistance to help build consensus on the model most likely to improve the judicial system in these countries and work on its independence;
- ☛ The United Nations can also allocate at least 20% of the funds provided to countries in post-conflict stages to support the access of



conflict-affected individuals to justice. The United Nations' use of mobile courts to resolve armed conflicts in Central Africa represents a good practice for individuals, including the most vulnerable groups, to access justice and obtain effective and fair remedies. Maat believes that the generalization of these practices will accelerate the pace of achieving justice in conflict areas and in post-conflict periods in transitional countries, and contributes effectively to establishing stability and implementing Article 8 of the Universal Declaration of Human Rights.

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