



# Sexual Rights Litigation Network

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LEGAL MOBILISATION / SOCIAL MOVEMENTS  
CURRICULUM OUTLINE

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# SEXUAL RIGHTS LITIGATION NETWORK LEGAL MOBILISATION / SOCIAL MOVEMENTS CURRICULUM OUTLINE

## INTRODUCTION

### 1. Background

The Initiative for Strategic Litigation in Africa (ISLA) is a feminist, Pan African organisation that uses the rule of law in African domestic and regional courts to advance women's human rights and sexual rights. Our work is based on the belief that strategic litigation is an immensely strong tool for social change because, it helps to reframe the understanding of entitlements before the law and it challenges the legal discourse. Yet in spite of its potential, on the continent, strategic litigation is an underutilised tool.

Through our work and interactions with several experts and organisations set up to do strategic litigation we have uncovered a number of reasons why strategic litigation has not been effectively harnessed for social change. These include, the limited capacity strengthening programs for legal mobilisation and strategic litigation, often leaving the social movement out of the capacity strengthening programs.

The *ad hoc* nature of these programs, designed to increase a critical mass of lawyers pursuing strategic litigation, often means that it is not social movements, who are often the clients in cases, are excluded for the strategic planning, which often contributes to the tense relationship lawyers and movements historically have. Another significant hurdle is that lawyers and social movements do not work together to understand each other's language and aims until a case arises. The limitations contribute to a poor and siloed working relationship between lawyers and movements.

In response to the above mentioned challenges, ISLA's innovation is to work with select individuals and institutions over a period of time with the aim of SOGIE based social movements with the human rights and legal knowledge, mobilisation support, an intentional relationship with movement lawyers and institutional support to undertake strategic litigation on matters of sexual orientation and gender identity. We have established our Sexual Rights Litigation Network; in which we have partnered with organisations that have an interest in using strategic litigation as an instrument to effect social change on sexual rights in Africa.

## **2. The Litigation Institutes**

The litigation institutes (institutes) are the centrepiece of ISLA's capacity strengthening activities. They are a series of week capacity strengthening activities which will span over a period of three years. The carefully developed curriculum has the overarching goals of developing the knowledge of strategic litigation, sexual rights and the human rights framework, provide knowledge and tools on how to identify and document rights violations, endow participants with the ability to legally mobilise and build the capacity to advance litigation on sexual rights.

The institutes incorporate both theoretical and practical components. The structure includes contact sessions, with faculty members, which are interactive and include presentations, readings, discussions and activities. The practical aspect of the institutes includes a moot court competition at the end of the two-week period. Participants will be required to work in teams on a hypothetical case, from the beginning of the institute, and present submissions before a panel of judges, at the end of the institute.

The faculty comprises experts drawn from academia, and practitioners who have substantive expertise in areas covered by the curriculum. As our objective is to continuously work with the same movements and institutions, participants for the institute will be drawn mainly from these various organisations that we partner with. A maximum of twelve participants will be invited, a number that will allow for lively discussions and debate while at the same time small enough to allow each participant maximum engagement.

## **3. Objectives of the Litigation Institutes**

The overarching objectives of the institutes are to:

- Strengthen the capacity of the movement in the region to mobilise in order to litigate SOGIE human rights cases at domestic, regional and international levels through the learning of the latest developments and interaction with experts;
- Facilitate collaborations and peer to peer learning; and
- Foster cross learning between the movement and ourselves on the capacity training needs and thematic issues that require addressing.

#### **4. Expected Learning Outcomes of the Litigation Institutes**

Ultimately, through the institutes, participants will:

- Enhance their ability to effectively work with lawyers to undertake strategic litigation of SOGIE rights;
- Develop an understanding of the thematic areas covered;
- Gain an in-depth and sophisticated understanding of legal mobilisation and the context to engender strategic litigation;
- Improve their understanding and use of constitutional, regional and international human rights in litigation; and
- Strengthen relationships with peers within the network in a way that fosters cross learning.

### **YEAR ONE | MODULE ONE** **SEXUAL RIGHTS LITIGATION NETWORK**

#### **OVERVIEW**

This module seeks to introduce the movement to the Sexual Rights Litigation Network, how, why it exists and came to be. The module will explore the existing conditions that gave rise to the need for the network as well as the unique model ISLA utilises.

#### **OBJECTIVES**

1. Build a solid understanding of the context that led to the necessity of the development of the network
2. Understand how the network operates
3. Develop a familiarity with the networks objectives

#### **FORMAT and REQUIREMENTS**

The module will be delivered through combined methods such as interactive lectures, presentations, and practical exercises. Participants are required to have engaged with the materials prescribed on the reading list prior to each session.

#### **EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out by the Network Coordinator through the use of pre and post online evaluations as well as next-day recaps.

#### **OUTLINE**

## **Introduction to the Sexual Rights Litigation Network**

- I. Why the network exists - problem analysis:
  - a. predatory lawyers
    - i. feeding off of homophobia
  - b. global north prioritizing decriminalization
  - c. public health v human rights
  - d. lawyers who diverts movement from goal
- II. Theory of change / ISLA model
- III. Network Objectives
  - a. Development of network
  - b. Relationship Management
  - c. Institutional Strengthening
  - d. Strengthening Capacity to Litigate Strategically
- IV. Role of network manager and activities

**YEAR ONE | MODULE ONE**  
**RIGHT TO NON-DISCRIMINATION**

**OVERVIEW**

Participants will explore what discrimination is, the various forms that it takes, and how to document a potential discrimination claim. This includes identifying the grounds for discrimination under domestic and regional laws, identifying direct and indirect discrimination, the evidence needed, the burden of proof, and the remedies available under discrimination claims.

**OBJECTIVES**

1. To enhance the movements' understanding of how discrimination manifests in various contexts.
2. To build an appreciation of the elements of a discrimination claim for the purpose of pursuing litigation.
3. To expand knowledge of comparative discrimination jurisprudence regionally and internationally.

**LEARNING OUTCOMES**

Upon completion of this module participants should:

1. Display an improved understanding of the basic structure of a discrimination claim.
2. Be able to identify when discrimination occurs in various scenarios.
3. Utilise key legal principles in discrimination law.
4. Be able to understand how to effectively deal with problems of evidence.
5. Demonstrate a knowledge of the major comparative discrimination precedents.

**FORMAT and REQUIREMENTS**

The module will be delivered through combined methods such as interactive lectures, presentations, and practical exercises. Participants are required to engage with the materials prescribed on the reading list, prior to each session.

**EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out through the use of in session and post institute evaluations carried out by the Network Coordinator as well as next-day recaps.

**OUTLINE**

- I. **An Introduction to Discrimination**
  - i. What is discrimination and how did the right develop?
  - ii. The scope and content of the right to freedom from discrimination.
  - iii. A state's positive and negative obligations.
  - iv. Justifications for discriminatory actions:

- i. legitimate goal,
  - ii. affirmative action
- v. Direct and indirect discrimination
- vi. How SOGIE discrimination manifests its causes and impact on access to
  - i. Employment
  - ii. Health services
  - iii. Housing
- vii. Discussion and reflection on experiences with SOGIE based discrimination
- viii. Documenting discrimination for litigation
- ix. Remedies for discrimination claims
- x. Comparative jurisprudence



**YEAR ONE | MODULE TWO**  
**RIGHT TO FREEDOM FROM VIOLENCE & DUE DILIGENCE**

**OVERVIEW**

Violence is an experience that many SOGIE movements are subjected to, thus, we will discuss various experiences of violence and the state's failure to act. In particular, we will explore due diligence principles, which provides an assessment framework for ascertaining what constitutes effective fulfilment of a state's obligations, and for analysing its actions or omissions. The international due diligence framework includes the duty to protect, prevent, investigate, prosecute, punish, and remedy.

We will review the development of due diligence in relation to LGBT violence and how courts have interrogated and analysed a state's duty and failure to prevent and respond to violence. The session will narrow in on how minority groups or people with a heightened vulnerability are often subjected to private violence can hold the state accountable.

**OBJECTIVES**

1. To equip movements with an understanding of the state obligation to protect from violence.
2. To build an appreciation of the various due diligence principles.
3. To expand knowledge of how to recognize when due diligence principle is violated.

**LEARNING OUTCOMES**

Upon completion of this module participants should:

1. Demonstrate a deep understanding of the due diligence principles.
2. Be able to identify when the state is complicit in private SOGIE-based violence.
3. Be able to identify the steps required under the due diligence principles in order to hold perpetrators accountable.
4. Demonstrate a knowledge the various forms of redress available.

**FORMAT and REQUIREMENTS**

The module will be delivered through combined methods such as interactive lectures, presentations, and practical exercises. Participants are required to engage with the materials prescribed on the reading list, prior to each session.

**EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out through the use of in session and post institute evaluations carried out by the Network Coordinator as well as in-institute next-day recaps.

## OUTLINE

### An Introduction to Violence and Due Diligence

- i. What is due diligence and how did it develop?
  - a. Preventing acts of violence
  - b. Protecting victims and survivors of violence
  - c. Prosecuting and investigating the incidents of violence
  - d. Punishing the perpetrators
  - e. Providing redress to the victims/ survivors for the harm suffered
- ii. The scope and content of the due diligence.
- iii. A state's positive and negative obligations
- iv. Manifestations, causes and consequences of SOGIE based violence
  - i. How the state fails in its obligation to LGBT persons
- v. Story-Telling / Discussion
  - i. Time when victims approach police to report SOGIE based violence.
  - ii. Consequences of filing a police report investigation, charges, etc?
- vi. How to document this violation
- vii. Why litigate violence and due diligence?
- viii. Landmark case: *Jessica Lenahan v United States*
  - i. Short film & reflection discussion
- ix. Heightened risk of vulnerable groups
- x. Duty to investigate
- xi. Duty to provide redress
- xii. International human rights framework, norms and standards

**YEAR ONE | MODULE TWO**  
**SEXUALITY AND HUMAN RIGHTS**

**OVERVIEW**

Sexuality is incredibly diverse but ubiquitously mis-understood, especially in post-colonial Africa and sexual rights is the study of the legal development of sexuality and gender. This module will begin with an examination of SOGIE terms and concepts in order for the movement to have a shared vocabulary and knowledge set to proceed from. Not only will we delve into hard definitions but also open up space for discussion about ideas and terminology that may be differently used or misunderstood.

In the second part of the module, the movement will explore the ways in which existing and developing legal frameworks can protect people from SOGIE based violations. SOGIE sexual rights has experienced recent developments, thus this module will equip the participants with this recent history, understanding, and analyse situations for further development.

**OBJECTIVES**

1. To enhance the movement's understanding of sexuality and gender identity.
2. To create space for discussion to safely inquire about and unpack sexuality.
3. To enhance the movement's knowledge of sexual rights as a legal framework.

**LEARNING OUTCOMES**

On completion of the session, participants should:

1. Have a firm understanding of the fluidity of sexuality and gender.
2. Be able to define the meaning of various SOGIE identities and concepts
3. Identify which legal standards can be applied to sexual rights and in what ways.

**FORMAT and REQUIREMENTS**

The module will be delivered through combined methods such as interactive lectures, presentations, online classes and practical exercises. Participants are required to engage with the materials prescribed on the reading list, prior to each session.

**EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out through the use of pre and post litigation institutes online evaluations carried out by the Network Coordinator as well as in-institute next-day recaps.

**OUTLINE**

**Sexuality and Human Rights**

Part 1: Introduction

- i. What is sexuality, sexual identity, and gender identity?
- ii. Definitions

- a. LGBTQ
  - b. Beyond LGBT – pansexual, asexual, intersex, gender non-conforming
  - c. Concepts – coming out, homophobia, in the closet, etc
- iii. Universality of human rights

Part 2: What are sexual rights and how did it develop?

- i. The areas of life which are protected
- ii. Challenges to the sexual rights framework
- iii. Opportunities for developing the framework
- iv. Sexual rights in human rights law
  - a. Applying sexual rights in the human rights context
- vi. International human rights framework & sexual right
- vii. Applicable international laws and state obligations

## YEAR ONE | MODULE THREE RIGHT TO FREEDOM OF ASSOCIATION

### **OVERVIEW**

Freedom of association involves an individual and group's right to come together with others to collectively express, promote, pursue and/or defend common interests without interference, and the right of the group to take collective action to pursue the interests of its members. Freedom of association is one of the key human rights areas where SOGIE movements faces continued violation, whether it is refusal of registration of an organisation, or arbitrary raids conducted by government officials and law enforcement officers. This right protects against the interference of the state in both the right to form an association and the right to join or remain a member of an existing one.

We will review how SOGIE movements that seek a change in the legal structure or merely aim to promote their distinct identity through exercising their freedom of association are protected by international and constitutional law. However, international law does allow for restrictions to be imposed on rights where those restrictions are provided by law, serve a legitimate aim, and are necessary.

### **OBJECTIVES**

1. To build familiarity with regional and comparative African jurisprudence on the right to freedom of association.
2. To establish an understanding of the principles guiding legal interpretation of the right of association.

### **LEARNING OUTCOMES**

Upon completion of this module participants should:

1. Demonstrate a strong understanding of the meaning of freedom of association and permissible restrictions.
2. Be able to identify the causes and manifestations of association violation.
3. Document violations of association.
4. Demonstrate familiarity with how strategic litigation can vindicate the right of freedom of association in SOGIE contexts.

### **FORMAT and REQUIREMENTS**

The module will be delivered through combined methods such as interactive lectures, presentations, online classes and practical exercises. Participants are required to engage with the materials prescribed on the reading list, prior to each session.

### **EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out through the use of in session and post institute evaluations carried out by the Network Coordinator as well as in-institute next-day recaps.

## **OUTLINE**

### **An Introduction to the Right to Freedom of Association**

- i. What is freedom of association and what type of activity does it protect.
- ii. Causes and manifestations in a SOGIE based context
- iii. How to document an association violation
  - i. Questions for victims
  - ii. Useful evidence to support a legal claim
- iv. Which associations are protected by the right.
  - i. Minorities protecting identity - *Sidiropoulos v Greece* (1998) ECHR
  - ii. Groups seeking to make political or legal changes - *Thuto Rammoge v. Attorney General of Botswana* (High Court)
- v. Regional SOGIE case studies
  - i. Kenya
    - *Eric Gitari v Non-Governmental Organizations Co-Ordination Board* [2015] eKLR, Petition No. 440 of 2013
  - ii. Uganda
    - *Jacqueline Kasha Nabagesera v Attorney-General Misc. Cause 33 of 2012*
  - iii. Uganda
    - *Frank Mugisha v Uganda Registration Services Board* [High Court of Uganda at Kampala, Misc Cause 96 of 2016
  - iv. Nigeria
    - *Pamela Adie v Corporate Affairs Commission* (2018) Federal High Court of Abuja
- vi. International and regional legal framework, norms, and standards protecting association

**YEAR ONE | MODULE THREE**  
**UNMASKING DEPOLITICIZATION (OUTSTANDING)**

**OVERVIEW**

The module is still in development and will be updated upon completion

**OBJECTIVES**

**LEARNING OUTCOMES**

Upon completion of this module participants should:

**FORMAT and REQUIREMENTS**

The module will be delivered through combined methods such as interactive lectures, presentations, online classes and practical exercises. Participants are required to engage with the materials prescribed on the reading list, prior to each session.

**EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out through the use of pre- and post-litigation institutes online evaluations carried out by the Network Coordinator as well as in-institute next-day recaps.

**OUTLINE**

**Unmasking depoliticization**

## **YEAR TWO | MODULE ONE**

### **STRATEGIC LITIGATION**

#### **OVERVIEW**

This module is aimed at introducing movements working towards the advancement of SOGIE rights to strategic litigation and its use as an effective advocacy tool that brings about significant changes in the law, social and legal practice and/or public awareness on SOGIE rights. The module will explore the concept of strategic litigation, its broader goals as well as key considerations and approaches.

#### **OBJECTIVES**

1. To enhance the movements' knowledge and understanding of strategic litigation.
2. To build an appreciation of conditions, strategies and tactics for defending and enforcing human rights.

#### **LEARNING OUTCOMES**

Upon completion of this module participants should:

1. Display an improved understanding of strategic litigation.
2. Be able to appreciate the value of strategic litigation and how it can be used to effect social change.
3. Understand the importance and utility of studying how SOGIE movements have litigated relevant issues in other jurisdictions.
4. Have a sense of the components necessary for strategic litigation in order to recognise whether strategic litigation is a viable option.
5. Develop an understanding of how to work with lawyers constructively.
6. Demonstrate an understanding of the impact (both negative and positive) and unintended consequences of strategic litigation at every stage.

#### **FORMAT and REQUIREMENTS**

The module will be delivered through combined methods such as interactive lectures, presentations, online classes and practical exercises. Participants are required to engage with the materials prescribed on the reading list, prior to each session.

#### **EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out through the use of pre- and post-litigation institutes online evaluations carried out by the Network Coordinator as well as in-institute next-day recaps.

#### **OUTLINE**

##### **An Introduction to Strategic Litigation**

- I. What is strategic litigation?
- II. What is "strategic" about strategic litigation?



- III. Theory of change
- IV. Limitations of and barriers to, strategic litigation – 4 conditions necessary to litigate:
  - a. existing rights framework;
  - b. independent and knowledgeable judiciary;
  - c. civil society organizations with the capacity to frame social problems as rights violations and to litigate; and
  - d. a network to support and leverage the opportunities presented by litigation
- V. Understanding and assessing impact of strategic litigation
  - a. The utility of strategic litigation in changing attitudes
  - b. Unintended consequences of strategic litigation
- VI. Working with lawyers
  - a. Discussion: what are movements goals for litigation?
- VII. Strategic litigation specific to the protection of SOGIE rights – consideration of potential cases

**YEAR TWO | MODULE ONE**  
**RIGHT TO PRIVACY**

**OVERVIEW**

The right to privacy ensures that individuals can make personal decisions about their body, home, family, relationships, and intimacy without intrusion from the state or other members of society. The way persons give expression to their sexuality has been recognized by various courts as the core of private intimacy and an intrusion by the state in such matters is a breach of the human right to privacy in relation to bodily autonomy. We will review the successful and unsuccessful developments of the right to privacy in relation to SOGIE with case studies from the European System, the United States, the UN system and across Africa.

**OBJECTIVES**

1. To establish an understanding of the principles guiding meaning of the right to privacy and bodily autonomy.
2. To develop an understanding of the right to privacy's intersection with other fundamental rights, such as the rights to dignity, non-discrimination and equality.
3. To build familiarity with international, regional and comparative African jurisprudence on the right to privacy in relation to SOGIE.

**LEARNING OUTCOMES**

Upon completion of this module participants should:

1. Identify the various ways in which LGBT persons are commonly violated in terms of their right to privacy, individually and collectively.
2. Demonstrate a knowledge of how the right to privacy applies in SOGIE contexts.
3. Be able to identify possible restrictions to the right to privacy and the legal principles and precedents to challenge such restrictions, particularly around anal exams.

**OUTLINE**

**An Introduction to the Right to Privacy**

- i. What does the right to privacy mean and what does it protect?
- ii. SOGIE based violations of privacy – causes and manifestations
- iii. Story-telling and discussion
  - a. Write a story about a time you or someone you know had private facts about their lives revealed without their permission and the consequences of this.
  - b. Write a story about a time you or someone you know had their personal space or possessions invaded.
- iv. How to document violations of private life
- v. Scope of the right to privacy
- vi. Standards related to privacy: distinction between private and public persons

- a. Case study: *Fontevicchia & D'Amico v Argentina* IACHR
- vii. Privacy and bodily autonomy – a historical development
  - a. Contraception
  - b. Abortion
  - c. Forced sterilization
  - d. Forced anal exams
- viii. Discussion:
  - a. Can and should people consent to anal exams?
  - b. How would you want your movement lawyers to deal with the possibility of the police pursuing an anal exam on the client?
- ix. Case Studies – SOGIE cases:
  - a. Kenya – *COI & Another v Chief Magistrate Ukundla Law Courts* 2018 (anal exams)
  - b. IACHR – *Atala Riffo and Daughters v Chile* (LGBT parental rights)
  - c. Uganda – *Kasha Jacqueline v Rolling Stone* (publication of identifying information)
  - d. Botswana – *ND v Attorney General of Botswana* (gender identity)
  - e. Uganda – *Victor Juliet Mukasa & Yvonne Oyo v Attorney General* (privacy of home; search & seizure)
  - f. ECHR – *I v Finland* (medical information)
- x. International and regional legal framework, norms and standards protecting privacy

## YEAR TWO | MODULE TWO CONSTITUTIONAL LAW

### **OVERVIEW**

This module focuses on understanding the constitution and how it can be utilized to further sexual rights. The module will also encompass constitutional principles and basic doctrines concerning the protection of fundamental rights. It will consider the various rules and procedures particular to national constitutional courts that are most relevant to human rights constitutional litigation, such as admission of an *amicus curiae* and costs.

### **OBJECTIVES**

1. To introduce participants to the practice and the procedures involved in litigating constitutional issues in their jurisdiction.
2. To understand how their country's constitution / bill of rights can protect sexual rights.

### **LEARNING OUTCOMES**

Upon completion of this module participants should:

1. Have developed the capacity to think strategically on how to advance sexual rights violations via the constitution.
2. Recognize general constitutional terms and procedures relevant to litigating human rights claims.

### **FORMAT and REQUIREMENTS**

The module will be delivered through combined methods such as interactive lectures, presentations, online classes and practical exercises. Participants are required to have engaged with materials prescribed on the reading list prior to each session.

### **EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out through the use of pre, in-session and post litigation institute evaluations carried out by the Network Coordinator as well as next-day recaps.

### **OUTLINE**

#### **Introduction to Constitutional Litigation**

- i. What is a constitution?
- ii. Bill of rights: locating human rights in the constitution
- iii. How does the work we do intersect with the constitution?
  - a. SOGIE based violations
- iv. How do SOGIE based violations manifest?
  - a. Story-telling / discussion: Write a story about a time you or someone you know experienced one of the discussed violations by the police or a government worker.

- v. Understanding constitutional law and litigation
  - a. Application
  - b. Interpretation
  - c. General limitation clause
  - d. Non-derogation clause
- vi. Process of using the constitution to protect fundamental rights
  - a. Who happened, which right, who are the parties
    - Intervener
    - Amicus curiae
    - Costs
    - Remedies
  - b. Case study:
    - Botswana - *Letsweletse Motshidiemang v Attorney General of Botswana* (High Court 2019)

## **YEAR TWO | MODULE TWO**

### **RIGHT TO HEALTH**

#### **OVERVIEW**

The right to health is a socio-economic right that involves an individual's right to the enjoyment of the highest attainable standard of physical and mental health. There has been a surge in litigation over the past several decades, particularly in the global south. Most of the cases pertain to issues of denial of emergency medical treatment, denial of access to life-saving medication, denial of access to health goods and services such as contraception, and denial of health care services based on sex, sexuality or HIV status. We will review how litigation has developed and expanded access to health care, particularly in a SOGIE context.

#### **OBJECTIVES**

1. To understand how SOGIE based violations of the right to health manifest
2. To build familiarity with the cases brought by other activists in various jurisdictions on the right to health.

#### **LEARNING OUTCOMES**

Upon completion of this module participants should:

1. Understand the content and scope of the right to health.
2. Be able to identify when a SOGIE based violation of the right to health occurs and how to document such a violation.
3. Demonstrate knowledge of the opportunities and barriers to litigating the right to health.

#### **OUTLINE**

##### **An Introduction to the Right to Health**

- i. What does the right to health mean and encompass?
  - a. Freedoms
  - b. Entitlements
- ii. Standards to evaluate implementation of the right
  - a. Available
  - b. Accessible
  - c. Acceptable
  - d. Good quality
- iii. Manifestations, causes and consequences of the SOGIE based violations of the right to health
  - a. Discrimination in health services
  - b. Denial of health insurance benefits
- iv. Story-telling / discussion

- a. Write a story about a time you or someone you know felt uncomfortable when trying to access health services. What did you or they experience? judgment, denial of care, harassment, etc?
  - b. Write a story about a time you or someone you know did not seek health care or services? Illustrate Why you / they were did not seek health care or services?
- v. Evidence and documenting a right to health violation
- vi. Health rights litigation
  - a. Why litigate this right?
  - b. Barriers to health rights litigation
- vii. How and where to bring a claim
  - a. Domestic feasibility
- viii. International and regional standards, laws, and principles
- ix. Case studies - Comparative jurisprudence
  - a. South Africa - ***Minister of Health v Treatment Action Campaign*** 2002 (5) SA 721 (denial of access to medicines)
  - b. India - ***Navtej Singh Johar & Ors. v Union of India*** 2018 (SCC) (SOGIE based violation of the right to health due to criminalisation)
  - c. Botswana - ***Tapela and Another v Attorney General and Others*** [2014] 2 BLR 353 (HC) (Denial of access to medicines)
  - d. Namibia - ***Government of the Republic of Namibia v LM, et al.*** (SA 49/2012) [2014] NASC 1 (Coerced sterilization without informed consent)
  - e. African Commission - ***Purohit and Moore v The Gambia*** Communication No. 241/2001 (2003) (Poor medical quality and treatment)

**YEAR TWO | MODULE THREE**  
**CREATING AN ENABLING ENVIRONMENT TO LITIGATE (OUTSTANDING)**

**OVERVIEW**

The module is still in development and will be updated upon completion

**OBJECTIVES**

**LEARNING OUTCOMES**

Upon completion of this module participants should:

**FORMAT and REQUIREMENTS**

The module will be delivered through combined methods such as interactive lectures, presentations, online classes and practical exercises. Participants are required to engage with the materials prescribed on the reading list, prior to each session.

**EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out through the use of pre- and post-litigation institutes online evaluations carried out by the Network Coordinator as well as in-institute next-day recaps.

**OUTLINE**

**Creating an Enabling Environment to Litigate**



## YEAR THREE | MODULE ONE HARASSMENT

### **OVERVIEW**

The purpose of this module is to provide an introduction to the way in which SOGIE based harassment manifests and the ways in which this can be challenged. We will explore how police raids, arbitrary arrests, extortion, and targeted violence of persons based on SOGIE create an environment of systemic harassment that often leaves victims feeling like they have no recourse. Participants will learn which laws provide protections for SOGIE based harassment and the developing jurisprudence related to this issue.

### **OBJECTIVES**

1. To establish an understanding of what constitutes SOGIE based harassment.
2. To expand knowledge of the emerging jurisprudence protecting victims of SOGIE based harassment.
3. To be able to identify when state harassment is a human rights violation and how to strategically challenge the practice.

### **LEARNING OUTCOMES**

Upon completion of this module participants should:

1. Understand the many ways SOGIE based harassment manifests and its consequences.
2. Be able to identify the human rights violation experienced during the harassment.
3. Be able to document the harassment.
4. Be familiar with the legal recourse available to them in the case of harassment.

### **EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out through the use of in session and post institute online evaluations carried out by the Network Coordinator as well as in-institute next-day recaps.

### **OUTLINE**

#### **Introduction to Harassment**

- i. Manifestations, causes and consequences of the SOGIE based harassment
  - a. Police Raids
  - b. Bribery
  - c. Coercion
  - d. Arbitrary arrests
  - e. Extortion and blackmail
  - f. Targeting
  - g. Denial of police assistance
  - h. Profiling

- i. Targeting
- j. Deliberate misgendering
- k. Acts of humiliation
- l. Brutality
- m. Retaliation
- n. Malicious prosecution
- ii. Story-telling / discussion
  - a. Write a story about a time you or someone you know were physically abused or verbally insulted by the police. What did you experience?
  - b. Write a story about a time you or someone you know were stopped by the police because of SOGIE.
- iii. Documentation and evidence
- iv. Recourse available
  - a. criminal prosecution
  - b. Injunctive relief
  - c. Civil lawsuits for damages
- v. Case studies
  - a. Uganda - **Victor Juliet Mukasa & Yvonne Oyo v Attorney General** Misc. Cause No. 246/06 (unlawful arrest, detention, inhuman degrading treatment)
  - b. Zimbabwe - **Ricky Nathanson v Farai Mteliso and others, High Court of Bulawayo in Zimbabwe**, 176/19 (unlawful arrest and malicious prosecution)

**YEAR THREE | MODULE ONE**  
**CRIMINAL DEFENCE**

**OVERVIEW**

This module is aimed at equipping the participants with the skills and knowledge to defend their clients who are affected by the criminal law system. Since many members of the LGBT movement are targeted by the state, and particularly the police, it is imperative that the lawyers can respond by providing quality criminal defence within the unique circumstances of SOGIE based harassment. We will also explore how even criminal cases can be made strategic in line with the movements' needs and goals. This can occur just by having ready legal representation to act when a violation or arrest occurs or by using a criminal case to lodge a larger constitutional challenge to a practice or law.

**OBJECTIVES**

1. To deepen an understanding of criminal procedures relevant to SOGIE based violations and arrests.
2. To become familiar with the ways in which lawyers have strategically pursued constitutional challenges during criminal proceedings in a SOGIE context.
3. To strengthen the capacity of participants to willingly respond to arrests, police harassment and criminal charges.

**LEARNING OUTCOMES**

On completion of the session, participants should:

1. Be able to identify the criminal procedures that are most relevant to SOGIE based arrests in the jurisdiction in which they practise.
2. Have a renewed commitment to legal ethics.
3. Understand the ways a seemingly straightforward criminal case may be turned strategic.

**OUTLINE**

**Criminal Defence**

Legal Ethics

- a. Law society mandated
- b. Bribery
- ii. Criminal procedure
  - a. Due process
  - b. Formal charges
  - c. Pre-trial detention
  - d. Bail
  - e. Right to a lawyer

- f. Habeas corpus
- iii. Evidence
  - a. Relevant rules of evidence
- iv. Raising constitutional issues during criminal proceedings (e.g challenging constitutionality of anal exams during trial for sodomy)
  - a. Stay of criminal proceedings during constitutional challenge
  - b. Making criminal case strategic

**YEAR THREE | MODULE TWO**  
**INCREMENTAL APPROACH**

**OVERVIEW**

The participants will explore the history and development of the incremental approach in litigation that the SXLN utilises to foster SOGIE social change across Africa. This highlights the context for how Euro-American strategies of centring ‘decriminalisation’ can be ill-fitted for the African continent. This module serves to provide the network with a historical and legal timeline of the African SOGIE activism that homed in on human rights violations beyond criminalisation.

**OBJECTIVES**

1. To enhance movement understanding of the historical developments that led to creation of the incremental approach.
2. To build an appreciation for what the incremental approach is and how the network will use it in litigation cases.

**LEARNING OUTCOMES**

1. Be able to understand the dynamics that create the necessity for the incremental approach.
2. Display an understanding of the potential litigation paths the incremental approach may take in relevant jurisdiction.
3. Dedication to a holistic approach to social change including incremental strategic litigation, campaigns, and empowered movements.

**OUTLINE**

- I. Human rights situation in Africa concerning SOGIE
  - a. The history of same-sex conduct criminalisation in Africa
- II. Prior attempts to decriminalise using litigation
- III. Additional SOGIE based human rights violations
- IV. Background: How did the incremental approach develop?
  - a. Why decriminalisation was so problematic
  - b. Problematic actors
  - c. Alternate strategy
- V. A change in strategy - Incremental approach to strategic litigation
  - a. Actors:
    1. SOGIE social movement
    2. movement lawyers
  - b. Jurisprudence
    1. SOGIE based violence

2. Freedom of association
3. State harassment

**YEAR THREE | MODULE TWO**  
**SOCIAL MOVEMENTS & STRATEGIC LITIGATION**

**OVERVIEW**

This module is aimed at guiding social movements to understand and reflect on their role during the process of SOGIE-based strategic litigation. Now that the movements are familiar with what strategic litigation is and how it works, it is important for the activists to grasp the main actors inside and beyond the courtroom and how they relate to such actors. The SXLN network's approach is holistic and requires considerations of the legal and political opportunities structures.

**OBJECTIVES**

1. Enhance movement's familiarity with all the actors who impact strategic litigation
2. Create a thorough discussion around the considerations of whether to litigate and the impact of such choices.

**LEARNING OUTCOMES**

Upon completion of this module participants should:

1. Display a thoughtful understanding of the various actors in and beyond the judiciary that can influence litigation in their jurisdiction.
2. Be able to contemplate the local (and regional) political and legal opportunity structures to that will either hinder or facilitate strategic litigation.
3. Identify potential backlash and inadvertent effects of pursuing SOGIE-based strategic litigation.

**FORMAT and REQUIREMENTS**

The module will be delivered through combined methods such as interactive lectures, presentations, online classes and practical exercises. Participants are required to engage with the materials prescribed on the reading list, prior to each session.

**EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out through the use of pre and post litigation institutes online evaluations carried out by the Network Coordinator as well as in-institute next-day recaps.

**OUTLINE**

**Strategic Litigation & Social Movements**

- I. Who are the key players in strategic litigation?
  - a. Social movements
  - b. Lawyers

- c. Courts & judges
    - d. Political elite – legislators & policy makers
- II. Factors that influence movements choosing litigation
  - a. Political opportunity structures
  - b. Legal opportunity structures
- III. Movements choosing to litigate in an African context
  - a. The benefits of strategic litigation
  - b. The disadvantages of litigation
- IV. Inadvertent consequences of litigation
  - a. example: **Canada (AG) v Bedford** 2013 SCC 72, [2013] 3 SCR 1101
  - b. negative aftermath of a successful case
- V. Table comparing potential impacts of successful and unsuccessful court cases.



**YEAR THREE | MODULE THREE**  
**ASSESSMENT OF READINESS TO LITIGATE (OUTSTANDING)**

**OVERVIEW**

The module is still in development and will be updated upon completion

**OBJECTIVES**

**LEARNING OUTCOMES**

Upon completion of this module participants should:

**FORMAT and REQUIREMENTS**

The module will be delivered through combined methods such as interactive lectures, presentations, online classes and practical exercises. Participants are required to engage with the materials prescribed on the reading list, prior to each session.

**EVALUATION and ASSESSMENT**

Evaluation and assessment of each module will be carried out through the use of pre- and post-litigation institutes online evaluations carried out by the Network Coordinator as well as institute next-day recaps.

**OUTLINE**

**Assessing Readiness to Litigate (OUTSTANDING)**