

RIGHT TO NON-DISCRIMINATION (Thematic area)

OVERVIEW

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

OBJECTIVES

1. To enhance the lawyers' understanding of how discrimination manifest 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 & 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 & 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 the right to non-discrimination and how did it develop historically?
- ii. International human rights framework
- iii. The scope and content of the right to freedom from discrimination.
 - i. formal v substantive equality
 - ii. affirmative action & reasonable accommodation
- iv. A state's positive and negative obligations
- v. Basic structure of discrimination claim
 - i. prima facie case
- vi. Justifications for discriminatory actions:
 - i. legitimate goal
 - ii. objective link
 - iii. proportionality
- vii. Direct and indirect discrimination
 - i. Apparently neutral with disproportionate impact
 - ii. Lack of justification
- viii. Overcoming evidentiary difficulties:
 - i. Problems with comparators
 - ii. Judicial notice
 - iii. Inferences
 - iv. Statistics
- ix. Remedies for discrimination claims