

INTRODUCTION TO THE 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 right to health occurs and how to document such a violation.
3. Demonstrate a knowledge of the opportunities and barriers to litigating the right to freedom to health.

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

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 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 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? Why?
- 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)