

INTRODUCTION TO CONSTITUTIONAL LITIGATION

OVERVIEW

This module focuses on the principal ways in which constitutional claims are litigated as part of strategic litigation in the relevant Network jurisdiction. The module will also encompass the historical contexts and evolution of constitutional principles, methods of constitutional interpretation and analysis 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 the duty to raise a constitutional matter as early as possible in the proceedings. Participants will also explore the essentials of successful constitutional litigation and the choice of effective remedies.

OBJECTIVES

1. To introduce participants to the practice and the procedures involved in litigating constitutional issues in their jurisdiction.
2. To understand the history and development of their country's constitutional history, doctrine, and principles.
3. To develop and refine the participants' critical thinking in respect to specific aspects of constitutional law.
4. To get participants to critically analyse remedies in constitutional litigation.

LEARNING OUTCOMES

Upon completion of this module participants should:

1. Have developed the capacity to think strategically and tactically about how to advance constitutional issues and remedies.
2. Have the ability to plan to design and construct a constitutional case, including being able to strategically apply and advance procedural rules.
3. Be familiar with the precedents that have shaped constitutional litigation.

OUTLINE

- I. **Introduction to Constitutional Litigation**
 - i. **Part i: Introduction**
 - i. The history and development of our Constitution
 - ii. What is constitutional litigation?
 - iii. How does constitutional litigation differ from other forms of litigation?

- iv. Key constitutional principles and doctrines
 - The two stage approach
 - Separation of powers
 - Constitutional interpretation
 - Limitation of rights
- v. The constitutional jurisdiction of various courts
- vi. Judicial attitudes to constitutional law and how it impacts on public attitudes on constitutional law and constitutional rights.
- vii. Constitutional frameworks for state obligations

ii. **Part ii: Procedure and Rules of Court**

- i. Court rules applicable in litigating violations of fundamental rights
 - Action versus summons
 - Direct Access
 - Standing
 - *Amicus curiae*
 - Joinder
 - Intervention
 - Costs
- ii. Onus
- iii. Remedies
 - Declarations of rights
 - Prohibitory and mandatory interdicts
 - Orders of invalidity
 - Damages
 - Other forms of relief
 - Enforcing court orders