

## **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 right to health litigation during 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. Although most constitutions do not contain a justiciable right to health, this module will explore the innovative ways in which lawyers can develop litigation around this right since SOGIE based violations of the right to health are ubiquitous amongst the SXLN Network.

### **OBJECTIVES**

1. To understand how SOGIE based violations of the right to health manifest
2. To build familiarity with international, regional and comparative jurisprudence on the right to health.
3. To establish an understanding of the principles guiding legal interpretation of the right to health.

### **LEARNING OUTCOMES**

Upon completion of this module participants should:

1. Analyse the various sources of law, standards, and norms concerning the right to health.
2. Demonstrate a knowledge of the opportunities and barriers to litigating the right to freedom to health.
3. Be able to identify jurisprudential trends related to the right to health in SOGIE contexts.

### **OUTLINE**

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

- i. What is the right to health and its historical development
- ii. Manifestations, causes and consequences of the SOGIE based violations of the right to health

- iii. International and regional legal framework, norms, & standards protecting and promoting the right to health
- iv. The scope and content of the right
- v. Barriers to health rights litigation
  - a. Recognition of the right in constitutions
  - b. Lack of knowledge of such a right / claim
  - c. Need to exhaust local remedies
  - d. Judicial versus public policy issue
- vi. How and where to bring a claim
  - a. Domestic feasibility
  - b. Regional and international fora
- vii. Comparative jurisprudence
  - a. South Africa
  - b. India
  - c. Botswana
  - d. African Commission