

UNIT 1: BACKGROUND

1.1 Structure of the Unit

This unit is organised as follows:

1.2 Objectives of the Unit

1.3 Overview

1.4 Definition of Terms

1.5 Key Issues for Discussion

1.6 Case Law and Examples

1.7 Lessons Learnt and Drawn

1.8 Practical Implications

1.9 Reflecting Back on the Unit

1.10 Activity of Learning

1.11 Unit Summary

1.2 Objectives of the Unit

At the end of this unit, the reader must be able to:

- a) Identify the key SRHR challenges in Zimbabwe and their link to access to justice;
- b) Relate SRHR violations to broader human rights and constitutional protections;
- c) Define the role of litigation and advocacy in advancing reproductive rights;
- d) Explain how Zimbabwe's legal framework interacts with global and regional SRHR commitments.

1.3 Overview

Access to justice remains a foundational tenet of the rule of law—without it, individuals are unable to realise their rights, challenge discrimination, or hold duty-bearers to account. Zimbabwe, as a signatory to various global and regional frameworks aimed at upholding the rule of law and access to justice, has embarked on a series of sectoral reforms. These reforms, including the decentralisation

of health, legal, and justice services, represent an attempt to make justice systems more accessible and responsive, particularly for marginalised and underserved communities.

Sexual and reproductive health and rights (SRHR) sit at the heart of this justice discourse. Far from being confined to questions of personal autonomy or bodily integrity alone, SRHR constitute core components of the human rights architecture-indivisible from rights to health, equality, privacy, dignity, and freedom from violence. Yet, in Zimbabwe, as in many parts of the Global South, the realisation of SRHR is constrained by a confluence of structural, legal, and socio-cultural impediments.

The health burden associated with reproductive and sexual rights violations is staggering. Reproductive health issues account globally for nearly 20% of the total disease burden, with the burden disproportionately falling on women of reproductive age—accounting for nearly one-third of their total health burden. In Zimbabwe, maternal mortality ratios remain unacceptably high-ranging between 363 and 462 deaths per 100,000 live births. Cervical cancer continues to claim lives, often undetected and untreated, while gender-based violence remains pervasive, systemic, and under-prosecuted (UNFPA, 2020; WHO, 2020).

While Zimbabwe demonstrates commendable progress in some areas—such as relatively high contraceptive prevalence rates—the overall unmet need for family planning remains substantial. Among all women, the unmet need stands at 10.4%, with adolescent girls (aged 15–19) disproportionately affected, with rates as high as 12.6% (UNFPA et al., 2022). These figures reflect not only gaps in service provision but also deeper systemic failures around education, youth-friendly services, and stigma reduction. Perhaps most starkly, the issue

of unsafe abortion underscores the human cost of legal and policy restrictions. In 2016 alone, approximately 66,800 induced abortions were estimated in Zimbabwe—equating to a rate of 17.8 per 1,000 women aged 15–49. Of these, the majority were conducted outside of legal parameters, contributing to an estimated 16% of maternal deaths nationally. Notably, Zimbabwe’s abortion-related mortality is significantly higher than in South Africa, where abortion is broadly legal and safely accessible (Guttmacher Institute, 2018; Reuters, 2018). This data points not only to a public health crisis but to a justice deficit—a context in which punitive legal frameworks, stigma, and procedural opacity combine to deny women the ability to make autonomous reproductive choices without fear or danger. Critically, these challenges do not occur in a vacuum. They intersect with entrenched patriarchal norms, socio-economic disparities, and systemic inequities within Zimbabwe’s legal and healthcare systems. While there has been legislative movement—such as the adoption of gender-sensitive policies or commitments under international treaties—persistent legal ambiguities, outdated statutory provisions, and weak enforcement mechanisms continue to inhibit meaningful progress. In this context, SRHR litigation is not just about legal reform but about transforming structural conditions that produce and sustain injustice.

1.4 Definition of Terms

SRHR (Sexual and Reproductive Health and Rights) is a set of entitlements ensuring individuals can make informed decisions about their sexual and reproductive health, free from discrimination, coercion, or violence.⁴

Unsafe Abortion is termination of pregnancy carried out by unqualified individuals or in environments lacking minimal medical standards, often leading to serious health risks.⁵

Maternal Mortality Ratio (MMR) is the number of maternal deaths per 100,000 live births, used as a critical health indicator.⁶

Access to Justice is the ability of individuals to seek and obtain remedies for rights violations through formal or informal institutions of justice.⁷

Strategic Litigation is the deliberate use of legal action to bring systemic change beyond individual relief.⁸

1.5 Key Issues for Discussion

Although sexual and reproductive health and rights (SRHR) are increasingly recognised as integral to global human rights frameworks—including those established under the International Covenant on Economic, Social and Cultural Rights and the Maputo Protocol—they remain deeply contested, particularly within conservative, patriarchal, or religiously-influenced contexts. These contestations are not merely theoretical; they are embedded in institutional practices, normative orders, and public policy, often determining who can access services, under what conditions, and with what consequences. In Zimbabwe, SRHR are mediated through complex socio-cultural and political matrices that frequently undermine the legal entitlements of women and girls.

Cultural norms rooted in patriarchal power structures continue to police female sexuality and reinforce the perception that women's bodies are subject to communal, familial, or spousal control. This has profound implications for the exercise of autonomy in reproductive decision-making. For instance, despite relatively high national contraceptive prevalence rates, decision-making around contraceptive use often remains dominated by male partners or shaped by misinformation, fear, and religious teachings that portray family planning as morally suspect. Moreover, issues such as abortion and sexual violence remain shrouded in stigma and silence, which

discourages victims from seeking care or redress, while emboldening impunity.

Nowhere is this more starkly illustrated than in the case of unsafe abortion. The continued criminalisation of abortion under the Termination of Pregnancy Act [Chapter 15:10], except under very limited grounds, drives thousands of women—particularly those from economically marginalised backgrounds—into unsafe procedures, often with life-threatening consequences. Maternal morbidity and mortality resulting from unsafe abortion remain a serious public health concern in Zimbabwe, despite the country's constitutional guarantees of the right to health (Section 76) and reproductive rights (Section 52). The legal framework, while offering superficial protections, falls short of the transformative promises enshrined in the 2013 Constitution and Zimbabwe's obligations under international law.

Progressive policy statements and ratifications of international instruments have not consistently translated into effective enforcement or resource allocation. Laws exist on paper, but enforcement remains patchy and subject to discretionary interpretation. Simultaneously, deep-rooted stigma within health institutions, law enforcement, and the judiciary often hinders access to even the limited SRHR services permitted by law. These challenges reveal the disjuncture between legal formalism and lived realities, particularly for adolescent girls, rural women, and survivors of gender-based violence.

Strategic litigation emerges in this context not as a panacea but as a vital tool within a broader ecosystem of SRHR advocacy. Through litigation, legal norms can be interrogated, unjust laws can be declared unconstitutional, and state inertia can be challenged in court. Importantly, litigation can create jurisprudence that affirms rights, clarifies ambiguities in the law, and places positive obligations on the state to act in accordance with constitutional and treaty-based

commitments. Moreover, public interest litigation has the potential to shift public discourse by reframing SRHR issues as matters of justice and dignity rather than moral deviance. When pursued alongside community mobilisation and policy reform, litigation can catalyse systemic change, ensuring that the law serves not as a barrier but as a mechanism for social transformation and accountability.

1.6 Case Law and Examples

Case law from both Zimbabwe and other jurisdictions offers critical insights into how strategic litigation can advance sexual and reproductive health and rights (SRHR). In *Reproductive Health Alliance of Kenya v Attorney General* (Kenya, 2019), the High Court affirmed reproductive health services as constitutionally protected, establishing a significant regional precedent. This judgment strengthened the legal positioning of SRHR within constitutional frameworks, particularly the right to health and non-discrimination.

In Zimbabwe, the Supreme Court decision in *S v Chokuramba* (2019), although primarily concerned with the rights of children in conflict with the law, illustrates the judiciary's willingness to engage in purposive constitutional interpretation that expands the scope of fundamental rights. However, this progressive judicial approach contrasts starkly with the continued application of the **Termination of Pregnancy Act (1977)**, which narrowly restricts access to safe abortion services, limiting such access to cases of rape, incest, or where the woman's life is at risk.

This disjuncture between restrictive statutory law and progressive constitutional interpretation reveals a significant legal gap. It also highlights the urgency of litigation as a reform tool – not only to align domestic law with constitutional standards but to respond effectively to the public health crisis posed by unsafe abortion and preventable maternal deaths.

RELEVANT INTERNATIONAL AND REGIONAL LAW

International human rights law provides a robust normative framework for interpreting and advancing SRHR in Zimbabwe. As a signatory to several core treaties—including the **International Covenant on Civil and Political Rights (ICCPR)**, the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, and the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**—Zimbabwe has committed to guaranteeing non-discrimination, access to health, and gender equality. These treaties were ratified by accession on 13 May 1991, while the **Convention on the Rights of Persons with Disabilities (CRPD)** and its Optional Protocol were ratified on 23 September 2013. Regionally, the **African Charter on Human and Peoples' Rights (ACHPR)** (1981) and the **Maputo Protocol** (2003) provide key legal foundations for SRHR, obliging states to protect women from harmful practices and to ensure access to reproductive healthcare, including family planning and post-abortion care. These instruments serve not only as binding legal commitments but also as persuasive sources for constitutional interpretation, particularly in dualist systems like Zimbabwe's, where treaty norms may not be automatically enforceable without domestic legislation.

Nevertheless, Zimbabwean courts have increasingly demonstrated an openness to engaging with international law as a persuasive source of authority. In *Mudzuru & Another v Minister of Justice, Legal & Parliamentary Affairs & Others* (2016), the Constitutional Court relied explicitly on CEDAW and the CRC to support its judgment outlawing child marriage, underscoring the potential of international treaties to influence domestic jurisprudence even in the absence of formal domestication.

Scholars such as Chirwa (2003) and Viljoen (2012) have argued convincingly that African courts can, and indeed should, rely on

international and regional human rights instruments to enrich domestic rights interpretations—particularly in contexts where national laws remain outdated, vague, or in conflict with constitutional principles. Through strategic use of international norms, litigators can more effectively frame SRHR claims as issues of constitutional and human rights concern, strengthening both legal arguments and advocacy efforts.

1.7 Lessons Learnt and Drawn

Zimbabwe's persistently high maternal mortality and unsafe abortion rates expose the limitations of a purely legislative approach to SRHR. While legal reform is essential, it is insufficient without meaningful implementation and cultural transformation. Strategic litigation emerges as an indispensable instrument for closing the gap between legal rights and lived realities. When deployed in tandem with public health evidence, grassroots mobilisation, and sustained advocacy, litigation can catalyse both judicial and societal shifts.

African case law increasingly affirms the judiciary's role in advancing SRHR, offering models for Zimbabwean actors to emulate. Jurisprudence from South Africa, Kenya, and Uganda demonstrates that courts can serve as effective venues for addressing gendered health inequalities and reproductive injustice. In this regard, litigation should not be viewed in isolation but as part of an integrated strategy for structural change.

1.8 Practical Implications

For litigation to effectively advance SRHR in Zimbabwe, legal professionals must adopt a multidimensional approach. Sound legal reasoning must be complemented by credible medical evidence, human rights arguments, and socio-cultural insights. Activists and

civil society organisations should view courts not as a last resort, but as a strategic platform for reinforcing ongoing policy work and community advocacy.

Policymakers, in turn, must prioritise the dismantling of legislative and regulatory barriers-such as the archaic abortion laws-that hinder realisation of constitutional and treaty-based rights. Efforts should be made to review and align domestic law with both international obligations and the lived experiences of marginalised populations. Moreover, legal education must evolve to treat SRHR as an interdisciplinary concern, integrating perspectives from medicine, sociology, and gender studies to inform litigation strategies and promote inclusive legal reform.

1.9 Reflecting Back on the Unit

From this unit, you should now understand:

- The major SRHR challenges in Zimbabwe and their connection to access to justice.
- How constitutional rights, international treaties, and regional commitments provide a framework for advancing SRHR.
- The potential of strategic litigation to complement advocacy, address restrictive laws, and set legal precedents.
- The practical steps legal practitioners, activists, and policymakers can take to strengthen SRHR protections.

1.10 Activity for Learning

Read the case *Mudzuru & Another v Minister of Justice, Legal & Parliamentary Affairs & Others* (2016). Then answer the following questions:

1. Which constitutional provisions did the Court rely on to set the minimum marriageable age at 18?

2. How did the Court use international and regional human rights instruments (such as CEDAW or the CRC) in its reasoning?
3. In your view, what lessons does this case provide for advancing SRHR through litigation in Zimbabwe?
4. Imagine you are part of a legal team preparing a case on access to safe abortion. Based on this judgment, outline two legal arguments you could use to strengthen your case.

1.11 Unit Summary

This unit situated SRHR within the broader framework of access to justice and fundamental human rights in Zimbabwe. It outlined the considerable health burden resulting from rights violations—particularly maternal mortality and unsafe abortion—and examined the legal, cultural, and economic barriers that obstruct meaningful access to SRHR services.

The unit highlighted how strategic litigation can serve as a vital mechanism for legal transformation and social justice. Through a review of key case law, international treaties, and practical strategies, the discussion underscored the importance of litigation not as a stand-alone remedy, but as part of a broader ecosystem of advocacy, evidence-based policymaking, and grassroots mobilisation.