

UNIT 4: STRATEGIC SRHR LITIGATION IN ZIMBABWEAN NATIONAL COURTS

4.1 Structure of the Unit

This unit is organised as follows:

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4.2 Objectives of the Unit

At the conclusion of this unit, the reader should be able to:

- a) Identify key constitutional, statutory, and international instruments utilised in SRHR litigation within Zimbabwe;
- b) Contextualise national SRHR litigation through reference to comparative and regional case law;
- c) Define the frameworks and strategic tools essential for effective SRHR litigation and advocacy;
- d) Elucidate the practical application of litigation as a means to protect and advance SRHR rights.

4.3 Overview

This unit centres on the utilisation of litigation as a mechanism to safeguard and promote sexual and reproductive health and rights (SRHR) in Zimbabwe. It critically explores constitutional and statutory frameworks, strategic methodologies, and comparative jurisprudence,

illustrating how litigation can drive substantive legal and social transformation. Emphasis is placed on practical strategies, pivotal case law, and valuable insights, aimed at equipping legal practitioners, activists, and policymakers with the tools necessary to effect meaningful change.

4.4 Definition of Terms

SRHR is Sexual and reproductive health and rights, including access to contraception, safe abortion, maternal health, and protection from gender-based violence.

Strategic Litigation is Legal action aimed at producing systemic change beyond the immediate case outcome.

Comparative Jurisprudence is the use of foreign and regional court decisions as persuasive authority in domestic litigation.

Public Interest Litigation is Legal proceedings initiated to protect the rights of broader societal groups, even if the applicant is not personally affected.

4.5 Key Issues for Discussion

Zimbabwe's constitutional and statutory frameworks provide a robust foundation for sexual and reproductive health and rights (SRHR) litigation. The Constitution guarantees fundamental rights such as equality, bodily autonomy, health, and protection from harmful practices (Constitution of Zimbabwe, 2013), while statutes including the Marriage Act [Chapter 5:17] of 2017, the Children's Protection and Adoption Act [Chapter 5:06], and the Termination of Pregnancy Act [Chapter 15:10] of 1977 offer specific legal mechanisms to enforce these rights. Together, these instruments enable practitioners to challenge violations, hold both state and private actors accountable, and pursue reforms in areas such as child marriage, maternal health, and reproductive autonomy (Mudzuru & Another v Minister of Justice, Legal & Parliamentary Affairs & Others, 2016).

However, enforcing SRHR protections through the courts faces multiple challenges. Procedural delays, limited access to victim-friendly facilities, and shortages of critical evidence, such as medical or forensic documentation, impede effective litigation (NewsDay, 2020; UNFPA, 2021). Cultural norms and social resistance, especially in rural communities, further complicate efforts to secure justice (UNICEF, 2019). Consequently, advocates must combine legal strategies with community outreach, awareness campaigns, and support for survivors to overcome these barriers.

Incorporating international, regional, and comparative law enhances domestic litigation by providing persuasive authority and guiding judicial interpretation. Treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW; United Nations, 1979), the Maputo Protocol (African Union, 2003), and the Convention on the Rights of the Child (CRC; United Nations, 1989), alongside jurisprudence from other African countries, allow Zimbabwean litigators to expand the scope of domestic rights, address legislative gaps, and align arguments with global human rights standards (Viljoen, 2012; Chirwa, 2003). Even in Zimbabwe's dualist legal system, where treaties require domestication to be enforceable, international norms can influence judicial reasoning and strengthen strategic litigation.

Strategic litigation in Zimbabwe addresses multiple thematic areas, including abortion, maternal health, sexual and gender-based violence (GBV), adolescent reproductive health, and access to contraception (Guttmacher Institute, 2018; WHO, 2018). Each domain presents unique legal and practical challenges, from restrictive statutes to systemic deficiencies in healthcare and law enforcement. Focusing on these themes enables litigators to protect marginalised populations, including women, girls, adolescents, and persons with disabilities,

while establishing precedents that can inform broader policy reforms (*Mudzuru & Another v Minister of Justice, Legal & Parliamentary Affairs & Others*, 2016; *Sentencia C-355*, 2006).

Finally, maximizing the impact of litigation requires a multifaceted approach. Legal action must be complemented by advocacy, public education, and policy engagement to ensure court decisions lead to meaningful change (Motlatsi, 2020; Viljoen, 2012). By leveraging comparative jurisprudence, presenting evidence-based arguments, and engaging stakeholders at multiple levels, litigators can strengthen the effectiveness of SRHR litigation and promote systemic transformation in Zimbabwe.

4.6 Case Law and Examples

4.6.1 Consent to Marriage and Equality

Mudzuru & Another v Minister of Justice, Legal & Parliamentary Affairs & Others (Constitutional Court of Zimbabwe, 2016): Established 18 as minimum marriageable age; affirmed public-interest standing; drew on international norms (CRC, CEDAW, ACRWC).

4.6.2 Sexual and Gender-Based Violence (SGBV)

Enforcement gaps exist despite constitutional (Sections 19, 80, 81) and legislative protections (Criminal Law [Codification & Reform] Act, Children's Protection and Adoption Act). Litigation strategies focus on compelling state compliance and procedural reforms.

4.6.3 Health and Abortion Rights

Sentencia C 355 (Colombia, 2006): International human rights norms guided the decriminalization of abortion under certain conditions, providing a model for Zimbabwean litigators.

4.6.4 Comparative Regional Jurisprudence

Federation of Women Lawyers Kenya v Attorney General & Others (Kenya, 2015): Transformative abortion jurisprudence.

WPI & Another v Attorney General (Uganda, 2021): Protection of adolescent abortion seekers.

CM (Minor) v Queen Elizabeth Central Hospital & Health Minister (Malawi, 2021): Clarified access to abortion for survivors of sexual violence.

J.O.O. v AG (Kenya, 2014): Expanded maternal health and obstetric violence jurisprudence.

4.7 Lessons Learnt and Drawn

Effective SRHR litigation requires a strategic approach that carefully targets constitutional, statutory, and international instruments. By grounding cases in these legal frameworks, litigators can establish strong claims, challenge violations, and hold both state and private actors accountable. Comparative jurisprudence provides persuasive authority where domestic law is silent or restrictive, allowing courts to draw on decisions from other jurisdictions to expand rights protections. Evidence-based advocacy, which integrates legal arguments with medical, social, and human rights data, further strengthens the case for reform and ensures that litigation is informed by the realities faced by affected populations. Finally, a multidisciplinary approach, combining legal expertise with knowledge from medicine, sociology, and gender studies, improves litigation outcomes and enhances the ability of cases to influence policy, societal norms, and systemic change.

4.8 Practical Implications

Legal practitioners play a critical role in advancing SRHR protections by strategically leveraging litigation to enforce constitutional, statutory, and international rights (Viljoen, 2012; Chirwa, 2003). NGOs and activists can amplify the impact of court decisions by integrating

them into broader advocacy campaigns, ensuring that legal victories translate into policy reforms and societal change (Motlatsi, 2020). Policymakers, in turn, have a responsibility to harmonize domestic law with international and regional obligations, removing legal barriers that restrict access to reproductive health services and other fundamental rights (United Nations, 1979; African Union, 2003). Law students and researchers should cultivate expertise in both legal reasoning and human rights frameworks, equipping themselves to engage effectively in SRHR litigation, contribute to evidence-based advocacy, and support systemic reforms that protect vulnerable populations (Viljoen, 2012).

4.9 Reflecting Back on the Unit

By the end of this section, the reader should be able to:

- Apply strategic litigation tools to real SRHR cases in Zimbabwe.
- Evaluate the challenges of enforcing SRHR rights through national courts.
- Consider how international and regional law could strengthen litigation strategies.

4.10 Activity of Learning

Case Study – *Mildred Mapingure v Minister of Home Affairs & Others* (2014)

1. What were the applicant’s main claims after being denied timely access to emergency contraception and abortion following rape?
2. How did the Court respond to arguments based on international human rights law (e.g., CEDAW, Maputo Protocol)?
3. In your view, what strategic litigation options were missed in this case?
4. Draft a mock litigation strategy that:

- ❖ Frames the case around constitutional rights (Sections 51, 52, 76).
- ❖ Uses international norms to reinforce access to emergency reproductive healthcare.
- ❖ Proposes complementary advocacy actions outside the courtroom (e.g., public campaigns, engagement with Parliament).

4.11 Unit Summary

This unit has demonstrated how litigation in national courts serves as a key mechanism for enforcing SRHR in Zimbabwe. It highlighted constitutional and statutory provisions, practical litigation strategies, comparative and regional case law, and the importance of multi-disciplinary and evidence-based approaches. By strategically employing litigation, advocates can secure meaningful protections, influence policy, and advance the rights of women, girls, and marginalised populations.