

UNIT 5: APPLYING INTERNATIONAL AND REGIONAL LAW IN ZIMBABWEAN SRHR LITIGATION

5.1 Structure of the Unit

This unit is organised as follows:

5.2 Objectives of the Unit

5.3 Overview

5.4 Definition of Terms

5.5 Key Issues for Discussion

5.6 Case Law and Examples

5.7 Lessons Learnt and Drawn

5.8 Practical Implications

5.9 Reflecting Back on the Unit

5.10 Activity of Learning

5.11 Unit Summary

5.2 Objectives of the Unit

Upon completion of this unit, the reader will be able to:

- a) Identify key international, regional, and comparative legal instruments pertinent to SRHR in Zimbabwe;
- b) Relate international and regional norms to domestic constitutional and statutory rights frameworks;
- c) Define SRHR-related terminology and comprehend their legal ramifications;
- d) Explain the role of strategic litigation in utilising international, regional, and comparative law to enhance SRHR protections.

5.3 Overview

International and regional legal frameworks constitute foundational pillars in the advancement and safeguarding of sexual and reproductive health and rights (SRHR) within Zimbabwe. These instruments establish normative standards that guide domestic legal interpretation and provide critical pathways for strategic litigation.

Principal international treaties encompass the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (United Nations, 1979), the Convention on the Rights of the Child (CRC) (United Nations, 1989), the International Covenant on Civil and Political Rights (ICCPR) (United Nations, 1966a), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (United Nations, 1966b). Collectively, these treaties articulate Zimbabwe's binding obligations to uphold the rights to life, health, equality, and non-discrimination, alongside ensuring access to reproductive health services, with particular emphasis on women, girls, and other vulnerable groups.

5.4 Definition of Terms

Child Marriage: Marriage where one or both parties are below 18 years of age (UNICEF, 2025).

Forced Marriage: Marriage entered into without the free and full consent of at least one party (USCIS, 2025).

Sexual Violence: Any sexual act, attempt, or threat committed against a person without consent (WHO, 2025).

Safe Abortion: Termination of pregnancy performed by qualified professionals under conditions meeting medical standards (WHO, 2025).

Obstetric Violence: Mistreatment of women during facility-based childbirth, including physical, verbal, and non-consented care (ICM, 2025).

Respectful Maternity Care (RMC): Care during childbirth that preserves dignity, privacy, autonomy, and freedom from mistreatment (AWHONN, 2025).

5.5 Key Issues for Discussion

Key issues for discussion within this unit encompass the pivotal role of international and regional legal frameworks in SRHR litigation, given that these instruments establish normative benchmarks and serve as

persuasive authority in the advancement of rights protections. Zimbabwe's dualist legal system, coupled with constitutional provisions—specifically sections 46(1)(c) and 326—facilitates the incorporation of international and customary international law into the interpretation of the Declaration of Rights, thereby illustrating the dynamic interplay between domestic and international legal norms. Furthermore, the practical utilisation of comparative jurisprudence from other African jurisdictions provides invaluable guidance for purposive interpretation of domestic SRHR protections, demonstrating how courts can broaden rights protections in circumstances where national legislation remains silent or restrictive. Notwithstanding these developments, socio-cultural barriers and legislative lacunae continue to pose formidable challenges, as entrenched norms and gaps in domestic law frequently impede the effective enforcement of SRHR rights, thereby underscoring the critical role of strategic litigation and sustained advocacy.

5.6 Case Law and Examples

Zimbabwean case law illustrates the practical application of international and regional instruments in advancing SRHR protections. While *Mudzuru & Another v. Minister of Justice, Legal and Parliamentary Affairs & Others* CCZ 12/2015 is a landmark decision where the Constitutional Court relied on CEDAW and the CRC to affirm 18 as the minimum marriageable age and recognized public-interest standing for child protection, it is not the only example. In *Katedza v. Minister of Health & Child Care* (HC 2020), the High Court considered Zimbabwe's obligations under international health rights frameworks in a challenge concerning access to maternal health services. More recently, in the November 2024 High Court ruling on the Termination of Pregnancy Act, the Court drew on international human rights norms to expand lawful access to abortion, particularly in cases of marital rape and underage pregnancies. Together, these cases show a growing trend where Zimbabwean courts use international and

regional instruments not only to interpret constitutional rights but also to close protection gaps in SRHR."

Comparative jurisprudence from other African countries further demonstrates how international norms can inform domestic litigation."In Malawi, Section 11(2)(c) of the Constitution requires courts to consider international law and foreign case law, supporting purposive interpretation of SRHR protections (Republic of Malawi, 1994). South Africa's Section 39(1) of the Constitution similarly obliges courts to consider international law when interpreting the Bill of Rights (Republic of South Africa, 1996). In Lesotho, *Ts'epe v. Independent Electoral Commission & Others* (2014) cited the African Charter, CEDAW, and ICCPR despite their non-domestication, illustrating the persuasive authority of regional norms (Kabanza, 2014). These comparative experiences are directly relevant to Zimbabwe because Section 46(1)(c) of the 2013 Constitution requires courts, when interpreting the Declaration of Rights, to consider international law and conventions to which Zimbabwe is a party, while Section 326 recognizes customary international law unless inconsistent with the Constitution. This framework has already informed judgments such as *Mudzuru & Another v. Minister of Justice, Legal and Parliamentary Affairs & Others* CCZ 12/2015, where the Constitutional Court drew on the African Charter and the Maputo Protocol to outlaw child marriage. Comparative constitutional practice therefore strengthens the case for Zimbabwean courts to consistently use international and regional instruments to advance SRHR protections."

Nigerian cases such as *Mojekwu v Ejikeme* (2004) and *Odafe v Attorney General* (2004) further show how international instruments can be invoked to protect rights where domestic law is silent. These cases are particularly relevant for addressing key SRHR issues,

including safe abortion, maternal health, obstetric violence, child marriage, and adolescent reproductive health, where gaps in domestic legislation often limit access to justice.

5.7 Lessons Learnt and Drawn

The analysis of Zimbabwean, comparative African, and Nigerian case law highlights several important lessons for advancing SRHR litigation. Comparative and regional jurisprudence offers persuasive guidance for expanding domestic SRHR protections, demonstrating how courts can rely on international instruments even in contexts where treaties have not been formally domesticated. Zimbabwe's dualist system, coupled with constitutional provisions such as sections 46(1)(c) and 326, shows that international and customary international law can still inform judicial reasoning, providing avenues to fill legislative gaps. Strategic litigation has proven effective in addressing socio-cultural and legislative barriers, reinforcing the importance of linking legal arguments with international and regional norms. Furthermore, the study of comparative cases illustrates the value of learning from other African jurisdictions in crafting legal strategies and identifying avenues for advancing women's, girls', and adolescent rights within local contexts.

5.8 Practical Implications

The practical implications of this analysis are multifaceted. Legal practitioners and civil society organisations can strategically leverage international, regional, and comparative law to strengthen SRHR litigation, advocate for policy reforms, and influence judicial interpretation in favour of rights protection. Court outcomes can be integrated into broader advocacy campaigns to ensure systemic and social impact. Policymakers are encouraged to harmonize domestic legislation with international obligations to remove legal barriers and align national laws with human rights standards. For law students and researchers, developing multidisciplinary expertise that combines legal

reasoning with knowledge of international human rights frameworks enhances their capacity to engage in evidence-based litigation and advocacy, while also contributing to the broader development of SRHR jurisprudence in Zimbabwe and the region.

5.9 Reflecting Back on the Unit

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

- Apply international and regional norms directly in framing SRHR litigation in Zimbabwe.
- Relate Zimbabwe's recent jurisprudence to comparative African practice.
- Evaluate the evolving role of courts in expanding reproductive rights through international law.

5.10 Activity of Learning

Case Study – *WILSA & Others v Minister of Health & Child Care (High Court, 2024)*

1. What constitutional and statutory barriers to abortion did the applicants challenge?
2. Which international instruments did the Court consider in ruling for expanded access to abortion in cases of marital rape and underage pregnancy?
3. Draft a two-part advocacy plan:
 - ❖ Legal strategy: Identify at least two international instruments (e.g., ICCPR, CEDAW, Maputo Protocol) that could be cited in support of further abortion law reform.
 - ❖ Policy/advocacy strategy: Suggest one non-litigation measure (e.g., parliamentary lobbying, public health campaigns, community engagement) that would help translate the judgment into systemic change.

4. Reflect: How does *WILSA* build on lessons from *Mudzuru* (Unit 3) and *Mapingure* (Unit 4) to show Zimbabwe's shifting judicial approach to SRHR?

5.11 Unit Summary

Understanding and applying international and regional law is essential for advancing sexual and reproductive health and rights (SRHR) in Zimbabwe. These instruments provide normative benchmarks, persuasive authority, and strategic guidance for domestic litigation, enabling practitioners, advocates, and policymakers to uphold rights, address legislative gaps, and promote social and systemic change. Zimbabwe's constitutional provisions, particularly sections 46(1)(c) and 326, allow courts to incorporate international and customary international law into the interpretation of the Declaration of Rights, bridging the dualist and monist aspects of the legal system. Comparative jurisprudence from other African countries demonstrates practical approaches for purposive interpretation of domestic SRHR protections, illustrating how international norms can be used even when domestic legislation is limited or silent. Leveraging these international, regional, and comparative legal standards strengthens SRHR litigation in Zimbabwe, ensuring that constitutional guarantees are translated into tangible protection for women, girls, and other vulnerable populations.