

A SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS LITIGATION GUIDE FOR ZIMBABWE



Memory Makuyana

A Sexual and Reproductive Health and Rights Litigation Guide for Zimbabwe

Memory Makuyana

ISBN 978-1-77928-572-0
EAN 9781779285720

©ZEGU Press 2025

Published by the Zimbabwe Ezekiel Guti University (ZEGU) Press
Stand No. 1901 Barrassie Rd,
Off Shamva Road
P.O. Box 350
Bindura, Zimbabwe

All rights reserved

DISCLAIMER: The views and opinions expressed in this book are those of the author and do not necessarily reflect the official position of funding partners”

SUBSCRIPTION AND RATES

Zimbabwe Ezekiel Guti University Press Office
Stand No. 1901 Barrassie Rd,
Off Shamva Road
P.O. Box 350
Bindura, Zimbabwe

Telephone: ++263 8 677 006 136 | +263 779 279 912

E-mail: zegupress@zegu.ac.zw

<http://www.zegu.ac.zw/press>

PREFACE

I was compelled to write this SRHR (Sexual and Reproductive Health and Rights) litigation guide after being unexpectedly immersed in a project necessitating strategic litigation within this domain. As I navigated the intersecting legal, social, and practical complexities, it became apparent that there existed a conspicuous dearth of accessible, contextually grounded resources—particularly within Zimbabwe and the broader Southern African region. Despite the increasing recognition of SRHR as a critical axis intersecting human rights, public health, and social justice, there remains a significant void in practical guidance tailored to legal practitioners, activists, and civil society actors engaged in litigation. Much of the extant literature is either excessively generalised, embedded in foreign legal frameworks, or predominantly concerned with policy advocacy rather than the nuanced realities of litigation strategy. This lacuna rendered an already intricate undertaking even more formidable. The decision to write this guide was thus both a pragmatic and principled response—an effort to demystify SRHR litigation, to distil and share insights borne of practice, and to equip others who may find themselves required to act swiftly and strategically within a legally complex and resource-constrained environment.

HOW TO USE THIS GUIDE

This guide is a toolkit. It makes use of laws and case law for reference. Within it are some interactive learning activities useful for the reader or working groups.

ABBREVIATIONS AND ACRONYMS

AU	African Union
CIDT	Cruel, Inhuman, or Degrading Treatment
HIV/AIDS-	Human Immunodeficiency Virus infection and Acquired Immune Deficiency Syndrome
RMC	Respectful Maternity Care
SADC	Southern African Development Committee
SGBV	Sexual and Gender-Based Violence
SRHR	Sexual Reproductive Health and Rights
STDs	Sexually Transmitted Diseases
UN	United Nations
UNICEF	United Nations Children's Fund
WHO	World Health Organisation

LIST OF STATUTES

Children's Act [Chapter 5:06]

Criminal Law (Codification & Reform) Act [Chapter 9:23]

Marriage Act [CHAPTER 5:15]

The Termination of Pregnancy Act [Chapter]

Botswana

Interpretation Act, NO. 20 OF 1984.

Malawi

Malawi Constitution 1 Of 1997

South Africa

South African Constitution 1996

International, Regional treaties, conventions and covenants

African Charter on Human and Peoples' Rights (ACHPR)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment(CAT);

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);

Convention on the Rights of Persons with Disabilities (CRPD)

Convention on the Rights of the Child (CRC); Convention on the Rights of Persons with Disabilities (CRPD);

IACHR, the European Commission on Human Rights

International Conference on Population and Development (ICPD)

International Convention for the Protection of All Persons from Enforced Disappearance (CPED).

International Convention on the Elimination of All Forms of Racial Discrimination (CERD);

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW);

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Civil and Political Rights (ICCPR);

International Covenant on Economic, Social and Cultural Rights
(ICESCR)

International Covenant on Economic, Social and Cultural Rights
(ICESCR);

Protocol to the African Charter on Human and Peoples' Rights on the
Rights of Women in Africa (Protocol on Women)

CASE LAW

AJ vs State & Others ex parte Standford Sirilo for TS(Minor) Constitutional case No 4&5 of 2021

Castell v De Greef 1993 (3) SA 501(C)

Center for Economic and Social Rights (CESR) v. Nigeria, the Social and Economic Rights Action Center (SERAC)

Chávez v Peru Report No. 71/03, Inter-Am. C.H.R., OEA/Ser.L/V/II.118 Doc. 70 rev. 2 (2003)

CM (minor) v The Hospital Director of Queen Elizabeth Central Hospital & Minister for Health of Malawi. Judicial Review Cause No 03 of 2021

da Silva Pimentel v. Brazil, Comm. 17/2008, U.N. Doc. CEDAW/C/49/D/17/2008

Esterhuizen V Administrator, Transvaal 1957 (3) SA 710 (T)

Federation of Women Lawyers Kenya, JMM & Others vs Attorney General & Others (High Court Constitutional Petition No. 266 of 2015);

Government of the Republic of Namibia v. L.M. & 2 Others [2014] Case No. SA 49/2012, NASC 19

Great Lakes Initiative for Human Rights and Development (GLIHD) vs Ministry of Justice of Rwanda, 2020.

J O O (also known as J M) v Attorney General & 6 others [2018] eKLR

J OO vs The Attorney General & others. Petition No. 5 of 2014

L A W & 2 others v Marura Maternity & Nursing Home & 3 others; International Community of Women Living with HIV (ICW) (Interested Party); Secretariat of the Joint United Nations Programme on HIV/AIDS & 2 others (Amicus Curiae) (Constitutional Petition 606 of 2014) [2022] KEHC 17132 (KLR) (Constitutional and Human Rights) (16 December 2022) (Judgment)

L.C. v. Peru, CEDAW, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

Legal Resources Foundation v. Zambia, African Commission on Human and Peoples' Rights, Comm. No. 211/98 (2001).

Lesotho: Ts'epe v The Independent Electoral Commission and Others (2005) AHRLR 136 (LeCA 2005)

Mildred Mapingure v. Minister Of Home Affairs and 2 Others (2014), Judgment No. SC 22/14, Civil Appeal No. SC 406/12

Millicent Awour Omiya a & Margaret Anyoso Oliele vs The Attorney General& Others (Petition No. 562 of 2012)
Mohr v. Williams, 104 N.W. 12 (Minn. 1905)
Mojekwu & others v Ejikeme & others (2000) 5 NWLR 402
Mudzuru & Anor v Ministry of Justice, Legal & Parliamentary Affairs N.O. & Ors (CC 12 of 2015; Constitutional Application 79 of 2014) [2016] ZWCC 12 (20 January 2016)
Odafe and Others v Attorney-General and Others (2004) AHRLR 205 (NgHC 2004)
PAK & Salim Mohamed vs Attorney General& Others, Constitutional Petition E009 of 2020)
Pratt v Davis
Purohit and Moore v. The Gambia. Cited as: Communication No. 241/2001, Sixteenth Activity report 2002-2003, Annex VII
R.R. v. Poland - 27617/04 Judgment 26.5.2011 [Section IV]
Salgo V. Leland Stanford Jr University Board of Trustees (1957)
Schloendorff v. Society of New York Hospital, 105 N.E. 92 (N.Y. 1914)
Stoffberg v Elliott 1923 CPD 148
Teachers Service Commission of Kenya v Center for Reproductive Rights & Others [2020] eKLR (Civil Appeal 309 of 2015)
Women Pro bono Initiative (WPI) & Another vs the Attorney General of Uganda & another (Miscellaneous Cause 32 of 2021)
Zimbabwe Human Rights NGO Forum v Zimbabwe - 245/02

TABLE OF CONTENTS

vi	Abbreviations and Acronyms
vii	List of Statutes
v	How to use the Guide
ixx	Case Law
1	Unit 1: Background
1	1.1 Structure of the Unit
1	1.2 Objectives of the Unit
1	1.3 Overview
3	1.4 Definition of Terms
4	1.5 Key Issues for Discussion
6	1.6 Case Law and Examples
8	1.7 Lessons Learnt and Drawn
8	1.8 Practical Implications
9	1.9 Reflecting Back on the Unit
9	1.10 Activity for Learning
10	1.11 Unit Summary
11	Unit 2: Contemporary Sexual and Reproductive Health and Rights Issues
11	2.1 Structure of the Unit
11	2.2 Objectives of the Unit
11	2.3 Overview
12	2.4 Definition of Terms
13	2.5 Key Issues for Discussion
14	2.6 Case Law and Examples
15	2.7 Lessons Learnt and Drawn
15	2.8 Practical Implications
15	2.9 Reflecting Back on the Unit
16	1.10 Activity for Learning
16	2.11 Unit Summary
18	Unit 3: Integrating International, Regional, and Comparative Law in Zimbabwean SRHR Litigation
18	3.1 Structure of the Unit
18	3.2 Objectives of the Unit

18	3.3 Overview
21	3.4 Definition of Terms
21	3.5 Key Issues for Discussion
22	3.6 Case Law and Examples
24	3.7 Lessons Learnt and Drawn
24	3.8 Practical Implications
25	3.9 Reflecting Back on the Unit
25	3.10 Activity of Learning
25	3.11 Unit Summary
27	Unit 4: Strategic SRHR Litigation in Zimbabwean National Courts
27	4.1 Structure of the Unit
27	4.2 Objectives of the Unit
27	4.3 Overview
28	4.4 Definition of Terms
28	4.5 Key Issues for Discussion
30	4.6 Case Law and Examples
31	4.7 Lessons Learnt and Drawn
31	4.8 Practical Implications
32	4.9 Reflecting Back on the Unit
32	4.10 Activity of Learning
33	4.11 Unit Summary
34	Unit 5: Applying International and Regional Law in Zimbabwean SRHR Litigation
34	5.1 Structure of the Unit
34	5.2 Objectives of the Unit
34	5.3 Overview
35	5.4 Definition of Terms
35	5.5 Key Issues for Discussion
36	5.6 Case Law and Examples
38	5.7 Lessons Learnt and Drawn
38	5.8 Practical Implications
39	5.9 Reflecting Back on the Unit
39	5.10 Activity of Learning

40	5.11 Unit Summary
41	References

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.

UNIT 2: CONTEMPORARY SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS ISSUES

2.1 Structure of the Unit

This unit is organised as follows:

2.2 Objectives of the Unit

2.3 Overview

2.4 Definition of Terms

2.5 Key Issues for Discussion

2.6 Case Law and Examples

2.7 Lessons Learnt and Drawn

2.8 Practical Implications

2.9 Reflecting Back on the Unit

2.10 Activity of Learning

2.11 Unit Summary

2.2 Objectives of the Unit

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

- a) Identify the main SRHR challenges affecting women and girls in Zimbabwe;
- b) Relate SRHR violations to public health outcomes and legal protections;
- c) Define the key legal instruments and policies governing SRHR.
- d) Explain the opportunities for litigation, advocacy, and reform within Zimbabwe's legal framework.

2.3 Overview

Women and girls are entitled to protection and comprehensive reproductive healthcare under international, regional, and domestic legal frameworks. Yet, in Zimbabwe, this entitlement is routinely undermined by restrictive statutory provisions and entrenched gender

norms that perpetuate inequality, limit bodily autonomy, and impair access to essential services. Despite constitutional and treaty-based guarantees, prevailing legal and societal frameworks often constrain the full realisation of sexual and reproductive health and rights (SRHR), particularly for marginalised and adolescent populations. This unit interrogates key contemporary SRHR issues in Zimbabwe – namely, child marriage, sexual violence, access to safe abortion, and respectful maternity care. These areas not only reflect urgent public health concerns but also serve as entry points for examining deeper legal and normative deficiencies. Child marriage, for instance, persists despite a constitutional minimum marriageable age, exposing the disconnect between legal standards and enforcement. Similarly, the criminalisation and medical gatekeeping surrounding abortion services fail to reflect constitutional commitments to life, dignity, and health, while maternal care settings continue to normalise mistreatment and obstetric violence under the guise of clinical discretion or resource scarcity.

Each of these thematic areas reveals the compounding effects of gender-based discrimination, legal inertia, and weak accountability mechanisms. They also point to opportunities for strategic litigation as a means to challenge unconstitutional practices, expose gaps in statutory protections, and compel alignment with international human rights obligations. In doing so, litigation can serve as both a corrective and generative force, reshaping not only legal doctrine but also societal attitudes towards reproductive autonomy and gender equality.

2.4 Definition of Terms

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

Forced Marriage is marriage entered into without the free and full consent of at least one party. (U.S. Citizenship and Immigration Services [USCIS], 2025)

Sexual Violence is any sexual act, attempt, or threat committed against a person without consent. (World Health Organisation [WHO], 2025)

Safe Abortion is termination of pregnancy performed by qualified professionals in conditions meeting medical standards. (WHO 2025)

Obstetric Violence is mistreatment of women during facility-based childbirth, including physical, verbal, and non-consented care. (International Confederation of Midwives [ICM], 2025)

Respectful Maternity Care (RMC) is Care during childbirth that preserves dignity, privacy, autonomy, and freedom from mistreatment. (Association of Women's Health, Obstetric and Neonatal Nurses [AWHONN], 2025)

2.5 Key Issues for Discussion

Contemporary sexual and reproductive health and rights (SRHR) challenges in Zimbabwe include high rates of child and forced marriages, particularly in rural areas, which undermine girls' health, education, and legal rights (UNICEF, 2023; UNICEF & ZimStat, 2019). Sexual violence remains widespread despite criminalisation, with enforcement gaps limiting access to justice for survivors and highlighting the need for systemic reform (UNFPA, 2021; NewsDay, 2020). Access to safe abortion is constrained by the restrictive *Termination of Pregnancy Act* (1977), which conflicts with recent High Court rulings expanding access in cases of marital rape or sexual activity involving minors under 18; nevertheless, unsafe abortions remain prevalent, contributing significantly to maternal morbidity and mortality (Guttmacher Institute, 2018; Africanews, 2024). Disrespectful maternity care and obstetric violence—such as physical abuse, non-consented procedures, verbal mistreatment, and discrimination—constitute violations of women's rights and disproportionately affect marginalized populations in Zimbabwe. These practices underscore the urgent need for strengthened legal frameworks, policy reforms,

and institutional interventions to ensure respectful, rights-based maternal healthcare (World Health Organization [WHO], 2018)."

2.6 Case Law and Examples

Recent case law highlights both the challenges and opportunities for advancing sexual and reproductive health and rights (SRHR) through litigation in Zimbabwe. For example, in *Mudzuru & Another v. Minister of Justice, Legal and Parliamentary Affairs & Others* CCZ 12/2015, the Constitutional Court outlawed child marriage by setting 18 as the minimum age of marriage, affirming the rights of girls to protection from early marriage and aligning domestic law with international human rights obligations. In *Loveness Mudzuru & Ruvimbo Tsopodzi v. Minister of Justice & Others* (2016), the Court further emphasized that strategic litigation can serve as a tool for public-interest enforcement of SRHR protections. More recently, in November 2024, the High Court ruled that exclusions under the Termination of Pregnancy Act—specifically for pregnancies resulting from marital rape and sexual activity involving minors under 18—were unconstitutional, thereby expanding legal access to abortion. These judicial interventions demonstrate a growing willingness by Zimbabwean courts to interpret constitutional rights expansively in matters of reproductive justice. At the same time, the tragic case of *Memory Machaya* (2021), a 14-year-old who died in childbirth after a forced child marriage, exposed critical gaps in enforcement despite existing legal protections (Amnesty International, 2021; BBC, 2021; The Guardian, 2021). Comparative regional experiences also offer valuable lessons: in *Reproductive Health Alliance v. Attorney General* (Kenya, 2019), the Kenyan courts affirmed that access to reproductive health services is a constitutional right, demonstrating how strategic litigation can influence policy and rights protections—insights directly applicable to Zimbabwe's SRHR advocacy and litigation efforts."

2.7 Lessons Learnt and Drawn

High rates of child marriage, sexual violence, and unsafe abortion in Zimbabwe underscore the urgent need for comprehensive legal and policy reform. Existing legal frameworks are insufficient on their own and require effective enforcement, widespread social acceptance, and complementary public health measures to translate rights into meaningful protections. Strategic litigation, when combined with advocacy, community mobilisation, and evidence-based arguments, can serve as a powerful tool to drive systemic reform in sexual and reproductive health and rights (SRHR). Comparative experiences from across Africa demonstrate that courts can play a pivotal role in expanding rights protections and influencing national policy, offering valuable lessons for Zimbabwean practitioners and policymakers.

2.8 Practical Implications

Legal practitioners in Zimbabwe should integrate medical evidence alongside human rights arguments to strengthen litigation in sexual and reproductive health and rights (SRHR) cases. Activists and non-governmental organisations (NGOs) can use strategic litigation to complement broader advocacy campaigns and policy reform efforts, ensuring that legal action drives tangible change. Policymakers, in turn, must address and remove legal barriers, such as restrictive abortion laws, to align national legislation with constitutional guarantees and international obligations. Finally, law students and researchers should approach SRHR as a multidisciplinary field, recognising the intersections of law, medicine, sociology, and gender studies, and applying this holistic perspective to both research and practical interventions.

2.9 Reflecting Back on the Unit

By engaging with this unit, you should now be able to:

- Explain how contemporary SRHR issues like child marriage, sexual violence, unsafe abortion, and respectful maternity care, affect women and girls in Zimbabwe.
- Analyse the relationship between these issues and constitutional, regional, and international rights frameworks.
- Evaluate how recent case law has shaped the legal landscape for SRHR in Zimbabwe.
- Apply strategic litigation and advocacy strategies to address systemic SRHR challenges.

1.10 Activity for Learning

Case Study Discussion: *The Case of Memory Machaya (2021)*

1. Identify the SRHR rights violated in this case.
2. Which Zimbabwean constitutional provisions and international human rights instruments could be invoked to strengthen litigation on similar issues?
3. What enforcement gaps does the case reveal, despite existing legal protections?
4. If you were advising an NGO preparing litigation, what two key legal and advocacy strategies would you recommend to prevent such cases in the future?
5. Compare this case with *Mudzuru & Another v Minister of Justice* (2015). What similarities and differences do you see in terms of how litigation can address child marriage?

2.11 Unit Summary

This unit has explored contemporary SRHR issues in Zimbabwe, including child marriage, sexual violence, safe abortion, and respectful maternity care. It highlighted the legal and policy gaps, enforcement challenges, and public health impacts of these issues. Case law and practical examples demonstrated how litigation can be used strategically to advance SRHR protections, and lessons drawn underscore the importance of coordinated legal, advocacy, and policy

efforts. The unit also outlined practical implications for practitioners, policymakers, and students, emphasizing the need for Zimbabwe-focused interventions in SRHR litigation and reform.

UNIT 3: INTEGRATING INTERNATIONAL, REGIONAL, AND COMPARATIVE LAW IN ZIMBABWEAN SRHR LITIGATION

3.1 Structure of the Unit

This unit is organised as follows:

3.2 Objectives of the Unit

3.3 Overview

3.4 Definition of Terms

3.5 Key Issues for Discussion

3.6 Case Law and Examples

3.7 Lessons Learnt and Drawn

3.8 Practical Implications

3.9 Reflecting Back on the Unit

3.10 Activity of Learning

3.11 Unit Summary

3.2 Objectives of the Unit

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

- a) Identify key international, regional, and comparative legal instruments relevant to SRHR (United Nations, 1966, 1979, 2006; African Union, 2003).²³
- b) Relate foreign and regional jurisprudence to the Zimbabwean legal context (ACHPR, 2001, 2006).²⁴
- c) Define the role of comparative law in strategic litigation and constitutional interpretation (Viljoen, 2012).²⁵
- d) Explain how international and regional instruments can inform domestic SRHR litigation and advocacy (Motlatsi, 2020).

3.3 Overview

International, regional, and comparative legal frameworks serve as critical tools for reinforcing and expanding domestic constitutional

protections, particularly in the context of strategic litigation focused on sexual and reproductive health and rights (SRHR). While Zimbabwe adheres to a predominantly dualist legal approach-requiring the formal domestication of international treaties for them to be directly enforceable in domestic courts-its 2013 Constitution introduces important openings for a more integrative application of international law.

Section 46(1)(c) of the Constitution directs courts, when interpreting the Declaration of Rights, to consider international law and all treaties and conventions to which Zimbabwe is a party. This is a notable departure from rigid dualism and allows for international norms to influence rights-based adjudication even absent formal domestication. Furthermore, section 326 affirms that customary international law is automatically part of Zimbabwean law, provided it does not conflict with the Constitution or existing legislation. These provisions empower litigators to invoke international human rights norms and jurisprudence in challenging domestic legal and policy failures in SRHR.

The courts have progressively acknowledged and operationalised these constitutional clauses. In *Mudzuru & Another v. Minister of Justice, Legal and Parliamentary Affairs & Others* CCZ 12/2015, the Constitutional Court drew heavily on international and regional standards—including the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child—to declare child marriage unconstitutional, emphasising the transformative potential of the rights framework. Similarly, in *S v. Ncube & Others* 1987 (2) ZLR 246 (SC), the Supreme Court affirmed that customary international law forms part of Zimbabwean domestic law, thereby providing a doctrinal foundation for integrating global legal norms into constitutional analysis.

These precedents demonstrate the courts' willingness to embrace a more expansive and purposive interpretative approach, guided by international and comparative sources, especially in areas where domestic law is underdeveloped or regressive. Strategic litigators can thus utilise instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples' Rights, along with its Maputo Protocol, to advance claims around reproductive autonomy, maternal health, access to contraception, and protection from gender-based violence.

Comparative jurisprudence from other African jurisdictions further enriches the interpretative toolkit available to Zimbabwean courts. Decisions such as *Reproductive Health Alliance of Kenya v. Attorney General* (Kenya High Court, 2019), which affirmed access to reproductive health as a constitutional right, and *Attorney General v. Tapela & Another* (Botswana, 2014), which upheld the rights of non-citizen prisoners to HIV treatment, exemplify the growing role of African constitutional courts in operationalising international norms to fill domestic legal gaps. These cases not only provide persuasive authority but also underscore the region-wide judicial trend toward harmonising national laws with global human rights obligations (Chirwa, 2003; Viljoen, 2012; Motlatsi, 2020).

These provisions have been judicially acknowledged in cases such as *Mudzuru & Another v. Minister of Justice, Legal and Parliamentary Affairs & Others* CCZ 12/2015, where the Constitutional Court relied on regional and international norms to strike down child marriage, and *S v. Ncube & Others* 1987 (2) ZLR 246 (SC), which confirmed that customary international law forms part of domestic law. Such precedents illustrate how international and regional instruments, as well as comparative jurisprudence from other African states—can

guide judicial interpretation, fill legislative gaps, and expand the scope of rights protection (Chirwa, 2003; Viljoen, 2012). Courts across Southern Africa have increasingly referred to these sources to interpret constitutional rights, even when domestic law is silent or restrictive (Motlatsi, 2020).

3.4 Definition of Terms

International Law are rules and obligations binding on states through treaties, conventions, or customary practices (United Nations, 1966, 1979, 2006).

Regional Law are instruments or decisions applicable to specific geographic areas, e.g., the African Charter on Human and Peoples' Rights (OAU, 1981).²⁶

Comparative Law is the analysis or use of legislation, judicial decisions, or legal principles from other jurisdictions to inform domestic law (Viljoen, 2012).²⁷

3.5 Key Issues for Discussion

International treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Maputo Protocol, play a significant role in shaping domestic SRHR litigation in Zimbabwe by providing normative frameworks that courts and practitioners can reference (United Nations, 1979; African Union, 2003). Similarly, regional instruments such as the African Charter on Human and Peoples' Rights guide judicial interpretation by establishing rights standards and state obligations that inform constitutional reasoning (OAU, 1981). Comparative case law from countries such as Malawi, South Africa, Lesotho, and Nigeria further offers persuasive guidance for Zimbabwean courts, demonstrating how constitutional and statutory rights can be expanded to protect SRHR, even in contexts where domestic law may be restrictive or underdeveloped (Republic of Malawi, 1994; Republic of South Africa,

1996; Kabanza, 2014; Mojekwu v. Ejikeme, 2004; Odafe v. Attorney General, 2004).

While Zimbabwe generally follows a dualist legal system, section 46(1)(c) of the Constitution obliges courts, when interpreting the Declaration of Rights, to take into account international law and conventions to which Zimbabwe is a party, and section 326 recognises customary international law unless inconsistent with the Constitution or legislation. These provisions have been tested in practice: for example, in *Mudzuru & Another v. Minister of Justice, Legal and Parliamentary Affairs & Others* CCZ 12/2015, the Constitutional Court struck down child marriage by drawing on both the African Charter on the Rights and Welfare of the Child and the Maputo Protocol. This demonstrated the Court's willingness to integrate international human rights standards into constitutional interpretation, providing an important precedent for future SRHR litigation in Zimbabwe.

To navigate these challenges effectively, legal practitioners can employ strategies that leverage foreign and regional jurisprudence persuasively, drawing parallels between Zimbabwe and similarly situated jurisdictions to strengthen litigation outcomes (Viljoen, 2012).

3.6 Case Law and Examples

Several regional and comparative cases illustrate how international and regional instruments can inform domestic SRHR litigation in Zimbabwe. For instance, in *Legal Resources Foundation v. Zambia* (ACHPR, 2001), the African Commission confirmed that treaties not domesticated can still impose obligations on states, a principle that Zimbabwean courts could adopt in SRHR cases. Similarly, *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (ACHPR, 2006) affirmed state obligations to prevent and redress human rights violations, even when perpetrated by private actors. Importantly, Zimbabwean jurisprudence has already demonstrated this approach: in *Mudzuru & Another v.*

Minister of Justice, Legal and Parliamentary Affairs & Others CCZ 12/2015, the Constitutional Court struck down child marriage by relying on the African Charter on the Rights and Welfare of the Child and the Maputo Protocol, affirming that international human rights instruments can guide constitutional interpretation. Likewise, in *Magaya v. Magaya* (1999), although the Supreme Court privileged customary law over equality rights, the case remains a cautionary example of the dangers of failing to harmonize domestic law with international obligations. Comparative constitutional examples further demonstrate practical approaches: Section 11(2)(c) of the Malawi Constitution directs courts to consider international law and foreign case law (Republic of Malawi, 1994), while Section 39(1) of the South African Constitution obliges courts to consider international law in interpreting the Bill of Rights (Republic of South Africa, 1996)."

"In Lesotho, the Court of Appeal in *Ts'epe v. Independent Electoral Commission & Others* (Kabanza, 2014) cited the African Charter, CEDAW, and ICCPR despite their non-domestication, highlighting the persuasive authority of regional instruments. Nigerian cases, including *Mojekwu v. Ejikeme* (2004) and *Odafe v. Attorney General* (2004), similarly illustrate the enforcement of rights using international instruments where domestic law was silent. Additionally, courts across Southern Africa have cited non-binding international instruments, such as ILO guidelines on HIV and workplace discrimination, to reinforce constitutional rights to health, non-discrimination, and dignity (ILO, 2010). These examples are directly applicable to Zimbabwe because section 46(1)(c) of the Constitution obliges courts, when interpreting the Declaration of Rights, to consider international law and conventions to which Zimbabwe is a party, while section 326 incorporates customary international law unless inconsistent with the Constitution. Zimbabwean courts have already acted in this spirit, as seen in *Mudzuru & Another v. Minister of Justice, Legal and Parliamentary Affairs & Others* CCZ 12/2015, where the Constitutional Court relied on the African Charter and Maputo Protocol to outlaw child marriage. Together, these

regional and comparative precedents reinforce the opportunities for Zimbabwean litigators to strategically use international, regional, and comparative law to advance SRHR protections within the domestic constitutional framework."

3.7 Lessons Learnt and Drawn

Comparative and regional jurisprudence offers persuasive authority for expanding SRHR protections in Zimbabwe, as demonstrated by cases such as *Legal Resources Foundation v Zambia* (ACHPR, 2001) and *Zimbabwe Human Rights NGO Forum v Zimbabwe* (ACHPR, 2006). Even when international instruments have not been domesticated, they can guide constitutional interpretation and inform advocacy strategies, providing a normative framework for litigators (Viljoen, 2012). Comparative case law from other African jurisdictions illustrates practical methods for addressing gaps in domestic law, as seen in *Ts'epe v Independent Electoral Commission & Others* (Kabanza, 2014) and Nigerian cases such as *Mojekwu v Ejikeme* (2004). By strategically deploying these instruments, legal practitioners can strengthen litigation, advocacy, and public policy reform, particularly in critical SRHR areas such as safe abortion, obstetric violence, and child marriage.

3.8 Practical Implications

Legal practitioners are encouraged to integrate international, regional, and comparative law into SRHR litigation to strengthen constitutional arguments and expand the scope of rights protection (Viljoen, 2012; Chirwa, 2003). Similarly, NGOs and activists can leverage foreign and regional jurisprudence to complement advocacy campaigns and influence policy reforms, ensuring that legal strategies are supported by broader normative frameworks (Motlatsi, 2020). Policymakers, on the other hand, should harmonize domestic law with international and regional obligations to remove legal barriers and enhance rights protection, particularly in areas such as safe abortion, child marriage,

and obstetric violence (United Nations, 1979; African Union, 2003). Finally, law students and researchers should cultivate multidisciplinary skills, combining legal analysis with an understanding of international human rights frameworks to effectively engage in SRHR litigation, advocacy, and research.

3.9 Reflecting Back on the Unit

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

- Explain how Zimbabwean courts integrate international and regional law when interpreting the Constitution.
- Identify how comparative jurisprudence provides persuasive authority.
- Analyse the role of constitutional provisions (Sections 46(1)(c) and 326) in bridging Zimbabwe's dualist system with international norms.

3.10 Activity of Learning

Case Study – *Mudzuru & Another v Minister of Justice, Legal & Parliamentary Affairs & Others* (2015)

1. Which international and regional instruments did the Court rely on in striking down child marriage?
2. How did the Court interpret Section 46(1)(c) of the Constitution in light of Zimbabwe's dualist legal system?
3. Compare this approach with South Africa's Section 39(1) of the Constitution, which obliges courts to consider international law when interpreting the Bill of Rights.
4. In small groups, draft a short argument showing how a future Zimbabwean court could use *Mudzuru* as precedent in another SRHR issue (e.g., maternal health or access to contraception).

3.11 Unit Summary

This unit has demonstrated the strategic value of international, regional, and comparative law in shaping domestic SRHR

jurisprudence. By linking foreign and regional experiences to Zimbabwe's legal context, practitioners can use persuasive authority to expand constitutional protections, influence judicial reasoning, and strengthen advocacy efforts. While Zimbabwe generally follows a dualist system, section 46(1)(c) of the Constitution obliges courts to consider international law and conventions when interpreting the Declaration of Rights, and section 326 recognises customary international law as part of domestic law unless inconsistent with the Constitution or legislation. These provisions significantly enhance the legal toolkit available for litigating SRHR cases and advancing the rule of law, as illustrated in *Mudzuru & Another v. Minister of Justice, Legal and Parliamentary Affairs & Others* CCZ 12/2015, where the Constitutional Court relied on the African Charter and Maputo Protocol to strike down child marriage (ACHPR, 2001, 2006; Viljoen, 2012; *Mudzuru*, 2015).

UNIT 4: STRATEGIC SRHR LITIGATION IN ZIMBABWEAN NATIONAL COURTS

4.1 Structure of the Unit

This unit is organised as follows:

4.2 Objectives of the Unit

4.3 Overview

4.4 Definition of Terms

4.5 Key Issues for Discussion

4.6 Case Law and Examples

4.7 Lessons Learnt and Drawn

4.8 Practical Implications

4.9 Reflecting Back on the Unit

4.10 Activity of Learning

4.11 Unit Summary

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.

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.

REFERENCES

- Amnesty International. (2021, July 20). *Zimbabwe: Child marriage death sparks calls for legislative reform*. <https://www.amnesty.org>
- BBC. (2021, July 21). *Zimbabwe: 14-year-old dies after forced marriage in Marange*. <https://www.bbc.com>
- Chirwa, D. (2003). The influence of international law on domestic courts in Africa: A Zimbabwean perspective. *African Human Rights Law Journal*, 3(2), 211–230.
- Ebeku, K. S. A. (2004). *Mojekwu v Ejikeme: Enforcing women's rights through international law in Nigeria*. *Nigerian Law Review*, 4(1), 45–68.
- Guttmacher Institute. (2018). *Abortion in Zimbabwe: Facts and figures*. <https://www.guttmacher.org>
- ILO. (2010). *International Labour Organisation guidelines on HIV and workplace discrimination*. International Labour Organisation. <https://www.ilo.org>
- Kabanza, J. (2014). *Ts'epe v Independent Electoral Commission & Others: Lesotho Court of Appeal*. *Lesotho Law Journal*, 8(1), 112–127.
- Mojekwu v. Ejikeme, [2004] 4 S.C. (Supreme Court of Nigeria).
- Motlatsi, P. (2020). Integrating international human rights instruments in domestic litigation: Botswana experience. *Botswana Law Review*, 12(2), 78–95.
- Mudzuru & Another v. Minister of Justice, Legal and Parliamentary Affairs & Others, CCZ 12/2015 (Constitutional Court of Zimbabwe).
- Mudzuru & Tsopodzi v. Minister of Health & Child Care & Others, HC 3903/20 (High Court of Zimbabwe).
- Odafe & Others v. Attorney General of the Federation & Others, (2004) AHRLR 205 (Nigeria, Federal High Court).
- Odafe v Attorney General, High Court of Nigeria (2004).
- OAU. (1981). *African Charter on Human and Peoples' Rights*. Organisation of African Unity. <https://au.int/en/treaties/african-charter-human-and-peoples-rights>

- Republic of Malawi. (1994). *Constitution of Malawi*. Government Printer.
- Republic of South Africa. (1996). *Constitution of the Republic of South Africa, 1996*. Government Gazette.
- S v. Ncube & Others, 1987 (2) ZLR 246 (Supreme Court of Zimbabwe).
- UNFPA. (2021). *Gender-based violence and SRHR in Zimbabwe*. United Nations Population Fund. <https://zimbabwe.unfpa.org>
- UNFPA, ZimStat, & UNICEF. (2022). *Adolescent reproductive health and contraceptive use in Zimbabwe*. <https://www.unicef.org>
- United Nations. (1966a). *International Covenant on Civil and Political Rights (ICCPR)*. United Nations Treaty Series. <https://www.ohchr.org>
- United Nations. (1966b). *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. United Nations Treaty Series. <https://www.ohchr.org>
- United Nations. (1979). *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*. United Nations Treaty Series. <https://www.un.org/womenwatch/daw/cedaw/>
- United Nations. (1989). *Convention on the Rights of the Child (CRC)*. United Nations Treaty Series. <https://www.ohchr.org>
- Viljoen, F. (2012). *International human rights law in Africa* (2nd ed.). Oxford University Press.
- WHO. (2018). *Respectful maternity care: The universal rights of childbearing women*. World Health Organisation. <https://www.who.int>
- ZimStat & UNICEF. (2019). *Multiple Indicator Cluster Survey 2019: Child marriage statistics in Zimbabwe*. <https://www.zimstat.co.zw>

Cases & Legal Documents

- Legal Resources Foundation v Zambia, African Commission on Human and Peoples' Rights (2001).
- Zimbabwe Human Rights NGO Forum v Zimbabwe, African Commission on Human and Peoples' Rights (2006).

Mudzuru & Another v Minister of Justice, Legal & Parliamentary
Affairs & Others, Constitutional Court of Zimbabwe (2016).

Synopsis

I was compelled to write this SRHR (Sexual and Reproductive Health and Rights) litigation guide after being unexpectedly immersed in a project necessitating strategic litigation within this domain. As I navigated the intersecting legal, social, and practical complexities, it became apparent that there existed a conspicuous dearth of accessible, contextually grounded resources—particularly within Zimbabwe and the broader Southern African region. Despite the increasing recognition of SRHR as a critical axis intersecting human rights, public health, and social justice, there remains a significant void in practical guidance tailored to legal practitioners, activists, and civil society actors engaged in litigation. Much of the extant literature is either excessively generalised, embedded in foreign legal frameworks, or predominantly concerned with policy advocacy rather than the nuanced realities of litigation strategy. This lacuna rendered an already intricate undertaking even more formidable. The decision to write this guide was thus both a pragmatic and principled response—an effort to demystify SRHR litigation, to distil and share insights borne of practice, and to equip others who may find themselves required to act swiftly and strategically within a legally complex and resource-constrained environment.

About the Author



Memory Makuyana is a Legal and Policy Consultant, Strategic Litigation Expert, and Human Rights Advocate with more than eight years of experience in advancing access to justice, gender equality, reproductive health rights, and environmental protection across Africa. She manages the University of Zimbabwe's Access to Justice Centre and coordinates its Environmental Law Unit, leading litigation, legal aid, and capacity-building initiatives that bridge academia, communities, and policy reform. She has worked with international partners such as UNICEF and the Community Working Group on Health in partnership with Afya Na Haki Institute, Uganda, designing and implementing strategic litigation programmes on children's rights and reproductive justice. Makuyana is an admitted Legal Practitioner and Notary Public in Zimbabwe. She holds an LLB from the University of South Africa and an MBA from the University of Zimbabwe, and she is in the process of pursuing a PhD on *"Strategic Litigation and Sustainable Justice: Advancing Child Rights, Gender Equality, Reproductive Health, and Environmental Protection in Africa."*