

# A Guide to Using the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage

For Parliamentarians, Civil Society Organisations and Youth Advocates





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# Foreword

**When a young girl becomes a bride, the consequences are lifelong – for the girl, for her children and for her nation. Globally, every year 12 million girls are married before age 18. Over 650 million women alive today were married as children. In East and Southern Africa, 35% of women are married before age 18.**

Child marriage is rooted in gender inequality and in the low value accorded to girls, and is exacerbated by poverty, insecurity and conflict. It denies girls their rights and undermines numerous development priorities. Ending child marriage will require long-term, sustainable action across many different sectors. A robust legal and policy framework with commitment and financing for implementation to prevent child marriage and to support married girls should be the cornerstone of Government efforts to address the practice.

In that context, the Southern African Development Community (SADC) Model Law on Eradicating Child Marriage, and Protecting Children Already in Marriage\* adopted by the Plenary Assembly of the Southern African Development Community Parliamentary Forum (SADC-PF) on the 3rd June 2016, constitutes a milestone in the efforts to end child marriage in Southern Africa. The Model Law provides guidance to parliamentarians, Ministries of Justice, policymakers, and other stakeholders in SADC Member States as they develop effective national laws to end child marriage and address inconsistencies in their current legal frameworks.

The SADC Model Law will only fulfil its potential if it is understood and adequately used by those who work to provide an enabling legal and policy framework, those who develop and implement programmes to address child marriage, and those who work to hold the Government accountable. This Guide aims to support the domestication and implementation of the SADC Model law by providing an easy-to-use overview of the content of the Model Law with practical and concrete examples and recommendations on how interested parliamentarians, civil society organizations and young advocates can take action to promote the Model Law in their countries.

Parliamentarians, civil society organizations and youth advocates are indeed uniquely positioned to shape, advance and implement a model law. They can lead the development of relevant legislation and policies, set the political agenda as opinion leaders on ending child marriage, pass budgets, monitor implementation, and ensure accountability for both national and international commitments, including Government accountability to Target 5.3 of the Sustainable Development Goals to end child marriage by 2030. They can guarantee that the voices of citizens are heard, particularly the voice of the girl child, in order to mobilise political will and commitment to end child marriage.

We believe that by establishing a fruitful and long-term partnership with committed parliamentarians, civil society organizations and the youth, we can work together towards a world where girls and women enjoy equal status with boys and men.

We wish you every success in your endeavours to end child marriage and to realise the rights of every girl.



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# About the Authors

This Guide was jointly developed by the following organisations:

*The Southern African Development Community Parliamentary Forum (SADC-PF)* is a regional inter-parliamentary body composed of approximately 3,500 Members of Parliament from 14 SADC Member State national parliaments (i.e. Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe). Established by the SADC Summit in 1997, the Forum aims to support and improve regional integration through parliamentary involvement, and promote best practices in the role of parliaments in regional integration and cooperation. The Forum's priorities include promoting human rights, gender equality, good governance, democracy and transparency.

*Girls Not Brides: The Global Partnership to End Child Marriage* is a global partnership of more than 900 civil society organisations from over 95 countries committed to ending child marriage and enabling girls to fulfil their potential. Members are based throughout Africa, Asia, the Middle East, Europe and the Americas. They share the conviction that every girl has the right to lead the life that she chooses and that, by ending child marriage, they can achieve a safer, healthier and more prosperous future for all. Stronger together, Girls Not Brides members bring child marriage to global attention, build an understanding of what it will take to end child marriage and call for the laws, policies and programmes that will make a difference in the lives of millions of girls.

UNFPA, *The United Nations Population Fund* is the lead UN agency for delivering a world where every pregnancy is wanted, every childbirth is safe and every young person's potential is fulfilled. UNFPA advocates for the rights of young people, including the right to accurate information and services related to sexuality and reproductive health. Empowered with knowledge and skills to protect themselves and make informed decisions, they can realize their full potential and contribute to economic and social transformation. UNFPA's commitment to address child marriage is highlighted in the 2013 Strategy on Adolescents and Youth, which is operationalized in the multi-country initiative called Action for Adolescent Girls and the UNFPA-UNICEF Global Programme to Accelerate Action to End Child Marriage.

## Acknowledgements

This guide was developed jointly by Girls Not Brides, UNFPA East and Southern Africa Regional Office and the SADC Parliamentary Forum.

Girls Not Brides and UNFPA East and Southern Africa Regional Office were supported in the development of the contents by a team of consultants led by Maria Bordallo and composed of Flor Hunt, Rhon Reynolds and Sophie Legros, as well as Pierre La Ramee for editing. Technical leadership and strategic oversight was provided by Françoise Kpeglo Moudouthe, Head of Africa Engagement at Girls Not Brides, jointly with Maja Hansen, Adolescent and Youth Programme Specialist at UNFPA ESARO and with significant contributions from Boemo Sekgoma, Acting Secretary General and Director of Programs at the SADC Parliamentary Forum. The design of the guide was supported by Paprika Graphics and Communication.

We would like to express our appreciation to the individuals and organisations that have contributed their time, expertise and materials to this guide, including the members of the Advisory Group, interviewees and participants to the strategic meeting that took place in November 2017. Their names and organisations are listed in Annex 6.

# Acronyms

<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>CEDAW</b>	Convention on the Elimination of all forms of Discrimination Against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>CSO</b>	Civil Society Organisation
<b>GNB</b>	Girls Not Brides
<b>MP</b>	Member of Parliament
<b>SADC</b>	Southern African Development Community
<b>SADC-PF</b>	Southern African Development Community Parliamentary Forum
<b>SDGs</b>	Sustainable Development Goals
<b>SRH</b>	Sexual and Reproductive Health
<b>SRHR</b>	Sexual and Reproductive Health and Rights
<b>UNFPA</b>	United Nations Population Fund
<b>UNFPA ESARO</b>	United Nations Population Fund East and Southern Africa Regional Office
<b>UNICEF</b>	United Nations Children's Fund



# Introduction to the Guide

As the first-ever regional model law on child marriage, the Southern African Development Community (SADC) Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage\* (hereby referred to as the Model Law), provides a common framework to end child marriage and protect children already in marriage, for law-makers, policy-makers, service providers and civil society, among other actors across the SADC region. It has the potential to trigger law and/or policy reform on child marriage in SADC Member States by providing an easy-to-apply regional standard and to promote cohesion among SADC Member States' in relation to their legal response to child marriage.

Unless this Model Law is properly understood by all stakeholders and used in the development of national legislation and policies, it will remain nothing more than a promissory note. Thus, convinced of its potential, the SADC-PF partnered with *Girls Not Brides* and UNFPA East and Southern Africa Regional Office (UNFPA ESARO) to develop a user-friendly Guide to using the SADC Model Law.



## Objectives of the Guide

This Guide is envisaged **as a tool to make the Model Law's content more accessible and to encourage and facilitate its use at the national level.**

It is designed for all actors engaged in efforts to address child marriage in Southern Africa, with a specific focus on parliamentarians, policymakers, civil society organisations (CSO) and youth advocates.

The Guide specifically aims to:

- **Promote understanding of the contents and value** of the SADC Model Law as an important instrument for addressing child marriage in the SADC region through legal reform and strengthened programming;
- **Make the contents of the SADC Model Law more accessible to non-legal experts**, by providing a summary of its key provisions;
- **Provide practical, actor-specific guidance and tools on how to use the SADC Model Law** to actors addressing child marriage across the region, including for advocacy for legal reform and monitoring for strengthened social accountability; and
- **Promote cohesion among actors** engaged in the movement to end child marriage in Southern Africa.

## How was this Guide Developed?

The guide was developed jointly by the SADC-PF, *Girls Not Brides* and UNFPA East and Southern Africa Regional Office, through a highly participatory process which involved legal experts, parliamentarians, CSOs, national and regional youth advocates as well as other key informants engaged in efforts to end child marriage in the region. The Advisory Group to the *Model Law on Ending Child Marriage User Guide* provided valuable insight into the needs of potential users of the Guide, and feedback on drafts, including during a final validation workshop, as well as provided guidance on dissemination and roll out plans for the Guide. The membership for the Advisory Group was drawn from a diverse set of stakeholders, and experts from the SADC region. Participants included those who have been part of the Model Law development process, and potential users of the Guide. The membership was comprised of *Girls Not Brides* members, Parliamentarians, UNFPA and UNICEF country representatives, youth activists, civil society organizations, advocates and allies advocating for ending child marriage, youth rights and other relevant issues.

See Annex 6 for a full list of Advisory Group members and other contributors to this Guide.

\* [http://www.sadcpf.org/index.php?option=com\\_docman&task=doc\\_download&gid=111&Itemid=91](http://www.sadcpf.org/index.php?option=com_docman&task=doc_download&gid=111&Itemid=91)



# Structure of the Guide

This Guide is divided into **five sections**:

Section 1 provides the definition of child marriage and an overview of its impact as well as prevalence in the SADC region.

Section 2 provides an overview of the SADC Model Law on child marriage, focusing on its purposes and key features. It also outlines the various ways in which the Model Law can be used at country level.

Section 3 provides a summary overview of the Model Law, simplifying its language. The summary is not exhaustive; instead it aims to give the reader a good understanding of the Model Law's key provisions.

Section 4 provides practical guidance to parliamentarians as they are uniquely positioned to shape, promote and encourage the implementation of child marriage legislation within their countries and beyond.

Section 5 provides practical guidance for civil society and youth advocates on how to use the Model Law for direct advocacy, accountability or programmatic implementation around the Model Law. The content of this section is not meant as an exhaustive list, rather a suggestion of possible actions CSOs and youth advocates can take to advance the Model Law in their countries.

The Guide includes **six annexes**, most of which are referenced to the Guide as tools for readers to get deeper understanding of the Guide's contents.

It is important to note that:

- Annex 3 identifies certain issues addressed in the SADC Model Law which are still the subject of debates among the different stakeholders working on child marriage in Southern Africa (specifically criminalization, funding and accountability). It recognises that the Model Law has taken a certain position in these debates, and seeks to provide a full picture of the considerations that were raised during the consultation processes. It aims to give readers the tools to form their own opinions and organise further discussions so as to make informed decisions on how to best adapt, adopt or advocate for some of the Model Law's provisions.
- The Model Law promotes a multi-sectoral approach to ending child marriage and identifies specific roles and responsibilities for key government stakeholders throughout its provisions. Annex 5 compiles these roles, thus providing useful guidance for Government actors and a tool for advocates and parliamentarians seeking to keep the Government accountable.

# Section 1. Child Marriage in the SADC Region: An Overview



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## What is Child Marriage and Why is it Harmful?

“Child marriage” is usually defined as a formal marriage or an informal union in which one or both of the parties is below the age of 18.

- **Child Marriage Is A Violation Of Human Rights**

Child marriage violates the rights of children, especially girls (who are disproportionately affected by the practice) to health, education, equality and non-discrimination, as well as the right to a life free from violence and exploitation. These rights are enshrined in many international and regional human rights instruments.

“Child marriage” means a statutory or customary union in which one party is a child or both of the parties are children.”

SADC Model Law, Part 1, section 2 (Interpretation), p. 7\*

The SADC Model Law uses a strong definition of child marriage that includes both formal marriage and unions conducted under customary law. This is critical because legal pluralism is common across Southern Africa, often leading to contradictions between statutory law and customary law and practice.

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- **Child Marriage Has Life-Threatening Health Consequences For Girls**

Child marriage is associated with early pregnancy as girls are pressured to prove their fertility. It leads to pregnancy-related complications which is a leading cause of death among girls aged 15 to 19 in low- and middle-income countries worldwide. Once married, inability to refuse sex, or negotiate safe sex, also puts girls at high risk of sexually transmitted infections, including HIV/AIDS.

- **Child Marriage Keeps Girls And Communities Poor**

Girls who marry young are less likely to receive the education they need to access the employment opportunities that will allow them to earn an income and help uplift themselves and their families out of poverty. Child marriage thus perpetuates an intergenerational cycle of poverty. A recent study on the economic impact of child marriage found that that child marriage is costing trillions to the global economy.<sup>1</sup>

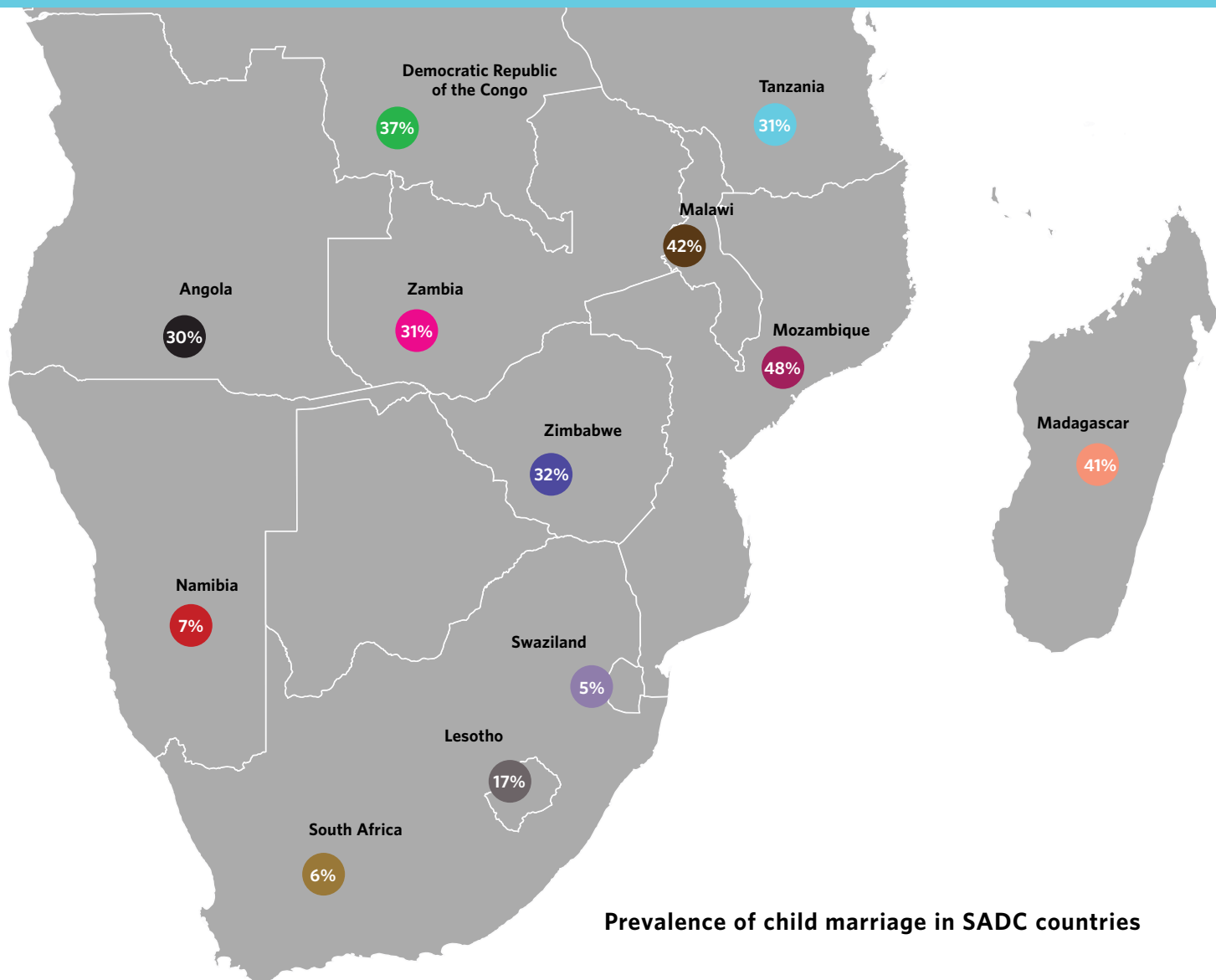
\* [http://www.sadcpf.org/index.php?option=com\\_docman&task=doc\\_download&gid=111&Itemid=91](http://www.sadcpf.org/index.php?option=com_docman&task=doc_download&gid=111&Itemid=91)

- **Child Marriage Is An Expression Of Gender Inequality**

Where child marriage is practised, girls are generally not valued as much as boys and do not have a say in the decisions that affect their own lives. At its root, child marriage is perpetuated by structural gender inequality, including unequal power relations and discriminatory norms around girls' value, sexuality and role in society.

## Child Marriage in the SADC Region

Globally, an estimated 12 million girls marry each year before they turn 18.<sup>2</sup> An estimated 650 million women alive today were married as children. Child marriage is widespread but not evenly practiced across the SADC region: in eight of the region's 15 countries, prevalence rates exceed 30% while three countries have prevalence rates lower than 10%. Mozambique, Malawi, Madagascar and the Democratic Republic of the Congo are among the 20 countries with the world's highest child marriage prevalence rates.<sup>3</sup>



<sup>1</sup>World Bank and International Center for Research on Women, The Economic Impacts of Child Marriage: Global Synthesis Brief, 2017

<sup>2</sup>Child marriage prevalence is the percentage of women 20-24 years old who were first married or in union before they were 18 years old.

<sup>3</sup>UNICEF, State of the World's Children, 2017 – based on Multiple Indicator Cluster Surveys (MICS), Demographic and Health Surveys (DHS) and other national surveys, and refers to the most recent year available during the period 2010-2016.]

## Section 2. What is the SADC Model Law on Child Marriage?



### What is a Model Law?

- ‘Model legislation’ may be defined as **a set of legal standards on a specific issue**, which are offered for the consideration of, and adoption by, national legislators as part of their national law. It typically embodies a **detailed set of provisions** inspired from international, regional or sub-regional standards on a subject.
- A Model law serves as a **sample or reference law** that can be used by national Governments. Model laws are therefore not developed with a specific country in mind, but rather as **a template that could be applied to several countries**. Model legislation is often adopted at a regional level, for a set of countries facing similar challenges.

### Why and How was the SADC Model Law on Child Marriage Developed?

In June 2014, during its 35th Assembly, SADC-PF adopted a Resolution that called for concerted efforts to end child marriage in the SADC region.

The Secretariat of the SADC-PF followed up by partnering with several organisations including UNFPA East and Southern Africa Regional Office (UNFPA ESARO), Association of European Parliamentarians with Africa, Plan International, the Southern African Litigation Centre, Girls Not Brides and the World Young Women’s Christian Association, to develop the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage (commonly referred to as the Model Law on child marriage). The Model Law was formally adopted in June 2016 during the 39th Plenary Assembly session of the SADC-PF.

The two-year process was thorough and participatory. It involved a wide range of stakeholders, including parliamentarians, policy-makers, young people, legal experts and legal drafters, judges, civil society organisations, and UN agencies from across the SADC region.



# Objectives of the SADC Model Law on Child Marriage

The SADC Model Law on child marriage provides a **comprehensive legal framework without loopholes** to guide the actions of Member States with regard to **legislation, policy and programming** to address the problem of child marriage.

The SADC Model Law on child marriage is designed to:

- Encourage the **adoption of progressive marriage laws** and the **reform of outdated laws**;
- Provide **specific guidance to national legislators** in Southern Africa on the **content and provisions of effective child marriage laws** that would be binding at the national level;
- **Promote regional and country level harmonization of child marriage-related laws** across and within Member States – laws on sexual offences; laws relating to gender equity and equality; penal laws; marriage laws; or divorce laws;
- **Provide clear definitions of terms** – such as ‘child’ and ‘child marriage’- to avoid ambiguity and enhance consistency (e.g. It sets the **legal minimum age of marriage at 18 for both sexes**, without the exceptions commonly seen in existing national laws);
- **Reaffirm a human rights approach** focused on the rights of women and children – to tackling the issue of child marriage in Southern Africa;
- Serve as a **standard for national legislators** and policy makers and promote accountability;
- Help **put the issue of child marriage on the agenda** and serve as a **stimulus for debate** as well as an entry point for advocacy; and
- Encourage data collection and in-depth research to guide design, implementation, monitoring and evaluation of programmes to ensure that they address the needs of the most vulnerable and at-risk groups of girls.

## Key Features of the SADC Model Law on Child Marriage

The Model Law on child marriage incorporates some key features that help facilitate its use at the national and local level:

- **It is holistic and comprehensive** in that it goes beyond marriage, **providing a multi-sectoral framework** for prevention, protection and mitigation of the effects of child marriage (e.g. through provision of comprehensive sexuality education, asset building, improved access to health, education and protection services, among others).
- Perhaps most importantly, it is **easy to use** as it is drafted in a way that makes it **possible to transplant its contents into national legislation** without undue effort following simple clear instructions. By way of example, readers are invited to review the Mozambique and Malawi case studies as archetypal models of the national ‘transplantation’ process in SADC Member States.

# How can the SADC Model Law be used to Accelerate Change at the National Level?

- The Model Law can be used **by lawmakers** in SADC Member States to **fully or partially domesticate its content** into one or several national laws.
- Lawmakers may follow the Model Law's specific guidance to **create a new comprehensive national law on child marriage** that encompasses all the areas in the Model Law, while adapting relevant provisions to suit the national context.
- **National legislatures may also review its existing legal framework and draw from different parts of the Model law to amend specific existing laws** in order to align with the standards set by the Model law. For example, a country may amend its Marriage Act to include the Model Law's provisions on minimum age of marriage; or a country may amend its Birth Registration Act to incorporate the Model law's provisions on birth registration. When there are several amendments needed to different laws in order to bring alignment to the Model law, a country may consider to pass a main law (e.g. a "Child Marriage Act" and amend other laws through "consequential amendments" which accompany the main law.
- The Model Law can also serve as a reference for **policy makers to initiate or influence policy reform processes**, as some of its provisions call for administrative action and can serve as input for national policies or programs. For example, the Model Law's includes language on girls' education that can provide a standard for setting or amending policies to regulate re-entry into formal education for girls whose education would have been disrupted by child marriage or teenage pregnancy.
- The Model Law includes provisions that can guide those who **develop, implement and monitor national strategies or action plans** to end child marriage and **are ready to implement**.



## Section 3. What does the SADC Model Law on Child Marriage Say? A Summary



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### The Model Law Reaffirms Basic Rights, Concepts and Principles Related to the Child

The Model Law, which is based on international and regional human rights instruments, restates the basic rights of all children, and immediately provides for the policies, measures and intervention to be put in place by Governments to ensure the realization of these rights. Special mention is made in the Model Law to the rights of vulnerable children, especially in the context of a vulnerable child in marriage or victim of a child marriage.

The specific rights and protections included in the Model Law include:

- **Basic rights:** Decisions taken by the Government, judicial institutions, service providers, parents, and others, must be taken in the best interest of the child. Children should have knowledge of such decisions and be granted the opportunity to express their opinion. The Government must put into place measures to ensure, to the maximum extent possible, the survival, protection and development of the child and young women affected by child marriage;
- **Protection from discrimination** on grounds of race, colour, sex, gender, age, language, religion, tradition and custom, political or other opinion, conscience, ethnic or social origin, disability, property status, birth, marital status, location, status of the child's parent or other status;
- **Right to life, privacy, dignity and respect**, and the right to equal treatment including the right to **equal opportunities** in political, economic, cultural and social spheres;
- **Protection from harmful practices** such as female genital mutilation, sexual exploitation, trafficking, child marriage;
- **Right to parental care** and to live with one parent or both parents. Where a child is not receiving the necessary care and protection from a parent, the Government shall try to provide appropriate alternative care for the child. In normal circumstances where legal custody is not divided, both parents have an equal duty to protect and adequately provide for the child;
- **Right to health** information, education, and services, including the right to mental health;

- **Social protection and social services**, including protection from child labour and right to sustainable livelihood and empowerment, not to be subjected to economic exploitation or any work that is hazardous;
- **Protection from physical and psychological violence or abuse**, neglect and any other form of exploitation, including sale, slavery, trafficking or abduction by any person; and provide any support for the prevention, identification, reporting, referral, investigation, rehabilitation and treatment of injury or illness resulting from maltreatment, abuse or exploitation;
- **Right to equal pay** for equal work or equal value of work; and
- **Right to registration of birth and marriage.**

### Vulnerability of children in fragile states and during humanitarian crisis

The Model Law does not explicitly include vulnerable children, those children living in situations of conflict or humanitarian settings; however, growing evidence shows that in times of humanitarian crisis, child marriage rates increase, with a disproportionate impact on girls. Poor families who have lost livelihoods, land and homes because of a crisis, consider child marriage as a way to cope with greater economic hardship and to protect girls from increased violence. But in reality, it leads to a range of devastating consequences.

Do you want to read in more detail? Go to pages 30 to 46 of the Model Law. For a comprehensive list of relevant human rights instruments and agreements see Annex 1.

## The Model Law Includes Provisions for the Prohibition of Child Marriage and Voids Existing Marriages in Certain Circumstances

- In accordance with regional and international treaties, **the SADC Model Law requires countries to set the minimum age of marriage at 18**, register all marriages and take effective action, including through legislation, to eradicate child marriage.
- It specifically says that **“the betrothal of a child, marriage between a child and an adult, and marriage between two children is prohibited**. No one shall contract, solemnize, abet or aid, promote, permit, coerce or force the betrothal or marriage of a child.”
- The Model Law also says that the **prohibition will be “from the commencement of the law”**, which means that the prohibition and punitive measures associated to it, will come into effect only once the law has been adopted.
- Child marriages and betrothals that were officiated before the law was enacted, will not be punishable, however **every child marriage contracted before the commencement of the law shall be revocable**.
- The Model Law provides that **offspring of prohibited marriages are considered as legitimate children for all legal, judicial or administrative purposes** and have the same rights and responsibilities as other legitimate children, and thus protects children born as a result of child marriages.
- The Model Law makes provision for all **property acquired by both married parties to be distributed equally between them after voiding the marriage**, while the property acquired or inherited by the married child stays with the child. Citizenship rights acquired by the child because of the marriage are maintained.

More information about prohibition in the Model Law can be reviewed in pages 46 to 50.



# The Model Law Proposes Measures for Prevention of Child Marriage

The Model Law lays out concrete guidance around prevention of child marriage and betrothal. It provides that a person who is requested to, or is about to, solemnize a marriage, and suspects or believes that one party is a child, or both of the parties are children, **must verify the age of the child** by means of a birth certificate, identification card or other official document that may reveal the identity and possible age of the child.

If a court has enough grounds to believe that a betrothal or marriage has been arranged or is about to take place it can issue a restraining order. A restraining order can be issued to anyone committing any act that may lead to a betrothal or child marriage and it is meant to restrain any person from aiding or abetting the commission of any such act. If that order is disobeyed or disregarded, this is considered an offence and the offenders will be **liable, on conviction, to a fine or imprisonment**.

The Model Law also includes **education as a means of prevention**, and it says that education must be considered along with the nature, causes and consequences of child marriage as well as the consequences of traditional and customary initiation programs. **Compulsory education** must be rolled out in public and private learning institutions, including vocational, religious, non-formal and indigenous learning systems and institutions.

The Model Law also mentions that the Government can establish **economic incentives for families** and children to assist in the delay of marriage, such as: providing cash transfers to the family to encourage children to remain single until they reach the minimum age of marriage; providing funds to a girl child, to enable her to complete secondary education; or giving scholarships and bursaries to a girl child up to tertiary level.

Interested in reading more about what the Model Law says about Prevention?  
Check pages 50 to 54 of the Model Law.

# The Model Law Provides Guidance for Mitigation of the Harmful Effects of Child Marriage

Measures to mitigate or reduce the harmful effects of child marriage for the child already in marriage, especially the girl bride are included in the Model Law. The Model Law urges Member States to provide for effective interventions and programs to support child brides and their families in national legislation. In particular:

- Governments must **“establish public safety homes**, public foster homes or any other public facility for the residence, care and maintenance of victims of child marriage and **ensure their protection against violence”**.
- The Model Law also instigates Governments to **strengthen community networks**, encouraging and assisting local communities to establish community watch committees under the auspices of traditional leaders or religious authorities, for the prevention of child marriages and protection of children already in marriages.
- The Model Law urges Governments to **provide for the training** of child marriage prohibition officers, judicial officers, law enforcement officers, traditional leaders, religious authorities, other public officers and policy makers, etc. on: 1) the dangers and effects of child marriage; 2) gender equity, equality and human rights; 3) the link between national development/economic growth and delayed or reduced childbearing; 4) the legal protections required to address the threats that children face with regards to child marriage; 5) reporting on matters related to child marriage; 6) the processes and procedures related to handling cases on children in need of care and protection; and 7) the programs and incentives relating to delaying child marriages.

- The Model Law also explicitly says that a child in marriage has a right to refuse sexual acts, including acts that put the child at risk of infection, such as HIV or other sexually transmitted infections, and such refusal shall not be a ground for divorce. Importantly, the Model Law says that **marriage shall not constitute a defence to a charge of rape.**
- Additional provisions of the Model Law include these entitlements of children in marriage: free and particularized legal services; assistance for care and maintenance of any offspring; other health and social services for any offspring; and, education for the child in marriage and their offspring.

If you would like to read further around measures to mitigate the harmful effects, please check the Model Law pages 54 to 61.



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# The Model Law Supports Monitoring and Evaluation, Awareness Raising and Improved Access to Data



The Model Law devotes an entire section (or 'Part') on **monitoring of child marriage and providing awareness** of the practice and its consequences. The Model Law articulates that access to information and data is dependent on the **creation and maintenance of public records** which can be easily accessed, and on data retrieved and disseminated efficiently while protecting critical data, such as personal data to ensure the privacy of the child.

The Model Law stipulates that **adequate funds be allocated to ensure effective and regular monitoring, evaluation and reporting on:**

- Customary, religious and national **laws, policies, strategies, measures and interventions** relating to the child, child marriage, eradication of child marriage and prevention of child marriage to **ensure compliance with this Model Law; and**
- **Technical, human and financial resources** to ensure that these are adequate for the implementation of the measures and interventions provided in this Model Law.

The Model Law calls as well for **disaggregated data collection, child surveillance systems and national child rights observatories** including indicators such as:

- Incidence and prevalence of child marriage;
- Number and status of children already in marriage, including their education attainment, access to resources, to health care and sexual and reproductive services, among other information;
- Causes of death of girls between 12 and 18 years of age, including death from AIDS and gender-based violence; and
- Nature and magnitude of child marriage.

The Model Law also calls Governments and other stakeholders (such as healthcare providers, including traditional and spiritual healers, at both public and private healthcare facilities) to roll out **comprehensive nationwide awareness-raising campaigns that:**

- Have meaningful participation of children;
- Use evidence-based successful approaches;
- Are age and gender-appropriate;
- Address social, cultural and religious constraints, including masculinity and unequal gender relations;
- Challenge stigma and discrimination against victims of child marriage and address misinformation about perceived benefits and advantages of child marriage; and
- Sensitize men and boys on HIV prevention, gender-based violence, effects of gender inequality and inequity and challenge dominant, religious or traditional conceptions of masculinity.

Are you interested in more details around this? You can read the full text in the Model Law pages 61 to 65.



# The Model Law Establishes Measures for Enforcement and Compliance



The Model Law provides for enforcement and compliance provisions for the successful implementation of a law on ending child marriage. This part of the Model Law specifies that the Government must:

- **Submit state reports to the SADC-PF** and other international and regional bodies, annually or as required under various international and regional human rights instruments. These state reports have to highlight the status and measures taken by the state;
- **Promptly follow up on the recommendations made by SADC-PF** and other international and regional bodies on measures to be taken to eradicate child marriage and protect victims of child marriages;
- **Engage constructively with relevant stakeholders**, including CSOs, the media, traditional leaders and children;
- **Provide a conducive legal and policy environment for CSOs** to enable CSOs to advance advocacy, research and litigation;
- **Strengthen the participation of key stakeholders in child marriage prevention programs** by supporting and funding community watch committees and centres, to ensure their sustainability; and
- **Table bi-annual reports** to the National Assembly (or the equivalent term in each country) on the activities undertaken to fulfil the requirements stipulated in the Part of the Model Law around enforcement and compliance.

The Model Law also stipulates that the Government shall establish **“an anti-child marriage fund or recommend to the Finance Minister [...] that funds be directly allocated** to the portfolio ministry for purposes of eradicating child marriage, preventing child marriage, assisting children already in marriages, assisting victims of child marriages and supporting the general implementation of the measures, public sensitization, advocacy and awareness campaigns and interventions specified in the Model Law”. The fund might consist of moneys coming from appropriations made by Parliament, coming in the form of grants or donations or be contributions by a spouse or parent of a victim of child marriage, when ordered to do so by a court.

The Model Law’s provisions concerning the Anti-Child Marriage Fund and measures for compliance and enforcement of the Model Law can be found in pages 68 and 69. See Annex 4 for a summary of the Model Law’s suggested Anti-Child Marriage Fund.





## Section 4. Practical Guidance for Parliamentarians on How to use the Model Law



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Parliamentarians in many countries have begun working to advance legislation and policies at national level in line with the content of the SADC Model Law. Some of the key actions parliamentarians can engage with, depending on the status of progress in their country, and the level of experience and interest that each parliamentarian has, are outlined below. It is important to note that given diversity in country legal frameworks and different stages of implementation of the Model Law, as well as differences in social acceptance of child marriage in each country, this guidance is not 'one size fits all' and has to be adapted to fit the domestic context.

### **Action Area 1: Verify the Starting Point of the Dialogue Around Legal and Policy Reform in Country**

Some countries have already begun a legal reform process leading to changes in their Constitutions or advanced efforts for full harmonization with national legislation, while others have yet to begin work or debates around the implementation of the Model Law. If you are new to your national process - for example, if you are a newly elected parliamentarian or new to the issue of child marriage - learn where national efforts stand, which stakeholders are engaged in the process - including efforts launched by civil society - and the status of the discussions.

### **Action Area 2: Analyse the Current Legal and Policy Framework and Cross-Reference with the Provisions of the Model Law**

Review your country's laws and policies and understand to what extent they are or not aligned with the Model Law as well as which aspects of the Model Law are already included in legislation. Identify which parts or sections of the Model Law are not recognized in national legislation or in policies and may thus, represent opportunities to strengthen the legal or policy framework. For example, parliamentarians can review education policies to assess if these adequately include comprehensive sexuality education (as included in the Model Law and other relevant resources) and encourage policy reform.

### **Action Area 3: Disseminate the Model Law and its Content Among Peers**

The content of the Model Law itself is an excellent guide to prompt and lead legal reform; however, some parliamentarians might not be fully aware of its content and/or specific language and provisions. This Guide and supportive materials are meant to facilitate dissemination of the Model Law to others. Dissemination efforts could be spearheaded within relevant committees or parliamentary caucuses or perhaps, led independently by a champion parliamentarian. Civil society working on the issue may also be available as a resource to support parliamentarians in their own capacity building efforts or raising awareness with other parliamentarians.

### **Action Area 4: Build Alliances with other Parliamentarians and Join Forces with Caucuses or Committees**

Working in coalitions and in partnerships with other supportive parliamentarians is key to achieving greater impact and more effective results. Check if there are current parliamentary committees or caucuses working on this subject and learn their positions and strategies. Specifically, most national parliaments have multi-party women caucuses generally aimed at allowing women parliamentarians to rise above party politics and address issues of common concern to women. Women caucuses in the region have been at the forefront of the parliamentary work around child marriage. If you are spearheading this work, meet with other policy makers and civil society representatives to identify avenues and opportunities to collaborate, for example around important advocacy dates such as International Girl Child Day.

### **Action Area 5: Advocate in Parliament for National Laws and Policies to be Adopted, Reviewed, Strengthened and Implemented in line with the Model Law**

Once you are more familiar with the current landscape and have identified allies, you can define advocacy goals you would like to achieve – for example, ensuring laws relating to child marriages (around welfare of children and/or ending child marriage) are introduced in Parliament for debate and subsequently enacted and enforced. This area of work can be very broad – from advocating for the inclusion of the issue of child marriage in the agenda to instigating a constitutional reform.

Some concrete advocacy actions that parliamentarians can take include:

- **Proposing motions** urging the Government to enact or implement legislation on child marriage;
- **Posing oral questions** in Parliament, either in plenary sessions or in committees. This process compels the relevant sector Ministry to provide a detailed answer on measures taken (or the lack thereof) in achieving the desired end. This mechanism also allows Members of Parliament (MPs) to seek points of clarification or ask follow-up questions in Parliament, so that the Government provides more information on the matter. MPs can additionally question the budget allocated to child protection and lobby for increases; and
- **Proposing special public hearings (with experts):** The purpose of a public hearing is to give all interested members of the public, groups and organisations the opportunity to express their views, testimonies and information on ending child marriage and to share it with the MPs. You may want to invite experts in the field or other MPs from the region working on this issue to share best practices and strategies.

### **Action Area 6: Promote Accountability to Commitments Adopted in Regional and Global Fora, Including the Model Law**

As part of their oversight role, members of relevant Parliamentary Committees can request from implementing Ministries their annual reports to assess the extent of implementation of programs and policies regarding the protection of children (including activities aimed at preventing and ending child marriage). The SADC Model law stipulates that the Government must report 'bi-annually, to the legislature on the activities undertaken to fulfil the requirements stipulated in this Part'. MPs can follow up with the Government regarding implementation of the Model Law and use this review process to promote policy changes.

### **Action Area 7: Ensure Adequate Budgetary Allocations Across Different Ministries for the Prevention of Child Marriage and to Support Married Girls**

One of the roles of Parliament is to provide budget oversight and financial accountability. In line with its mandate, the relevant Parliamentary Committee can undertake the monitoring of budgets to assess whether funds appropriated by Parliament toward programs designed to end child marriage were actually released and applied to the intended activities spelled out in the national law created from the Model Law. Before approving the budget, MPs should advocate for and ensure that appropriate funds are allocated to providing effective responses to prevent and eradicate child marriage. See Annex 4 for an overview of what the Model Law suggests an Anti-Child Marriage Fund – or any other allocation of funding to end child marriage – should cover.

### **Action Area 8: Be a Champion and Opinion Leader Nationally and with your Constituencies**

A key role of parliamentarians is to represent their constituents and thus, to listen to their testimonies about child marriage, to understand what motivates them, and advocate for solutions that address their specific issues. Parliamentarians who are champions on this cause, speak out in Parliament, in the media, including on community radio, to increase visibility of child marriage and sensitize the general public. Parliamentarians can also work with school authorities in their constituencies and with religious leaders to sensitize them, as well as young individuals, about the risks of child marriage, the benefits of delaying marriage for both boys and girls, and highlighting the value of girls in their communities; You could also champion this issue at the regional; and global levels by sharing the experience of your country with other fellow parliamentarians, as part of the SADC Parliamentary Forum, the Pan-African Parliament, the Inter-Parliamentary Union or organisations working with parliamentarians such as Parliamentarians for Global Action.

For more ideas on actions to undertake as a parliamentarian, please check out Girls Not Brides' Toolkit "The Role of Parliamentarians in Ending Child Marriage" available at: <https://www.girlsnotbrides.org/resource-centre/the-role-of-parliamentarians-in-ending-child-marriage/>



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## Section 5. Practical Guidance for CSOs and Young Advocates on How to Use the Model Law



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Civil society plays a pivotal role in advocating and working towards the elimination of child marriage in many ways. The Model Law's article 40 (c) says that "the government shall engage constructively with relevant stakeholders, including CSOs, the media, traditional leaders and children, towards the eradication of child marriage".

There are many ways in which civil society and youth advocates can support the use of the Model Law at the national level. These below are four key 'action areas' in which CSOs and young advocates can use the Model Law to advocate for the eradication of child marriage and promote children's and women's rights:

### **Action Area 1: Direct Advocacy with Policy and Decision Makers**

The Model Law is by its very nature non-binding and must be incorporated or domesticated at the national level. In other words, only national legislation based on the Model Law adopted by Parliament is legally binding. These are suggestions for carrying out direct advocacy with policy-makers to help ensure that the provisions of the Model Law successfully navigate the legislative process.

### **Study and Disseminate the Content of the Model Law**

This Guide and supportive documents are an attempt to make the contents of the Model Law more accessible and easy to use for CSOs and young advocates. A deep understanding of the content and features of the law is needed not only for advocacy work, but also for work on accountability or alignment with the Law's programmatic provisions (Action Areas 2 and 3).

### **Verify the Starting Point of the Dialogue Around Legal and Policy Reform in Country**

In some countries, a legal reform process is in place, leading to changes in the Constitution or full harmonization efforts with national legislation, while in others there has not been any work or debate around the implementation of the Model Law. It is important that you **understand the status of national efforts around implementation of the Model Law** as well as the tone of the discussion. This includes knowing the level of opposition or resistance



as well as political will. It is also important that you learn which actors or institutions are responsible for legal or policy reform around the Model Law. **A mapping exercise of past and current efforts undertaken by law and policy makers**, as well as initiatives by fellow civil society organisations or advocates, will greatly enhance understanding.

### **Analyse the Current Legal and Policy Framework and Cross-Reference with the Model Law**

This is done by reviewing the country's laws and policies to learn to what extent they are or not aligned with the Model Law and what aspects of the Model Law are already included in legislation. **Identify the parts of the Model Law that are not recognized in national legislation or policies** and represent opportunities to strengthen the legal or policy framework. In some countries, such as Malawi or Mozambique, the Government is actively engaging with CSOs to gather input and feedback into the respective legal and policy reform processes. Find out if this is the case in your country. For many advocates, a starting point has been to learn about any constitutional reviews to reflect the provision of the Model Law establishing the minimum age of marriage at 18 without any exceptions.

### **Gather Data and Evidence that can Inform Legal and Policy Change, Government Programs and Advocacy Strategies**

Up to date and reliable data and evidence can be used directly as input for advocacy materials or briefs for decision and policy makers. It is extremely important that advocates have an excellent understanding of the issue of child marriage in their country, its root causes and consequences, as well as prevalence and gravity. This is vital to work around messaging and make the case with decision makers and opinion leaders. Specifically, the Model Law mentions that the Government must roll out evidence-based national awareness campaigns and create policies that are informed by evidence, including evidence-based comprehensive sexuality education (Pages 14, 15 and 24). This can serve as an entry point for civil society to collect and submit evidence that facilitates the different processes.

### **Engage in Parliamentary Dialogues**

There are ways by which civil society can actively participate with Parliament. **Conducting power or interest groups mapping** exercises to understand power dynamics and positions of key parliamentary groups and MPs is vital, and so is **relationship-building** with committees or caucuses working to advance the issue of eradicating child marriage. Civil society can also play an important role in **building the capacity** of parliamentarians on the Model Law itself, using this Guide and supportive materials among others. Among other actions, civil society can also: work closely with parliamentarians to **suggest submission of oral questions** or motions, conduct public hearings or **create technical working groups or special commissions**; offer to **provide testimony and expertise** during parliamentary debates and hearings; **mobilize support for the passage of Bills** – among policy makers, organisations, constituents (including traditional leaders) and the media – to ensure they are voted on and passed. Support may furthermore be garnered to pass subsidiary legislation which are usually made by the Executive and tabled in Parliament.

### **Engage in Policy Dialogue and Drafting Processes Where You Find Them**

When it comes to the elaboration of policies, national strategies or plans, civil society can be an instrumental partner to policy makers. Some countries might be focusing on the policy level, on the drafting or adaptation of their National Child Policy, National Plan of Action to End Child Marriage or National Framework on Child Marriage or any other policy related to child marriage.

### **Engage with and Help Train Champions**

'Champions' have the ability to raise awareness of child marriage-related issues with the right people at key moments. They can open doors which would otherwise be shut; they can be a strong voice in the media; they can inspire other MPs and civil society groups and bring the realisation that they are not alone in working to end the practice of child marriage. Existing champions might not be familiar with the Model Law or might not have used it for their own advocacy. Civil society organisations can disseminate the Model Law to them and, in some cases, train them and strategize together on their advocacy path. It is especially important to identify, liaise with, and train **religious and traditional leaders** as champions. They are often decision-makers and might even themselves be officiating child marriages.

## **Advocate for Open Space and Meaningful Inclusion of Civil Society and Girls Themselves**

This could mean creation of spaces for civil society in working groups, councils, commissions and other Government spaces where legislation and policy are developed and/or evaluated and participating in those spaces. One potential area identified involves the creation of spaces for CSOs at the SADC-PF meetings as observers, an option currently not available.

## **Action Area 2: Holding Government Accountable to Commitments on Ending Child Marriage**

The Model Law is by its very nature non-binding and must be incorporated or domesticated at the national level. In other words, only national legislation based on the Model Law adopted by Parliament is legally binding. These are suggestions for carrying out direct advocacy with policy-makers to help ensure that the provisions of the Model Law successfully navigate the legislative process.

- Following up with, reviewing and advocating for appropriate action around the **State Reports to the SADC-PF and other international and regional bodies** (annually or as required), that the Government is required to submit, and that must highlight the status and measures taken by the State towards eradicating child marriage and protection children already in marriage. Based on these reports, civil society organisations can build their advocacy strategies and messaging;
- Following-up, reviewing and advocating for appropriate action for the **bi-annual reports to the legislature** on the activities undertaken to fulfil the requirements stipulated in Part VII [of the Model Law]. Civil society can follow-up with the Government to request and demand that these reports are developed on time and made available to the public;
- Reviewing the **recommendations made by the SADC-PF** and other international or regional bodies to your country on measures to be taken to eradicate child marriage, protect victims of child marriages and hold Governments accountable for acting on such recommendations; and
- Holding Governments accountable to their implicit commitment under the Model Law to **'provide a conducive legal and policy environment for CSOs** to enable them to advance advocacy, research and litigation to prevent child betrothal and marriage and support children in marriages and victims of child marriages'.

Besides those provisions found in Part VII there are many other areas mentioned in different parts of the Model Law where civil society can act as a watchdog. Here are some examples:

- Verifying that the **data collection (as per the Model Law concrete provisions) is being done** and advocating for it if needed;
- Holding the Government to account with regards to the **creation of the Anti-child marriage Fund** or adequate funding expenditures, and full coverage of the provisions around funding included in the Model Law; and
- Verifying and holding the Government to account for the **provisions related to establishing specific programs** or support areas, such as the creation of 'toll free child help lines, including the adoption and allocation of SADC harmonized toll-free helpline numbers to facilitate cross-border protection of children'.

Some accountability tools or strategies used by civil society include:

- Producing annual report cards on child marriage and how decision makers have voted on this matter and sharing it with decision makers and others;

- Conducting social audits of public institutions to see if they are implementing policies the way they are supposed to (health services, schools, birth and marriage registration etc.) and reporting results to decision makers; and
- Taking Governments to court, also known as litigation processes or lawsuits, have also been used as strategies. These type of actions, require a lot of legal effort and resources and have not always been successful. However, regardless of the outcomes of the rulings, they can help to prove a principle right, put the issue on the agenda and get significant media attention.

### Case Study: How Civil Society Motivated Law Reform in Tanzania

In July 2016, the Constitutional Court ruled that marriage under the age of 18 was illegal and stated that sections 13 and 17 of the Marriage Act were unconstitutional. This landmark ruling was the result of a precedent-setting campaign launched by the Msichana Initiative, a civil society organisation and member of Girls Not Brides, in collaboration with other members of the Tanzania Ending Child Marriage Network (TECMN). In the ruling of the so called "Rebecca Gyumi v. Attorney General Miscellaneous Civil Cause No 5", the Government was given a year to update its laws by the Court.



During the entire campaign, Msichana and the other members of the TECMN, used the Model Law to host briefing sessions with Government Ministers responsible for Children, Gender and Community Development, as well as selected MPs. Despite all these efforts, the Attorney General of Tanzania appealed the High Court's decision.

- Conducting **budget tracking** (or partnering with organisations who do budget tracking), to see if funds are being allocated for implementation and enforcement of laws and policies addressing child marriage, and correspond to those areas articulated in the Model Law;
- Ensuring **regional accountability** – that all information about adoption and implementation of the Model Law and the Government's work to end child marriage is included in Government submissions to the Human Rights Council's Universal Periodic Reviews, the Sustainable Development Goals (SDG) Voluntary National Reviews and Regional reporting requirements associated to **regional instruments** such as reporting to the African Committee of Experts on the Rights and Welfare of the Child (ACRWC). CSOs can use **shadow reports** to highlight issues not raised by their Governments or point out where the Government may be reporting facts different from the real situation. Shadow reports may be presented to all human rights treaty monitoring bodies, but also at the **national level, with national parliaments**.

### Action Area 3: Mobilizing Public Opinion and Raising Public Awareness

Given that parliamentarians are elected officials and are supposed to align with and represent their constituencies, advocacy is closely linked with working to increase public support for eradicating child marriage. Since the Model Law can serve as an entry point on this issue for the general public, working with the media as a co-constituency (not just an opportunistic platform to deliver messages) is important, and should be mainstreamed in the work of CSOs and young advocates. Possible actions to increase the outreach of the Guide, and mobilize more support for the Model Law include:

- Develop and **share a youth friendly version of the Model Law** and sharing with youth and youth organisations;
- Adapt or develop yet another 'version' of the Guide, **targeted to traditional and religious leaders**, building their capacity around the content of the Guide, and helping them understand their own roles within their communities as well as at the legal and policy level;
- Partner with **traditional media outlets** but also use social media to conduct awareness campaigns and

shape public opinion. Furthermore, the Model Law provides that “the public and private media, including the advertising industry, develop policies and codes of conduct to increase awareness of, and sensitivity to, the effects of child marriage, human rights and freedoms of children.” Civil society can work with media to prevent sensationalized coverage of child marriage, and help avoid use of inappropriate language and stereotypes when reporting on child related issues;

- **Identify and train champions and youth leaders** in advocacy so they can participate in efforts with the wider public to advance the Model Law and end child marriage;
- Develop **high-impact sensitization campaigns in partnerships** with others; join and strengthen networks or coalitions of other organisations working to end child marriage, advance the rights of women and girls, and advocate for sexual and reproductive rights and other issues; and
- Act as a bridge between Government, grassroots efforts and citizens; creating platforms for consultation and providing a voice for weaker, marginalised groups.

### **Girls Not Brides National Partnerships:**

In several countries, *Girls Not Brides* members have decided to use collective action to end child marriage in their country, aligning their work with the *Girls Not Brides* global strategy. Other civil society coalitions to end child marriage have formed which work closely with *Girls Not Brides*. At the time of printing National Partnerships and coalitions in the SADC region were *Girls Not Brides Mozambique*, *Tanzania End Child Marriage Network (TECMN)*, *The Zambia Ending Child Marriage NGO Network*, and the *Zimbabwe Alliance to End Child Marriage*.

### **Action Area 4: Implementing (or Training Others on) the Programmatic Provisions of the Model Law**

The Model Law includes provisions and recommendations that can guide the development and implementation of programmes by Government bodies, CSOs and other actors – making it a useful tool beyond legal reform. This means that NGOs, teachers or health service providers for example, can start applying the Model Law guidance to their practice – if they are not already doing so – and implement the Model Law from the ground up. The Model Law also includes clear provisions for the training of many different sectors which could be done in cooperation with civil society, including:

- Work with the Government to **develop training materials and conduct trainings** for police, media, teachers, traditional leaders and health practitioners;
- Train and work with health service providers so that they respect the sexual and reproductive **health rights of every adolescent accessing sexual and reproductive health (SRH) services**; provide information on family planning and services to adolescents, regardless of marital status or accompaniment by a spouse or partner; provide young people with the necessary information and counselling to make decisions and obtain written consent before performing tests, medical procedures or offering services; ensure and guarantee privacy and confidentiality around health;
- Alternatively, or complementarily, civil society can have a role in **verifying that the scope and content of training materials** reflect the provisions of the Model Law and holding Governments accountable for its content; and
- **Teachers can seek inspiration from the provisions of the Model Law** to generate information which could be used for sexuality education of children from a rights-based approach.





## Annex 1. The SADC Model Law Builds on Several International and Regional Human Rights Instruments that Condemn Child Marriage



### International Human Rights Instruments

- Universal Declaration of Human Rights (1948)
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956)
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1964)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1976)
- Convention on the Eliminations of All Forms of Discrimination Against Women (CEDAW) (1979)
- Convention on the Rights of the Child (1989)
- Human Rights Council Resolution on Child, Early and Forced Marriage (2013 and 2015)
- UN General Assembly Resolution on Early and Forced Marriage (2014)
- Sustainable Development Goals (2015)

### African Human Rights Instruments and Frameworks

- African Charter on Human and Peoples' Rights (1986)
- African Charter on the Rights and Welfare of the Child (1990)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (2003)
- African Youth Charter (2006)
- SADC Protocol on Gender and Development (2008)
- African Women's Decade (2010-2020)
- African Union Adopts Common Position on Ending Child Marriage (2015)
- AU Continental Policy Framework on Sexual Reproductive Health and Rights and the Maputo Plan of Action for its Implementation (2016-2030)
- UN General Assembly Resolution on Early and Forced Marriage (2014)
- African Union Agenda 2063

## Annex 2. Examples of Ways Countries Have Started Using the SADC Model Law to Accelerate Change

### **Example 1: Using The SADC Model Law's Specific Guidance to Create a New National Law: the Case of Mozambique**

The Parliament of Mozambique in close cooperation with civil society started a process to reform the country's Family Law and to advocate for the need of a specific law to address child marriage. At the time of publication of this Guide, Mozambique was reviewing its Family Law in order to remove article 30 that states that 16-year-old children may get married with the permission of their parents. Furthermore, in August 2017 a taskforce was created and given the responsibility of drafting the law against child marriage. The taskforce is composed of three judges, three parliamentarians, one anthropologist and the coordinator of CECAP (Coligação para Eliminação Dos Casamentos Prematuros), the leading civil society coalition working on child marriage (also known as Girls Not Brides Mozambique).

The taskforce opted for the creation of a specific child marriage law recognizing the problem of inconsistencies, gaps and scattered language in the national laws which weaken the sanction mechanisms available to law enforcement agencies in the country. **In the drafting of the new law on child marriage in Mozambique, the taskforce is using the SADC Model Law on child marriage as a guiding reference**, drawing particularly on its principles and arguments, its provisions about the minimum legal age of marriage.

### **Example 2: Using the Model Law as a Reference as Part of Legal Review Processes: the Case of Malawi**

In February 2017, the Malawi Parliament amended the Constitution to (a) raise the age by which a person is defined as a child to 18 years (from 16 years); (b) raise the minimum age of marriage for boys and girls to 18 years without exceptions (from 15 with parental consent); and (c) delete the section which granted parents powers to consent to marriages of persons between the ages of 15 to 18 years.

The constitutional amendment was signed into law in April 2017 by the President.

As a consequence, the Malawi Ministry of Justice and Constitutional Affairs set up a constitutional amendment taskforce to amend all relevant laws to comply with the amended Constitution and align with article 2 of the African Charter on the Rights and Welfare of Children (which defines a child as "every human being below the age of 18 years"). Comprising the Ministries of Gender and Justice, UN Agencies representatives and CSOs, the taskforce is in charge of harmonizing all child related laws accordingly - including the Penal Code, the Employment Act, the Child Care, Protection and Justice Act and others.

The Ministry has committed to have all laws amended by December 2018. In this process, the SADC Model Law is used as a reference: when the laws are being reviewed, compliance with the content of the Model Law is also being checked.



## Annex 3. Beyond the Contents of the Model Law: Issues for Critical Reflection and Discussion



The SADC Model Law on child marriage includes provisions and raises issues which are still the subject of debates among the different stakeholders working on child marriage in Southern Africa. Based on discussions with key actors working to end child marriage in the SADC region, this section seeks to provide a full picture of the considerations that were raised during the consultation processes. It aims to give readers the tools to form their own opinions and organise further discussions so as to make informed decisions on how to best adapt, adopt or advocate for some of the Model Law's provisions.

This section, however is not meant to be conclusive or to offer recommendations, but rather a starting point for debates at the country level. This section could be used for example, as background for a meeting to agree on an organisation's position on criminalization or as a basis for a position paper or think piece.

### **Criminalization**

The Model Law includes in different sections, suggestions of punitive measures, such as fines, for the countries to use as reference when developing their own child marriage laws or when harmonizing existing laws to the model law. However, the discussion around criminalization is a complex and polarized one. As such, this Guide includes a few of the considerations and points of view that might be of relevance when having a dialogue about criminalization in country and aims at helping parliamentarians, young advocates or CSOs define their standpoint and shape the discussions.

When **framing the issue of criminalization**, it is important to notice that the term itself, might be too narrow of an approach as it implies that child marriage is not yet a crime, whereas there are multiple crimes that are associated with the specific violation of child "marriage" itself. The community might consider moving from the term "Criminalizing Child Marriage" to a broader "Access to Justice" or "Criminal Justice" around the issue of child marriage. The criminal justice dimensions will also include such offences as rape, abductions, child pornography, trafficking etc., as well juvenile justice issues where the husband is a child (i.e. an adolescent). The general objectives to guide this reframing would be to focus on rights protection, fighting impunity, deterrence, etc.



At the core of the conversation lays the fundamental dilemma of choosing between demanding justice and ensuring there is no impunity on the one hand, and mitigating the unintended negative consequences that criminalization may have at all levels of the ecological system. For example, there have been extreme cases where the girl is punished for not reporting the assault she is a victim of; or when the girl has to face the social stigma associated with putting family members in prison. The negative consequences of criminalization can also be destabilizing for the families and the communities, such as in cases where everyone who attended a wedding is imprisoned. In some occasions, the negative effect has reached national – systemic- levels, such as in Zambia, where the Law Development Commission realized that the push for longer jail sentences contradicted the state's efforts to decongest prisons.

Furthermore, **criminalization can be difficult to implement** due to a number of factors such as the question around **who to criminalize** (the husband, the parents, the religious leader/chief who performed the marriage, anyone who attended, etc.), or **proving the age of the girl** in context with lax legislation regarding birth registration.

Another fundamental barrier is the **difficult access to justice for young girls**, that have been subject to violence or child marriage. These barriers are informed by age as well as barriers to access and dependence on the perpetrator or the parent or guardians who are also complicit in the crime. This reality leaves girls vulnerable and hampers ability to denounce or report such crimes.

Another concern is around **poor implementation and accountability of already existing laws**. Many have raised their doubts about the effectiveness of additional punitive measures in lax implementing contexts.

While these concerns are well founded, there is also general agreement that the **law embodies an essential symbolic and deterrent power**: Having a categorical law about criminalization, sends a strong signal that child marriage is a crime and will not be tolerated. It is important to note, though, that the enactment of the law should be paired with considerable efforts to ensure broad public awareness of the law and its provisions.

Some of the lines of thought offer some ideas to balance the previous dilemmas. Some include having a nuanced and level approach that combines different types of punishment for different degrees of gravity and conducting detailed **perpetrator analysis**. The person marrying and sexually abusing the girls should be considered the primary offender, and therefore subject to harsher punitive measure. Parents or guardians as accomplices, would be subject to other fines or community work and finally milder punitive measures to other accomplices, such as those performing the weddings.

While penalties to offenders should balance between incapacitation, rehabilitation and restitution or indemnifications to the victims, it is important to note that community service and lenient sentences could result in undermining the use of the law for accountability and weakening the law's potential for long-term change.

Future work on this area, either commissioned by the SADC-PF or as a follow up to this guide, could include case studies of how criminalization works or does not work. More research, including from other regions in the world would be, therefore instrumental.

## **Funding**

As mentioned in the summary section, the Model Law urges Governments to either recommend to the Finance Minister to allocate funds to the Ministry working on Child Marriage or to **create an Anti-Child Marriage Fund** (see annex 4). While there is widespread agreement that funding is crucial, many have raised a few questions on the specificities of funding, in particular of an Anti-Child marriage fund, such as its modalities or sources.

When starting the conversations at the country level about funding it would be good to keep a number of considerations in mind:

- Having a stand-alone Anti-Child Marriage fund might mean having a less resourced, less sustainable funding, if it is not tied to the countries budget cycles and appropriations by the Parliament.
- Currently many National Action Plans around child marriage are already costed and budgeted for in the national budgets. It is important that any new funding is aligned and additional to existing funding streams.
- An important feature of the Model Law, is the multi-sectoral approach. This means that it does not focus on the issue of child marriage as a separate silo in the development of a country, but rather it links with many other sectors, which also need to be resourced. Justice, Education, or Health Ministries, among others, must also receive funding to fulfil their respective roles so any type of **funding around child marriage must be multi-sectoral in nature.**
- While the Model Law has not mentioned international sources for national work around child marriage, it is relevant to avoid the risk of creating Anti-Child marriage funds that are predominantly funded by external sources, especially international donors, as these can be less sustainable and fluctuate over time. Furthermore, many of the international funding mechanisms have systems in place that do not allow the funding to trickle down into the countries. In that line, tapping into **African philanthropy** is key, and has been undervalued to date.
- Advocacy for adequate funding must run in parallel to any other legal or policy change advocacy. This is to ensure that results in the legal framework are sustained over time. In Malawi, for example, the passing of the different laws has resulted in a considerable number of girls getting out of marriage. However, because the funding is not in place yet to support them in their transition, many have had no other option than to return to their husbands.
- Any type of funding scheme created at the country level must allow for transparency and accountability. CSOs have a crucial watchdog role in this sense, as explained in more detail in section 6. Furthermore, if the country decides to set up a new Anti-Child Marriage Fund, CSOs should demand participation in the conceptualization and design of such structure. It is also important that both in a separate fund or as part of the governmental budget lines, there is recognition of the work of CSOs and earmarked funding for these groups.
- The SADC-PF future monitoring mechanisms must include specific follow up as well as recommendations to the countries on funding.

### **Monitoring and evaluation (M&E)**

As stated in section 3 above, the Model Law stipulates that Governments shall ensure the effective and regular monitoring, evaluation and reporting of national laws, policies, strategies and reporting of legal, policy and programmatic measures to address child marriage to ensure compliance with the Model Law, but it is silent about the necessary structures and responsible bodies to report and monitor around child marriage from prevalence data to effectiveness of policy implementation. It is key to note that at the time of publication of this Guide, the organs of the SADC-PF are in the process of formalising the monitoring of Model Laws through an institutional oversight mechanism which involves gathering information from Member States by the facilitation of national Parliaments.

Since monitoring and evaluation is key to assess progress and analyse effectiveness of strategies and approaches, it is important that both parliamentarians and CSOs know how the current M&E landscape looks like in the country and consider how they leverage this for reporting on the Model Law rather than establishing new structures.

This section includes a few of the considerations and points of view that might be of relevance when assessing the existing structures and reporting mechanisms.

- What are the **existing M&E mechanisms** in place to assess the status and measures taken by the Government towards eradicating child marriage and protection child already in marriage?
- Are there **any legal, policy or programmatic areas** that are included in the Model Law that are left out/ not covered by these mechanisms?
- To what extent and how well is the Government performing in its reporting **to international and regional human rights instruments and commitments** made by the state?
- What is the **periodicity of the reporting** through these mechanisms?
- Are there any mechanisms in place for follow up on the recommendations made by international and regional bodies on the reports?
- Which **agencies, ministries or departments** are responsible for reporting and M&E?
- How are relevant stakeholders, including parliamentarians, CSOs, the media, traditional leaders and young people involved in the reporting?
- Which **technical, human and financial resources** are available to support the M&E efforts? What are the gaps?
- What are some of the **challenges** faced in the reporting through these mechanisms?
- How does the reporting link with the oversight mechanism under the auspices of the SADC-PF?



# Annex 4. Overview of the Anti-Child Marriage Fund Proposed by the SADC Model Law

In the Model Law, there are numerous mentions of areas and programs that need funding and consequently, the Model Law proposes that countries establish an anti-child marriage fund. While all of the areas needing funding are spread throughout the Model Law itself, this box contains all areas that could be included in an Anti-Child Marriage Fund that the Model Law mentions “for the purposes provided for in the Model law or generally for budget funding for purposes of eradicating child marriage”, so Parliamentarians, CSOs, and others can easily propose them or advocate for them in-country.

## Prevention (with children and families)

- Provide opportunities for children, especially girls, to continue primary, secondary and tertiary education, including life skills and vocational training;
- Provide opportunities for children whose families live below the poverty line to complete primary and secondary education;
- Provide opportunities to families and children to earn money through entrepreneurship and work in the public sector through human resource development programs;
- Support the retention of children, especially girls, in school;
- Support positive discrimination and broadening opportunities in relation to education of the girl child, poor child performers and children with special needs;
- Support innovative programs for adolescent girls that provide alternatives to marriage;
- Target families in communities where child marriage is most prevalent by providing advocacy or awareness programs on the consequences of child marriage;
- Support awareness programs in primary and secondary schools sexual and reproductive health matters and the benefits of not marrying before the minimum age of marriage; and
- Incentives for families and children to assist in the delay of marriage, such as providing cash transfers to the family to encourage children to remain single at least until they reach the minimum age of marriage; Providing funds to a girl child to complete secondary education; Giving scholarships and bursaries to a girl child up to tertiary level.

## Prevention (through Training of Professionals)

- Training for **teachers or instructors** on comprehensive sexuality education;
- Training of public and private **health practitioners** about awareness raising, including confidentiality on data collection and storage; and
- Training of child marriage **prohibition officers, judicial officers, law enforcement officers, traditional leaders, religious authorities**, other public officers and policy makers, at all levels of the State.

## Support for Children

- Establishment of public safety homes, **public foster homes or any other public facility** for the residence, care and maintenance of victims of child marriages.

## Data Collection and Monitoring

- Regular monitoring, evaluation and reporting of customary, religious and national laws, policies, strategies, measures and interventions relating to the child, child marriage, eradication of child marriage and prevention of child marriage to ensure compliance with the Model Law;
- Technical, human and financial resources to ensure that such resources are adequate for the implementation of the measures and interventions provided in the Model Law;
- Put in place data collection, child surveillance systems and national child rights observatories; and
- Supporting and funding community watch committees and centres.



# Annex 5. Roles and Responsibilities for Government Actors, as Identified by the Model Law

The Model Law identifies and promotes a multi-sectoral approach to ending child marriage and identifies specific roles and responsibilities for key Government stakeholders throughout its provisions. The below table compiles these roles, thus providing useful guidance for Government actors and a tool for advocates and parliamentarians seeking to keep the Government accountable.

Area of Government	Government Actor	Roles and Responsibilities
Legislative Branch	Parliament or legislature	<p>The Legislative Branch is the state sphere where laws are created or reformed. It materializes in the form of parliaments and congresses and each country has established specific parliamentary processes for the creation or reform of laws.</p> <p><b>Some of the actions that the legislative branch can take to prohibit child marriage and protect children from the harmful effects of child marriage are:</b></p> <ul style="list-style-type: none"> <li>▪ Enact laws to prohibit child marriage and the betrothal of girls and boys and allow for the voidance of child marriages under certain circumstances;</li> <li>▪ Enact laws that specify the minimum age for marriage;</li> <li>▪ Enact laws that guarantee the right to registration at births and marriage;</li> <li>▪ Enact laws that prohibit discrimination against a child on any grounds;</li> <li>▪ Enact laws that guarantee reproductive rights and access to reproductive health services for girls and boys;</li> <li>▪ Enact laws that ensure children are treated equally before national laws and are accorded equal protection and rights regardless if they were born inside or outside marriage;</li> <li>▪ Enact laws that protect children from abuse, neglect and harmful practices;</li> <li>▪ Enact laws that ensure the right to education;</li> <li>▪ Enact laws to ensure that girls can stay in school after marriage, during pregnancy and after having children; and</li> <li>▪ Enact laws to guarantee the right privacy and confidentiality of the child.</li> </ul>
Executive Branch	Office of the President or Prime Minister, Government Ministries, Institutes and Agencies	<p>The Executive Branch is the state sphere where Government actions are carried out. This is called public policy. Public policy may include sectoral plans or policies that can involve more than one Ministry, or Government programs or actions. The Executive Branch includes the various Government Ministries and agencies whose role is to transform social problems through public policies and budgets to address them.</p>

<p>National Institute of Statistics and data collection and production sections of relevant Ministries</p>	<p>The National Institute of Statistics and the data collection arms of Ministries are responsible for verifying, approving, administering and publishing basic national statistical data and to regularly disseminate it to the general public.</p> <p>Some of the actions that data collection agencies can take prevent child marriage and protect children from the harmful effects of child marriage are:</p> <p>Collect and publish disaggregated data on the prevalence of child marriage, number and status of children already in marriage, causes of death of girls aged between 12 and 18 years of age, maintain an up-to-date record of information on the nature and magnitude of child marriage and keep track of emerging child marriage concerns to inform the development, implementation and monitoring and evaluation of public policies.</p>
<p>Ministry responsible for registration of births</p>	<p>Needs to come up with criteria to <b>determine the age</b> of the person that is to get married when no birth certificate is available.</p>
<p>Ministry responsible for labour</p>	<p>The Ministry or Department of Finance is responsible for developing and implementing economic policies.</p>
<p><b>Some of the actions that the Ministry of Labour can take to prevent child marriage and address the needs of children in marriage and those that are victims of child marriage:</b></p> <ul style="list-style-type: none"> <li>▪ Develop and implement youth centred macroeconomic policies that includes regulation of the informal economy, ensure children are appropriately trained to take part in the formal labour market and get appropriately-timed career guidance and establish measures to ensure full participation in economic life for children in marriages and victims of child marriages; and</li> <li>▪ Promote entrepreneurship for children in marriages and victims of child marriages.</li> </ul>	
<p>Ministry responsible for social protection</p>	<p>The Ministry responsible for social protection is responsible for putting in place policies, measures and interventions to ensure that a child has access to adequate social protection and social security services.</p>
<p>Ministries in charge of enforcing prohibition on child marriage</p>	<p>To ensure implementation of laws that prohibit child marriage, the Ministries should appoint public officers as child marriage prohibition officers or as a committee that can prevent child marriage.</p> <p>They should:</p> <ul style="list-style-type: none"> <li>▪ Collect evidence to prosecute people who break the law;</li> <li>▪ Raise awareness and sensitize communities of the consequences and effects of child marriage and advise them not to promote, help, or allow child marriage;</li> <li>▪ Gather and share statistics on children in marriage, including areas with high prevalence.</li> </ul>
<p>Ministry responsible for Education</p>	<p>The Ministry of Education is responsible for the design, implementation, monitoring and evaluation of educational legislations, policies and programs and ensuring that all children have access to free and compulsory primary and accessible secondary education. In some countries it oversees the structures, human resources, budget and administrative and management of the education sector.</p>

**Some of the actions that the Ministry of Education can take to prevent child marriage and address the needs of children in marriage and those that are victims of child marriage:**

- Ensure that every child has access to free and compulsory primary and accessible secondary education;
- Enact policies and programs to ensure that pregnant girls continue and complete their education and take measures to ensure all children have equal access to education, including eradicating discrimination against a pregnant or married child, or victim of child marriage;
- Ensure that the curriculum for all educational institutions integrates principles of equality and equity, incorporates life skills and comprehensive sexuality education; and introduces subjects that enhance the integration of the girl child in male dominated disciplines.

Ministry responsible for Health

The Ministry of Health is the Government agency responsible for protecting and promoting public health and providing welfare and other social security services. They are responsible for the design, implementation, monitoring and evaluation of health policies, programs and guidelines.

**Some of the actions that the Ministry of Health can take to prevent child marriage and address the needs of children in marriage and those that are victims of child marriage:**

- Put in place child centred health policies that ensure access to health and medical services including quality comprehensive sexual and reproductive health services and information;
- Enact programs to reduce infant and child and adolescent mortality, combat disease and malnutrition and abolish harmful practices;
- Enact policies and programs that provide comprehensive maternal health services including ante-natal, post-natal and obstetric care, post abortion care, immunization and nutrition programs to a child - who is pregnant or has given birth;
- Prevent mother to child transmission of HIV and AIDS by enacting policies and programs to ensure access to HIV and AIDS counselling, testing, treatment and family planning for pregnant and in marriage children and victims of child marriage; and
- Ensure and uphold the child's right to privacy and confidentiality of his or her personal information.

Judicial System

Court System

The Court System is responsible for interpreting the laws passed by the Legislative Branch and enforced by the Executive Branch. They are responsible for the administration of justice.

**Some of the actions that the Judicial System and Courts can take to prevent child marriage and address the needs of children in marriage and those that are victims of child marriage:**

Courts should/can:

- Define rules and procedures for the distribution of property acquired during a prohibited marriage and the dissolution/annulment of a voidable child marriage;
- Issue a restraining order to anyone that knows or is about to engage or marry a child, independently of what customary or religious laws and practices say; and
- Provide legal aid and legal services to victims of child marriage.

Courts should ensure the rights of child brides are respected including:

- On petition of a child, adult person or third-party dissolve/annul the marriage that was contracted before the commencement of the law;
- Provide custody, access and maintenance to the offspring; and
- Ensure respect of citizenship acquired through marriage.

## Other Stakeholders Mentioned in the Model Law:

- Administrative institutions
- Police to “ensure adequate punishment”
- Ministry responsible for finance (anti-child marriage fund, budget)
- Ministry responsible for community development, culture and traditional affairs
- Ministry responsible for local government
- Local chiefs, traditional authorities
- Ministry responsible for registration of marriages
- The private sector





# Annex 6. Contributors and Key Informants to the Guide

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**A Guide to Using the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage For Parliamentarians, Civil Society Organisations and Youth Advocates - © 2018**



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