

**MODEL LAW ON ERADICATING CHILD MARRIAGE  
AND PROTECTING CHILDREN ALREADY IN  
MARRIAGE**



## **EXPLANATORY NOTES ON THE MODEL LAW ON ERADICATING CHILD MARRIAGE AND PROTECTING CHILDREN ALREADY IN MARRIAGE**

### **1.0 RATIONAL AND OBJECTIVES**

Please refer to the Position Paper for a comprehensive rationale and objectives of the Model Law.

Child marriage remains a problem in Southern Africa due to a variety of factors. These include poverty; gender inequity; tradition; insecurity, especially in times of conflict, limited education and lack of adequate legal frameworks in Member States, most of which are inconsistent. In at least five countries in the Southern African Development Community (SADC), almost 40% of children are married before they are 18 years of age. Malawi and Mozambique are amongst 10 countries in the world with the highest rates of child marriage. In both countries over 50% of children are married before they are 18 years of age. In Mozambique and Malawi 1 in 2 girls is married before she turns 18 years of age. In Zambia and Madagascar, the prevalence of child marriage is over 40%;

The Model Law is intended to trigger policy reforms and development or revision of substantive laws in Member States (MS) of SADC as:

- ❑ it is a regional process shifting focus from national requirements to regional dimensions based on best regional practices, shared experiences, convergence of ideas, principles and concepts and arrived at through consensus, making it a useful tool for policy discussions, enactment of laws, decision-making and efficacious enforcement which is dynamic in achieving within the region harmonisation beneficial to eradicating child marriage;
- ❑ it is based on international human rights instruments already committed to by MS thus making MSs comfortable with it and enabling them to be compliant with their international obligations;
- ❑ it sets in motion efforts already begun at national level and provides a well researched model establishing a regional standard, against which efforts in MSs can be measured, that has been approved by MSs at a high level having, though not binding in itself, a binding effect on MSs; and

- ❑ It is dynamic as it makes it possible or easy to transpose or transplant its contents without much effort as it describes and explains its adopting or adapting process.

MS should use this Model Law to develop their National laws as it creates a robust and uniform legal framework relating to the prohibition and prevention of child marriage and is a key path to addressing Sexual Reproductive Health Rights.

The objective of the Model Law is, therefore, to serve as a yardstick and an advocacy tool for legislators in the SADC Region. It also provides best practice language without loopholes which can be easily adopted or adapted by Member States in their laws dealing with the eradication of child marriage.

The Model Law will assist policy makers and legislative drafters to address all the relevant areas in need of legislative reform without usurping the authority of national legislatures to determine the content extent, style and form of their national laws. The following key users of the Model Law have been borne in mind when developing this Model Law:

- (a) policy makers, when developing policies and strategies relating to eradication of child marriage;
- (b) legislative drafters, when drafting national laws on eradicating child marriage;
- (c) lawmakers, when enacting legislation on the eradication of child marriage;
- (d) judicial officers, when interpreting the laws on and related to eradication of child marriage;
- (e) researchers, when doing research on child marriage; and
- (f) administrators, when applying and implementing the laws on and related to eradication of child marriage.

Most Parliaments of SADC Member States have constitutional competence to initiate through Members of Parliament or the Executive legislation for enactment by Parliament following set procedures as contained in national laws and standing orders or rules of the National Assembly. However, for purposes of the SADC Model Law it is important that a close working relationship with the Executive is established to ease the process of successfully enacting the national legislation on this matter.

The eradication of child marriages, using a human rights based approach, is of absolute importance if SADC PF is to achieve their legislative intent. In June, 2014, at its 35<sup>th</sup> Plenary Assembly, SADC PF unanimously approved a review on the status of child marriage in SADC. This decision was followed, in February 2015, by a SADC Regional Parliamentary Dialogue on Child Marriage law organised by the SADC PF with the Association of European Parliamentarians with Africa (AWEPA) and Plan Netherlands. This forum discussed the benefits of a Model Legislation on child marriage and the possible contents of such a law.

The creation of a robust and uniform legal framework relating to child marriage is a key path to addressing child marriage in SADC Member States. A uniform legal framework/model law on child marriage will encourage Governments to be accountable in the execution of policies, enactment of laws and coming up with strategic plans aimed at addressing child marriage.

There are a number of challenges that may be a hindrance to the eradication of child marriage, some of which are as follows:

- lack of effective and well streamlined birth registration systems making age determination difficult for purposes of enforcing a law on child marriage;
- sometimes there are no provisions in the law penalising those who contravene the minimum age of marriage requirement and thus the seemingly conflict with the criminal law on sex with a minor (it's ok as long as you are married?);
- slow reform in laws on marriage which may frustrate interventions on eradicating child marriage and preventing child marriage;
- existence of some cultural, religious and traditional practices that infringe on the rights of children and create power relations between women and men that favour the latter in the domestic, community and public domains and impede the advancement of women, which go against State obligations under international human rights instruments; and
- lack of recognition of, or adequate provision of, sexual reproductive health services and rights (SRHSR) in the general legal framework.

An adequate and well drafted legal and institutional framework is important to forestall the adverse effects on the child arising from cultural, religious

and traditional systems impacting on marriage that exist side by side with statutory laws in most countries in the SADC Region.

## **2.0 RELATED LAWS**

There are pieces of legislation in Member States that may have a direct external relationship with a law on eradicating child marriage that will need to be cross-referenced effectively in the Bill when drafting the national law. There may also be need to pass consequential amendments to existing laws to ensure consistency and harmony of the law. This will prevent ambiguity of the law and assist in the holistic and correct interpretation of the law.

The following are some of the laws (cited by subject matter) that may impact on a law to eradicate child marriage:

- laws on sexual offences;
- laws relating to gender equity and equality;
- laws relating to anti- gender based violence;
- penal laws;
- anti trafficking laws
- child justice laws;
- marriage laws;
- adoption laws;
- legitimacy laws;
- citizenship laws;
- laws on refugees;
- maintenance and affiliation laws;
- termination of pregnancy laws;
- education laws;
- health laws;
- empowerment laws; and
- labour laws.

The Constitutions of Member States also need to be taken into account when considering the content of national laws as the ultra/intra-vires rule will apply. The Bill of Rights and exercise of legislative power through the making of subsidiary legislation to operationalise the law must seriously be considered by Member States and the legislative drafter.

### **3.0 INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS**

It is important for Member States, when considering the enactment of national laws on eradicating child marriage to ensure that domestication of international and regional human rights instruments which may impact on the rights of the child and women is done as Member States have already committed to the obligations under these instruments. This is in line with the Vienna Convention on the Law of Treaties of 1969. This Convention can best be described as a codification of public international law.

All SADC MSs are parties to many instruments that are governed by public international law. Article 26 of the Convention states: "***Every treaty in force is binding upon the parties to it and must be performed by them in good faith.***" Article 27 states: "***A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.***"

The Model Law effectively lists some of these international instruments for ease of the legislative drafter in the Schedule to the Model Law. The Model Law is based on these international and regional human rights instruments and cites some of these in the preamble and some substantive provisions. The rights of the child cited are a restatement of the rights as provided under some of these international and regional instruments. For the avoidance of doubt, a restatement is to say something in a different way so that it is more clearly or strongly expressed. Therefore, the Model Law gives meaning, content and breath to the rights enumerated in the international human rights instruments by amplifying them and providing for implementation provisions in terms of measures and interventions to be put in place by the governments of Member States.

It is important for the legislative drafter to domesticate the listed instruments in accordance with their constitutional requirements and legislative styles and forms.

### **4.0 STYLE AND FORM**

The Model Law has been drafted using the precedent set by the SADC Law on HIV/AIDS with minor adjustments for ease of communication in legislation and to facilitate the drafting of national legislation by the

legislative drafter. Further, guidance notes, in italics in brackets, have been inserted into the Model Law to guide the legislative drafter on specific issues.

The Model Law, therefore, does not conform to individual Member States' form, style or structure of legislation, for example, it will not have a long title or short title. Member States will have to adapt the provisions of the law into appropriate national form, style and structure when adapting or adopting the contents of the Model Law as national laws.

The Model Law is formatted and structured using general conventional practices as reflected in the SADC Model Law on HIV/AIDS, as follows:

- tables of contents;
- Preamble;
- Part headings;
- section headings;
- subsections;
- paragraphs;
- sub-paragraphs;
- logical order of sections; and
- numbering of text using Greek numerals.

These conventional practices help facilitate communication of the extent of the law, Part or section of the law. The division of the Model Law into Parts enables similar or related provisions to be put together for comprehensibility but the Parts are supportive of each other thus making the Law a cohesive whole. The use of cross-referencing helps achieve the cohesiveness of the Law.

These conventional practices have become quite uniform throughout the SADC Region, with small variations, for example use of marginal notes as opposed to section heads, use of chapters as opposed to parts or use of roman numerals as opposed to Greek numerals.

## **5.0 PARTS OF THE MODEL LAW**

The Model Law address five main thematic areas, reflected in the Part heading, and sub-thematic areas, reflected in the sections and subsections, relating to the eradication and prevention of child marriage and protecting

children already in marriages using a human rights based approach. The following are Parts of the Model Law:

- Preamble;
- Part I Preliminary Provisions;
- Part II Restatement of Rights and Concepts Relating to the Child, Policies, Measures and Interventions;
- Part III Prohibition of Betrothals and Child Marriage;
- Part IV Measures and Intervention to Prevent Child Marriage;
- Part V Measures and Interventions to Mitigate the Effects of Child Marriage;
- Part VI Access to Data and Information, Public Awareness, Monitory and Evaluation; and
- Part VII General Provisions, Offences and Enforcement.

These Parts are based on well researched best practices contained in a variety of documents/articles and literature on child betrothals, child marriage and children already in marriage by UN bodies and renowned authors on the subject, see the Position Paper for an outline on the documents used and their authors.

The following is a brief narration on the key sections of the Parts and what role they play in the Model Law, why the need to have them in the Model Law and how a drafter can use the content to draft national legislation which conforms to the style, form and structure of national legislation.

## **5.1 Preamble**

The preamble to the Model Law is meant to assist Member States put in context the issues and concerns relating to child marriage. The preamble outlines the underlining human rights basis of the law and the commitments that Member States of SADC have already made at regional, continental and international levels on child rights and eradication of child marriage. The preamble also expresses the concerns of SADC PF on the issue of child marriage, despite the various conventions on the rights of the child. SADC PF's policy position is clearly articulated in the preamble.

The context of the preamble sets the stage for the substantive provisions in the Model Law. The Scheduled international human rights instruments will help the legislative drafter identify the instruments for purposes of



domestication or amplification in the Bill. A legislative drafter can adapt these paragraphs in a domestication clause, which can be, depending on the style used in a Member State, drafted by domesticating the instrument by naming it in the Memorandum and long title, by annexing the instrument to the Bill or substantially restating its provisions in the substantive provisions of the Bill. It is important when doing so that the full citation of the instrument is made, that is, its correct title, date it came into force, place of signatory, adoption and any protocols made to it.

The preamble also urges Member States to remove reservations put on international and regional human rights instruments harmonise their laws with such instruments and embark on legislative reforms to give effect to the Model Law.

Therefore, the legislative drafter may use the content of the preamble to help contextually draft domestication provisions in the Bill through citation, definition or recital. The outlining basis of the preamble can be translated by the legislative drafter into objects and reasons (explanatory memorandum) in the Bill.

The preamble will also assist the legislative drafter identify relevant legislation (those that impact on child marriage) for purposes of cross referencing in the Bill.

## **5.2 Part I Preliminary Provisions**

This Part deals with the preliminary aspects of the Model Law, such as the objectives, domestication and interpretation provisions.

The objectives of the law contained in section 1 are the golden thread that permeates the entire fabric of the substantive provisions of the Model Law and must, therefore, conform with the rationale for coming up with the law neither should the substantive provisions conflict or be inconsistent with its objectives.

The objectives in the Model Law have been drafted in a manner that will assist the user to have a general idea (bird's eye view) of the entire content of the law for its better understanding.

The legislative drafter can adapt these objectives as principles in conjunction with those enumerated in international and regional human rights instruments for purposes of the Bill or place them, with necessary adaptation, as direct objectives in the Bill. Some of the objectives can also be moved to the memorandum and long title of the Bill.

Section 2 is the interpretation clause. This section provides for clear definitions which are relevant to the subject matter and repeatedly used in the substantive text. The essence of the definition of words and terms is to prevent ambiguity, enhance consistency in the language used and certainty to the law. Further, technical terms and words are defined for the better understanding of the law. Words defined include child, child marriage, victim of child marriage, marriage, harmful practice, religious authority, traditional leader, appropriate authority etc.

The interpretation section is also necessary to contextualise the use of words in the text of the law for clarity in meaning, to maximise the breadth of coverage of the law and shorten the law.

This section can be adapted by the legislative drafter to suit the legislative style in the Member State. However, the definitions have been drafted in a manner that makes it easy for a drafter to cut and past into the Bill without changing much to it.

Note must be taken of the fact that some countries have an Interpretation and General Provisions Law which defines basic and frequently used words in legislation and therefore do not require re-defining in the Bill, for example “Minister”, “Government” “Ministry” “Act” “prescribed” etc. This interpretation Law provides, amongst other things, for the amendment and consolidation of the law with respect to the construction, application and interpretation of written laws. This interpretation Law is, therefore, of general application to all Acts of Parliament and defines certain words and terms commonly used in legislation. It helps shorten legislation and enhances consistency and harmony of the Statute Book. It, therefore, follows that if a word is defined in this interpretation Law then the legislative drafter should not define it in the Bill unless the intention is to give it a different meaning. The Bill should, therefore, be drafted judiciously to take into account these standards.

### **5.3 Part II Restatement of Rights and Concepts Relating to the Child, Policy Initiatives, Measures and Interventions**

Child marriage is a violation and abuse of children's rights under the ACRWC, CRC and other international and regional human rights instruments. State authorities have a duty to enforce human rights in their countries. It is now a truism that child marriage is endemic in most parts of SADC Member States and can no longer be regarded as a private matter confined within the family. It is, therefore, time that suitable legislation is enacted to stop child marriage and its attendant consequences

This Part is the basis of the law for eradicating child marriage and protecting children that are already in marriage and, as such, the objectives of the law will be easier to achieve if it is anchored on the human rights of the child to which the majority of Member States are already obligated and committed in accordance with international and regional human rights instruments to which they are State Parties. The sections in this Part restate the basic rights and immediately provide for the policies, measures and intervention to be put in place by the Government so as to ensure the realisation of the rights.

This Part also deals with sexual reproductive rights of a child and the issues surrounding sexuality and comprehensive sexuality education as part of the provision on the right to health. Child marriage has life-threatening health consequences for children, especially girls. Studies indicate a close association between child marriage and early pregnancy as girls are pressured to prove fertility. Further, girls may not have access to contraceptives and other family planning services and thus are unable to control the timing of their pregnancies. This is despite the fact that pregnancy complications is the leading cause of death among girls aged 15 years to 19 years, especially in low- and middle-income countries according to the World Health Organization (WHO).

For boys and girls alike, an early marriage has far-reaching physical, intellectual, psychological and emotional consequences. For example, it has serious threats on sexual and reproductive health, maternal and newborn mortality and morbidity, obstetric fistula and sexually transmitted infections, including HIV/AIDS.

There is no clear consensus on the age of consent for sexual activity worldwide. According to UNICEF, most countries have chosen to set the age of consent at 16 years. In SADC, the age of consent ranges from 14 years to

18 years. For example, in Botswana and Zambia the age of consent is 16 years while in Tanzania it is 18 years.

The sections in this Part have been drafted in a manner that will enable the legislative drafter to cut and past the provisions in the Bill with minimum change.

#### **5.4 Part III Prohibition Of Child Betrothal and Marriage**

Regional and international treaties require countries to set the minimum age of marriage at 18, register all marriages and take effective action, including legislation, to eradicate child marriage – the SADC model Law does just that.

It is important to note that some national legislation permit the marriage of minors, sometimes in a discriminatory fashion and with gender-based differences in minimum ages.

Note should be taken of the 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage which reaffirms “that all States, including those which have or assume responsibility for the administration of Non-Self-Governing and Trust Territories until their achievement of independence, should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, inter alia, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil or other register in which all marriages will be recorded”. These obligations have been reiterated in subsequent human rights instruments.

This Part of the Model Law is core to any law on eradicating child marriage. The provisions impact on other laws that are already on Member States Statute Book, such as laws of on marriage, legitimacy, adoption, citizenship, gender-based violence, criminal responsibility and trafficking. It is, therefore, important that the legislative drafter ensures adequate cross-referencing, consequential amendment or repeal of laws which conflict with the basic tenants of this Model Law. The idea is to have a consistent and harmonised Statute Book that will be in the best interest of the child. Any conflicts may result in the law being interpreted against the intention of the legislator.

The sections in this Part have been drafted in a manner that will enable the legislative drafter to cut and past the provisions in the Bill with minimum change.

The sections in this Part are cohesive, meaning they support one another to give efficacy to the law during implementation and interpretation.

## **5.5 Part IV Measures and Interventions to Prevent Child Marriage**

There is empirical evidence emanating from various researches undertaken by groups and individuals that show that child marriage has specific negative implications on children, ranging from restriction of their personal freedom to impact on health and education. For boys and girls alike, an early marriage has far-reaching physical, intellectual, psychological and emotional consequences. For example, child marriage cuts short the opportunities afforded by study and the chances of personal development. As far as girls are concerned, early marriage in the main, end up in premature pregnancy and childbearing which is a cause of high maternal mortality rates. In addition early marriage is likely to lead to a lifetime of domestic and sexual subservience of the girl child over which she has no control. Teenage girls are also more susceptible, more than grown women, to sexually transmissible diseases, including HIV/AIDS. It is, therefore, important to put in a law, on eradicating child marriage, programmes and incentives to delay marriage.

It is imperative to note that the key interventions in this Part could have a significant impact on reducing child marriage, if more resources are made available to rigorously evaluate what is working and scale up successful programs.

This Part, therefore, provides for measures and interventions to try and prevent child marriage and delay marriage. These provisions will assist in the long run to eradicate child marriage and are, therefore, essential to any law on eradicating child marriage, and should underpin its structure.

The sections in this Part have been drafted in a manner that will enable the legislative drafter to cut and past the provisions in the Bill with minimum change.

## **5.6 Part V Measures And Interventions To Mitigate The Effects Of Child Marriage**

Mitigatory measures for the child already in marriage, especially the girl wife/bride are embedded in the Model Law as there are girls who have born or will continue to bear children while still children themselves. To guard against the increased health risks and death of these children, the Model Law obliges Member States to provide in national legislation for intervention programmes to support child brides/wives and their families by promoting earlier and more frequent use of family planning, HIV/AIDS and maternal health services. It is a truism that married girls do need educational and economic opportunities to help break the cycle of inequality, illiteracy, illness and poverty that frequently perpetuates child marriage.

This Part is specifically targeted to children already in marriage and provides for measures and interventions to mitigate the effects of such marriages. The Part also goes into a little detail on measures to deal with a child who is in need of care and protection.

The Model Law obliges Member States to provide in national legislation for effective interventions and programmes to support child brides/wives and their families by:

- promoting earlier and more frequent use of family planning, HIV/AIDS and maternal health services, and educational and economic opportunities to help break the cycle of inequality, illiteracy, illness and poverty that frequently perpetuate child marriage;
- providing comprehensive sexuality education;
- providing for collection of data on the number and status of children already in marriage, including the child's education, access to resources, health care, education, information and entertainment and the socio-economic status of the family;
- providing for access to health related and other data and information relating to the child, while protecting personal data to ensure the privacy of the child.
- providing for reporting, monitoring and evaluation of implementation of the law; and
- providing and allowing awareness programmes on consequences of child marriage and forbidding the use of inappropriate language

and stereotyping when reporting and advertising on child related issues.

The sections in this Part have been drafted in a manner that will enable the legislative drafter to cut and past the provisions in the Bill with minimum change.

### **5.7 Part VI Access to Data and Information, Public Awareness Monitoring and Evaluation**

It's imperative to understand that successful and efficient monitoring of child marriage and providing awareness of it and its consequences depends on having efficient access to information and data on child related issues. Access to information and data is dependent on the creation and maintenance of public records which can be easily accessed, data retrieved and disseminated efficiently while protecting critical data, such as personal data to ensure the privacy of the child.

Further, having successful awareness programmes will depend on the nature of mechanisms put in place to support the awareness campaigns. The provisions also ensure that the Government carries out effective public awareness campaigns.

This Part, therefore, provides for detailed measures and interventions to enable effective access to information and data on child marriage, children already in marriage, victims of child marriages and children in need of care and protection. The measures, if included in a law on eradicating child marriage, will underpin effective monitoring and evaluation of the effectiveness of the measures and interventions and therefore the efficacy of the law.

The sections in this Part have been drafted in a manner that will enable the legislative drafter to cut and past the provisions in the Bill with minimum change.

### **5.8 Part VII- General Provisions, Offences and Enforcement**

This Part provides for enforcement and compliance provisions for the successful implementation of a law on eradicating child marriage.

It is a central element of transparency to have clear and verifiable rules concerning enforcement and compliance in any law. Every party affected by regulatory decisions ought to have the opportunity to know what procedures will be followed in all matters. Therefore, compliance and enforcement provisions are key components to the efficacy of the implementation of the law and may assist in determining the impact of the new legislation.

The Bill should ensure adequate punishment is legislated for in relation to child marriage. It is important that offence provisions are comprehensive and identify all possible offences which can be committed in relation to child marriage.

Once the offences are detailed, sanctions need to be available to punish the commission of offences. The punishment for serious offences can include imprisonment, as well as substantial fines. Notably, penalties should act as a serious disincentive to bad behaviour. The threat of hefty fines and imprisonment can be an important deterrent and ensure compliance. It is important to analyse the Statute Book to ensure that penal provisions are not conflicting. The Bill should as much as possible cross-reference to laws on domestic violence, trafficking, drugs and general penal codes.

This Part also provides for the establishment of an anti-child marriage fund for the purposes provided for in the Model law or generally for budget funding for purposes of eradicating child marriage.

The sections in this Part have been drafted in a manner that will enable the legislative drafter to cut and past the provisions in the Bill with minimum change.



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**MODEL LAW ON ERADICATING CHILD MARRIAGE AND PROTECTING  
CHILDREN ALREADY IN MARRIAGE**

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**PREAMBLE**

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*(Please draft according to the style of drafting legislation in the national jurisdiction, for example replace this Preamble with an Explanatory Memorandum or Memorandum of objects and reasons)*

**We, the members of the SADC Parliamentary Forum:**

**Conscious** that Article 21(2) of the African Charter on the Rights and Welfare of the Child provides that-

1. *States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular-*
  - (a) *those customs and practices prejudicial to the health or life of the child; and*
  - (b) *those customs and practices which are discriminatory to the child on the grounds of sex or other status.*
2. *Child Marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory;*

**Noting** Article 6 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol) which provides that –

*States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that –*

- *no marriage shall take place without the free and full consent of both parties;*
- *the minimum age of marriage for women shall be 18 years;*
- *monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;*
- *every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;*
- *the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;*
- *a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname;*
- *a woman shall have the right to retain her nationality or to acquire the nationality of her husband;*
- *a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;*
- *a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;*

- *during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.*

**Noting also** that Article 16 of the Universal Declaration of Human Rights provides that –

*(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*

*(2) Marriage shall be entered into only with the free and full consent of the intending spouses;*

**Aware** that Article 16(2) of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) provides that-

*The betrothal and marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory;*

**Noting** further that in its General Recommendation 29 concerning equality in marriage, the Committee on the Elimination of Discrimination of Against Women affirmed that *identity-based personal status laws and customs perpetuate discrimination against women and that the preservation of multiple legal systems is in itself discriminatory against women;*

**Acknowledging** that the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences has expressed concern over personal laws' discriminatory provisions on the dissolution of marriage and maintenance provisions, which cause *many women to stay*

*in violent marriages out of fear that their de jure and de facto legal status will be negatively impacted, and also that they will be denied financial support if they are divorced or separated;*

**Recalling** that the General Assembly of the United Nations declared, by Resolution 843 (IX) of 17 December 1954 and in 2014, that certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights;

**Recognizing** that child marriage constitutes a serious threat to multiple aspects of a child's survival and development and, in particular, that child marriage threatens a child's physical and psychological health, sexual and reproductive health, significantly increasing the risk of early, frequent and unintended pregnancy, maternal and newborn mortality and morbidity, obstetric fistula, uterine prolapse, haemorrhaging, sexually transmitted infections, HIV and AIDS and death;

**Recognizing** also that child marriage is itself a barrier to attaining the Sustainable Development Goals (SDGs) and thus contributing to perpetuating the cycle of poverty and that the risk of child marriage is also highly exacerbated in conflict and humanitarian crisis situations;

**Concerned** that children, girls in particular, are often married due to socio-cultural norms, against their will and in some cases are victims of child trafficking, abduction, kidnapping and other forms of violence, resulting in their being subjected to physical, mental, emotional and sexual abuse;

**Noting** with deep concern that the protection of children against child marriage under the African Charter on the Rights and Welfare of the Child,



the Maputo Protocol and other African Union instruments is yet to be realised by some Member States;

**Conscious** that Article 19(1) of the Convention on the Rights of the Child provides that:

*State Parties shall take appropriate legislative, administrative and educational measures to protect the child from all forms of mental violence, injury or abuse, neglect or negligent treatment, maltreatment, exploitation, including sexual;*

**Acknowledging** the work that has been done in the region to address issues of gender and children's rights such as the launch of the African Union Campaign to End Child Marriage in Africa;

**Noting** that SADC PF at its 35<sup>th</sup> Plenary Assembly unanimously approved a review of the status of child marriage in SADC and development of a Model Law that would contribute towards ending child marriage;

**Knowing** that model legislation builds on best practices and serves as a guide, yardstick and an advocacy tool for legislators, administrators, policy makers, civil society, adjudicators and other concerned stakeholders;

**Desirous** that children should not marry before attaining 18 years of age and that children already in marriage should be protected against all forms of violence, injury or abuse, neglect or negligent treatment, maltreatment and exploitation and all forms of discrimination;

**Urge** Member States that have not ratified the international and regional human rights instruments listed in the Schedule to this Model Law to

endeavour to ratify and domesticate into national laws such instruments, where applicable, without undue delay, and withdraw any reservation on any international or regional human rights instrument listed in the Schedule to this Model Law;

**Encourage** Member States to put in place mechanisms to enforce or harmonise their existing legislation on children in the best interest of the child and operationalise programmes relating to the eradication and prevention of child marriage and the rights of the child in general;

Adopt the following Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage for the SADC Region as a guide to legislative efforts on the matter and urge Member States to adopt measures and interventions, including the review of their laws, to eradicate child marriage and protect children already in marriages, in accordance with this Model Law:

## **PART I**

### **PRELIMINARY PROVISIONS**

*(Insert long title, enactment clause and short title and other preliminary matters as appropriate in the Member State)*

#### **1. Objectives**

*(The objectives relate to the Model Law but Member States can adapt them into explanatory memorandum, long titles and objectives in their national legislation and in the style normally used. Note that some jurisdictions insert the interpretation section before the objects, normally after the short title. It is important that the form of legislation follows that of the Member State's legislative style)*

The objective of this Model Law is to provide model provisions to assist Member States enact laws on the eradication of child marriage and protection of children already in marriage and domesticate international and regional human rights instruments dealing with, or impacting on, child marriage and specifically to –

- (a) re-state some basic rights, concepts and principles relating to the child, as a basis of eradicating child marriage and enabling the development of policies, strategies, measures and interventions to fulfill a child's rights;
- (b) prohibit child marriage from the commencement of a Member State's law on eradicating child marriage;
- (c) make any child marriage, existing at the commencement of a Member State's law on eradicating child marriage, voidable on the option of a party to the marriage, in certain circumstances;
- (d) prohibit child betrothals and make existing child betrothals void from the commencement of a Member State's law on eradicating child marriage;
- (e) provide for a minimum age of marriage and capacity to contract a marriage;
- (f) prohibit the solemnisation of child marriage and enable a court to issue restraining orders;
- (g) provide for legal aid to victims of child marriage;
- (h) provide for custody and maintenance of offspring of prohibited marriages and victims of child marriages;
- (i) provide for the legitimacy of offspring of prohibited marriages;
- (j) provide for policy options for programming to develop strategies and incentives to delay marriage until the age of majority;
- (k) provide for division of property acquired during the subsistence of a child marriage;

- (l) provide for mechanisms to determine when a child is in need of care and protection and interventions to ensure the care and safety of such a child;
- (m) provide for the establishment of places of safety for the residence and maintenance of victims of child marriage and their offspring;
- (n) provide for the training of key government officials and other relevant stakeholders on how to eradicate child marriage and protect children already in marriages and victims of child marriage;
- (o) provide for the monitoring and evaluation of laws on eradicating child marriage and their implementation;
- (p) provide for public awareness to be undertaken on the human rights of children and the consequences of child marriage;
- (q) provide for the establishment of an anti-child - marriage fund or other financial support considered necessary by a Member State to enable effective implementation of the law on eradicating child marriage and protecting children already in marriage; and
- (r) provide for effective enforcement provisions to ensure compliance of the law on eradicating child marriage and protecting children already in marriage.

## **2. Interpretation**

***(Member States should amplify this section by including other terms and words used in the national legislation or excluding others which are already defined in a general interpretation law. The words and terms in this section have been drafted in a manner that will enable a Member State to cut and paste them, with necessary adjustments, to suit particular national legislative styles and requirements)***

In this Model Law, unless the context otherwise requires –

**“ACRWC”** means the African Charter on the Rights and Welfare of the Child adopted by the Organisation of African Unity (Now African Union) on 29<sup>th</sup> November, 1999;

**“annul”** means the termination of a marriage which is thereby treated as though it never occurred;

**“anti-child marriage fund”** means a fund to be established by a Member State in accordance with section 42;

**“appropriate authority”** means the Minister, Ministry or any other minister or ministry having responsibility for, or such public or statutory officer or body having powers under any written law over, children, marriages, registration of births, registration of marriages, health, education, skills training, State budgeting and finance, national planning, local authority, labour, gender, statistics or chiefs affairs, and includes a traditional leader, religious authority and civil society organisation or other agency having special interest or mandate over children affairs;

**“betroth”** means to promise in marriage or to be engaged for the purpose of marriage, and includes any coerced act that may lead to marriage or results in a marriage, and the word “betrothal” shall be construed accordingly;

**"child"** means every human being below the age of eighteen years, and the word “children” shall be construed accordingly;

**"child marriage"** means a statutory or customary union in which one party is a child or both of the parties are children;

**"child marriage prohibition officer"** means an officer to be appointed in accordance with section 43;

**“child in need of care and protection”** means a child referred to in subsection (1) of section 29;

**"court"** means a court of competent jurisdiction over child related matters;

**“CRC”** means the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November, 1989;

**“CSO”** means a civil society organisation carrying out activities in a Member State;

**“discrimination”** means any distinction, exclusion or restriction made on any ground specified in section 4 which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by a child or parent, on the basis of equality with another member of the community, of human rights, fundamental freedoms, any entitlement, privilege, measure or intervention provided or made available to a child or parent to mitigate the effects of child marriage;

**“foster parent”** means an adult person, not being a biological parent or guardian of a child, who provides parental responsibility;

**“foster home”** means a private home or residence for the care and maintenance of a victim of child marriage, and “foster care” shall be construed accordingly;

**“girls and boys”** means a child in relation to gender or inter-sex;

**“Government”** means the constitutional organ of a Member State which is responsible for the execution and exercise of Executive functions and authority in accordance with a Member States constitution;

**“guardian”** means a person who has actual or legal custody, care, authority or control of a child, and includes a foster parent;

**“harmful practices”** means customary, traditional, religious or social practices that negatively affect, or behavior, attitudes or rites which threaten or may threaten, the health, social welfare, dignity, physical or psychological development or life of a child, or the child’s enjoyment of human rights, including practices

and prejudices based on the idea of inferiority of either sex or on stereotyping roles for girls and boys;;

**“judicial or administrative institution”** means a court, quasi-judicial tribunal or administrative authority that, and any person who, interprets or applies a law affecting or impacting on a child;

**“law”** means national legislation related to eradication of child marriage;

**“marriage”** means a union of persons contracted statutorily, religiously, verbally or customarily;

**“Member State”** means a Member State of the Southern African Development Community;

**“minimum age of marriage”** means the age of 18 years or such older age as the Constitution or law of a Member State may specify, without exception or gender discrimination;

**“Minister”** means a Minister, in a Member State, responsible for matters-relating to children;

**“Ministry”** means the Ministry, in a Member State, responsible for children’s affairs and related matters;

**“Model Law”** means this Model Law on Eradicating Child Marriage and Protecting Children already in Marriages;

**“offspring”** means a child born of a child marriage;

**“parent”** means the biological father or biological mother of a child, and includes an adoptive parent, guardian or any person or relative acting, in whatever manner, as a parent;

**“parental responsibility”** means the duties, rights, powers, responsibilities and authority which socially, culturally, by law or otherwise, a parent has in relation to a child and exercised in a manner consistent with the evolving capacities of the child;

**"place of safety"** means a place where a child in need of care and protection can be kept temporarily, and includes a safety home or foster home;

**"prohibited marriage"** means a marriage which is prohibited in accordance with section 17;

**"regional and international human rights instruments"** means the human rights agreements, treaties, conventions, protocols, standards and declarations relating to a child's rights or impacting on child marriage which are force;

**"religious authority"** means a person who has power to solemnise a marriage, give religious guidance, counsel or advise on any matter related to any particular social issue related to marriage or perform any religious rite or service, whether as an individual or under the authority of a church or other religious institution;

**"SADC PF"** means the Southern African Development Community Parliamentary Forum established by the SADC Summit of Heads of State on 8th September, 1997;

**"safety home"** means a place which is used for the care, protection, reception, education, counseling and safety of a victim of child marriage;

**"service provider"** means a person who, or body of persons which, is competent to provide services in health, education, child development or protection for a child, child at risk of child marriage, a child in marriage, a victim of child marriage or for the general well-being of such a child and who is licensed or otherwise recognised for such purposes in accordance with the law of the Member State;

**"traditional or local leader"** means a chief, headperson or other person recognised in a community as traditionally having responsibility over that community, or a political or civil person



or body of persons elected or nominated to represent that community at local or national level;

**“victim of child marriage”** means a person who was party to a prohibited marriage, a child whose marriage was dissolved or is in the process of being dissolved, in accordance with section 19, or a child who is in need of care and protection; and

**“voidable”** means a marriage having legal force which can be annulled by a court in accordance with section 19; and

**“vulnerable child”** means a child that is exposed to being attacked, harmed or influenced, whether physically or mentally, and as such is in need of care and protection.

## PART II

### RESTATEMENT OF RIGHTS AND CONCEPTS RELATING TO THE CHILD AND ATTENDANT POLICY INITIATIVES, MEASURES AND INTERVENTIONS

*(This Part and the following Parts have been drafted in a manner to assist Member States to draft similar provisions with minimum amendments. The rights outlined in this Part are a restatement of certain rights of the child as specified in the ACRWC and CRC and inserted in this Model Law as a basis for the eradication of child marriage and protection of a child already in marriage. The style of drafting is generalized as to the rights of the child mainly from the CRC and ACWRC with specific reference or relativity to the issue of child marriage and children already in marriages. The Draftsperson should use the content to develop specific provisions on the subject related issues as conforms with the style and language of legislation in each jurisdiction.*

*The offence and penalty clauses are inserted to remind Governments/draftspersons that they must provide for prohibitions, offences and penalties and are put in strategic sections as indicators).*

*The provisions in this Part and the following Parts can be part of a Childs Code or be enacted as a stand-alone law on child marriage or an amendment to existing laws on marriage or related laws, drafted with the necessary adaptations to bring them in line with the form and style of national legislation)*

### **3. Principles and general rights**

- (1) The best interest of the child shall be a paramount consideration in any matter, decision or action concerning the child, whether undertaken by the Government, judicial institution, appropriate authority, service provider, a body in the private sector or parent to the extent that a child's –
  - (a) rights are safeguarded and promoted; and
  - (b) welfare is promoted and the child is given adequate guidance in matters relating to the child.
- (2) A child is entitled to know of decisions affecting the child.
- (3) A child who is capable of forming an own opinion shall be accorded an opportunity to express that child's opinion in any matter, decision, action or procedure affecting the child and that opinion shall be taken into account, as may be appropriate, having regard to the age and maturity of the child and nature of the matter, decision, action or procedure.
- (4) A child shall have the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice, subject to restrictions provided by law.
- (5) The Minister shall put into place measures to ensure, to the maximum extent possible, the survival, protection and development of the child.

#### **4. Protection from discrimination**

The Government, a judicial or administrative institution, an appropriate authority, a service provider, traditional or local leader, religious authority and any other person shall not discriminate against or punish a child 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, status of the child's parent or other status.

#### **5. Equality, right to life, privacy, dignity and respect**

- (1) All children are equal before the law and shall be entitled to equal protection before the law.
- (2) A child's inherent right to life and right to liberty, security, dignity and respect of the person shall be upheld.
- (3) A child has a right to privacy, dignity and respect.
- (4) Children have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
- (5) The Government and a judicial and administrative institution shall ensure that –
  - (a) children, whether born in or outside marriage, are treated equally before national laws and are accorded equal protection and rights;
  - (b) a child's inherent right to life, liberty, security, dignity and respect are ensured and upheld; and
  - (c) girls and boys have access to sexual reproductive health services and are not unduly hindered in the exercise of their sexual reproductive rights.

## **6. Protection from exploitation and abuse**

- (1) A child shall not be subjected to physical and psychological violence or abuse, neglect and any other form of exploitation, including being used in sexual work, induced or coerced to engage in any sexual activity, exposed to obscene or pornographic materials, sexually abused or groomed using the internet, or sold, enslaved, trafficked or abducted by any person.
- (2) The Minister, in consultation with relevant appropriate authorities, shall put in place policies, measures and interventions to ensure that –
  - (a) a child is accorded 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
  - (b) necessary support is given to a child, child in marriage and a victim of child marriage for the prevention, identification, reporting, referral, investigation, rehabilitation and treatment of injury or illness resulting from maltreatment, abuse or exploitation.

## **7. Protection from harmful practices**

- (1) Child marriage and the betrothal of girls and boys is prohibited and the Government shall ensure that necessary laws specify the minimum age of marriage.
- (2) A person shall not subject a child to harmful practices.
- (3) The Minister shall, in consultation with relevant appropriate authorities, put in place policies, measures and interventions to ensure that a child shall not be subjected to harmful practices.

- (4) The Minister shall, in consultation with the Ministers responsible for community development, culture and traditional affairs (*insert relevant ministerial and administrative portfolios*) and other relevant appropriate authorities take appropriate measures to ensure that education for the family includes a proper understanding of maternity as a social function and the recognition of parental responsibility in the upbringing and development of children.
- (5) A person shall not use or impose, subject or encourage another person to use or impose, a harmful practice on a child.
- (6) A person who contravenes subsection (6) commits an offence and shall be liable, on conviction, to a fine not exceeding XXX. (*insert offence and penalty clause according to style used in, and sentencing policy of, Member State*)

## **8. Parental responsibility and State interventions**

- (1) A child is entitled to parental care and to live with one parent or both parents.
- (2) Where a child is not receiving the necessary care and protection of that child's parent, the Government shall endeavour to provide appropriate alternative care for the child.
- (3) Both parents have an equal duty to protect and adequately provide for the child.
- (4) A parent shall provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance to the child in the exercise by that child of the child's rights.
- (5) A judicial or administrative institution, child marriage prohibition officer or an appropriate authority may, subject to judicial review, remove a child from parental responsibility where the judicial institution, child prohibition officer or appropriate

authority determines that the continued living with the parent may –

- (a) lead to significant harm to the child;
  - (b) lead to the child being married off;
  - (c) subject the child to neglect, exploitation or abuse; or
  - (d) not be in the best interest of the child.
- (6) A child who is temporarily or permanently deprived of the family environment, or in whose own best interest cannot be allowed to remain in that environment, is entitled to special protection, alternative care and assistance, provided by the Government, as specified in this Model Law, including adoption, with due regard to the desirability of continuity in the child's upbringing and the child's ethnic, religious, cultural and linguistic background.
- (7) The Minister shall ensure that the institutions, services and facilities responsible for the care or protection of children conform to the standards established by appropriate authorities, particularly in the areas of safety, health, number and suitability of staff and competent supervision.
- (8) The Government shall respect the responsibilities, rights and duties of parents or, where applicable, the community, as provided for by local customs that are compatible with this Model Law, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights specified in this Model Law and regional and international human rights instruments.
- (9) The Government shall ensure that a child shall not be separated from his or her parents against their will, except when a judicial institution, or child marriage prohibition officer or an appropriate authority, subject to judicial review, determine, in accordance with applicable laws and procedures, that such separation is necessary in the best interest of the child.

- (10) Where separation of a child from his or her parents or parent results from any action initiated by the Government, the Government shall, upon request of the parents or parent, provide the parents or parent with the essential information concerning the whereabouts of the child, unless the provision of the information would be detrimental to the well-being of the child, as provided in this Model Law and regional and international human rights instruments.
- (11) A request by a child's parents, as provided in subsection (10), shall be dealt with by the Government in a positive, humane and expeditious manner.

## **9. Right to education**

- (1) A child has a right to free and compulsory primary and accessible secondary education.
- (2) The Minister responsible for education, in consultation with the Minister, shall ensure that –
  - (a) a child has access to free and compulsory primary and accessible secondary education;
  - (b) the education of the child shall be directed so as to –
    - (i) promote and develop the child's personality, talents, mental and physical abilities to the fullest potential of the child;
    - (ii) foster respect for human rights and fundamental freedoms;
    - (iii) preserve and strengthen positive African values and culture;
    - (iv) promote the child's understanding of the dangers of engaging in a child marriage;

- (v) promote the child's understanding of the nature, causes, modes of transmission, consequences and means of preventing and managing HIV and AIDS and how to access reproductive rights;
  - (vi) promote the child's understanding of the rights and protection of a child who is already in marriage or a victim of a child marriage; and
  - (vii) recognise the special needs of children with disabilities and other marginalised children.
- (3) A girl child who becomes pregnant, before completing her education, shall be given the opportunity with appropriate facilities, during pregnancy and within a reasonable period after delivery, to continue with her education.
- (4) An appropriate authority, service provider, person or anybody in the private sector shall not discriminate against a pregnant child, married child or a victim of child marriage by -
  - (a) putting in place arrangements that deny such a child education and training; or
  - (b) making the terms and conditions of accessing training, facilities or services, including vocational counseling and guidance, difficult or impossible.
- (5) The Minister responsible for education shall, in consultation with the Minister, take appropriate measures to eradicate discrimination against a child who is pregnant, a married child or victim of child marriage in the education sector by -
  - (a) developing career and vocational policy guidelines on training and access to studies;
  - (b) giving such a child the same opportunities to access and benefit from scholarships, educational awards and other study grants;



- (c) ensuring that such a child has the same opportunities in accessing programmes of continuing education, including functional literacy programmes;
  - (d) enhancing the capacity of teachers in guidance, counseling and comprehensive sexuality education;
  - (e) ensuring that such a child has access to specific educational information to enhance that child's health or the health and well-being of the family; and
  - (f) preventing sexual abuse of children by teachers, care providers and peers and imposing severe penalties for such behaviour.
- (6) The Minister responsible for education shall, in consultation with the Minister, take measures to ensure that the curriculum for all educational institutions-
- (a) integrates principles of equality and equity;
  - (b) addresses the special needs of children by incorporating life skills-and comprehensive sexuality education; and
  - (c) introduces subjects that enhance the integration of the girl child in disciplines that are traditionally male dominated.
- (7) A person who contravenes subsection (4) commits an offence and shall be liable, on conviction, to a fine not exceeding XXX.  
*(insert offence and penalty clause according to style used in, and sentencing policy of, Member State)*

## **10. Right to Health**

- (1) A child has a right to enjoy the best attainable state of physical and mental health.
- (2) A child has the right to receive adequate nutrition and health services and, where such services are provided by the Government, the Government shall endeavour to ensure that it

provides health and nutrition services that are adequate to meet a child needs.

- (3) The Minister responsible for health shall, in consultation with the Minister, put in place health policies for the child which shall ensure, according to the situation, evolving capacity and status of the child, the following:
  - (a) access to health and medical services;
  - (b) access to comprehensive, safe and quality sexual and reproductive health services and rights;
  - (c) access to comprehensive sexuality education;
  - (d) access to measures and programmes that will assist in-
    - (i) diminishing infant and child mortality;
    - (ii) diminishing adolescent mortality;
    - (iii) combating disease, the risk of contracting disease or infection and malnutrition; and
    - (iv) ensuring the provision of appropriate pre-natal and post-natal health care for child mothers and their offspring; and
  - (e) the abolishment of harmful practices.
- (4) The Minister responsible for health shall put in place measures that provide to a child - who is pregnant or has given birth, access to maternal health services and specialised services to deal with complicated conditions, such as fistula, including ante-natal, post natal and obstetric care, post abortion care, immunization and nutrition programmes for the child and offspring, as the case may be.
- (5) The Minister responsible for health shall put in place measures for accessing HIV and AIDS counseling, testing, treatment and family planning for a child who is pregnant, child in marriage or a victim of child marriage.

- (6) The Minister responsible for health shall ensure that measures put in place, in accordance with this section, to allow a child wife or child mother the right to determine the best medical procedure for herself, and where consent for such medical procedure is required, to give such consent on her own without the requirement of seeking another person's consent.
- (7) A service provider shall -
- (a) respect the sexual and reproductive health rights of every child;
  - (b) respect the dignity, privacy and integrity of every child accessing sexual and reproductive health services;
  - (c) if the child is capable of fully understanding the nature and possible consequences of the treatment, provide family planning services to a child requesting sexual and reproductive health services, irrespective of marital status or whether or not that child is accompanied by a spouse or partner;
  - (d) impart the information or counseling necessary for a child to make a decision on whether or not to undergo testing or medical procedures or to accept any service relating to the child's sexual and reproductive health;
  - (e) record the manner in which the information imparted to the child seeking reproductive health services was given or counseling undertaken and whether or not it was understood by the child; and
  - (f) obtain the written consent of the child being offered sexual and reproductive health services or family planning services before performing any test or medical procedure or offering any service.

- (8) The Minister responsible for health shall put in place interventions and strategic measures to prevent mother to child transmission of HIV and AIDS.
- (9) In all matters relating to the health of the child, the child's right to privacy of her or his person shall be respected and the right to confidentiality of his or her personal information shall be upheld.
- (10) A service provider who contravenes subsections (6), (7) and (9) commits an offence and shall be liable, on conviction, to a fine not exceeding XXX. (*insert offence and penalty clause according to style used in, and sentencing policy of, Member State. Also put in a clause in the general provisions on offences by body corporate or unincorporated body*)

## **11. Social protection and social services**

- (1) A child is entitled to social protection and social security services.
- (2) The Minister responsible for social protection and social security services shall, in consultation with the Minister, put in place policies, measures and interventions to ensure that a child has access to adequate social protection and social security services.

## **12. Protection from child labour and right to sustainable livelihood and empowerment**

- (1) A child has a right not to engage in work that is exploitative or likely to be hazardous or adverse to the child's health or welfare.
- (2) A child has a right to economic, social and cultural rights, and a Member State shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

- (3) The Minister responsible for labour (*insert appropriate portfolio or portfolios*) shall, in consultation with the Minister and other relevant appropriate authorities, put in place policies, measures and interventions, subject to international labour standards, which shall ensure that –
- (a) a child is not subjected to economic exploitation or any work that is hazardous or likely to interfere with the child’s education, physical or mental health or social development; and
  - (b) a child in marriage or a victim of child marriage has access to suitable gainful employment and, in particular, equal pay for equal work or equal value of work.
- (4) The Minister responsible for labour shall, in consultation with the Minister –
- (a) develop macroeconomic policies that focus on job creation for children in marriages or victims of child marriages;
  - (b) develop measures to regulate the informal economy so as to prevent unfair labour practices where the majority of children work;
  - (c) foster greater linkages between the labour market and education and training systems to ensure that curricula are aligned to the needs of the labour market and that children are trained in fields where employment opportunities are available or are growing;
  - (d) implement appropriately-timed career guidance for children, children in marriages and victims of child marriages, as part of the schooling and post-schooling education system;
  - (e) promote entrepreneurship for children in marriages and victims of child marriages, by including entrepreneurship training in the school curricula, providing access to credit,

business development, skills training, mentorship opportunities and better information on market opportunities; and

- (f) establish measures to empower children in marriages and victims of child marriages to enable them participate fully in economic life across all sectors and on all levels of economic activity.
- (5) The Minister, in consultation with the Minister responsible for finance, shall take appropriate measures in the social and economic fields, especially relating to access to, and control of, resources by a child in marriage or a victim of a child marriage to ensure the full development and advancement of the child.
- (6) A person who contravenes any measures put in place in accordance with this section commits an offence and shall be liable, on conviction, to a fine not exceeding XXX. *(insert offence and penalty clause according to style used in, and sentencing policy of, Member State but consider using fines more than custodial sentences)*

### **13. Rights of vulnerable children**

- (1) A child with a disability, an orphan child, a girl child, a migrant child, unaccompanied migrant children, a child who is a refugee or asylum seeker and other vulnerable children shall enjoy all the rights of a child, as specified in this Part, and shall be given special attention and assistance by the Government.
- (2) The Government shall put in place policies, measures and interventions to assist and protect vulnerable children, especially a vulnerable child in marriage or victim of a child marriage, taking into special account the susceptibility of the girl child.

#### **14. Right to registration of birth and marriage**

- (1) A child has the right to have his or her birth registered in a register of birth.
- (2) A child has a right from birth to a name which shall be registered immediately after birth, in the register of births.
- (3) All marriages, without exception, shall be registered in a register of marriages, as prescribed.
- (4) Notwithstanding, subsection (5), registration of a child marriage contracted before the commencement of the law, and where no option has been exercised in terms of section 19, (**replace with Act if need be**) and the marriage has not yet been registered, shall be compulsory.
- (5) After the commencement of the law, (**use enactment or Act or whatever term or word according to jurisdiction style**) a certificate, license or registration shall not be granted in respect of any marriage unless the officer responsible for registering marriages is satisfied, as specified in this law, that the parties to the marriage have attained the minimum age of marriage.
- (6) The Government shall promote education and public awareness on the births and marriages registration system(s).
- (7) The Government shall train public officers responsible for births and marriages in the relevant disciplines related to birth and marriage registration, so as to create competent authorities for such matters.
- (8) The Government shall put in place policies, measures and interventions to assist in registering births and marriages to enable acquisition of birth certificates and the verification of the age of a person.
- (9) A person who contravenes subsection (5) commits an offence and shall be liable, on conviction, to a fine not exceeding XXX. (**insert**

*offence and penalty clause according to style used in, and sentencing policy of Member State)*

**15. Special policies and programmes for children in marriages and victims of child marriages living in rural and peri-urban areas**

- (1) The Minister, in consultation with the Ministers responsible for local government, community development, agriculture, finance, health and education, (*insert relevant ministerial portfolios*) shall put in place special policies and programmes to meet particular challenges facing children in marriages and victims of child marriages, especially the girl child, who live in rural and peri-urban areas.
- (2) The Minister shall, in consultation with other appropriate authorities, when putting in place the policies and programmes, as specified in subsection (1), ensure that children in marriages and victims of child marriages, especially the girl child -
  - (a) participate in the formulation and implementation of development programmes affecting them;
  - (b) access adequate healthcare facilities, including comprehensive sexual reproductive health services;
  - (c) benefit directly from social security programmes;
  - (d) obtain training and education, formal and non-formal, including functional literacy;
  - (e) access community and extension services;
  - (f) organise self-help groups and co-operatives in order to obtain access to economic opportunities; and
  - (g) access credit, marketing facilities, appropriate technology and land.



## **PART III**

### **PROHIBITION OF CHILD BETROTHAL AND CHILD MARRIAGE**

*(In drafting national legislation a Member State/draftsperson should take into account the child justice system and penal/criminal laws impacting on the matters provided for in this Part and do effective cross referencing, for example, to existing laws on criminal responsibility, marriage, legitimacy, adoption, gender-based violence, trafficking etc; and if need be make consequential amendments to such legislation in order to meet the objectives of this Model Law and harmonise the law so as to ensure efficacy of the law)*

*( Note that where a Member State already has this provision in its laws then the need to add “from the commencement of the law” is unnecessary and if necessary replace with appropriate language such as “this Act, law enactment, etc. This comment applies throughout the Model Law)*

*(Note that the “law” as used in this Model law means the law of the Member State)*

#### **16. Minimum age of marriage and contractual capacity**

From the commencement of the law, a person under the minimum age of marriage has no capacity to consent to a marriage or contract a marriage and any marriage purportedly entered into or solemnised is a prohibited marriage and void.

#### **17. Prohibition of child betrothal and marriage**

- (1) From the commencement of the law –
  - (a) the betrothal of a child is prohibited;
  - (b) a marriage between a child and an adult or between two children is prohibited; and
  - (c) a person shall not contract, solemnise, abet or aid, promote, permit, coerce or force the betrothal or marriage of a child.

- (2) A person, other than a child, who contravenes subsection (1), commits an offence and shall be liable, on conviction, to a fine not exceeding XXX or to a term of imprisonment not exceeding XXX, or to both. *(insert offence and penalty clause according to style used in, and sentencing policy of, Member State)*
- (3) Where it is proved to a court that a child was, at the time the betrothal or marriage was contracted, living or dependant on a person, the court shall consider the parental relationship as an aggravating circumstance. *(This provision may need to be amplified to make clear in some jurisdictions that the penalty imposed shall be higher/stiffer)*

#### **18. Legitimacy of offspring of prohibited child marriage**

- (1) From the commencement of the law, every offspring of a prohibited marriage shall be deemed to be a legitimate child for all legal, judicial or administrative purposes.
- (2) Every offspring of a prohibited marriage shall enjoy the same rights and responsibilities as those of a legitimate child for all legal, judicial and administrative purposes.

#### **19. Voidable child marriage**

- (1) Every child marriage contracted before the commencement of the law, shall be voidable at the option of-
  - (a) one party or both parties to the marriage, where one party was a child or both parties were children at the time the marriage was contracted;
  - (b) a child to the marriage, where the child is married to an adult person;
  - (c) an adult person to the marriage, where the adult person is married to a child;

- (d) one party or both parties to the marriage, where both parties to the marriage are children; or
  - (e) a third party, in consultation with an appropriate authority, in any of the circumstances specified in paragraphs (a) to (d).
- (2) A court shall, on petition of a child, adult person or third party referred to in subsection (1), dissolve/annul the marriage that was contracted before the commencement of the law.
  - (3) The Chief Justice (*state competent authority*) shall prescribe rules for the procedures and processes relating to the dissolution/annulment of a voidable child marriage. (*These rules and procedures may be prescribed in the law itself*)

**20. Property and citizenship arising from prohibited marriage or dissolved marriage**

- (1) From the commencement of the law, where a marriage contracted in contravention of section 17 is dissolved/annulled as specified in section 19 –
  - (a) any property acquired by either party during the subsistence of the marriage, except property that was inherited or brought into such a marriage, shall be deemed to have been lawfully acquired by both parties to such a marriage and shall be distributed equally between them, as prescribed; and
  - (b) any citizenship rights that have accrued or due to accrue to any party of such a marriage, as an entitlement arising from such a marriage, shall be deemed to have been lawfully acquired by, and accruing to, that party.
- (2) Any property that was inherited, or property that was brought into the marriage, by a child, shall be the property of that child

and shall not be subject to distribution in accordance with paragraph (a) of subsection (1).

- (4) The Chief Justice (*state competent authority*) shall prescribe rules and procedures for the distribution of property acquired during a prohibited marriage. (*These rules and procedures may be prescribed in the law itself*)

## **21. Custody and maintenance of offspring of victim of child marriage**

- (1) A court shall make such appropriate orders for the custody, contact, access and maintenance of the offspring of a victim of child marriage, by a party to such a marriage, including maintenance orders by the Government and the parent of the victim of the child marriage, if the court finds it justifiable to do so.
- (2) When a court is making an order for the custody and maintenance of an offspring, in accordance with subsection (1), the welfare and best interest of the offspring shall be of paramount consideration.
- (3) An order for the custody and maintenance of an offspring, in accordance with this section, may include appropriate directions on the giving of access to the parent who has not been given custody of the offspring.

## **22. Legal aid and legal services to victim of child marriage**

- (1) A victim of child marriage, and a third party intervening in a child marriage in accordance with paragraph (e) of section 19, shall be entitled to appropriate legal aid by the Government.
- (2) The Government shall put in place policies, programmes and mechanisms that will ensure accessible and affordable legal services to victims of child marriages, and third parties

intervening in a child marriage in accordance with paragraph (e) of section 19.

**PART IV**  
**MEASURES AND INTERVENTIONS TO PREVENT CHILD MARRIAGE**

**23. Preventative measures and interventions**

- (1) The Minister shall, in consultation with the relevant appropriate authorities, put in place measures and interventions to prevent child marriage.
- (2) Any expenditure relating to the measures and interventions put in place, in terms of subsection (1), shall be paid out of the anti-child marriage fund established in accordance with section 42 or such other funds, directly budgeted for such purposes, appropriated, by the Government, to an appropriate authority.

**24. Prohibition of solemnisation of child marriage**

- (1) A person shall not solemnise, conduct, promote, direct or abet the solemnisation of a marriage which the person suspects or believes that one party is a child, or both of the parties are children.
- (2) Where a person is requested to, or is about to, solemnise a marriage, suspects or believes that one party is a child, or both of the parties are children, the person shall 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.
- (3) Where a birth certificate, identification card or other official document, referred to in subsection (2), is not available or

cannot be accessed within a reasonable period of time, the person who is requested to, or is about to, solemnise a marriage shall determine the age of the person he or she suspects or believes to be a child by the method and criteria prescribed by the Minister responsible for registration of births.

- (4) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding XXX or to a term of imprisonment not exceeding XXX, or to both. (*insert offence and penalty clause according to style used in, and sentencing policy of, Member State*)

## 25. Restraining orders

- (1) Notwithstanding any other enactment, (*replace with Act or law if need be*) customary or religious practice if –
  - (a) on an application of a child marriage prohibition officer or an appropriate authority; or
  - (b) on receipt of information from a person who has personal knowledge or information;

relating to the likelihood of a betrothal or solemnisation of a child marriage, a court is satisfied that a betrothal or child marriage has been arranged or is about to be solemnised, the court shall issue a restraining order.

- (2) A restraining order issued, in accordance with subsection (1), shall prohibit the respondent (*insert appropriate term in accordance with Member States criminal/civil justice system*) from committing any act that may lead to a betrothal or child marriage and restrain any person from aiding or abetting the commission of any such act.
- (3) A court may, when issuing a restraining order, in accordance with subsection (1), impose any condition or give such direction, as the court considers necessary to protect or provide for the

safety of the child, including moving the child to a place of safety.

- (4) A person who, knowingly or has been notified that a restraining order has been issued, in accordance with subsection (1), disobeys or disregards such an order, commits an offence and shall be liable, on conviction, to a fine not exceeding XXX or to imprisonment for a term not exceeding XXX, or to both. (*insert offence and penalty clause according to style used in, and sentencing policy of, Member State*)

## **26. Programmes and incentives to delay marriage**

- (1) The Government shall establish programmes and incentives for families and children to assist delay marriage, including the following:
  - (a) provide opportunities for children, especially girls, to continue their primary, secondary and tertiary education, including life skills and vocational training;
  - (b) provide opportunities for children whose families live below the poverty datum line to complete their primary and secondary education;
  - (c) provide opportunities to families and children to earn money through entrepreneurship and work in the public sector through human resource development programmes;
  - (d) support the retention of children, especially girls, in school;
  - (e) support positive discrimination and broadening opportunities in relation to education of the girl child, poor child performers and children with special needs;
  - (f) support innovative programmes for adolescent girls that provide alternatives to marriage;

- (g) target families in communities where child marriage is most prevalent by providing advocacy or awareness programmes on the consequences of child marriage; and
  - (h) support awareness programmes in primary and secondary schools on sexual reproductive health matters and the benefits of not marrying before the minimum age of marriage .
- (2) The Ministry shall, in liaison with the Ministry responsible for education and other relevant appropriate authorities, make learning of the nature, causes and consequences of child marriage and the consequences of traditional and customary initiation programmes compulsory, as components of a comprehensive sexuality education subject, in public and private learning institutions, including vocational, religious, non-formal and indigenous learning systems and institutions.
- (3) For purposes of subsection (2), the Ministry, in liaison with the Ministry responsible for education and other relevant appropriate authorities, shall ensure that-
- (a) the content, scope and methodology of a comprehensive sexuality education subject is based on aged, appropriate, scientifically accurate, evidence-informed and human rights data and information;
  - (b) every teacher or instructor of a comprehensive sexuality education subject is adequately trained and duly qualified to teach the subject; and
  - (c) the content of a comprehensive sexuality education subject –
    - (i) includes sexual and reproductive health and rights education;



- (ii) provides opportunities for students or learners to discuss and analyse gender inequality and inequity; and
  - (iii) provides advocacy or lessons that ensure that a child in marriage or a victim of a child marriage that attends that learning institution is accepted and not discriminated against.
- (4) The Government may establish incentives for families and children to assist in the delay of marriage, such as –
  - (a) providing cash transfers to the family to encourage children to remain single until they reach the minimum age of marriage;
  - (b) providing funds to a girl child, to enable the girl child complete secondary education; or
  - (c) giving scholarships and bursaries to a girl child up to tertiary level.
- (5) The Government shall support the programmes and incentives specified in this section from moneys paid out of an anti-child marriage fund established in accordance with section 42 or such other funds, directly budgeted for such purposes, appropriated, by the Government, to an appropriate authority.

**PART V**  
**MEASURES AND INTERVENTIONS TO MITIGATE EFFECTS OF CHILD**  
**MARRIAGE AND PROTECT CHILDREN ALREADY IN MARRIAGE**

**27. Mitigatory measures and interventions**

- (1) The Minister shall, in consultation with relevant appropriate authorities, put in place measures and interventions to mitigate the effects of child marriage and protect a child already in

marriage, which measures shall be funded from an anti-child marriage fund, established in accordance with section 42, or such other funds, directly budgeted for such purposes, appropriated, by the Government, to an appropriate authority.

- (2) The Government shall establish public safety homes, public foster homes or any other public facility for the residence, care and maintenance of victims of child marriage which shall be funded from an anti-child marriage fund, established in accordance with section 42, or such other funds, directly budgeted for such purposes, appropriated, by the Government, to an appropriate authority.

## **28. Protection against violence**

- (1) A child in marriage shall not be subjected to any form of violence, including sexual violence, rape, coerced sex or harmful practices. **(cross reference to gender-based violence laws, if any)**
- (2) 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 infection, and such refusal shall not be a ground for divorce. **(cross reference to gender-based violence laws, penal statutes and laws on HIV and AIDS if any)**
- (3) Marriage shall not constitute a defence to a charge of rape.
- (4) A person, who contravenes section (1), commits an offence and shall be liable, on conviction, to a fine not exceeding XXX or to a term of imprisonment not exceeding XXX, or to both. **(insert offence and penalty clause according to style used in, and sentencing policy of, Member State)**

## **29. Determination of children in need of care and protection**

- (1) A child in marriage is in need of care and protection if –

- (a) the child has been or there is substantial risk that the child shall be physically, psychologically or emotionally affected or injured, sexually abused or raped by their spouse or any other person and the spouse, parent or other person, knowing of such effect, injury, risk or abuse, has not protected or is unlikely to protect the child from such effect, injury, risk or abuse;
- (b) the child requires to be examined, investigated or treated for the purpose of restoring or preserving the health of the child and the spouse neglects or refuses to have the child to be so examined, investigated or treated;
- (c) the child behaves in a manner that is, or is likely to be harmful to the child, or to any other person and the spouse or parent is unable or unwilling to take necessary measures to remedy the situation or the remedial measures taken by the spouse or parent are inadequate or inappropriate;
- (d) the child continues to live with a person who has been convicted of an offence in connection with the child and the living arrangement poses a threat to the child;
- (e) the child lives in circumstances that makes the child vulnerable to sexual exploitation;
- (f) the child has no place of abode, lives on the street, or is allowed to be on a street, premises or any other place for the purpose of –
  - (i) begging, receiving alms or offering anything for sale; or
  - (ii) carrying out illegal hawking, illegal lotteries, gambling or other illegal activities detrimental to the health and welfare or educational advancement of the child; or

- (g) the child is assessed by a court to be in need of care and protection having regard to this section, section 8 and any other enactment *(replace with law or legislation if need be)* relating to gender based violence.
- (2) Any person who has reasonable grounds to believe that a child in marriage is in need of care and protection may, as soon as practicable –
    - (a) report the matter to a child marriage prohibition officer or an appropriate authority; or
    - (b) where emergency protection is required, bring the child before a court for an order to move the child to a place of safety.
  - (3) A child marriage prohibition officer or an appropriate authority shall, upon receipt of a report, submitted in accordance with subsection (2)(a), immediately or as soon as is practicable, take the child to a place of safety until the child is brought before a court.
  - (4) Where a child is brought before a court, in accordance with subsection (2) (b) or (3), the court may make an order for the placement of the child in a safety home or for the child's temporary committal into foster care.
  - (5) Where the court determines that a child in marriage is in need of care and protection, the court may order the following:
    - (a) that the child be returned to the child's parent or the person who has parental responsibility for the child and may direct the parent or the person who has parental responsibility for the child to execute a bond, with or without sureties, to exercise proper care and guardianship of the child;
    - (b) that contact may be established between the child and the child's parent;

- (c) that the child be committed to a child correctional centre, ***(insert appropriate term from the Member State)*** if the court is satisfied that it is in the best interest of the child;
  - (d) that the child be committed to a harm reduction centre, a centre for the reintegration of children or the child be accorded professional counseling in an appropriate place, where the court is satisfied that the child has been engaged in drug abuse, and that it is in the child's best interest.
- (6) A court may in an order, made in accordance with subsection (4) or (5)-
- (a) specify directions as to how the order shall be carried out and enforced;
  - (b) impose conditions that shall be complied with;
  - (c) define the duration of the order; and
  - (d) attach any other condition as the court may consider necessary in the circumstances.

***(This section may be amplified and drafted by the Member States in accordance with the procedures and processes provided under the judicial codes/high court rules with special reference to gender based violence)***

### **30. Measures, interventions and entitlements for child in need of care and protection**

- (1) The Government shall ensure, at no cost to the child or the child's parents, that it provides – :
- (a) assistance and maintenance for - a child in need of care and protection;
  - (b) appropriate health facilities for the treatment, counseling, rehabilitation and care for a child in need of care and protection; and

- (c) other facilities, programmes and support structures and appropriate measures and interventions to promote the safety, physical and psychological rehabilitation of a child in need of care and protection.
- (2) A child in need of care and protection shall be entitled to the following:
- (a) free and particularised legal services;
  - (b) assistance for care and maintenance of any offspring; and
  - (c) other health and social services for any offspring.

### **31. Requirements relating to safety homes**

A safety home, established in accordance with the law (*re-place with this Act, if need be*), shall –

- (a) secure the physical safety of a victim of child marriage and any offspring;
- (b) provide basic material support for the care of the victim of child marriage and any offspring;
- (c) offer counseling and rehabilitation services to the victim of child marriage and any offspring; and
- (d) in cooperation with the Minister responsible for education, offer certain educational programmes, as may be prescribed, to the victim of child marriage and any offspring.

*(A Member State should provide in a separate part of the national legislation for establishment of public and private safety homes, foster homes and other facilities and for the standards for such facilities, approvals, regulatory provisions as to stay, discipline and maintenance and closure of such facilities. Further, provide for procedures for committal and responsibilities of persons running such facilities. Most of these provisions already exist in Child Codes, juvenile laws and other juvenile justice system laws in some Member States and there may, therefore, only be the need for effective cross referencing)*

### **32. Strengthening community networks**

- (1) The Ministry shall, in order to mitigate the effects of child marriage and prevent child marriage –
  - (a) establish contact with traditional leaders and religious authorities;
  - (b) assist in the establishment of community networks; and
  - (c) encourage the development of community centers or homes for purposes of –
    - (i) providing psychological and physical support to children who leave marriages;
    - (ii) providing emergency facilities to accommodate and care for victims of child marriage;
    - (iii) supporting the re-integration of victims of child marriages with their parents;
    - (iv) re-integrating victims of child marriages into society;
    - (v) launching child advocacy programmes for the prevention of child marriage; and
    - (vi) providing an accessible, youth friendly and gender neutral place for reporting intended child marriages, betrothals, child marriages and children in need of care and protection.
- (2) The Ministry shall, in collaboration with other appropriate authorities, encourage and assist 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.

### **33. Training of officials**

The Government shall provide for the 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, *(insert appropriate terms of officers to be trained according to Member State)* on -

- (a) the dangers and effects of child marriage;
- (b) gender equity, equality and human rights;
- (c) the legal protections that must be activated and put in place to address the threats that children face with regards to child marriage;
- (d) the link between national development, economic growth, the economic empowerment of society and delayed or reduced child bearing;
- (e) reporting on matters related to child marriage, the processes and procedures related to handling cases on children in need of care and protection and the programmes and incentives relating to delaying child marriage; and
- (f) the objectives and requirements of this law.*(replace with Act if need be)*

## **PART VI**

### **ACCESS TO DATA AND INFORMATION, PUBLIC AWARENESS, MONITORING AND EVALUATION**

### **34. Evidence based information and data**

- (1) The Ministry shall develop and implement effective evidence based policies and programmes for eradicating child marriage.



- (2) The Ministry shall set up disaggregated data collection, child surveillance systems and national child rights observatories in line with the objectives of the ACRWC and the CRC and shall –
  - (a) collect data on the –
    - (i) incidence and prevalence of child marriage;
    - (ii) number and status of children already in marriage, including the 1 child’s education, access to resources, health care, sexual and reproductive services, information and entertainment and the socio-economic status of the family;
    - (iii) causes of death of girls aged between 12 and 18 years of age, including death from AIDS and gender-based violence;
  - (b) maintain an up-to-date record of information on the nature and magnitude of child marriage ;and
  - (c) keep track of emerging child marriage concerns.

### **35. Access to information and data on children’s issues**

- (1) The Ministry shall establish information and data systems and ensure efficient access by children, parents, other members of a child’s family and the public to data and information on child marriage, children’s rights and freedoms, gender equity and equality, gender-based violence, socio-economic programmes and opportunities for the empowerment of children and other matters concerning the child.
- (2) Subject to the law on privacy of a person and personal information, a person, regardless of their marital status or gender, shall have access to the data and information system, established in accordance with subsection (1), including gender sensitive HIV and AIDS-related information and data, health

services and girl-specific sexual and reproductive health services data.

### **36. Public awareness**

- (1) The Ministry shall promote public awareness about the nature, causes, consequences and means of prevention of child marriage through comprehensive nationwide campaigns conducted in liaison with appropriate authorities or other agencies at local and national levels.
- (2) The public awareness campaigns, referred to in subsection (1), shall-
  - (a) use evidence-based approaches that have proved to be successful elsewhere;
  - (b) be adapted to the age, gender and nature of activities of the targeted groups;
  - (c) address social, cultural and religious constraints, including masculinity and unequal gender relations;
  - (d) be carried out in schools and other institutions of learning, workplaces and rural and urban communities;
  - (e) be guided by evidence on potential opportunities for, and barriers to, behavior change, and include effective measures to ensure that information, education and communication translate into behavior and attitude change;
  - (f) challenge stigma and discrimination against victims of child marriage and address misinformation about perceived benefits and advantages of child marriage; and
  - (g) promote the acceptance and integration of victims of child marriage.

- (3) In undertaking public awareness campaigns, referred to in subsection (1), the Ministry, appropriate authority or other agency shall collaborate with relevant public and private stakeholders, including the media, and ensure the meaningful involvement and participation of children, children already in child marriage, victims of child marriage, children in need of care and protection and parents.
- (4) The public awareness campaigns, undertaken in accordance with this section, shall ensure the sensitisation of men and boys on HIV prevention, gender-based violence, effects of gender inequality and inequity and challenge dominant, religious or traditional conceptions of masculinity.

### **37. Child marriage education and information as a healthcare service**

- (1) The Government shall ensure that providing the data and information, stipulated in this Part, forms part of the delivery of healthcare services by all healthcare providers, including traditional and spiritual healers, at both public and private healthcare facilities.
- (2) For purpose of subsection (1), a person responsible for the management of a healthcare facility shall ensure that all healthcare providers are trained on how to provide the information and data stipulated in this Part.
- (3) The training of healthcare providers, in accordance with this section, shall include training on topics such as confidentiality of information relating to the child, privacy of the child and display of positive attitudes towards a child in marriage or a victim of child marriage.

### **38. Child marriage information and media**

- (1) The Ministry and every appropriate authority shall ensure that its relevant departments design programmes that –
  - (a) take into consideration cultural, religious, age, status, locality and gender specificities in dealing with child marriage prevention and protection;
  - (b) challenge gender inequality and inequity, gender based violence and attitudes of discrimination and stigmatisation against children in marriages or victims of child marriages; and
  - (c) include the role of the media in reporting and highlighting the issues and effects of child marriage.
- (2) The Ministry shall develop strategies with a clear action plan on eradication of child marriage.
- (3) The public and private media, including the advertising industry, shall develop policies and codes of conduct to increase awareness of, and sensitivity to, the effects of child marriage, human rights and freedoms of children, prevent the sensationalisation of child marriage issues and the use of inappropriate language and stereotyping when reporting and advertising on child related issues.

### **39. Regular monitoring, evaluation and reporting**

The Government shall allocate adequate funds to ensure the effective and regular monitoring, evaluation and reporting of –

- (a) 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

- (b) technical, human and financial resources to ensure that such resources are adequate for the implementation of the measures and interventions provided in this Model Law.

## **PART VII**

### **GENERAL PROVISIONS, OFFENCES AND ENFORCEMENT**

#### **40. General State action**

- (1) The Government shall –
- (a) 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 and shall, in such State Reports, highlight the status and measures taken by the State towards eradicating child marriage and protection children already in marriage;
  - (b) take action to 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;
  - (c) engage constructively with relevant stakeholders, including CSOs, the media, traditional leaders and children, towards the eradication of child marriage;
  - (d) provide a conducive legal and policy environment for CSOs to enable CSOs to advance advocacy, research and litigation to prevent child betrothal and marriage and support children in marriages and victims of child marriages;
  - (e) address the structural causes of child marriage through strategies that –

- (i) promote gender equality and equity;
  - (ii) empower a child in marriage and victim of child marriage to vitiate poverty;
  - (iii) challenge gender stereotypes and harmful practices;
  - (iv) engage stakeholders on initiatives to eradicate child marriage; and
  - (v) engage parents on initiatives to eradicate child marriage;
- (f) support the capacity of families to adequately protect a child already in marriage and victims of child marriages by –
- (i) enhancing their socio-economic capacities such as, increased access to employment, loans and child sensitive social protection schemes; and
  - (ii) involving parents in programmes that promote positive, non-violent and non-discriminatory forms of child rearing; and
- (g) strengthen the participation of key stakeholders in child marriage prevention programmes by supporting and funding community watch committees and centers, as provided in section 32, to ensure their sustainability.
- (2) The Ministry shall, bi-annually, table a report to the legislature ***(insert appropriate term, such as National Assembly)*** on the activities undertaken to fulfill the requirements stipulated in this Part.

#### **41. Notification and reporting mechanisms**

- (1) Every appropriate authority shall establish notification and reporting mechanisms to inform persons under threat of, or to report on, child betrothal or marriage, which shall include

practical steps to be taken by a child or other person to avoid child betrothal or marriage.

- (2) The practical steps to be taken, as required in subsection (1), may include-
  - (a) placing one's passport in safe keeping;
  - (b) reporting perpetrators of child marriage to a child marriage prohibition officer or an appropriate authority; or
  - (c) informing a child marriage prohibition officer or an appropriate authority when a child is being taken out of any jurisdiction, on suspicion that the child is to be betrothed or married off.
- (3) In order to encourage persons to report a possible child betrothal or marriage, the Ministry shall-
  - (a) establish toll free child help lines, including the adoption and allocation of SADC harmonised toll free helpline numbers to facilitate cross-border protection of children; and
  - (b) provide incentives, protection and confidentiality to informers reporting on an impending child betrothal or marriage.

#### **42. Anti-child marriage fund or alternative financial resources**

- (1) The Minister shall, with the approval of the Minister responsible for finance, establish an anti-child marriage fund or recommend to the Minister responsible for finance, in consultation with a portfolio 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 sensitisation, advocacy

and awareness campaigns and interventions specified in this Model Law.

- (2) An anti-child marriage fund, established in accordance with subsection (1), shall consist of such moneys as may –
  - (a) be appropriated by Parliament for the purposes specified in subsection (1) and such other purposes as provided in this Model Law;
  - (b) be paid to the anti-child marriage fund by way of grants or donations;
  - (c) be contributed to the anti-child marriage fund by a spouse or parent of a victim of child marriage, when ordered to do so by a court; or
  - (d) otherwise vest in or accrue to the anti-child marriage fund.
- (3) The Minister may, for purposes of an anti-child marriage fund, or a portfolio ministry, for purposes specified in subsection (1), accept moneys by way of grants or donations from any source within the country and, subject to the approval of the Minister responsible for finance, from any source outside the country.
- (4) There shall be paid from an anti-child marriage fund or such monies as may be appropriated to a portfolio ministry for purposes of the law –
  - (a) the cost arising from prevention and protection measures and interventions, put in place by the Ministry, for purposes of eradicating child marriage and mitigating the effects of child marriage;
  - (b) the cost of establishing public safety homes, public foster homes or any other public facility for the residence, care and maintenance of victims of child marriage, their offspring and children in need of care and protection;



- (c) Government's contribution for the maintenance and assistance of a victim of child marriage as provided in section 21;
- (d) incentive payments and programmes as provided in section 26;
- (e) training of officials as provided in section 33; and
- (f) any other costs incurred in carrying out the objectives of this law. *(replace with Act if need be)*

*(Insert appropriate standard provisions for procedures to protect the monies of the fund from being misappropriated and for payments out of the fund, in accordance with standard procedures in Member State)*

#### **43. Child marriage prohibition officers or committee, functions and duties**

- (1) The Ministry shall appoint public officers as child marriage prohibition officers or constitute a committee *(insert appropriate titles according to Member State establishment systems)* for purposes of the law *(replace with this law or this Act if need be)*.
- (2) It shall be the duty of a child marriage prohibition officer or a committee constituted in terms of subsection (1), in consultation with relevant appropriate authorities and CSOs, to –
  - (a) prevent child marriage;
  - (b) collect evidence for the effective prosecution of persons contravening the law;
  - (c) advise either individual cases or counsel the communities generally not to indulge in promoting, helping, aiding, abetting or otherwise allowing child marriage;
  - (d) create awareness of the consequences and effects of child marriage;
  - (e) sensitize communities on child marriage;

- (f) furnish, to the Minister, periodical returns and statistics on children already in marriage, including areas with high prevalence rates; and
  - (g) perform such other functions and duties as may be assigned by the Minister and prescribed by any other enactment.
- (3) Nothing in this section shall prevent any other appropriate authority from performing the duties and exercising the functions specified in subsection (2).
- (4) A suit, prosecution or other legal proceeding shall not lie against a child marriage prohibition officer, committee members or other appropriate authority in respect of anything done or intended to be done in good faith when carrying out the duties and functions specified in the law.

#### **44. Compliance notice**

- (1) The Minister may issue a compliance notice to an appropriate authority or private body which the Minister, on reasonable grounds, believes is not substantially complying with the law or other relevant enactment impacting on the objectives of the law. *(draft in accordance with Member States style for reference of the law or cross reference to other laws, for example, use “Act” and name and cite the relevant laws)*
- (2) A compliance notice, referred to in subsection (1), shall clearly state -
- (a) the form, conditions and time frames for submission of a report on any matter requested by the Minister;
  - (b) the address where the report shall be submitted;
  - (c) who the addressee is;

- (d) the provisions of the law or other relevant enactment impacting on the objectives of the law that has not been complied with;
  - (e) the details of the nature and extent of non-compliance; and
  - (f) request the addressee to remedy any non-compliance with the law or other written law impacting on the objectives of the law or give an explanation in answer to the allegations made in the compliance notice.
- (3) The Minister shall, on receipt of a report, submitted in accordance with subsection (2), consider the report and if the Minister is not satisfied with the measures put in place to remedy the non-compliance or the explanation given, inform the addressee –
- (a) to take such action or corrective measures to address any non-compliance, as specified by the Minister;
  - (g) to take the action or corrective measures within such period as the Minister shall specify in the compliance notice; and
  - (h) of the enforcement measures that the Minister intends to impose in the event of non-compliance with this subsection.

***(Insert provisions relevant to Member States enforcement and compliance systems for cases where a compliance notice is not complied with or appropriate action is not taken)***

#### **45. Access to premises, documents and information**

- (1) A child marriage prohibition officer, committee constituted in terms of section 43 or an appropriate authority who suspects or believes that any person, private body or agency is contravening or is about to contravene this law, shall have the power, subject to a warrant issued by a court, to -

- (a) access all books, records, returns, reports and other documents relating to that person, private body or agency, related to the alleged contravention;
  - (b) enter and search, forthwith, the premises of that person, private body or agency, where the premises is being, or is intended to be, used in the commission of an offence as provided in this law;
  - (c) search for and remove any document or other thing that may be relevant to an investigation or may be evidence of an offence;
  - (d) where necessary, take copies of any document or extracts from any document that may be relevant to an investigation; and
  - (e) where necessary, require a person to reproduce, or to assist in reproducing, in usable form, any information recorded or stored in any document or device.
- (2) An appropriate authority shall endeavour to enable a stakeholder, including the media, to access information for purposes of furthering the objectives or implementing the provisions of the law.
- (3) Access to premises, documents and information may be obtained, for the purpose of subsection(1), without a warrant, if a probation officer, committee or appropriate authority, on reasonable grounds, believes the delay in obtaining such a warrant would defeat the objective of this section.

#### **46. General offences**

A person, who is not a child, who –

- (a) refuses to answer any questions asked for purposes of an investigation or gives an answer which is false or misleading in a material particular or is incomplete;

- (b) fails to produce a document required by a child marriage prohibition officer, a committee constituted in terms of section 43 or an appropriate authority;
  - (c) willfully signs or delivers any false or incorrect notification, report, document or statement;
  - (d) refuses to allow a child marriage prohibition officer, a committee constituted in terms of section 43 or an appropriate authority to enter and search a premise, as specified in section 45;
  - (e) refuses to divulge where a victim of a child betrothal, a child who is to contract a marriage or a victim of a child marriage is;
  - (f) willfully moves a victim of a child betrothal, a child who is to contract a marriage or a victim of a child marriage out of jurisdiction or place of safety; or
  - (g) fails to comply with any order or warrant issued under the law;
- commits an offence and shall be liable, on conviction, to a fine not exceeding XXX or to a term of imprisonment not exceeding XXX, or to both. (***Insert offence and penalty clause according to style used in, and sentencing policy of, Member State***)

## **Schedule**

### **(Section 2)**

#### **Regional and International Human Rights Instruments**

1. Convention on the Rights of the Child, 1989;
2. African Charter on the Rights and Welfare of the Child, 1999;
3. United Nations Sustainable Development Goals, 2015;
4. Convention on the Elimination of All Forms of Discrimination Against Women, 1979;
5. Declaration on the Elimination of Violence Against Women, 1993;
6. Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1950;
7. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003 (the Maputo Protocol);
8. International Convention on Economic, Social and Cultural Rights, 1966;
9. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984;
10. African Charter on Human and People's Rights, 1981;
11. Universal Declaration on Human Rights, 1948;
12. International Labour Organisation Convention on the Elimination of the Worst Forms of Child Labour, 1999;
13. African Youth Charter, 2006;
14. SADC PF Model Law on HIV/AIDS, 2008;
15. Beijing Platform of Action; and
16. SADC Protocol on Gender.

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