



The Sentinel

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The official newsletter of the Human & Social Development and Special Programmes of the SADC Parliamentary Forum.

WINDS OF CHANGE



...as Parliamentarians fight child marriage



Message from the Secretary General

Dr Esau Chiviya

Welcome to yet another edition of *The Sentinel*. I am pleased to note that efforts to develop a SADC Model Law on Eradicating Child Marriage and Protecting those already in marriage are gaining momentum. Over the past year we have worked with our partners to organise various meetings at which many stakeholders have looked at the draft Model Law and made many comments and suggestions which have been taken on board. It was important that many experts and our Parliamentarians carefully look at this draft and suggest how it could be developed in a manner that best serves its intended beneficiaries who include women and girls who continue to be worst affected by child marriage. In this edition we highlight some of the many engagements that have taken place as we worked towards developing this Model Law. Additionally, we capture what some of our most important stakeholders who include lawmakers, have said with respect to the process of developing this Model Law and what needs to be done once it has been finalized. We are pleased to note that the process of developing this Model Law has emboldened some SADC Member States to examine the causes, extent and impacts of child marriage in their countries with a view to taking concrete steps. Recently Mozambican Parliamentarians met in Maputo and discussed what is driving child marriage in their countries. They looked at prevailing marriage-related laws and how they could be used to protect the rights of women and girls. This is commendable. As we have said in the past, ending child marriage will require the active involvement of all stakeholders. We are pleased to see our Parliamentarians throwing their collective weight behind this growing social movement. We are grateful to many of our partners who have been working with us in developing this Model Law. We need to maintain the momentum until child marriages have been eradicated in all of our countries. Enjoy reading!

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The Sentinel

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SADC child marriage law takes form



TOGETHER AS ONE: Experts representing key institutions working on policy and legal issues related to Sexual and Reproductive Health and Rights (SRHR), pose after a meeting to review a draft SADC Model Law on Child Marriage.

Staff Writer

Johannesburg – A group of experts representing key institutions working on policy and legal issues related to Sexual and Reproductive Health and Rights (SRHR), children’s rights, women’s rights and HIV and AIDS met in Johannesburg, South Africa last week to review a draft SADC Model Law on Child Marriage.

The meeting, held on the 10th and 11th of August, was the first in a series planned to enable stakeholders to comment on the SADC model Law on Child Marriage whose development the SADC Parliamentary Forum is spearheading.

During the meeting, the approximately 10 experts pored over the draft model law as well as a related position paper line by line and made extensive comments and recommendations which will be incorporated. The aim is to ensure that once the SADC Model Law on Child Marriage has been fully developed, it can be used to effectively prohibit, prevent and respond to all forms of child marriage, which currently affects millions of girls in southern Africa and beyond.

After the meeting, the experts were upbeat. Professor Ann Skelton, the Director of the Centre for Child Law at the University of Pretoria, said the meeting was necessary to remove grey areas, ensure that the proposed model

law is consistent with regional and international instruments related to child marriage and to make it serve the best interests of the children it seeks to protect.

“I thought the meeting grappled with some tough questions, the central one being where to find the fine balancing line between protecting girls (which seems to require an inflexible approach) and recognising their growing autonomy and right to develop relationships (which requires a flexible approach),” Skelton said in an interview. She stressing that this tension was not uniquely found in the child marriage

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question, but was very acute in this debate.

“I am very happy that the expert group was clear about not criminalising children. It also appreciated the care taken to distinguish between pre-existing marriages (which it is proposed will be voidable at the instance of a party), and those that may occur after a prohibition of marriage law is passed (which will be automatically void).”

Mrs Ronaldah Lerato Karabo Ozah, an Attorney who also works at the Centre for Child Law at the University of Pretoria, said she was grateful to have been part of experts who had the opportunity to input on a document that is aimed at protecting girl children and towards the realisation of the rights to which they entitled.

“I am mindful of the fact that the law on its own will not eradicate child marriage but will remind us all of our obligations to protect girl children and this is the responsibility of all -communities, lawyers as well religious and traditional leaders,” she said.

Ozah said the meeting was important as it enabled participants to input not only on the draft SADC Model Law on Child Marriage, but also on the strategic way forward that will ensure that relevant individuals and groups are lobbied to garner support for the model law.

“Even if this takes a bit longer, it is crucial that we consult as widely as possible and get as much support for the model Law,” she said.

Ms Nyasha Chingore, a human rights lawyer who works at the Southern Africa Litigation Centre (SALC) said being part of the experts’ meeting was an “intriguing” experience.

“It was interesting to see how Expert Team members from varying backgrounds tried to negotiate the tensions that will inevitably arise in attempting to legislate in this area. While one would expect that considerations of ‘custom and religion’ and the impact of prohibition with sanctions would present challenges which are not easy to navigate, for me the stickiest point was figuring out how the Model law could recognize the evolving capacities of children without compromising the very essence of what the Model Law seeks to do - eradicate child marriage in any and all its forms,” she said.

Chingore cited the example of the discussion around whether the model law should leave room for any “loopholes” at all including close in age considerations.

“The debate in the Experts Team is of course just a pre-cursor to the debates that will ensure in parliaments across the region. The Experts Team is generally a group of like-minded people who agree on the principals. However, the engaging debate that ensued reminded me that while we agree on the problem and indeed the end goal, it is important to critically assess the nuances and to remember that there are no easy answers.”

Dr Aquinaldo Celio Mondlate, a researcher specialising in Children’s rights said the meeting was a great platform to reflect about the problems that affect children involved child marriage and its negative consequences.

“It was interesting to learn about the sensitivities around the issues relating to child marriage, mainly the challenges in ensuring that the situation of children who are currently involved in child marriage is not worsened when SADC Member States incorporate provisions of the model law in their national laws. Concerns raised also included the fact that there is a need to safeguard the rights of children who are involved or affected by child mar-

riage including the children born out of child marriage,” Mondlate said.

Dr. Asha Mohamud, UNFPA East and Southern Africa Adolescent Sexual and Reproductive Health Policy Advisor with the United Nations Population Fund (UNFPA) which is one of the institutions supporting SADC PF in the development of the model law, sounded excited and optimistic.

She stressed the importance for all interested parties to maintain the momentum to ensure that the draft model law is shared widely and finalised soon.

“I am very enthusiastic. I know that we have a lot in front of us but when I realise that we are making a difference I feel encouraged. The eradication of child marriage is critical achieving demographic dividends and socio-economic development. When you have large numbers of young people marrying, they have large numbers of children which indicates high fertility, which leads to a high dependency ratio and poverty,” she said.

More stakeholders that include Civil Society Organisations, Judges, and academicians, legal drafters and law commissions will be consulted before the model law can be finalised.

According to a road map proposed by SADC PF Secretary General Dr Esau Chiviya, the next steps will include presentation of the polished Draft Model Law on Child Marriage to SADC PF Committees for further consideration before it is presented to the SADC PF Plenary Assembly for approval and adoption.

The final step will entail the SADC PF boss presenting the Model Law to the Executive Secretary of SADC before being adopted by the 39th Plenary Assembly Session of SADC PF for the transformation into a SADC Protocol on Child Marriage to commence.



Joy as SADC Model Law on Child Marriage takes shape



Hon. Innocent Gonese



Judge Prof Key Dingake



Hon. Shakeel Mohamed

Staff Writer

Parliamentarians and other stakeholders from Southern Africa have welcomed the draft SADC Model Law on Eradicating Child Marriage and Protecting those already in Marriage, saying it is a giant step forward in a region working to promote the rights of women and girls.

Zimbabwean Parliamentarian, Hon Innocent Gonese, said child marriage was “problematic” in the SADC region and it was about time the region united against it.

“It is something we all need to confront and coming up with a model law is going to give guidance to our respective countries,” he told *The Sentinel*.

Hon Gonese hailed the SADC Parliamentary Forum for making the drafting of the model law an interactive process involving many stakeholders.

“As representatives of the people we come across child marriage. Enabling us to go through this draft clause by clause enables us to give our thoughts so that there is ownership in the whole process.”

He said by the time that the Model is made available to respective National Parliaments, those who were involved in its development would be able to help “colleagues who were not part and parcel of the process to be aware of the law and what it seeks to achieve.”

Hon Gonese, a lawyer by profession,

said while law was not a panacea, it was important in the achievement of set goals.

“Legislation is very important because we have to buttress education and sensitisation with some pieces of legislation which deal with given problems. I believe that once we have a model law and our respective countries enact appropriate legislation, that would go a long way towards reducing child marriages which are endemic in the region,” he said.

He said the two days that delegates spent poring over the draft were “time well spent”.

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Prominent High Court Judge, Professor Dr Key Dingake who has followed the development of the draft model law with keen interest, described it as “belated but also timely.”

Said the Judge: “The fact that the SADC Region has now converged to address this problem is commendable.”

Judge Dingake sat through the two days that delegates spent examining the draft model law. *The Sentinel* asked him what he thought had been the sticky or contentious issues.

“Let me start off with the positive part. Everyone realises that child marriage must be stopped. That is a major breakthrough. The sticky points related to details which reflect the dynamics in individual countries but that should not detain us. What is important is that we have agreed as a region to stop child marriage and we know the adverse consequences,” he said.

Turning to the manner in which the model law was being developed, the Judge said he was happy with the “critical approach” and the exhaustive clause by clause scrutiny that cultivates ownership.

“Political ownership can only come from the people’s representatives.”

While acknowledging the fact that the proposed model law fell into the category of non-binding soft laws, Judge Dingake said it should not be taken for granted.

“Jurisprudentially, we are moving to a stage where even judges consider soft law as a part of the guidance. From that perspective soft law is now part of international law. Soft law can transform into legislative provisions. To that extent, one must celebrate it.”

On what SADC PF should do after the

model law has been fully developed and adopted by its Plenary Assembly Session, the judge said much would still need to be done.

“There is need to cultivate Executive ownership. The reality is that the power of SADC is interlinked with the political will of the Executive. If the Executive is not willing or does not understand, has reservations, is reluctant or is indifferent, this law will not go through. That is very important. Once the Executive has been won over, there is need to create awareness among members of the public including certain critical constituencies,” he said.

An MP from Mauritius, Hon Shakeel Mohamed, said by bringing MPs and stakeholders to discuss the draft Model Law, the SADC PF had shown “courage.”

“SADC PF is spearheading this agenda of outlawing child marriage. It’s not easy to bring to the table people from different countries. It’s even more complicated to bring together people from different cultural backgrounds,” he said.

He said during the two days of intense debate around the draft model law, one of the “thorny” issues was related to the age that defined a child.

“Some people said it should be 18 in line with international conventions. Some have suggested that it should be 21. Consensus has been that it be 18. Another interesting issue which the Mauritian delegation brought up was around the age at which sexual intercourse can be deemed legal. In many jurisdictions of member states, 16 happens to be the norm. International organisations also talk about the age of 16,” Hon Mohamed said.

He said that presented a dilemma.

“How does one reconcile the fact that one is allowed legally to have sexual intercourse when one is 16 as opposed to the fact that one is not allowed to get married until one is 18 years old?”



HRH Prince Dlamini

He described that as an interesting “conflictual issue” that should perhaps be left to sovereign states to resolve in keeping with their cultural and religious sensitivities.

Asked what difference the model law would make if embraced and implemented, he said: “Getting together and preparing a model law is one thing. Implementation and seeing it translated into law in different Parliaments is another thing. I think we are still far away from the implementation issue. What it takes is political will amongst Parliamentarians. It is still to be tried and tested if there is political will among those in cabinet.”

He thanked SADC PF for providing a platform from which people, especially Parliamentarians, can work together to resolve common problems.

This meeting has for me been a voyage of discovery; learning through various interactions how people view one subject differently. That has been enriching.”

He said focus should be placed on coming up with a law that is gender neutral and shows uniformity among

● see **FORM** page 7



“Infantilisation” of women fuelling child marriage: MP

Staff writer

Malawi’s law maker, well known feminist activist and scholar, Dr Jessie Kabwila, has said the belief that women are children and men are adults is fuelling child marriage in the SADC Region and other parts of the world.

Dr Kabwila is one on many Parliamentarians and other stakeholders who have been advocating for greater protection of the rights of the world’s girls for years and who are now relieved to note that the SADC Region is now moving towards a Model Law on the Eradication of Child Marriage and Protecting those Already in Marriage.

For Dr Kabwila, there has never been a finer moment than now.



Hon. Dr. Jessi Kabwila

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Member States.

“We should be courageous enough to put aside our cultural differences and prohibit child marriage.”

Turning to the clause by clause scrutiny of the draft model law, he said the process had been “meticulous”.

“It shows that each MP did not come on

holiday. We went into the nitty gritty of this law. What is of paramount importance is the interest of the child.”

His Royal Highness Prince Dhlamini, a Senator from Swaziland, said he was excited to be part of a process to chart “a new order of things in terms of child protection laws and making sure that children grow up in an environment in which they can be adults before they do the adult things.”

He said the draft model law “is good, although it touches on peoples cul-

tures.” He added: “We have to stamp out child marriages but we have to approach these issues soberly otherwise there would be social commotion.”

He said the meeting had enabled most MPs to better appreciate the letter and spirit of the proposed model law.

“We are more relaxed now and most of us understand what is being intended with this model law but going forward, a lot of work still needs to be done.”



● **INFANTILISATION** from p.7

“As a person who has been in the women’s movement for a long time and a legislator, out of a commitment to make sure that we are improving the lives of women, this is a very crucial draft Model Law and I am looking forward to the time when it becomes law,” she told *The Sentinel*.

She however bemoaned the fact that the SADC PF was still trying to transform into a SADC Regional Parliament.

“It is disturbing to work on something knowing that in the end what one is working on will end up as just a reference document. However, a journey of a thousand miles starts with one step. That we are discussing this draft should be cherished,” she said.

Dr Kabwila was full of praise for the SADC PF for bringing MPs and other stakeholders together to discuss the draft Model Law.

“Being here with legislators from different countries showed me the level of discourse on child marriage in the different parts of the SADC Region. The stereotypes and gaps have become very clear. Steps being taken have also become clear,” she said.

Dr Kabwila held out the example of Zimbabwe and South Africa in which “not only the issue of women’s empowerment is real but has been institutionalised.”

“The quality of arguments that came from those countries was just outstanding.”

She added: “I am very happy with the strides that the human rights discourse is making in terms of marginalised groups. In the past, whenever patriarchy entered the discourse; it had to be women fighting it. Now I see men who not only understand concepts, but are committed to making sure that equity is attained in the SADC Region.”



Hon. Masefele Rosalia Morutoa of South Africa

Probed on what lawmakers should do to ensure that the region’s women and girls benefit from the Model Law, Dr Kabwila said popularising the law once it is done would be crucial.

“We should own this law; brand it and have sessions in Parliament dealing with nothing other than this law. There should be an ‘Ending Child Marriage Day’ in all SADC Member States on which experts and ordinary citizens discuss child marriage eradication ef-

forts.

Veteran South African law maker, Hon Rosalia Morutoa who chairs the multi-party Women’s Caucus, said a SADC Model Law against child marriage was “long overdue.”

“I am so happy that after years of lobbying, we have such a law (in the mak-

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● **INFANTILISATION** from page 8

ing); a guiding law that we can utilise in our countries,” she told The Sentinel.

Hon Morutoa was unsparing in her praise for the Model Law drafts person, Ms Eva Jahla from Zambia.

“She is well-informed. It is clear that she has spent years in this sort of work.”

She said it emerged during the vigorous debates on the draft Model Law that people have different opinions about child marriages.

“Some think there is legitimacy somehow and that laws against child marriage might restrict tradition. Some MPs felt that the model law in its current form tends to discriminate against boys. “For us who deal with such issues in the women’s formations, this law is very welcome. The leadership of SADC PF has done a very good job.”

A Parliamentarian from Mozambique said child marriage was a major problem not just for the SADC Region but the entire African continent.

“It is, therefore, good that we in SADC are trying to find a solution to the problem. We have a saying in Mozambique that if we educate a woman we educate a society and a nation. As a country we fully support this Model Law.”

He said some aspects of the draft Model Law were not applicable to Mozambique without elaborating. He stressed, nevertheless, that the Model Law was a regional document and Member States would have to take aspects that were relevant to their prevailing national peculiarities.

He said SADC PF had done well to include more stakeholders beyond MPs and staff of Parliament in de-



Hon. Ida Hoffman of Namibia

veloping the model law.

“We are working with other experts with knowledge on this matter. They include judges and lawyers. I am sure this will be a richer Model Law as a result.”

The MP said together with fellow MPs who attended the validation session from Mozambique, he would hold a briefing session with other MPs in Mozambique on the Model Law.

“We will use television and Radio Mozambique to popularise this model law,” he said.

Namibian Parliamentarian Hon Ida Hoffman said she would advocate for research to better appreciate the extent and impact of child marriage in Namibia. Her view was that child marriage was a problem in certain cultures and traditions and not in others.

“What I know is that we have high rates of early pregnancies which disturb girls’ education. It is important that we understand the experiences of the different regions of Namibia with respect to child marriage and teenage pregnancy,” she said.

Her view was that the media should play a key role in highlighting the extent and impact these problems in Namibia and other countries. “We need to discourage our children from rushing into marriage. Education is important and so we must ensure that children are in school.”

Noting that in some instances children were forced into marriage by parents or guardians, Hon Hoffman said: “Those who are taking care of children must do the best for the children. Protect children from sugar daddies.”



CSO POWER: Representatives of Civil Society Organisations who met in Johannesburg to validate the draft SADC Model Law of Eradicating Child Marriage and Protecting those already in Marriage

'Start with the law then end with real change to eradicate child marriage'

Joint Op-ed by SADC PF, UNFPA, UNDP, Plan International, Southern Africa Litigation Center, and Girls Not Brides.

Staff Writer

At least 30 Civil Society Organizations from SADC Countries converged in Johannesburg on March 17 and 18, 2016 to review and refine a Model Law on Eradicating Child Marriage and Protecting Children already in Marriage.

The Model Law was drafted by the SADC Parliamentary Forum and partners in 2015 and it has been undergoing various reviews by stakeholders including adolescent sexual and reproductive health and legal experts, girls affected by child marriage, and SADC PF Portfolio Committees.

Laws alone will not end child marriage, but they are a necessary and important first step to de-legitimize a practice that violates the rights of millions of adolescent girls in Sub-Saharan Africa and SADC Countries in particular.

This is why the Southern African Development Community prioritized the development of an aspirational Model Law on ending child marriage which can serve as a best practice law and a yard stick for countries undertaking legal reform in the region.

The good news is that child marriage is very low in some SADC Countries like Swaziland and South Africa. How-

ever, there are differences within and between countries. For example, while prevalence of child marriage is low in Swaziland and South Africa respectively, almost 40% of children are married before they are 18 years of age in at least five SADC countries. High levels of child marriages persist amongst rural under-educated girls in the poorest communities.

The decline of Child Marriage in Sub-Saharan Africa and SADC countries is limited to girls in the richest urban communities and those with secondary

● see *CHANGE* p.11



● *CHANGE from p.10*

and higher educational levels—making child marriage inequity in access to education, services and opportunities. Poverty, gender inequality, insecurity and tradition also perpetuate child marriage. Millions of girls are denied their fundamental rights as well as the skills, knowledge and opportunities that would enable them to lift themselves and their families out of poverty.

The consequences are long-lasting and devastating. Child marriage means high levels of adolescent pregnancies and births that put the lives of adolescent girls at risk – death during child birth, anaemia and the devastating fistula are common among adolescents. The risks to their born and unborn children are also very real - infants are at higher risk of foetal death and poor health and malnutrition. Nine out of 10 births to adolescent girls take place within marriages in Sub-Saharan Africa.

Even if sub-Saharan Africa bucked the trend and doubled the rate of reduction, this would not be enough to reduce the number of child brides marrying each year. How does this compare with the rest of the world? Poorly. In all other regions, current rates of reduction mean there will be fewer child brides with each passing year. With the current trend Sub-Saharan Africa will have the largest number of child brides.

Eliminating child marriage will have significant benefits for Africa's development as more adolescent girls will become educated, have opportunities for employment and earned income while their children will be more likely to survive, be immunized, educated and escape inter-generational poverty.

More importantly, girls would be less exposed to risk of HIV infection as married girls are more likely to be infected than unmarried girls.

For example, in Zimbabwe, 6.2% of the prevalence of HIV is 6.2% among never married young women 15-24 years compared with 14.2% of currently married and 26% of divorced or widowed. Evidence shows that when girls are aware of their rights they are empowered to make informed choices about their future. This not only transforms their lives, it transforms communities and benefits future generations.

Currently, there is no SADC country which has enacted comprehensive legislation on child marriage, despite many of them having laws in place regarding the minimum age of marriage. The fact remains that girls as young as 14 can marry with parental or judicial consent, and are vulnerable to customary, traditional and religious practices which have effectively created legal loopholes allowing child marriage to flourish.

Fortunately, the bold move by the SADC-Parliamentary Forum, to develop a Model Law on Child Marriage is extremely timely. The Model Law aims to establish a strong legal and policy framework for preventing child marriage which cuts across customary, religious and civil marriage systems.

This is undoubtedly a ground-breaking initiative which has the potential to ensure there is one law that can be adopted or adapted not just in one country, but across all Member States—moving SADC towards a harmonized child marriage law.

What will this mean in practice? Member States will now be able to incorporate and adopt a Model Law into their respective national laws and will have the language needed to close existing legal loopholes.

Young girls will have the backing of the law to push back against this violation while campaigners, civil society organisations and advocates will now have a legal basis for preventing all

forms of child marriage.

Civil society organisations scrutinized the Model Law and gave clear feedback to the legal drafters to improve the applicability of the Law at the community level.

Their recommendations were also very specific and included that to be effective, the Law must be accompanied by political commitment at all levels, specific budgets for its implementation and national and regional monitoring mechanisms and indicators.

CSOs also emphasized a girl-centered approach which will include access to quality primary and secondary education, skills development and interventions around prevention of child marriage and sexual and reproductive health information and services.

They also noted that ending child marriage must involve different line ministries as well as all segments of society including girls, boys, parents, elders and community leaders. Finally, they raised the importance of addressing the root causes child marriage, which include gender discrimination, the low value placed on girls, poverty, or religious and cultural justifications.

The CSOs also committed themselves to disseminate Model Law and its provisions back in their countries, to organize mock trials with it, and to share it with their national Parliamentarians among other important steps.

The SADC Parliamentary forum also outlined the follow up steps after the CSOs meeting which included a) a Legal Drafters' Meeting to refine the Law's Provisions, b) translation into French and Portuguese; c) it being tabled at the SADC PF X Plenary Session; d) presentation at the SADC Secretariat for it to be considered for a Protocol, and e) dissemination and monitoring at the regional and national levels.



Stakeholders learn about draft Model Law on Eradicating Child Marriages

Staff Writer

Maputo, Mozambique: A member of the Expert Group overseeing the drafting of a SADC Model Law on Eradicating Child Marriages and Protecting those Already in Marriage has given Mozambican stakeholders an appreciation of the developing law.

Dr Aquinaldo Mandlate, who holds a doctorate in Public International Law, said the SADC Model Law on Eradicating Child Marriages and Protecting those Already in Marriage is being developed at a time when there are many global and regional initiatives aimed at ending the scourge of child marriages.

“Generally, these initiatives aim to protect children against harmful practices, promote sustainable human development and address socio-economic and political challenges (such as poverty and discrimination) facing our societies,” Dr Mandlate said.

He explained that some of these initiatives were embedded in general international human rights law instruments focusing on the protection of the rights of all individuals. They include the Universal Declaration of Human Rights, the Convention on Civil and Political Rights and the Convention on Economic Social and Cultural Rights as well as in the Convention on Elimination of all forms of Discrimination against Women or CEDAW.

“They also include some child-specific instruments such as the Convention on the Rights of the Child or CRC, African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, and



EXPERT: Dr. Aquinaldo Mandlate speaks about the draft Model Law.

many others,” he said.

He explained that in 2015, the United Nations Human Rights Council adopted a resolution calling on states to take measures to address child marriage. Earlier in the same year the African Union (AU) launched a regional campaign to eliminate child marriage in Africa.

“This was followed by the ‘AU Girls Summit on Ending Child Marriages in Africa’ held in Lusaka (November 2015), where the main themes spoke to the need to protect the girl child from child marriage and to resolve the underlying causes including access to education and harmful cultural practices.”

He said the Lusaka Summit came up with an outcome statement proposing implementation of measures to address child marriages in Africa. On its part,

the Southern African Development Community Parliamentary Forum (SADC PF) hosted a Regional Parliamentary Dialogue on Child Marriage Laws.

“As a result of these initiatives, and particularly the Parliamentary Dialogue, the SADC Parliamentary Forum (SADC PF) embarked on a process of drafting a Model Law on Eradicating Child Marriages and Protecting Children already in Marriage.”

He defined a model law as a base of reference or a template of detailed rules or measures regarding a specific subject matter.

“It is usually developed to be taken into account and to serve as the basis for adoption of legislation and policies at

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● **STAKEHOLDERS** from p.12

domestic level. Often, model laws are developed at international and sub regional levels to serve as a basis or as a template of reference for the adoption of domestic legislation in the countries affected by the subject forming the content of the model legislation.”

He noted that Model laws are not binding instruments, but as soft laws they form part of the sources of international law.

“As a template of references, model legislations provide guidance for standards setting at domestic level.”

He explained that when adopted as a formal document, the draft Model Law on Eradicating Child Marriage and Protecting Children already in Marriage would be used by Southern African states to shape their own legislation and policies in a manner adequate to address child marriage.

“Moreover, the draft law will also be used to influence positive changes and address harmful practices affecting the rights of children, negatively.”

The draft law contains provisions highlighting some of the measures to eradicate and prevent child marriage. Apart of the preamble, Dr Madlate explained contents of the eight parts that form the draft law.

The first part alludes to the objective of the law which is the need to call upon Member States of the SADC Region to adopt measures to eradicate child marriages, prevent its occurrence and protect children already in marriage or affected by

child marriages, generally.

The second part contains some provisions capturing rights relevant to the issue of child marriage. Mandlate explained that these rights are not new as they are captured in other human rights treaties predating the draft model law. The third part forms the backdrop of the model law and contains provisions that outlaw child marriage.

In complimenting the third part, parts Four and Five set out standards to prevent (including education for girls, vocational training etc.) and to mitigate the effects of child marriage (assistance to child victims of child marriage and others), respectively.

In part six of the draft law, Member States are encouraged to keep track of information and data concerning child marriage in their own territories in acknowledgement of the fact that they will only be able to understand and deal with the problem comprehensively if they have a clear picture of the problems on the ground.

Lastly, parts Seven and Eight incorporate provisions envisaging implementation of the law including a proposition of punishment for perpetrators and a monitoring mechanism under the SADC PF.

A summary of advantages of adhering to the Model Law on Eradicating Child Marriages and Protecting Children already in Marriages, when adopted by SADC Member States, were discussed. They include the fact that, if domesticated, the Model Law will help SADC Member States to meet their international commitments expressed in ratified international and regional law standards such as the CRC and CEDAW, which call upon Member States to take legislative and policy

measures to advance the human rights of children and protect them from abuse.

Participants noted that adhering Member States would find it easy to incorporate into their own domestic legislation and policies, provisions speaking to the protection of children against child marriages and standards to prevent this practice as many of these standards are already constructed in great details in the model law that is being drafted.

“The end result will be the promotion of a system that enables children to grow freely and capable of attaining their full development potential in a context friendly to their rights.”

Mozambican stakeholders who included Parliamentarians were informed about the role that they can play in supporting the process of development and implementation of the SADC Model Law. It was highlighted that they can contribute with recommendations on how to strengthen the draft model law, ensure that Mozambique ratifies the law through its national process of domestication of treaties (including following up if necessary with government authorities).

More importantly, Parliamentarians were briefed about their role in taking stock of domestic laws and policies to measure compliance with international law standards, and particularly the draft model law to ensure that they are in conformity with the countries’ commitments.

It was suggested that Parliamentarians consider developing or amending legislation and making recommendations for adoption of policies that are adequate to curb the problem of child marriages in Mozambique and to prevent the practice while assisting victims.





Some of the delegates at the national dialogue on laws related to child marriage in Mozambique.

Polygamy cited among drivers of child marriage in Mozambique

Staff Writer

Delegates attending a national dialogue on national laws related to child marriage in Mozambique have cited polygamy in parts of the country as one of the drivers of child marriage.

They noted that in cultures in which polygamy was countenanced, men tended to target younger women and girls, whenever they increased the number of their wives.

“Men marry young women. After that they move to another. In other words they keep on getting these girls pregnant,” one delegate said, adding that lack of education, skills, unemployment and lack of access to school, made many young girls in Mozambique vulnerable to child marriage.

The delegate added that young boys that failed to access formal education

often migrated from rural to urban centres, where they sank deeper into poverty. On the contrary, desperate rural girls seldom migrated to urban centres but remained in rural villages where local tycoons preyed on them.

“With the younger men their age moving to urban centres, vulnerable young girls ended up getting romantically involved with older men. Older local men take advantage of the situation. This is very common in most of our regions,” the delegate said.

The delegate called for more investment in rural infrastructure development and greater support towards the education of young people, especially girls who continued to be disproportionately affected by child marriage.

Another participant opined that in some instances, destitute parents actually pushed their children into marriage

with older and more affluent men “because they think their children would be more socially secured.”

“The parents think that because they are poor, their children would not get an opportunity to get into school or access good nutrition. As a result they submit their children to child marriage thinking the children would be more secure.”

While acknowledging efforts by the government and other stakeholders towards the eradication of child marriage in Mozambique, one Parliamentarian expressed concern over high levels of sexual abuse in the country.

“Sexual violence is equal to child marriage. There is need for more action by the Government and civil society against sexual violence. We want tangible results,” they lawmaker said.

● see *POLYGAMY* p.15



SADC-PF Plenary notes draft model law on child marriage

Staff Writer

The 38th Plenary Assembly Session of the SADC Parliamentary Forum has noted the draft Model Law on Eradicating Child Marriage and protecting those already in marriage.

The Plenary Assembly is the supreme

decision making body of the 14-Member States SADC PF. It noted the draft model law when it met for its Assembly Session in Swakopmund, in Namibia.

The Plenary appreciated the work that had been put into developing the model law over the past approximately full year. It noted that scores of stakeholders had been given an opportunity to

examine the draft model law to ensure that it was in line with international drafting codes and international human rights law. It was expected that more stakeholders, especially legal drafters, would also validate the draft model law before it is presented to the 39th Plenary Assembly session in Swaziland in June 2016 for adoption.

● POLYGAMY from p.14

Noting that interventions towards eradicating child marriage and sexual violence tended to be largely externally funded, the MP called for sustainable funding strategies.

“Sometimes there are small projects and after a while funds get finished. The idea ends and there is no continuity,” he said and called for greater coordination and collaboration among stakeholders.

“Ideally the Government should coordinate these activities so that we achieve the results that we desire. Those with responsibilities must fulfil their roles,” he said.

While acknowledging various efforts towards eradicating child marriage and protecting children’s rights, one participant called for clear monitoring and evaluation mechanisms to measure the impact of those interventions.

“We have various measures. The country is vast. What assessment has been done on the issues regarding child marriage which is a serious issue even in remote parts of the country? We continue to find children with other children on their backs,” she said.

The participant explained that child marriage was an old tradition in some

parts of Mozambique but said in the past there were ways of protecting child brides.

“There were rules enforced by the society regulating the age at which the man would get (sexually) involved with that child. Society controlled that. In today’s society, the control and supervision is no longer there,” she said.

The participant cited greed and love for status as some of the drivers for child marriage in some parts of Mozambique.

Another participant called for studies to determine the impact of proximity of schools, especially secondary schools, on child marriage in parts of Mozambique. She expressed the view that since secondary schools tended to be few and far between in some parts of the country, few children went beyond primary education.

“Secondary schools are very far, sometimes 20 to 30 kilometres away and so some children are not able to go to school. Sometimes the parents give the children away to older men. I think distance between schools is an issue and for children that cannot continue with school, the only option is to get married.”

She said limited vocational and tertiary education opportunities for the few that

completed high school was another issue that needed to be explored.

“Some (children who complete secondary school) find jobs, some do not and young girls get married. The legal age for marriage should be set at 18 without exception.”

Turning to child prostitution which she said was rife in some communities, the participant called for parents to be told about the importance of education so that they help children remain in school.

The participant stressed that the need to educate and win the support of parents was more important now than never, given that many children are physically maturing earlier than before. “I started menstruating at the age of 16. Today we see girls aged 11 years menstruating. We have a lot of work to be done.”

The role of the electronic media, especially television, in influencing children’s sexuality also came up for discussion, with one Parliamentarian saying some people had called for the regulation of broadcast content.

“Some people say television is giving children ‘ideas’. They have asked us to try to convince the national broadcaster to change the times of certain broadcasts. No one controls the projection of movies.”





Legal drafters pose for a group photograph at a meeting to validate the draft SADC model law on Eradicating Child Marriage and protecting those already in marriage.

Legal drafters approve Draft SADC Model Law on Eradicating Child Marriage

Staff Writer

JOHANNESBURG, South Africa – Legal drafters from SADC Member States have approved the draft Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage, setting the stage for its final adoption by the Plenary Assembly of the SADC Parliamentary Forum.

The Plenary Assembly Session is the highest decision-making body of the SADC-PF, the deliberative forum that brings together National Parliaments

from 14 SADC Member States and approximately 3500 Parliamentarians.

Drawn from Malawi, Mauritius, Mozambique, South Africa, Swaziland, Tanzania, Zimbabwe and Zambia, the legal drafters met over five days in Johannesburg, South Africa to review the draft model law to ensure its compliance with international legal drafting codes and efficacy to the policy and legal objective of eradicating child marriage which is a serious concern in the SADC region.

The legal drafters went through the draft model law clause by clause before they approved it. Renowned Botswana High Court Judge Prof Oagile Dingake, who holds a PhD in law, facilitated the validation session.

The approval by the legal drafters signals the penultimate stage before the adoption of the model law by Parliamentarians from SADC National Parliaments who are scheduled to meet

● see **ERADICATING** p.17



● **ERADICATING** from p.16

in Swaziland in June 2016 for the 39th Plenary Assembly Session of the SADC-PF.

With funding from Sweden and Norway, the SADC-PF and other partners developed the model law in response to the prevalence of child marriage in Southern Africa, which is driven by a number of factors including high poverty levels, gender inequity, traditions, religion, limited education and inadequate legal frameworks in Member States, most of which are inconsistent.

Research shows that an estimated eight percent of all pregnancies are teenage pregnancies and 16 percent of all births in the sub-region are teenage pregnancies.

In addition, 36 percent of all maternal deaths involve teenagers while unsafe abortions are responsible for 13 percent of maternal deaths. This paints a bleak picture in a region in which scores of people including adolescents have poor access to Sexual Reproductive Health Rights services.

SADC PF's efforts to develop and adopt a regional model law on eradi-

cating child marriage and protecting children already in marriage has received support from the United Nations Populations Fund (UNFPA) East and Southern Africa Regional Office, United Nations Development Programme (UNDP), the Association of European Parliamentarians with Africa (AWEPA), Plan International's 18 Plus Programme, the Southern African Litigation Centre and Girls Not Brides: The Global Partnership to End Child Marriage.

The process to develop the model law started in 2015 and has involved wide consultations with various stakeholders in SADC Member States at regional level including victims of child marriages, Parliamentarians, civil society organizations and Human Rights Commissions.

Expectations are that when adopted, the model law will be a yardstick providing guidance to legislators, policymakers and other stakeholders in SADC Members States as they develop national laws to eradicate child marriages and protect those already in marriage.

The inspirational law has best practice provisions, making it easy for Member States to adapt or adopt it in keeping

with their national situations. The ultimate aim is that the region's national laws are harmonised without loopholes to prevent child marriage.

Speaking at the end of the validation session, Judge Dingake said Africa, and sub-Saharan Africa in particular, would not develop if child marriages continued to subsist.

He said no parliament in the SADC Region should pass any law permitting child marriage and to foster development in its broadest sense, SADC legislators must honour rights of all children without distinction based on irrational grounds.

"It falls on the current generation of drafters to ensure that in drafting they use simple (language) and avoid ambiguity that may, when interpreted, disadvantage rights holders, more particularly children. Legal drafters must remain ultra - sensitive to diversity, difference and their countries' international law obligations and ensure that this is reflected in the laws they draft," the Judge said.

He stressed that it was "absolutely imperative" that legal drafters understand their obligations to the broader society, especially the vulnerable.



THOROUGH: Legal drafters examine the draft SADC Model Law on Eradicating Child Marriage and protecting those already in marriage.





HAPPY: From left to right: UNFPA's Dr Asha Mohamed, Ms Eva Jhala, the chief drafts person of the SADC Model Law on Eradicating Child Marriage and Botswana High Court Judge, Prof Key Dingake, PhD.

Drafter says Model law might breed accountability in child marriage war

Staff Writer

A common legal framework or model law on child marriage might encourage SADC Member States to be accountable in the execution of policies, the enactment of laws and coming up with strategic plans and measures aimed at eradicating child marriage, protecting children already in marriage and ensuring SRHRs of young persons.

Ms Eva Jhala, the lead drafts person of the SADC Model Law on Eradicating Child Marriage and Protecting chil-

dren already in marriage, expressed this view while addressing Editors, senior journalists and staff of Parliament working in public relations recently. The media practitioners were meeting for a session to explore ways of increasing SRHR advocacy through the media.

She stressed that the creation of a robust and uniform legal framework relating to child marriage is a key to addressing child marriage and SRHRs.

“The Model Law is underpinned by a

strong restatement of the child’s rights and the principles and concepts on the best interest of the child, including SRHRs,” she explained.

The Model Law on Eradicating Child marriage and protecting Children already in Marriage responds to a resolution of the 35th SADC Parliamentarian Forum Assembly held in Mauritius in June 2014 which called for concerted efforts to eradicate child marriage in the SADC Region.

● see **MODEL** p.19





FULL HOUSE: Legal drafters looked at the draft Model Law clause by clause before approving it.

● **MODEL** from p.18

She said in February 2015, the SADC PF in collaboration with Association of European Parliamentarians with Africa (AWEPA) and Plan Netherlands convened a SADC Regional Parliamentary Dialogue on Child Marriage Law.

The forum gave further impetus to the development of a Model Legislation on Child Marriages in that it ended with the adoption of a SADC-PF Six Step Road Map towards the development of a Model Law that SADC Member States could use as a sounding board as they develop their own national laws to eradicate child marriage.

Ms Jhala said child marriage was a major challenge in Southern Africa due to a variety of factors that 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 were inconsistent.

She said Sub-Saharan Africa had the highest prevalence of child marriage in the world and that in at least five coun-

tries in the Southern African Development Community (SADC), almost 40% of children were married before they were 18 years of age.

In response to this situation, Ms Jhala said the SADC Parliamentary Forum was spearheading a ground-breaking initiative in ensuring that there is a law that can be applied not just in one country but across Member States.

In this regard she said the SADC PF had made significant progress in brokering a consensus among all Member States on a law with enough commonality that it can be applicable across all Member States.

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. According to Ms Jhala, the SADC model Law, which uses a human rights based approach, does just that.

“The Model Law is underpinned by a strong restatement of the child’s rights and the principles and concepts on the best interest of the child, including

SRHRs,” she said.

She explained that the Model Law obliges Member States to provide in national legislation for intervention programmes to support child brides or wives and their families.

Among other things the law: promotes 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; provides comprehensive sexuality education; and provides 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.

It also seeks the provision of awareness programmes on consequences of child marriage and forbidding the use of inappropriate language and stereotyping when reporting and advertising on child related issues.

CAMERA EYE

