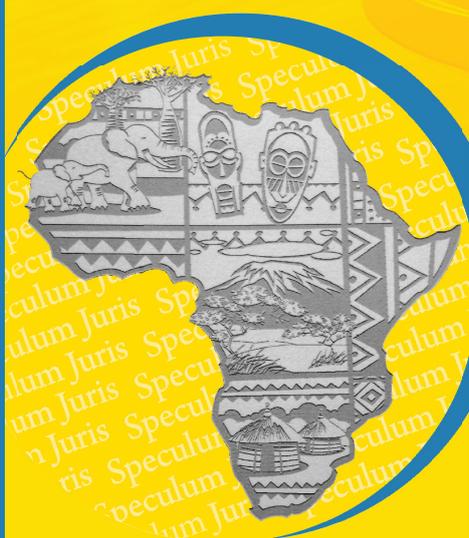


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Real Law or Cover up: Pros and Cons of the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage

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Abstract

This article critically examines the Southern African Development Community Parliamentary Forum Model Law on Eradicating Child Marriage and Protecting Children Already in Child Marriage. The article highlights the positive and forward-looking provisions of the model law and determines how best member states in the region can utilise it to combat the harmful practice of child marriage. The article also highlights the shortcomings of the Model Law, specifically the fact that it is a non-binding instrument with no legal obligation on member states; the challenge regarding its non-enactment by member states; and inadequate awareness and publicity of its content and scope in the region. This article contends that the practice of child marriage persists in Southern Africa, despite the international and regional human rights instruments prohibiting the practice. It is therefore submitted that a consistent effort must be made to eradicate this phenomenon by means of a various legal and non-legal measures proffered in the Model Law.

Keywords: child marriage, children's rights, Sothern Africa, Parliament, Model law.

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1 INTRODUCTION

In 2016, the Southern African Development Community Parliamentary Forum (SADC-PF)¹ adopted the Model Law on Eradicating Child Marriage and Protecting Children Already in Child Marriage as part of sub-regional effort and response to addressing the recurring practice of child marriage.² Child marriage refers to a statutory, customary or religious marriage between two people, where one or both spouses are below the age of eighteen years.³ It is a harmful practice that is widespread across Southern Africa.⁴ According to the United Nations Children's Fund (UNICEF) 2014 report entitled "Ending Child Marriage: Progress and Prospects" about forty percent of children, especially girls in at least five states in the SADC region are married before the age of eighteen.⁵

Various international and regional human rights instruments with provisions relating to the prohibition of child marriage have been adopted by SADC member states. These include but are not limited to: The Convention on the Rights of the Child, 1989 (CRC);⁶ African Charter on the Rights and Welfare of the Child, 1990 (African Children's Charter);⁷ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 (African Women's Protocol);⁸ and the SADC Protocol on Gender and Development, 2008.⁹ In addition,

- 1 The SADC PF was established by the SADC Summit of Heads of State on 8th September 1997.
- 2 SADC Parliamentary Forum "Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage" [Hereinafter "SADC Model Law"] adopted on 3rd June 2016 at the 39th Plenary Assembly meeting in Swaziland. See also Girls Not Brides "SADC Parliamentarians Adopt Model Law on Eradicating Child Marriage" 4 June 2016 <https://www.girlsnotbrides.org/sadc-model-law-child-marriage/> (accessed 01-08-2018).
- 3 See United Nations Population Fund (UNFPA) "Marrying Too Young: End Child Marriage" (2012) 10-11 <https://www.unfpa.org/sites/default/files/pub-pdf/MarryingTooYoung.pdf> (accessed 21-08-2018).
- 4 SADC member states include Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Eswatini, United Republic of Tanzania, Zambia, Zimbabwe.
- 5 It is worth noting that child marriage affects both boys and girls. However, a higher number of girls are affected with graver consequences. See SADC PF "Explanatory Notes on the Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage" v and United Nations Population Fund (UNFPA) East and Southern Africa "SADC Model Law on Child Marriage" 24 March 2016 <http://esaro.unfpa.org/news/sadc-model-law-childmarriage?page=3%2C1> (accessed 27-08-2018).
- 6 Adopted by General Assembly Resolution 44/25 of 20 November 1989. Although the CRC does not directly prohibit child marriage, however there are other rights provided in the CRC that are linked to the practice of child marriage. For example, the right to non-discrimination (article 2) and right to be protected from all forms of abuse (article 19). The SADC member states that have either ratified or acceded to the CRC include : Angola (5 December 1990); Botswana (14 March 1995(a)); Democratic Republic of Congo (27 September 1990); Lesotho (27 September 1999); Madagascar (19 March 1991); Malawi (2 January 1991(a)); Mauritius (26 July 1990(a)); Mozambique (26 April 1994); Namibia (30 September 1990); Seychelles (7 September 1990(a)); South Africa (16 June 1995); Eswatini (formerly Swaziland, 06 October 1995); United Republic of Tanzania (10 June 1991); Zambia (6 December 1991); Zimbabwe (11 September 1990). See United Nations Treaty Collection https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (accessed 21-08-2018).
- 7 Adopted by the Organisation of African Unity (OAU) now African Union (AU) on 01 July 1990 and entered into force on 29 November 1999. The following SADC member states have ratified this treaty: Angola (11 April 1992); Botswana (10 July 2001); Lesotho (10 March 1992); Madagascar (13 March 2005); Malawi (16 September 1999); Mauritius (14 February 1992); Mozambique (15 July 1998); Namibia (23 July 2004); Seychelles (13 February 1992); South Africa (07 January 2000); Eswatini (formerly Swaziland, 05 October 2012); United Republic of Tanzania (16 March 2003); Zambia (02 December 2008); Zimbabwe (19 January 1995). It is worth noting that Democratic Republic of Congo has only signed on 2 February 2010. See List of countries that have signed, ratified/acceded to the African Charter on the Rights and Welfare of the Child, 15 June 2017, https://au.int/sites/default/files/treaties/7773-sl-african_charter_on_the_rights_and_welfare_of_the_child_1.pdf (accessed 21-08-2018).
- 8 Adopted by African Union Assembly of Heads of State and Government on 11 July 2003 and entered into force on 25 November 2005. See also article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women adopted by the General Assembly resolution 34/180 of 18 December 1979 and entered into force 3 September 1981. The SADC member states that have ratified the African Women's Protocol include: Angola (30 August 2007); Democratic Republic of Congo (09 June 2008); Lesotho (26 October 2004); Malawi (20 May 2005); Mauritius (June 2017); Mozambique (09 December 2005); Namibia (11 August 2004); Seychelles (09 March 2006); South Africa (17 December 2004); Eswatini (05 October 2012); United Republic of Tanzania (03 March 2007); Zambia (02 May 2005); Zimbabwe (14 April 2008). Madagascar has signed the African Women's Protocol on 28 February 2004 but yet to ratify, while Botswana is yet to sign and ratify the Protocol. See Ratification of the Maputo Protocol by Mauritius: Reflections, Expectations and Next Steps, https://www.up.ac.za/en/faculty-of-law/news/post_2569008--ratification-of-the-maputo-protocol-by-mauritius-reflections-expectations-and-next-steps (accessed 22-08-2018)
- 9 Adopted on 18 August 2008 and entered into force 22 February 2013.

at the regional level, a common African position on the African Union (AU) Campaign to End Child Marriage in Africa was adopted in 2015 by the Heads of State and Governments of the African Union.¹⁰ At the national level, some states in the SADC region have taken steps to address the problem by adopting a national strategy and creating awareness campaigns to end child marriage.¹¹

However, child marriage persists in this region for a variety of reasons, which include poverty, gender inequality, limited access to education, traditional and religious practices and lack of an adequate legal framework.¹² These have impacted gravely on children's rights¹³ that include, but are not limited to: the right to consent to marriage; the right to education; the right to health; the right to non-discrimination; the right to dignity and freedom from degrading, inhuman and cruel treatment; and protection from harmful traditional practices.¹⁴ However, the practice is likely to continue despite the huge contributions of the Model Law towards the eradication of child marriage, because the Model Law contains a number of shortcomings, manifested mainly in its non-binding nature.

A Model Law or legislation refers to "a detailed set of standards on a particular issue, which are offered for the consideration of and adoption by, national legislators".¹⁵ This article acknowledges that different model laws have been developed and have contributed to addressing pressing and pertinent societal challenges.¹⁶ This article will focus on the Model Law on eradicating child marriage and protecting children already in marriage, rather than the general processes of Model Law or the issues it has addressed. The Model Law aims to serve as a yardstick and a tool for guidance to national legislators in the SADC region, as it provides best practice language that member states can easily incorporate into their laws.¹⁷ The Model Law complements existing international and regional standards relating to the eradication of child marriage and aims at unifying and harmonising national laws in the region. For example, the law unequivocally sets eighteen as the minimum age of marriage and expressly stipulates that any person below this age lacks the capacity to enter into a valid marriage contract.¹⁸ The Model Law also addresses the contentious problems of inconsistencies in laws that hamper the effective implementation and enforcement of laws prohibiting child marriage.¹⁹ For example, the direct provision of the minimum age of marriage without exception invalidates parental and judicial consent to marriage of a child below the age of eighteen.

Therefore, this article is a critical examination of the SADC Model Law, highlighting arguments for and against it to determine how best it can be utilised to combat this harmful practice. Also, this article seeks to determine the extent of the legal implication of the Model Law on SADC member states. The first part of this article discusses the international and regional human rights standards on the practice of child marriage, while the second part deals with the Model Law, highlighting arguments in defence and against it. Recommendations and a Conclusion will follow.

10 See Commitments of member states for future action A1-17 in African Union Common Position on the Campaign to End Child Marriage in Africa, adopted by the Head of State and Governments of the African Union in July 2015, https://au.int/sites/default/files/documents/31010-doc-cap_on_ending_child_marriage_english_0.pdf (accessed 07-01-2019).

11 See, for example, Girls Not Bride "Zambia Adopts National Strategy to End Child Marriage by 2030" 22 April 2016 <https://www.girlsnotbrides.org/zambia-adopts-national-strategy-to-end-child-marriage-by-2030/> (accessed 11-09-2018).

12 SADC PF "Explanatory Notes on the Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage" v.

13 *Ibid.*

14 Mutyaba "Early Marriage: A Violation of Girls' Fundamental Human Rights in Africa" 2011 *IJCR* 339-355.

15 Viljoen "Model Legislation and Regional Integration: Theory and Practice of Model Legislation Pertaining to HIV in the SADC" 2008 *De Jure* 383 384.

16 For example, United Nations Office on Drugs and Crime (UNODC) Model Law against Trafficking in Persons, https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf (accessed 12-01-2019) and Model Law on HIV in Southern Africa adopted 24 November 2008, http://www.justice.gov.za/vg/hiv/docs/2008_Model-Law-on-HIV-in-Southern-Africa.pdf (accessed 12-01-2019). See also Viljoen 2008 *De Jure* 384.

17 *Ibid* p 3.

18 *Ibid.*

19 *Ibid.*

2 INTERNATIONAL AND REGIONAL HUMAN RIGHTS STANDARDS ON CHILD MARRIAGE

Child marriage is a basic violation of internationally accepted legal standards relating to the age of a child, minimum age of marriage and the right to free and full consent as the foundation for a valid marriage. Anyone below the age of eighteen is a child and cannot be legally married. This is in line with article 1 of the Convention on the Rights of the Child and article 2 of the African Children's Charter, which defines a child as every human being below the age of eighteen. Article 21(2) of the African Children's Charter expressly prohibits the betrothal and marriage of children (boys and girls) and requires state parties to take effective action, including legislation, to adhere to the minimum age of marriage as well as make registration of all marriages in an official registry compulsory. These requirements are echoed in article 6 of the Protocol on Women's Rights in Africa, which stipulates that eighteen must be the minimum age of marriage and article 8 of the SADC Protocol on Gender and Development, 2008 which provides that no person below the age of eighteen shall be married. Similarly, the Joint General Comment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Experts on the Rights and Welfare of the Child (ACERWC) emphasise eighteen as the minimum age of marriage. Marriages between individuals under this age will be declared *void*.²⁰

Article 1 of the Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages, 1964²¹ and article 6 of the African Women's Protocol provides that "no marriage shall take place without the free and full consent of both parties".²² Therefore, given the young age of the child and the lack of capacity to give free and full consent to a marriage, child marriage is often referred to as 'early' or 'forced marriage'.²³ Forced marriages often involve parents, guardians or extended families coercing the child, in most cases a girl, into marriage by force or threat.²⁴ However, not all forced marriages are child marriages because adults above eighteen could also be forced into marriage.²⁵

Some SADC member states have taken steps to address and prevent child marriage through the adoption of laws and reforms relating to the definition of a child: minimum age of marriage, gender equality and non-discrimination. However, to date many national laws are still discriminatory and/or failed to adhere to the international and regional standards regarding the prohibition of child marriage. In Malawi, for example, the parliament unanimously adopted a constitutional amendment that raises the minimum age of marriage from fifteen (with consent of parent and guardian) to eighteen for both boys and girls, conforming to international and regional standards.²⁶ The new Zimbabwean Constitution, which came into force in 2013, contains a substantive and comprehensive Bill of Rights that reserves the right to marry and establish a family to persons above the age of eighteen.²⁷ In the landmark ruling of *Mudzuru and another*

20 See Joint General Comment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on Ending Child Marriage 2017, http://www.achpr.org/files/news/2018/01/d321/joint_gc_acerwc_achpr_ending_child_marriage_eng.pdf (accessed 05-01-2019) and Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on Harmful Practices CEDAW/C/GC/31-CRC/C/GC/18 14 November 2014, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement> (accessed 05-01-2019).

21 Adopted by the General Assembly resolution 1763 A (XVII) on 7 November 1962 and entered into force 9 December 1964.

22 See article 16(2) of Universal Declaration of Human rights (UDHR) adopted by UN General Assembly Resolution 217A (III) of 10 December 1948 and article 16 of the Convention on the Elimination of All forms of Discrimination against Women.

23 See UNFPA "Marrying Too Young: End Child Marriage" (2012) 11.

24 *Ibid*. See also *Prosecutor of the Special Court v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu*, Special Court for Sierra Leone SCSL-2004-16-A, Appeals Chamber, Judgment, Feb. 22, 2008, para 195, <http://www.refworld.org/cases,SCSL,48441e412.html> (accessed 24-08-2018).

25 See, Centre for Human Rights at the University of Pretoria "A Report on Child Marriage in Africa" (2018) 16, http://www.chr.up.ac.za/images/researchunits/wru/news/files/2018_child_marriage_report_en.pdf (accessed 07-01-2019).

26 It is worth noting that this constitutional amendment aligns with Malawi's Marriage, Divorce and Family Relations Act which sets minimum age of marriage at 18 years. See, for example, UN Women "Malawi Parliament adopts amendment to end child marriage", 22 February 2017, <http://www.unwomen.org/en/news/stories/2017/2/news-malawi-parliament-adopts-amendment-to-end-child-marriage> (accessed 09-01-2019) and Girls not bride "Malawi: Constitution No Longer Allows Child Marriage", 26 April 2017, <https://www.girlsnotbrides.org/malawi-constitution-no-longer-allows-child-marriage/> (accessed 25-08-2018).

27 See s 26(b) which provides that children are not pledged in marriage..." read with s 81(1) which defines a child

v the Minister of justice, legal and parliamentary affairs & 2 others, the Constitutional Court of Zimbabwe ruled with immediate effect from 20 January 2016 that the marriage of a person under eighteen was unconstitutional in that the provisions in s 22 of the Marriage Act were in conflict with the Constitution.²⁸ However, it is worth noting that, in Zimbabwe to date, the parliament is yet to remedy the offending provisions in s 22 in the Marriage Act and related laws. This is a *lacuna* that will reduce the effectiveness of the landmark ruling.

In South Africa, the rights of the child are clearly provided for in the Bill of Rights of the Constitution, 1996.²⁹ In the case of *Jezile v S and Others*, the high court ruled against the defendant's reliance on the practice of *ukuthwala* (which refers to a form of abduction of girls for marriage and often referred to as a form of child and forced marriage) to justify criminal acts of rape and abduction.³⁰ However, the marriage laws in South Africa, and specifically, s 3(3)(a) and (b) of South Africa's Recognition of Customary Marriages Act (RCMA) 120 of 1998³¹ allow girls below the age of eighteen to marry with the consent of parents or guardians without which, s 25 of the Marriage Act 25 of 1961 applies.³² Section 25 provides for either the Commissioner of Child Welfare or a judge of the High Court to give consent to such a marriage. In essence, consent is sought from a third party not familiar with the partners in marriage. Thus, it is trite to submit that these provisions in the marriage legislation disregard the acceptable international and regional standards that demand valid consent as the basis and true reflection of a legitimate marriage. This is a major drawback in South Africa despite its expansive children's rights and the protective measures against harmful practices.³³

Discriminatory laws regarding minimum age of marriage are also evident in Mozambique, though the Family Law of 2004 provides that eighteen is the legal age for marriage, but it allows for marriage from the age of sixteen with parental consent.³⁴ This loophole in the family law has been addressed by the recent bill passed unanimously by the Mozambican parliament in July 2019 and will come into force once signed by the president.³⁵ This bill is a significant step towards the efforts to end child marriage in Mozambique. In Angola, article 24 of the Angola Family Code provides only for persons over the age of eighteen to marry, but allows exception for boys to marry at sixteen and girls at fifteen with the consent of a guardian.³⁶

In Tanzania, prior to the Court of Appeal ruling against child marriage in October 2019, the Law of Marriage Act, 1971 set the minimum age of marriage at fifteen years for girls with parental consent and eighteen for boys.³⁷ The law also allowed the marriage of children of fourteen, if the court was satisfied that special circumstances applied.³⁸ In 2016, the Tanzanian High

as "every boy and girl under the age of eighteen years."

28 Section 22 of Zimbabwe's Marriage Act [Chapter 5:11], 1964 provides that: "No boy under the age of eighteen years and no girl under the age of sixteen years shall be capable of contracting a valid marriage except with the written permission of the Minister..." See *Mudzuru & Another v The Minister of Justice, Legal and Parliamentary Affairs & 2 Others* (Const. Application No. 79/14 CC 12-15 [2015] ZWCC 12 (20 January 2016), <https://zimlil.org/zw/judgment/constitutional-court/2016/12> (accessed 26-08-2018) and Girls not bride "Child Marriage Around the World: Zimbabwe" 1.

29 See s 28 which also provides that a child is a person under the age of 18 years.

30 *Jezile v S and Others* (A 127/2014) [2015] ZAWCHC 31 (23 March 2015).

31 Date of commencement 15 November 2000.

32 See the Marriage Act of 1961 Gazette No 6670, Notice No. 613 dated 21 April 1961, Date of Commencement 1 January 1962.

33 See s 2 of the 1996 South African Constitution which stipulates that the Constitution is the supreme law of the land and any law or conduct that is inconsistent with it must be declared unconstitutional to the extent of its inconsistency.

34 Girls not Brides "Child Marriage Around the World: Mozambique" 1, <https://www.girlsnotbrides.org/child-marriage/mozambique/> (accessed 28-09-2018) and Centre for Human Rights in Africa "A Report on Child Marriage in Africa" 2018 54, https://www.chr.up.ac.za/images/researchunits/wru/news/files/2018_child_marriage_report_en.pdf (accessed 01-10-2020).

35 Agnes Odhiambo "Mozambique Passes Law to End to End Child Marriage" Human Rights Watch (HRW), <https://www.hrw.org/news/2019/07/19/mozambique-passes-law-end-child-marriage> (accessed 01-10-2020).

36 African Child Policy Forum (ACPF) "Minimum Age of Marriage in Africa" March 2013 1-16, <https://www.girlsnotbrides.org/wp-content/uploads/2013/04/Minimum-age-of-marriage-in-Africa-March-2013.pdf> (accessed 15-09-2018).

37 See ss 13 and 17 of the Law of Marriage Act, 1971. *Rebeca Z. Gyumi v. Attorney General* (Tanzania Civil Cause No 5 of 2016, Decided July 8, 2016). See also Human Rights Watch "Dispatches: Tanzanian High Court Rules Against Child marriage" 8 July 2016 1, <https://www.hrw.org/news/2016/07/08/dispatches-tanzanian-high-court-rules-against-child-marriage> (accessed 16-09-2018) and Girls Not Brides "High Court Judgement in Tanzania Rules Age of Marriage Laws Discriminatory and Unconstitutional" 1, <https://www.girlsnotbrides.org/high-court-tanzania-child-marriage/> (accessed 16-09-2018).

38 See ss 13(2) of the Law of Marriage Act (1971).

Court ruled that the age of minimum laws in ss 13 and 17 of the Law of Marriage Act, 1971 was discriminatory and unconstitutional and should be revised to eliminate the inequality between the minimum age of marriage for girls and boys.³⁹ In 2017 The Attorney-General of Tanzania appealed this decision on the grounds that the court had erred regarding discriminatory laws.⁴⁰ In its favour, the Court of Appeal of Tanzania rejected the arguments by the Attorney General that the decision of the High Court had interfered with the culture of the land.⁴¹ Instead, the Court of Appeal upheld the progressive landmark decision of the High Court and held that, the questionable provisions failed to uphold and appreciate the true intentions of the respective international and sub-regional human rights law.⁴² It is worth noting that the Court of Appeal reasoned that the common denominator of all international human rights conventions and treaties relevant to children is that no marriage can be contracted with a person or persons who have not attained the age of majority.⁴³ The onus is now on the Tanzanian government to revise the Law of Marriage Act in line with this landmark ruling.

It is significant to note that even in jurisdictions where law reforms have taken place, the enforcement of these laws and the court decisions remain a challenge despite the legislative inroads that have been made to address the practice of child marriage.

3 OVERVIEW OF CHILD MARRIAGE IN SADC REGION

Child marriage is widespread across the SADC region, and the prevalence of the practice varies from one state to another.⁴⁴ According to UNICEF, of the fifteen member states of the SADC, the top five states with the highest percentage of women married before the age of eighteen is Mozambique (forty-eight percent), Malawi (forty-two percent), Madagascar (forty-one percent), Democratic Republic of Congo (thirty-seven percent) and Zimbabwe (thirty-two percent).⁴⁵ The lowest percentages are in Swaziland at five, South Africa at six and Namibia at seven.⁴⁶

As mentioned above, a variety of inter-related factors are at the root of the prevalence of child marriage in the SADC. These include but are not limited to acute poverty, gender inequality, limited access to education, traditional and religious practices and the lack of an effective legal framework.⁴⁷ For example, in Tanzania the practice of child marriage is often considered by poor families/households as a way to secure or improve their financial security as they rely on dowry payment in the form of money and/or livestock from the groom's family.⁴⁸ Poverty exacerbates child marriage, especially in many rural communities due to the lack of employment and/or opportunities for incomes.⁴⁹

Some traditional practices and religious beliefs also encourage the early marriage of young girls to older men. For example, the abuse of the customary practice of *ukuthwala* in South Africa is a form of child and forced marriage.⁵⁰ In Zimbabwe, child marriage is prevalent

39 *Rebeca Z. Gyumi v. Attorney General* (Tanzania Civil Cause No 5 of 2016, Decided July 8, 2016). See also Human Rights Watch "Dispatches: Tanzanian High Court Rules Against Child marriage" 1 and Girls Not Brides "High Court Judgement in Tanzania Rules Age of Marriage Laws Discriminatory and Unconstitutional" 1.

40 *The Attorney General v Rebecca Z Gyumi* Civil Appeal No 4 of 2017.

41 *Ibid.*

42 *Ibid.*

43 *Ibid.*

44 See also African Union "Campaign to End Child Marriage in Africa: Call to Action" November 2013, https://au.int/sites/default/files/pages/32905-file-campaign_to_end_child_marriage_in_africa_call_for_action_-_english.pdf (accessed 24-08-2018).

45 See UNICEF "The State of the World's Children 2017: Children in a Digital World" December 2017, 183-185, https://www.unicef.org/publications/files/SOWC_2017_ENG_WEB.pdf (accessed 25-08-2018).

46 *Ibid.* According to the UNICEF report the statistics of other states include Lesotho at 7 percent; Tanzania at 31 percent; Zambia 31 percent. No available data was provided for Botswana, Mauritius and Seychelles.

47 SADC Parliamentary Forum "Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage" 2.

48 See Human Rights Watch "No Way Out: Child Marriage and Human Rights Abuses in Tanzania" 2014 Human Rights Watch Report 9-11, <https://www.hrw.org/report/2014/10/29/no-way-out/child-marriage-and-human-rights-abuses-tanzania> (accessed 23-03-2016).

49 See for example, Girls not bride "Child Marriage Around the World: Zambia" 1, <https://www.girlsnotbrides.org/child-marriage/zambia/> (accessed 26-08-2018); The Herald "Child Marriage and Child Poverty Nexus" 10 September 2018, <https://www.herald.co.zw/child-marriage-and-child-poverty-nexus/> (accessed 10-09-2018) and World Bank "Poverty", <http://www.worldbank.org/en/topic/poverty/overview> (accessed 10-09-2018).

50 *Ukuthwala* is recognised as a "culturally-legitimate abduction of a woman whereby, as a preliminary step to a customary marriage, a young man will forcibly take a girl to his home". However, the abuse of the practice violates the fundamental rights of the girl-child and results in child and forced marriages. Mwambene and Sloth-Nielsen "Benign accommodation? *Ukuthwala*, 'Forced Marriage' and the South African Children's Act"

among religious and traditional groups, specifically the Apostolic Faith Sects that regard the practice as a means to preserve family honour and prevent pre-marital sex.⁵¹ In addition, in Zambia, polygamy is a recognised cultural practice that allows young girls to be given away into marriage to older men who already have more than one wife.⁵²

The serious implications of child marriage are well documented in reports and studies.⁵³ The negative consequences to children's lives cannot be overemphasised as child marriage has been classified as a harmful practice that impacts on every aspect of children's lives, ranging from their wellbeing, inherent dignity and human rights.⁵⁴ Significantly, child marriage effectively ends childhood⁵⁵ and prevents a smooth transition to adulthood. It further impairs children's rights to education, minimises their economic opportunities and a fair chance in life, and increases their vulnerability to domestic violence.⁵⁶ The Model Law, in its preamble also recognises the dire consequences of the practice of child marriage. It expressly states that—

[C]hild marriage constitutes a serious threat to multiple aspects of the physical and psychological health of women and girls, including their sexual and reproductive health, significantly increasing the risk of early, frequent and unintended pregnancy, maternal and new-born mortality and morbidity, obstetric fistula and sexually transmitted infections, as well as HIV/AIDS and increasing vulnerability to all forms of violence, and that every girl and woman at risk of or affected by these practices must have equal access to quality services such as education, counselling, shelter and other social services, psychological, sexual and reproductive healthcare services and medical care."⁵⁷

4 SADC-PF MODEL LAW ON CHILD MARRIAGE

The persistent practice of child marriage in the region arguably led to the enactment of the SADC Model Law in 2016 by the Southern African Development Community Parliamentary Forum (SADC-PF).⁵⁸ According to Viljoen, a Model Law or legislation is generally a detailed set of legal standards addressing a particular societal issue or problem.⁵⁹ He explains that:

Model legislation is often adopted at the supranational level, as a "template" that could be used in various jurisdictions that face similar problems. Domestic legislatures may adopt the whole or parts of the model law and may adapt the relevant provisions to suit local circumstances, if need be.⁶⁰

The Model Law provides uniform legal standards for law makers of countries faced with societal problems not yet effectively addressed in their legislations.⁶¹ It is important to note that a Model Law displays some of the features contained in treaties, such as the African Children's Charter and the African Women's Protocol.⁶² However, it is a non-binding instrument

2011 AHRLJ 1-22 3.

51 Human Rights Watch "Zimbabwe: Scourge of Child Marriage", <https://www.hrw.org/news/2015/11/25/zimbabwe-scourge-child-marriage> (accessed 12-09-2018) and Girls not bride "Child Marriage Around the World: Zambia" 1 and Girls not bride "Child Marriage Around the World: Zimbabwe" 1, <https://www.girlsnotbrides.org/child-marriage/zimbabwe/> (accessed 25-08-2018).

52 See Girls not bride "Child Marriage Around the World: Zambia" 1.

53 See, for example, Human Rights Watch "Zimbabwe: Scourge of Child Marriage" 2015; Human Rights Watch "No Way Out: Child Marriage and Human Rights Abuses in Tanzania" 2014.

54 See, for example, Fact Sheet 23 "Harmful Traditional Practices Affecting the Health of Women and Children". See also article 24 of the Convention on the Rights of the Child. See also Toebes The Right to Health as a Human Right in International Law (1999); Girls Not Bride "Ending Child Marriage in Africa: A Brief" <http://www.girlsnotbrides.org/wp-content/uploads/2015/02/Child-marriage-in-Africa-A-brief-by-Girls-Not-Brides.pdf> (08-06-2019).

55 See International Centre Women's Coalition "Facts on Child Marriage", <https://iwhc.org/wp-content/uploads/2014/05/iwhc-child-marriage-facts.pdf> (accessed 13-04-2016).

56 *Ibid.* See also Human Rights Watch "Ending Child Marriage in Africa Opening the Door for Girls' Education, Health, and Freedom from Violence", <https://www.hrw.org/news/2015/12/09/ending-child-marriage-africa> (accessed 16-07-16). See also Varia "Tackling the Roots of Child Marriage: The Way Forward" 2016, <https://www.hrw.org/world-report/2016/ending-child-marriage-> (accessed 16-07-16).

57 See preamble of the SADC Parliamentary Forum *Model Law on Eradicating Child Marriage and Protecting Children already in Marriage* 2016.

58 SADC PF "Explanatory Notes on the Model Law on Eradicating Child Marriage and Protecting Children already in Marriage" 2016 v.

59 See Viljoen 2008 *De Jure* 384.

60 *Ibid.*

61 *Ibid.* and SADC PF "Explanatory Notes on the Model Law on Eradicating Child Marriage and Protecting Children already in Marriage" 2016 v.

62 Viljoen 2008 *De Jure* 386.

with no legal authority under international law,⁶³ because while a treaty is open for ratification by member states, the Model Law is not.⁶⁴ In order for the Model Law to be legally binding, its provisions must be given legal effect at the national level through domestication.⁶⁵ As rightly pointed out by Viljoen:

Domestication of treaties may take one of two main forms – direct incorporation, when the whole of the treaty is adopted as a domestic law, or transformation, when parts of national law are amended to reflect the standards in the treaty.⁶⁶

Therefore, in the context of child marriage, the Model Law is to serve as inspiration to incentivise member states to eradicate the bane of child marriage. As indicated above, the international and regional standards on child marriage were strong contributing factors in the drafting of the SADC Model Law. Hence, the Model Law is a restatement of the existing rights and concepts relating to the prohibition of child marriage and betrothal of children below eighteen.⁶⁷ It is worth pointing out that the Model Law gives more “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”.⁶⁸ This is evident in the core objectives and focus of the Model Law, which must serve as a standard and guidance for legislators and relevant child rights stakeholders in the SADC region to address all relevant areas in need of legal reform without usurping the authority of national legislatures.⁶⁹ In particular, member states are advised to:

enact strong and clear penal provisions specifically on child marriage in conformity with international and regional human rights instruments, protecting children who are already in child marriages by making these marriages voidable on the option of the child, protect children already in marriages and victims of child marriages by putting in a mechanism to determine when a child is in need of care and protection and the interventions to ensure the safety of such a child, provide for the establishment of places of safety for the residence and maintenance of victims of child marriage.⁷⁰

Secondly, the Model Law aims to encourage national governments to be accountable in the implementation of policies, enactment of laws and strategies for addressing child marriage.⁷¹ Lastly, the Model Law aims to reinforce a common approach and legal harmonisation with the uniform framework relating to child marriage.⁷²

4 1 Arguments in Support of the Model Law

The Committee on the Rights of the Child identified four basic principles that underlie child rights, chief among which is the best interest of the child.⁷³ This principle stipulates that “in all actions concerning the child undertaken by any person or authority the best interest of the child is of paramount consideration”.⁷⁴ The Model Law has incorporated this principle and also unequivocally sets minimum age of marriage at eighteen years⁷⁵ It stipulates clearly that any

63 *Ibid.*

64 *Ibid.*

65 *Ibid.*

66 *Ibid.*

67 The SADC-PF point out that “a restatement is to say something in a different way so that it is more clearly or strongly expressed.” See SADC PF “Explanatory Notes on the Model Law on Eradicating Child Marriage and Protecting Children already in Marriage 2016 v.

68 *Ibid.*

69 *Ibid.*

70 See article 1 of the SADC PF Model Law on Eradicating Child Marriage and Protecting Children already in Marriage 2016.

71 SADC PF “Explanatory Notes on the Model Law on Eradicating Child Marriage and Protecting Children already in Marriage 2016 v.

72 *Ibid* and Viljoen 2008 *De Jure* 386-388.

73 Other basic principles are right to non-discrimination, the right to survival and development and the views of the child. See UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14.

74 See article 4 of the ACRWC.

75 Minimum age of marriage is defined as “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.” See article 2 of the SADC PF Model Law on Eradicating Child Marriage and Protecting Children already in Marriage 2016.

person below that age has “no capacity to consent to a marriage or contract a marriage and any marriage purportedly entered into or solemnised is prohibited and void”.⁷⁶ The provisions of the Model Law make no exception regarding the age of a child as in article 1 of the Convention on the Rights of the Child, nor does it allow for the consent of the parents or the court for the marriage of a child under the age of eighteen.⁷⁷ Also, these provisions reinforce the international consensus on the minimum age of marriage and the need for member states to conform to the set standard.

In addition, the Model Law prohibits “the betrothal of a child; a marriage between a child and an adult or between two children is prohibited; and a person shall not contract, solemnise, abet or aid, promote, permit, coerce, or force the betrothal or marriage of a child”.⁷⁸ This provision outlaws all forms of child marriage in the region and confirms the position under the African Children’s Charter in article 21.⁷⁹ This provision sends a positive message by not only prohibiting the practice of child marriage but also holding any person (that is stakeholders, such as, parents, guardians, family members, religious or traditional leaders) criminally responsible when in contravention of these provisions.⁸⁰

Accordingly, the duty is on SADC member states to consider enacting specific and strong penal provisions criminalising the act of child marriage in line with the Model Law. Criminal sanction at the domestic level will not only have a deterrent effect on perpetrators who officiate and participate in child marriage cases, it will also serve as a clear message to the public that this practice is socially unacceptable and intolerable.

Furthermore, the SADC PF Model Law permits a court of law to issue restraining orders⁸¹ to people who either promote or encourage under-age marriages. Contravention of a restraining order is punishable by law.⁸² However, as restraining orders usually take time, they may not be fully effective. Since its inception the Model Law has not been tested by the courts in the SADC region.

It is common knowledge that no single strategy exists to put an end child to marriage.⁸³ In this regard, the Model Law in article 34 encourages SADC member states to constructively engage with the public by way of data collection.⁸⁴ Article 34 also calls for a multiple sectoral approach that includes socio-legal mechanisms, such as public engagements and information sharing⁸⁵ about the causes and dire ramifications of under-age marriages on child rights and their lives.

Articles 27 and 28 are significant illustrations of the foresight of the Model Law. They provide for measures and interventions to mitigate the effect of child marriage and protect children already in marriage. Article 27 obliges member states to establish an anti-child marriage fund in accordance with article 42 of the Model Law.⁸⁶ In addition, SADC member states are obliged to provide shelter homes for victims of child marriage, specifically, “public safety homes, public

76 *Ibid.* article 16.

77 *Ibid.* article 2 defines a child as “every human being below the age of eighteen years.”

78 *Ibid.*, article 17.

79 Article 21 of the African Children’s Charter.

80 See article 24(1)-(4) of the SADC PF Model Law on Eradicating Child Marriage and Protecting Children already in Marriage 2016.

81 See article 27 of the SADC PF Model Law on Eradicating Child Marriage and Protecting Children already in Marriage 2016.

82 *Ibid.*

83 Girls Not Brides “A Theory of Change on Child Marriage” <https://www.girlsnotbrides.org/theory-change-child-marriage-girls-brides/> (accessed 12-1-2019).

84 See article 34 of the SADC PF Model Law on Eradicating Child Marriage and Protecting Children already in Marriage 2016.

85 These will be discussed in depth in part four which seeks to map out a strategy that will be used to curb the scourge.

86 See for example article 42(1)-(2)—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.

foster homes or any other public facility for the residence, care and maintenance of victims of child marriage".⁸⁷ This provision is paramount because the majority of child marriages are condoned by parents and family members which makes it difficult for the victims to seek refuge at home.⁸⁸ The South African case of *Jezile v S* demonstrates this challenge.⁸⁹ In this case, male family members were directly involved in the marriage of an under-age girl against her consent, completely disregarding her rights in s 28 of the South African Constitution.⁹⁰ The Model Law also focuses on rural and peri-urban areas due to the high incidence of child marriages in there.⁹¹

Article 28 provides for protection against violence in marriage. This provision recognises the risk and exposure of child brides to an array of abuses. This include neglect or rejection by spouses due to medical issues,⁹² physical, psychological or emotional injury, sexual abuse and rape. Accordingly, article 6 provides for the care and protection of children already in these marriages by stipulating that laws, policies and measures must protect them and their off spring.⁹³

Lastly, the provisions of the Model Law are generally drafted in a manner that will enable legislative drafters in each member state "to be able to cut and paste the provisions into domestic bills with minimum changes required."⁹⁴ For example, article 17 (1) to (3) provides for the prohibition of child betrothal and marriage, but subsection 2 provides that—

A person, other than a child, who contravenes subsection (1), commits an offence and shall be liable, on conviction, to a fine not exceeding or to a term of imprisonment not exceeding XXX, or to both.

With provisions such as this, the Model Law aims to reinforce a commonality of approach and legal harmonisation in the region as well as accommodate country-specific differences regarding a fine or term of imprisonment upon conviction.⁹⁵

4 2 Real law or cover up: Shortcomings on the part of the Model law

The SADC Model Law is designed to protect children and their offspring already in these so called "marriages", but it has its shortcomings. First, since the Model Law has been adopted at the regional level, its significance has not been publicised as widely as possible to sensitise SADC residents. Secondly, the Model Law is a non-binding instrument, and as a result it does not incur any direct legal obligation on member states,⁹⁶ which means that they are neither

⁸⁷ See article 27(2) of the SADC Model law.

⁸⁸ Many of the girls who are forced into marriage want out of the marriage but are faced with fear of being rejected by family members. This has resulted in some of the girls committing suicide and some ending up in the criminal justice system for killing their husbands. The recent case of Noura Hussein in Sudan is an example of this situation. She killed her husband after he rape her and was sentenced to death. However, with the intervention and campaign of NGOs and international community the court of appeal overturned her death sentence in favour of five years imprisonment and financial compensation. Although this case is not in the SADC region, however, it brings to light the extent of high risks of child marriage especially on the girl- child. See Amnesty International "Why Sudanese Teenager Noura Hussein's Case Matters" <https://www.amnesty.org/en/latest/campaigns/2018/09/why-sudanese-teenager-noura-husseins-case-matters/> (accessed 12-01-2019).

⁸⁹ *Jezile v S and Others* (A 127/2014) [2015] ZAWCHC 31 (23 March 2015).

⁹⁰ While the perpetrator of the harmful practice of child marriage relied on the defence of *ukuthwala* the court rejected this defence as it cannot be used to justify acts of criminality like rape and sexual assault.

⁹¹ Amnesty International "Why Sudanese Teenager Noura Hussein's Case Matters". Article 15 which provides for special policies and programmes to meet the challenges facing children in marriages and victims of child marriages, especially the girl child, who live in rural and peri urban areas.

⁹² For example, young pregnant girls who develop obstetric fistula: a hole between the birth canal and the bladder or rectum caused by prolonged obstructed labour during childbirth are often neglected due to the resulting medical problems. See Girls Not Brides "Fistula, A Silent Tragedy for Child Brides" <https://www.girlsnotbrides.org/fistula-a-silent-tragedy-for-child-brides/> (accessed 16-01-2019).

⁹³ Some of these measures may include creating safe homes for victims of child marriage where counselling, rehabilitation and legal services must be provided. The Model Law envisages the establishment of safety homes, in order to secure the physical safety of a victim of child marriage and any offspring; to provide basic material support for the care of the victim of child marriage and any offspring; to offer counselling and rehabilitation services to the victim of child marriage; and to offer certain educational programmes, to the victim of child marriage and any offspring. See article 42 of the SADC model law.

⁹⁴ Moul and Nekura "SADC Model Law on Child Marriage an Update on Law Reform in the SADC Region", 27 March 2017, <https://africanlii.org/node/1754> (accessed 16-01-2019).

⁹⁵ Viljoen 2008 *De Jure* 389.

⁹⁶ As provided in the objectives of the Model Law that the law is a guiding framework on issues relating to child marriage.

bound legally to adopt or adapt the Model Law in order to provide reforms for outdated marriage laws, nor to develop progressive marriage laws and/or harmonise child marriage-related laws. The progressive provisions of the Model Law aim to provide guidance and inspiration and not usurp national legislatures or undermine domestic sovereignty of member states.⁹⁷ Such states may prefer their domestic laws which provide for lower standards than those enshrined in the Model Law.

Even if it were binding, some member states would prefer incorporation: that is adopting the entire treaty as national legislation, as required by their constitutions.⁹⁸ A number of constitutional provisions in the region demand incorporation of international legal provisions before they are directly invoked by the courts. For instance, s 231 of the South African Constitution and s 326 of the 2013 Constitution of Zimbabwe adhere to dualism⁹⁹ and thus require parliament to ratify all international instruments that have been signed by the executive. However, for interpretative purposes all the fundamental human rights courts (especially those of children) in SADC member states that follow dualist principles, must have due regard to the principles of public international law and all treaties and conventions that protect the human rights of their people.¹⁰⁰ In this regard, it is contended that courts must use international law as an interpretative tool in the framework of giving rights full force and effect. For a meaningful interpretation, it is argued that such international law must include both binding and non-binding international law to the extent that it is not contrary to the integrity and spirit of the Constitution. For example, in the case of *Mudzuru & another v the Minister of Justice, Legal and Parliamentary Affairs and Others*,¹⁰¹ the Zimbabwean Constitutional Court emphasised that:

Regards must also be had to the emerging consensus of values in the international community, of which Zimbabwe is a party, on how children should be treated, and their wellbeing protected so that they can play productive roles in society upon attaining adulthood.¹⁰²

SADC courts are therefore obliged to seek guidance from the SADC model in child marriage related cases so as to avoid unreasonable interpretation that is not in line with international human rights law norms.¹⁰³ Accordingly, it is important to submit that failure by the SADC courts to find recourse in the model law will very likely minimise its influence and efficacy in preventing, curbing and eradicating the harmful practice of child marriage at the municipal level.

Member states that adhere to monism,¹⁰⁴ must ensure that courts in the interpretation and application of the law, the legislatures in the enactment of laws and the executives in their development of policies and enforcement of laws, utilise the rich provisions under international law. For example, article 144 of the Constitution of the Republic of Namibia provides that; "Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution

97 SADC PF "Explanatory Notes on the Model Law on Eradicating Child Marriage and Protecting Children already in Marriage 2016 v-vi.

98 Viljoen 2008 *De Jure* 386.

99 Dualism is an approach that requires formal incorporation of public international law into national laws before it can become enforceable in the national courts. See Ferreira and Ferreira-Synman "The Incorporation of Public International Law into Municipal Law and Regional Law against the Background of the Dichotomy Between Monism and Dualism" 2014 PER/PELJ 1471. See also Dugard *International law: A South African Perspective* 4 ed (2011).

100 See, for example, s 39(1)(b) of the South African Constitution which provides that: "when interpreting the Bill of Rights, a court, tribunal or forum must consider international law." See also s 46 (1)(c) of the 2013 Constitution of Zimbabwe. It is worth noting S 233 of the South African Constitution which provides that "When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law." This is also provided for in s 327(6) of the 2013 Constitution of Zimbabwe.

101 *Mudzuru & Another v Ministry of Justice, Legal & Parliamentary Affairs (N.O.) & Others* (Const. Application No. 79/14, CC 12-15) [2015] ZWCC 12 (20 January 2016).

102 *Ibid.*

103 For instance, s 231 of the South African Constitution provides that, when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

104 Monism is an approach that allows national courts to directly enforce public international law without any need for incorporation into their national law. See Ferreira and Ferreira-Synman 2014 PER/PELJ 1471. See also Dugard *International law: A South African Perspective* 4 ed (2011).

shall form part of the law of Namibia.”

Further, a third shortcoming of the Model Law is the challenge with the non-enactment of the Model Law by member states since its adoption in 2016. To date there is no record of any incorporation or enactment of the provisions of the Model Law by member states nor is there any interpretation or application of the provisions of such law in any national court in the region. This is confirmed by a Zimbabwean MP in a recent statement that: “In many countries in SADC, there is debate on that model law, but when it comes to enactment of it, nothing much has happened”.¹⁰⁵ This is largely because of the lack or slow effort at aligning the standards in the Model Law with the national law due to factors, such as, the absence of political will to address child marriage issues; the challenge with culturally entrenched traditions and practices that promote the harmful practice of child marriage within a patriarchal system and the problems with birth registration which makes it difficult to determine the age of a child.¹⁰⁶ In addition, the lack of awareness on the scope and content of the Model Law across the SADC region also limits efforts at adopting the whole or adapting part of the law into a national treaty.

From the afore mentioned shortcomings of the Model Law it suffices to question whether it should be considered as a real law or a cover up by SADC member states to be seen as taking initiatives to address the recurring problem of child marriage in the region.¹⁰⁷

Be that as it may, there is no single strategy that will end child marriage. The SADC Model Law must however act as a guide to all stakeholders, specifically, the SADC governments, policy makers, law makers, the judicial officers, administrators, non-profit organisations, parents, traditional leaders and religious leaders and all relevant organisations.¹⁰⁸

5 CONCLUSION

This article examined and established that the SADC Model Law on eliminating child marriage and protecting children already in marriage makes a significant contribution to combating this harmful practice and it highlighted arguments in support of the law, particularly the clear standards relating to the minimum age of marriage and the right to free and full consent as a foundation for a valid marriage. The provisions that clearly provide criminal sanction(s) on contravention of the law and the provisions specific to the protection of children already in marriages are lauded.

It was illustrated that the Model Law has its shortcomings as it exercises no legal obligation on member states. Clearly, these shortcomings limit efforts at incorporating, enacting or promulgating the forward-looking provisions of the Model Law into their domestic legal frameworks. Nevertheless, it was suggested that a consistent effort must be made to address the ongoing practice of child marriage by way of a variety of legal and non-legal measures proffered in the Model Law, that are well documented in studies and reports.¹⁰⁹

105 Lange “SADC Urged to Implement Child Marriages Model Law”, *Newsday* 23 August 2018, <https://www.newsday.co.zw/2018/08/sadc-urged-to-implement-child-marriages-model-law/> (accessed 16-01-2019).

106 Moulton and Nekura “SADC Model Law on Child Marriage an Update on Law Reform in the SADC Region” 1.

107 As noted above in this paper a number of states in the SADC region are among the top countries with highest prevalence of child marriage.

108 See SADC PF “Explanatory Notes on the Model Law on Eradicating Child Marriage and Protecting Children already in Marriage 2016 vi.

109 See, for example, Centre for Human Rights at the University of Pretoria “A Report on Child Marriage in Africa” (2018) and UNFPA “Marrying Too Young: End Child Marriage” (2012).