

ENDING CHILD MARRIAGES IN SOUTHERN AFRICA: DOMESTICATING THE SADC MODEL LAW ON CHILD MARRIAGE

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Photo: Annie Spratt/Unsplash

CONTENTS

Background	3
The SADC Model Law provisions: An overview	3
Progress made so far	4
Key Challenges towards full domestication of the Model Law	6
Recommendations to SADC Member States	7

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ABOUT EQUALITY NOW

Since its founding in 1992, Equality Now has been using a unique combination of legal advocacy, regional partnership-building, and community mobilization to encourage governments to adopt, improve and enforce laws that protect and promote the human rights of women and girls around the world. With an international team, our campaigns are centered on four program areas: Achieve Legal Equality, End Sexual Violence, End Harmful Practices, and End Sexual Exploitation, with a cross-cutting focus on the unique needs of adolescent girls.

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BACKGROUND

The SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage ('Model Law' or 'SADC Model Law') was adopted on June 3rd 2016 by the 39th Plenary Assembly of the SADC Parliamentary Forum, which met in the Kingdom of Eswatini. The purpose of this brief is to present a review of the extent to which Member States of SADC have domesticated the Model Law in their own laws and policies as a way of working towards eradicating child marriages in the region.

The objective of the Model Law is to create a legislative yardstick based on agreed-upon concepts derived from international human rights instruments to which the Member States of SADC have already committed themselves. It is, therefore, a normative tool designed to make it easier for legislators and legislative drafters in the Member States to revise, reform, and improve their domestic laws and policies. In the context of child marriage, SADC Model Law defines a child as a person who is less than 18 years of age.



Photo: Dazzle Jam/pexels

THE SADC MODEL LAW PROVISIONS: AN OVERVIEW

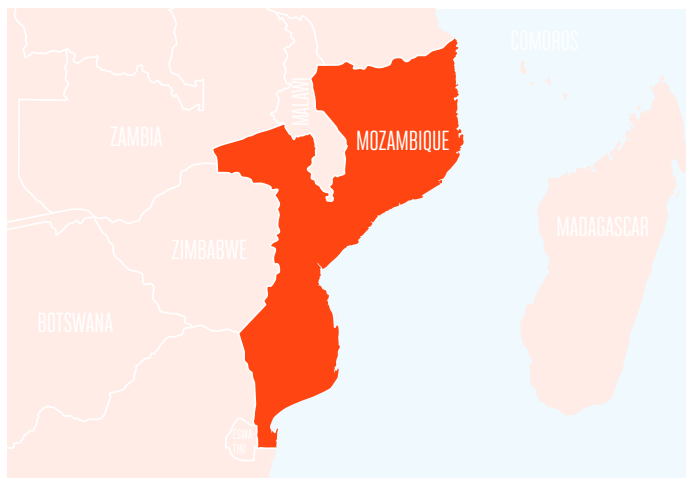
- The Model Law calls for the unequivocal prohibition of marriage and betrothal for both boys and girls under the age of 18, with laws on penalties for contravention as a deterrent measure.
- The law provides for the application of a restraining order to prevent a child marriage from taking place, which can include the removal of the child from the environment that puts them at risk of being married off.
- Child marriages already in place before the commencement of the new domestic law (whether through amendments or by way of a standalone law) should be made voidable. Voiding these child marriages can be initiated by either a party to the marriage or a concerned third party who can provide adequate reasons for voiding the marriage in the best interests of the child.
- All marriages should be registered to enable the government to make the necessary checks regarding the age of the parties to the marriage.
- A multisectoral approach to tackling child marriages is at the core of the Law. The Law gives practical provisions that should contribute towards the eradication of child marriage as well as provisions for children who are already in marriage or are victims of child marriage. These provisions include but are not limited to:
 - age-appropriate comprehensive sex education for children,
 - legal aid for victims,
 - prevention programmes including incentives to keep children out of marriage,
 - custody and maintenance arrangements for the offspring of the child as well as ensuring their legitimacy,
 - training for key government officials and stakeholders in dealing with child marriage issues,
 - establishment of an anti-child marriage fund to support programmes undertaken under the law,
 - scholarships and bursaries for continued education from primary to tertiary levels and ensuring continued education for pregnant girls, and
 - ensuring access to sexual and reproductive health information and services and medical care.

If implemented properly, the Model Law has the potential to end child marriage in the sub-region. However, the benefits of the Model Law can only be optimised by Member States adopting the recommended provisions as the Model Law itself is normative rather than binding in nature. However, the provisions of the Model Law are grounded in binding international and regional human rights standards that most of the SADC Member States have ratified [including the Maputo Protocol and the Joint General Comment on

Ending Child Marriage issued by the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) and which make similar recommendations]. While comprehensive laws on their own without effective enforcement are insufficient to eliminate child marriage, laws also assist survivors in getting justice. They also provide legitimacy to policies and strategies that can be implemented by governments.

PROGRESS MADE SO FAR

In the SADC region, there have been varying degrees of implementation of the aspirations of the SADC Model law. Some examples of good practices are highlighted below



Mozambique

Mozambique is one of the SADC countries with the highest prevalence of child marriage, with 1 in 2 girls being married before they reach 18.¹ To address this situation, the country set up a framework that provides best practices in the implementation of the SADC Model Law. In 2019, Mozambique enacted the Law on the Prevention and Combating of Premature Unions Law 19/2019. This law specifically acknowledges in Article 6 that it is inspired by the SADC Model Law and, as far as it is not in conflict with

Mozambican laws, should be interpreted to reflect the SADC Model Law's objective. This law, therefore, contains the majority of the provisions suggested by the SADC Model Law, including specified penalties for persons who contravene the prohibition of child marriages. While the SADC Model Law provides for equal distribution of property acquired during the subsistence of a voided child marriage, the Mozambican law goes a step further by providing that the individual who was a child at the time of marriage should get two-thirds of the property while the adult gets one third. In addition, Mozambique reformed its *Family Act Law 22/2019*, which now has absolute prohibition of the betrothal or marriage of persons under the age of 18.

These laws came at a time when Mozambique was already implementing a *National Strategy for Prevention and Combat of Child Marriage (2016-2019)*, which promoted a socio-economic framework for the prevention and combating of child marriages. The framework acknowledges the socio-economic factors that contribute to child marriages as well as the need for a multi-sectoral approach to eradicate the problem. As a demonstration of this multi-sectoral approach, in December 2018, Mozambique revoked the draconian decree of 2003, which forced pregnant girls to attend classes in night school.²



Zimbabwe

In January 2016, the Constitutional Court in Zimbabwe struck down Section 22(1) of the Marriage Act, which allowed children under 18 to get married for being inconsistent with the Constitution. Subsequently, in 2022, Zimbabwe enacted a new Marriage Act which prohibits marriage under the age

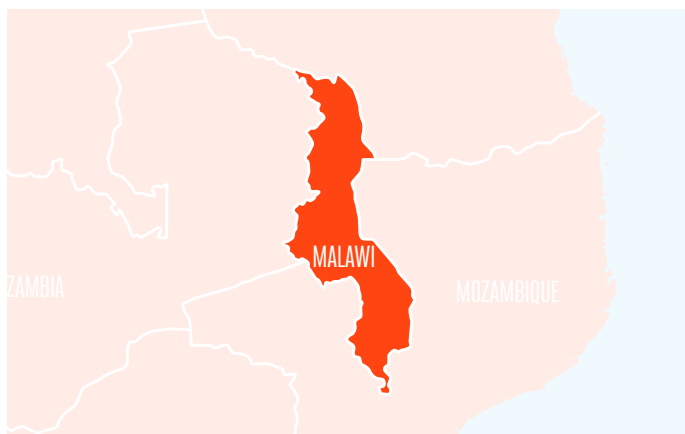
of 18 in all cases (including in customary unions, whether registered or not). It also sets penalties with imprisonment of up to five years for the contravention of this provision.

In 2018, Zimbabwe launched the National Action Plan and Communication Strategy to end child marriage.³ Some of the identified activities in line with the SADC Model Law include ensuring registration of all marriages (in line with state obligations under the Maputo Protocol), as well as ramping up efforts to ensure that all births are registered, which is important for verification of age at marriage. To ensure a multi-sectoral approach to ending child marriage, the action plan also contains strategies to retain girls in school and create partnerships for all stakeholders working on poverty alleviation. The plan also had a strategy to engage community leaders on challenging the norms and traditions of child marriages.

¹ Human Rights Watch 'Mozambique passes law to end child marriage' <https://www.hrw.org/news/2019/07/19/mozambique-passes-law-end-child-marriage>

² UNICEF 'The situation of children in Mozambique' (2021).

³ Government of Zimbabwe National Action Plan and Communication Strategy to End Child Marriage (2018).



Malawi

Malawi is one of the SADC countries with the highest rate of child marriages. In 2017, Malawi successfully changed its Constitution by removing the provision that earlier allowed parents to consent to the marriage of their children under 18.

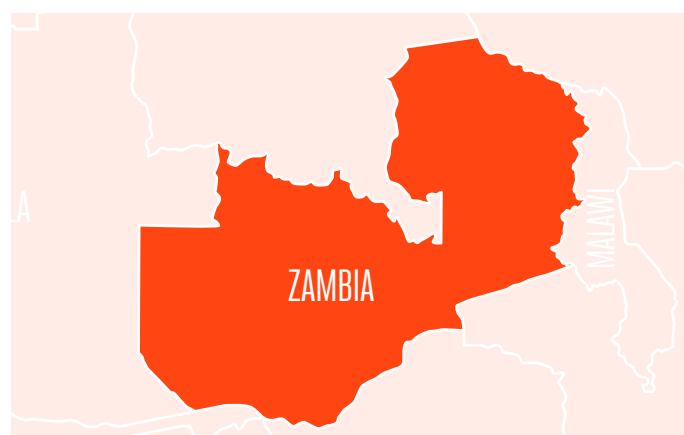
This amendment harmonized the Constitution with the provisions of the Marriages, Death, and Family Relations Act of 2015, which set the minimum age of marriage at 18.

Malawi has also adopted a [National Strategy on Ending Child Marriage \(2018-2023\)](#), which adopts a multi-sectoral approach to tackle child marriage.⁴ Some of these strategies include economic empowerment for girls and prioritizing school re-entry to ensure that pregnant girls achieve their educational aspirations. In line with the SADC Model Law, the strategy emphasized the capacity-building of key government stakeholders like law enforcement agencies, increasing child protection services such as victim support groups, and providing adequate frontline child protection workers. It also has strategies for providing age-appropriate sexual and reproductive health information and services for young girls and adequate healthcare and psychosocial support for survivors of child marriage.



South Africa

While South Africa has not yet harmonised its laws to unequivocally bring the minimum age of marriage to 18, it has made some strides in comprehensive sexuality education, which is an essential component for the prevention of child marriage. The SADC Model Law encourages a multi-sectoral approach that includes inter-ministerial cooperation. South Africa has done this through involving the Department of Basic Education, which has incorporated a comprehensive sexuality education module as part of its Life Orientation subject, compulsory at both primary and secondary education levels.



Zambia

Zambia has enacted the Children's Code Act No 12 of 2022, which prohibits the marriage of children under the age of 18 and categorises child marriage as a harmful practice. Though Zambia is yet to harmonise its laws to unequivocally bring the minimum age of marriage to 18 across the board, the government is taking steps to address child marriage through various policies and programmes. The Education Act of 2011 has made marrying a learner a criminal offence, though a learner is defined as a child under 16 who is in school. There are some adolescents who are not in school and therefore, this provision would be inapplicable. This is augmented by comprehensive sexuality education, which has been integrated into several of the existing subjects in schools. In 2016, Zambia adopted a [National Strategy on Ending Child Marriage 2016-2021](#) aimed at positively influencing societal attitudes, beliefs, and practices that contribute to child marriage.⁵

⁴ Government of Malawi National Strategy on Ending Child Marriage (2018).

⁵ Government of Zambia National Strategy on Ending Child Marriage (2016).



KEY CHALLENGES TOWARDS FULL DOMESTICATION OF THE MODEL LAW

Inconsistent legal frameworks

One of the key factors preventing effective implementation of the laws to combat child marriage is the lack of a comprehensive and consistent legal framework. There appear to be more efforts in reforming laws on child protection (which in most cases prohibit child marriage) but slower progress in reforming marriage or family laws. This situation results in a conflict where some new laws do not specifically repeal previous laws.

An example of this conflict is in the case of Zambia, where the most recent Children's Code Act No. 12 of 2022 sets the minimum age of marriage at 18 without directly repealing the provision in the Marriage Act of 1964, which set the minimum age of 16 for both boys and girls. This leads to legal complications, although statutory interpretation would proffer that the new provision (the Children's Code Act No. 12 of 2022) supersedes the previous one (the Marriage Act 1964), given that new legislations keep the preceding provisions in mind. Still, the SADC Model law emphasises the need to cross-reference related laws to avoid any inconsistencies or difficulties in interpretation.

Another example is that Malawi's Constitution and the Marriage, Divorce and Family Relations Act set the minimum age of marriage at 18. The [Child Care, Protection and Justice Act of 2011](#) prohibits forced marriage of children, but it defines a child as a person below the age of 16. In this case, while the Constitution will supersede the *Child Care, Protection and Justice Act*, it still creates complications in the application of the law.

Slow progress

While the conversation on child marriage in the region has been ongoing for years, progress on the ground has been relatively slow. In 2016, the High Court of Tanzania handed down a landmark ruling striking down sections 13 and 17 of the Marriages Act, which sets different minimum ages for boys and girls to enter marriage. This decision was upheld on appeal in 2019. Despite the Court of Appeal giving the government a year to amend the law, progress has been slow.⁶

Similarly, in South Africa, despite the discussions [dating back as far as 2015](#), the pace of progress in putting in place a law that prohibits child marriage in all circumstances remains slow.⁷ These delays encourage impunity for child marriages and disregard the urgency of the issue. Slow progress is also caused by changes in political players who have been driving the process.

Lack of progress

In some countries, despite agreement at parliamentary committees, other high levels, and national decision-making bodies on the steps necessary to eradicate child marriage, the political support on the ground appears variable. Angola, for instance, has not made much progress in reforming the law on child marriage. Its current law adopted in 1988 (which allows girls as young as 15 to get married with parental consent) is yet to be reviewed to bring the minimum age of marriage in line with international human rights standards.

⁶ The Citizen 'Government speaks on Marriage Amendment' September 11, 2022. <https://www.thecitizen.co.tz/tanzania/news/national/government-speaks-on-marriage-act-amendment-3944798>.

⁷ L Mwambene 'Recent legal responses to child marriage in Southern Africa: The case of Zimbabwe, South Africa, and Malawi (2018) Africa Human Rights Law Journal Vol. 18 No. 2

Ad hoc pathways to legal reform

Some of the countries that have made progress in implementing the SADC Model law or generally reforming their laws on child marriage indicate the benefit of coordinated and multi-sectoral approaches to legal reform. For example, the constitutional change in Malawi was a result of [concerted action from youth groups](#).⁸ Similarly, there is [evidence to suggest](#) that the *Prevention and Combating of Premature Union Act* in Mozambique was a culmination of multi-sectoral collaborations motivated by the alarming rate of child marriages in the country.⁹ However, there is not enough information in other countries on how the legislative changes come about; or adequate attention is not paid to existing related laws when a law is amended.

Lack of understanding of the issue

Limited understanding of the law and its implications within different levels of various sectors can hamper progress towards law reform. Dedicated support to parliamentarians can help enhance their arguments to eradicate child marriage. Also, enhanced economic and budgetary allocation arguments need to be made. Similarly, understanding of the general populace, including the children involved, could be improved to enhance meaningful participation in the law reform process.

RECOMMENDATIONS TO SADC MEMBER STATES

- Prioritise the harmonisation of national laws to make them consistent with the SADC Model Law. This may mean repealing/amending laws that do not meet the standards set by the Model Law.
- Prioritise the legal reform process. This may include adequate budgetary allocation to the process and ensuring a robust partnership framework for an inclusive legislative process.
- Optimise the knowledge and expertise garnered by members of the SADC PF in domestic parliaments to enrich debates and discussions on law reform.
- Adopt a human rights-based approach to the law reform as effective implementation of the SADC Model Law requires complying with several international and regional human rights obligations.
- Identify key actors and embark on multi-sectoral consultations for legal reform. This can include how each sector envisions their role in eradicating child marriage which can then be considered in the formulation of the law. It is critical to harmonize civil and customary or religious laws pertaining to child marriage.
- Support the dissemination of correct and consistent information by the media to encourage different sectors to make meaningful contributions to legal debates.
- Identify champions in the communities who can push for the child marriage legal reforms agenda.
- Support 'memorialising' programmes, especially since parliaments and cabinets change regularly. 'Memorialising' could take the form of consistent and proper documentation of progress made by the government's ministerial and parliamentary bodies to build institutional memory.

⁸ Plan International 'Malawi changes law to end child marriage' <https://plan-international.org/news/2017/02/14/malawi-changes-law-to-end-child-marriage/#:~:text=Malawi%20has%20made%20a%20historic,and%20organisations%20including%20Plan%20International>

⁹ FEMNET 'Female genital mutilation, early and child marriages- Mozambique' (2022) Policy Brief

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