

SADC MODEL LAW ON GENDER BASED VIOLENCE



SADC Parliamentary Forum

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SADC MODEL LAW ON GENDER BASED VIOLENCE

CHAPTER ONE

1.0 EXPLANATORY NOTES ON SADC MODEL LAW ON GENDER BASED VIOLENCE

1.1 A Guiding Tool

The SADC Model Law on Gender-Based Violence (GBV Model Law), outlined in Chapter Two, and these attendant Explanatory Notes on the SADC Model Law on Gender Based Violence, seek to guide SADC Member States (SMS) in developing effective policies and efficacious Laws on gender-based violence (GBV). The GBV Model Law is not designed in the exact style and form as legislation in SMS but its design is such as will communicate clearly the policy content and recommendations on best practice legislative provisions for inclusion in National laws on GBV.

Therefore, the GBV Model Law is a useful tool for SMS as it provides the following:

- guidance on the scope and content of best practice GBV provisions to be incorporated in National GBV laws;
- encourage national legislatures to enact GBV laws where these do not exist or, where they do exist but do not conform with this Model Law, to review such laws and adopt certain provisions from this GBV Model Law to ensure efficacy of National Laws on GBV ;
- support to National GBV Laws during the implementation stage, especially where gaps still exist;
- a yardstick to National policy analysts, legislators and implementers as to best practices in enacting and dealing with GBV;
- reinforces a commonality of a regional approach in dealing with GBV laws, measures and strategies to help eliminate GBV; and

- a stimulus for debate, awareness and advocacy.

Therefore, the GBV Model Law is a governance tool to assist SMS develop and enact National GBV Laws or revise or reform existing GBV Laws, in order to meet SMS international, continental and regional commitments relating to human rights and, more specifically, commitments to stop gender-based violence.

1.2 Rationale and Objectives

GBV covers domestic violence, sexual harassment in the workplace, human trafficking and sexual and emotional abuse, economic violence etc., to name a few examples. When referring to GBV the discussion is not just about the act of violence, but also about education and prevention, as well as victim assistance. GBV not only has terrible effects on the victim but impacts negatively on society at large, with serious social and economic consequences. It is a National issue which requires drastic national interventions through the highest tool of governance - the law.

GBV is an affront to human rights. The underlining rationale is to protect victims and probable victims of GBV, punish offenders and ensure that human rights are upheld in accordance with international, continental and regional standards and requirements.

There are various definitions of what Gender based violence constitutes. The following definitions are widely acceptable; and this GBV Model Law uses them in context of its provisions:

- The United Nations (UN) defines GBV as *“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”*.
- The SADC definition of GBV is “all acts perpetrated against women, men, boys and girls on the basis of their sex which causes or could

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cause them physical, sexual, psychological, emotional or economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed or other forms of conflict.¹ SADC recognises that GBV covers domestic violence, sexual harassment in the workplace, human trafficking and sexual and emotional abuse to name a few examples. When referring to GBV SADC recognises that the discussion is not just about the act of violence, but also about education and prevention, as well as victim assistance;

- the UN Declaration on the Elimination of Violence against Women of 1993 defines GBV as **‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’**²;
- UNHCR provides an identical definition to what is provided by UN Women (<https://www.unhcr.org/uk/gender-based-violence.html>) but the UNHCR Master glossary refers to GBV as Sexual and Gender Based Violence which can be defined as **‘Any act of violence perpetrated against a person based on gender norms and unequal power relationships. It encompasses threats of violence and coercion, and can occur in public or in private life. SGBV inflicts harm (whether physical, sexual or psychological) on women, girls, men and boys’**³;

¹ SADC [Protocol on Gender and Development](#)

² <https://www.un.org/womenwatch/daw/vaw/v-overview.htm>

³ <https://www.unhcr.org/glossary/#sexual-and-gender-based-violence>

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- the UN Women website states that 'Violence against women and girls is defined as any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Violence against women and girls encompasses, but is not limited to, physical, sexual and psychological violence occurring in the family or within the general community, and perpetrated or condoned by the State,'⁴ and
- The UN women state that 'Gender-based violence (GBV) refers to harmful acts directed at an individual or a group of individuals based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms. The term is primarily used to underscore the fact that structural, gender-based power differentials place women and girls at risk for multiple forms of violence. While women and girls suffer disproportionately from GBV, men and boys can also be targeted. The term is also sometimes used to describe targeted violence against LGBTQI+ populations, when referencing violence related to norms of masculinity/femininity and/or gender norms;'⁵

The SADC Protocol on Gender and Development (revised in 2016) emphasizes the need to address all forms of GBV. The Protocol, through Articles 20-25, identifies several measures to address GBV including legal measures; social, economic, cultural and political practices; support services; measures against sexual harassment; training of

⁴ <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>

⁵ <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>

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service providers; and adoption of integrated approaches. The SADC Gender Protocol urges Member States to enact and enforce legislation prohibiting all forms of gender-based violence. In addition, SADC has developed the Regional Strategy and Framework of Action for Addressing GBV (2018-2030) and the Regional Strategy on Women, Peace and Security (2018 – 2022), all of which seek to harmonize and coordinate the regional response to GBV and to help Member States to effectively respond to GBV. Additionally, the SADC SRHR Strategy for 2030 and its corresponding scorecard includes indicators to measure progress to the SDG's targets related to SDG 5.1.

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All SADC States have also ratified international and regional treaties and instruments that contain important provisions relating to eliminating gender-based violence.

GBV not only has terrible effects on the victim but impacts negatively on society at large, with serious social and economic consequences. It is a National issue which requires drastic national interventions through the highest tool of governance - the law,

Economic violence is 'any act or behaviour which causes economic harm to an individual. It can take the form of, for example, property damage, restricting access to financial resources, education or the labour market, or not complying with economic responsibilities, such as alimony.'⁶ Economic violence experiences include limited access to funds and credit; controlling access to health care, employment, education, including agricultural resources; excluding from financial decision making; and discriminatory traditional laws on inheritance, property rights, and use of communal land.⁷ Economic violence may lead to physical violence, promote sexual exploitation and the risk of contracting HIV infection, maternal morbidity and mortality, and trafficking. Economic abuse may continue even after the victim has left the abusive relationship.

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⁶ Forms of Violence at <https://eige.europa.eu/gender-based-violence/forms-of-violence>

⁷ Ibid

Economic violence disproportionately affects women and it is thus important to ensure that each gender have equal power opportunities to generate and manage income as an important step toward realizing enhanced societal development, gender self-esteem, and influence, both within the household and in society.

Gender equality in terms of access to economic opportunities contributes directly to the reduction of poverty and overall development as each gender will have access to, and control over, productive resources, and become powerful resources for development in the SADC region.⁸

1.2.1 Inadequacy of National laws on GBV

SADC members signed the Declaration on Gender and Development on 8th September 1997 to promote closer regional cooperation and collective action as a means of fostering gender equality.⁹ The Declaration reaffirms SADC's commitment to eliminating gender discrimination and mainstreaming gender issues in Southern Africa¹⁰. Through the Declaration, Member States agree to establish policy and institutional frameworks for advancing gender equality, to set up advisory systems with government and non-governmental organisations to monitor gender issues.¹¹ These measures are intended to place gender issues at the forefront of the SADC Programme of Action and Community Building Initiative, thereby leading to amendment of laws that discriminate against women, improvement of access to productive resources, and protection of human rights¹².

To operationalise the SADC Gender Protocol and other international and regional GBV-related instruments, SADC Member States have different pieces of legislation to address Gender-Based Violence, including legislation that address specific aspects of GBV such as rape and other forms of sexual violence, domestic violence, child sexual abuse,

⁸ PwC, Women in Work Index 2018. Available at: <https://www.pwc.co.uk/services/economics-policy/insights/women-in-work-index.html>

⁹ ibid

¹⁰ ibid

¹¹ ibid

¹² ibid

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trafficking in persons, discrimination against women and other protected groups, female genital mutilation, child and/or forced marriage, and other harmful practices. Fourteen (14) of the SADC Members States have legislation on Human Trafficking, except Comoros and the Democratic Republic of Congo (DRC). However, even where legislation on Gender-Based Violence is in place, in some cases these laws are not comprehensive.

Although the majority of SADC Member States (SMS) have laws in one form or the other dealing with some forms and components of GBV, these do not seem to be stemming or eradicating GBV. Most SMS's legislation -

- **have certain loopholes/lacunae in the legislation:** provisions lack scope or content, are fragmented, inconsistent, conflict in allocation of mandates, are ambiguous or generally vague as to meaning, privilege, entitlement or right;
- **lack adequate access to justice provisions:** to enable and capacitate the various players in the criminal justice and administrative systems, at various stages, to prevent, receive, investigate, attend, prosecute and decide on GBV cases; and enforce decisions and protect victims of GBV;
- **lack adequate compliance and enforcement measures:** making the law inefficacious and not having the impact it was intended to have;
- **lack adequate provisions to ensure sufficient and sustainable resources:** resulting in lack of judicial, rehabilitative, administrative and financial capacity to deal with GBV;
- **lack of provision acknowledging and addressing the nexus between statelessness and GBV on the one hand, and forced migration and GBV on the other hand; and**
- **lack of inclusion of asylum seekers, migrants and others on the move, as well as stateless persons.**

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1.2.2 National legislative and institutional frameworks

Currently, issues related to GBV in SMS are regulated and managed by various Ministries and statutory authorities, with complementary support from the private sector, especially civil society organisations (CSO). In most SMS there are no independent single regulators or management units dealing with matters relating to, or impacting on GBV, resulting in multitude of institutional frameworks dealing with GBV, including gender commissions, prosecution authorities, legal aid services, advisory clinics, the police service, victim support units, the judiciary, civil society organisations and workforce and institutional-based units. SMS are encouraged to concertedly put in place measures to coordinate matters dealing with GBV at national level, with effective consultation and communication mechanisms amongst all players.

For effective and efficacious handling of GBV cases SMS require legislative and institutional frameworks that provide adequate measures, strategies, programmes and interventions to deal with GBV, including adequate capacity building of critical role players and stakeholders for effective and sustainable prevention, rehabilitative, monitoring and management of GBV cases.

It is also important to ensure that the law provides an adequate institutional framework for engagement of all players who regulate, manage and are affected by GBV, by providing for a clear system for coordination, communication and collaboration among all the players when dealing with GBV cases, with clear lines of responsibilities.

Therefore, the regulatory and institutional framework must be clear and certain on issues such as extent of regulatory and investigative powers, functions and duties of key role players, procedural requirements, access to justice, coordination, communication and collaborative issues, enforcement and compliance mechanisms and management of infrastructure facilities, among others. The victims of GBV and

the private sector involved in providing advice, assistance and protection to victims of GBV need assurance that regulatory State authorities have the necessary autonomy, power and capacity to act fairly, transparently and decisively when responding to GBV cases.

1.2.3 Paradigm shift in legislative system for GBV

National laws on GBV should aim at providing a four-pronged approach towards achieving a paradigm shift in the legislative system for GBV as follows:

- providing a human rights-based approach to GBV laws that addresses the root causes of GBV and allows for inclusion of all marginalized groups including refugees, asylum seekers, stateless persons (whose nationality cannot be identified), persons with disabilities, prison inmates and persons without documentation and migrants and ensure that such approach is actually applied by all respondents;
- interfacing all concepts, rules and principles of access to justice to promote seamless connectivity for efficient handling, investigating, prevention, prosecution, protection and enforcement of all GBV cases;
- introducing innovative methods to deal effectively with GBV; and
- ensuring adequate information and financial resources are provided for intervention, prevention, protection, enforcement, regulation, rehabilitation, harmonisation and standardization, and that measures put in place are working, maintained and are sustainable.

1.2.4 Constitutions of SMS and Human Rights

The Constitutions of SMSs need to be taken into account when drafting, adopting, adapting and enacting the content of the GBV Model Law into National laws. The principle of intra vires and ultra vires are applicable to all primary and subordinate legislation and must be observed by National drafters. Most SMS have Bill of Rights

embedded in their Constitutions, which, though not comprehensive, follow closely the Human Rights spelt out in the Universal Declaration of Human Rights. International human rights instruments provide an agreed set of human rights standards and establish mechanisms to monitor the manner in which human rights and freedoms are implemented. The other key human rights treaties of the UN are as follows:

- the International Covenant on Civil and Political Rights;
- the International Covenant on Economic, Social and Cultural Rights;
- the Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention on the Elimination of All Forms of Discrimination Against Women;
- the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- the International Convention for the Protection of all Persons from Enforced Disappearance;
- the International Convention on the Protection of all Migrant Workers and the Members of their Family;
- the Convention on the Rights of the Child; and
- the Convention on the Rights of Persons with Disabilities.

Further, the drafters of National legislation should take into account other regional and international instruments listed in paragraph 2.6 relating to the human rights approach.

The GBV Model Law attempts to restate some of the human rights that directly impact on GBV. These are in no way exhaustive and, the drafters of National legislation should endeavour to summarize all their States obligations at international level, analyse these and fill in the gaps in National laws where these exist. The UN has issued a number of Legislative Guidelines, guidance notes, explanatory notes and commentaries on various human rights instruments which act as good working tools to, the drafters of National legislation for a gap analysis on National laws

impacting on GBV, some of the main recommendations have been incorporated in this GBV Model Law.¹³

The GBV Model Law does, as far as is possible, as made explicit in these explanatory notes and reference notes, takes cognizance of the constitutional requirements of SMS.

1.2.5 Reviewing current criminal laws on GBV

SMSs which already have existing criminal laws on GBV may need to generally review their laws to ascertain conformity with the GBV Model Law and other international and regional requirements and standards. SMS may need to pass consequential amendments to GBV laws to ensure consistency and harmony of their National laws.

SMS must, when reviewing their current criminal laws on GBV, interrogate gaps in the existing laws on GBV which may bring about inconsistencies or disharmony in the legislative space governing GBV and ascertain how these may impact on the manner GBV is perceived, prevented, handled, investigated, prosecuted, decided on and enforced. In this regard, a 'gap' may be manifested as a failure in the coverage, comprehensiveness, inclusivity, rationality or appropriateness of the legislative framework and how it impacts on the institutional mandates of the various players in the justice and administrative system. These gaps may include overlaps, conflicts or

¹³ See Schedule 2 which lists some of the instruments from which a number of **recommendations** were used in developing this GBV Model law: , for example, the main instrument used was the UNODC Blueprint for Action (on criminal justice aspects) and the UN Handbook for Legislation on Violence against Women and its Supplement (on broader aspects including prevention, budgeting, etc.), also used were certain Model Laws developed by the UNODC such as those on trafficking of women and children. The provisions shall not, therefore, be repeated in these Explanatory Notes. This citation shall be of general application throughout the GBV Model Law, so will be the other instruments listed in Schedules 1 and 2, **and are hereby acknowledged.**

inconsistencies within the legislative framework that might result in uncertainty, overlaps, conflicts or ambiguity in the law that create challenges or obstacles in managing GBV. The offences, penalties and compensation regimes need careful planning and drafting if GBV is to be eliminated or prevented. The GBV Model Law attempts to do so but does not provide for police/law enforcement provisions or powers to enable enforcement or ensure compliance, such as search, seizure and arrest. These should be provided for adequately in National laws. The drafters of National legislation may wish to refer to regional and international guidelines and recommended practices that provide for police and law enforcement duties and responsibilities. For example, The Essential Services Package (ESP) is a guidance tool identifying the essential services to be provided to all women and girls who have experienced gender-based violence, including services that should be provided by the health, social services, police and justice sectors. This package also provides guidelines for the coordination of these services. It provides standards and guidelines for health personnel, police and justice players, social and health services, and for coordination and governance of these. SADC has also just developed similar guidelines for the region.

National Legislatures should consider a range of enforcement and compliance provisions to give effect to the GBV Model Law and effectively prevent or deter GBV happening. The following key factors should be considered when reviewing and crafting GBV provisions into law:

- the extent to which the root causes of GBV are addressed with a view of migrating or eradicating them;
- the extent and nature to which GBV is provided in criminal and administrative law;
- whether the GBV offences provided for, contravene fundamental provisions and the language of this GBV Model Law;
- where the offence of GBV is provided in the law and what the extent of the prohibitions are;

- whether the offences, penalties and compensation provisions are adequate and fit the offence specified;
- whether adequate investigation powers are provided for to enable evidence to be easily gathered, assessed and used to obtain a conviction for a GBV offence;
- whether procedural fairness and justice are firmly embedded in the law; and
- whether there is commitment to address impunity and delays in the course of justice.

An inefficacious legislative framework on GBV may result in increase in GBV cases, lack of access to justice and continued inequities and inequalities in society, thereby having a negative impact on socio-economic development and continued non-observation and contravention of an individual's fundamental human rights and freedoms.

The GBV Model Law will enable the SMS decide on whether to retain the status quo as provided in their existing institutional and legislative frameworks, amend some laws dealing with or impacting on GBV, or generally gender equality and equity, or repeal and replace some laws to ensure that they deal comprehensively with GBV and provide effective access to justice provisions, thus creating an efficient and sustainable criminal justice and administrative systems for the fight against GBV.

1.2.6 Regulations under National Laws on GBV

The GBV Model Law gives SMSs a general guide to the content of a law on GBV which can ensure efficacious legislative content for National laws, while taking into account regional specificities. It is imperative that SMS must, after enactment of their laws on GBV, which may not be comprehensive as to measures, interventions, administrative support systems, procedures and processes, exercise legislative authority through the making of subsidiary legislation for operationalisation of the GBV laws as these are effective implementation tools for the measures proposed in

the GBV Model Law. In this respect, the GBV Model Law endeavours to deal with both substantive issues and subsidiary matters to guide SMS on the extent of the law to be enacted by National Legislatures.

1.2.7 Customary laws and religious norms

SMS customary laws **and religious norms** may impact greatly on women's and children's human rights, offend international commitments on GBV, good governance and be repugnant to natural and legal justice. Customary laws are recognised as a source of law in most SMS, where they are not inconsistent with the Constitution or an Act of Parliament or are not repugnant to natural justice, whereas most Constitutions of SMS recognise the freedom of religion. SMS must assess their customary laws, religious norms and practices and attendant institutions and where these are contrary to the provisions of the Constitution, an Act of Parliament and this GBV Model Law, or repugnant to natural justice, they should ensure that the National Law on GBV reforms/amends such customary laws, religious norms and practices. (see the Position Paper supporting this GBV Model law for examples of judicial decisions)

1.2.8 Acts of general application

SMS and their National drafters must consider Statutes of general application whilst adopting or adapting the GBV Model Law. These are Statutes that generally apply to all laws in a country's jurisdiction, for example the interpretation and general provisions Acts, statutory portfolio Acts, criminal laws, evidence codes and financial management laws.

1.2.9 Domestication and internationally used terms

SMS should bear in mind the Vienna Convention on the Law of Treaties of 1969 which obligates Member States to abide by their international commitments. International law consists of its own realm of rules, concepts, principles and standards which apply to the conduct of Member States and international organisations, in their relations with one another and in some cases with individual groups and transnational companies. The commitments and obligations of States emanate from these rules and standards, so a National drafter must take them into account when drafting GBV laws.

The GBV Model Law provides guidance for the domestication of various regional and international instruments on GBV, by SMSs, in accordance with their commitments under the regional and international instruments on GBV. This GBV Model Law urges SMS to embark on legislative reforms for purposes of giving effect to their international and regional obligations and commitments, which are generally incorporated as requirements, principles, concepts, standards, measures, interventions and programmes.

Should the GBV Model Law be adopted by SADC PF, domestication of regional and international instruments on GBV will still depend on National legislative or Executive action. Domestication will depend on, and evolve according to, the requirements and complexities of National constitutional requirements and processes, which may vary among SMS. Some SMS follow the dualist concept whilst others have a self-executing system (monist) for the domestication of international obligations. National Legislatures may use various methods for incorporating international law, such as the following:

- reflecting the principles of their content or text in the National law, either directly or in a contextualized manner;
- setting out the text in the National law, either in full or in part;
- giving full effect to the regional or international instrument by reference and annexing the instrument as a Schedule to the National law; or
- a combination of the above.

The GBV Model Law uses a number of words and terms defined in regional and international instruments on GBV and were used in the GBV Model Law, these are defined as provided in the regional or international instrument, with some modification to achieve simplification and ease of understanding. It is important that language is adapted in the National legislation to reflect the most up-to-date terminology in the field.

1.2.10 *Appropriate level of competence and procedural fairness*

The GBV Model Law attempts to ensure that decisions are directly taken by the appropriate authority, competent authority, judicial institution or quasi-judicial body (defined terms) for effective and efficient decision-making. Where discretion is given it is to be exercised proportionately or comparably in relation to the nature of the decision being made.

An appropriate authority, a competent authority, judicial institution or quasi-judicial body must act in a manner which affords procedural fairness to victims of GBV. An appropriate authority, a competent authority, judicial institution or quasi-judicial body is required to be and appear to be free from bias and survivors and victims of GBV must be given a fair opportunity to provide any relevant information before a decision is arrived at and that decision made or explained in a way the victim of GBV can easily understand regardless of their background, nationality, or lack thereof. In this respect, the GBV Model Law places a lot of emphasis on access to justice provisions, for example the cautionary warning or collaboration rule has to be out-lawed in gender-based violence cases.

The cautionary warning/collaboration rule is a practice by which a court warns itself (or the jury if one exists) that it is dangerous to convict on the uncorroborated evidence of the victim. This practice is based on the belief that women lie about rape

and that their evidence should be independently corroborated. It should be noted that many countries, including Britain from which many commonwealth countries have inherited their justice systems, have removed the warning/caution rule from their legal systems. Some countries which still apply this warning/caution rule have made some judges support their decisions by giving probative value to testimony of a victim when it was the only evidence available to the judge. (see the Position Paper supporting this GBV Model law for examples of judicial decisions)

1.2.11 Focus of GBV Model Law

It's important to emphasize that while the focus of the GBV Model Law seems to be more on violence against women and children, the GBV Model Law takes a gender-based approach. The provisions of the GBV Model Law should be read broadly to apply to all forms and components of GBV, without discrimination, to all victims and offenders of GBV. However, in general, women and girls are more vulnerable to, and experience more, sexual violence, more severe physical violence, more abuse and more control largely from the male gender, and that's the reason acute focus is made, in certain instances, on women and children, who are disproportionately affected by GBV.

Further, the underlying logic of the subject areas of the GBV Model Law bear in mind the various categories of users of the GBV Model Law, who will be responsible in SMS for developing, drafting, approving, enacting and implementing the GBV Model Law or who have an interest in monitoring and evaluating the efficaciousness or impact of the GBV Model Law.

1.2.12 Underpinning scope of GBV Model Law and National laws

The GBV Model Law aptly addresses all GBV issues and challenges, thus providing a comprehensive guide on how to improve, both from a normative and operational perspective, the response to GBV. SADC PF has succinctly stated what the scope of a law on gender-based violence should be, which will be helpful to, and assist drafters in SMS, determine the content and scope of National laws, as follows:

The proposed process of drafting a model law on Gender-Based Violence in the SADC region initiated by the SADC-PF is in response to the prevailing shortfalls in legislation on Gender-Based Violence and the chronic implementation gap across the region....

A model law can guide these initiatives and interventions and ensure that they adhere to regional and international human rights frameworks and address the increased vulnerability due to statelessness, unequal nationality rights and forced displacement.

Victims and survivors often have little or no access to the justice system to report offences and initiate legal action to secure protection or to ensure the State investigates crimes and prosecutes offenders. There is a need for a model law to strengthen legislative responses in the region, provide clear guidance for law enforcement mechanisms, access to justice and to facilitate harmonization and consistency of GBV-related laws within and across States.

An analysis of initiatives reveals that in several cases, countries fail to adequately deal with the problem of contradicting laws and laws that are limited in the type of Gender-Based Violence considered, the result being fragmented and inadequate policy and legal developments that fail to address the problem of GBV systematically and inclusively.

Laws and policies have an important role to play in the achievement of gender equality. The development of a regional Model Law on GBV is one critical step

in the process of effective legislative reform. Once the GBV model legislation is adopted, the SADC-PF will encourage member states to domesticate and implement key aspects of the model legislation at the national level. The model law will thus assist states to address all relevant areas in GBV legislation where they have gaps or where existing legislation needs reform.

The SADC GBV Model Law follows the spirit and intent of the SADC Declaration on Gender and Development which sets the following six specific targets and aims to eliminate gender-based violence at every level:

- Enact and enforce legislation prohibiting all forms of gender-based violence;
- Ensure that the laws on gender-based violence provide for the comprehensive testing, treatment and care of survivors of sexual assault;
- Review and reform SMS criminal laws and procedures applicable to cases of sexual offences and gender-based violence;
- Enact and adopt specific legislative provisions to prevent human trafficking and provide holistic service to the victims, with the aim of re-integrating them into society;
- Enact legislative provisions, and adopt and implement policies, strategies and programmes which define and prohibit sexual harassment in all spheres, and provide deterrent sanctions for offenders of sexual harassment; and
- Adopt integrated approaches, including institutional cross sector structures, with the aim of reducing current levels of gender-based violence by half ...

Further recognition needs to be made of CEDAW General Recommendation No. 35 which was adopted on 14 July 2017, by the Committee on the Elimination of Discrimination against Women (CEDAW Committee) which elaborates on the gender-based nature of gender-based violence, building on the work of the Committee and other international human rights mechanisms, as well as developments at national,

regional and international levels. General Recommendation No. 35 is a milestone in this field as it –

- recognizes that the prohibition of gender-based violence has become a norm of international customary law;
- expands the understanding of violence to include violations of sexual and reproductive health rights;
- stresses the need to change social norms and stereotypes that support violence, in the context of a resurgence of narratives threatening the concept of gender equality in the name of culture, tradition or religion;
- clearly defines different levels of liability of the State for acts and omissions committed by its agents or those acting under its authority - in the territory of the State or abroad- and for failing to act with due diligence to prevent violence at the hands of private individuals and companies, protect women and girls from it, and ensure access to remedies for survivors;
- unequivocally calls for the repeal of all laws and policies that directly and indirectly excuse, condone and facilitate violence; and
- emphasizes the need for approaches that promote and respect women's autonomy and decision-making in all spheres of life.

It is important that General Recommendation No. 35 be used as a tool for accelerating the implementation of regional and international SMS obligations to eliminating gender-based violence against women, especially by incorporating the above recommendations into National policies dealing with gender-based violence.

In brief, the creation of a robust, inclusive and uniform legislative framework relating to GBV is a key path to addressing GBV in SADC Member States. The GBV Model Law gives guidance to National Legislatures on how to give effect to national policies, enact national laws and hold national Executives accountable in the implementation of strategic plans that aim at addressing GBV. The GBV Model Law endeavors to

address GBV using a human rights-based approach with underpinning principles, which are visible in the objectives, rationale and principles of the GBV Model Law.

1.2.13 COVID-19 considerations and innovative measures

The COVID-19 outbreak continues to affect people worldwide. In Africa, infections have risen steadily since March 2020 when the World Health Organization declared the outbreak a global pandemic. New variants of the disease are emerging in some countries resulting in a continued slowdown in economic outlook and business activities, which has a negative impact on households, bringing with it frustration and anger, which in turn may bring on increased incidences of GBV. This in the light of the fact that, in Africa, most countries have had little success in gaining access to vaccines and vaccination programs.

The Covid-19 pandemic has seen an increase of GBV in some SMS. There has been a global increase of GBV reported cases as a consequence of COVID- 19. Globally there has been a 30% increase¹⁴. There is continued outcry from survivors and victims, civil society organisations, the international community and other stakeholders, for effective solutions to address GBV including putting into place more stringent and innovative measures to ensure that the COVID-19 pandemic does not act as a stimulus for increasing instances of GBV.

However, new variants and waves of infection across countries and the continued economic consequences of the pandemic adversely impact the fight against GBV, as it reduces the capacity of member countries, in its efforts to put in places measures, programmes and facilities to manage GBV. As the pandemic is not fully under control and the prospect of vaccination programs appears uncertain, SMS should continue to anticipate and report all effects of COVID-19 as they become known while ensuring the well-being and safety of its citizens and other persons living in their jurisdictions.

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There is need for stronger vaccination programs that are effectively planned and efficiently rolled out to boost market confidence and lower business uncertainties. Further, SMS need to discern latest trends in incidences of GBV and in particular behavioral patterns of offenders, and assess, evaluate and monitor whether it's working processes and programmes are effective in the fight against GBV. In addition, identification of victim needs and alignment of these needs with the objectives of the GBV Model Law must be applied in programme design so as to support and align with the intended outcome and output objectives of the GBV Model Law.

The GBV Model Law attempts to provide innovative solutions and measures in investigating, assessing, prosecuting, and deciding on, implementing and managing GBV and attendant cases.

2.0 STRUCTURE OF GBV MODEL LAW

2.1 Form

The GBV Model Law is structured in the style and form of the approved/adopted SADC Model Law on Child Marriage and Protection of Children Already in Marriages and the SADC HIV/AIDS Model Law, as these set a good precedent that has been established by SADC-PF on structure and form. This will also assist the SADC-PF build a compendium of Model Laws that are authoritative.

The GBV Model Law, therefore, does not conform to any individual Member States' form or structure of legislation; for example, it does not have a memorandum, long title or short title but has a preamble which outlines SMS regional and international commitments on human rights and gender-based violence as spelt out in these instruments. These commitments provide clear objectives, concepts and principles

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underlining the content, and rationale for the need, of a SADC GBV Model Law. The Preamble will assist SMS to develop their policy base for an effective law on GBV.

Member States will have to adapt and adjust the provisions of the GBV Model Law into appropriate National form, style and structure, suiting their jurisdictions, when drafting their National laws on GBV.

Therefore, the GBV Model Law is drafted using general conventional practices as reflected in the above cited SADC Model Laws, as follows:

- **Arrangement** of sections citing numbered Parts and sections,
- **Preamble** citing major international instruments and SMS commitments, policy statements, concepts and resolutions;
- **Parts** with headings reflecting the subject content of the Part;
- **Divisions** within a related Part with headings reflect the subject content of the Division;
- **Sections** are the basic unit of the GBV Model Law which relate to the contents of the Parts or Divisions, having individual headings with respect to the subject content of the section;
- **Subsections** which de-escalate from the sections, if the subject content so requires;
- **Paragraphs** which de-escalate from the subsections, if the subject content so requires;
- **Sub-paragraphs** which de-escalate from the Paragraphs, if the subject content so requires; and
- **Items** which de-escalate from the subparagraphs into items, if the content so requires.

2.2 Style

The GBV Model Law is drafted in such a manner that it can easily be used by National drafters to develop and draft a law on GBV. The contents provide best

practice provisions derived from various regional and international commitments of SMSs and authoritative writings on the same.

The provisions of the GBV Model Law can be copied and pasted by National drafters into their working drafts, adapted or expanded on to enhance content of National laws on GBV. The interpretation section enables National drafters to understand or appreciate technical content, competencies and extent of application of the GBV Model Law. For example, the GBV Model Law defines “competent authority” as the Minister, statutory body, functionary, etc., responsible for GBV or related laws. This widens the span of competency and creates flexibility in allocation of functions, roles and responsibility.

The GBV Model Law uses the “means or includes” rule to draft definitions to ensure definitive legislative language which is tight, leaving no room for misunderstanding or misinterpretation by the user. The use of “means” closes the meaning, “includes” opens/extends the meaning and does not limit it, therefore there is no need to add the words “but not limited to” after “include”. In this sense the sui generis rule will apply.

The interpretation section will be subject to the provisions of SMSs interpretation laws, if any, when adapting the GBV Model Law into National laws. The Interpretation laws normally provide guidance on the manner words are interpreted, words not requiring definition in individual Acts and construction of terms, phrases, time limits and how these are accounted, etc.

Further, the GBV Model Law is drafted in a logical order and its contents are properly sequenced. The numbering is done using Greek numerals.

The above conventional practices relating to form and style help facilitate communication of the extent of the entire law, part or section of the law. The conventional practices on form and style have become quite uniform throughout the

SADC Region with small variations, for example use of marginal notes as opposed to section heads, use of chapters as opposed to parts or use of roman numerals as opposed to Greek numerals and use of articles instead of sections.

2.3 Law Making and Drafting Processes

The GBV Model Law does not, in anyway, address the law-making process that is from policy to enactments, which is left to individual SMS, as the processes may vary widely from State to State.

This GBV Model Law does not also address the actual technique of drafting legislation although it gives drafting guidance on what National drafters should note, take into account, modify and insert, in accordance with the form and style of drafting legislation in their jurisdictions.

National Legislatures should be mindful of the legislative hierarchy in their jurisdictions, such as the Constitution, primary legislation and subordinate legislation, and how these affect or impact on the initiation of legislation, different types of legislative instruments (for example, Government Bills, private members Bills, Acts, Regulations, Rules etc.) and their key characteristics, processes and procedures.

2.4 Cross-referencing

There are pieces of law from SMSs that may have a direct external relationship with the GBV Model Law; these are cross-referenced generally in the GBV Model Law to alert National drafters to cross-reference them when drafting their National laws. This cross-referencing is done as to subject matter and not to a specific Act of Parliament, for example, by referring to a law relating to sexual offences or a law relating to gender equity and equality. SMS may need to reference the following laws (cited by subject matter) that may impact on a law on GBV: the Constitution; laws on sexual offences; laws relating to gender equity and equality; laws relating to gender based violence; penal laws; anti-trafficking laws; terrorism laws; corruption and money

laundrying laws; disaster management laws; refugee and asylum laws; laws relating to the child; marriage laws; termination of pregnancy laws; education laws; health laws; extradition laws; mutual legal assistance in criminal matters laws; and labour and employment laws.

2.5 Reference Notes

Reference notes in the GBV Model Law are not extensive due to these comprehensive explanatory notes.

Where there is need to explain further the subject content and rationale of the Parts of the GBV Model Law, highlight existing SMS' regional and international obligations and commitments or remind SMS to use their drafting form or style, this is done briefly in italics at the beginning of the Part, as a footnote or as included in a section or subsection.

2.6 Parts of GBV Model Law

As stated above, the GBV Model Law is divided into Parts (titled by a thematic area or combination of areas). The various thematic areas may be further separated into Divisions. The following are mere examples on the contents of the Parts:

- © **Preamble:** cites various international instruments and policy statements which outline the underlying human rights basis of the law and the commitments that Member States of SADC have already made at regional, continental and international levels with regards to GBV and emphasizes the concerns of SADC-PF on issues relating to GBV in Africa, despite the various conventions against GBV. The cited regional and international instruments and concerns revolve around the areas that are components of GBV, such as violence and discrimination against women and children, transnational organised crimes, such as trafficking, kidnapping, slavery, forced labour, prostitution, etc. The preamble

recites increased vulnerability due to statelessness, unequal nationality rights and forced displacements.

SADC PF's policy position is clearly stated in the Preamble and national Parliaments are urged to review and reform their national laws, where appropriate, to eliminate all forms of gender-based violence, discriminatory and inequitable practices and norms that currently exist; and punish offenders, especially considering women and child victims and witnesses, in order to prevent further hardship and trauma.

Further, emphasis is made on national coordination and cooperation between government agencies and CSOs/NGOs, including international, regional and continental organisations;

- ◎ **Preliminary Provisions:** incorporate preliminary and general issues relating to the key thematic areas on GBV. These basically consist of sections on domestication, objectives, scope and application and interpretation, as follows:
 - **the objectives** are the golden thread that pervades all provisions of the GBV Model Law, meaning that the rationale for coming up with the law must not be lost neither should the substantive provisions conflict or be inconsistent with its objectives and principles;
 - **the scope and application** set out the extent of the law to ensure that all components of GBV are included; and provides to who or to what the law applies;
 - **the jurisdiction** provides for territorial as well as extra-territorial jurisdiction as some of the crimes committed will be transnational; and
 - **the Interpretation** section defines key words and terms used in the GBV Model Law. The majority of definitions are derived from international agreements and instruments;

The GBV Model Law ensures the following with regard to the Preliminary Provisions:

- **Interpretation and Definitions:** The GBV Model Law defines as broadly as possible what GBV is, to include all its underlining components as defined by the UN, including all its sub-components, such as sexual assault, marital rape, harassment, rape, beating, insults, tormenting, statelessness, trafficking, terrorism, kidnapping, slavery, persecution, refugees and asylum seekers, displacements as a result of war and disasters, all forms of exploitation, etc. It is important that National GBV laws do the same;
 - **Application and Jurisdiction:** The GBV Model Law includes a broad application and jurisdiction provision for effective coverage. It is imperative that National laws on GBV ensure a wide application and scope of GBV laws to cover all appropriate persons, things and circumstances and provide for territorial as well as extraterritorial jurisdiction, as some of the crimes committed will be transnational. For purposes of extradition, mutual assistance in criminal matters and exchange of prisoners, most SADC Member States have laws relating to these matters, which may be cross-referenced in National laws on GBV, for efficacious implementation of the GBV laws;
- © **Human Rights Based Approach and Policy Direction:** The GBV Model Law ensures that effective domestication is achieved and major provisions in regional and international instruments are incorporated on gender equity, equality and violence. Some human rights are restated, to achieve a human-rights based approach to effectively deal with GBV, as committed to by SMS under various human rights instruments. The following are indicative of some of the rights that are re-stated in the GBV Model Law but SMS may include more rights as is appropriate or desired:
- The right to life and human dignity;
 - Protection from inhuman treatment;
 - The right to security of the person;

- The right not to be held in slavery and servitude and not to be subjected to forced labour;
- The right to access information and social and economic services;
- The rights of asylum;
- The right to a nationality;
- The right to access and have justice, remedy and legal aid;
- The right to gender equality and equity;
- The rights to health, health care and sexual and reproductive health care; and
- Prohibition of all forms of discrimination in all social and economic sectors, political affairs and governance, in sum all spheres of life.

While restating the above rights and prohibitions the GBV Model Law also guides SMS state authorities to develop policies and strategies that can effectively eliminate GBV and execute administrative acts, provide appropriate services and interpret GBV laws more effectively. For example, SMS are encouraged in the GBV Model Law to pursue the following policy objectives:

- promote the equal representation and participation of all gender at all levels and sectors of decision-making and ensure that gender is championed in all agenda;
- ensure gender mainstreaming into all policies, structures, systems, programmes and activities in order to make them gender responsive, transformative and contribute to the effective achievement of sustainable socio-economic and political development;
- take appropriate steps to modify or abolish existing laws, that are discriminatory or non-inclusive, harmful stereotypes, customs and practices which discriminate against women, including the girl child, adolescent girls and young women;
- develop an integrated framework for the empowerment of women, including the girl child, adolescent girls and young women; and

- monitor the implementation of laws, policies and programmes that affect, or have an impact on, women, including the girl child, adolescent girls and young women.

For this Part, the GBV Model Law has taken into account, and SMS may need to pay particular attention to, the following international instruments, plans and strategies:

- 1997 SADC Declaration on Gender and Development and its 1998 Addendum on the Prevention and Eradication of Violence Against Women;
- Revised SADC Protocol on Gender and Development (2016);
- SADC Strategy and Framework of Action for Addressing Gender Based Violence, 2018-2030;
- SADC Strategy to address Gender Based Violence in situations of armed or other forms of conflict;
- Ten Year SADC Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children;
- SADC Strategy on Women, Peace and Security;
- United Nations Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- The International Covenant on Civil and Political Rights;
- Convention against Torture and other Inhuman and Degrading Treatment or Punishment;
- UN Convention against Transnational Organised Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children;
- ILO Convention concerning Forced or Compulsory Labour;
- ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
- Convention and the Supplementary Convention on the abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery;

- International Convention on the Protection of the Rights of All Migrant Workers and their Families;
- The International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol;
- The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003;
- The Convention on the Rights of the Child and its Optional Protocols;
- The African Charter on the Rights and Best Interests of the Child
- The UN Sustainable Development Goals;
- The African Union Agenda 2063.
- Regional Strategy and Framework of Action for Addressing Gender Based Violence (2018 – 2030);
- International Convention for the Protection of People Against Enforced Disappearances;
- United Nations Convention on the Rights of Persons with Disabilities (2006);
- ILO Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons), 1983, (No. 159);
- International Labour Organization (ILO) Convention Concerning Discrimination in Respect of Employment and Occupation, 1958, (No. 111); and
- Convention on the Elimination of all Forms of Racial Discrimination.

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© **Access to Justice and Procedural Protections:** The GBV Model Law mainly incorporates the requirements as stipulated in some SMS laws, international, regional and continental instruments and recommendations made in research documents written by protagonists. Further, this Part incorporates, throughout the entire proceedings, the rights of the victim. The following have been considered and drafted into the GBV Model Law:

- the right to reasonable, accurate, and timely notice of any judicial institution proceeding or parole proceeding involving the crime of GBV or any release or escape of an accused;
- the victims' right to be informed of their rights, remedies and victim support services and on how to obtain them, in addition to information about their role and opportunities to participate in judicial and quasi-judicial proceedings (survivor-centred approach);
- the right to seek restitution from the offender or compensation from the State;
- the right to safety and privacy and to be free from hardship during the detection, investigation and prosecution process, which requires legal provisions to ensure the safety, privacy and dignity of victims and their families at all stages of the criminal justice process, such as witness and victim protection programmes, measures to exclude the public from the courtroom, use of testimonial aids like screens or CCTV and support persons, the prohibition to publish the victim's name or other intimate details;
- access to free legal aid and judicial and administrative support, including interpretation services for all including asylum seekers, refugees, stateless persons and persons without documentation;
- the right to speak to a female officer, where possible, whether it be the police or any other criminal justice official;
- claims of self-defence by women who have been victims of violence are taken into account in investigations, prosecutions and sentencing;
- ensuring that evidentiary rules are non-discriminatory and the outmoded cautionary rule, the admissibility of hearsay evidence, and the drawing of inferences from the absence of previous consistent statements or from the length of delay between when the offence took place and when the victim reported it to the police or other law enforcement officers should not be admissible. The following are also included:

- introduction of the complainant's sexual history in both civil and criminal proceedings is prohibited;
- evidence of prior acts of violence, abuse, stalking and exploitation by the offender is considered during judicial proceedings, in accordance with the principles of national criminal law;
- legal defences such as-
 - "honour" or "provocation" cannot be invoked by offenders of violence against women to escape criminal responsibility in GBV cases; and
 - people who perpetrate acts of violence against women and children while voluntarily under the influence of alcohol, drugs or other substances are not exempted from criminal responsibility;
- prohibit any law, customary law or practice and religious rule or practice from being used in GBV responses;
- avoid mediation that could harm the victim;
- Prohibit discrimination based on nationality (or lack thereof), refugee or asylum-seeking status;
- prohibit any adverse inferences if GBV cases are reported late and there should be no offence of false accusation;
- sentence imposed should match gravity of GBV crime;
- judicial and quasi-judicial proceedings should not be a bar to civil proceedings being initiated against the offender or anyone who acted negligently;
- pre, during and post requirement procedures and processes for and relating to GBV cases are clearly outlined, such as the following:
 - how to inform and the extent of information to be given to, a victim, the victim's rights and any basic support which may be available to assist the victim;
 - obtaining for the victim, or advising the victim on how to obtain, shelter, medical treatment, legal services, counseling or other services that may be required in the circumstances;

- advising the victim of the victim's right to lodge a complaint and where the complaint may be best lodged for expeditious handling;
- informing the victim of remedies available;
- protection of the victim during legal proceedings;
- nature and extent of evidence to be presented in legal proceedings;
- protection of witness;
- special needs of women and children;
- restraining and protection orders; and
- re-victimisation provisions;
- provision of legal aid;
- re-integration and social support to victims; and
- mutual legal assistance in criminal matters and extradition.

This Part of the GBV Model Law, therefore, puts emphasis on the need, by SMS, to take the requisite legislative measures to ensure victims access appropriate and adequate justice.

© Prohibitions, Offences and Sentencing

This Part of the GBV Model Law puts emphasis on the need, by SMSs, to take the requisite legislative measures to prohibit GBV, provide adequate offences on GBV and supportive measures or restraints, to assist effective charging and prosecution of a GBV offence, such as forbidding all forms of GBV criminality and creating specific GBV offences, cross-referencing to other offences created under other related laws, such as trafficking, terrorism, etc., and providing appropriate penalties, while ensuring sentencing policies are well streamlined to ensure deterrence.

Supportive measures or restraints are built into the provisions on prohibitions such as, there should not be any adverse inferences if GBV cases are reported late, there should be no offence of false accusation, there should be protection of the victim during legal proceedings, sentences imposed should match gravity of

the GBV offence, without exceptions and reductions, and no mitigatory reasons or extenuating circumstance should be allowed.

© **Early and Effective Response Mechanism and Referral Systems:** The GBV Model Law sets out provisions which stimulate a quick and effective response to GBV, whether it takes place in the home, public place, public or private institution or place of employment, thus addressing acts of gender-based violence that are about to take place or have already taken place. This Part also includes preventive and protective measures and care and support services.

The provisions in this Part ensure that when GBV occurs, how it is reported, assessed, investigated, duly prosecuted and decisions made and executed are done timely and expeditiously, and that the rights of the complainant/victim are observed and respected at all times and for all, irrespective of status and documentation. Therefore, this Part of the GBV Model Law includes the following:

- efficient and simplified procedures and processes for handling reports of GBV and internal complaints at places of work or other public and private institutions, with regard to reporting, receiving, assessing, investigating, determining and appealing a GBV report or complaint without reprisals;
- the process of referring and lodging a GBV report or complaint to an appropriate authority, such as the police, victim support unit, human resource department or human resource person dealing with GBV or other appropriate authority or person or statutory body or ministerial department dealing specifically with gender matters, children or women's affairs;
- the procedures for requests and submission of information, release and dissemination of information on GBV; and
- collaboration on investigations and assessments of GBV reports or complaints with and among appropriate authorities.

- © **Protection, Prevention and Intervention Measures:** The GBV Model Law incorporates protection, prevention and intervention measures, as provided in international, regional and continental agreements and instruments and recommended measures and strategies by protagonists, to enable SMS to efficaciously deal with GBV; such as social, educational, health, and economic opportunities and interventions to help break the cycle of inequality, illiteracy, illness and poverty that perpetuate and are key drivers of GBV, increased vulnerability due to statelessness, unequal nationality rights and forced displacement. Protection, care and support services, including actions and measures by different service providers and stakeholders (police and other law enforcement institutions, CSOs, justice institutions, immigration, health care institutions, educational institutions, employers, traditional and religious leaders and social services institutions); putting in place educational, healthcare, advisory, advocacy and awareness programs and information centers, creation of multi-disciplinary community groups and partnerships to assist in fighting GBV;

The GBV Model Law endeavours to outline possible support and assistant mechanisms and facilities to effectively mitigate the consequences of GBV and support victims, survivors and would-be victims; such as putting into place adequate shelters, women and children protection units, advisory and referral centers, victim support units at police stations, evacuation centers, refugee camps, hot lines, counseling services, report desks, housing, education and health facilities or means to access these, including transport and financial assistance and ensuring inclusion at all times of stateless and forcibly displaced persons;

- © **Capacity Building and Awareness:** The GBV Model Law endeavours to provide for the training of relevant public officials such as judges, police officers, social workers and immigration officers, for effective GBV detection, prevention, investigation, prosecution, protection and awareness on GBV, support for GBV victims, issue of gender sensitive judgments and implementation of court

decisions. This Part also sets out provisions for encouraging advocacy, activism and communication with, and involvement of, the media, traditional leaders, leaders in the community, neighbours and religious leaders; and endeavours to ensure that SMS allocate adequate resources for these activities;

- ◎ **Information and Data Protection:** The GBV Model Law endeavours to ensure that SMS provide adequate information systems in their National laws for handling and recording GBV cases, providing adequate data and privacy protection measures and access to information to victims, related GBV institutions, the media, and ensuring cooperation with local, regional and international institutions, including CSO/non-governmental organisations;
- ◎ **Research and Development:** The GBV Model Law encourages innovation and establishing trends in GBV cases, tracking and investigating offenders, tracking victims and ascertaining how GBV cases are handled and prosecuted, as well as how decisions are being implemented. Research on and review of, customs, traditions, religious and other societal practices and attitudes that drive GBV is also encouraged;
- ◎ **Monitoring and Evaluation Systems:** The GBV Model Law provides checks to monitor and evaluate the efficacy and impact of GBV legislation, prevention and protection measures, strategies, action plans and mechanisms;
- ◎ **Financial Resources and Budgeting:** The GBV Model Law urges SMS to ensure financial resources are budgeted specifically for, and dedicated to, the implementation of the measures, strategies and interventions put in place to eradicate GBV, support GBV victims, prosecute GBV cases and provide compensatory relief for victims of GBV; and
- ◎ **Enforcement, Compliance and Regulatory:** The GBV Model Law sets out provisions to ensure procedures and processes for effective enforcement and

compliance with the law and full operationalisation of the law, including appointing and establishing rapporteurs, inspectors, a coordinating body, inter agency/ministerial committees, requirements for issue of reports and manner of reporting.

In the process of developing, structuring and composing the GBV Model Law, these specific Parts may merge or content may be moved to another Part so as to ensure consistency of content, rationality and logical development of the GBV Model Law to ensure easy flow and understanding by the user.

SADC GBV FINAL CLEAN VERSION SUBMITTED 30TH NOV 2021

CHAPTER TWO

SADC MODEL LAW ON GENDER BASED VIOLENCE

PREAMBLE

Please draft according to the style of drafting legislation in the National jurisdiction, for example replace this Preamble with an Explanatory Memorandum or Memorandum of Objects and Reasons. The contents of the Preamble will help develop appropriate content.

We, the Members of the SADC Parliamentary Forum:

Bearing in mind that the peoples of the United Nations have, in the Universal Declaration on Human Rights, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person by recognising the inherent equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world;

Recognizing that every person, regardless of their sex, gender, nationality, social origin, class, religion, gender, marital status, age, language, custom, political affiliation, tribe, colour, pregnancy, disability, economic, or social status, are entitled to fundamental human rights and freedoms, especially the right to non-discrimination, survival, development, education, health and welfare, participation, peace, dignity, tolerance, equality and solidarity, and that gender-based violence is a serious violation of these rights;

Understanding that gender-based violence refers to all acts perpetuated against women, men, boys and girls on the basis of their sex or gender which causes or could cause them physical, sexual, psychological, emotional or economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental rights and freedoms in private or public

life, in peace time and during situations of armed or other forms of conflict, as well as humanitarian emergencies, natural disasters and disease outbreaks;

Recognizing that gender-based violence is a multi-faceted social, cultural and economic epidemic which, coupled with harmful practices and prejudices in most parts of Africa, have an adverse impact on the personal development and future opportunities, health and wellbeing of women, men, girls and boys with detrimental consequences, especially on children, women, families, communities and Nations at large;

Acknowledging that the Southern African Development Community (SADC) signed the Declaration on Gender and Development on 8th September 1997 to promote closer regional cooperation and collective action as a means of fostering gender equality and reaffirming SADC's commitment to eliminating gender discrimination and mainstreaming gender issues in Southern Africa by establishing policy and institutional frameworks for advancing gender equality and advisory systems with government and non-governmental organisations for monitoring gender issues and creating a Gender Unit within the SADC Secretariat;

Bearing in mind that the Declaration on Gender and Development reaffirms SADC's commitment to eliminate gender-based violence in Southern Africa, and supporting the following SADC targets and aims set for Member States to implement so as to ensure they eliminate gender-based violence at every level:

- enact and enforce legislation prohibiting all forms of gender-based violence;
- ensure that the laws on gender-based violence prevent and provide for the comprehensive testing, treatment and care of survivors of sexual assault;
- review and reform SMS criminal laws and procedures applicable to cases of sexual offences and gender-based violence;

- enact and adopt specific legislative provisions to prevent human trafficking and provide holistic service to the victims, with the aim of re-integrating them into society;
- enact legislative provisions, and adopt and implement policies, strategies and programmes which define and prohibit sexual harassment in all spheres, and provide deterrent sanctions for perpetrators of sexual harassment; and
- adopt integrated approaches, including institutional cross sector structures, with the aim of reducing current levels of gender-based violence by half;

Taking due account that Member States undertook, in the SADC Treaty (Article 6(2)), not to discriminate against any person on the grounds of, inter alia, sex or gender;

Recalling that Member States reaffirmed their commitment to the Convention on the Rights of the Child (1989); the Africa Platform of Action (1994); the Beijing Declaration and its Platform for Action (1995); and United Nations Resolution 1325 on Women, Peace and Security (2000); and resolved, through the SADC Declaration on Gender and Development (1997) and its Addendum on the Prevention and Eradication of Violence Against Women and Children (1998), to ensure the elimination of all gender inequalities in the SADC Region and the promotion of the full and equal enjoyment of human rights;

Emphasizing the African Union's Agenda 2063 which identifies GBV as a major obstacle to human security, peace and development, often fueled by armed conflict, terrorism, extremism and intolerance and the following SDGs themes that directly address factors that contribute to GBV: SDG 1 – No poverty, SDG 3 – Good health and wellbeing, SDG 4 – Quality education, SDG 5 – Gender equality, SDG 8 – Decent work and Economic growth, and SDG 10 – Reduced inequalities;

Further Recalling general recommendation number 35 of 2017, on gender-based violence against women, where the Committee on the Elimination of Discrimination Against Women:

- recognizes that the prohibition of gender-based violence has become a norm of international customary law;
- expands the understanding of violence to include violations of sexual and reproductive health rights;
- stresses the need to change social norms and stereotypes that support violence, in the context of a resurgence of narratives threatening the concept of gender equality in the name of culture, tradition or religion;
- clearly defines different levels of liability of the State for acts and omissions committed by its agents or those acting under its authority - in the territory of the State or abroad- and for failing to act with due diligence to prevent violence at the hands of private individuals and companies, protect women and girls from it, and ensure access to remedies for survivors;
- unequivocally calls for the repeal of all laws and policies that directly and indirectly excuse, condone and facilitate violence; and
- emphasizes the need for approaches that promote and respect women's autonomy and decision-making in all spheres of life.

Conscious that Article 21(2) of the African Charter on the Rights and Welfare of the Child provides that States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular-

- (a) those customs and practices prejudicial to the health or life of the child; and
- (b) those customs and practices which are discriminatory to the child on the grounds of sex or other status.

Noting Article 2 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003 (the Maputo Protocol) which provides that States Parties undertake to combat all forms of discrimination against women at all levels and in all fields by doing the following:

- take concrete steps to ensure that in their constitutions and all other laws of the State Parties, it is clearly stipulated that women and men are equal, they have the same rights;
- undertake to enact and effectively implement appropriate laws or regulatory measures that prohibit and punish harmful practices which endanger the health and general well-being of women;
- ensure that the opinions of women are taken into account in all endeavours at the village, city, suburban or national level;

and commit themselves to change through public education, adult education, and mass communication, all cultural and traditional practices deemed harmful to the health of women or their welfare or anything that may cause women to be considered as inferior to men or which causes certain roles to be considered as being for men and others for women in society or within the family;

Noting the Worth of Article 4 of the Maputo Protocol 2003 which states that "Every woman shall be entitled to respect for her life and the integrity, security and protection of her person in the home, in her family, in society and throughout the country" and requires States Parties to take appropriate and effective measures such as the following:

- enact and enforce laws to prohibit all forms of violence against women including physical violence such as beating a woman, verbal abuse or harassment, rape, forced sexual relations, be it in the marital home, workplace, on the farm or any other place;
- enact laws to ensure the existence of economic resources and measures to ensure the prevention of all forms of violence and all forms of suffering against women;

- *identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;*
- *actively promote all peace building initiatives in the village, city, suburbs, throughout the country and continent, through peace, education curricula and social communication in order to eradicate all traditional and cultural beliefs which create inequalities between men and women or which consider women to be inferior to men;*
- *punish the perpetrators of violence against women;*
- *establish mechanisms and accessible services for information distribution, rehabilitation and reparation for female victims of violence, including provision of mechanisms to ensure that the perpetrators of violence be compelled to make reparations;*
- *prevent and condemn trafficking in women, including women and girls sent to be sexually or economically exploited;*
- *prohibit all medical or scientific experiments on women without their informed consent;*
- *provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;*
- *ensure that, in those countries where the death penalty still exists, death sentences are not carried out on pregnant or nursing women;*
- *ensure that women who have fled their country to another country as a result of war or for any other reason enjoy equal rights as men;*

Noting also that Articles 4 and 5 of the Universal Declaration of Human Rights provide that “no one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms, and no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, respectively;

Aware that Article 6 of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) requires Member States to end the exploitation of sex workers and trafficking in women and girls;

Acknowledging that the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences has expressed concern over personal laws and discriminatory provisions on the dissolution of marriage and maintenance provisions, which cause many women to stay in violent marriages out of fear that their *de jure* and *de facto* legal status will be negatively impacted, and also that they will be denied financial support if they are divorced or separated;

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

Noting with deep Concern that women and girls, in particular, are often victims of gender-based violence, due to socio-cultural norms and poverty, and are subjected to physical, mental, emotional, verbal, sexual and economic abuse, and in certain cases are victims of rape, trafficking, slavery, kidnapping and displacements due to wars, threats of violence and terrorism;

Recognising that the United Nations in 2015 set an agenda for sustainable development with goals and targets for the next 15 years with the 2030 Agenda for Sustainable Development and the 17 Sustainable Development Goals (SDGs); and SDG 5, which is the standalone goal for gender equality, focuses on achieving gender equality and empowering all women and girls, including ending all forms of discrimination against all women and girls as its first target, as a prerequisite for achieving sustainable development which is a connecting factor to all other SDGs, whilst recognising that gender-based violence is itself a barrier to attaining the SDGs

and contributes to perpetuating the cycle of poverty, exacerbated in conflict and humanitarian crisis situations; and SDG 16 which promotes peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels and targets to significantly reduce all forms of violence and related death rates across all countries by 2030;

Acknowledging Member State's obligations on trafficking as listed in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) apply to all forms of gender-based violence, and urge Member States to –

- (a) adopt necessary legislative and other measures to establish trafficking in persons as a criminal offence when committed intentionally (Article 5);
- (b) ensure that their domestic legal or administrative system contains measures, that provide to victims, information on court and administrative proceedings and assistance to enable their views and concerns to be presented and considered during criminal proceedings against offenders (Article 6);
- (c) ensure that their domestic legal systems contain measures that offer victims the possibility of obtaining compensation for damage suffered (Article 6);
- (d) adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking (Article 9); and
- (e) consider adopting legislative or other measures that permit victims of trafficking to remain in their territory, temporarily or permanently, in appropriate cases (Article 7);

Bearing in Mind the Rome Statute of the International Criminal Court (the Rome Statute) which provides the broadest statutory recognition of gender-based violence as a crime under international criminal law and in particular article 7(1)(g), which classifies rape, sexual slavery, enforced prostitution, forced pregnancy, enforced

sterilization, or any other form of sexual violence of comparable gravity committed as part of a widespread or systematic attack directed against any civilian population as crimes against humanity and article 8(2)(b)(xxii) which classifies these same offences as serious violations of the laws and customs applicable to international armed conflict and thereby classifiable as war crimes; and places primary responsibility on States Parties, under the principle of complementarity, to bring those responsible for genocide, crimes against humanity and war crimes to justice and states that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes;

Taking into Account Article 8 of the Maputo Protocol that ensures access to justice and equal protection before the Law for women and requires States Parties to take all appropriate measures to ensure the following:

- the promotion of the right of women to seek justice in the cities and villages throughout the country and continent; and where the act of taking a case before the court entails costs for a woman, the State should provide assistance to the woman either by allowing women to take cases to court free of charge or providing legal aid to women free of charge;
- giving support to local and national initiatives directed at providing women access to justice in case their rights are violated;
- establishing services to train women and the entire society on the rights of women;
- training of judges and law enforcement organizations namely, gendarmes, policemen, lawyers, public prosecutors, immigration officers, and notaries public to effectively protect gender equality rights;
- adequate representation of women among the notaries public, judges, magistrates, lawyers, bailiffs, prosecutors, policemen and gendarmes; and
- reviewing existing discriminatory laws and practices in order to promote and protect women's rights;

Concerned that, despite numerous United Nations General Assembly (GA) resolutions on “Intensification of efforts to eliminate all forms of violence against women (GA resolutions 61/143, 62/133, 63/155, 64/137, 65/187, 67/144) and the UN updated Model Strategies and Practical Measures on the Elimination of Violence against Women and Girls in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 65/228) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) which brings to the forefront the need to eliminate GBV and the SADC Protocol on Gender and Development, gender-based violence continues unabated;

Appreciating all the efforts made by SADC in its fight against gender-based violence in all its forms as reflected in the following instruments: SADC Declaration on Gender and Development (1997), and its Addendum on the Prevention and Eradication of Violence against Women and Children (1998), the SADC Gender Policy which highlights the need to understand the causes of GBV in order to facilitate the implementation of appropriate interventions, towards prevention and elimination of all forms of GBV in public and private spheres and suggests an approach to addressing GBV by emphasizing the need to develop strategies that encompass a holistic response, which includes education, prevention and victim assistance and the 10 Year SADC Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children (2009-2019), acknowledging that the crime of trafficking in persons has an underlying gender dimension;

Convinced that, the integration and mainstreaming of gender issues into the SADC Programme of Action and Community Building Initiatives is key to the sustainable development of the SADC Region;

Recognizing that Member States are obliged to meet their commitments and set targets under various international and regional instruments relating to human rights and gender-based violence, and that the fragile gains made so far face new threats as a result of, inter alia, HIV and AIDS, COVID-19 pandemic, globalisation, human

trafficking, especially of women and children, statelessness, forced displacement, humanitarian emergencies, climate change and natural disasters, the feminisation of poverty, and gender-based violence;

Recognizing further that, social norms, patriarchal and matriarchal systems, cultural and religious practices, attitudes and mindsets, continue to militate against the attainment of gender equality and equity which are central to democracy and development;

Welcoming the initiative of the Chairperson of the African Union Commission on the Campaign to End any Form of GBV;

Strongly emphasizing that reforming the Laws on gender-based violence, so as to conform to SMS commitments in regional and international instruments on gender-based violence shows a profound commitment towards ending and reducing gender-based violence and fulfilling every person's potential to a life free from any form of violation of their human rights and freedoms;

Concerned that gender-based violence is often perpetuated as a result of socio-cultural norms, and women and girls are victims of trafficking, abduction, kidnapping and other forms of violence, resulting in their being subjected to physical, mental, emotional, verbal and sexual abuse;

Desirous that all gender be protected against all forms of violence, injury or abuse, neglect or negligent treatment, maltreatment and exploitation and all forms of discrimination;

Accepting that a model law builds on best practices and serves as a guidance, yardstick and an advocacy tool for legislators, administrators, policy makers, civil society, adjudicators and other concerned stakeholders in the Region;

Urge Member States that have not ratified the international and regional human rights instruments listed in the Schedule I to this Model Law to endeavour to ratify and domesticate them into national laws, where applicable, without undue delay, and withdraw any reservation on any international or regional human rights instrument listed in Schedule I;

Encourage Member States to put in place mechanisms to enforce or harmonise their existing legislation on gender, criminality and social justice and operationalise programmes relating to gender-based violence; and

Acting in accordance with the powers vested in the Treaty **Adopt** the following GBV Model Law on eradicating gender-based violence, as a guide to legislative efforts on gender-based violence, in the SADC Region.

PART I

PRELIMINARY PROVISIONS

The preliminary provisions consist of matters generally underlying the understanding of the GBV Model Law. In this Part insert, in accordance with the style and form of a Member State, a long title, enactment clause, short title and other preliminary matters as appropriate in the Member State. The drafter should take into account and consider the Constitution, Acts of general application, customary law, international legal obligations, especially human rights and freedom.

A SMS shall, if it domesticates or adopts the entire content of this Model Law or particular provisions of the Model, endeavour to follow through with the mandatory provisions, as provided in this Model Law, in order to ensure an efficacious National Law on gender-based violence. The mandatory provisions mainly relate to human rights and gender equity and equality provisions which SMS have already committed to under regional and international human rights instruments, concepts and principles of law and roles and responsibilities of service providers.

1. Domestication of Model Law

- (1) Member States may undertake a process of legislative reform to give effect to this Model Law and observe its objectives.
- (2) Member States shall enact and enforce National laws prohibiting all forms of gender based violence that address and punish all forms of such violence, in line with international human rights standards as provided in this Model Law and international instruments on gender-based violence.
- (3) Member States may use any of the following to domesticate this Model Law –
 - (a) adopt this Model Law as a whole, by scheduling;
 - (b) adapt and adopt this Model Law as a whole as a single stand-alone law on gender-based violence;
 - (c) adopt selected provisions from this Model Law in parts of the various National laws on gender-based violence; or
 - (d) adapt and adopt selected provisions from this Model Law in parts of the National law on gender-based violence.
- (4) Notwithstanding subsection (1), Member States that have already in place National laws that prohibit gender-based violence may review, assess and strengthen such laws in conformity with this GBV Model Law.

Kommentar [EJ1]: Participants comments on insertion of obligation to domesticate, methods of domestication and ratification of generated laws have already been catered for in the ML. Further, States have their own constitutional and statutory methods of doing so.

2. Application and Scope

- (1) This Model Law applies to all persons, without distinction of any kind, such as race, status, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, , gender identity, ethnic or social origin, or disabilities, taking into account the special needs and circumstances of women, children and other marginalised persons.
- (2) This Model Law shall be construed to apply to the full extent of the definition of gender-based violence and to offences committed –
 - (a) within the territory of Member State;

- (b) on board a vessel or aircraft that is registered under the laws of a Member State at the time the offence was committed; or
 - (c) by a national of a Member State whose extradition is refused on the grounds of nationality.
- (3) The rights, benefits, protections, interventions, assistance and services specified in this law shall also apply and be available for victims who are repatriated from one Member State to another Member State.

3. Conflict and review of National laws

- (1) For the avoidance of doubt, the principles relating to hierarchy of laws, subsidiarity of laws and ultra-vires shall apply to all National laws relating to gender-based violence.
- (2) Where there are conflicts or inconsistencies between customary, religious and statutory law, statutory law shall prevail and the matter shall be resolved with respect –
 - (a) to the human rights of the victim; and
 - (b) to gender equality standards.
- (3) Where there are conflicts or inconsistencies between gender-based violence laws with laws relating to family and divorce, property, housing, social security and employment, the gender-based violence laws shall prevail and the legal framework that promotes human rights and gender equality and the elimination of violence shall apply.
- (4) The processing of a case under customary or religious law shall not preclude it from being brought before the formal justice system.
- (5) The Government may amend any provisions of its laws, such as family and divorce laws, property laws, housing laws, social security laws, and employment laws that contradict or are inconsistent with this Model Law or any law on gender-based violence, so as to ensure a consistent legal framework that promotes human rights and gender equality, and eliminates gender-based violence.

Kommentar [EJ2]: The question by participants which law would prevail, where there is conflict between the ML and National law, then National Law will prevail. That's why we are urging MS to domesticate

Kommentar [EJ3]: The intention here was to make it mandatory

- (6) The Government may review, reform and strengthen their laws and procedures applicable to cases of gender-based violence, in particular, sexual assault offences in order to –
- (a) eliminate gender bias; and
 - (b) ensure justice and fairness are accorded to victims in a manner that ensures dignity, protection and respect.

4. Extra territorial jurisdiction of National laws

- (1) A Member State shall ensure that any law on gender-based violence shall have extra-territorial effect so as to meaningfully give effect to certain obligations and commitments made by the SMS under international instruments relating to gender-based violence.
- (2) The law shall apply to any offence committed outside the territory of the Member State when the offence is committed –
 - (a) by a national of another Member State;
 - (b) by a stateless person who resides in a Member State at the time of the commission of the offence; or
 - (c) against a national of a Member State.

5. Objectives¹⁵

The objectives of this Model Law are to provide sets of concepts, principles, standards, measures and interventions to assist SMS to develop policies that support the enactment of efficacious and comprehensive National laws on gender-based violence which –

¹⁵*The objectives relate to the Model Law but Member States can adapt them into explanatory memorandum, long titles and objectives in their national legislation and in the style normally used. Note that some jurisdictions insert the interpretation section before the objects, normally after the short title. It is important that the form of legislation follows that of the Member State's legislative style.*

- (a) provide prohibitions with respect to gender-based violence, access to justice, procedural fairness, measures, strategies and interventions in key areas relating to gender-based violence, without usurping the powers of National Legislatures or National Executives to initiate and enact National laws in their areas of competence and jurisdictions;
- (b) provide for legal rights, secure legal protections and legal recourse for victims;
- (c) provide for non-discrimination based on statelessness, nationality, and refugee or asylum status;
- (d) provide for mechanisms that promote access to services and justice for all;
- (e) provide for responsive and referral mechanisms and procedural systems to deal with gender-based violence using a human rights-based and victim-centered approach, in conformity with standards and requirements of SMS international, continental and regional commitments;
- (f) promote gender equality in public and private spheres, as a cross-cutting issue to support the socio-economic, political and cultural sectors of society, and stimulate productive resources and development opportunities;
- (g) provide for evidence-based investigation and prosecution of gender-based violence cases, prohibit mediation in settling gender-based violence cases, prohibit the withdrawal of a gender-based violence complaint by a victim and any reduction in sentences for any reason, including the use of extenuating circumstances to reduce or limit a sentence;
- (h) ensure that victims are not discriminated against during judicial and other proceedings;
- (i) provide for the prohibition of any law, customary law, harmful practice, community mediation that is detrimental to the victim or other practices and religious rule or practice, from being used as a ground for perpetuating gender-based violence;
- (j) provide for a systems and measures that may assist in removing gender disparities and imbalances, owing to legislative, administrative, religious or cultural norms, practices and traditions;

- (k) provide for the protection of victims, through emergency, interim or final protection orders;
- (l) provide for financial and other resources for maintenance, residence and other support services and assistance for victims;
- (m) provide for the facilitation of awareness and advocacy programs and institutional capacity building for persons and institutions dealing with GBV;
- (n) provide for information sharing and collection of information and statistics on gender-based violence in order to effectively ascertain trends in gender-based violence, track, evaluate and monitor cases on gender-based violence, offenders, survivors of gender-based violence and victims;
- (o) provide for data protection and confidentiality of personal information of victims and survivors of gender-based violence;
- (p) provide for capacity building and training for essential players in the justice and executive systems to ensure effective policing, handling, investigation, prosecution and management of gender-based violence and such cases;
- (q) provide mechanisms for enforcement and compliance; and
- (r) provide for matters incidental to and connected to the foregoing.

6. Interpretation¹⁶

- (1) In this Model Law, unless the context otherwise requires –

“**AIDS**” means Acquired Immune Deficiency Syndrome;

“**anti-gender-based violence fund**” means a fund established under section 76 for the purposes provided for in this Model Law;

¹⁶ *Member States should amplify this section by including other terms and words used in the National laws or excluding others which are already defined in a general interpretation law. The words and terms in this section have been drafted in a manner that will enable a SMS to cut and paste them, with necessary adjustments, to suit particular National legislative styles and requirements.*

“anti-gender-based-violence prohibition officer” means a person appointed in accordance with section 77 for the purposes specified in that section;

“appropriate authority” means the Minister, Ministry or any other minister or ministry having responsibility for, or such public or statutory officer or body having powers under any written law over, gender, gender-based violence, health, education, skills training, State budgeting and finance, national planning, local authority, labour, statistics or chiefs affairs, and includes any other person or authority a Member State empowers to deal with gender-based violence, a traditional or religious leader or civil society, organisation or other agency having special interest or mandate over gender equality, equity or gender-based violence;

“care-giver” means any person who provides emotional, psychological, physical, economic, spiritual or social care and support services to victims of gender-based violence;

“child” means every human being below the age of eighteen years;

“child marriage” means a formal marriage or informal union or marriage to which either or both of the contracting parties is a child, and includes child betrothal;

“committee” means a committee constituted in accordance with section 77, for purposes specified in that section;

“competent authority” means the Minister responsible for gender or criminal laws, a public officer or statutory body delegated by law to perform functions or exercise powers in relation to gender equality, equity or gender-based violence;

“consent” means the voluntary, informed and un-equivocal agreement of the victim to engage in the sexual activity in question;

“court” means a court of competent jurisdiction over gender related matters;

“CSO” means a civil society organisation legally authorized to carry out activities in a Member State;

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“domestic violence” means any action or omission based on gender, perpetrated by a family member, the consequences of which cause or may cause harm or suffering to a woman or child, whether physical, psychological, sexual or economic, including death, injury, deprivation, sexual abuse and moral or patrimonial damage;

“employee” means a person who is contractually engaged in the service of an institution, excluding an independent contractor;

“employee’s representative” means a person appointed by an employee to represent the employee during a disciplinary process;

“discrimination” means any distinction, exclusion or restriction made on any ground specified in section 7 which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by a person, on the basis of equality with another member of the community, of human rights, fundamental freedoms, any entitlement, privilege, measure or intervention provided or made available to a person to mitigate the effects of gender-based violence;

“entity” means a company, enterprise, statutory body or Government ministry, department or unit;

“equality” means a state of being equal in terms of enjoyment of rights, freedoms, treatment, quantity or value, access to opportunities and outcomes, including resources;

“exploitation” includes the making use of the prostitution of others, forced or coerced labour or services, bonded labour and debt bondage, slavery or practices similar to slavery, servitude, sexual servitude, removal of organs, forced marriage, forced or coerced begging, use in illicit or criminal activities, the trafficking or production of drugs, use in armed conflict, ritual or customary servitude, exploitative and abusive religious or cultural practices that dehumanize, degrade or cause physical or psychological harm, use of women as surrogate mothers, forced pregnancy and illicit conduct of biomedical research on a person;

“gender” means a female or male, and may be relative to the roles, duties and responsibilities which are culturally or socially ascribed to a particular gender;

“gender-based violence” means a harmful act directed at an individual, or a group of individuals, based on their gender, gender norms and unequal power relationships, which cause or could cause them physical, sexual, verbal, psychological, emotional or economic harm, including coercion, the threat to take such acts, or to undertake the imposition of arbitrary restrictions on, or deprivation of, fundamental rights and freedoms, in private or public life, in peace time or during situations of armed or other forms of conflict;

“gender equality” means the equal enjoyment of rights and access to opportunities and outcomes, including resources, by each gender;

“gender equity” means the just and fair distribution of benefits, rewards and opportunities for all gender;

“gender mainstreaming” means the process of identifying gaps in gender and making all gender's concerns and experiences integral to the design, implementation, monitoring and evaluation of policies and programmes in all spheres, so that they benefit equally;

“gender sensitive” means acknowledging and taking into account specific gender needs at all levels of planning, implementation, monitoring and evaluation;

“gender stereotypes” means the beliefs held about characteristics, traits and activity domains that are deemed appropriate for all gender, based on their conventional roles, domestically and socially;

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

“grievance” means any concern, objection, protest, annoyance or dissatisfaction by an employee, relating to gender-based violence at a place of work or educational institution;

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“grievance and complaints policy” means the measures, strategies, plans and programmes, of an entity, providing for the processes, procedures and approach to handling grievances and complaints, based on the requirements specified in this Model Law or National law;

“grievance process” means the method for dealing with complaints as specified in this Model Law;

“harmful practices” means customary, traditional, religious or social practices that negatively affect, or behavior, attitudes or rites which threaten or may threaten, the health, social welfare, dignity, physical or psychological development or life of a person or the person's enjoyment of human rights, including practices and prejudices based on the idea of inferiority or stereotyping roles of either sex or gender;

“health” means a complete state of physical, mental, spiritual and social well-being of an individual and not merely the absence of disease or infirmity;

“HIV” means Human Immunodeficiency Virus;

“informal sector” means the portion of a country's economy that lies outside of any formal or regulatory environment;

“investigation” means an inquiry into, or examination of, a gender-based offence to ascertain the occurrence of the offence and to gather evidence supporting or not supporting the complaint or charge;

“judicial institution” means a court of competent jurisdiction or a special court dealing with matters of gender-based violence;

“law” means National legislation on or relating to gender-based violence or gender equality and equity, as the case may be;

“marginalised persons” means a category of persons prescribed, as such, by each Member State;

“marital rape” means any unwanted sexual act by a spouse or ex-spouse that is committed without the other person's consent;

“Member State” means a Member State of the Southern African Development Community, and SMS shall be construed accordingly;

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“Minister” means a Minister, in a Member State, responsible for matters relating to gender or gender-based violence, as the case may be;

“Ministry” means the Ministry, in a Member State, responsible for gender or gender-based violence and related issues, as the case may be;

“Model Law” means this SADC Model Law on Gender-Based Violence;

“multiple roles of women” means the several responsibilities that women shoulder in the reproductive, productive and community management spheres;

“offender” means a person who has committed the crime of gender-based violence, or is a person who has been convicted of a gender-based violence offence, and the word “perpetrator” shall be construed accordingly;

“place of safety” means a place where a victim of gender-based violence can be kept temporarily, and includes a safety home;

“procedure” means the rules relating to the way grievances or complaints of gender-based violence is dealt with, and includes the system, order and manner a grievance or complaint of gender-based violence is reported, initiated, considered, assessed, investigated, heard or determined;

“quasi-judicial body” means an administrative or Executive entity established to settle gender-based violence matters, without having to initially prosecute the case before a judicial institution;

“quasi-judicial proceedings” means administrative proceedings that are undertaken for the settlement of specific gender-based violence matters and rights or obligations which may require discretion and decision and which may be the subject to notice and hearing requirements and judicial review;

“regional and international human rights instruments” means the human rights agreements, treaties, conventions, protocols, standards and declarations relating to human rights and freedoms and gender-based violence;

“rehabilitation” means restoring an offender to normal life through training and therapy after imprisonment or addiction;

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

“safety home” means a place which is used for the care, protection, reception, education, counseling and safety of victims;

“service provider” means a person who, or body of persons which, is competent to provide services for victims or for the general well-being of such victims and who is licensed or otherwise recognized for such purposes in accordance with the law;

“sex” means the biological differences between females and males;

“sexual assault” means a violation of bodily integrity and sexual autonomy, where –

- (a) the victim did not give unequivocal and voluntary consent or agreement to a sexual act;
- (b) the offender did not take steps to ascertain whether the victim consented to the act; or
- (c) the act took place in coercive circumstances, irrespective of the nature of the relationship between the offender and the victim, including marital rape;

taking into account aggravating circumstances including, the age of the victim, the relationship of the offender and the victim, the use or threat of violence, the presence of multiple offenders, and grave physical or mental consequences of the attack on the victim;

“sexual harassment” means any unwelcome sexual advance, request for sexual favour, verbal, display of images, or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, whether or not such sexual advance or request arises out of unequal power relations;

“sexual and reproductive rights” means the universal human rights relating to sexuality and reproduction bodily autonomy and integrity and safety of the person, the right to sexual privacy, the right to make free and responsible reproductive choices, the right to sexual information based on scientific enquiry, and the right to sexual and reproductive health care;

“social safety nets” means the measures taken or applied to mitigate the effects of poverty, gender-based violence and other social ills;

“special measures” means a policy programme or measure that seeks to redress past discrimination through active measures to ensure equal opportunity and positive outcomes in all spheres of life;

“State Party” means a Member State that is a party to any regional or international human rights instrument;

“supervisory officer” means the immediate supervisor of an employee or head of an entity;

“survivor” means a person that was a subject of gender-based violence;

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“trafficking in persons” means the recruitment, transportation, harbouring or receipt of persons, by means of threat, abuse of power, position of vulnerability, force or other forms of coercion, abduction, fraud or deception to achieve the consent of a person having control over another person for the purpose of, amongst other things, sexual or financial exploitation;

“traditional or local leader” means a chief, headperson, religious person or other person recognised in a community as having responsibility over that community, or a political or civil person or body of persons elected or nominated to represent that community, at local or national level;

“victim” means a person who has been subject to gender-based violence or discrimination and who, individually or collectively, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws, proscribing abuse of

power, employment laws or gender equity and equality laws, in force in a Member State, including a survivor, and the word “survivor” shall be construed accordingly; and

“violence against women and girls” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life and includes physical, sexual and psychological violence occurring in the family or within the general community, and perpetrated or condoned by the State.

- (2) For the purposes of the definition of “competent authority” the following may be considered with respect to gender equality, equity or gender-based violence in relation to specific contexts and perpetrated by specific persons:
- (a) the family;
 - (b) the community;
 - (c) conflict situations; and
 - (d) violence condoned by the State, including violence in police custody; and
 - (e) violence committed by security forces.
- (3) For the purposes of the definition of “gender-based violence” the following may be included:
- (a) domestic violence;
 - (b) intimate partner violence;
 - (c) sexual violence, including sexual assault and sexual harassment;
 - (d) harmful practices, including early marriage, forced marriage, female genital mutilation;
 - (e) female infanticide, prenatal sex-selection, virginity testing, HIV/AIDS cleansing;

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- (f) honour crimes, acid attacks, crimes committed in relation to bride-price and dowry, maltreatment of widows, forced pregnancy, and trying women for sorcery or witchcraft;
 - (g) femicide;
 - (h) trafficking;
 - (i) sexual slavery;
 - (j) child sexual exploitation material; and
 - (k) online gender based cyber-crimes and bullying.
- (4) For purposes of the definition of “victim” a person who has been subject to gender-based violence or discrimination shall be a victim –
- (a) regardless of whether the offender is identified, apprehended, prosecuted or convicted or there is a familial relationship between the offender and the victim; and
 - (b) where appropriate, includes, the immediate family or dependents of the victim and persons who have suffered harm in intervening, or assisting the victim or in trying to prevent victimisation.

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PART II

HUMAN RIGHTS BASED APPROACH AND POLICY DIRECTION

This Part and the following Parts have been drafted in a manner to assist Member States to draft similar provisions with minimum amendments. The rights outlined in this Part are a restatement of certain rights specified in various international and regional human rights instruments on gender-based violence and Member States' constitutions. The style of drafting is generalized as to the rights with specific reference or relativity to the issue of gender-based violence, whilst emphasizing the rights of women and girls. The Draftsperson should use the content to develop specific provisions on the subject related issues as conforms with the style and language of National law. The offences and penalty clauses are inserted to remind SMS/drafters that they must provide for appropriate prohibitions, offences and penalties which are put in strategic sections as indicators that punishment is required in relation to that subject area.

7. Protection from discrimination

- (1) The Government, a competent authority, judicial institution, an appropriate authority, a service provider, traditional or local leader and all other persons shall not –
- (a) discriminate against a victim on grounds of race, colour, sex, status, identity, gender, age, language, religion, tradition and custom, political or other opinion, conscience, ethnic or social origin, disability, property status, birth, marital status, area of residence, homelessness, statelessness, nationality, refugee or asylum status, HIV status, or other status, when handling, investigating, prosecuting or deciding on a case of gender-based violence; and
 - (b) discriminate against a person by using any distinction, exclusion or restriction, on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise, by any gender, of human rights and fundamental freedoms, in the political, economic, social, cultural, civil or any other field.
- (2) A competent authority, judicial institution, an appropriate authority, and a service provider shall display at their premises of work information on its non-discrimination policy and gender equality practices.
- (3) If a person, who performs any function or exercises any power of a competent authority, law enforcement officer, judicial institution, an appropriate authority, a service provider, traditional or local leader, contravenes subsection (1), the person shall immediately be cautioned and appropriate action be taken in accordance with the law.
- (4) A SMS shall enact laws prohibiting all forms of discrimination in the performance of public or private functions or exercise of public or private powers, as committed under regional and international human rights instruments, including–
- (a) in economic and social life or activities;
 - (b) in accessing official documentation, such as national identity documents, health records and qualification certifications;
 - (c) in education and vocational training, learning and guidance;

- (d) in and at a place of employment, in recruitment, retentions, promotions, dismissals and payment of remuneration and allowances;
- (e) in the provision of health services and health care; and
- (f) as provided in this Model Law.

8. Access to justice

(1) A victim has a right to access justice, as provided in this section and Part III of this Model Law.

(2) An offender shall be tried by a judicial institution of competent jurisdiction.

(3)

(3) A person, who is in custody or in a place that is hard to reach, shall be entitled to protection, from gender-based violence, by the State.

(4) A person has a right not to be arbitrarily arrested or detained;

(5) A person has a right to be brought promptly before a court;

(6) A person has the right not to be deprived of their freedom, except for reasons and conditions previously laid down by law.

(7) A person has a right to be informed of their right to silence.

(8) A person has a right to be notified of their right to consular assistance.

(9) A victim has a right to execute a judgement against the State after one year of the judgement, if no action is taken by the Government as provided in the judgement.

(10) A judicial institution shall not order any security for costs on matters relating to gender-based violence.

(11) A victim reporting gender-based violence or an offender facing arrest, has a right to clear identification of the law enforcement officer to whom the victim is reporting to, or by whom the offender is being arrested by.

(12) The Government shall ensure that a law enforcement officer who is not compliant with the rules on arrest and custody, as specified in the law, faces appropriate sanctions or disciplinary measures.

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~~(14)~~(13) The Government shall ensure that the provisions its National laws dealing with gender-based violence are enforced and widely publicised, so as to sensitise victims, offenders, communities, traditional authorities, religious leaders and the public generally, on the norms and procedures specified in the law.

~~(15)~~(14) Traditional authorities and religious leaders shall, when handling matters relating to gender-based violence ensure, as applicable, they apply the procedures and norms relating to access to justice.

9. Right to fair trial and settlement of complaints

- (1) A victim has a right to a fair trial before a judicial institution and to have a dispute or complaint decided timely and fairly before an administrative authority or employer.
- (2) A law enforcement officer and judicial institution shall ensure that a trial for a gender-based offence is commenced and judgement given without unreasonable delay.
- (3) An employer shall ensure that complaints and grievance proceedings on a gender-based matter are commenced and decided without use of undue bureaucratic procedures and unreasonable delay.
- (4) A judicial institution shall ensure that a victim is able to follow the proceedings of the trial and if the victim is unable to speak or understand the language used during the trial, the judicial institution shall, at its expense, provide an interpreter, or in the case of –
 - (a) visually impaired victims, use Braille or tactical diagrams; and
 - (b) deaf victims, use sign language.

10. Right to fair administration

- (1) A person is entitled to administrative action that is expeditious, lawful, reasonable and procedurally fair.

- (2) A SMS shall ensure that all competent authorities, appropriate authorities and service providers comply with the law when handling, investigating or managing gender-based violence cases and observe and uphold a victim's fundamental human rights and they uphold natural justice principles, without fear or favour.
- (3) A competent authority shall ensure that law enforcement personnel are constantly sensitised on the harm corruption has on victims and shall, in this regard, put in place special measures, including stiff disciplinary measures, to ensure that victim's complaints are processed efficiently and effectively without any extraneous influences, especially from spouses and other family members.
- (4) A public officer or any other person who willfully contravenes the law to negate the rights of victims commits an offence and shall be liable, on conviction, to imprisonment of a term not exceeding XXX or a fine not exceeding XXX, or to both.¹⁷

11. Right to life

- (1) A person has the right to life.
- (2) A Member State shall ensure through law, and in particular, where a person is deprived of life because of a gender-based offence, that the offender is sentenced to the maximum possible penalty provided for that offence.
- (3) A judicial institution shall not impose a sentence of death for a gender-based violence offence.

12. Protection from gender-based violence

- (1) A person shall not be subjected to any form of gender-based violence, including being sold, enslaved, trafficked or abducted by any other person.

¹⁷insert offence and penalty clause according to style used in, and sentencing policy of, a Member State

- (2) A person, especially a woman, has the right to refuse sexual acts, including acts within marriage and relationships, that put the person at risk of infection, and has the right to refuse any act not desirable by the person, which refusal shall not be a ground for divorce.¹⁸
- (3) Marriage, co-habitation or a romantic or intimate relationship shall not constitute a defence to a charge of marital rape or any other form of gender-based violence.
- (4) A SMS shall put in place policies and special measures, including those outlined in this Model Law, to ensure that –
- (a) every gender is accorded protection from gender-based violence;
 - (b) necessary support is available and accessible for the prevention, identification, reporting, referral, investigation, rehabilitation and treatment of injury or illness resulting from gender-based violence;
 - (c) laws against domestic violence give adequate protection to women and children, and respect their bodily integrity and dignity;
 - (d) laws on marriage provide that no marriage shall take place without the free and full consent of both parties and that the minimum age of marriage is 18 years;
 - (e) laws on gender-based violence provide effective penal sanctions, civil remedies and compensatory provisions to protect against all kinds of gender-based violence;
 - (f) gender-based violence is condemned by all and no competent authority, judicial institution or traditional or religious leader invokes custom, tradition or religion to avoid obligations to eliminate gender-based violence;
 - (g) laws on gender-based violence provide mechanisms for access to justice and include civil, criminal and administrative sanctions to redress the wrongs caused to victims; and provide for the rehabilitation of offenders;

¹⁸cross reference to gender-based violence laws, penal statutes and laws on HIV and AIDS, if any

- (h) laws on gender-based violence provide for mechanisms for the social and psychological rehabilitation of offenders;
- (i) secondary victimisation of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions; and
- (j) an offender refrains from harassing, intimidating or threatening the victim or survivor.

13. Protection from inhuman treatment and security of person

- (1) A person has the right not to be subjected to torture, treated or punished in a cruel, inhuman or degrading manner.
- (2) A person has the right to liberty and security of the person which includes the right not to be subjected to human trafficking and slavery.
- (3) A Member State shall ensure that all relevant competent authorities comply with legal, administrative and surveillance systems provided in this Model Law and the law, for the protection of all gender and victims, especially women and children.

14. Equality, privacy, dignity and respect

- (1) A victim is equal before the law and shall be entitled to equal protection before the law.
- (2) A victim has a right to privacy, dignity and respect.
- (3) A victim's inherent right to liberty, security, dignity and respect of the person shall be upheld.
- (4) A woman shall not be discriminated against with respect to the provision of housing or any attendant services due to her having survived gender-based violence and a landlord is prohibited from evicting her, or refusing to rent a house to her because she is a victim, provided that all financial obligations are settled.

- (5) A landlord or tenant may terminate a lease without penalty, in order to avoid gender-based violence.
- (6) The Ministry responsible for housing in consultation with the Ministry responsible for gender shall develop improved housing admissions and occupancy policies and best practices, and improve collaboration between public housing agencies and private organizations, to assist victims, including migrants, who have become homeless, to rent affordable housing.
- (7) A woman has the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
- (8) The Government and a judicial institution shall put in place special measures to ensure that –
- (a) women and children of all backgrounds are treated equally in law and during legal proceedings;
 - (b) a woman's and child's inherent right to life, liberty, security, dignity and respect are upheld in any action or decision involving them; and
 - (c) a woman and adolescents shall have access to sexual reproductive health services, as is appropriate, and are not unduly hindered in the exercise of their sexual reproductive rights;
- (9) The Government shall ensure that public officials, especially law enforcement officers, health-care providers, social workers and teachers, and other appropriate service providers, including persons specified in section 69 are fully familiar with applicable laws and sensitised to the social context of gender-based violence.

15. Access to information

- (1) A victim has the right of access to information held by the State or another person which is lawfully required for the exercise or protection of a right or freedom, as specified in the law
- (2) A victim has the right to demand correction of false or misleading information recorded or published about the victim.
- (3) The Government shall proactively publish information that is educative of the harm and consequences of gender-based violence and its effect on the victim and society.

16. Non-refoulement of refugees and asylum seekers

- (1) A victim who has been granted asylum or refugee status in a Member State has a right not to be returned to the country of origin or a third country if that victim has a well-founded fear of persecution or being subjected to further gender-based violence.
- (2) A victim shall not be deported or subjected to other punitive actions because of her immigration status when she reports gender-based violence to a law enforcement officer and shall be allowed to confidentially apply for legal immigration status independently of the offender.
- (3) A victim shall be allowed to apply for legal immigration status independently of the spouse, if he/she is the offender of the violence.
- (4) The Government shall ensure that victims who are refugees, asylum seekers, displaced or stateless, are treated equally and all the privileges and protections provided under gender-based violence laws are made accessible to them.
- (5) The Government shall ensure that victims who are refugees, asylum seekers or displaced persons due to conflict, are treated as citizens and all the privileges and protections provided under gender-based violence laws are rendered to them.

- (6) The Government shall put in place policies, special measures, terms and conditions to enable victims to attain legal status in the country, such as the following:
- (a) allowing victims, whose immigration or nationality status depends on that of a citizen or lawful permanent residence, to self-petition for their own immigration status under certain circumstances and conditions as specified by law;
 - (b) permitting victims who meet certain requirements, set in the law, to obtain suspension of deportation proceedings and become lawful permanent residents;
 - (c) allowing victims to apply for permanent residence status, irrespective of whether their spouse supports the application;
 - (d) allowing victims who show proof of domestic violence to be granted separate residence status;
 - (e) granting a girl and or her family residence status, if they show proof that the girl is at risk of female genital mutilation; and
 - (f) permitting a victim whose residency status is dependent on that of an offender to apply for leave to remain in the country indefinitely.¹⁹

17. Protection from harmful practices

- (1) A person shall not subject another person to harmful practices, especially those practices that are prejudicial to the health rights or life of women and children.
- (2) The Minister shall, in consultation with relevant appropriate authorities, put in place policies and special measures to ensure that women and children are not subjected to harmful practices.
- (3) The Minister shall, in consultation with the Ministers responsible for community development, culture and traditional affairs²⁰ take

¹⁹ Leave can be obtained from the Ministry responsible for immigration of a court of competent jurisdiction.

appropriate measures to ensure that the community, especially families, are educated on the effects and consequences of the use of harmful practices.

- (4) A person shall not use or impose, subject or encourage another person to use or impose, a harmful practice on any other person, especially women and children.
- (5) A person who contravenes subsection (4) commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding XXX or to a fine not exceeding XXX, or to both.²¹

18. Right to education and access to educational facilities

- (1) The right to education shall be upheld by all competent authorities.
- (2) A competent authority shall put into place special measures to ensure that –
 - (a) women and children have access to education, including tertiary and vocational training on an equal basis with the male gender;
 - (b) women and children have a right to enrolment and retention and to be, and learn in, an education environment, within a school setting, where learning takes place without fear of school-related gender-based violence;
 - (c) the curriculum creates and mobilizes empowerment for women and children, so they realise their full potential in the years after school; and that the education of women and children are directed so as to –
 - (i) promote and develop their personality, talents, mental and physical abilities to the fullest potential;
 - (ii) foster understanding of human rights and fundamental freedoms;

²⁰ Insert competent authority

²¹ Insert offence and penalty clause according to style used in, and sentencing policy of, a Member State

- (iii) preserve and strengthen positive African values and culture;
 - (iv) promote understanding of the nature, causes, modes of transmission, consequences and means of preventing and managing HIV and AIDS and how to access reproductive health rights;
 - (v) promote understanding of the rights and protection of persons living in abusive environments;
 - (vi) recognise the special needs of persons with disabilities and other marginalised persons;
 - (vii) promote awareness regarding human rights, gender equity and equality and the right to be free from gender-based violence; and
 - (viii) educational curricula eliminate discriminatory practices, and modify social and cultural patterns of behaviour prejudicial in the fight against gender-based violence, and derogatory gender stereotypes.
- (3) The Government shall ensure public and private institutions make access to training, educational facilities and services, including vocational counseling and guidance, available and accessible to every gender and marginalised persons, without discrimination.
- (4) The Minister responsible for education shall, in consultation with the Ministers responsible for gender and child development, put in place special measures to eradicate discrimination against school-going girls who are pregnant and elderly or mature persons seeking education or who are already attending an educational institution by -
- (a) implementing school re-entry policies for girls and adolescents who get pregnant and are prepared to go back to school;
 - (b) developing career and vocational policy guidelines on training and access to studies;

- (c) giving women and children opportunities to access and benefit from scholarships, educational awards and other study grants;
 - (d) ensuring that women and children have opportunities in accessing programmes of continuing education, including functional literacy programmes;
 - (e) enhancing the capacity of teachers in guidance, counseling and comprehensive sexuality education;
 - (f) ensuring that women and children have access to specific educational information to enhance their health or the health and well-being of the family; and
 - (g) preventing sexual abuse of women and children by teachers, service providers and peers, by imposing severe penalties on such behaviour.
- (5) The Minister responsible for education shall, in consultation with the Minister responsible for gender, take measures to ensure that the curriculum for all educational institutions-
- (a) integrates principles of equality and equity;
 - (b) addresses the special needs of women and children by incorporating life skills and comprehensive sexuality education; and
 - (c) introduces subjects that enhance the integration of women and girls in disciplines that are traditionally male dominated.

19. Right to Health

- (1) A person has a right to enjoy the highest attainable state of physical and mental health, including access to doctors and health facilities whilst in custody.
- (2) The health rights of a person, in particular women and children, include being entitled to –
 - (a) a life free from fear and violence;

- (b) make their own decisions, including on matters related to sexual and reproductive decisions, and in case of a child, in accordance with the child's level of understanding and age;
 - (c) refuse medical procedures or take legal action;
 - (d) the highest attainable standard of health, including receiving health services of good quality that are available, accessible and acceptable;
 - (e) health care services offered without discrimination;
 - (f) provision of care, treatment and counseling that is private and confidential; and to having personal information only disclosed with their consent;
 - (g) knowing what information has been collected about their health and having access to this information, including their medical records.
- (3) A person, especially children, have the right to receive adequate nutrition and health services and, where such services are provided by the Government, the Government shall endeavour to ensure that it provides health and nutrition services that are adequate to meet their needs.
- (4) The Minister responsible for health shall, in consultation with relevant appropriate and competent authorities, put in place health policies, special measures and strategies for women and children which ensure the following:
- (a) access to health and medical services which are available, acceptable, affordable and of good standard and quality;
 - (b) access to comprehensive, safe and quality sexual and reproductive health services and rights;
 - (c) access to comprehensive sexuality education;
 - (d) access to free emergency measures and programmes, including provision of crisis rape centers, that will assist in providing immediate access to comprehensive and integrated health

- services for victims of sexual violence, including pregnancy testing, emergency contraception, abortion services, treatment for sexually transmitted diseases, treatment for injuries, post-exposure prophylaxis and psychosocial counseling;
- (e) access to such services shall not be conditional upon the victim reporting the sexual violation to the police; and
 - (f) abolishment of harmful practices.
- (5) The Minister responsible for health shall put in place special measures to provide women and children that are pregnant or have given birth, access to maternal health services and specialised services to deal with complicated conditions such as fistula, ante-natal, post-natal and obstetric care, post abortion care and immunization.
 - (6) The Minister responsible for health shall put in place special measures for accessing HIV and AIDS counseling, testing and treatment for all gender, with particular attention to women and children who are pregnant as a result of gender-based violence.
 - (7) The Minister responsible for health shall ensure that any special measures put in place, in accordance with this section, allow women and children the right to determine the best medical procedure for themselves, and where consent for such medical procedure is required, to give such consent on their own without the requirement of seeking another person's consent.

20. Right to employment and social security

- (1) Every gender has the right to employment and safe and fair labour practices.
- (2) A woman in employment has the right to –
 - (a) fair remuneration commensurate to the productivity and size of the enterprise;
 - (b) decent working conditions;

- (c) a pension benefit or gratuity commensurate with her office, salary and length of service; and
 - (d) form, join or participate in activities and programmes of a trade union.
- (3) A victim shall continue to enjoy the employment rights specified in subsection (1) and an employer is prohibited from discriminating against her or penalizing her for consequences arising from gender-based violence.
- (4) A victim, who has been harmed as a consequence of gender-based violence, whether at the workplace or elsewhere, is entitled to take paid leave of absence as prescribed by law, in addition to other paid leave.
- (5) Public and private sector employers shall grant permission to a victim to attend programmes, including self-support groups, for survivors of gender-based violence, including re-education sessions for offenders.
- (6) Every gender is entitled to social protection and social security services.
- (7) The Minister responsible for social protection and social security services shall, in consultation with the Minister responsible for gender, put in place policies, measures and interventions to ensure that a victim accesses adequate social protection and social security services, including for unpaid care work and unpaid productive work.

21. Right to nationality

- (1) A woman has the right to confer her nationality on to her children and spouse, on an equal basis with men
- (2) all children, regardless of their sex, found or born on the territory of a Member State shall acquire the nationality of that State, if stateless.
- (3) A woman has the right to renounce her nationality, on the same basis as men,

- (4) A woman and girl and her children shall not be deprived of her nationality, if stateless.

22. Right to asylum

- (1) Every person has the right to asylum, in line with relevant conventions and principles of international law.
- (2) Every woman has the right to an individual eligibility interview, and the right to the recognition of her refugee status on merit of her own claim.
- (3) Eligibility claims submitted by victims for asylum shall be processed as a matter of priority.
- (4) All reception and distribution arrangements for victims seeking asylum shall include safeguards against sexual abuse and exploitation.

23. Protection from exploitation and right to sustainable livelihood and empowerment

- (1) Women and children have a right not to engage in work that is exploitative or likely to be hazardous or adverse to the woman's or child's health or welfare.
- (2) Women and children are entitled to economic, social and cultural rights, and the Government shall put in place special measures to the maximum extent of their available resources and, where needed within the framework of international co-operation, to achieve such rights.
- (3) The Minister responsible for labour (*insert appropriate portfolio or portfolios*) shall, in consultation with the Ministers responsible for gender and child development with other relevant competent and appropriate authorities, put in place policies, special measures and interventions, subject to international labour standards, which will ensure that –

- (a) women and children are not subjected to economic exploitation or any work that is hazardous or likely to interfere with their education, physical or mental health or social development; and
 - (b) women or girls in marriage or victims have access to suitable gainful employment and, in particular, equal pay for equal work or equal value of work.
- (4) The Minister responsible for labour shall, in consultation with the Ministers responsible for gender and child development–
- (a) develop macro-economic policies that focus on job creation for women and victims;
 - (b) develop measures to regulate the informal economy so as to prevent unfair labour practices where the majority of women and children work;
 - (c) foster greater linkages between the labour market and education and training institutions and systems to ensure that curricula are aligned to the needs of the labour market and that women are trained in fields where employment opportunities are available or growing;
 - (d) implement appropriately-timed career guidance for women and victims, as part of the schooling and post-schooling education system;
 - (e) promote entrepreneurship for women and victims, by including entrepreneurship training in the curricula, providing access to credit, business development, skills training, mentorship opportunities and better information on market opportunities; and
 - (f) establish measures to empower women and victims to enable them participate fully in economic life across all sectors and on all levels of economic activity.
- (5) The Minister, in consultation with the Minister responsible for finance, shall take appropriate measures in the social and economic fields,

especially relating to access to, and control of, resources by women or to enable the full development and advancement of women.

24. Rights of vulnerable women and children

- (1) Women and children with disabilities, orphans, migrant women and unaccompanied migrant children, refugees or asylum seekers, stateless persons and other vulnerable persons shall enjoy all the rights of women and children specified in this Part, and shall be given special attention and assistance by the Government.
- (2) The Government shall put in place policies, special measures and interventions, in collaboration with the police, social services and health-service providers, to assist and protect vulnerable women and children, especially victims, taking into account the increased risks that they face.

25. Special policies and programmes for victims and women living in rural and peri-urban areas

- (1) The Minister, in consultation with the Ministers responsible for local government, gender, community development, agriculture, finance, health and education, (*insert relevant ministerial portfolios*) shall put in place policies special measures and programmes to meet particular challenges facing victims and women who live in rural and peri-urban areas.
- (2) The Minister shall, in consultation with other competent and appropriate authorities, when putting in place the policies, special measures and programmes, specified in subsection (1), ensure that women and victims, especially children -
 - (a) participate in the formulation and implementation of development programmes affecting them;
 - (b) access adequate healthcare facilities, including comprehensive sexual reproductive health services;
 - (c) benefit directly from social security programmes;

- (d) obtain training and education, formal and non-formal, including functional literacy;
- (e) access community and extension services;
- (f) organise self-help groups and co-operatives in order to obtain access to economic opportunities; and
- (g) access credit, marketing facilities, appropriate technology and land.

26. General policy direction for achieving human rights

- (1) The Government shall develop gender-based violence policies and strategic implementation plans incorporating response, preventative, supportive and protective measures specified in this Model Law, including the following:
 - (a) promoting the equal representation and participation of all gender at all levels and sectors of decision-making and ensuring that gender is championed in all agenda;
 - (b) enacting nationality laws incorporating proper safeguards on nationality and other laws adequately protect refugees and stateless persons;
 - (b) ensuring gender mainstreaming into all policies, structures, systems, programmes and activities in order to make them gender responsive and contribute to the effective achievement of sustainable socio-economic and political development;
 - (c) taking appropriate steps to modify or abolish existing laws, customs and practices which discriminate against women;
 - (d) developing an integrated framework for the empowerment of women and children already in marriages;
 - (e) monitoring the implementation of laws, policies and programmes that affect, or have an impact on, women;
 - (f) providing funds for, and contributing towards establishing, comprehensive and integrated facilities to assist victims;

- (g) providing adequate support to children under the care of a victim;
- (h) ensuring that the location of such support services allow equitable access to the services provided, in particular, by urban and rural populations; and
- (i) providing access to health care, including reproductive health care and HIV prophylaxis.

PART III

ACCESS TO JUSTICE AND PROCEDURAL PROTECTIONS

27. General requirements on access to justice and fair treatment

- (1) A victim shall be treated with compassion and provided with support to recover from the effects of gender-based violence, and the Government shall ensure that confidentiality and a victim-centered approach is respected at all times.
- (2) A law enforcement officer or an appropriate authority shall ensure that—
 - (a) every complaint or arrest is recorded in the occurrence book or register of reported cases;
 - (b) an occurrence book or register of reported cases contain at a minimum –
 - (i) the identity, age and address of the individual reporting a gender-based violence case or of the offender;
 - (ii) the contact details of the next of kin or friend of the victim or the offender;
 - (iii) the reasons for arrest or the gender-based violence;
 - (iv) the exact time, date and place of reporting the gender-based violence complaint or of the arrest and transfer to a place of custody;

(v) the identity of the person recording the gender-based violence complaint, or carrying out the arrest and the person supervising the facility;

(vi) the place where the offender is initially detained;

(vii) the date, time and place the offender was notified of the reasons for arrest or detention;

(viii) the date and time the offender's next of kin or friend was notified of the arrest or detention of the offender;

(ix) the date, time and place of any transfer of the offender, and the identity of those responsible for making or authorizing the transfer; and

(x) the date of release of the offender;

(c) the occurrence book or register is available to the offender, victim, lawyer, judicial institution or other competent authority or relative seeking to trace the offender's whereabouts;

(d) a victim's statement is –

(i) taken promptly, and in a professional, non-judgmental and victim sensitive manner;

(ii) recorded accurately, read back to the victim, and the content is confirmed by the victim once so as minimize the impact on the victim and to prevent secondary victimization;

(e) a medico-legal examination is arranged if appropriate and is done in a –

(i) timely fashion;

(ii) gender sensitive manner that takes into account the unique needs and perspectives of the victim; and

(iii) respectable manner so as to protect her or his dignity and integrity and minimizes intrusion, while abiding by standards for the collection of forensic evidence;

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- (f) all available evidence that can lend credibility to the allegation is collected, and is collected in a respectful manner that maintains the dignity of the victim, including the following:
- (i) promote evidence building that focuses on the credibility of the allegation rather than the credibility of the victim;
 - (ii) consider whether forensic examinations are required and, if so, they shall be done in a timely manner and with due respect, except that virginity testing, two-finger tests and other procedures that draw inferences on the victim's sexual history or consent are prohibited;
 - (iii) ensure the scene is visited in timely fashion and the scene is viewed and protected to preserve evidence;
 - (iv) if scene viability is confirmed, a thorough crime scene examination shall be undertaken;
 - (v) evidence shall be gathered, stored and processed to meet the chain of evidence requirements;
 - (vi) arrangements shall be made for scene and victim evidence analysis;
 - (vii) evidence analysis reports shall be reviewed and used to determine the next steps in the investigation or prosecution process; and
 - (viii) based on the findings, follow-up actions shall be taken to conclude the case expeditiously.
- (g) when working with victims, who are children, that services are tailored to the unique requirements of the age of the child, and the -
- (i) interview rooms and interviews are gender and child friendly, and where necessary or appropriate, ensure anonymity and confidentiality;
 - (ii) procedures are child sensitive;

- (iii) the non-offending parent, guardian, legal representative or appropriate child assistance authority is involved and participates in all actions contemplated or taken;
 - (iv) medical, psycho-social and victim support services are age appropriate; and
 - (v) confidentiality is maintained and disclosure of information related to the child is restricted;
- (h) witnesses and other persons who may have relevant information are identified and interviewed as soon as practicable;
- (3) A victim is entitled to access the mechanisms of justice as provided in this Model Law and to prompt redress and compensation, as prescribed, for any harm suffered by the victim.
- (4) Judicial and administrative mechanisms shall be established and strengthened, where necessary, to enable victims obtain redress and compensation through formal or informal procedures that are expeditious, fair, inexpensive and accessible, and the victim shall be informed of hers or his rights in seeking redress and compensation through such mechanisms.
- (5) The responsiveness of judicial and administrative processes to the needs of a victim shall be facilitated by the following:
 - (a) informing the victim of the role, scope, timing and progress of judicial or quasi-judicial proceedings and disposition of their case, where they have requested such information;
 - (b) allowing the views and concerns of a victim to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, consistent with the criminal justice system;
 - (c) providing proper assistance to a victim throughout the legal process;

- (d) taking measures to minimize inconvenience to a victim, protect the victim's privacy, where necessary, and ensuring a victim's safety, as well as that of their families and witnesses, from intimidation, re-victimization and retaliation; and
 - (e) avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
- (6) The cautionary warning or corroboration rule in gender-based violence judicial and quasi-judicial proceedings is not permitted, and it shall be unlawful to require corroboration of the victim's evidence and creating an assumption of the victim's credibility in sexual assault cases, which credibility shall be the same as the credibility of a complainant in any other criminal proceeding.
- (7) All law enforcement officers shall, in consultation with relevant appropriate authorities, when carrying out an investigation on a suspect of gender-based violence ensure that –
- (a) the suspect is identified, interviewed and when appropriate, arrested;
 - (b) a thorough and well documented report that details investigations conducted and actions taken is completed and reviewed by a senior officer or supervisor to ensure all necessary steps have been taken and recorded;
 - (c) a copy of the report is provided for use by any follow-up investigators and prosecutors; and
 - (d) a copy of the report is shared with other relevant appropriate authorities, service providers and care givers.
- (8) All law enforcement officers, employers, teachers and other concerned institutions shall, throughout the process of carrying out investigations into gender-based violence –
- (a) ensure organisational accountability is established and maintained throughout the investigation process;

- (b) through a senior investigator or supervisor; ensure that the case is properly assessed, an investigation plan is developed and implemented, investigations are appropriately coordinated, and actions and findings are monitored and evaluated on an ongoing basis;
- (c) hold investigators accountable for their actions throughout the investigative process; and
- (d) ensure that someone is assigned to –
 - (i) conduct ongoing crime analysis to identify any signs of increasing violence, and that history and trends in violence are included in the report specified under subsection (7);
 - (ii) ensure investigations are thorough and meet evidentiary requirements;
 - (iii) ensure services are delivered to meet the victim's needs;
 - (iv) ensure that a transparent and accountable complaint response and management system is in place to address all complaints of gender-based violence; and
 - (v) ensure that the response and complaint management system is easily accessible and readily available to all victims and is monitored on an ongoing basis.
- (9) All law enforcement officers, employers, teachers and other concerned institutions shall, when conducting a pre-trial process, whether criminal, civil or administrative, conduct pre-trial hearings in a non-biased and gender sensitive manner and reducing any barriers that place undue pressure on the victim to withdraw charges of gender-based violence.
- (10) The Government shall ensure that the criminal justice system –
 - (a) reflects its regional and international obligations relating to access to justice for gender-based victims;
 - (b) obligates its justice service providers, in exercising their primary responsibilities during investigations and initiating prosecutions,

- empower victims to make informed decisions regarding their interactions with the criminal justice system; and
- (c) considers increased vulnerability, due to statelessness, unequal nationality rights and forced displacement.

28. General provisions on victims' and offender's entitlements and access to legal services

- (1) A victim or offender shall be entitled to the following rights:
- (a) the right to reasonable, accurate and timely notice of any judicial or quasi-judicial proceedings, parole proceedings or release or escape of an offender;
 - (b) the right to be informed of hers or his rights, remedies and support services and on how to obtain them, including information on how to participate in criminal proceedings;
 - (c) the right to seek restitution from the offender or Government;
 - (d) the right to safety and privacy and to be free from hardship during the detection, investigation, prosecution and hearing processes and, which requires the safety, privacy and dignity of victims and their families at all stages of the judicial or quasi-judicial proceedings, such as witness and victim protection programmes, measures to exclude the public from the court or hearing room, use of testimonial aids like screens or close circuit television and non-publication of her or his name or other personal information;
 - (e) the right to access free legal aid and, where appropriate, court or administrative support and interpretation services;
 - (f) the right to speak to an official of one's choice, where possible, whether it be the police or other law enforcement officer; and
 - (g) the right to plead self-defence and for such defence to be taken into account in investigations, assessments, prosecutions and sentences or decisions in a gender-based violence case.

29. Hearings not in open court

- (1) Where, in gender-based violence proceedings, before a judicial institution or quasi-judicial body, the institution or body is satisfied that there are special circumstances that make it desirable in the interests of the proper administration of justice, that the proceedings or any part of the proceedings should not be heard in open court, order that any persons, not being parties to the proceedings or their legal representatives, be excluded during the hearing of the proceedings or any part of the proceedings.
- (2) A judicial institution or quasi-judicial body may order that that a victim or offender testifies away from the other, in different rooms, by use of a separating screen or virtually.
- (3) All proceedings on sexual-related and gender-based violence cases affecting children shall be held in-camera

30. Injunctions or other orders

- (1) A judicial institution or quasi-judicial body may, without prejudice to any other powers of the institution or body, on application made by a victim or offender, whether or not an application has been made by the victim or offender for any other relief, grant an injunction or other order –
 - (a) for the personal protection of the victim;
 - (b) restraining the offender from the use or occupancy of the matrimonial home;
 - (c) restraining the offender from entering or remaining in the premises in which the victim resides, or restraining the offender from entering or remaining in a specified area, being an area, which is the location of the premises in which the victim resides;or

- (d) restraining an offender from entering the place of work of the victim; and
 - (e) obligating public officials to duly enforce the protection order.
- (2) In exercising its powers under subsection (1), a judicial institution or quasi-judicial body may make an order relieving a victim from any obligation to perform marital services or render conjugal rights.
- (3) Without prejudice to the power of a judicial institution to punish a person for contempt, the judicial institution may, if it is satisfied that an offender has knowingly and without reasonable cause contravened or failed to comply with an injunction or other order under this section –
 - (a) order that the offender pay a fine not exceeding two hundred thousand penalty units²²;
 - (b) require that the offender enters into a recognisance, with or without sureties, in an amount that the judicial institution considers reasonable to ensure that the person complies with the injunction or other order, or order the offender to be imprisoned until he or she enters into the recognisance or until the expiration of three months, whichever occurs first;
 - (c) order that the offender delivers, to the judicial institution, documents that the judicial institution considers necessary to ensure compliance; or
 - (d) make such other orders that the judicial institution considers necessary to enforce compliance with the injunction or other order.
- (4) A judicial institution exercising any power under this section may grant an injunction by interlocutory order or otherwise, including an injunction in aid of the enforcement of a decree, where it appears to the judicial institution to be just or convenient to do so, unconditionally or on terms and conditions that the judicial institution considers just.

²²One penalty unit is worth say 200 points thus you multiply the penalty units imposed by 200. Please use style and penalty policy in your jurisdiction to determine the amount of fine to impose.

31. Intervention orders

- (1) Where a person applies to a judicial institution or quasi-judicial body in proceedings relating to a case of gender-based violence for leave to intervene in the proceedings and the judicial institution or quasi-judicial body is satisfied that the person may be able to prove facts relevant to the proceedings that have not been made or may not be made, but ought to be made known, the judicial institution or quasi-judicial body, may at any time before the proceedings are finally disposed of, make an order entitling that person to intervene in the proceedings.
- (2) An intervening order under this section may be made on conditions that the judicial institution or quasi-judicial body may consider necessary in the case.
- (3) A person intervening under this section shall be deemed to be a party in the proceedings with all the rights, duties and liabilities of a party.

32. Restitution

- (1) An offender or third party who is responsible for the offenders' behaviour shall, where appropriate, make restitution to the victim, which restitution shall include compensation in monetary form for the harm, injury or loss suffered by the victim, and other third parties during the commission of the gender-based violence offence, and reimbursement of the expenses for relocation and expenses incurred as a result of the gender-based violence, the provision of services and restoration of rights, except that the payment of restitution shall not act as a settlement of the case of gender-based violence, which case shall be decided on and due justice obtained by the victim
- (2) Where public officials or other agents acting in an official or quasi-official capacity have violated gender-based violence laws, a victim shall receive

restitution from the Government and the public official or agent, as prescribed.

- (3) The Government shall review practices, regulations and laws to ensure that restitution is an available sentencing option in criminal cases in addition to other criminal sanctions, where these do not exist.

33. Financial assistance from Government

- (1) When restitution is not fully available from an offender or other sources, the Government shall endeavour to provide financial assistance to-
 - (a) a victim who has sustained significant bodily injury or impairment of physical or mental health as a result of the gender-based violence; and
 - (b) the family or dependents of the victim or any other person, who have died or become physically or mentally incapacitated as a result of intervening or trying to stop an offender from committing a gender-based violence offence.
- (2) The Minister responsible for finance shall establish, strengthen or expand the national fund for compensation to victims.

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34. Procedures and legal services to ensure access to justice

- (1) A service provider shall ensure, when attending to a victim, that they –
 - (a) are non-judgmental, empathetic and supportive;
 - (b) proceed in a manner that considers and prevents secondary victimization;
 - (c) respond to the victims' concerns in an un-intrusive manner;
 - (d) maintain the victims' privacy;
 - (e) give the victim the opportunity to tell her or his story and have her or his story accurately recorded;

- (f) encourage the victim to explain how the violence has impacted her or him;
- (g) allow victims to express their views and concerns according to their abilities, age, intellectual maturity and evolving capacity.
- (2) Mediation shall not be permitted in any case of gender-based violence, before and during judicial and quasi-judicial proceedings.
- (3) Marriage shall not be a competent decision in cases of sexual assault or rape cases or due to the woman or girl being pregnant as a result of the sexual assault or rape act.
- (4) A judicial institution and quasi-judicial body shall ensure timely and expeditious proceedings and encourage fast-tracking of cases of gender-based violence, where appropriate.
- (5) A judicial institution and quasi-judicial body shall permit and provide free support, including –
 - (a) to be accompanied and represented, in court, a tribunal or administrative committee, by a specialised victims' service or intermediary and, without prejudice to the victim's case, access to service centers, to receive guidance and assistance in navigating the judicial or complaints handling system;
 - (b) access to a qualified and impartial interpreter; and
 - (c) translation of legal documents, where requested or required.
- (6) The Government shall put in place policies, programmes and mechanisms that shall ensure accessible and affordable legal aid and legal services to victims and third parties intervening in a gender-based violence case.

35. Rights of victims during judicial or quasi-judicial proceedings

- (1) A victim shall have the right, throughout the judicial or quasi-judicial proceedings, to –
 - (a) decide whether or not to appear in court or submit evidence by alternative means, including drafting a sworn statement or affidavit,

- requesting that the prosecutor present relevant information on her behalf, or submit taped testimony;
- (b) when appearing in court, give evidence in a manner that does not require the complainant or victim to confront the defendant, including through the use of in-camera proceedings, witness protection boxes, closed circuit television, and video links;
 - (c) protection within the court buildings, including separate waiting areas, separate entrances and exits, police escorts and staggered arrival and departure times;
 - (d) testify only as many times as is necessary;
 - (e) request closure of the courtroom during proceedings, where constitutionally possible; and
 - (f) a gag on all publicity regarding individuals involved in the case, with applicable remedies for non-compliance.
- (2) The following shall apply to all gender-based cases:
- (a) evidence relating to the sexual reputation of the complainant shall be inadmissible as evidence
 - (b) any law, customary law or practice or religious rule or practice shall not be used as a ground for committing gender-based violence;
 - (c) any sentence or penalty imposed shall match the gravity of gender-based offence committed;
 - (d) criminal proceedings shall not be a bar to civil proceedings being initiated against the offender or anyone who acted negligently;
 - (e) pre, during and post requirement procedures and processes for and relating to gender-based violence cases, as provided in the law, shall be clearly explained or provided, as the case may be, to a victim, by a law enforcement officer or an administrative officer handling a complaint of gender-based violence, including the following:
 - (i) the victim's rights and any basic support which may be available to assist the victim;

- (ii) obtaining for the victim, or advising the victim on how to obtain, shelter, medical treatment, legal services, counseling or other services that may be required in the circumstances;
- (iii) advising the victim of the victim's right to lodge a complaint and where the complaint may be best lodged for expeditious handling;
- (iv) informing the victim of remedies available to the victim;
- (v) advising the victim of measures or evidentiary rules that may assist or protect the victim during judicial or quasi-judicial proceedings;
- (vi) advising the victim of the nature and extent of evidence to be presented in judicial or quasi-judicial proceedings relating to the gender-based offence;
- (vii) informing the victim of any protection programmes available for witness; and
- (viii) advising the victim of the availability of restraining and protection orders.

36. Evidentiary rules and procedures

- (1) The evidence of a spouse shall be admissible in any proceedings to prove that marital rape did or did not take place between them during any period.
- (2) The evidence of a spouse shall be admissible in any proceedings to prove that sexual assault did or did not take place between them during any period.

•(3) A witness who, being a party in proceedings relating to gender-based violence, voluntarily gives evidence on the witness's own behalf or is called by a party, may be asked and is bound to answer a question, the answer to which may show, or tend to show, an offence of gender-based violence.

(1)(4) A judicial institution may, in proceedings relating to gender-based violence, receive as evidence of the facts stated in a document purporting to be the original or certified copy of a certificate, entry or record of a birth, death or marriage.

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(2) (5) Law enforcement officers and other investigating entities shall ensure that medical and forensic evidence, where possible, is properly collected and submitted to a judicial institution or quasi-judicial body and such evidence shall be tested timely.

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(3) (6) A victim shall be treated or examined by a doctor without requiring the consent of any person or party, other than the victim, such as a male relative or any guardian.

(4) (7) Law enforcement officers or other investigating entities shall not, unnecessarily, collect, multiple medical and forensic evidence in order to prosecute or convict an offender.

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(5) Law enforcement officers and other investigating entities shall protect the dignity of a victim when gathering evidence in a gender-based violence case and such evidence shall be gathered in the least intrusive manner and within limited sessions, as is possible, and any medical form required for entry of such evidence shall be detailed enough and easily understood by the victim and all parties, including a judicial institution or quasi-judicial body.

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(6) The prosecution and conviction of an offender shall proceed, based solely on the testimony of the victim, without use of the corroboration rule or cautionary warning, where forensic and medical evidence may not be available in court proceedings for a variety of reasons, including the following:

- (a) a victim's lack of knowledge regarding the importance of such evidence;
- (b) fear of medical examination;
- (c) actions taken that may unintentionally compromise the evidence, such as washing after being sexually assaulted or time lapse in seeking services;

- (d) lack of available facilities or personnel trained in the collection of evidence in cases of gender-based violence in a manner sensitive to the victim; or
 - (e) the nature of the gender-based violence.
- (7) A prosecution of a gender-based offence may proceed in the absence of the victim or where a victim is not able or does not wish to give evidence, except that in such cases, the victim shall be informed of matters pertaining to the case throughout all stages of the proceedings.
- (8) A judicial or quasi-judicial body shall not permit the introduction of a victims' sexual history during proceedings relating to gender-based violence.
- (9) A judicial institution or quasi-judicial body, during gender-based violence proceedings, as the case may be, shall not draw any inference only from the length of the delay between the commission of the gender-based violence act and the laying of a report or complaint and the judicial institution or quasi-judicial body shall not deny the issuance of a protection order or other remedy due to lapse of time between the act of gender-based violence and the filing of the application.
- (10) A presiding judicial officer or an administrative official shall, in any case of gender-based violence, inform the any assessor, a jury, if any, or themselves that a delay in reporting the gender-based violence act shall not be held against the victim.
- (11) The legal system, prosecution and sentencing policy with regards to gender-based violence cases shall ensure that –
- (a) evidentiary rules are non-discriminatory;
 - (b) the cautionary warning or collaboration rule, the admissibility of hearsay evidence, the drawing of inferences from the absence of previous consistent statements or from the length of delay between when the offence took place and when the victim reported it to a law enforcement officer, employer or appropriate authority, do not apply;

- (c) introduction of the complainant's sexual history in both civil and criminal proceedings is prohibited when it is unrelated to the gender-based violence case;
- (d) evidence of prior acts of gender-based violence by the offender shall be considered during gender-based violence judicial and quasi-judicial proceedings;
- (e) legal defences such as –
 - (i) "honour" or "provocation" shall not be invoked to escape criminal responsibility;
 - (ii) false accusation shall not be invoked in gender-based violence cases; and
 - (iii) being under the influence of alcohol, drugs or other substances, unless forced, shall not exempt an offender from criminal responsibility; and
 - (iv) a marriage or other relationship shall not constitute a defence to a charge of sexual assault or rape.

PART IV

PROHIBITION OF ALL FORMS OF GENDER-BASED VIOLENCE AND ATTENDANT PROCEDURES

In drafting national legislation a Member State/draftsperson should take into account the justice system and penal/sentencing policy/criminal laws impacting on the matters provided for in this Part and do effective cross referencing, for example, to existing laws on criminal responsibility, marriage, health research, health, other gender-based violence, trafficking etc.; and if need be make consequential amendments to such legislation in order to meet the objectives of this GBV Model Law and harmonise the law to ensure efficacy of the law. Note that where a Member State already has these provisions in its laws then the need to add "from the commencement of the law" is unnecessary and if necessary, replace with appropriate language such as "this Act/ law/ enactment/ etc. This comment applies throughout the Model Law.

Division I: General Requirements for Criminal Justice System

37. Gender-based violence Sentencing Policy and specific prohibitions relating to defences and penalties

- (1) The Minister responsible for the criminal justice system in consultation with the Minister responsible for justice shall develop sentencing policies and penalties to –
 - (a) eliminate all forms of gender-based violence, especially violence against women and children;
 - (b) prohibit the imposition of the death penalty on pregnant or nursing women;
 - (c) prohibit the payment of a fine for gender-based violence committed against children;
 - (d) prohibit the imposition of a fine for offences relating to sexual violence;
 - (e) permit the placing of pregnant women under house arrest;
 - (f) prohibit the imprisonment of pregnant women, until they give birth;
 - (g) prevent and eliminate all harmful, social and cultural practices;
 - (h) eliminate child marriages and forced marriages;
 - (i) eliminate marriage broking;
 - (j) abolish slavery and trafficking in persons; and
 - (k) deter female genital mutilation.
- (2) Any sentence imposed on an offender shall be commensurate with the gravity of the gender-based violence offence and the Minister responsible for the criminal justice system shall ensure that sentencing guidelines are developed to ensure consistency in sentencing.
- (3) A Member State shall, in its penal laws, prohibit co-habitation or the existence of an intimate relationship as a defence to a charge of marital rape.
- (4) Despite any other law to the contrary, a judiciary institution shall not –
 - (a) provide a reduced penalty or exculpate an offender for an honour crime;

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- (b) exculpate an offender if the offender subsequently marries the victim; and
 - (c) provide for the imposition of a lesser penalty for a conviction of an offence due to the fact that the victim is a sex worker or non-virgin.
- (5) Where an offender is a repeat offender, a judicial institution shall impose a more severe penalty, regardless of the level of harm resulting from the gender-based violence.
- (6) A judicial institution shall avoid imposing any fine in cases of domestic violence, if doing so would cause financial hardship to the victim, especially women and children, and if a fine is imposed, the penalty shall be combined with treatment and supervision of the offender through probation or other intervention mechanism.
- (7) Where compensation is an element in penalising an offender, it shall not be a substitute for other penalties, such as imprisonment.
- (8) The Minister responsible for home affairs shall regulate marriage broking and shall–
- (a) put in place measures to minimize the risks posed by international marriage brokers;
 - (b) impose restrictions on the operations of international marriage brokers;
 - (c) restrict a person who is abusive or an offender from using international, regional or local marriage brokers;
 - (d) ensure that women or children who are recruited through marriage brokers are above the age of majority, have given their consent and have been given adequate information about their prospective spouse and legal rights.

38. Measures to protect and promote the rights of victims

- (1) The rights of a victim shall be promoted and protected as follows:

- (a) the identification of victims shall be construed and applied in a manner that is nondiscriminatory on any ground, by the fact that the person has once been a victim or has participated in the sex industry;
- (b) victims shall be provided with holistic services with the aim of re-integrating them into society;
- (c) all relevant law enforcement officers and other relevant institutions shall cooperate in eradicating gender-based violence syndicates operating nationally, regionally and internationally;
- (d) data collection mechanisms shall be harmonised in order to improve research and reporting on the types and modes of gender-based violence offences so as to ensure effective programming and monitoring; and
- (e) bilateral and multilateral agreements shall be established for joint actions against offenders.

39. Intervention programmes for offenders and alternative sentencing

- (1) A judicial institution may order an intervention programme for an offender when sentencing the offender and shall order that the operators of such a programme to work in close cooperation with the victim and a care provider.
- (2) The Minister responsible for crime, order and prisons shall, in collaboration with correctional services or institutions and relevant civil society organisations, shall put into place programmes to combat recidivism linked to gender-based violence and provide for rehabilitation and reintegration interventions for offenders.
- (3) The use of alternative sentencing, including sentences in which the offender is ordered to attend an intervention programme for offenders and no other penalty is imposed, is to be approached with serious caution and only handed down in instances where there shall be continuous monitoring of the sentence by the judicial institution and an appointed care-giver, to ensure the victim's safety and the effectiveness of the sentence.

- (4) A judicial institution shall ensure careful review and monitoring of intervention programmes for offenders and alternative sentencing,

Division II: Offences Related to Gender-Based Violence

40. Prohibition of gender-based violence

- (1) All forms of gender-based violence is prohibited.
- (2) Any person who commits gender-based violence commits an offence and shall be liable, on conviction, to imprisonment for a period not exceeding....²³

41. Collusion in gender-based violence offence

Any person who colludes with another person in the commission of a gender-based violence offence by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person or not to investigate or prosecute a gender-based violence complaint or report, commits an offence and shall be liable, on conviction, to imprisonment for a period not exceeding.....²⁴

42. Other gender-based violence related offences

- (1) A person who—
- (a) removes an organ from any person's body;
 - (b) takes away the child from the lawful mother of that child after she gives birth;

²³ Insert offence and penalty clause according to style used in, and sentencing policy of, Member State

²⁴ Insert offence and penalty clause according to style used in, and sentencing policy of, Member State

- (c) without lawful authority makes, produces or alters any identity or travel document, whether actual or purported, in the course or furtherance of an offence under this law,
 - (d) obtains, procures, destroys, conceals, removes, confiscates, withholds, alters, replicates, possesses or facilitates the fraudulent use of another person's travel or identity document, with the intent to commit or to facilitate the commission of an offence under this law,
 - (e) discloses, without lawful authority, to another person any information acquired in the course of his or her official duties that enables or leads to the identification of a victim or witness.
 - (f) Instigates a person to commit an act of gender-based violence; or
 - (g) Instigates a person to take part in an obscene publication or obscene display;
- commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding XXX²⁵.
- (2) The Government shall review and reform laws relating to harmful criminalisation or coercive practices based on a person's sexuality, sexual activity, HIV status, gender or age, with the aim of abolishing such laws so as to protect a person's security, well-being, health, accessibility to services and reduce vulnerability to gender-based violence.

Division III: Processes and Procedures

43. Factors when imposing imprisonment

- (1) A judicial institution shall take into consideration the following factors when sentencing an offender, and shall impose an imprisonment term, if these factors are present in offences punishable by imprisonment but with an option of a fine or alternative penalty:

²⁵ Insert offence and penalty clause according to style used in, and sentencing policy of, Member State

- (a) the offence involves serious injury or death of the victim or another person, including death as a result of suicide;
- (b) the offence involves a victim who is particularly vulnerable, including a pregnant woman;
- (c) the victim was deprived of liberty;
- (d) the victim is physically or mentally handicapped;
- (e) the victim is a child;
- (f) the offence involves more than one victim;
- (g) the crime was committed as part of the activity of an organized criminal group or more than one offender;
- (h) drugs, medications or weapons were used in the commission of the offence;
- (i) a child has been adopted for the purpose of exploitation;
- (j) the offender has been previously convicted for the same or similar offence;
- (k) the offender is a State or public official;
- (l) the offender is a spouse or conjugal partner of the victim;
- (m) the offender is in a position of responsibility or trust in relation to the victim.

44. No criminal or administrative liability when subjected to gender-based violence

A judicial institution shall not hold a victim criminally or administratively liable for an offence committed by the victim if the offence was committed by the victim as a direct consequence of being subjected to gender-based violence.

45. Matters of facts

- (1) For the purposes of this law, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the judicial institution.
- (2) Where a provision of this law requires the judicial institution to be satisfied of the existence of any ground, fact or any other matter, it is sufficient if the judicial institution is reasonably satisfied of the existence of that ground, fact or other matter.

46. Protection of victims and witnesses

- (1) The Government shall through a competent authority or appropriate authority take all appropriate measures to ensure that a victim or witness of gender-based violence, and his or her family, is provided adequate protection if their safety is at risk, including measures to protect them from intimidation and retaliation by the offender and his or her associates.
- (2) The Government shall ensure that victims and witnesses have access to any existing witness protection measures or programmes.

47. Child victims and witnesses

The Government shall ensure, in addition to any other measures or programmes specified in this law that –

- (a) children who are victims, especially infants, are given special care and attention;
- (b) when the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be treated as such, pending verification of his or her age;
- (c) assistance to children who are victims shall be provided by specially trained professionals and in accordance with their special needs, especially with regard to accommodation, education and care, as

provided in the SADC Model Law on Children in Marriage and Children already in Marriages;

- (d) if the victim is an unaccompanied child or foundling, a competent authority shall –
 - (i) appoint a legal guardian to represent the interests of the child;
 - (ii) take all necessary steps to establish his or her identity and nationality;
 - (iii) make every effort to locate his or her family when this is in the best interest of the child;
- (e) information is provided to the child through the child's guardian or parent, or in case the legal guardian or parent is the alleged offender, the other parent, child protection officer or a care giver;
- (f) a child who is a victim shall be provided with information in a language that they use and understand and in a manner that is understandable to the child;
- (g) in the case of a child who is a victim or witness, interviews, examinations and other forms of investigation shall be conducted by specially trained professionals in a suitable environment and in a language that the child uses and understands, and in the presence of his or her parents, legal guardian or a child protection officer or care giver;
- (h) in the case of a child who is a victim or witness, judicial proceedings shall always be conducted in camera, without the presence of the media.

PART V

EARLY AND EFFECTIVE RESPONSE MECHANISMS AND REFERRAL SYSTEMS

Division 1: General Response and Referral Systems Mechanisms

48. Simplified procedures and processes for effective response and referral

- (1) A competent authority shall put in place effective procedures –
- (a) providing for efficient and simplified procedures and processes for handling investigations, assessments and complaints relating to gender-based violence, such as reporting, receiving, assessing, investigating, determining and appealing a gender-based complaint or report, without reprisals;
 - (b) providing for simpler procedures for seeking medical treatment for victims of gender-based violence without need of a police report or other official reference;
 - (c) for referring and lodging a gender-based violence complaint or report to an appropriate authority, such as the police or other law enforcement officer, victim support unit, statutory body or ministerial department dealing specifically with issues of gender-based violence, gender, women's or children's affairs;
 - (d) for requesting and submitting information on gender-based violence; and
 - (e) for collaborating on investigations and assessments on gender-based violence cases with relevant authorities.
- (2) All law enforcement officers, other appropriate authorities and judicial officers shall –
- (a) develop fast track procedures that can identify cases involving gender-based violence and prioritize them in court dockets, including bail hearings, committal hearings and trial;
 - (b) in cases of victims who are children, trials shall take place as soon as practical, unless delays are in the child's best interest;
 - (c) in civil or administrative matters ensure –
 - (i) timeliness of procedures to ensure timely pre-trial processes and trials;

- (ii) fast tracking of cases involving gender-based violence against women; and
 - (iii) prioritise cases in the court dockets.
- (3) All law enforcement officers, other appropriate authorities and judicial officers shall ensure –
 - (a) the application of fair burden and evidentiary standards;
 - (b) completion of all basic evidence collection before any decisions are made about a case of gender-based violence;
 - (c) there is a clear and complete statement from the victim, as is possible;
 - (d) review all other evidence leading to, or connected with, the act of gender-based violence reported;
 - (e) reduce delay at all stages of the decision-making process in the prosecution of gender-based violence offences;
 - (f) limit the number of case continuances or adjournments; and
 - (g) allow only reasonable delays, taking into account the impact on the victim in civil, family or administrative matters;
- (4) All law enforcement officers, other appropriate authorities and judicial officers shall ensure, as the case may be –
 - (a) the coordination of all key officers and service providers such as the arresting police officer, health care providers, child prohibition officers, anti-gender-based violence monitoring officers and welfare officers;
 - (b) attendance of critical witnesses, victims and offenders are located and served with notices to attend court;
 - (c) that statements, analysis and evidence is collected, compiled and is available for judicial and quasi-judicial proceedings and any additional statements required are secured;
 - (d) that officers are competent to present evidence in court in an ethical, objective and professional manner;

- (e) evidence building is promoted to achieve credibility of the allegation rather than on the credibility of victim or complainant;
- (f) that the victim has access to the entitlements and rights provided in this law and is familiar with the geography of the judicial or quasi-judicial premises and appropriately facilitated with all preparation services, such as transport.

49. Response to gender- based violence complaints by law-enforcement officers

- (1) All law enforcement officers shall –
 - (a) respond promptly to every request for assistance and protection in cases of gender-based violence, even when the person who reports such violence is not the victim;
 - (b) assign the same priority to calls or complaints concerning cases of gender-based violence as to calls or complaints concerning other acts of violence, and assign the same priority to calls or complaints concerning domestic violence as to calls or complaints relating to any other form of gender-based violence;
 - (c) upon receiving a complaint, conduct a coordinated risk assessment of the crime scene and respond accordingly in a language understood by the victim, including the following:
 - (i) interviewing victims, offenders and witnesses in separate rooms to ensure there is an opportunity to speak freely, including children who are victims;
 - (ii) recording the gender-based violence complaint in detail;
 - (iii) advising the victim of the victim's rights;
 - (iv) filling out and filing an official report on the gender-based violence complaint;

- (v) providing or arranging transport for the victim to the nearest hospital or medical facility for treatment, if it is required or requested;
 - (vi) providing or arranging transport for the victim and the victim's children or dependents so they may re-locate, if it is required or requested; and
 - (vii) providing protection to the reporter of the gender-based violence.
- (2) A law enforcement officer who contravenes subsection (1) shall face severe disciplinary action and shall be fined for his or her omission or commission.
 - (3) A law enforcement officer shall arrest an offender if the assessment of the situation gives the officer probable cause to believe that a gender-based violence offence has been committed.
 - (4) A law enforcement officer or prosecuting authority shall ensure that all gender-based violence cases are prosecuted, without any exception, and he or she shall not impose any alternative penalty or try to settle or settle the case.

50. Response to gender- based violence complaints by prosecutors

- (1) A prosecutor shall be responsible for prosecuting gender-based violence cases and not a victim, regardless of the level or type of injury, exploitation or other abuse sustained.
- (2) A victim shall at all relevant stages of the judicial proceedings, be promptly and adequately informed, in a language the victim understands, of –
 - (a) his or her rights and remedies available;
 - (b) the details of relevant judicial proceedings;
 - (c) available services, support mechanisms and protective measures;

- (d) opportunities for obtaining restitution and compensation as specified in this law; and
 - (e) details of events in relation to the case, including specific places and times of hearings; and
 - (f) release of the offender from pre-trial detention or from jail.
- (3) A prosecutor may refuse to institute a prosecution for a gender-based violence offence where the prosecutor believes that there are reasonable grounds to do so.
- (4) A prosecutor shall not discontinue a gender-based violence case unless the Attorney-General or Director of Public Prosecutions gives consent to do so.²⁶
- (5) Where the Attorney-General or the Director of Public Prosecution consents to discontinue a case of gender-based violence the prosecutor shall explain to the victim why the case was discontinued.
- (6) A prosecutor who contravenes this section shall be liable to severe disciplinary measures.

51. Response to gender-based violence complaints by health providers

- (1) The Minister responsible for health shall ensure that the provisions of section 16 (right to health) are implemented by all health providers and shall streamline the processes for accessing sexual reproductive health rights and services, particularly abortion, so victims may have access to safe abortion on demand.
- (2) A service provider shall -
- (a) respect the sexual and reproductive health rights of every woman and child;

²⁶ Insert appropriate competent authority. In some Member States the function is that of the Attorney General who takes into account public interest considerations and not that of the prosecutor or Director of Public Prosecution.

- (b) respect the dignity, privacy and bodily autonomy and integrity of every woman and child accessing sexual and reproductive health services;
 - (c) if the woman or child is capable of fully understanding the nature and possible consequences of the treatment, provide the woman or child sexual and reproductive health services, irrespective of marital status or whether or not that woman or child is accompanied by a spouse or partner, according to a child's evolving capacities;
 - (d) impart the information or counseling necessary for a woman or child to make a decision on whether or not to undergo testing or medical procedures or to accept any service relating to the woman's or child's sexual and reproductive health;
 - (e) record the manner in which the information imparted to the woman or child seeking reproductive health services was given or counseling undertaken, including whether or not it was understood by the woman or child; and
 - (f) obtain the written consent of the woman or child being offered sexual and reproductive health services before performing any test or medical procedure or offering any service.
- (3) A service provider who contravenes subsection ((2) commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding XXX or a fine not exceeding XXX, or to both.²⁷

²⁷*Insert offence and penalty clause according to style used in, and sentencing policy of, Member State. Also put in a clause in the general provisions on offences by body corporates or unincorporated bodies*

52. Developing innovative and proactive models to respond to gender-based violence

- (1) The Government shall be innovative and proactive in developing models of dealing with gender-based violence issues aimed at eradicating gender-based violence, including the following:
- (a) psychosocial and mental health support and counseling about sexuality and gender relations with peer outreach and support systems that are shaped and led by women, men or children;
 - (b) taking intensified action to prevent and respond to gender-based violence, building on a body of evidence of what works;
 - (c) investing in national implementation scale-up and community-level good practices that shift underlying gender norms and unequal power dynamics, including programmes that are led by women, and strengthen complaint and redress mechanisms for violations of human rights and freedoms;
 - (d) responding promptly and taking effective action to prevent domestic violence and giving efficacious support to victims, drawing on knowledge of what works;
 - (e) starting early prevention efforts and approaches to enable girls and boys to question and challenge prevailing gender norms that justify or promote gender-based violence, and ensuring those efforts and approaches take account of the broader gender, social and economic dynamics that shape their lives;
 - (f) reviewing policies and programmes involving men and boys to leverage missed opportunities for undoing harmful masculinities, advancing respect for women's rights and adopting gender-transformative approaches; and
 - (g) meeting men and boys for gender-based outreach and services in spaces where they are comfortable and applying a gender lens that responds to masculine perspectives to reach them more effectively.

- (2) The Government shall ensure a well-coordinated response system, among the various role players in the criminal justice system with respect to gender-based violence, including social workers, health professionals, legal practitioners, police, prosecutors, psychosocial workers, public service financial officers, including the managers of the fund established for mitigating gender-based violence.

DIVISION II: Complaints, Grievance and Appeals Process at Places of Work, Educational Institutions and Communities

53. Adoption or adaptation of grievances, complaints and appeals processes

- (1) The Government shall, through its competent and appropriate authorities, ensure that employers, educational institutions and community-based conflict resolution bodies, adopt or adapt the procedures specified in this Model Law, as or part of its internal grievances, complaints and appeals processes, which processes shall form an integral part of their corporate governance instruments.
- (2) Despite sub-regulation (1), an employer, an educational institution and a community-based conflict resolution body shall not, in developing its internal grievances, complaints and appeals process, modify or do away with any of the provisions specified in this Division.

54. Core principles underlying grievances, complaints and appeals

- (1) The core principles underlying a quasi-judicial proceeding on gender-based violence, including internal complaints handling procedures for reporting and settling grievances or complaints on gender-based violence, shall be as follows:

- (a) effective, efficient, fair and non-discriminative processes for handling complaints, grievances and appeals;
 - (b) expeditious resolution of grievances and complaints;
 - (c) confidentiality of proceedings and their outcomes;
 - (d) observance of the rules of natural justice, founded on the rights of a victim or offender to –
 - (i) be present or be represented;
 - (ii) prepare and present their case;
 - (iii) redress; and
 - (iv) appeal a decision of the quasi-judicial body;
 - (e) having respect for the victim and treating her or him with dignity;
 - (f) carrying out the proceedings with integrity, fairness and openness, without fear of reprisal, attribution, retribution or victimisation;
 - (g) coming up with well-reasoned decisions based on evidence and in the manner specified in this Division; and
 - (h) the right to be notified of a decision in a reasonably concise manner, in a language understood by the victim or offender and simply, with minimum use of legal technicalities.
- (2) A grievance, complaints or appeals process shall include, and underline, measures and mechanisms that ensure the following:
- (a) grievances, complaints and appeals are handled with due regard to a victims' best interest;
 - (b) a victim's grievance or complaint or an offenders defence is adequately addressed;
 - (c) a victim is guaranteed appropriate redress, and where necessary, disciplinary action against the offender is taken or a referral is made to the appropriate authority for further investigation or prosecution of the offence;
 - (d) if a person seeking employment, or admission to an educational institution, has been subjected to discrimination, unfairness, harassment, sexual harassment or other abuse that person should be

entitled to lodge a grievance or complaint to the concerned institution, where the conduct giving rise to the grievance took place; and

- (e) the institution concerned be obliged to—
 - (i) deal expeditiously, sensitively and confidentially with any allegation of discrimination, unfairness, harassment, sexual harassment or abuse;
 - (ii) protect a victim against victimisation, retaliation, reprisal, attribution or false accusation for lodging a grievance or complaint or reporting the gender-based violence;
 - (iii) explain the procedures to address the gender-based violence grievance or complaint;
 - (iv) communicate the grievances and complaints policy and processes effectively to all members of their institution;
 - (v) communicate decisions to a victim and offender, which decision shall consist of a summary of the matter and the right to appeal if a victim or offender is not satisfied with the decision; and
 - (vi) designate an officer, dealing with human resources, to whom complaints or grievances of gender-based violence may be lodged and who shall provide confidential advice and counseling.
- (3) A victim need not exhaust the grievances, complaints or appeal procedures, before prosecuting a gender-based violence offence or instituting civil proceedings.

55. Mandatory requirements for grievances, complaints and appeals policy

- (1) A grievances, complaints and appeals policy shall ensure fair, equal and without bias treatment to all.
- (2) A grievances, complaints and appeals policy shall –

- (a) contain provisions to ensure victims are able to protect their rights and develop trust in the functioning of the grievances, complaints and appeals process;
- (b) ensure that victims are free to lodge or report grievances or complaints and appeal decisions made without fear of reprisal, attribution, retribution or victimisation;
- (c) embed adequate whistleblower provisions to encourage morally upright and lawful behaviour;
- (d) establish internal reporting channels that ensure clear and transparent responsibilities in the handling of grievances, complaints, and appeals;
- (e) ensure that a supervisory officer has sufficient powers to handle grievances, complaints or appeals, including the power to give redress or make referrals, where appropriate, or to have ready access to a senior officer for a decision on a matter;
- (f) include a plan for training and testing the knowledge of supervisory officers and human resource officers in matters relating to the handling of grievances and complaints on gender-based violence;
- (g) ensure quick and effective resolution of grievances, complaints and appeals;
- (h) provide for measures and mechanisms for overseeing grievances, complaints and appeals procedures, to ensure that they are in compliance with the law; and
- (i) provide for the development of simplified step-by-step procedures for handling grievances, complaints and appeals, which shall enable employees understand the procedures, without too much difficulty, and to access such procedures.

56. Conflict of interest

- (1) A grievance, complaints or appeals process shall have disclosure of conflicts of interest, and ensure that a supervisory officer or a person presiding over the grievance proceedings or appeals process –
 - (a) has no financial, professional, family or social relationship, or acquire any financial or personal interest which might compromise their impartiality before or during, a grievance, complaints or appeals process;
 - (b) discloses, before or at the commencement of the grievance, complaint or appeals process, any existing or potential conflict of interest, which may affect their impartiality and reasonably raise doubts as to their impartiality;
 - (c) discloses circumstances which may lead to a conflict of interest as soon as the circumstances become known to them if, before or at the commencement of a grievance, complaints or appeals process, the circumstances requiring disclosure are not known;
 - (d) withdraws from the grievance, complaints or appeals process, if it discloses a conflict of interest, irrespective of the expressed desires of a victim; and
 - (e) shall not accept any gift or hospitality from a victim, an offender or a witness.
- (2) The duty to disclose an existing or potential conflict of interest shall be a continuing duty which shall not cease until the grievance, complaints or appeals process has been concluded.

PART VI

PREVENTION, PROTECTION, SUPPORT AND INTERVENTION MEASURES FOR VICTIMS

57. Preventative measures and interventions

- (1) The Minister shall, in consultation with the relevant competent and appropriate authorities, put in place preventive, protective, supportive and intervention measures to eradicate gender-based violence and assist victims, including the following:
- (a) establish, where possible, at least the following minimum standards of support services for victims:
 - (i) national phone hotline where all victims may obtain assistance by phone, around the clock, and free of cost, from wherever they may be or if referred to by service providers;
 - (ii) shelter or refuge place for, providing safe emergency accommodation;
 - (iii) qualified counseling and assistance in finding long-term accommodation;
 - (iv) victim's advocacy and counseling center which provides proactive support and crisis intervention for victims, including legal advice and support, as well as long-term support for victims;
 - (v) specialised services for particular groups of women, such as specialized services for immigrant victims, victims of trafficking and victims who have suffered sexual harassment at the workplace, where appropriate; and
 - (vi) rape crisis centers.

- (b) implement in collaboration with relevant stakeholders' gender-based violence prevention initiatives and programmes that address the root causes of gender inequality and achieve transformed attitudes, beliefs and norms.
- (2) The Government shall provide budgetary support for the installation and maintenance of shelters by both the public and private sectors.
 - (3) The Minister responsible for local authorities shall ensure that all local authorities or municipalities, plan, budget and establish shelters for victims in their jurisdictions.
 - (4) The Government shall, in collaboration with CSOs, ensure that all provinces establish intervention centers, where victims are proactively offered assistance, after interventions by the police, which shall be financed through public funds on the basis of a five-year plan and contractual relationships with CSOs.

58. Basic benefits and services to victims

- (1) The Government shall ensure that a victim receives the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.
- (2) The Minister responsible for health shall provide for immediate access to comprehensive and integrated services, including pregnancy testing, emergency contraception, abortion services, treatment for sexually transmitted diseases and injuries, post-exposure prophylaxis and psychosocial counseling, for victims of sexual violence at the expense of the State.
- (3) Access to the services, specified in subsections (1) and (2), shall not be conditional upon the victim reporting the violation to the police or other law enforcement officer.
- (4) A victim shall be informed of the availability of health and social services and other relevant assistance which shall be readily accessible to them.

- (5) In providing services and assistance to victims –
- (a) attention shall be given to victims who have special needs, due to the nature and extent of the harm inflicted or other factors relating to the health status of the victim;
 - (b) the immigration status of such victims shall not be negatively taken into account; and
 - (c) the fact that the victim was unable or un-willing to participate in the investigation or prosecution of the gender-based offence shall be irrelevant or immaterial.
- (6) The Government shall establish public safety homes, shelters, public foster homes, crisis rape centers or any other public facility for the residence, healthcare and maintenance of victims.
- (7) The Government shall ensure that support and assistance to victims shall include:
- (a) safe and appropriate accommodation;
 - (b) health care and necessary medical treatment, including, where appropriate, free optional confidential testing for HIV and other sexually transmitted diseases and access to safe and legal abortions;
 - (c) counseling and psychological assistance, on a confidential basis and with full respect for the privacy of the victim, in a language that he or she understands;
 - (d) information regarding legal assistance to represent his or her interests in any investigation, including the obtaining of financial assistance; and where applicable, assistance to make applications for obtaining immigrant status and support for victims, in terms of continuity in accessing key services and other life requirements, such as education, medical and health services.
- (8) In appropriate cases and to the extent possible, the Government shall ensure that assistance is provided to the accompanying dependents of the victim.

- (9) A competent or appropriate authority shall ensure that victims are not held in any detention facility as a result of their immigration status.
- (10) A competent or appropriate authority shall ensure that any assistance or services provided to a victim is on a consensual and informed basis, while taking due account of the special needs of children and other persons in vulnerable positions.

59. Temporary Protection orders

- (1) A judicial institution shall, despite any other law, issue a temporary protection order on an application of -
 - (a) a victim, a law enforcement officer or an appropriate authority; or
 - (b) a person who has information from a person who has personal knowledge or information relating to an act of gender-based violence having been committed.
- (2) A judicial institution shall issue a temporary protection order—
 - (a) without any requirement that the victim institute other legal proceedings, such as criminal, civil or divorce proceedings, against the offender;
 - (b) in addition to and not in lieu of any other legal proceedings; and
 - (c) which may be introduced as a material fact in any subsequent legal proceedings.
- (3) A judicial institution may, when issuing a temporary protection order, in accordance with subsections (1) and (2), impose any condition or give such direction, as the judicial institution considers necessary to protect or provide for the safety of the victim, including moving the victim to a place of safety.
- (4) A temporary protection order issued under this section may –
 - (a) order the offender to stay a specified distance away from the victim and her children (*add other people if appropriate*) and the places that they frequent;

- (b) order the offender to provide financial assistance to the victim, including payment of medical bills, counseling fees or shelter fees, monetary compensation and, in cases of domestic violence, mortgage, rent, insurance, alimony and child support;
 - (c) prohibit the offender from contacting the victim or arranging for a third party to do so;
 - (d) restrain the offender from causing further violence to the victim, her dependents, other relatives and concerned persons;
 - (e) prohibit the offender from purchasing, using or possessing a firearm or any dangerous weapon specified by the judicial institution;
 - (f) require that the movements of the offender be electronically monitored;
 - (g) instruct the offender, in cases of domestic violence, to vacate the family home, without any way ruling on the ownership of such property, or to hand over the use of a means of transportation, or other essential personal effects, to the victim; and
 - (h) direct that a law enforcement officer or other appropriate or competent authorities shall not remove a victim from the home against her will.
- (5) A person who, knowing or has been notified that a protection order has been issued, in accordance with subsection (1), disobeys or disregards such an order, commits an offence and shall be liable, on conviction, to a fine not exceeding XXX or to imprisonment for a term not exceeding XXX, or to both.²⁸

²⁸insert offence and penalty clause according to style used in, and sentencing policy of, Member State

60. Financial empowerment programmes for women and children²⁹

- (1) The Government shall establish programmes and incentives for families, especially women and children, to economically and financially empower them and ensure women's ability to manage her own affairs and pay for the children's education and development, including the following:
 - (a) opportunities for women and children, especially girls to attend primary, secondary and tertiary education, life skills and vocational training;
 - (b) financial and material assistance for women and children whose families live below the poverty datum line; and
 - (c) opportunities for women and children to earn money through entrepreneurship and work in the public sector through human resource development programmes.
- (2) The Government may establish incentives for victims to assist them live a normal and fulfilled life, such as –
 - (a) providing cash transfers for daily living; or
 - (b) giving scholarships and bursaries to children, under the care of the victim, up to tertiary level.

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61. Educational and social measures to empower women and children

- (1) The Minister responsible for education shall establish programmes to –
 - (a) support the retention of children, especially girls, in school;
 - (b) support positive discrimination and broadening opportunities in relation to education for women and girls, poor performers and those with special needs;
 - (c) support innovative programmes for adolescent girls that provide alternatives to marriage;

²⁹ Cross-reference to laws on children, gender equality and equity and employment. This provision has been inserted to guide the drafter on the extent of economic empowerment to prevent gender-based violence.

- (d) target families in communities where child marriage and gender-based violence is prevalent by providing advocacy programmes on the consequences of child marriage and gender-based violence; and
 - (e) support awareness programmes in primary and secondary schools on sexual reproductive health matters and the consequences of gender-based violence.
- (2) The Ministry shall, in liaison with the Ministry responsible for education and other relevant appropriate authorities, make learning of the nature, causes and consequences of gender-based violence compulsory, as components of a comprehensive sexuality education subject, in public and private learning institutions, including vocational, religious, non-formal and indigenous learning systems and institutions.
- (3) For purposes of subsection (2), the Ministry shall, in liaison with the Ministry responsible for education and other relevant competent and appropriate authorities, ensure that-
- (a) the content, scope and methodology of a comprehensive sexuality education subject is based on aged appropriate, scientifically accurate, evidence-informed and human rights data and information;
 - (b) every teacher or instructor of a comprehensive sexuality education subject is adequately trained and duly qualified to teach the subject; and
 - (c) the content of a comprehensive sexuality education subject –
 - (i) includes sexual and reproductive health and rights education;
 - (ii) provides opportunities for students or learners to discuss and analyse gender inequality and inequity;
 - (iii) includes lessons on what healthy relationships are like, how to have them, and interpersonal skills, so children and teenagers learn how to identify abuse; and

- (iv) provides advocacy or lessons that ensure that a woman or a child that attends the learning institution is accepted and not discriminated against.

62. Surveillance to protect victims

- (1) Any person who has reasonable grounds to believe that a person is the subject of gender-based violence shall, as soon as that person witnesses the offence or receives a report or complaint of gender-based violence –
 - (a) report the matter to a police officer or other law enforcement officer, competent authority or appropriate authority; or
 - (b) where emergency protection is required, bring the victim before a judicial institution for a protection or restraining order so as to move the victim to a place of safety.
- (2) A police officer, other law enforcement officer, competent authority or an appropriate authority shall, upon receipt of a report or complaint on gender-based violence, made in accordance with subsection (1)(a), immediately or as soon as is practicable, take the victim to a place of safety until the victim is brought before a judicial institution.
- (3) Where a victim is brought before a judicial institution, in accordance with subsection (1) or (2), the judicial institution shall make a protection order for the placement of the victim in a safety home or, in case of a child victim, temporarily commit the child into foster care.
- (4) A judicial institution may order the following:
 - (a) that the victim returns to the victim's parents or in the case of a child victim, be given into the custody of the non-offending parent or guardian; and
 - (b) if the judicial institution is satisfied that the offender has been engaged in drug abuse, that he or she be committed to a harm reduction center, a center for the re-integration of offenders or be accorded professional counseling in an appropriate place.

- (5) A judicial institution may in a protection order, made in accordance with subsection (3) or (4)-
- (a) specify directions as to how the protection order shall be executed and enforced;
 - (b) impose conditions that shall be complied with;
 - (c) define the duration of the protection order; and
 - (d) attach any other condition as the judicial institution may consider necessary in the circumstances.³⁰

63. General measures, interventions, protections and entitlements relating to families

- (1) The Government shall ensure that the following measures and interventions are put in place for families, especially women and children, that need special care and protection, at no cost to the family or victim:
- (a) assistance and maintenance for the family;
 - (b) appropriate health facilities for the treatment, counseling, rehabilitation and care of the family; and
 - (c) other facilities, programmes and support structures and appropriate measures and interventions to promote the safety, physical and psychological rehabilitation of the family members.
- (2) Families, especially women and children, as the case may be, who are vulnerable and at risk of gender-based violence, shall be entitled to the following:
- (a) free and particularised legal services;
 - (b) assistance for care and maintenance;
 - (c) health care and social services;

³⁰*This section may be amplified and drafted by the Member States in accordance with the procedures and processes provided under the judicial codes/high court rules with special reference to gender - based violence*

- (d) if the victim is a woman –
 - (i) divorce from a violent husband and adequate alimony to the woman and children and the right to stay in the family dwelling after divorce;
 - (ii) social insurance and pension rights when divorced;
 - (iii) expedited distribution of property, and other relevant procedures;
 - (iv) careful screening of all custody and visitation cases so as to determine whether there is a history of gender-based violence by the person claiming custody;
 - (v) a statutory presumption against awarding child custody to the partner who has a history of gender-based violence; and
 - (vi) availability, in appropriate cases, of professionally run supervised visitation centers; and
- (e) where a person has acted in self-defense, or who has fled in order to avoid further gender-based violence, the person shall not be classified as a offender, or have a negative inference drawn against her or him, in custody and visitation decisions.

64. Requirements relating to safety homes or shelters

- (1) A safety home or shelter, established in accordance with the law, shall –
- (a) secure the physical safety of victims;
 - (b) provide basic material support for the care of victims;
 - (c) offer counseling and rehabilitation services to victims; and
 - (d) in cooperation with the Minister responsible for education, offer certain educational programmes, as may be prescribed, to victims³¹.

³¹ A Member State should provide in a separate part of the national legislation for establishment of public and private safety homes, foster homes and other facilities and for the standards for such facilities, approvals, regulatory provisions as to stay, discipline and maintenance and closure of such facilities. Further, provide for procedures for committal and responsibilities of persons running such facilities. Most of these provisions already exist in domestic violence a children legislation, juvenile laws and other juvenile justice system laws in some Member States and there may, therefore, only be need for effective cross referencing

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- (2) A Member State shall issue guidelines for the establishment, management and maintenance of safety homes and shelters

65. Strengthening community networks

- (1) The Minister shall, in order to mitigate the effects of gender-based violence –
- (a) establish contact with, and sensitise, traditional leaders and religious authorities on the consequences of gender-based violence;
 - (b) establish training programmes for the training of traditional and religious leaders on –
 - (i) social and cultural practices impacting adversely on gender-based violence; and
 - (ii) effective management of gender-based violence cases.
 - (c) assist in the establishment of community networks for the surveillance of offenders and prevention of gender-based violence; and
 - (d) encourage the development of community centers or homes for purposes of –
 - (i) providing psychological and physical support to victims;
 - (ii) providing emergency facilities to accommodate and care for victims;
 - (iii) supporting the re-integration of victims into community life without discrimination;
 - (iv) re-habilitating offenders who have served their sentences or who have been acquitted on technicalities or due to insufficient evidence;

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- (v) launching and maintaining gender-based violence advocacy programmes for the prevention and eradication or gender-based violence; and
 - (vi) providing an accessible and gender-neutral place for reporting gender-based violence cases and offenders.
- (2) The Minister shall, in collaboration with other competent and appropriate authorities, encourage and assist local communities to establish community watch or surveillance committees and other support assistance and facilities, under the auspices of traditional leaders or religious authorities, for the prevention of gender-based violence.
- (3) The Minister shall, engage with women's rights defenders and other women's groups, particularly those representing gender-based violence survivors and victims' and ensure that such groups are supported and resourced to ensure that the experiences and perspectives of those most affected inform law implementation and enforcement.

66. Access to general services

- (1) The Government shall ensure that all services shall –
 - (a) be easily accessible to all victims as and when needed; and
 - (b) all service providers shall maintain the confidentiality and privacy of victims.
- (2) All law enforcement officers, victim support units and other institutions and facilities handling or managing victims shall ensure the safety and well-being of victims.
- (3) The Government shall ensure that –
 - (a) cases of gender-based violence are conducted in a gender sensitive environment; and
 - (b) all service providers availed with information by victims keep such information with the utmost confidentiality, except where required in a judicial or quasi-judicial proceeding.

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67. Funding of programmes, measures, interventions, incentives and services

The Government shall support the programmes, measures, interventions, incentives and services specified in this Part from moneys paid out of an anti-gender-based violence fund established in accordance with section 76 or such other funds, directly budgeted for such purposes, and appropriated by the Government to a competent authority or an appropriate authority for purposes of this law.

PART VII

ACCESS TO DATA AND INFORMATION, CAPACITY BUILDING, PUBLIC AWARENESS, MONITORING AND EVALUATION

68. Evidence based information and data

- (1) The Ministry shall develop and implement effective evidence-based policies and programmes for eradicating gender-based violence.
- (2) The Ministry shall set up disaggregated data collection, surveillance systems and national observatories in line with the objectives of regional and international human rights instruments, and shall –
 - (a) collect data on the –
 - (i) incidence and prevalence of gender-based violence;
 - (ii) number and status of immigrants and displaced persons arising from gender-based violence incidents; and
 - (iii) number of deaths occurring due to gender-based violence, the nature of the gender-based violence and the gender; and

- (b) maintain an up-to-date record of information on the scope of gender-based violence against women and children and keep track of emerging gender-based violence offences against women and children;
- (c) gather statistical data, at regular intervals, on the causes, consequences and frequency of all forms of gender-based violence against women and the effectiveness of measures to prevent, protect, support, punish and eradicate gender-based violence against women; and
- (d) disaggregate statistical data by sex, race, age, ethnicity, relationships between victims and offenders and other relevant characteristics on gender-based violence.

69. Access to information and data on gender-based violence and human rights

- (1) The Ministry shall establish information and data systems and ensure efficient access, by victims, parents, other members of a victim's family and the public, to anonymised statistics and information on gender-based violence, human rights, gender equity and equality, socio-economic programmes and opportunities for the empowerment of victims, especially women and children, and other matters concerning support services and assistance for victims.
- (2) Women and girls, regardless of their marital status, shall have equal access to the information and data systems, established in accordance with subsection (1), including gender sensitive HIV and AIDS-related information and data, health services and girl-specific sexual and reproductive health services data.
- (3) The Government shall ensure that victims are provided with –
 - (a) information on the nature of protection, assistance and support to which they are entitled and the possibilities of assistance and

support by non-governmental organizations and other agencies, as well as information on any legal proceedings related to them; and

- (b) information in a language that the victim understands, and if the victim cannot read, he or she shall be briefed by an appropriate or competent authority.

70. Public awareness

- (1) The Ministry shall promote public awareness about the nature, causes, consequences and means of prevention of gender-based violence through comprehensive nationwide evidence-based campaigns conducted in liaison with appropriate authorities, CSOs or other agencies at local and national levels.
- (2) The public awareness, referred to in subsection (1), shall-
 - (a) use evidence-based approaches that have proved to be successful elsewhere;
 - (b) be adapted to the age, gender and nature of activities of the targeted groups and address social, cultural and religious constraints, including masculinity and unequal gender relations;
 - (c) be carried out in schools and other institutions of learning, workplaces and rural and urban communities;
 - (d) be guided by evidence on potential opportunities for, and barriers to, behavior change, and include effective measures to ensure that information, education and communication, translate into behavior and attitude change;
 - (e) sensitise the population about violence against women and children as a manifestation of inequality and a violation of women's and children's human rights;

- (f) heighten knowledge of laws enacted to address gender-based violence against women and children and the remedies provided by law;
 - (g) sensitise the public of the challenges, stigma and discrimination against victims and how to overcome these;
 - (h) address misinformation about perceived benefits and advantages of harmful practices; and
 - (a) promote the acceptance and integration of victims into society, especially the workplace and educational institutions.
- (3) In undertaking public awareness, as referred to in subsection (1), the Ministry, competent authority, appropriate authority or other agency, shall collaborate with relevant public and private stakeholders, including CSOs and the media, and ensure the meaningful involvement and participation of women and children, victims and traditional authorities.
- (4) The public awareness, undertaken in accordance with this section, shall ensure the sensitization and engagement of men and boys on gender-based violence and effects of gender inequality and inequity on the family, society and economic development and challenge dominant religious or traditional conceptions of masculinity.

71. Information and media

- (1) The Ministry and every competent and appropriate authority shall ensure that its relevant departments design programmes that –
- (a) take into consideration cultural, religious, age, status, locality and gender specificities in dealing with victims;
 - (b) challenge gender inequality and inequity, gender-based violence and attitudes of discrimination and stigmatisation against victims; and
 - (c) include the role of the media in reporting and highlighting the issues and effects of gender-based violence.

- (2) The Ministry shall develop strategies with a clear action plan on eradication of all forms of gender-based violence, including publication of gender-based issues by the media.
- (3) The public and private media, including the advertising industry, shall develop policies and codes of conduct to increase awareness of, and sensitivity to, the effects of gender-based violence, human rights and freedoms of women and children, prevent the sensationalisation of women's and children's issues and the use of inappropriate language and stereotyping when reporting and advertising on women and children related issues, especially those relating to gender-based violence.

72. Training of public officials

- (1) The Government shall provide for the training of child prohibition officers, judicial officers, law enforcement officers, employers, teachers, academics, immigration officers, traditional leaders, religious authorities, other relevant public officers and policy makers, at all levels of the State on -
 - (a) the dangers and effects of gender-based violence;
 - (b) gender equity, equality and human rights;
 - (c) the legal protections that must be activated and put in place to address the real threats of gender-based violence and the need for effective means and mechanisms for victims to access justice;
 - (d) the link between national development, economic growth, the economic empowerment of society and gender-based violence;
 - (e) reporting on matters related to gender-based violence and the processes and procedures related to handling of cases of gender-based violence and the programmes and support services for victims; and
 - (f) the objectives and requirements of this law.

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(2) The Government shall ensure that training on gender-based violence is periodically reviewed so as to ensure—

- (a) training curriculum of is updated in order to include updated information on gender-based violence and technological and social mechanism for dealing with gender-based violence; and
- (b) capacity development at all levels of policing.

73. Regular monitoring, evaluation and reporting

- (1) The Government shall allocate adequate funds to ensure the effective and regular monitoring, evaluation and reporting of –
 - (a) customary, religious and national laws, policies, strategies, measures and interventions relating to gender-based violence, including prohibitions and prevention and intervention measures, to ensure compliance with this law; and
 - (b) technical, human and financial resources which are available to ensure that such resources are adequate for the implementation of the measures and interventions provided in this law.
- (2) The Government shall, where no competent authority exists to monitor and report on gender-based violence as provided in this law, establish a national coordinating body that shall develop and maintain national guidelines and procedures for identification of victims and tracking their welfare and well-being.
- (3) A competent authority or national coordinating body shall develop and disseminate, to law enforcement officers, judges, appropriate authorities, legal women's clinics, bar associations, prosecutors and legal aid officers and other professionals who are likely to encounter victims, information and material relating to gender-based violence, offenders and victims, including, issue of a procedural manual on the identification and referral of victims.

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PART VIII

ENFORCEMENT, COMPLIANCE AND REGULATORY

74. General State action

- (1) The Government shall –
 - (a) submit State Reports to the SADC PF, and other international and regional bodies, reports on gender-based violence, annually or as required under various regional and international human rights instruments and shall, in such State Reports, highlight the status and measures taken by the State towards preventing and eradicating gender-based violence;
 - (b) take action to promptly follow up on the recommendations made by SADC PF and other international and regional bodies on measures to be taken to prevent and eradicate gender-based violence;
 - (c) engage constructively with relevant stakeholders, including CSOs, the media, traditional and religious leaders and communities, towards the prevention and eradication of gender-based violence;
 - (d) provide a conducive legal and policy environment for CSOs, to enable CSOs advance advocacy, research and litigation to prevent, and assist victims of, gender-based violence;
 - (e) address the structural causes of gender-based violence through strategies that –
 - (i) promote gender equality and equity;
 - (ii) empower women, children and victims to vitiate poverty and enhance their socio-economic capacities such as, increasing access to employment, loans and social protection schemes;
 - (iii) challenge gender stereotypes and harmful practices;
 - (iv) engage stakeholders on initiatives to eradicate gender-based violence;

- (v) engage families on initiatives to eradicate domestic violence by involving them in programmes that promote positive, non-violent and non-discriminatory forms of family relationships; and
 - (f) strengthen the participation of key stakeholders in addressing gender-based violence by sensitising them on laws for the prevention and eradication of gender-based violence and by supporting and funding community watch and surveillance committees and call centers to ensure their sustainability.
- (2) The Ministry shall, bi-annually, table a report to the Legislature (*insert appropriate term, such as National Assembly or Parliament*) on the activities undertaken to fulfill of the requirements stipulated in this Part.

75. Notification and reporting mechanisms

- (1) Every appropriate authority shall establish notification and reporting mechanisms to inform persons under threat of, or to report on, gender-based violence, which shall include practical steps to be taken by a woman and child or other persons to avoid being a victim.
- (2) The practical steps to be taken, as required in subsection (1), may include-
 - (a) placing one's passport in safe keeping;
 - (b) reporting offenders to law enforcement officers, service providers, anti-gender-based monitoring officers or committees, prohibition officers or any appropriate authority or committee and informing them when a victim is being taken out of the country, on suspicion that the person is or is going to be a subject of trafficking or exploitation.
- (3) the Ministry shall, in order to encourage persons to report gender-based violence-
 - (a) establish toll free help lines, including the adoption and allocation of SADC harmonised toll-free helpline numbers to facilitate

- cross-border protection of persons that may be or are subjects of gender-based violence;
- (b) provide incentives, protection and confidentiality guarantees to informers reporting on gender-based violence;
 - (c) provide for the creation of a specific parliamentary multi-sectoral committee to oversee implementation of the law and report back to the Legislature on a regular basis;
- (4) The functions of a parliamentary committee shall include –
- (a) information gathering and analysis;
 - (b) interviews with victims, advocates, attorneys, police and other law enforcement officers, prosecutors, judges, probation officers and service providers regarding gender-based violence;
 - (c) assess the legal system and the effectiveness of remedies, offences and penalties relating to gender-based violence offences, including obstacles faced by particular groups of women in accessing justice;
 - (d) recommending proposals to amend the law on gender-based violence, if necessary; and
 - (e) recommending the provision of adequate funding for mechanisms to prevent and eradicate gender-based violence.

76. Anti-gender-based violence fund or alternative financial resources

- (1) The Minister shall, with the approval of the Minister responsible for finance, establish an anti-gender based violence fund or recommend to the Minister responsible for finance, in consultation with a portfolio Minister, that funds be directly allocated to a portfolio ministry for purposes of supporting the general implementation of the measures, interventions, capacity building programmes, public sensitisation and

- advocacy campaigns and other matters related to eradication of gender-based violence.
- (2) An anti-gender-based fund, established in accordance with subsection (1), shall consists of such moneys as may –
- (a) be appropriated by the Legislature for purposes specified in subsection (1) and such other purposes as specified in this Model Law;
 - (b) be paid to the anti-gender-based fund by way of grants or donations; and
 - (c) otherwise vest in or accrue to the anti-gender-based fund.
- (3) The Minister may, for purposes of an anti-gender-based fund, or a portfolio Ministry for purposes specified in subsection (1), accept moneys by way of grants or donations from any source within the country and, subject to the approval of the Minister responsible for finance, from any source outside the country.
- (4) There shall be paid from an anti-gender-based fund or such monies as may be appropriated to a portfolio Ministry for purposes specified in subsection (1)–
- (a) the cost arising from prevention, support, protection and intervention, measures and programmes put in place for purposes of preventing and eradicating gender-based violence;
 - (b) the cost of establishing or constructing public safety homes or shelters, crisis rape centers, public information and advisory centers, emergency call in centers or any other public facility for the residence, care and maintenance of victims;
 - (c) material support for victims of domestic violence;
 - (d) any matter connected with the rescue, rehabilitation and re-integration of victims of gender-based violence;
 - (e) training and capacity building for persons connected with the provision of shelter, rehabilitation and re-integration;

- (f) training and capacity building for public officials and private persons specified in this law;
- (g) providing health care and other assistance to victims of gender-based violence;
- (h) rehabilitation and intervention measures for offenders as specified in this law; and
- (i) any other costs incurred in carrying out the objectives and purposes of this law.³²

77. Anti-gender-based violence monitoring officers or constitution of committee, their functions and duties

- (1) The Ministry shall appoint public officers as anti-gender-based violence monitoring officers or gender-based violence focal persons or constitute a committee for monitoring gender-based violence for purposes of this law.
- (2) The Government shall ensure that it has in place competent and appropriate authorities and service providers to provide to victims the benefits and services provided in this law.
- (3) It shall be the duty of anti-gender-based violence monitoring officers or a committee constituted in terms of subsection (1), in consultation with relevant competent and appropriate authorities, service providers, private sector, academia and CSOs, to –
 - (a) prevent gender-based violence;
 - (b) collect evidence for the effective prosecution of persons contravening this law;

³²*Replace with Act if need be. Insert appropriate standard provisions for procedures to protect the monies of the fund from being misappropriated and for payments out of the fund, in accordance with standard procedures in a Member State.*

- (c) advise individuals or counsel communities generally not to indulge in promoting, helping, aiding, abetting or otherwise allowing gender-based violence;
 - (d) create awareness of the consequences and effects of gender-based violence;
 - (e) sensitize communities on gender-based violence;
 - (f) furnish, to the Minister, periodical returns and statistics on gender-based violence, including areas with high prevalence rates; and
 - (g) perform such other functions and duties as may be assigned by the Minister and prescribed by any other law.
- (4) Nothing in this section shall prevent any competent or appropriate authority from performing the duties and exercising the functions specified in subsection (3).
- (5) A suit, prosecution or other legal proceeding shall not lie against a woman and an anti-gender-based violence and monitoring officer, committee member, competent and appropriate authorities and service providers, in respect of anything done or intended to be done in good faith when carrying out their duties and functions specified in this law.

78. Compliance notices³³

- (1) The Minister may issue a compliance notice to an appropriate authority or private body which the Minister, on reasonable grounds, believes is not substantially complying with this law or other relevant enactment impacting on the objectives of this law.³⁴

³³*Insert provisions relevant to Member States enforcement and compliance systems for cases where a compliance notice is not complied with or appropriate action is not taken*

³⁴*Draft in accordance with Member States style for reference of the law or cross reference to other laws, for example, use "Act" and name and cite the relevant law.*

- (2) A compliance notice, referred to in subsection (1), shall clearly state -
- (a) the form, conditions and time frames for submission of a report on any matter requested by the Minister;
 - (b) the address where the report shall be submitted;
 - (c) who the addressee is;
 - (d) the provisions of this law or other relevant enactment impacting on the objectives of this law that has not been complied with;
 - (e) the details of the nature and extent of non-compliance; and
 - (f) request the addressee to remedy any non-compliance with this law or other written law impacting on the objectives of this law or give an explanation in answer to the allegations made in the compliance notice.
- (3) The Minister shall, on receipt of a report, submitted in accordance with subsection (2), consider the report and, if the Minister is not satisfied with the measures put in place to remedy the non-compliance or the explanation given, inform the addressee -
- (a) to take such action or corrective measures to address any non-compliance, as specified by the Minister;
 - (b) to take the action or corrective measures within such period as the Minister shall specify in the compliance notice; and
 - (c) of the enforcement measures that the Minister intends to impose in the event of non-compliance with this subsection.

79. Access to premises, documents and information

- (1) Anti-gender-based violence monitoring officer, a child marriage prohibition officer, committee constituted in terms of section 77 or an appropriate authority who suspects or believes that any person, public official, private body or agency is contravening or is about to contravene this law, shall have the power to, subject to a warrant issued by a judicial institution -

- (a) access all books, records, returns, reports and other documents relating to that person, public official, private body or agency, related to the alleged contravention;
 - (b) enter and search, forthwith, the premises of that person, public official, private body or agency, where the premises is being, or is intended to be, used in the commission of a gender-based violence offence as provided in this law;
 - (c) search for and remove any document or other thing that may be relevant to an investigation or may be evidence of an alleged gender-based violence offence;
 - (d) where necessary, take copies of any document or extracts from any document that may be relevant to an investigation on an alleged gender-based violence offence; and
 - (e) where necessary, require a person to reproduce, or to assist in reproducing, in usable form, any information recorded or stored in any document or device relating to the alleged gender-based offence.
- (2) An appropriate authority shall endeavour to enable a stakeholder, including the media, to access information for purposes of furthering the objectives or implementing the provisions of this law.
- (3) Access to premises, documents and information may be obtained, for the purpose of subsection (1), without a warrant, if an anti-gender-based violence monitoring officer, a child marriage prohibition officer, committee constituted in terms of section 77 or an appropriate authority, on reasonable grounds, believes the delay in obtaining such a warrant would defeat the objective of this section.

80. General offences

A person who, except a victim, who willfully –

- (a) refuses to answer any questions asked for purposes of an investigation or gives an answer which is false or misleading in a material particular or is incomplete;
 - (b) fails to produce a document required for purposes of an investigation as provided in section 79;
 - (c) signs or delivers any false or incorrect notification, report, document or statement;
 - (d) refuses to allow an anti-gender-based violence monitoring officer, a child marriage prohibition officer, committee constituted in terms of section 77 or an appropriate authority to enter and search a premise, as specified in section 79;
 - (e) moves a victim out of jurisdiction or place of safety; or
 - (f) fails to comply with any order or warrant issued under this law;
- commits an offence and shall be liable, on conviction, to a fine not exceeding XXX or to a term of imprisonment not exceeding XXX, or to both.³⁵

81. Regulations, rules and guidelines

- (1) The Minister may make regulations for the better carrying out of the provisions of this law.
- (2) Despite the generality of subsection (1), regulations may provide for-
 - (a) the fees to be paid in respect of notices and applications;
 - (b) the publication of notices;
 - (c) the forms of notices and applications;
 - (d) registers, records and indexes to be kept under this law and providing for their inspection;
 - (e) the provision of certified copies of records or extracts of records kept under this law; and
 - (f) anything required to be prescribed under this law.

³⁵Insert offence and penalty clause according to style used in, and sentencing policy of, Member State)

- (3) The Chief Justice (**insert competent authority**) may, by statutory instrument, make rules for, or in relation to, the practice and procedure of judicial institutions and quasi-judicial bodies in their exercise of their jurisdiction and functions under this law.
- (4) The rules referred to in subsection (3) may be made to –
- (a) regulate and prescribe the practice and procedure of judicial institutions and quasi-judicial bodies in gender-based violence cases;
 - (b) prescribe matters relating to the costs of proceedings and the assessment or taxation of those costs;
 - (c) the manner of referring claims or applications for maintenance, compensation, material assistance or any other matter before the judicial institutions and quasi-judicial bodies to a competent or an appropriate authority for payment or other action; and
 - (d) provide for the manner of service of any document requiring to be served or for the manner of dispensing with such service; and
 - (e) prescribe any other matter which is to be prescribed for a judicial institution and quasi-judicial body under this law.
- (5) The President shall require that all relevant Ministers, in collaboration with the police, prosecutors, judges, the health sector, social services sector and the education sector, develop protocols, guidelines, instructions, directives and standards, including standardized forms, for the comprehensive and timely implementation of this law, within a limited and prescribed number of months following the coming into force of this law.
- (6) The guidelines referred to in subsection (5) may include –
- (a) strategies to strengthen relationship skills, including skills in interpersonal communication, conflict management and shared decision making;
 - (b) strategies to ensure empowerment of women, including those that build skills in self-efficacy, assertiveness, negotiation and self-confidence;

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- (c) provision of services, including health, police, legal and social services for survivors;
- (d) strategies to reduce or alleviate poverty targeted to women or a household;
- (e) strategies for creating a safe environment, including safe schools, public places and work places;
- (f) measures for prevention of child and adolescence and abuse, including mechanisms that nurture family relationships; and

~~(7)~~(g) measures for the transformation of attitudes, beliefs and norms, including mechanisms that challenge harmful gender attitudes, beliefs, norms and stereotypes.

~~(8)~~(7) The President shall ensure that relevant ministries and institutions put in place measures to strengthen enabling environments, including-

- (a) building political commitment from leaders and policymakers;
- (b) investing in and supporting the work of women's organisations;
- (c) strengthening policies, laws and institutions to address violence against women and promote gender equality; and
- (d) allocating resources to programmes, research and capacity-building of health, education, law enforcement, and social services,

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Schedule I

INTERNATIONAL HUMAN RIGHTS AND GBV RIGHTS AGREEMENTS

1. Convention on the Rights of the Woman and a child, 1989;
2. African Charter on the Rights and Welfare of the Woman and a child, 1999;
3. United Nations Sustainable Development Goals, 2015;
4. Convention on the Elimination of All Forms of Discrimination Against Women, 1979;
5. Declaration on the Elimination of Violence Against Women, 1993;
6. Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1950;
7. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003 (the Maputo Protocol;
8. International Convention on Economic, Social and Cultural Rights, 1966;
9. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984;
10. African Charter on Human and People's Rights, 1981;
11. Universal Declaration on Human Rights, 1948;
12. International Labour Organisation Convention on the Elimination of the Worst Forms of Child Labour, 1999;
13. SADC Declaration on Gender and Development, 1997;
14. SADC Protocol on Gender and Development; and
15. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
16. 2000, the Security Council adopted resolution 1325 on Women, Peace and Security,

Schedule 2

SOURCE MATERIALS ON GBV

1. Tools and Resources for Thematic Areas, Guidance and Toolkits, Gender-Based Violence Case Management IRC 2018
2. African Youth Charter, 2006;
3. SADC PF Model Law on HIV/AIDS, 2008;
4. Beijing Platform of Action;
5. UNODC Blueprint for Action (on criminal justice aspects) and the UN Handbook for Legislation on Violence against Women and its Supplement (on broader aspects including prevention, budgeting, etc.) and certain Model Laws developed by the UNODC such as those on trafficking of women and woman and a children will also be taken into account;
6. The UN General Assembly's updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice;
7. RESPECT women, preventing violence against women -RESPECT Women Framework, WHO and UN Women publication; and
8. UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems .