



**REPORT OF THE REGIONAL PARLIAMENTARY MODEL LAWS
OVERSIGHT COMMITTEE TO THE 56TH PLENARY ASSEMBLY**

***THEME: "IMPROVING THE DOMESTICATION AND IMPLEMENTATION
PROCESSES AND OUTCOMES: STRIVING FOR THE EFFECTIVENESS OF
SADC MODEL LAWS IN THE SADC REGION"***

Mr. President, I beg to move that this Plenary Assembly do adopt the Report of the Regional Parliamentary Model Laws Oversight Committee to the 56th Plenary Assembly of the SADC Parliamentary Forum, laid on the Table on 11th December 2024.

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1.0 COMPOSITION OF THE COMMITTEE

At the time of the statutory meeting, from 21st to 22nd September 2024, the membership of the Regional Parliamentary Model Laws Oversight Committee (RPMLOC) was as follows:

1. Hon Princes Kasune, Zambia (**Chairperson**)
2. Hon. Phillipus Wido Katamelo, Namibia (**Vice Chairperson**)
3. Hon Ruth Mendes, Angola
4. Hon Mope Khati, Lesotho
5. Hon Leonard Mwalwanda, Malawi
6. Hon Shally Josepha Raymond, Tanzania

2.0 TERMS OF REFERENCE

The RPMLOC is established as an Organ of the Forum in Article pursuant to Articles 10(1) and 17 of the SADC-PF Constitution. The functions of the RPMLOC are provided in Article 17(4) of the Constitution of the SADC Parliamentary Forum.

3.0 NUMBER OF MEETINGS HELD AND MEETING DATES

The RPMLOC convened from 21st to 22nd September 2024 under the theme: *“Improving the Domestication and Implementation Processes and Outcomes: Striving for the Effectiveness of SADC Model Laws in the SADC Region.”*

4.0 BACKGROUND

- 4.1 The establishment of the Regional Parliamentary Model Laws Oversight Committee (RPMLOC) as an organ of the SADC PF was aimed to enhance harmonisation of legislative frameworks of SADC Member States by encouraging Member States to domesticate model laws that address regional challenges and promote uniformity in legal standards. The membership of the RPMLOC is elected to serve for a two-year term in accordance with Article 15(3) of the SADC PF’s Constitution. The current membership was elected in May 2024 to serve for the period of 2024-2026.
- 4.2 Against the above background, this meeting served as the orientation for the newly elected RPMLOC membership. As such, the orientation programme was designed to provide the recently elected members of the Committee with a comprehensive understanding of their roles, responsibilities, and the operational framework of the Committee. This initiative was essential to ensure that committee members were well-informed and could effectively perform their legislative roles at regional level.
- 4.3 The orientation programme was structured in such a way as to cover a range of topics and activities that were essential to the work of the RPMLOC as a number of the Committee Members may not have

previously served on the RPMLOC or a similar organ before. In this regard, the meeting was organised as a platform for the Members to reflect on some of the pertinent Resolutions that had been adopted by the Plenary Assembly in the recent past which were of relevance to the work of the RPMLOC.

5.0 SUMMARY OF PRESENTATIONS FROM VARIOUS RESOURCE PERSONS

5.1 Overview of Model Laws

5.1.1 The Committee learnt that Model Laws were quite significant because they were designed to assist Member States to reform, modernise and harmonise their laws. As persuasive and inspirational instruments, model laws were intended not only to help foster debate and keep an issue alive on the agenda, but also to be a guide to stakeholders, including legislators. In this way, model laws could go a long way in promoting the SADC regional agenda.

5.1.2 In terms of content, a Model Law tended to be a melting pot of all the ideals to which the Member States had committed themselves at regional, continental and international levels. It took into account the particular features and needs of the region, and helped to enhance legal certainty and predictability, promoted regional integration through harmonisation, collective action and a common approach, whether substantively or procedurally, in tackling regional challenges. Model Laws could, therefore, have impact on all sectors such as energy deficiency, food and agriculture, climate change, mining policy, non-communicable diseases, access to ICTs, water and sanitation, among others.

5.1.3 The Committee noted that, in addition to the above, the Plenary Assembly had since granted approval in principle for the development of Model Laws on:

- a) Prison Oversight
- b) Mining
- c) Strategic and Sensitive Assets
- d) Constitutionalism and Rule of Law

5.1.4 Work to develop the Model Laws on these themes had commenced but was characterised by sluggish progress due to limited resources. The RPMLOC further reiterated that all SADC Member States had made various policy commitments which could only be implemented once backed by legislation in order for the citizens to enjoy their envisaged benefits, hence the significance of model laws at regional level.

5.1.5 Moreover, it was noted that SADC member States, as members of the African Union and the United Nations, were required to report regularly on progress made towards domestication and

implementation of these commitments. This was done through established national mechanisms for reporting and follow-up which were mandated to coordinate and prepare reports to and engage with international and regional human rights mechanisms.

5.1.6 The Committee learnt that the RPMLOC was mandated to be the primary advocate to monitor domestication while other organs of the Forum could also champion the domestication agenda as part of their respective mandates

5.2 Taking Stock of the Domestication and Implementation of the SADC Model Law on Eliminating Child Marriage and Protecting Children Already in Marriage

5.2.1 Through this presentation, the Committee was informed that child marriage remained a problem in Southern Africa due to a variety of factors. These factors included poverty, gender inequity, tradition, insecurity, especially in times of conflict, limited education and lack of adequate legal frameworks in Member States. In at least five SADC countries, almost 40% of children were married before they are 18 years of age. Further, Malawi and Mozambique were amongst ten countries in the world with the highest rates of child marriage. In both countries, over 50% of children were married before they are 18 years of age.

5.2.2 The Committee, further, received an update on the efforts made to domesticate the Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage by some SADC Member States as set out below.

a) Mozambique

As a response to the high incidence of child marriage in the country, Mozambique enacted the Law on the Prevention and Combating of Premature Unions in 2019 inspired by the SADC Model Law on Child Marriage. This piece of legislation adopted the majority of the provisions in the Model Law

Mozambique also reformed its Family Law Act to prohibit marriage under 18 years. The country was also implementing a National Strategy for Prevention and Combat of Child Marriage.

b) Malawi

The Committee learnt that in Malawi, the minimum age of marriage was currently 18 years without exception. A 2024 review by the Law Commission of all laws to ensure full domestication of the SADC Model Law recommended introducing a stand-alone law on child marriage. During the review, the following gaps were identified:

- Low prosecutions

- Lack of protective measures
- No provisions in domestic law for measures and interventions to mitigate the effects of child marriage.

c) South Africa

Although the laws were not yet unequivocal in prohibiting child marriage, South Africa adhered to best practice on comprehensive sexuality education. In this regard, the Department of Basic Education had incorporated it in the Life Orientation subject which is compulsory at both primary and secondary school levels.

Further, the Marriage Bill 2024 was pending to amend law.

d) Zambia

In Zambia, the Children's Code Act of 2022, prohibited marriage of children under 18 years and considered child marriage a harmful practice. Similarly, the Marriage Act of 2023 prohibited marriage under 18 without exceptions, including for customary marriage. In addition, the National Strategy on ending child marriage (2016-2021) provided further similar policy guidance, while the Matrimonial Causes Bill 2024 was pending.

e) Zimbabwe

The 2013 constitution prohibited marriage of persons under 18 years. In 2016, the Supreme Court struck down a section of the Marriage Act which allowed children under 18 to get married for being inconsistent with the constitution. Further, in 2022, Zimbabwe enacted a new Marriage Act which prohibits marriage under 18 years for all, including customary unions, whether registered or not with imprisonment penalties for contravention. In addition, the National Action Plan and Communication Strategy to end child marriage was adopted in 2018

5.2.3 The Committee was further informed that the domestication of the Model Law on Child Marriage was fraught with challenges, including the following:

- i. Inconsistent legal frameworks with the same jurisdiction sometimes having conflicting provisions.
- ii. Slow progress – the consultations on ending child marriage were often slow and not taking effect fast enough. She cited the examples of Tanzania, South Africa.
- iii. Lack of progress altogether – in some cases, no efforts appeared to be underway towards reviews, such as in the case of Angola.
- iv. In some cases, the pathways to reform had been ad hoc and there was insufficient data to indicate how legislative changes came about.

- v. There was also a challenge of insufficient understanding of the issues from policy makers, parliaments included, to the general public
- 5.2.4 The Committee was informed that parliamentarians could play a key role in enabling domestication of the Model Law through their legislative roles by adopting laws, regulations, and policies that give effect to rights. The Committee noted that it was the duty of parliamentarians to review and ensure that the entire marriage law regime (including laws on inheritance, divorce, among others) did not have loopholes that exposed children to child marriage but that the laws were in line with the country's international and regional human rights obligations. Parliament could also oversee the training of relevant stakeholders involved in the justice delivery system so that they were capacitated to handle the cases with the sensitivity that they required.
- 5.2.5 Parliamentarians could also advocate for the adoption of national or subnational strategies and plans for the implementation of the multisectoral approach, or the integration of necessary measures into existing plans as well as ensure that adequate budget allocations were made to programmes that aimed at eliminating child marriage even if such allocations were to be made to different ministries responsible for portfolios relevant to the issue of child marriage. Members of Parliament should also monitor the spending of the budgets allocated and demand accountability from government departments on their spending. Parliamentarians may also demand for a specific parliamentary committee on child marriage to be set up for comprehensive oversight of the issue. This committee can also engage directly with non-state actors, including CSOs, who can provide useful insight on whether the government efforts are effective and update on their own activities to end child marriage.

6.0 COMPARATIVE ANALYSIS: SADC MODEL LAW ON PUBLIC FINANCIAL MANAGEMENT AND NATIONAL PUBLIC FINANCIAL MANAGEMENT LAWS - MALAWI, ZAMBIA AND ZIMBABWE

- 6.1 The Committee received a presentation on the findings of a research study commissioned by one of its partners, the African Forum and Network on Debt and Development (AFRODAD). The objectives of the study were to analyse the public financial management (PFM) legislation of Zambia, Zimbabwe and Malawi, specifically provisions on debt, tax and IFFs. The study was also aimed at comparing and contrasting the national PFM legislation of the three countries with the SADC Model Law on PFM and propose policy and legal recommendations for the identified gaps within the national PFM legislation.

- 6.2 The Committee was informed that the key findings of the study were that:
- a) the three Member States adopted PFM legislative instruments when they had already contracted massive debts and were facing unsustainable debt crises.
 - b) This meant that the laws in these countries were challenged to expeditiously achieve good public finance management, management of public debt stock, effective revenue collection and control of illicit financial flows.
 - c) In the three Member States, Parliament and the Auditor-General were given a progressive oversight role over contracting of public debt, and other public finance management issues.
 - d) Notwithstanding the positives recorded, the three PFM systems lacked a proactive enforcement framework with regard to the recommendations of Parliament and the Auditors-General 's office This militates against financial mismanagement in the public sector, illicit financial flows and contraction of unsustainable public debt.
 - e) The three states had weak enforcement systems, penalties and sanctions against public financial mismanagement.
- 6.3 Against this background, the Committee was informed that there was need for a policy shift towards adoption of governance and structural reforms to achieve greater transparency in public finance management, public debt management, taxation and initiatives to combat illicit financial flows (IFFs). The three states must strengthen the power and mandate of oversight institutions such as the Parliamentary Public Accounts and Budget and Finance Committees, the Auditor-General's Office and the Debt Management Office in public finance management.
- 6.4 It would further be prudent to introduce provisions in the relevant laws and regulations to mainstream inter-agency collaboration across different relevant sectors. Specific provisions must be inserted in law to guard against contracting debt bearing high interest rates and unsustainable penalties and conditions for arrears payments. In addition, specific safeguards to plug corruption entry points during direct procurement, single source selection and restricted bidding should be instituted.
- 6.5 The Committee further learnt that in the implementation of these strategies, political commitment of the highest level must be demonstrated by the governments, especially in meeting their international obligations and implementing key economic, financial and governance reforms.
- 6.6 The three governments would also be well advised to develop clear policy directions on the use of their natural resources to serve either

as a direct source of repayment or as an underlying guarantee of repayment in respect of contracted loans. Resource-backed loans may need to be applied by the three central governments or their state-owned companies that received loans from other governments, state-owned companies, the private sector and/or international financial institutions. The public finance management laws of the three states must enable the development of regulations by the Minister responsible for Finance to address IFFs in the PFM system. These regulations must mainstream other approaches stated above, such as inter-agency collaboration in investigation, detection, prevention and prosecution of criminal entrepreneurial activities in the financial system.

- 6.7 Moreover, economic activities in the three countries are dominated by informal traders and small to medium sized enterprises, hence the need for the Governments in these countries to ensure their tax policies are favourable for tax compliance.

7.0 OBSERVATIONS AND RECOMMENDATIONS

Based on the presentations made during the meeting, the Committee:

CONCERNED over the slow pace of domestication of SADC Model Laws and related Protocols

NOTING the need for an enlarged advocacy voice for domestication of SADC Model Law.

RECOGNISING that the Forum stands to benefit from cross-pollination of ideas and exchange of information with other like-minded organisations in its quest to advance the domestication of model laws and related protocols.

ACKNOWLEDGING the work done in the development of the Scorecard on the Model Law on Public Financial Management which was piloted in Zambia and Zimbabwe.

AWARE of the need to relentlessly pursue updates from the Member Parliaments on progress towards implementation, for the ultimate benefit of the ordinary citizens.

NOTING WITH CONCERN that the response from SADC Member Parliaments to requests for updates on domestication has been poor.

RECOGNISING the urgent need for a robust framework for monitoring of the domestication of Model Laws in the Member States

CONGISANT of the need to raise awareness about the content of the SADC Model Laws among all parliamentarians of SADC Member parliaments so as

to create a critical mass of champions to advocate for the domestication of these instruments.

NOTING the imperative for capacity building on a continuous basis among Members of Parliament for excellence in oversight around budgetary matters.

NOW, THEREFORE, the Regional Parliamentary Model Laws Oversight Committee resolved to recommend to the 56th Plenary Assembly to:

- i. **CALL** for enhanced capacity building efforts targeted at parliamentarians beyond the SADC PF delegates through strengthened linkages between the SADC PF Secretariat and the Clerks of the Member Parliaments.
- ii. **IMPLORE** all the SADC Member States to make concerted efforts towards timely domestication of SADC Model Laws and related protocols.
- iii. **URGE** the Secretariat to ramp up efforts to seek collaborative partnerships which will facilitate the rolling out of the implementation of the Scorecard on the Model Law on PFM to other Member countries.
- iv. **RESOLVE** that a reporting mechanism be developed and institutionalised, anchored on a system of Focal Points resident in the Member Parliaments, to undertake monitoring work on a continuing basis and ensure that the Forum could receive regular updates on the domestication of SADC Model Laws through Country Reports during the Plenary Assembly.
- v. **IMPLORE** all Clerks and Secretaries General to take particular interest in the Model Laws developed by the Forum and collaborate with the Forum Secretariat to develop appropriate strategies suitable for their respective parliaments, for interface through sensitisation, capacity enhancement and dissemination of the Model Laws among their Members of Parliament
- vi. **CALL UPON** the Secretariat to undertake resource mobilisation in order to facilitate the activities necessary for domestication of the Model Laws.
- vii. **ENCOURAGE** the Forum, through the Focal Persons to be resident in the Member Parliaments, to establish linkages with the country reporting mechanisms under SADC, the AU and the UN in order to ensure that work done in the Member States is duly recorded and acknowledged at SADC Parliament level.
- viii. **IMPLORE** the SADC Member Parliaments to seriously consider setting up Parliamentary Budget Offices to assist the parliaments to achieve excellence in budget oversight.

- ix. **ENCOURAGE** the SADC PF Secretariat to work towards fostering women's leadership around budget oversight at all levels so that women parliamentarians can participate effectively in budgeting and budget scrutiny.

8.0 CONCLUSION

As an organisation mandated to support regional integration, the SADC Parliamentary Forum is suitably positioned to engage on a wide range of policy and development initiatives to ensure that the perspectives and interests of all citizens are taken into account and appropriately addressed. The Forum also provides a common arena where Member State commitments to promote various common regional goals can be monitored for implementation.

The development of various modal laws by the Forum is intended to complement regional efforts aimed at tackling regional challenges.

The RPMLOC, therefore, extends its gratitude to the Secretary General and staff of the SADC PF for facilitating its activities, including this meeting. The RPMLOC also wishes to place on record its appreciation to all the partners who have collaborated with the Forum and supported the Forum in various ways in its quest to develop monitoring mechanisms for the domestication of SADC Model Laws.

The RPMLOC implores the 56th Plenary Assembly to adopt the recommendations contained in its report without reservations.

Hon. Princess KASUNE
CHAIRPERSON

Ms. Clare MUSONDA
COMMITTEE SECRETARY

9.0 APPENDICES

APPENDIX I – LIST OF OFFICIALS

- i. Ms. Boemo Sekgoma, Secretary General
- ii. Mr Joseph Manzi, Director, Parliamentary Business and Programmes
- iii. Ms. Clare Musonda, Programme Manager (RWPC and RPMLOC)
- iv. Ms Masenate Molapo, Programme Manager (TIFI)
- v. Ms Thoko Gumedze, Outgoing Committee Secretary
- vi. Ms Paulina Kanguatjivi, Assistant Procedural Officer and Coordinator
- vii. Mr. Ronald Windwaai, Webmaster

APPENDIX II – LIST OF RESOURCE PERSONS

- i. Ms Divya Srinivasan – Equality Now!
- ii. Dr James Tsabora – African Forum and Network on Debt and Development (AFRODAD)