

November 2021

# USER-GUIDE FOR

The Pan **AFRICAN** Model

# GENDERED

## ELECTORAL LAW





**USER-GUIDE FOR**  
The Pan **AFRICAN** Model  
**GENDERED**  
ELECTORAL LAW



## TABLE OF CONTENTS

|      |  |    |
|------|--|----|
| 1.0  | <b>Foreword</b>  | 4  |
| 2.0  | <b>Acronyms</b>  | 5  |
| 3.0  | <b>Introduction to the Guide</b>   | 6  |
| 3.1  | Objectives of the Guide  | 6  |
| 3.2  | How was this Guide Developed?  | 6  |
| 3.3  | Structure of the Guide   | 8  |
| 4.0  | <b>Section 1. Women's Political Participation in the Context Electoral Democracy on the African Continent: An Overview</b>                 | 9  |
| 4.1  | The Legislative Framework  | 9  |
| 4.2  | The Practice   | 12 |
| 5.0  | <b>Section 2. What is the Pan African Model Gendered Electoral Law?</b>  | 14 |
| 5.1  | What is a Model Law?   | 14 |
| 5.2  | Why and How was the Pan African Model Gendered Electoral Law Developed?  | 14 |
| 5.3  | Objectives of the Pan African Model Gendered Electoral Law   | 17 |
| 5.4  | Key Features of the Pan African Model Gendered Electoral Law   | 18 |
| 5.5  | How can the Pan African Model Gendered Electoral Law be used to  |    |
| 5.6  | Accelerate Change at the National Level?   | 18 |
| 6.0  | <b>Section 3. What provisions the Pan African Gendered Model Electoral Law Directly promote Women's Political Participation? A Summary</b> | 19 |
| 7.0  | <b>Preliminary Provisions</b>  | 19 |
| 7.1  | Principles on Elections  | 20 |
| 7.2  | Defining the role of Electoral Management Bodies:  | 21 |
| 7.3  | Minimum Standards for Electoral System Design and Principles   | 21 |
| 7.4  | Delimitation of Electoral Boundaries   | 22 |
| 7.5  | Timing of Elections  | 22 |
| 7.6  | Political Party and Electoral Candidate Conduct  | 24 |
| 7.7  | Electoral Codes of Conduct   | 22 |
| 7.8  | Eligibility of Voters  | 23 |
| 7.9  | Voter Registration and Voters' Roll  | 23 |
| 7.10 | Voter and Civic Education  | 23 |
| 7.11 | Campaigning  | 24 |
| 7.12 | Media  | 24 |
| 7.13 | Election Observation and Monitoring  | 24 |
| 7.14 | Polling Stations   | 25 |
| 7.15 | Handling of Electoral Disputes   | 26 |
| 8.0  | <b>Miscellaneous</b>   | 26 |
| 9.0  | <b>Section 4. Practical Guidance for key stakeholders on How to use the Model Law</b>  | 26 |
| 9.1  | Parliamentarians   | 26 |
| 9.2  | Practical Guidance for CSOs and Young Advocates on How to  |    |
| 9.3  | Use the Model Law  | 26 |
| 10.0 | <b>Executive</b>   | 34 |
| 11.0 | <b>Judiciary</b>   | 35 |
| 12.0 | <b>Security Forces</b>   | 36 |
| 13.0 | <b>Political Parties</b>   | 36 |
| 13.1 | Election Observers   | 37 |
| 13.0 | <b>Voters</b>  | 39 |

# FOREWORD

## User Guide for the Pan-Africa Gendered Model Electoral Law

It is exciting to live in an era where Africa has made great strides in making conscious legislative efforts to include women in political participation. The continent boasts a unique approach to ensuring that future generations witness the sustainability of the inclusive democracy processes we are putting together today. The Model Law is designed to assist Member States in reforming and modernising their electoral laws in a gender responsive manner. The covid 19 pandemic has definitely affirmed that we definitely need more women in decision making positions, the time is now to relook the inclusiveness of our electoral legal and policy frameworks.

Many of us attest to the brilliant norms and standards for elections in Africa, yet this gendered model electoral law comes at an opportune time when many African countries are in the process of reforming their electoral laws to ensure that women have equal opportunities to participate in politics. Some of these processes include special measures in the form of quotas for women in politics, directly addressing gender based violence targeted at women politicians and building capacity of women – including young women who aspire to be in politics.

The Women in Political Participation (WPP) Consortium led by International IDEA has demonstrated its commitment to contribute towards the continent's democratic processes within societies where no one is left behind in political participation. The WPP project is piloted in eight African countries; Botswana, Eswatini, Zimbabwe, Kenya, DRC, Senegal, Cote D'Ivoire and Tanzania where indeed this model law user guide will be instrumental in contributing towards women in political participation.

This user guide is only a guideline aimed at making the Model Law's content more accessible and to encourage and facilitate its use at the national level for domestication and implementation of affirmative action provisions in support of women in political participation. The user guide is not prescriptive on how each country should reform its electoral laws. The common purpose of the guide is that gender equality should be at the centre of each electoral law in line with global, continental and sub-regional instruments.

The WPP Africa Barometer 2021 developed by one of our WPP Consortium member, Gender Links reveals that gender parity at parliamentary level will only be achieved in 2070 – seven years after the African Union's Agenda 2063 expires and 40 years after the Sustainable Development Goals deadline. Without learning from such guides it will surely take us this long to achieve gender parity at all levels of governance. We indeed have a lot of work to do, ensuring that women who consist of at least 50 percent of Africa's population are included in decision making processes. This guide and many others are set to be part of a pool of resources that can be used by multi stakeholders and indeed the electorate to ensure that women have equal participation in politics.

I applaud the pool of legal minds led by Women and Law Southern Africa in bringing this great milestone to fruition. Together we can achieve an inclusive society to benefit generations to come through eliminating inequalities and ensuring that gender equality is central in our democracy. Indeed, the time is now for women in Africa to lead and the future is indeed female.

**#WomenLeadAfrica**

**Ms Sifisosami Dube**  
**Women in Political Participation Project**  
**International IDEA**

## Acronyms

|                       |  |
|-----------------------|--|
| <b>ADR</b>            | Alternative Dispute Resolutio  |
| <b>ECF-SADC</b>       | SADC Electoral Commissions Forum of the Southern African Development Countries |
| <b>EISA</b>           | Electoral Institute for the Sustainability of Democracy in Africa              |
| <b>EMB</b>            | Electoral Management Body  |
| <b>EOM</b>            | Election Observation Mission   |
| <b>Inter-national</b> | International Institute for Democracy and Electoral Assistance                 |
| <b>IDEA</b>           |  |
| <b>MISA</b>           | Media Institute for Southern Africa  |
| <b>MLE</b>            | Model Law for Elections  |
| <b>RWSLD</b>          | Regional Working Session for Legal Drafters                                    |
| <b>SADC</b>           | Southern African Development Community   |
| <b>SADC LA</b>        | Southern African Development Community Lawyers' Association                    |
| <b>SADC PF</b>        | Southern African Community Development Parliamentary Forum                     |
| <b>SEOM</b>           | SADC Election Observer Mission   |
| <b>SPGGDE</b>         | SADC Principles and Guidelines Governing Democratic Elections                  |
| <b>CSO</b>            | Civil Society Organisations  |
| <b>REOM</b>           | Regional Election Observer Missions  |
| <b>SEAC</b>           | SADC Electoral Advisory Council  |
| <b>SEOM</b>           | SADC Election Observation Mission (SEOM)                                       |
| <b>ECF-SADC</b>       | Electoral Commissions Forum of SADC  |
| <b>SADC-CNGO</b>      | SADC Council of Non Governmental Organisations                                 |
| <b>AU</b>             | African Union  |
| <b>Mps</b>            | Members of Parliament  |

## Introduction to the guide

This effort constitutes the first ever Pan African Gendered Model Electoral Law (PAGMEL), the PAGMEL (hereinafter referred to as the Model Law), provides a common framework to enhance the participation of women in democratic conduct of elections, for law-makers, policy-makers, service providers and civil society, among other actors across the African continent. It has the potential to trigger law and/or policy reform on electoral law in AU Member States by providing an easy-to-apply standard and to promote cohesion among African States' in relation to their legislative response to mainstreaming the participation of women the administration of elections.

Unless the Model Law is properly understood by all stakeholders and used in the development of national standards, legislation and policies, it will remain nothing more than a promissory note. Thus, convinced of its potential, WLSA and its partners embarked on an exercise to develop a user-friendly Guide to using the PAGMEL.

It is important to note that:

- The guidelines identify certain issues addressed in the PAGMEL, which are still the subject of debates among the different stakeholders working to enhance WPP (specifically political party funding, the issue of local government election participation support, enforcement of progressive regulations on WPP and whether or not independent candidates can contest in elections). It recognizes that the Model Law has taken a certain position in these debates, albeit informed by extensive consultations, and seeks to provide a full picture of the considerations that were raised during the consultation processes. It aims to give readers the tools to form their own opinions and organise further discussions so as to make informed decisions on how to best adapt, adopt or advocate for some of the Model Law's provisions.
- The Model Law promotes a multi-sectorial approach to enhancing WPP in democratic elections and identifies specific roles and responsibilities for key government stakeholders throughout its provisions.

### **Objectives of the Guide**

This User-Guide is envisaged as a tool to make the Model Law's content more accessible and to encourage and facilitate its use at the national level for domestication and implementation of affirmative action provisions in support of WPP.

It is designed for all actors engaged in efforts to address shortcomings in handling of WPP at all stages of the electoral cycle in Africa, with a specific focus on Parliamentarians, Executive, Judiciary, Policymakers, Security Forces, Political Parties, CSOs and Election Observers.

### **The User-Guide specifically aims to:**

- (a) Promote understanding of the value of the Model Law as an important instrument for promoting WPP and democratic elections in Africa through legal, policy and management practice reforms;
- (b) Make the contents of the Model Law more accessible to non-legal experts and ordinary citizens, by providing a summary of its key provisions;
- (c) Provide practical, stakeholder-specific guidance and tools on how to use the Model Law among the stakeholders dealing with promotion of WPP across the region, including for advocacy for legal, policy and management practice reforms and monitoring progress on the domestication of gender principles, regional and international instruments, in particular the African Charter for Democracy, Elections and Governance and the African Charter on Human Rights (ACHPR) on the Rights of Women in Africa (Maputo Protocol). The Maputo Protocol makes specific provisions on WPP.
- (d) consolidate electoral democracy in through creating gendered normative standards to regulate the conduct of the electoral process;
- (e) mainstream gender into the electoral obligations for States that are scattered in various electoral instruments.
- (f) Promote coordination and collaboration among electoral stakeholders in championing the integrity of elections in the Africa.
- (g) Provide for key gender considerations that ought to be made in the regulation of all aspects of the electoral cycle and electoral processes
- (h) Promote a cordial approach to gender mainstreaming in election observation and election management, as a means of achieving democracy
- (i) Promote gender responsive electoral reforms, the strengthening of electoral institutions and the entrenchment of democratic elections
- (j) Promote understanding of the contents and value of the Model Law as an important instrument for addressing electoral democracy in the context of WPP across the African continent through legal reform and strengthened programming;
- (k) Facilitate the development of inclusive and participatory electoral systems, practices and processes to advance peace, mitigate conflict, and deepen democracy;
- (l) promote constitutionalism and the strengthening of institutions of democracy such as political parties, electoral management bodies (EMBs) and statutory commissions that

are key for electoral governance such as the human rights, gender, and anti-corruption commissions; and

- m) To amplify the impact of previous and ongoing advocacy as well as research products on WPP through a legal framework.

### **How was this User-Guide Developed?**

The User-Guide was developed by the Enhancing the Inclusion of Women in Political Participation in Africa Consortium led by International IDEA (The consortium). The consortium worked jointly with the Consultant coordinated by WLSA as one of its members. The Model Law was developed through an all-inclusive and consultative process which involved the WLSA and International IDEA Technical Support team, representatives of continental and regional election observation Missions (REOMs) such as the AU Election Observation Mission), Electoral Commission Fora of respective regional economic communities), and various Councils of Non-Governmental Organisations in the RECs, Media Institutes, legal and election experts, political role-players, parliamentarians, CSOs and other key informants engaged in the conduct and administration of elections. A virtual validation workshop was held which drew a wide array of experts whose input to the draft made a significant impact to the outcome.

The Guide was further strengthened in content and practical recommendations by drawing the experiences of the coalition, active Pan African Women's rights advocacy organizations. Parliamentarians, regional electoral experts, REOM, Media, Election Management Bodies (EMB) and CSO representatives during a High Level Policy Dialogue on the Domestication of the PAGMEL which was convened by WLSA

The Policy Dialogue focused on three broad areas, namely, immediate next steps for domestication, harmonisation and implementation, political finance system strengthening and establishment of durable electoral conflict prevention and resolution mechanisms and accountability measures. National Parliaments were invited to commit to domestication of the provisions of the PAGMEL through various resolutions adopted by the Plenary Assembly Sessions of the various Regional Legislative Assemblies.

In terms of methodology, the user-guide is the last and final guiding tool in a series of coordinated and sequential advocacy tools based on through research and analysis. First the coalition produced the Situational Analysis of WPP in Africa, this was followed by Guiding principles for WPP based on which the Model Law was developed. The User-Guide brings together the key advocacy elements of the instrument to highlight the crucial roles of advocates for WPP.

### **Structure of the User-Guide**

This User-Guide is divided into **four sections**:

**Section I** provides the definition of electoral democracy and an overview of WPP and its development in Africa from the legislative/normative framework perspective and the empirical

perspective to demonstrate how the participation of women in politics has been enhanced through the conduct of elections in light of the need for electoral democracy on the African continent. It then outlines the key tenets of democracy that buttress WPP in Africa as seen in practice over the years.

**Section 2** provides an overview of the PAGMEL, focusing on its purposes and key features. It also outlines the various ways in which the Model Law can be used at country level.

**Section 3** provides a summary overview of the Model Law, simplifying its language. The summary is not exhaustive; instead it aims to give the reader a good understanding of the Model Law's key provisions.

**Section 4** provides practical guidance to key stakeholders in the conduct and administration of elections in Africa. It speaks to how to use the Model Law for direct advocacy, accountability or the pragmatic implementation. The content of this section is not meant as an exhaustive list, rather a suggestion of possible actions the identified stakeholders can take to advance the Model Law in their countries.

The stakeholders addressed have been identified for their unique capacity to shape, promote and encourage the implementation of WPP provisions in electoral processes and legislation within their countries and beyond.

## **Section I. An Overview of WPP in the Context of Electoral Democracy on the African Continent**

### **Definition of Electoral Democracy and the place of WPP enhancement.**

Democracy “is a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly, through the competition and cooperation of their elected representatives.”<sup>1</sup> Electoral Democracy on the other hand is a democratic system through which voters have the opportunity to elect individuals and/or political parties by casting a vote in favour of the candidate or party of their choice. The revised SPGGDE define Democratic Elections as, “Competitive, periodic, inclusive, regular elections in which persons to hold office at all levels of government are elected, through the secret ballot, by citizens who broadly enjoy fundamental human rights and freedoms.”<sup>2</sup> This guide seeks to advance the rightful position that women and men should be able to participate in elections with equal access to all aspects of the electoral cycle and attendant resources. Measures must accordingly be taken to ensure that the ground is even for candidates in such a way that gender does not unfairly elevate or demote one's chances of exercising the same rights in politics.

### **The Legislative Framework**

There are at least 16 instruments in total (eight global, three Commonwealth, two African and four sub- regional) that commit African countries to achieving gender equality in political

---

<sup>1</sup> Philippe C. Schmitter and Terry Lynn Karl, “What Democracy Is . . . and Is Not,” *Journal of Democracy* 2 (Summer 1991): 76.

<sup>2</sup> Revised SADC Principles and Guidelines Governing Democratic Elections (2015, p. ii).

decision-making. Eight of these provide for affirmative action of some kind, progressing from 30% to 50%.

For the African continent, the 2003 Protocol to the African Charter on Human and Peoples' Rights (ACHPR) [Maputo Protocol] appears to be Africa's most progressive legal instrument providing a comprehensive set of human rights for African women. It details wide-ranging and substantive human rights for women covering the entire spectrum of civil and political, economic, social, cultural and environmental rights. The Protocol is laudable for its emphasis on the right of women to participate without discrimination in all elections, equal representation of women in the electoral process and equal partnership of women with men at all levels of development and implementation of State policies. The Maputo Protocol has been strengthened by other instruments such as the African Charter on Democracy, Elections, and Governance (African Democracy Charter).

Africa's Agenda 2063 commits to improving women's political participation through Aspiration three on Africa's good governance, democracy, respect for human rights, justice and the rule of law. Sustainable Development Goal Five on gender equality provides for the increase and meaningful participation of women in political decision-making.

The AU has developed continental instruments on elections that entrench gender equality and women's rights to participate in electoral and political processes. The main instruments include; the *OAU/AU Declaration on the Principles Governing Democratic Elections in Africa (2002)* and the *African Charter On Democracy, Elections and Governance (2007)* and the *African Charter on Human and People's Rights on the Rights of Women in Africa (2003)* (Maputo Protocol). These instruments are primarily based on the international foundation-setting instruments premised on the principles of non-discrimination and equal enjoyment of political rights as enshrined in the *Universal Declaration of Human Rights (1948)*, the *International Covenant on Civil and Political Rights (1966)*, the *Convention on the Political Rights of Women*, as well as the *African Charter on Human and Peoples' Rights*.

In line with the international and continental best practices, the African Regional Economic Communities (RECs) have developed regional instruments agreed to by their Member States, and these provide benchmarks for democratic elections within the regions.

The normative framework of instruments that impact WPP include the following:

- i. *Universal Declaration of Human Rights (1948)*
- ii. *Convention on the Elimination of all Forms of Discrimination against Women (1991)*
- iii. *International Covenant on Civil and Political Rights (1966)*
- iv. *Convention on the Political Rights of Women (1952)*
- v. *Convention on the Rights of People with Disabilities (2006)*
- vi. *United Nations Security Council Resolution 1325 (2000)*
- vii. *The UN Economic and Social Council resolution 1990/15*
- viii. *The Beijing Declaration and Platform for Action*
- ix. *The 2003 UN General Assembly resolution on women's political participation*

- (A/RES/58/142)
- x. The 2011 UN General Assembly resolution on women's political participation (A/RES/66/130)
  - xi. The 2030 Sustainable Development Goals (SDGs)
  - xii. African Charter on Human and Peoples' Rights
  - xiii. African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (Maputo Protocol)
  - xiv. African Charter on Democracy, Elections and Governance (2007)
  - xv. Declaration on the Principles Governing Democratic Elections in Africa (2002),
  - xvi. African Union Modalities of Elections of Officials,
  - xvii. African Union Gender Policy 2009,
  - xviii. Solemn Declaration on Gender Equality in Africa
  - xix. The African Union Guidelines for AU Electoral Observation and Monitoring Missions
  - xx. Southern African Development Community's (SADC) Gender and Development Protocol (2008)
  - xxi. Revised SADC Protocol on Gender and Development (2016)
  - xxii. SADC Principles and Guidelines Governing Democratic Elections
  - xxiii. Principles and Guidelines on the Independence of Election Management Bodies in the SADC Region (2008)
  - xxiv. The Protocol on Democracy and Good Governance for the Economic Community of West African States (ECOWAS) (1999)
  - xxv. Supplementary Protocol on Democracy and Good Governance for ECOWAS
  - xxvi. Supplementary Act on Equality of Rights between Women and Men for Sustainable Development in the ECOWAS Region, 2015
  - xxvii. East African Community Protocol on Good Governance
  - xxviii. The Brazzaville Declaration for the Economic Community of Central African States (ECCAS) 2005
  - xxix. SADC Principles and Guidelines for Democratic Elections of 2004 adopted during the SADC Summit;
  - xxx. SADC Protocol on Gender and Development of 2008 adopted during the SADC Summit;
  - xxxi. Principles for Election Management, Monitoring, and Observation in the SADC Region (PEMMO) of 2003 adopted during by the ECF-SADC and EISA;
  - xxxii. The East Africa Gender Act of 2016
  - xxxiii. The Economic Commission of West Africa State (ECOWAS) Treaty, 1975
  - xxxiv. The African Union Declaration on the Principles Governing Democratic Elections in Africa of 2002 as adopted by the Heads of State and Government of the Organization of African Unity;
  - xxxv. African Charter on Democracy, Elections and Governance of 2007 as adopted by the AU;
  - xxxvi. Benchmarks for Democratic Legislatures in Southern Africa of 2010 as adopted by the SADC PF; and
  - xxxvii. SADC PF Benchmarks for Assessing Democratic Elections in Southern Africa of 2013 as adopted by the SADC Parliamentary Forum.

It is important to highlight at this juncture that even though the development of various election instruments within SADC was a positive step, the majority of them are not legally binding. This presents a barrier for effective implementation and accountability.

## The Practice

Despite having attained the right to vote and hold office and constituting far more than half the electorate, women in most African countries still continue to be seriously underrepresented as candidates for public office. It is telling, for instance, that women form 25% representation in lower houses, and 24% overall, which is far from the 50% mark provided for by global and continental gender instruments.<sup>3</sup>

That Local government data is only available for 19 African countries is indicative of a glaring information gap, even as the data shows that women's representation at that level of political decision-making is at 21%. Local government political participation has been proven to provide essential a training ground for sound long term political participation. That women are left out at this level then, does not bode well for participation at other levels and organs of the political structure and strata.

In those African countries that have registered significant progress in the expansion of women's political participation, and drawing on comparative experience from around the world are several key drivers of the success in enhancing women's political participation which have included;

- a) A deliberate electoral system design which is structured to enlarge the scope for the inclusion of women in elected positions.
- b) The introduction by governments of legislation to provide for special quotas for women, the youth, people with disability, and historic minorities.
- c) A conducive political environment with mechanism to address political violence
- d) The creation of special funds to finance female candidates contesting political office.
- e) Active adherence by governments to international and regional norms, standards, and protocols on women's rights and gender parity, and a proactive domestication and application of these

The reform of electoral laws can be a positive step towards achieving equality in the field of politics. Therefore, the consortium proposes the drafting of a gendered Model Electoral Law meant to assist Member States in domesticating gender equality principles in key; electoral principles and obligations stipulated in regional and International Election instruments. This is aimed at improving the level of women's participation in electoral and decision making processes so that it is at par with that of men.

While the continent has made notable advancement towards the strengthening regional standards on elections and overall Member States have recorded progress in improving the quality of elections, there are still numerous recurrent and emerging challenges which have the potential to undermine the participation of women in politics and therefore the integrity and credibility of elections within the African continent, thereby undermining the value addition proposition of the regional democratisation process. These include the evident gradual decline in voter turnout especially among the youth, gender inequality, disinformation and “fake news,”

---

<sup>3</sup> Women's Political Participation Africa gender Barometer, 2021, @ page 8

election-related conflicts and violence, lack of transparency and accountability in political financing and polarized and biased media, among others.

Recently in SADC, it was observed that, “The region has become vulnerable to the threat of violence, conflicts and instability due to a number of factors including bad governance, inequality, human insecurity and post-elections conflicts.”<sup>4</sup> Indeed the region has witnessed heightened political tensions between governing political and opposition parties, coupled with a growing trend of non-acceptance of electoral outcomes<sup>5</sup> as well as the emergence of political power transitions outside the formal electoral process.<sup>6</sup> All of which have a fundamental exclusionary impact on the role of women in politics.

Against the above situation, domestication of the electoral principles, guidelines and obligations contained in the normative framework on electoral democracy and tracking of progress of the same using the Model Law on Elections should remain a key priority.

### **Key Milestones in the advancement of WPP and Electoral Democracy in Africa**

Among the major milestones in the advancement WPP in the context of electoral democracy across the regions are the following:

- i) The establishment of independent Election Management Bodies (EMBs) with their own governance, administration and budgets;<sup>7</sup>
- ii) Legislative provision for continuous registration of voters to allow for maximum voter registration;
- iii) Accounting of ballots at polling stations and the posting of results outside polling stations which enhances reliability and minimises mistrust in the process and government;
- iv) The adoption and implementation of legally enforceable Codes of Conduct to govern the behaviour of stakeholders during elections; and Establishment of Conflict Resolution Mechanisms.

### **Areas for Reform**

A cursory look at reports by the international and domestic election observation missions from recent elections that took place within African States are revealing in terms of the areas that require priority during electoral reforms. As articulated above, some of these areas include the following:

- i) Declining number of women being elected into public office despite the adoption of the instruments and Protocols on Gender and Development;
- ii) Declining participation and representation of young people in elections, especially as candidates;
- iii) New and emerging forms of electoral violations against women committed and perpetuated on social media and electronic platforms;

<sup>4</sup> SADC Concept Note on Strengthening of Mapped Regional Infrastructures for Peace to Enhance SADC's

<sup>5</sup> Deployment Capability: 2019.

<sup>6</sup> Part II, Section 20 of the SMLE

<sup>7</sup> Botswana 2018, South Africa 2018, Zimbabwe 2018

- iv) Gender biased and polarised media coverage of political parties, candidates and electoral events, which undermines the fairness of electoral competition, breeds tension and promotes political conflicts;
- v) Abuse of public resources in election campaigns by governing parties which skews the electoral playing field and undermines the principle of equality;
- vi) Inadequate genderisation of EMBs compounded by lack of funding and overreliance on donor funding by the EMBs;
- vii) Lack of and inadequacy of voter education and voter registration systems which affects the accuracy and gender inclusiveness of the Voters Roll;
- viii) Political intolerance and electoral conflicts resulting in violence excluding women from fair participation;
- ix) An increasing culture of non-acceptance and challenging of results by political parties resulting in the undermining of EMB's and their mandate;
- x) The aspect of conflation of state and political party has seen embedded forms of government that make formal transition of political power impractical if not wholly impossible in extreme cases. This has in turn eroded the probative value of the electoral process as a means of expressing the sovereign will; and
- xi) An increasing gap between political party campaign promises and actual delivery against a background of diminishing platforms of accountability and tolerance of dissent by governments.

## Section 2. What is the Pan African Model Gendered Electoral Law?

### What is a Model Law?

'Model legislation' may be defined as **a set of legal standards on a specific issue**, which are offered for the consideration of, and adoption by national legislators as part of their national law. It typically embodies a detailed set of provisions inspired by international, regional or sub-regional standards on a subject.<sup>8</sup>

A Model law serves as a **sample or reference law** that can be used by national Governments. Model laws are therefore not developed with a specific country in mind, but rather as an **overarching template that could be applied to several countries**. Model legislation is often adopted at a regional level, for a set of countries facing similar challenges.

### Why and How was the Pan African Model Gendered Electoral Law Developed?

The Model Law is a tool meant to assist African States in domesticating the various principles, guidelines and obligations on democratic elections emphasising enhancement of WPP

The PAMGEL should, therefore be seen as a vital tool that is meant to assist stakeholders at national level to ratify the provisions of the wide expanse of progressive electoral legislation at

<sup>8</sup> Taken from User-Guide SADC Model Law on Eradicating Child Marriage & Protecting Children Already in Marriage

international and regional level into national legislation, policy and practices that enhance WPP.

### ***Process of Developing the Pan African Model Gendered Electoral Law***

As mentioned above, the Model law is part and parcel of a purposive set of instruments meant to increase the continent's capital for advocacy on enhancement of WPP. It accordingly builds on years of advocacy and research with excellent tabled knowledge products, reports, policy briefs and more recently a gender barometer. The Model law itself drew immediately from a situational paper and principles on elections. Various stages of consultation, research and validation were encountered till finalisation.

### ***Steps towards the Development and Adoption of the Pan African Model Gendered Electoral Law.***

- Step 1:** Consultative meeting for stakeholders to map out the scope, content and process of drafting and approving the Model Law and constitute a Technical Working Group to support the drafting process;
- Step 2:** Engagement of drafter/s, development of a Policy Paper on conceptual issues and rationale for developing the Model Law, drafting and translation of the draft Model Law into the three official languages;
- Step 3:** Regional meetings to review the draft Model Law by the Regional Legislative Assemblies or Equivalent, their relevant Standing Committees, Rec Secretariats, Non state stakeholders, Technical Working Group and the Pan African Parliament;
- Step 4:** Review of the Draft Model Law by Legal Drafters from representatives of Ministries of Justice and technical legal drafting experts;
- Step 5:** Review of the Draft Model Law by a Joint Sitting of Pan African Parliament and AU Political Affairs Department Standing Committee;
- Step 6:** Validation of the Draft Model Law by the stakeholders;
- Step 7:** Presentation of the draft Model Law to the Pan African Parliament and AU Plenary Assembly for approval;
- Step 8:** Editing, Translation and Printing; and
- Step 9:** Post-Adoption Engagement.

## Figure 1 Steps in the development of the Pan African



The technical drafting team followed up by partnering with several organisations including the legal profession to ensure precision of the drafting language and provisions of the Model Law. The consultative process was thorough and practical in nature. It involved a wide range of stakeholders, including parliamentarians, policymakers, the Coalition on Enhancement of WPP, youth, legal experts and drafters, judges, civil society organisations, and other key stakeholders from across the African Continent.

## **Objectives of the Pan African Model**

The Model law covers all components of the electoral cycle and involves all key stakeholders. Thus the PAMGEL strives to provide **a comprehensive legal framework to eliminate loopholes** and guide the actions of States with regard to **legislation, policy and programming** to address the challenges faced with enhancing WPP.

The objectives of the PAMGEL are:

- i) To consolidate electoral democracy on the African continent through domestication and implementation of international and regional electoral standards, best practices and obligations at national level.
- ii) To support Africa's states and electoral stakeholders to integrate the comprehensive international and legal frameworks on elections with respect to provisions that target enhancement of WPP.
- iii) To advocate for the integration of the provisions of the Model Law into national electoral legislative frameworks through consultative processes.
- iv) Promote a harmonised approach to promotion of WPP in election observation and election management in furtherance of democracy that mainstreams women's participation in Africa.
- v) Encourage the **adoption of progressive Electoral laws and the reform of outdated laws.**
- vi) Provide **specific guidance to national legislators** on the **content regarding provisions of effective affirmative action in electoral laws promoting WPP** that would be binding at the national level.
- vii) **Promote regional and country level harmonization of election-related laws giving impetus to WPP** across and within REC Member States – laws relating to gender equity and equality; laws on political party finance; electoral dispute resolution laws; laws relating to minimum compliance with international standards; or laws relating media and access to information during election. The key aim being to align these with minimum benchmarks for enhancing WPP.
- viii) **Provide clear definitions of terms to avoid ambiguity and enhance consistency.**
- ix) **Affirmation of a women human rights approach** focused on the conduct – to tackling the issue of Women's Political Participation on the African Continent;
- x) Serve as a **standard for national legislators** and policy makers and promote

accountability.

- xi) **Help put the issue of Women's Political Participation as an imperative for electoral democracy on the agenda** and serve as a **stimulus for debate** as well as an entry point for relevant advocacy and,
- xii) Encourage data collection and in-depth research to guide design, implementation, monitoring and evaluation of programmes to ensure that they address the needs of women in politics and generally the most disadvantaged and vulnerable societies across the African continent.
- xiii) To align the national and regional electoral legal framework with that of the AU and Global level principles and standards.
- xiv) To encourage uniform, correct and consistent application of the electoral laws throughout the African continent.

### **Key Features of PAMGEL**

The Model Law on Elections incorporates some key features that help facilitate its use at the national and local level:

- a) It is holistic and comprehensive in that it goes beyond elections as an event. It covers the full electoral cycle, providing a multi-sectorial framework for prevention, protection and mitigation of the effects of receding compliance with regulations on enhancement of WPP within electoral standards.
- b) Perhaps most importantly, it is easy to use as it is drafted in a way that makes it possible to transplant its contents into national legislation without undue effort following simple clear instructions.

### **How can the Pan African Model Gendered Electoral Law be used to Accelerate Change at the National Level?**

- i) The Model Law can be used **by lawmakers** in Africa's regional and state legislatures to **fully or partially domesticate its content** into one or several national laws.
- ii) Lawmakers may follow the Model Law's specific guidance to **create a new comprehensive national law on elections** that promotes WPP and that encompasses all the areas in the Model Law, while adapting relevant provisions to suit the national context.
- iii) National **legislatures may also review its existing legal framework and draw from different parts of the Model law to amend specific existing laws** in order to align with the standards set by the Model law. For example, a country may amend its Electoral Act to include the Model Law's gendered provisions on regulation of incentivisation of political parties funding based on the extent of inclusion of women in executive leadership position in a political party. Further, when there are several

amendments needed to different laws in order to bring alignment to the Model law, a country may consider to pass a main law such as a “Political Parties Finance Act” and amend other laws through “consequential amendments” which accompany the main law.

- iv) The Model Law can also serve as a reference for **policy makers to initiate or influence policy reform processes**, as some of its provisions call for administrative action and can serve as input for national policies or programs.
- v) The Model Law includes provisions that can guide those who **develop, implement and monitor national strategies or action plans** to enhance WPP.

### Section 3. A Summary of the Pan African Model Gendered Electoral Law.

#### **Preliminary Provisions**

Under this section, the model law emphasizes the key objectives of the Model Law. Principal amongst these is the aim to assist Africa's states in domesticating gender equality principles in key; electoral principles and obligations stipulated in regional and International Election instruments. This is aimed at improving the level of women's participation in electoral and decision making processes so that it is at par with that of men. The Model law accordingly aims to consolidate electoral democracy in Africa through creating a unified body of law towards a justiciable normative framework of civil and political rights that buttress the role of women in politics.<sup>9</sup>

African States are urged and encouraged to incorporate the provisions of this law into their domestic legal systems to give rise to a binding legal effect. This is an exercise referred to as domestication in the Model Law.<sup>10</sup>

Under the preliminary provisions, the use of wide and self-explanatory definitions assists with promoting correct, uniform and consistent interpretation and application of electoral norms. For example, there is a wide and inclusive definition of “Gender based political violence.” It is clearly all based on experience and widely accepted wisdom from community and grass roots level as shown below;<sup>11</sup>

**“Gender equality”** includes the achieving for men and women equal enjoyment of the socially valued political and economic rights, opportunities, resources or rewards in the conduct and management of the electoral process gender equality must be observed in particular with respect to—

- (a) the employment of staff of the Election Management Body
- (b) the employment of the staff of the Election Management Body during elections
- (c) the voter registration process

---

<sup>9</sup> Part I S1 (a)

<sup>10</sup> Part I s1 (b)

<sup>11</sup> .....

- (d) *polling arrangements and process*

### **Principles on Elections**<sup>12</sup>

This section outlines minimum guiding principles relevant for the enhancement of WPP in credible conduct of elections as follows;

- a) The model law provides that the State shall take all legislative and other measures to ensure that all relevant stakeholders fully participate in elections without discrimination or violence, regardless of their gender identity, ethnicity, sexual orientation, class, age, disability status and religion, among other conditions.<sup>13</sup>
- b) **The Model law speaks to prohibition of marginalisation of women through violence, intimidation and fraud**
  - i) No political parties, its members, supporters or candidate shall marginalise women during the electoral process, including through –
    - Violence
    - intimidation
    - fraud
    - use of hateful language
  - ii) All broadcasters and print publishers have an obligation to ensure that their news media avoid language that—
    - encourages racial, ethnic or religious prejudice or hatred; or
    - encourages or incites violence; or
    - is likely to lead to undue public contempt towards any political party, candidate or class of person
- c) **It states and lists the key women's rights that require particular attention in electoral processes**
  - i. equality and non-discrimination
  - ii. equal participation
  - iii. human dignity
  - iv. security of person
  - v. freedom from torture or cruel
  - vi. freedom from inhuman or degrading treatment or punishment
  - vii. access to information
  - viii. freedom of expression
  - ix. freedom of assembly
- d) The Model Law says that States shall hold regular democratic, credible, peaceful and transparent elections. It is noted hereunder that it is stated as a must for elections to be held under a democratic constitution with support to strong institutions such as the Judiciary, Parliament and even independent commissions.<sup>14</sup>

---

<sup>12</sup> Part II

<sup>13</sup> Part II, Participation and Inclusion

<sup>14</sup> Part IIS<sub>4</sub>

- e) The principle of equality; “One man one vote.” without discrimination is pronounced in the Model Law. Similarly, equality of conditions for participation is emphasised for a level playing field based principles of non violence.<sup>15</sup>
- f) The Model law clearly spells out the principle that without rule of law, there can be no fulfilment of human rights and representative democracy through the electoral process.<sup>16</sup> In other words, the rule of law is a pre condition for elections to lead to fulfilment of human rights and representative democracy.
- g) In terms of the Model Law, the principle of equality is characterized by freedom of movement, expression, assembly and access to information, including the obligation to disclose critical information by state institutions.<sup>17</sup>
- h) It is stated therein that only in terms of the law can any form of freedom or equality be deprived of any man or woman.

### **Defining the role of Electoral Management Bodies.**<sup>18</sup>

The Model Law enjoins EMBs to ensure the delivery of free and fair, credible, peaceful and transparent elections. To achieve this the Model law outlines key characteristics that an EMB ought to espouse as independence and impartiality.

States are mandated to ensure there is gender mainstreaming in recruitment and that male staffers are gender sensitised.<sup>19</sup> There should be transparent recruitment to EMBs based on competence and knowledge of electoral processes and security of tenure for EMB employees. Measures are to be taken to ensure a permanent gender balanced professional staff. Important to note is the recommendation that EMBs be accountable to Parliament. Above all, the EMB's independence and role must be entrenched in the constitution and states must allocate adequate funding for the EMB to operate without undue interference.

In section 26, EMBs are enjoined to enforce political party quotas for gender inclusivity and ensure maintenance thereof through re-allocation of special seats to candidates of the same gender.<sup>20</sup>

### **Minimum Standards for Electoral System Design and Principles.**

The Model Law insists that electoral systems must allow gender sensitive representative democracy to be implemented. In addition, the Model Law enjoins states to ensure that the electorate understands the consequences of any particular electoral system. An important acknowledgement made in the Model Law is to the effect that Electoral systems are not uniform in origin and impact. Rather, the Model Law recognises electoral systems as the unique result of influence by the history, political party culture and experience of a nation. The Model law notes

<sup>15</sup> Part II s15

<sup>16</sup> Part II S5

<sup>17</sup> Part II S14, 15, 16, 17

<sup>18</sup> Part III

<sup>19</sup> Part III, section 23

<sup>20</sup> Section 26

that certain political party systems favour women (FPP) than others (Proportional Representation).<sup>21</sup>

### **Delimitation of Electoral Boundaries**

It is provided in the Model Law that an independent body must be appointed to draw boundaries for constituencies in a fair and transparent manner. In providing guidance for the achievement of this objective, the delimitation commission must be inclusive and pay heed to gender mainstreaming. Representatives of the electorate, political parties, civil society, and similar stakeholders must be involved.<sup>22</sup>

### **Timing of Elections**<sup>23</sup>

The most important principle underlying timing of elections is that enough time must be given for the EMB to prepare for elections and to ensure fair play for all stakeholders in the election. The Model Law grants parliamentary oversight of the setting of the timeframes for electoral processes throughout the full electoral cycle. Further, the Model Law provides that there must be a clear time table for each of the stages of the electoral cycle from announcement through to polling and even appeals. The Model law states that these critical intervals must be determined in consultation with all election stakeholders.

### **Political Party and Electoral Candidate Conduct**

The relevant section of the Model Law seeks to guarantee the freedom to register a political party or de-register in terms of the law regulated by a prescribed body without discrimination on a gender or any other basis. The Model Law recommends that the EMB or prescribed body should keep an updated register of all active political parties. A key provision is the allowance of individual and party based candidates to contest in elections. In Africa there are different positions on this aspect as some electoral laws do not allow for independent candidates to contest in elections while others do. This has a negative impact on the candidacy of female candidates that may wish to run on a unique set of genderised principles.

The Model Law enjoins the EMB to facilitate free access to the polling station by election monitors and observers. There is a provision to allow the consultation of monitors on decisions made by the Presiding Officer and for constitution of monitor, observer and EMB polling staff to espouse gender parity.

In the interests of fairness, the Model Law stipulates that there must be a law to regulate private and public political party sources of funding. Fairness in distribution of public funds by the state is stipulated. In return, political parties are required to account for use of public funds.

Important to note is that the provisions distinguish between funding of meaningful roles in female Executive functions and undue access to state resources for party activities by incumbents.

### **Electoral Codes of Conduct**

The Model Law provides that the conduct of political players shall be regulated by a binding Electoral code of conduct monitored by the EMB. The Code of Conduct Regulates all stages of

---

<sup>21</sup> Section 27

<sup>22</sup> Part v, Section 29

<sup>23</sup> Part VI

the electoral cycle with emphasis on the campaign period

The Electoral Court is charged with enforcing the Electoral Code of Conduct. Each political party is enjoined to sign the Electoral Code of Conduct as a condition for registration. This ensures that all who enter the field of elections are committed to a uniform set of rules.<sup>24</sup>

### **Eligibility of Voters**<sup>25</sup>

The Model Law clearly states that all citizens of age shall be allowed to vote. It explicitly states that prisoners and citizens in foreign countries must be enabled to vote. It further provides that female voters must be given special consideration to enable them to vote due to unique circumstances and roles that prevent them from fully exercising their right to vote if they so wish.

### **Voter Registration and Voters' Roll.**<sup>26</sup>

The Model law stipulates the standard nature and format of a national voters' roll. In line with international and regional standards, the Model Law urges EMBs to ensure that the voters' roll is compatible with the national registry. Further that the national registrar facilitates efficient issuance of identity documents to facilitate voter registration.

It is stated in the Model Law that voter registration shall be continuous subject to the time needed by EMBs to prepare for and conduct elections.<sup>27</sup> It is stated that the the EB shall develop voter registration regulations that are context specific, gender sensitive and inclusive to address barriers that are faced by vulnerable and marginalised groups.<sup>28</sup> The Model Law also provides that the voters' roll shall be accessible and open to queries by all eligible voters, political parties and candidates. A clear innovation in the Model law is the suggestion of the electronic and verifiable voters' roll to enhance credibility of the electoral process.

### **Voter and Civic Education**<sup>29</sup>

The Model Law instigates EMBs to conduct voter education in all parts of the country. This is aimed at assisting voters to be acquainted with the voting procedures and other aspects of civic awareness relating to elections. States are exhorted to ensure there are adequate funds for all voter and civic education requirements.

A unique entry point to electoral regulation heralded by the Model Law is the stipulation that EMBs must collaborate with Civic organisations in voter education. CSOs are also requested to give out correct information and desist from bias. In providing voter and civic education, EMBs are urged to effectively cater to the level of literacy of the population, and to provide information in print, oral and audio-visual mediums accessible to all. As far as possible, laws must be made available in the official languages of a country.

---

<sup>24</sup> Part VIII

<sup>25</sup> Part IX, section 44

<sup>26</sup> Part X

<sup>27</sup> Part X S50, Period of Registration

<sup>28</sup> Part X, Section 49

<sup>29</sup> Part XI

### **Campaigning.**<sup>30</sup>

The Model Law awards the freedom to campaign to all political parties. It states that this freedom must be exercised together with the freedom of movement, assembly, association and expression. It expressly prohibits use of public order law provisions to restrict free political campaigning by political parties as well as voter and civic education by CSOs.

The Model Law provides for a cooling off period of two days before elections to allow a neutral voting environment. This is another aspect that past experience has seen as applied differently in different Countries.

States are enjoined to ensure that there is security to property, citizens and candidates during campaign periods. An important provision is the restriction of political party regalia and political messaging within polling stations.

### **Media**<sup>31</sup>

The model law calls for equal access to all forms of media by political parties and stakeholders to the electoral process. Media itself is called upon to be impartial and neutral. More importantly to shun hate speech or fanning of violence.<sup>32</sup>

Section 64 (3) provides that the EMB shall grant incentives to encourage private media to develop Temporary Special Measures to afford female candidates free additional time for campaigning.

The EMB is encouraged to accredit media personnel with impartiality and to take positive steps to give equal access to information to all media institutions. The model law recognizes the role of a media commission or a similar body in regulating the media function during elections, particularly through a media code of conduct.<sup>33</sup>

### **Election Observation and Monitoring.**<sup>34</sup>

This section states that the EMB is responsible for accrediting monitors and observers. It prohibits the EMB from unreasonably denying accreditation merely based on the perception of bias. The format of applying to observe and accreditation format are given in the section and one criteria is gender balance of observation missions.

The EMB is called upon to give observers and monitors access to polling stations and the voters' roll. At the same time election observers are reminded to respect local culture and due process as laid out in the law. Just like with the media, the Model Law recommends a code of conduct for election observers.

### **Polling Stations**<sup>35</sup>

The model law includes provisions to ensure that the EMB shall ensure that all polling station

---

<sup>30</sup> Part XII

<sup>31</sup> Part XIII

<sup>32</sup> Part XIII on Media should be read together with the ACHPR's Guidelines on Access to Information & Elections in Africa.

<sup>33</sup> Section 67

<sup>34</sup> Part XIV

<sup>35</sup> Part XV

have gender inclusive facilities at Section 72. It also provides that EMBs shall ensure that there are enough, accessible and well known polling stations to smoothly facilitate voting in all constituencies. A particular standard recommended is that each citizen should have a polling station within 5 kilometres of their residence.<sup>36</sup>

### **Polling**<sup>37</sup>

Part sixteen of the Model Law provides for facilitation of early voting by security forces, sick persons, the elderly and expectant mothers in places where they are located by the EMB. It states that all polling days are to be declared public holidays and no one must be forced to go to work if he or she wants to vote on that day or to exercise any right or freedom related to the electoral process.

As regards the conduct of security agents during elections: All must be aware that security officers are not allowed inside the polling stations unless when called upon by the presiding officers. Their mandate is to ensure safety and security of all people and property, acting in a manner that is impartial.

The Model Law provides that all the voters who are in the queue at the time of closing shall be allowed to vote. Only the EMB can extend polling time in terms of the law having regard to the circumstances of marginalized sections of society and any special circumstances attendant thereto.

It is important to highlight that the Model Law requires that all voting be secret and the EMB is enjoined to uphold the secrecy of the ballot. The EMB must do this in a demonstrable and verifiable manner. The Model Law allows for those that volunteer and declare the need for assistance to vote, to be assisted impartially. In such an event, records of all assisted votes must be kept.

### **Vote Counting, Tallying and Announcement of Results.**<sup>38</sup>

The Model Law provides that there shall be clear, simple, transparent and efficient procedures of counting votes and release of results. Results must be released immediately upon completion of counting in constituencies and the standard is to post these on the face of the polling station for all to see.

Election observers and monitors must be allowed to observe the vote counting.

The model law stipulates the finality of results validly and legally announced by the EMB. It goes further to encourage political parties to accept the finality of results of fair contests. Only in the case of a court challenge can results be set aside or altered as determined by the court.<sup>39</sup>

Institutions of government are called upon to give effect to the will of the people as reflected in

---

<sup>36</sup> Part XVII

<sup>37</sup> Part XVII Part XVI

<sup>38</sup> Part XVII Part XVI

<sup>39</sup> Seychelles Case Study: The losing candidate in the Seychelles Presidential elections lost by 139 votes but still conceded defeat in the spirit of national cohesion.

the outcome of elections.

### **Handling of Electoral Disputes.**<sup>40</sup>

The Model law provides for the state to constitute election dispute resolution structures. It explicitly provides that electoral disputes before the Electoral Court must be decided expeditiously, with due regard to urgency and sensitivity of the matters, and according to time limits which shall be set in an Act of Parliament. All disputes shall be resolved in pursuit of the Electoral codes of conduct.

Stakeholders to elections must be aware that the model law recommends that the Electoral Court has the same status as the High Court. Disputes can accordingly be referred to it as a court of first instance without going to a lower tribunal.

### **Miscellaneous.**<sup>41</sup>

In this category, the Model Law prohibits Traditional Leaders in their official capacity as such from influencing the elections or managing any aspect of the electoral process. This eliminates the exclusionary effect of patriarchal society on women.

The Model Law sets the standard that the electoral law shall be translated and made available in at least all official languages of the country. This is important to facilitate voter and civic education.

Lastly the model law recommends that the EMB holds a post-election review attended by all electoral stakeholders.

## **Section 4. Practical Guidance for Key Stakeholders on How to use the Model Law**

### **Parliamentarians**

Parliamentarians in many African countries have begun working towards the advancement of legislation and policies at national level in line with the content of Model Laws. Some of the key steps parliamentarians can engage with, depending on the status of progress in their country and the level of experience and interest that each parliamentarian has, are outlined below.

It is important to note that given the diversity in country specific legislative frameworks, different stages of implementation of the Model Law, as well as differences in sectorial acceptance of WPP in the context of electoral democracy in each country - this guidance is not a 'one size fits all' solution and has to be adapted to fit the domestic context. Steps on domestication are spelt out in

### **Action Area I: Verify the Starting Point of the Dialogue on Legal and Policy Reform in the Country**

Some countries have already begun a legal reform process leading to changes in their Constitutions or advanced efforts for full harmonization with national legislation, while others have yet to begin work or debates around the implementation of the Model Law. If you are new

---

<sup>40</sup> Part XVIII

<sup>41</sup> Part XIX

to your national process - for example, if one is a newly elected parliamentarian or new to the issue of electoral conduct and ancillary processes, one should establish where the national efforts stand, which stakeholders (such as efforts launched by civil society) are engaged in the process and establish the current status of the discussions.

### **Action Area 2: Analyse the Current Legal and Policy Framework and Cross-Reference with the Provisions of the Model Law**

Review your country's existing laws and policies and establish the extent to which they are or not aligned with the Model Law as well as which aspects of the Model Law are already included in legislation. Identify which parts or sections of the Model Law are not recognized in national legislation or in policies and may thus, represent opportunities to strengthen the legal or policy framework.

### **Action Area 3: Disseminate the Model Law and its Content among Peers**

The content of the Model Law itself is an excellent guide to prompt and lead legal reform; however, some parliamentarians might not be fully aware of its content and/or specific language and provisions. This User-Guide and supportive materials are meant to facilitate dissemination of the Model Law to others. Dissemination efforts could be spearheaded within relevant committees or parliamentary caucuses or perhaps, led independently by a champion parliamentarian. Civil society could assist in working on the issues available as a resource to support parliamentarians in their own capacity, building efforts or raising awareness with other parliamentarians.

### **Action Area 4: Build Alliances with other Parliamentarians and Join Forces with Caucuses or Committees**

Working in coalitions and in partnerships with other supportive parliamentarians towards a common goal is key to achieving greater impact and more effective results in domesticating the Model Law and tracking progress on implementation. Verify whether there are existing parliamentary committees or caucuses working on issues that are covered in the Model Law such a gender equality, role of ICTs in elections and media coverage of election and establish their positions and strategies. If you are spearheading this work, meet with other policy makers and civil society representatives to identify avenues and opportunities to collaborate to enhance WPP.

### **Action Area 5: Advocate in Parliament for National Laws and Policies to be Adopted, Adapted, Reviewed, Strengthened and Implemented in line with the Model Law.**

Once you are more familiar with the current landscape and have identified allies, you can define advocacy goals you would like to achieve – for example, ensuring laws relating to inclusion of women in politics through electoral legislation.

Some concrete advocacy actions that parliamentarians can take include:

- a) **Proposing motions** urging Parliament to enact or implement legislation on elections.

- b) Posing oral questions** in Parliament, either in plenary sessions or in committees. This process compels the relevant sector Ministry to provide a detailed answer on measures taken (or the lack thereof) in achieving the desired end. This mechanism also allows MPs to seek points of clarification or ask follow-up questions in Parliament and in doing so ensure that the Government provides more information on what is being done to adhere to affirmative action provisions on WPP. MPs can additionally question the budget allocated to EMBs to enable them to meet their obligations toward gender inclusivity under the Model Law and other progressive legal instruments.
- c) Proposing special public hearings** to give all interested members of the public, groups and organisations the opportunity to express their views, testimonies and information on advancing women's political participation and to share it with the MPs. You may want to invite gender, constitutional and electoral law experts or other MPs from the region to share best practices and strategies.
- d) Allowing for a Parliamentary Petition mechanism** which acts as an alternative initiation process and a failsafe should a Parliament fail to identify or neglect to act on a legislative or policy shortfall with regards to advancing WPP. Petitioning as a mechanism is available to the public to present certain topic for debate in and action by Parliament.
- e) Allowing for Private Members Bills** which may be tabled through a Parliamentary process by the public and which again may assist if a Parliament fails or neglects to identify a specific legislative or policy shortfall and take action.

### **Action Area 6: Promote Accountability to Commitments Adopted in Regional and Global Fora, including the Model Law**

As part of their oversight role, members of relevant Parliamentary Committees can request from implementing Ministries their annual reports to assess the extent of implementation of programmes and policies regarding the participation of women in electoral processes.

### **Action Area 7: Ensure Adequate Budgetary Allocations across Different Ministries for the implementation of key steps towards adherence with Regional and International Standards for WPP in Elections.**<sup>42</sup>

One of the roles of Parliament is to provide budget oversight and financial accountability. In line with its mandate, the relevant Parliamentary Committee can undertake the monitoring of budgets to assess whether funds appropriated by Parliament toward programs designed for electoral democracy were actually released and applied to the intended activities spelt out in the national law created from the Model Law. Before approving the budget, MPs should advocate for and ensure that appropriate funds are allocated to providing effective responses to prevent

---

<sup>42</sup> Part III S26 (3)

and eradicate compromised handling of the electoral cycle by any relevant body. MPs should also make sure that accountability for non adherence to quotas to promote WPP is given priority.

### **Action Area 8: Be an Ambassador and Opinion Leader Nationally along with your Constituencies**

A key role of parliamentarians is to represent their constituencies and thus, to listen to their testimonies about the treatment of women throughout the electoral cycle, to understand what affects them, and advocate for solutions that address their specific issues. Some of these may include-

- a) Following up on electoral dispute resolutions mechanisms and their perceived levels of impartiality in matters relating to WPP.
- b) Parliamentarians who are champions on this cause, speak out in Parliament, in the media, including on community radio, in order to increase visibility of issues around women's political participation and sensitize the general public.
- c) Parliamentarians can also work with pressure groups and civic educators in their constituencies and with religious leaders to sensitize them, as well as women and young individuals, about the risks of neglecting full participation of women in politics, the benefits of voting, and highlighting the value of democratic elections. In all instances there is a need for Parliament and civic society to work hand in glove in matters of civic education amongst others.
- d) One could also champion this issue at the regional; and global levels by sharing the experience of your country with other fellow parliamentarians, as part of the East African Legislative Assembly, SADC Parliamentary Forum, the Pan-African Parliament, the Inter-Parliamentary Union or organisations working with parliamentarians.

### **Practical Guidance for CSOs and Young Advocates on How to Use the Model Law**

There are many ways in which civil society and youth advocates can support the use of the Model Law at the national level. These below are four key- 'action areas' in which CSOs, and young advocates can use the Model Law to advocate for enhanced quality and integrity of women's participation in politics:

#### **Action Area 1: Direct Advocacy with Policy and Decision Makers**

The Model Law is by its very nature non-binding and must be incorporated or domesticated at the national level. In other words, only national legislation based on the Model Law ratified and adopted by Parliament is legally binding. These are suggestions for carrying out direct advocacy with policymakers to help ensure that the provisions of the Model Law successfully navigate the legislative process.

#### **Study, Disseminate and Educate on the Content of the Model Law.**

This User-Guide and supportive documents attempt to make the contents of the Model Law more accessible and easier to use for CSOs and young advocates for WPP. A deep

understanding of the content and features of the law is needed not only for advocacy work, but also for work on accountability or alignment with the Law's programmatic provisions.

### **Verify the Starting Point of the Dialogue on Legal and Policy Reform in Country**

In some countries, a legal reform process is in place, leading to changes in the Constitution or full harmonization efforts with national legislation, while in others there has not been any work or debate around the implementation of the Model Law. It is important that you understand the status of national efforts around implementation of the Model Law as well as the tone of the discussion. This includes knowing the level of opposition or resistance as well as political will. It is also important that you learn which actors or institutions are responsible for legal or policy reform around the Model Law. A mapping exercise of past and current efforts undertaken by law and policy makers, as well as initiatives by fellow civil society organisations or advocates, will greatly enhance understanding. Reports by domestic and international election observation missions are very instructive, especially the recommendations on gender mainstreaming and WPP.

### **Analyse the Current Legal and Policy Framework and Cross-Reference with the Model Law**

This is done by reviewing the country's laws and policies relating to electoral democracy to establish to what extent they are or not aligned with the Model Law and what aspects of the Model Law are already included in legislation. **Identify the parts of the Model Law that are not recognized in national legislation or policies** and represent opportunities to strengthen the legal or policy framework.

### **Gather Data and Evidence that can Inform Legal and Policy Change, Government Programmes and Advocacy Strategies**

Up to date and reliable data and evidence can be used directly as input for advocacy materials or briefs for decision and policy makers. It is extremely important that advocates of WPP have an excellent understanding of the role women play in the issue of electoral democracy and the supporting legal framework in their country. This is vital to work around messaging and make the case with decision makers and opinion leaders.

### **Engage in Parliamentary Dialogues**

There are ways by which civil society can actively participate with Parliament. **Conducting power or interest groups mapping** exercises to understand power dynamics and positions of key parliamentary groups and MPs is vital, and so is **relationship-building** with committees or caucuses working to advance the issue of electoral democracy. Civil society can also play an important role in **building the capacity** of parliamentarians on the Model Law itself, using this Guide and supportive materials among others. Among other actions, civil society can also:

- Lobby parliamentarians to **suggest submission of oral questions** or motions, conduct public hearings or create technical working groups or special commissions.
- Offer to **provide testimony and expertise** during parliamentary debates and hearings.
- **Mobilize support for the passage of Bills** as mentioned above policymakers,

organisations, constituents (including traditional leaders) and the media could ensure they are voted on and passed. Support may furthermore be garnered to pass subsidiary legislation which is usually made by the Executive and tabled in Parliament.

### **Engage in Policy Dialogue and Drafting Processes**

When it comes to the elaboration of policies, national strategies or plans, civil society can be an instrumental partner to policy makers by way of public participation hearings or other mechanisms promoting women's participation such as lobbying and petitioning. Some countries might be focusing on the policy level, on the drafting or adaptation of their National Electoral Code of Conduct or any other policy related to elections.

### **Engage with and Help Train Ambassadors**

'Champions' have the ability to raise awareness of minimum standards for democratic conduct of elections with the right people at key moments. They can open doors which would otherwise be shut; they can be a strong voice in the media; they can inspire other MPs and civil society groups and bring the realisation that they are not alone in working to advance WPP in the context of electoral democracy. Existing champions might not be familiar with the Model Law or might not have used it for their own advocacy. Civil society organisations can disseminate the Model Law to them and, in some cases, train them and strategize together on their advocacy path. It is especially important to identify, liaise with, and train **religious and traditional leaders** as champions. They are often decision-makers and might even themselves preside over electoral dispute resolution related matters that consider matters of WPP.

### **Advocate for Open Space and Meaningful Inclusion of Civil Society**

This could mean creation of spaces for civil society in working groups, councils, commissions and other Government spaces where legislation and policy are developed and/or evaluated and participating in those spaces. One potential area identified involves the creation of spaces for CSOs at the REC legislative Assembly and PAP meetings as observers, an option currently not available.

## **Action Area 2: Holding Government Accountable to Commitments on Advancing WPP in Electoral Democracy**

The Model Law is by its very nature non-binding and must be ratified and incorporated or domesticated at the national level. In other words, only national legislation based on the Model Law that is adopted by Parliament is legally binding. These are suggestions for carrying out direct advocacy with policymakers to help ensure that the affirmative action provisions of the Model Law successfully navigate the legislative process.

- Following up with, reviewing and advocating for appropriate action around the period Parliament **Reports to the PAP, REC Legislative Assemblies and State Reports to other international and regional bodies** (annually or as required), that must highlight the status and measures taken by the State towards democratisation of elections and enhancing WPP. Based on these reports, civil society organisations can build their advocacy strategies and messaging.
- Following-up, reviewing and advocating for appropriate action for the **bi-annual reports** to the legislature on the activities undertaken to fulfil the requirements stipulated in the Model

Law. Civil society can follow-up with the Government to request and demand that these reports are developed on time and made available to the public. In addition, civic society can conduct shadow monitoring and reporting of compliance with the set requirements and commitments towards enhancing WPP by government.

- Reviewing the **recommendations made by the REC legislative assemblies** and other or international bodies to your country on measures to be taken to enhance women's participation in politics and hold Governments accountable for acting on such recommendations.
- Holding Governments accountable to their implicit commitment under the Model Law to enable them to advance advocacy, research and litigation to advance electoral democracy and WPP. Civil society can act as a watchdog. Here are some examples:
  - a) Verifying that the **data collection (as per the Model Law concrete provisions) is being done** and advocating for it if needed;
  - b) Holding the Government to account; and
  - c) Verifying and holding the Government to account for the **provisions related to establishing specific programmes** or support areas, some accountability tools or strategies used by civil society, including the following:
    - i) Producing annual report cards on electoral conduct and adherence to standards throughout and in-between the electoral cycle and how decision makers have voted on this matter and sharing it with decision makers and others;
    - ii) Conducting social audits of public institutions to see if they are implementing policies the way they are supposed to (such as the Independent Electoral Commission and the National Human Rights Commission) and reporting results to decision makers; and
    - iii) Conduct public interest litigation (PIL). This type of action requires a lot of legal effort and resources and may not always been successful. However, regardless of the outcomes of the rulings, PIL can help to prove a principle right, put the issue on the agenda and get significant media attention.
    - iv) Conducting **budget tracking** (or partnering with organisations who do budget tracking), to see if funds are being allocated for implementation and enforcement of laws and policies addressing the realization of increased participation of women in politics.
    - v) Ensuring **regional accountability** – that all information about adoption and implementation of the Model Law and the Government's work to advance WPP and electoral democracy is included in Government submissions to the Human Rights Council's Universal Periodic Reviews, the Sustainable Development Goals (SDG) Voluntary National Reviews and Regional reporting requirements. CSOs can use **shadow reports** to highlight issues not raised by their Governments or point out where the Government may be reporting facts different from the real situation. Shadow reports may be presented to all human rights treaty monitoring bodies, but also at the **national level, with national,**

---

<sup>42</sup> Part III S26 (3)

## regional and the Pan African parliaments.

### Action Area 3: Mobilizing Public Opinion and Raising Public Awareness

Given that parliamentarians are elected officials and are supposed to align with and represent their constituencies, advocacy is closely linked with working to increase public awareness around the correct implementation of laws within the electoral cycle as well as gender mainstreaming in politics. Since the Model Law can serve as an entry point on this issue for the general public, working with the media as a co-constituency (not just an opportunistic platform to deliver messages) is important, and should be mainstreamed in the work of CSOs and youth and gender advocates. Possible actions to increase the outreach of the Guide, and mobilize more support for the Model Law include:

- Develop and **share a youth friendly version of the Model Law** and sharing with youth and youth organisations;
- Adapt or develop yet another 'version' of the Guide, **targeted at traditional and religious leaders**, building their capacity around the content of the Guide, and helping them understand their own roles within their communities as well as at the legal, policy and administrative level;
- Partner with **traditional media outlets** but also use social media to conduct awareness campaigns and shape public opinion. Civil society can work with media to prevent sensationalized coverage of electoral issues, and help avoid use of inappropriate language and gender stereotypes when reporting election related issues;
- **Identify and train gender champions and youth leaders** in advocacy so they can participate in efforts with the wider public to advance the Gendered Model Law on Elections;
- Develop **high impact awareness campaigns in partnerships** with others; join and strengthen networks or coalitions of other organisations working to advance WPP; and
- Act as a bridge between Government, grassroots efforts and citizens; creating platforms for consultation and providing a voice for women and identified weaker, marginalised groups in politics.

### Action Area 4: Implementing (or Training Others on) the Practical Provisions of the Model Law

The Model Law includes provisions and recommendations that can guide the development and implementation of programmes by Government bodies, CSOs and other actors in promoting WPP—making it a useful tool beyond legal reform. This means that NGOs, EMBs, Law Societies, and Human Rights Commissions for example, can start applying the Model Law guidance to their practice, if they are not already doing so, and implement the Model Law from the bottom up.

## **Election Management Bodies**

**Action Area 1: Lead law reform proposals and national law gaps analysis** to ensure that domestication is relevant and effective.

**Action Area 2: Ensure inclusion of all political stakeholders in dissemination of information** throughout the full electoral cycle. More importantly in-between elections to ensure inclusivity of marginalised groups.

**Action Area 3: Stick to professionalism, neutrality and operate within the confines of minimum benchmarks** set by the legal framework on elections at national, regional, continental and global levels.

**Action area 4: Conduct extensive voter and civic education on the Model Law** in partnership with Civic Society and government. The use of similar minimum standards will result in minimised potential for electoral disputes based on sheer differences in interpretation of legal provisions and policy guidelines. More particularly to educate political parties on the Electoral Code of Conduct and the Model Law beyond just obtaining signatures upon registration.

**Action Area 5: Partner and guide other independent bodies and commissions charged with overseeing certain sections of the electoral process** on the immediate next steps towards utilising the Model Law. These include the Media Commission, National Human Rights Institutions (NHRIs) and the Judicial Services Commission (JSC) to ensure correct application.

**Action area 6: Through REC Legislative Assemblies, consolidate the continental Body of electoral laws and standardise its knowledge and application on the Continent.** Additionally, to advocate for upgrading of the Model Law into a binding Protocol.

**Action Area 7: Conduct audit of national electoral systems and structures** for compliance capacity with the regional norms and standards defined in the Model Law. Identify capacity constraints and engage national electoral stakeholders such as political parties, government institutions for targeted programmatic interventions in between electoral cycles to ensure readiness to facilitate WPP. This aspect includes ensuring requesting adequate budgetary means from the treasury.

**Action Area 8:** constitute specialist departments for regulation of political parties and enforcing the affirmative action provisions of Electoral Codes of Conduct.

## **Executive.**

**Action area 1: Clearly define the duties of the executive organ regarding EMBs.** The Executive should concern itself with the autonomy and independence of EMBs and to what degree autonomy exists. The Executive should be aware of the critical role that EMBs play regarding constitutional democracies through the contestation of state power through elections.

Three types of EMBs are identified: Type one is the non-autonomous EMB which is located within the formal government bureaucracy, type two is the semi-autonomous EMBs located within the formal government bureaucracy but under the supervision of an autonomous body established specifically for that purpose, and type three is an autonomous EMB also known as an independent electoral commission. The Executive must clearly define the autonomy of the EMB and then ensure that the rules are correctly enforced so that the EMB may set about its work with as little interference as possible.

**Action area 2:** Set appropriate measures for Executives to ensure that each country's domestic legislation adequately reflects the regional and international instruments on elections, women's participation in electoral democracy and the election process as a whole.

**Action Area 3: Clearly define its own functions and separation thereof from other arms of government.** To respect Separation of powers and operate government in a way that gives effect to the will of the electorate as stipulated in the Model Law. Ensure transparent and credible recruitment of judicial officers with secure tenure of office and adequate gender balance.

### **Judiciary**

**Action area 1: Independence of the judiciary.** It is vital that there be an adequate separation of powers and that the independence of the judiciary is fully protected. In some instances where electoral courts are established to deal with electoral disputes, the independence of the judicial officers serving in this capacity is also essential.

**Action area 2: Adequate training of judicial officers of the electoral court.** Judicial officers with proper knowledge of the intricacies of the electoral process, all electoral laws and codes of conduct must serve on the benches of electoral courts. Electoral law is an area of expertise, and at least one of the judicial officers on the bench should be well versed in this area of the law, including regional and international instruments that may apply to an electoral case before it. Detailed workshops for electoral judicial officers must be developed, and training completed.

**Action area 3: Judicial review of amendments to electoral processes.** Although parliament may be able to suggest a review or amendment of specific electoral processes, it should be confirmed by the judiciary before being actioned into law.

**Action Area 4:** The Judiciary must work hand in glove with the legal profession (Represented by an independent Bar Association) to identify grey areas in the electoral law. Key actions after identifying these include applying judicial activism to the interpretation so that it is as aligned to international and Model Law Standards as far as possible; or to recommend cases for public interest litigation. Where the grey areas are incurable through public interest litigation, an important factor is for the Law Societies to approach parliament with request for law reform, this also includes working with the Law Development Commission or the equivalent in each jurisdiction.

## **Security Forces.**<sup>43</sup>

**Action area 1: Adequate training of the security forces.** Security forces must be trained in gender parity based electoral law and procedures before Election Day. The security forces should be able to give gender sensitive assistance should there be any violations or disruptions at the polling stations. They should be able to recognise inappropriate or illegal behaviour without necessarily being consulted by the electoral staff.

**Action area 2: Impartiality of the security forces.**<sup>44</sup> All security force personnel should be able to act independently and impartially when addressing gender based electoral crimes or violations of the electoral legislation. Security forces cannot receive a mandate from the ruling party, any other political party or the current government. When enforcing electoral laws, they should be bound only by the EMB rules of procedure and other adequate rules regarding elections. Should staff members of the security force be found to be influenced, corrupt or advancing the agenda of a particular political party or candidate, this should be an offence that is punishable under the law.

**Action area 3: Security forces, should be neutral and not instil fear amongst the voters at the polling stations.** They must be properly trained to prepare them for their roles on Election Day, so they clearly understand the parameters of their duties. To this end, their actions must be regulated by a Code of Conduct for security forces.

Action area 4: Permission to cast a voter before elections day. Since it is the task of the security forces to ensure peace and that the elections run smoothly at the polling stations on Election Day, they must be provided the opportunity to vote before election day. The voting process must be free from duress or undue influence and it is critical that secrecy of this vote is protected.

## **Political Parties**

**Action area 1: Code of Conduct.** All political parties contesting the election must subscribe to an Electoral Code of Conduct for political parties that regulates their behaviour before, during, and after the day of the elections. This Code of Conduct should also speak to adherence to quotas or women's political participation, marketing activities, campaign rules, conduct on Election Day and interaction with the voters and other political parties. More importantly, political parties must work with EMBs to ensure dissemination of the Code of Conduct to its electoral officials and have internal procedures to guarantee adherence including and up to preventive sanctions.

**Action area 2: Multi-Party liaison committees.** The political parties must attend the EMB multi-party liaison committee during which the rules and codes of conduct for the elections is set. Parties must then be expected to act under these agreed terms.

**Action area 3: All political parties should receive equal representation.** Government, the EMBs and other entities cannot exclude or ignore smaller political parties

---

<sup>43</sup> The aspects outlined herein on Security forces are provided for in Part XVI Section 76 of the Model Law

<sup>44</sup> Part XVI S76 (3)(b)

contesting the elections. Each political party legally contesting should have equal opportunities to make their manifestos known and to advocate for their policies.

**Action area 4: Disclosure of funding.** There are a variety of opinions on the disclosure of political party funding. In some instances, public funding for political parties is allowed, and in other countries, it is not. Issues arose with the latter due to suspicions regarding the sources of funding raised. This is an intricate issue that needs to be thoroughly researched and discussed. Ultimately, the role of money in politics must be regulated in order to avoid capture of public officials and public policy by rich and political parties have a big role to ensure compliance in this regard.

**Action area 5: Voter education provided by political parties.** Voter education is vital during an election, but it is equally essential that the correct message reaches the voter. Should political parties choose to engage in voter education with the voters, they need to subscribe to a Voter Education Code of Conduct. The Code should regulate the information supplied to voters to ensure that the correct information reaches to voters.<sup>45</sup>

**Action area 6: Encourage political parties to accept the outcome of the elections.** It is a severe drain on resources to engage in ongoing legal disputes regarding the outcome of the elections. If it is clear that transparent elections took place, that were free and fair and acceptable to the people, political parties should carefully decide whether to litigate. Procedures that regulate the instances under which the outcome of an election can be contested must be drafted.

Action area 7: All political parties must institute **internal party democratic systems** and ensure adherence to these. These must be supported by robust intra-party dispute resolution mechanisms.

## **Election Observers**

The revised SPGGDE sets the reason for the observation of elections as “...to assist in enhancing transparency, political credibility and acceptance of electoral outcomes”. Thus, when observing elections an observer should always remain impartial and open to all voters. African member States agreed to several principles and guidelines to ensure the later during elections. These principles and guidelines are set out below in practical action areas which should be employed before, during and after elections.

**Action Area 1: Accreditation is essential for the fulfilment of an Election Observation Mission (EOM) mandate** and all individual observers should be accredited in a timely manner to allow observers to fulfil their mandate.<sup>46</sup> Training and education should be conducted by the EMB, as one of the principal accreditation institutions of foreign and domestic observers. This can be done by way of online courses, provision of textbooks along with short

---

<sup>45</sup> Part II S11(b)(c) & Part VII S39

<sup>46</sup> Part XIV S68

courses on the process and standards to be employed on WPP as well as “Think Tanks”, which offer a more hands-on training experience. Ensuring buy-in from the observers is crucial and thus accreditation is key.

**Action Area 2: The EOM should conduct electoral stakeholder consultations** to ensure implementation of broad key elements of the Electoral Cycle to ensure compliance with the “Principles for Conducting Democratic Elections”. The observers as must also be consulted appropriately and kept informed at all stages of the electoral cycle.

**Action Area 3: An EOM must ensure continuous and long-term observation and analyses** that speaks to all the aspects of the Electoral Cycle as well as observe the broader political context which may influence the character and quality of elections. The EOM may employ strategies such as reports of Pre-election Goodwill Missions as well as associated reports on the political environment. In essence the EOM must be committed to:

- Using procedurally based electoral observation strategies and techniques in line with the objective principles and national conditions and ensure that the elements of the electoral process are adhered to. This will ensure uniformity and inspire trust in the voters;
- Conducting objective analysis of and develop findings and recommendations, in line with national legal requirements and applicable international and regional obligations, principles and commitments;
- Being open and transparent regarding the benchmarks employed during observation activities.

**Action Area 4:** The EOM should ensure that **the implementation** of electoral legal frameworks and “Responsibilities of Member States Holding Elections” **are in line with the legal and constitutional framework** which guarantees freedom of expression, freedom of assembly, freedom of association and human rights; civil and political rights; and economic, social and cultural rights and that it promotes good governance. This should form part of the accreditation and observers should be educated on the domestic legal framework and possible risk areas identified such as the right to political participation by women, a secret vote and possible undue influence to vote for a particular political party.

**Action Area 5: Each EOM has to ensure that the composition of the EMB reflects the Gender Equality as per Maputo Protocol.** This means that, the members state who have ratified the Protocol, should have endeavoured to have at least 50 per cent female representation in decision making positions, including electoral administration.

**Action Area 6: EOM's should further observe the adequacy of funding and contingencies availed to the EMB to ensure a credible and legitimate election.** To ensure this as EOMs are guided by specific reporting criteria stipulated in Annexure I of the SADC Principles and Guidelines and other regional and international provisions.

**Action Area 7: EOMs must inquire into the delimitation of geographical election boundaries.** This promotes Electoral Justice – this can be done in a manner which is acceptable to stakeholders and is in accordance with the laws of a land.

**Action Area 8: The host country must** provide EOMs with the registered political parties list, qualification and disqualification of political candidates and any relevant laws requiring explicitly for the latter. Again, the EOMs must be guided by existing law.

**Action Area 9: Civic and voter education is paramount to democratic consolidation**, as they allow for the electorate to make informed choices. To this end, EOM shall observe:

- The capacity and quality of civic and voter education programmes to afford all prospective voters accurate, comprehensible and adequate information upon which to make electoral choices;
- The adequacy of civic and voter education conducted particularly by state agencies, inter alia, information about where, when, how and why to register and vote;
- The adequacy of civic and voter education in relation to the necessary guarantees of the secrecy of the ballot.

**Action Area 10: The EOM must observe voter registration**

**Action Area 11: The EOM must gather information and concerns raised** regarding polling stations, voting mechanisms, voting and counting arrangements, during the Election period. This can be done by direct interaction with voters, visual observation or by way of anonymous comments being submitted at polling stations.

**Action Area 12: EOM's must observe the following during the post-election period -**

- The conduct of procedures and processes concerning electoral complaints and challenges by citizens, prospective voters and those seeking election, including the provision of effective remedies for violations of electoral-related rights;
- The conduct of administrative, civil and criminal processes concerning alleged violations of laws and regulations regarding electoral related rights and responsibilities, including application of appropriate penalties.

## Voters

**Action area 1: Voter education.** The critical element in elections is the proper education of the voter. Voters need to understand how to vote, where to vote, and what recourse is available to them if they cannot cast a vote at the polling station on the day of the elections. False information regarding the voting process is one of the leading causes that result in voters opting out of the voting process.

**Action area 2: Access to polling stations.** Many voters have to travel great distances to reach polling stations in order to cast a voter. Polling stations, especially in rural areas, should be carefully planned and more should be erected to cater for those travelling from far away. Not only is the travel inconvenient, but the cost thereof places a burden on the female voter. The Model Law recommends a distance of five kilometres between each polling station.<sup>47</sup>

---

<sup>47</sup> Part XV 571(2)

**Action area 3: Voters must understand their responsibilities.** Although voters have rights during the election process, they also have responsibilities. They need to understand how they should participate in the process. Part of this responsibility is registering to vote and ensuring that the voter casts a vote at the correct polling station. Other responsibilities may include education on the voting process, on the election manifestos of the political party they choose to vote for and accepting the outcome of the vote. This includes full knowledge of the timeframes and criteria for release of official results by the EMB.

**Action area 4: Ensure that all voters, regardless of gender, can vote.**<sup>48</sup> All polling stations should be ready to assist illiterate voters and other voters who may need assistance. The polling stations should provide for wheelchair access, and polling stations should have blind ballots available for blind voters who still wish to cast their vote without assistance.

---

<sup>48</sup> Part XVI S74 (3)



16 Lawson Avenue, Milton Park, Harare, Zimbabwe

**Phone:** +263242 253001/2/3 or 2928337

**Whatsapp:** +263775708476 | **Toll-free number:** 08080479 | **Twitter:** @wlsazim

**Email:** admin@wlsazim.co.zw | **Website:** www.wlsazim.co.zw

**Facebook:** Women and Law in Southern Africa – Zimbabwe