

INTERNATIONAL INSTRUMENTS

Minimum Age of Marriage

- **Convention on the Elimination of Discrimination against Women** (Article 16; General Recommendation 21, paras 36-39)
- **Convention on the Rights of the Child** (Articles 24, 34 and 35; General Comment 4, paras 9 and 20)
- **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa** (Article 6)
- **African Charter on the Rights and Welfare of the Child** (Article 21)
- **ASEAN Human Rights Declaration** (Article 19)

Convention on the Elimination of Discrimination against Women

Article 16

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

[General Recommendation 21 on equality in marriage and family relations](#)

The Committee on the Elimination of Discrimination against Women interpreted the Convention as regards equality in marriage and family relations in its General Recommendation 21. Paragraphs 36 to 39 refer to early marriage.

36. In the Vienna Declaration and Programme of Action 12 adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. Article 16 (2) and the provisions of the Convention on the Rights of the Child preclude States parties from permitting or giving

validity to a marriage between persons who have not attained their majority. In the context of the Convention on the Rights of the Child, "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier". Notwithstanding this definition, and bearing in mind the provisions of the Vienna Declaration, the Committee considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted.

37. This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities.

38. Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a woman's right freely to choose her partner.

39. States parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children.

Convention on the Rights of the Child

Article 24

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Committee on the Rights of the Child

General Comment 4:

9. Under article 4 of the Convention, “States parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized” therein. In the context of the rights of adolescents to health and development, States parties need to ensure that specific legal provisions are guaranteed under domestic law, including with regard to setting a minimum age for sexual consent, marriage and the possibility of medical treatment without parental consent. These minimum ages should be the same for boys and girls (article 2 of the Convention) and closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity (arts. 5 and 12 to 17).

20. The Committee is concerned that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS. Both the legal minimum age and actual age of marriage, particularly for girls, are still very low in several States parties. There are also non-health-related concerns: children who marry, especially girls, are often obliged to leave the education system and are marginalized from social activities. Further, in some States parties married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys. The Committee on the Elimination of Discrimination against Women has made a similar recommendation (general comment No. 21 of 1994).

Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa

Article 6: Marriage

States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

- no marriage shall take place without the free and full consent of both parties;
- the minimum age of marriage for women shall be 18 years;

African Charter on the Rights and Welfare of the Child

Article 21: Protection against Harmful Social and Cultural Practices

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

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

2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

ASEAN Human Rights Declaration

Article 19

The family as the natural and fundamental unit of society is entitled to protection by society and each ASEAN Member State. Men and women of full age have the right to marry on the basis of their free and full consent, to found a family and to dissolve a marriage, as prescribed by law.