

Provisions of International and Regional Instruments Relevant to Protection from Child Marriage

Name of Instrument	Provisions
African Charter on the Rights and Welfare of the Child, 1990	<p>Article 21: Protection against Harmful Social and Cultural Practices</p> <p>(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:</p> <p>(a) those customs and practices prejudicial to the health or life of the child; and</p> <p>(b) those customs and practices discriminatory to the child on the grounds of sex or other status.</p> <p>(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.</p>
Convention on the Rights of the Child, 1989	<p>Article 19(1): States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.</p> <p>Article 19(2): Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.</p>

<p>Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), 1948</p>	<p>Article 16(1): Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.</p> <p>Article 16(2): Marriage shall be entered into only with the free and full consent of the intending spouses.</p>
<p>African (Banjul) Charter on Human and Peoples' Rights, 1981</p>	<p>Article 18 (3): The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.</p>
<p>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003</p>	<p>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:</p> <p>(a) no marriage shall take place without the free and full consent of both parties;</p> <p>(b) the minimum age of marriage for women shall be 18 years.</p>
<p>SADC Protocol on Gender and Development, 2008</p>	<p>Article 8(1): States parties shall enact and adopt appropriate legislative, administrative and other measures to ensure that women and men enjoy equal rights in marriage and are regarded as equal partners in marriage.</p> <p>Article 8(2): Legislation on marriage shall ensure that: a) no person under the age of 18 shall marry, unless otherwise specified by law, which takes into account the best interests and welfare of the child; (b) every marriage takes place with the free and full consent of both parties; (c) every marriage, including civil, religious, traditional or customary, is registered in accordance with national laws; and (d) during the subsistence of their marriage the parties shall have reciprocal rights and duties towards their children with the best interests of the children always being paramount.</p>

<p>Vienna Declaration and Programme of Action , 1993</p>	<p>Para. 36: The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.</p> <p>The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.</p>
<p>Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Slavery Convention), 1956</p>	<p>Article 2: With a view to bringing to an end the institutions and practices mentioned in article 1(c) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.</p>
<p>Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964</p>	<p>Article 2: States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.</p>
<p>The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979</p>	<p>Article 16(1): States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:</p> <ul style="list-style-type: none"> (a) The same right to enter into marriage; (b) The same right freely to choose a spouse

	<p>and to enter into marriage only with their free and full consent</p> <p>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.</p>
<p>Committee on the Elimination of Discrimination against Women, General Recommendation 21, Equality in marriage and family relations, 1994</p>	<p>(Para. 36): In the Vienna Declaration and Programme of Action 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 18 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.</p> <p>(Para. 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</p>

	<p>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 women's right freely to choose her partner.</p> <p>(Para.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.</p>
<p>International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966</p>	<p>Article 10(1): The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.</p>
<p>International Covenant on Civil and Political Rights (ICCPR), 1966</p>	<p>Article 23(2): The right of men and women of marriageable age to marry and to found a family shall be recognized.</p> <p>Article 23(3): No marriage shall be entered into without the free and full consent of the intending spouses.</p> <p>Article 23(4): States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.</p>