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early marriage, in times of financial hardship, families may well respond to offers of marriage of their daughters for relatively large sums of money. Further, girls who have been married at a very young age, and lack education and family support, and whose marriages end in divorce, are vulnerable to offers that appear to offer financial security.

Under the United Nations Convention on the Rights of the Child, the minimum marriage age is set at 18 for both males and females. This age is higher than the minimum age for Muslims in most countries in the region. There are some Muslims who, while they would not wish to marry their daughters off before puberty, believe that it is better for their 16-year-old daughters to be married than it is for them to engage in illicit sexual relations outside of marriage. In Australia, which has a minimum age of marriage of 18, some Muslims regard state law as hypocritical, because it only punishes those illicit sexual relations when one of the partners is below the legislated age of consent, and does not allow that relationship to be sanctified by marriage which would protect the rights of the woman and the reputation of her and her family (Hussain 2001, 164-5). They argue that the law sets an arbitrary age for marriage, and disregards sexual maturity, when sexual maturity should determine readiness for marriage, not age. Thus even today, differing notions of childhood, and adulthood, with adolescence as a link between the two, exist.

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#### Sub-Saharan Africa, Overview

This entry provides an overview of early marriage of girls under the age of 18 from a human rights and gender perspective. It examines international conventions relating to child marriage and critiques the application of Islamic law (Shari'a) in Sub-Saharan Africa.

#### DEFINITION OF EARLY MARRIAGE

There is no accepted age of marriage in United Nations (UN) instruments; nor do these clearly state when a girl is too young to marry. Although the term "child" is not defined in Article 16 (2) of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), it has been interpreted to suggest that the age of marriage for both sexes be 18. While Article 1 of the main international instrument dealing specifically with children's rights, the 1989 United Nations Convention on the Rights of the Child (CRC), defines a child as a person below 18, it does not set a minimum age for marriage. The United Nations Children's Fund (UNICEF) therefore suggests that 18 be considered the minimum age.

A distinctive feature of the 1990 binding regional African Charter on the Rights and Welfare of the Child (hereafter, Charter) is that it

is the first instrument that sets 18 as the minimum age of marriage for both sexes and expressly prohibits child marriage (Article 21 [2]). It also defines a child as a person below 18 (Article 2). The Charter follows closely after the CRC and is contended to have come into being because its African member-states felt that its international counterpart (CRC) failed to take cognisance of the region's socioeconomic and cultural realities. The two instruments must, however, be viewed as complementary (Oluwu 2002, 128).

The lack of a definition of early marriage in international conventions has resulted in some debate by scholars and activists suggesting that focus be placed on the elimination of unwanted effects of "early" marriage instead of imposition of a universal age since societies have different socioeconomic and cultural realities and perceptions of what it means to be a child. Most countries set a minimum age of 18 or above for both sexes, but several permit marriages to take place below this age with parental consent. The addition to Article 1 of the CRC of "unless, under the law applicable to the child, majority is attained earlier" makes it easier for Muslim countries with divergent provisions, but who have signed and/or ratified this instrument, to comply with its provisions.

#### ISLAMIC LAW (SHARI'A)

Although 18 in most instances is the secular legal age of majority, that is, full civil legal capacity, this does not necessarily apply to "majority" for Muslim marriage purposes. The latter is regulated in accordance with Shari'a and attained at the onset of puberty, presumed to have been reached by ages 12 for boys and 9 for girls and definitely reached at the completion of the fifteenth year (El Alami and Hinchcliffe 1996, 6-8). The ages of legal capacity vary from country to country and do not necessarily accord with Islamic law. The best interests of the child play a vital role in marriage when age is a factor (Moosa 1998b, 490-91). A menstruating girl is of child-bearing age and is considered adult on reaching puberty. While secular legislation may prescribe criminal penalties should a "child" marriage take place, this does not affect the validity of such a Muslim marriage, which often remains unregistered, as do any offspring – to the further detriment of the girl-child.

Islam sees marriage as an institution for, among other goals, the procreation of children (Moosa 1998b, 481). This does not imply that children should become parents at the expense of their

childhood. While parents, family, or guardians may take the initiative in arranging an Islamic marriage, consent from both partners is essential for its validity with either party having the right to change their mind. Rather than choice, marriage is deemed more as a question of (informed) consent. Consent to marriage may generally have been given by children in terms of Shari'a (or custom), but in reality is given by others on their behalf. Marriage may be solemnized from puberty onwards and in some cases even before the child is born with the aid of a guardian. Neither the CRC nor the Charter has any provisions for the protection of the unborn child. Certain guardians also have the right to contract their infant wards in marriage without their consent but cannot do so negligently or to their detriment. The option of puberty is a remedy whereby a ward, on attaining puberty ("majority"), may repudiate such a marriage. Repudiation, however, is revoked by consummation of marriage with express or tacit consent (e.g. by claiming maintenance, dowry, or inheritance). This right has more significance for females since males on reaching puberty are free to exercise their exclusive power of divorce (El Alami and Hinchcliffe 1996, 7).

Many societies in Africa support the idea that girls should marry at or soon after puberty. This begs the question of whether it is realistic to expect an immature pubescent girl of age nine upwards to give "full and free consent" to marriage (Articles 16 [1-2] of the Universal Declaration of Human Rights [UDHR], 1948). UNICEF regards "consent" given under such circumstances as a violation of human rights and maintains that such marriages cannot transform a girl into a woman. The Prophet Muhammad exemplified this as he allowed his third and very young wife 'A'isha to continue to play with dolls and consummated their marriage only when she was much older (Moosa 2003, 6.2.2).

#### HUMAN RIGHTS AND GENDER IMPLICATIONS

Neither the CRC nor the Charter provides for the right to equality before the law. Contradictions between constitutions of countries where children's rights and protections are entrenched and instruments that these countries sign and ratify are common. Many countries pay lip service to the rights and protections offered by these instruments and allow rights to culture, custom, and religion to trump, rather than be subject to, equality (Moosa 1998b, 481-2). Despite minimum age and regis-

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provides for traditions here children and stability are ce to the documents region to Moosa and regis-

ration requirements, secular and religious marriage laws of certain countries also set different higher ages for boys than for girls. This amounts to discrimination on the basis of sex (Article 2 of the CRC) and perpetuates the belief that it is acceptable for girls to marry at an early age.

The consequences and impact of child marriage on girls are far reaching. Legislative frameworks guard against and may prohibit young children getting or being married but cultural, customary, and religious reality often dictates otherwise. This is evident in the widespread acceptance of early marriages below 18 as valid. Discriminatory consequences are proved *after* such marriages which often are unregistered. Governments have therefore taken steps to either unify their customary and civil or common laws, or have passed legislation designed to protect those in customary and religious marriages.

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NAJMA MOOSA

#### Sub-Saharan Africa

Although childhood and adolescence are concepts that are understood and experienced in various ways across different cultures and regions, there is an emerging international consensus that marriage before age 18 is child marriage. Age 18 is commonly viewed as the outer boundary of childhood in accordance with the Convention on the Rights of the Child (CRC), article 1, 1989. Other international conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), specifically prohibit the marriage of children. As stated in 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." At the regional level, the 1990 African Charter on the Rights and Welfare of the Child echoes the wording found in CEDAW, and specifies that the minimum age of marriage should be 18 years (article 21).

Sub-Saharan countries with sizeable Muslim populations have been supporters of such international conventions. Indeed, of countries with Muslim populations of 1 million or greater, all except Somalia and Sudan have ratified both the CRC and CEDAW (Table 1). The enactment of national laws regarding minimum ages of marriage that are in accordance with these conventions, however, has been slower in coming. Nine countries have established age 18 or higher as the minimum age of marriage for girls, and only seven have set the same minimum age for girls as that for boys.

Of course, laws regarding minimum ages of marriage are only as strong as their enforcement. Few parents, officiators, or spouses are ever prosecuted for breaking marriage laws, and many laws do not prescribe sanctions, only the invalidation of the marriage (UNICEF 2001). Many countries allow marriages to take place below minimum ages with parental consent. Additionally, it is common to find settings where early marriage is prohibited by civil law, but condoned by customary and religious laws and practice—Islamic law does not specify a minimum age at marriage. Most couples (particularly in rural areas) have religious ceremonies and/or customary ceremonies, but may forego civil ceremonies. A recent qualitative study of marriage practices in Mali found that in the rural villages, the only respondents who had a civil marriage were civil servants for whom such a marriage is mandatory (Lardoux 2005).