

## Socio-cultural and Religious Framings on Marriageable Age in Amhara Regional State

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### Abstract

Existing literature shows the social perception attached to child marriage is often conflicting with the legal definition. This insight holds the dichotomized view of layering contestation in two levels: the internal community against the external norm change agents of the state and non-state actors. Accordingly, this article attempts to identify the gap in research by exploring and documenting the internal contestation among local key norm holders on their understanding of marriageable age. By taking a closer look at how religious leaders, community elders, parents, and adolescent girls and boys in Kuwarit *woreda* of Amhara Regional State comprehend marriage and girls' marriageable age, the article unpacks the translation of the globally defined girls' marriageable age to a local context. After exploring the international laws vis-à-vis local social norms, the article presented competing and changing local considerations and framings on the age of marriage for girls and their justification. It, then, argues rectifying the fears of local norm holders in relation to delaying girls' marriage until legally accepted age is important and necessary by understanding the socio-cultural and religious framing of girls' marriage.

**Keywords:** *child Marriage, marriageable age, Ethiopia*

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## Introduction

Legislation on age of marriage dates back to the 1948 Universal Declaration of Human Rights (UDHR),<sup>294</sup> where, under Article 16, it sets the foundation for what constitutes 'full age' to start a family when there is 'free and full consent.'<sup>295</sup> It was then followed by the Convention on the Abolition of Slavery, which implicitly prohibited child marriage, considering it as an institution or a practice alike slavery. The Convention requested state parties to abolish parental arranged marriages for the sole purpose of getting dowry, undertaken against the will of a bride.<sup>296</sup> It is essential to highlight both documents do not explicitly mention the minimum age of marriage.<sup>297</sup> It was in the Convention on the Consent to Marriage, Minimum age of Marriage, and Registration of Marriage that child marriage was broadly and explicitly addressed.<sup>298</sup> The Convention on the Consent to Marriage, Minimum age of Marriage, and Registration of Marriage required member states to set protective minimum age and denounce the betrothal and subsequent marriage of children as void.<sup>299</sup> It also requested member states to abolish customs inconsistent with the Convention's provisions.<sup>300</sup> In addition, the 1965 recommendation on Consent to Marriage, Minimum age of Marriage, and Registration of Marriage,<sup>301</sup> though a non-binding instrument, recommended the minimum age of marriage to be 15 with an exception clause.<sup>302</sup>

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<sup>294</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III)

<sup>295</sup> Providing free and full consent entails 'non-coercive agreement to the marriage with a full understanding of the consequences of giving consent,' see (ACHPR and ACERWC 2017: 5)

<sup>296</sup> See UN Economic and Social Council (ECOSOC), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 7 September 1956, Article 1 (C) (i); See also (Gaffney-Rays 2011)

<sup>297</sup> Supra note 2.

<sup>298</sup> UN General Assembly, Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 7 November 1962 (the Convention has 16 state signatories, but not signed by Ethiopia)

<sup>299</sup> Ibid at Article 2

<sup>300</sup> Ibid

<sup>301</sup> See UN General Assembly, Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1 November 1965, See Principle II

<sup>302</sup> The convention stipulates a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

Many subsequent relevant legislations such as the 1979 Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>303</sup> outlaws the betrothal and marriage of a child but do not specify acceptable minimum age of marriage.<sup>304</sup> Later in 1989, it was the United Nations Convention on the Rights of the Child (CRC)<sup>305</sup> that provided the definition.<sup>306</sup> The CRC and CEDAW committees jointly requested states to set 18 as the minimum age of marriage, for both boys and girls.<sup>307</sup>

The African Human rights instruments also set the age limit for marriage as 18.<sup>308</sup> Unlike the 'flexible' global legal regime set by CRC, legislation against child marriage in the continent follow a 'strict' or no exception clause.<sup>309</sup> Regardless, the minimum age of marriage for girls is below 18 in eleven African countries.<sup>310</sup> Most of these countries have different legal standards for boys and girls, which is discriminatory. For example, girls can marry at 15 but boys at 18 in Niger, Republic of Congo (DRC), Cameroon, Gabon, Seychelles, and Tanzania. In Senegal, the minimum age is 16 for girls and 18 for boys, while in Burkina Faso it is 17 for girls and 20 for boys. Sudan has the lowest legal age of marriage at 10 for girls and 15 for boys. It is Guinea-Bissau and Zambia that have the same minimum age of 16 for both girls and boys.

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<sup>303</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 1

<sup>304</sup> See CEDAW Article 16(2), which reads: "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."

<sup>305</sup> UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577

<sup>306</sup> CRC defined child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." See CRC, Article 1.

<sup>307</sup> UN Committee on the Elimination of Discrimination against Women and UN Committee on the Rights of the Child, Joint General Recommendation No. 31 (2014): The Committee on the Elimination of Discrimination against women/ General Comment NO. 18 of the Committee on the Rights of the Child (2019) on Harmful Practices, 8 May 2014

<sup>308</sup> See Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Adopted by the 2nd Ordinary Session of the African Union General Assembly in 2003 in Maputo CAB/LEG/66.6 (2003) entered into force 25 November 2005, Article 6 (a) and (b); See also The African Charter on the Right and Welfare of the Child, Article 21(2); The Addis Ababa Declaration on Ending Child Marriage in Africa, 23<sup>rd</sup> session of the African Committee of Experts, 11 April 2014.

<sup>309</sup> The SADAC Protocol on Gender and Development provisions is an exception. It reiterates the free and full consent and 18 years minimum age requirements but provides a legal loophole for lowering the age, considering the best interest and welfare of children's requirement.

<sup>310</sup> See (ACPF and Plan 2019 : 69)

Nevertheless, the existing exceptions in domestic laws based on parental consent, socio-cultural and religious reasons create a loophole for underage marriage practices to persist. The decision of the African Court on Human and Peoples' Rights against Mali clearly evidence these grounds shall not be taken as a force majeure defence to relieve the State from complying with its obligations on international marriageable age of 18.<sup>311</sup> However, African countries still top the list in the world's highest rates of child marriage; 18 out of the 20 countries are from the continent.<sup>312</sup>

In Ethiopia, the Constitution denounces child marriage as a 'harmful' practice<sup>313</sup> and a crime under the criminal code,<sup>314</sup> with the existing comprehensive protection accorded by the adopted international and regional human rights instruments such as CEDAW, CRC, and the African Charter on the Right and Welfare of the Child (ACRWC).<sup>315</sup>

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<sup>311</sup> See APDF & IHRDA v Republic of Mali (046/2016) [2018] AfCHPR 15; (11 May 2018) (African Court on Human and Peoples' Rights) Decision of 11 May 2018. Republic of Mali enacted a Family law stipulating marriageable age of 18 for boys, while girls can marry by 15/16 with parental consent (of their father). During the litigation, the country has raised force majeure as a defence since the initial draft of its Family Law was changed due to wider community protests. Mali was obliged to frame girls marriageable age to fit in with Islamic law, and hence, failed to comply with the universal marriageable age of 18 and 'free and full consent' standards. However, the Court ruled against the State, with the justification that its Family Law violates the ratified provisions at the African Charter on the Rights and Welfare of the Child (see Articles 1(3), 2, 3, 4 and 21); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (see Articles 2(2), 6(a) and (b), and 21(2)); and CEDAW (see Articles 5(a), 16(a) and (b)).

<sup>312</sup> ACPF & Plan, *supra* note 20.

<sup>313</sup> See Article 35 (4) of the FDRE Constitution, which guarantees that "... Customs and practices that... cause bodily or mental harms to women are prohibited."

<sup>314</sup> Criminal Code [Ethiopia], Proclamation No. 414/2004, 9 May 2005, available at:

<https://www.refworld.org/docid/49216b572.html>, Article 648 stipulates "who so ever concludes marriages with a minor apart from circumstances permitted by relevant family code is punishable with rigorous imprisonment not exceeding three years if the victim is 13 years or above and not exceeding seven years if she is below 13"

<sup>315</sup> Ethiopia signed CEDAW on 8 July 1980 and ratified it on 10 September 1981. Under Article 9 (4) of the FDRE Constitution, CEDAW has become part of the law of the land but has yet to be justiciable. Proclamation 10/1992 and Proclamation 283/2002 confirm the notices of ratification for CRC and ACRWC, respectively, without publishing the full texts of CRC and ACRWC. Under the Ethiopian legal system, judicial notice is possible when laws are published under its official law Gazette, Federal Negarit Gazette. Consequently, arguments are often raised on the justifiability of the treaties. Counter-arguments state that the Cassation Bench of the Federal Supreme Court renders decisions based on CRS and ACRWC, showing the gap is already addressed, and they have already become integral parts of the laws of Ethiopia. See Girmachew and Yonas (2012)

The Revised Family Code that came into force in 2000 raised the minimum marriageable age from 15 to 18 for girls,<sup>316</sup> and child marriage has been specified as voidable.<sup>317</sup> Nonetheless, the Ethiopian legal regime does not contain a blanket prohibition of marriage under 18, and marriage from the age of 16 is allowed under the permission of the Minister of Justice for 'serious cases'.<sup>318</sup>

The existing legal loophole that allows the age of marriageable age to lower to 16 was faced with counterarguments considering 'sexual consent'<sup>319</sup> and 'age of majority'.<sup>320</sup> Marriageable age<sup>321</sup> often coincides with the age of the majority. The age of sexual consent is not clearly defined under the Ethiopian law but can be inferred from the Criminal Code to be 18.<sup>322</sup> Hence, allowing 16 as marriageable age creates a legal loophole that allows statutory - rape.

Legal developments on raising or lowering girls' marriageable age and its effect on the prevalence of child marriage is an important issue to consider. Recent studies noted that the

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<sup>316</sup> Ethiopia had discriminatory minimum age of marriage under the Civil Code. For establishing marriage, the man shall be 18, but the law lowered the marriageable age to 15 years for girls. See Article 581 (1), The Civil Code of Ethiopia (1960). Negarit Gazette, Proc. No. 165/1960, Year 19, No. 2.

<sup>317</sup> Federal Negarit Gazetta of the Federal Democratic Republic of Ethiopia, The Revised Family Code Federal Negarit Gazetta, Issue number 1/2000, See Article 31(1) & (2). Hence, one cannot apply for validation after they have attained full age.

<sup>318</sup> Indicates judicial authorization is an exception for lowering the legal marriageable age of girls in both at the Federal (see supra note 30) and Amhara Regional Family codes (see Article 18(2), Amhara National Regional Family Code, Proclamation No. 79/2003 A Proclamation to Approve the Amhara National Regional State Family Code," 2003. However, according to the in-depth interview with the justice office (AA001, April 27/22, Bahir Dar), there is no regulation for defining 'serious cause' justifying marriage to be lowered, and the justice office has made practically no decision under this article. According to an in-depth interview with AD6 (on May 27, 2022 in Addis Ababa,) the only reason that justifies emancipation is the protection of girls' rights, and no decision has been made based on this article in any case. The respondent claims that there is no practical legal gap.

<sup>319</sup> Sexual consent refers to "the age at which a person is legally capable of agreeing to marriage (without parental consent) or to sexual intercourse. If a person over the age of consent has sexual intercourse with a person under the age of consent, the older person may be prosecuted for statutory rape re-gradeless of whether the younger person consented to the act." See Garner, B. A. (2004). Black's Law Dictionary (8th Edition). USA: Thomson West Publishing Co.

<sup>320</sup> Age of majority refers to "the age at which a person is granted by law the rights and responsibilities of an adult." See Merriam - Webster Dictionary. <https://www.merriam-webster.com/legal/age%20of%20majority> accessed 22 April 2023. See also (Garner 2004). Black's Law Dictionary defines it as "the age at which a person is legally capable of agreeing to a contract, maintaining a lawsuit, or the like."

<sup>321</sup> Marriageable age can be defined as the legally acceptable age at which one can establish a family.

<sup>322</sup> Criminal Code, supra note 28, Article 626 (1)

deterrence effect of the law through raising the statutory marriageable age had not helped decline the practice (Collin et.al. 2017; Batyra and Pesando 2021). Recent experiences from India and Indonesia show that “economic and cultural considerations primarily contribute to child marriages among women”, regardless of raising the age of marriage.<sup>323</sup> Correspondingly, based on the experience of Mali, lowering the legal ‘cut-off’ age may also have the adverse effect of intensifying the prevalence.<sup>324</sup>

Despite unequivocal legal responses to outlaw the practice, the sustained prevalence of child marriage has resulted in an intense discussion among scholars (Batyra and Pesando 2021). One myriad of reasons behind the practice's persistence is that child marriage involves different and often conflicting legal and social definitions (Hodgkinson, Winny and Esther 2016). Apart from the legal definition, a closer look at what "child" and "marriage" means in different cultures is essential. Any disparity between the legal and social/or cultural definition of child marriage hinders the implementation of child marriage laws at the grass-root level. Bunting is also sceptical about the efficacy of law in defining and addressing child marriage by arguing that "a uniform marriageable age and a narrow rights-based analysis misses the complexity of marriage and age" (2015:17). She claims the importance of considering the local socio-economic contexts and the design of culturally relevant international strategies (Ibid). Accordingly, this article digs into the conceptualization of ‘child’, ‘marriage’, and ‘girlhood’ among the local community of Kuwarit *woreda*,<sup>325</sup> Amhara region, Ethiopia, and explores existing internal contestations, along with their justifications for girls’ ‘marriageable age’.

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<sup>323</sup> Ibid

<sup>324</sup> Batyra (2022) studied the impact of lowering the statutory minimum age at marriage on the incidence of girls' child marriage in Mali when the legal marriageable age was reduced from 18 to 16; the prevalence inclined from 59% to 79%.

<sup>325</sup> *woreda* is an administrative unit in Ethiopia which has equivalent meaning with a district.

## Study Area and Source of Data

The empirical data used in this article is gathered from the Amhara region, Kuwarit *woreda*. Due to the high prevalence of child marriage,<sup>326</sup> the *woreda* is identified for implementing UNICEF-UNFPA Global Program to Accelerate Action to End child marriage.<sup>327</sup> Kuwarit is a *woreda* with a population of 142,712 (69,507 Male, 73,205 Female) with 87% rural community, all followers of Orthodox Christianity.

The study adopts a phenomenological approach that aims to learn from the experiences of the local community in the study setting. The findings are drawn on primary data collected from March 21<sup>st</sup> to April 29<sup>th</sup> 2022 through in-depth interviews involving 23 adolescents<sup>328</sup> (12 female), 27 parents (10 female), 5 Priests (all male), 3 community elders (all male), and 4 community facilitators (2 female).<sup>329</sup> Semi-structured key informant interviews were also held with 3 (all female) health extension workers, 5 (all male) school directors, 3 women gender focal teachers, and 2 women development army leaders. Besides, *woreda* and regional focal persons/experts of UNICEF and UNFPA, and government stakeholders (8 female) serving as 'harmful traditional practice' (HTP) eradication committees.<sup>330</sup> In addition, the findings were triangulated using 14 focus group discussions (FGDs) with community members.

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<sup>326</sup> See "Ethiopia Demographic and Health Survey" 2016; "National Costed Roadmap to End Child Marriage and FGM/C 2020-2024 of Ethiopia Ministry of Women, Children, and Youth" 2019, p.63; Jones, Emirie, et al. 2016

<sup>327</sup> UNICEF/UNFPA Global Program is a multi-donor (eight) and multi-stakeholder program implemented across twelve countries to end child marriage. Phase I (2016-2019) focused more on strengthening institutions, while Phase II (2020-2023) aimed to engage critical actors, support adolescent girls, engendering laws/policies, and improve evidence. It also plans to continue in the third Phase (2024-2030).

<sup>328</sup> WHO defines adolescence as age that ranges from 10 to 19. Accordingly, in this study, girls from 10 -13 are referred as 'young/early adolescents,' from 14 to 17 as 'middle adolescents' age, and those 18 -19 as 'late adolescents' age. See <https://www.who.int/health-topics/adolescent-health>

<sup>329</sup> Community facilitators are selected by the initiative of UNICEF - UNFPA project to provide continuous awareness to eliminate harmful practices and, more importantly, child marriage in their community.

<sup>330</sup> HTP committee comprises 15 members: Women Mobilization Lead (Chair), Youth Mobilization Lead (Vice Chair), Culture and Tourism (secretary), and representatives from Administrative Office, Education, Health, Agriculture, Justice, Police, Social Affairs, Court, Women Association, Youth Association, Government Communication, and Religious Institutions.

## Local Conceptualizations of “Marriage”

Marriage is conceptualized as a celebration,<sup>331</sup> source of pride,<sup>332</sup> a life,<sup>333</sup> and a milestone<sup>334</sup> parents must achieve before death; “*salmot leyat*,” (shows parents’ strong wish to see their daughters’ being married, and see grandchildren before their death.)<sup>335</sup> In the study area, marriage is a means by which parents become part of the happiness of their children; “*yelejen adugna ley*” [egger to see my daughters’ happiness or joy].<sup>336</sup> “*bet mesrat*” [being able to establish an independent livelihood by having a family and living in their own separate house] indicates marriage is a pivotal stage in leading their own life.<sup>337</sup> It is also a phase where they start to become independent; “*bota masyaz*” [ensuring the well-being of their daughters].<sup>338</sup>

Marriage is honored, and its celebration is a deep-rooted tradition adhered to by the community, involving social sanctions on those who deviate.<sup>339</sup> Parents have an active and vital role in fulfilling their responsibility regarding the wedding ceremony and building strong collaboration among neighbours, locally known as “*akolkuway meshome*” or “*wenfel masemelse*’ [claiming back debt]. Each neighbouring family contributes 50-100 *Injera* [sourdough flatbread], three pots of ‘*wot*’ [stew], and three containers of ‘*madega tella*’ [local alcoholic drink].

Prior from the wedding preparation, the request for betrothal and therefore initiating marriage, locally known as “*wel meyaze*,” is a right solely given to the father of the groom;<sup>340</sup>

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<sup>331</sup> In-depth interview with CM 01 and CM 02, March 30/2022

<sup>332</sup> In-depth interview with A04, April 1/2022, Kuwarit

<sup>333</sup> In-depth interview with Elder 01, April 6/2022, Kuwarit; Elder 03, April 15/2022, Kuwarit

<sup>334</sup> In-depth interview with A04, April 1/2022; 10 out of the 17 male in-depth interview Parents and Elder 01, April 6/2022, Kuwarit; Elder 03, Elder 02, April 11/2022, Kuwarit

<sup>335</sup> FGD with 007 Girls, March 30/2022, Kuwarit; In-depth interview with A 01, April 3/2022, Kuwarit

<sup>336</sup> Supra note 46 - 48

<sup>337</sup> Ibid.

<sup>338</sup> Ibid.

<sup>339</sup> Ibid. Those who have not celebrated marriage by inviting the neighbourhood are considered 'greedy' and belittled. Will be named as the person who has not still seen the flower/ '*adugna*' (means happiness) of their child. They will be ashamed in times of social gatherings (*Idir*’, '*Senbete*’, '*mahber*’)

<sup>340</sup> The betrothal recognized under the Amhara Regional family law envisages marriage promises by a girl and a boy who have attained the majority. See Article 1. In contrast to the law, the study shows that the two parties involved in the betrothal are the marrying families.



the bride-to-be or her parents cannot initiate the marriage. When the couples agree to get married without the initiation by the parents, the girl is shamed by indicating "*jenjena agebache*" [she flirted him to marry her]. In this case, parents often incline to accept the marriage out of fear that the girl might run away, though this is an exceptional situation.

The betrothal recognized under Article one of the Amhara Regional family law envisages marriage promised by couples who have attained the majority. In contrast to the law, however, the local custom shows that the two parties involved in the betrothal are the marrying families. It is a process that not only comprises of creating a marital relationship between families, but also sharing resources such as land/cattle.<sup>341</sup>

Adolescent girls do not worry about 'who' they marry or the quality and duration of their married life, as they see divorce as an 'easy' option.<sup>342</sup> On the other hand, parents are more considerate of the person their children marry to maintain family honor. Therefore, in contrast to the law,<sup>343</sup> the local conception of marriage puts the parents central to the decision-making process in determining age of marriage, selection of partners and providing consent. The study respondents identified that selecting the 'right' family involves many factors and depends on the interpretation of the marrying families. The informants also stated 'right' family might imply, but not limited to, marrying off their daughter's seeking wealth,<sup>344</sup> and even, on the contrary, to a boy who is from a low-income family but systematically for getting unpaid labor (locally known as "*kanjaye*" or "*wesenaye new*").<sup>345</sup> In contrast, girls are socialized to take passive roles in providing meaning and making the ultimate decision or giving informed consent. "I do not know the groom, I have not seen him before, even once. I trust my family has done the required checking because they will not push me into a miserable life", noted an adolescent girl interviewed in this study.<sup>346</sup> Another study informant stated,

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<sup>341</sup> FGD with 007 Girls, March 30/2022, Kuwarit; FGD with 005 Girls, April 18/2022, Kuwarit.

<sup>342</sup> Noted by 5 out of the 12 in-depth interview adolescent girls.

<sup>343</sup> Consent of the marrying couples, who have attained majority, is the foundation of marriage as per the preamble and Article 11, See Amhara National Regional Family Code, 2003, *Supra* note 29.

<sup>344</sup> FGD with 005 Girls, April 18/2022, *Kuwarit*

<sup>345</sup> In-depth interview with A04, April 1/2022; A01, April 3/2022, *Kuwarit*; Some parents marry off their girls to ensure the groom's presence after he supports them with his free labour.

<sup>346</sup> Case 3 Adolescent Girl 06, April 17/2022, *Kuwarit*

"I consented to marry the groom whom I do not know because it is a usual practice in our community."<sup>347</sup>

## Local Definition of Marriageable Age

In *Kuwarit*, the community defines a child [*hitsan*], and therefore unable to take the responsibility of marriage, to be under the age of 8. The age group of 9 to 14 is referred as young [*kutara* or *tadagi*], signifying the phase where girls prepare themselves for marriage; and those beyond the age of 15 are considered as youth [*wetate*], a fully grown and independent individual who is beyond parental control.<sup>348</sup>

In the community, girls are betrothed, and even married, at the age of 4,<sup>349</sup> and become 'socially appropriate' to marry them off after the age of 12,<sup>350</sup> where one transitions into becoming a 'girl' and no longer seen as a child. At this point of transition, as shown in the study by Jones et al. (2020), parental arranged marriages aim to control girls' sexuality.

Marrying off girls at a very young age, locally known as "*chagula merget*" / "*daweja medeqdeq*,"<sup>351</sup> is seen as a protective factor from sexual violence such as rape or fear of

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<sup>347</sup> Adolescent Girl 08, April 12/2022, Kuwarit

<sup>348</sup> Key informant interview with CM 01, 30 March/2022, Kuwarit; AA03, April 21/2022, Finote Selam; AA004, March 28/2022, Bahir Dar; See also Ethiopian National Youth Policy that similarly identifies ages of 15-29 as a youth, [https://www.youthpolicy.org/national/Ethiopia\\_2004\\_National\\_Youth\\_Policy.pdf](https://www.youthpolicy.org/national/Ethiopia_2004_National_Youth_Policy.pdf)

<sup>349</sup> In-depth interview with CM 01, March 30/2022, Kuwarit; FGD 006, April 2/2022, Kuwarit; FGD 008, April 19/2022; In-depth interview with A07, April 2/2022, Kuwarit; FGD with 001 Boys, April 17/2022, Kuwarit; 4 out of the 12-adolescent girl in-depth interview participants stated less than five years of age girls are married off in their locality for the purpose of undergoing through *chagula merget*" / "*daweja medeqdeq*." Girls at this age will not have sexual intercourse with the groom since it is their mothers who will take them carrying in their back to the family of the groom and return them home.

<sup>350</sup> FGD with 005 Girls, April 18/2022, Kuwarit; 3 out of 12 in-depth interview adolescent girls; FGD 001 Boys. The age of 11/12 is considered as socially acceptable age for girls to marry, and they are also expected to consummate marriage. The central justification, according to the findings of the study, is that it is the critical age/time for the parents to be in the 'driving seat' for selecting the groom keeping family honour. Besides, there is a wider belief in the community that age of 15 is viewed as "age of consent for girls." Entailing parents will lose control in deciding selection of 'whom' their daughter is going to marry.

<sup>351</sup> The term 'celebrating marriage ceremony' better describes *chagula merget*" / "*daweja medeqdeq*" than 'marriage at the young age.' However, sometimes the latter meaning seems more fitting as '*chagula regta*

becoming a lone women after her prime age passes, which are both considered to bring shame and ignominy to the girl and her parents. Loosing virginity, under any circumstances, including rape, before marriage is unacceptable according to the norms. And therefore, if a girl marries at a young age ("*chagula regta keneber*"), age of sexual intercourse is not that relevant. Moreover, the girl will not be socially sanctioned or insulted as "*kumo ker*" [unwanted/ a spinster].<sup>352</sup> Kuwarit *woreda* culture and tourism office noted, "the age beyond 16 is frustrating for parents due to the wildly held belief that girls will lose their virginity, locally known as '*wedket*' [meaning loss]. Rather than letting them lose their virginity, parents often prefer to marry them early." Mainly for this reason, among many others, parents prepare for marriage when a girl shows signs of puberty, physical change, which is taken as a sign of being a woman and thus ready for marriage.<sup>353</sup> Other sign of readiness for marriage, according to the community, include becoming rude (disrespecting family) and not listening to parents, which is seen as a sign of rebelling.<sup>354</sup> Girls in an FGD also mentioned, once they reach the age of ten, "most parents usually believe that [they have] the sexual urge,"<sup>355</sup> and thus must be controlled.

The age of marriage is also affected by the preference of the groom. Age is lowered for marriage with deacons<sup>356</sup> compared to marriage with others, locally known as "*yechewa gabicha*,"<sup>357</sup> which has an equivalent meaning to 'marriage with ordinary people.'

The study has also shown marriageable age preference is different among parents. While mothers prefer to lower the marriageable age to 11/12,<sup>358</sup> male parents stated the 'right' age of marriage to be between 15 and 17.<sup>359</sup> Men value biological readiness and expressed their

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*keneber*' – refers to the girl married at the young age. This ambiguity is created because marriage celebration is viewed as marriage per say (with or without consummation of marriage) in the study locality.

<sup>352</sup> Supra note 77.

<sup>353</sup> In-depth-interview with HE 01 and HE 02, April 8/2022, Kuwarit

<sup>354</sup> Ibid, In-depth interview with Priest 02 and Priest 03, April 9/2022, Kuwarit.

<sup>355</sup> April 18/2022, Kuwarit

<sup>356</sup> Supra note 55

<sup>357</sup> In-depth interview A01, April 1/2022, Kuwarit; and in-depth interview with 10 out of 17 male Parents.

<sup>358</sup> It is 2 out of 10 female parents' in-depth informants show the marriageable age for girls. In 2 female parents only FGDs, all the informants stated girls' child marriage is not practiced in their locality.

<sup>359</sup> In one man only FGD, the informants agreed 15 -17 the appropriate girls' marriageable age (FDG Men 002, April 2/2022, Kuwarit). The other men only FGD did not concur on marriageable age. Some participants argued as ten years is an appropriate age, while others 15-18 years, and one of them argued 18

fear of dishonour if girls lose their virginity before marriage.<sup>360</sup> On the other hand, female parents focused on celebrating marriage while their daughters are in their prime age when their beauty is intact, and they highlighted their fear related to becoming *kumo ker*<sup>361</sup> than loss of virginity.<sup>362</sup> One of the female parents stated, “I do not know the appropriate age, but if I am lucky, I want to marry off my daughter as a teen and beautiful...at the age of 12.”<sup>363</sup> Similarly, the other female parent stated, “the appropriate age is 16/17, but I want to marry my daughter at 11/12 because I do not want her to become *kumo ker* and face social sanction.”<sup>364</sup>

Adolescents reported lower age of marriage for girls, where girls stated they sometimes get married when they are infants and ‘carried at the back of their mothers’. However, the common marriageable age is 12/13.<sup>365</sup> Other study participants share similar views that girls from the age of 3-9 are married off,<sup>366</sup> while most girls are usually married at the age of 12/13.<sup>367</sup> Meanwhile, adolescent boys mentioned 5 to 15/16 as the usual girls' marriageable age in their locality.

Furthermore, adolescent boys preferred pushing girls' marriageable age to the legal age, which they stated was 15-20. Their justification centres on striking a balance between ensuring virginity and maturity of the girls for shouldering domestic work. Girls also preferred the age of marriage to be 18 and above to give them time to complete school and secure a job.<sup>368</sup>

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-20 (FGD 003, 10 April/2022, Kuwarit); in the in-depth interview, 9 out of the 17 men stated that 15-17 years is the appropriate marriageable age.

<sup>360</sup> Ibid

<sup>361</sup> *Kumo ker* is a derogatory term that labels unmarried women as “unwanted.” See Meron (2018)

<sup>362</sup> Female Parent 7, April 9/2022, Kuwarit; Female Parent 03, April 4/2022, Kuwarit

<sup>363</sup> Female Parent 7, April 9/2022, Kuwarit

<sup>364</sup> Female Parent 03, April 4/2022, Kuwarit

<sup>365</sup> See Supra note 58 & 59

<sup>366</sup> In-depth interview with CM 01, March 30/2022, Kuwarit; FGD 006, April 2/2022, Kuwarit; FDG 008, April 19/2022; In-depth interview with A07, April 2/2022, Kuwarit; FGD with 001 Boys, April 17/2022, Kuwarit; 4 out of the 12-adolescent girl in-depth interview participants stated less than five years of age girls are married off in their locality.

<sup>367</sup> FGD with 005 Girls, April 18/2022, Kuwarit; 3 out of 12 in-depth interview adolescent girls; FGD 001 Boys

<sup>368</sup> FGD with 008, April 19/22, Kuwarit

In the discussion with adolescents, change in marriageable age has been observed in the area because of girls' educational success. Girls who want to pursue their education have been challenging their parents by reporting<sup>369</sup> to the authority or running away from their locality.<sup>370</sup> Their impact has, however, been limited because family respect<sup>371</sup> as it prevents most girls from resisting marriage arrangement by parents. Parents are not deterring girls from education like in previous days but contest the benefit/achievement of educated girls and resort to the comparative advantage of underage marriage.<sup>372</sup> Study informant from the government stakeholder similarly highlighted that: -

*The main issue is, does education leads to economic betterment for supporting their family? The answer is no. Let alone supporting their family; most will be unemployed. Moreover, those who manage to get a job in the government sector still depend on their farmer parents, and their salary does not even cover their living costs. So, parents are vigorously contesting the value of educating their daughters (In-depth interview with AA02, April 22, 2022, Finote Selam).*

The other important implication from the study is that underage marriage's economic value seems to be a strongly held driving factor from both parents' and adolescent girls' standpoints. In the study area, marriage is a steppingstone for girls that choose labor migration in adjacent localities, locally known as "bereha." A closer look into girls' "willingness" shows it is not a free choice but enforced, for the lack of other economic opportunities. In addition, middle-adolescent girls who have not married at the age of 15 face stigma from peers, which pressures others into marrying early. "My friends always annoy me, tease me, by saying shepherd of her parents' cattle," says an adolescent interviewed in the study.<sup>373</sup> These findings concur with the recent findings in India and Indonesia<sup>374</sup>

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<sup>369</sup> In-depth interview with 8 out of 12 Adolescent Girls; FGD 004 Boys, *Kuwarit*; FGD 005 Girls, 18 April, *Kuwarit*; In-depth interview A02, April 5/2022, *Kuwarit*; In-depth interview with CM 01 and CM 02, March 30/2022; A001, March 29/2022, *Kuwarit*; HE 01 & 02, April 8/2022, *Kuwarit*

<sup>370</sup> *Ibid*

<sup>371</sup> *Ibid*

<sup>372</sup> *Ibid*

<sup>373</sup> In-depth interview with Ad Girl 08, April 16/2022, *Kuwarit*

<sup>374</sup> See Batyra and Pesando 2021; Collin, Talbot, and World Bank 2017

<sup>83</sup> See Batyra and Pesando 2021; Collin, Talbot, and World Bank 2017

showing that economic and cultural reasons are key drivers of girls' underage marriage. Furthermore, in the study area, one can validly imply that the economic aspect seems to be more influencing than the cultural reasons behind girls' child marriage. The study indicates girls' underage marriage is yet a tradition, but at the same time, it evidences existing social norm changes on the existence of consensual adolescent girls and boys-initiated marriage.

Educational attainment gives agency to girls, but their voice is 'limited' due to unemployment and their perception of viewing marriage as an alternative means of livelihood. Accordingly, when girls do not perform well in their education, disagree with their parents, or want to claim assets (inheritance), they consider marriage as the only option and best alternative.<sup>375</sup> This finding differs from the result of the study by Presler-Marshall et. al. (2021) that shows adolescent girls' aspiration for education is getting stronger and has positive support from most parents/caregivers involved in the study.

Parents still have autonomy in fixing girls' marriageable age because they attach a strong meaning to 'marriage'. Moreover, the study shows marriage is an accountability shouldered by parents to ensure their daughters' well-being and independent livelihood. On the other hand, for girls, marriage is part of their life that they are compelled to pass through in their 'childhood' or at most in their 'young' age, and even a 'choice' (opting for economic betterment or means of livelihood) when they reach middle/late adolescence; hence, married under legal 'cut-off' age. Consequently, parents take the responsibility not only 'to whom' their daughter going to marry but also to fix their marriageable age.

Unpacking the views of the community in the study area shows that girls' marriageable age is determined socially, providing 'acceptable' reasons behind girls' marriageable age below the legal 'cut off' age.

### *Local Government Responses for Enforcing Laws on Marriageable Age*

Harmful 'traditional' practice (HP) eliminating committee<sup>376</sup> has been established from *woreda* to the regional level as a nationwide initiative,<sup>377</sup> including in the study area. The committee, in Kuwarit *woreda*, actively works with non-state actors (UNICEF and UNFPA) and has recognized the importance of engaging key opinion makers, religious fathers, and community elders as agents for educating the community on marriageable age as of 2020/21.<sup>378</sup>

In line with the theory of Vernacularization,<sup>379</sup> the local agents have been given the mandate to lead community awareness raising.<sup>380</sup> The theory's central idea is the importance and necessity attached to local framing for ensuring the applicability of the global norms, on marriageable age, at the national and grassroots level. According to this framework, accepting '18 as marriageable age' requires a precondition to be adopted into the existing "local ideologies."<sup>381</sup> Due to the impunity of child marriage law,<sup>382</sup> the local government resorts to community-wide awareness raising and compulsory age estimation before the marriage ceremony. Regardless, child marriage continues to be prevalent in the area,

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<sup>376</sup> See supra note 42.

<sup>377</sup> National Committee on the Eradications of HTPs had been established by the Regional Women Affairs Bureaus in collaboration with non- governmental organizations (particularly Ethiopian Women Lawyers Association). The committee has been established in most regional states with an ultimate purpose of eradicating the practice of child marriage and abduction through mobilizing the community. See (Cedaw /C/Eth/ 2009); See also Ethiopian Global Database on VAW (2009). <https://evaw-global-database.unwomen.org/en/countries/africa/ethiopia/2009/national-committee-on-the-eradication-of-harmful-traditional-practices> accessed 23 April 23, 2023.

<sup>378</sup> See also the Addis Ababa Declaration on Ending Child Marriage that recognizes the central role of religious fathers and local elders; UNICEF and UNFPA support the budget.

<sup>379</sup> Vernacularization theory, developed by the late Sally Engle Merry, refers to the "process of appropriation and local adoption of global women/girls' human rights ideas and strategies" (Levitt and Merry 2009:446)

<sup>380</sup> In-depth interview with A001, March 29/2022, Kuwarit; every Sunday after the collective religious prayer

<sup>381</sup> Ibid.

<sup>382</sup> Existing literature shows that legal impunity contributes significantly to Ethiopia's child marriage prevalence. See (FDRE Ministry of Women 2019)

imposing fine<sup>383</sup> or prosecution has been very challenging for government authorities.<sup>384</sup> As a result, neighbors do not usually report to authorities, as indicated by one informant who stated, “no one will report to the local authority unless that person is malignant”.<sup>385</sup>

The awareness raising on the appropriate marriageable age does not seem to have successfully met the intended purpose. FGD informants expressed the fundamental gap stating, “despite broader community awareness has been conducted in the past two years, parents are unable to identify the age appropriate for marriage, while most still need to be convinced to change their attitude”.<sup>386</sup> There is internal contestation among religious fathers, community elders, and government stakeholders on marriageable age of girls.

The study reveals that some local government authorities have contested the appropriateness of legal marriageable age. Some argue for increasing, and others for lowering the minimum age of marriage by following the religious (Orthodox Church) reasoning, and socio-culturally based framings respectively.<sup>387</sup> The socio-cultural-based framing allows marriage below adulthood. The debate among the clergy, on the other hand, raises the age limit beyond legal adulthood, while the counterargument allows the biblical marriageable age for girls to be below the legal ‘cut off’ age.

On December 15, 2021, ninety-one priests at Kuwarit *woreda* condemned elders and community members who facilitated betrothal of child brides and participated in the wedding celebration. Nonetheless, their statement is vague in clearly indicating the appropriate marriageable age.

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<sup>383</sup> The justice office at Kuwarit *woreda* has worked with each *kebele* local administration to fix to impose fines on parents who undertake child marriage. The fine varies from *kebele* and ranges from 50 to 10,000 ETB.

<sup>384</sup> In-depth interview with A001, March 29/2022, Kuwarit; A002, A003, & A004, March 31/ 20/2022, Kuwarit. Even if girl's child marriage is widely prevalent, no prosecution except for one case under police investigation during the data collection. Government stakeholders are having a pertinent challenge of evidence and witness for persecution. Community members usually conduct girl's child marriage underground.

<sup>385</sup> Adolescent Girl 9, April 17/2022, Kuwarit

<sup>386</sup> FGD 008, April 19/2022, Kuwarit

<sup>387</sup> This study used the term 'socio-cultural' because the framing mainly follows physical appearance for girls fixing girls' marriageable age, which is based on the existing social /cultural norms.



The local government provides significant attention to religious fathers' partnership in eliminating child marriage. The head of the women mobilization office, who selected and trained religious fathers, stated, "the contribution of religious fathers is significant since no single marriage will be undertaken without getting a blessing from Priests."<sup>388</sup> However, an informant indicated, "most religious fathers are not yet convinced about legal marriageable age,"<sup>389</sup> showing the gap in mobilizing religious fathers.

Two controversial views of religious fathers are identified in the current study. Based on the life of Adam and Eve, most clergies teach marriageable age for girls shall be 15 and 30 for men based on the age they were created by God.<sup>390</sup> In contrast, other clergies refer to the same story but teach that the marriageable age shall be 22 and 37 for women and men, respectively. They contend that Eve was created by God at the age of 15 and stayed together with Adam in Eden Garden for seven more years before consummating their marriage when they started to live on Earth. Religious fathers who support increasing girls' marriageable age to 22 condemn clergy who preach the marriageable age of girls as 15 on the ground that "they mix culture with religion and preach the culture claiming that it is religious doctrine. They also contest our interpretation as new canon law".<sup>391</sup>

Religious justification for the betrothal of young girls to deacons is also contested. Some clergy argues that this ensures virginity for the betrothal ceremony, not the actual marriage, while other religious fathers who advocate for 22 as girls' marriageable age have put the consent of both spouses as a prerequisite for marriage. They contend that not only marriage, but also betrothal shall be based on the full consent and initiation of the future spouses and requires attaining the age of 22 and 37, including for betrothal.<sup>392</sup>

The same gap has also been noticed with the community elders where some still disagree with the legal marriageable age and argue that it shall be lowered. One of them stated, "as a principle, it is convincing to delay girls' marriage till 25, let alone 18 years, but she will

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<sup>388</sup> In-depth interview with A001, March 29/2022, Kuwarit

<sup>389</sup> In-depth interview with A001, March 29/2022, Kuwarit

<sup>390</sup> In-depth interview with Priest 01, April 2/2022, Kuwarit; with A01, April 3/2022; with A02, April 5/2022, Kuwarit

<sup>391</sup> Ibid.

<sup>392</sup> In-depth interview with Priest 01, April 2/2022, Kuwarit

already lose her virginity by the age of 7 and 8".<sup>393</sup> Furthermore, according to the study's findings, community elders, even after they received training from the local government, suggest 15 as an appropriate marriageable age for girls. They justify this as "her uterus is ready for pregnancy, her body is matured, and her blood vessels are relaxed. Nevertheless, if she is lower than that, her uterus will be damaged; she will be a fistula victim".<sup>394</sup>

An interview with Kuwarit *woreda* culture and tourism office also showed community elders propagate the wildly held belief that "adolescent girls who attain 13 and beyond years should not sleep alone; if so, they will get the evil spirit." Similarly, adolescent boys stated, "elders are the ones who facilitate betrothal of underage girls, and hence, most of them are not supportive of eliminating girl's child marriage".<sup>395</sup>

The debate that centers on accommodating local elders' views of lowering the legal marriageable age to 15 mainly relies on the physical maturity and 'interest'<sup>396</sup> of middle/late adolescent girls<sup>397</sup>, which are not plausible in terms of "the best interest of the child" legal standard<sup>398</sup> and also it is against the Ethiopian law on the age of sexual consent.

Regardless of the attempts by the government, it still remains a fact that girls are married off from the age of 4 and 5. Such girls are raised among the groom's family until they reach the age of 12 or 13, where they often request to start living together and start a family of their own.<sup>399</sup> According to the *woreda* officials, it is highly likely that 'early' adolescent girls will

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<sup>393</sup> In-depth interview with Elder 03, April 15/2022, Kuwarit. Their justification is related to misconceptions about girls' sexuality discussed in the first section of this article.

<sup>394</sup> In-depth interview with Elder 01, April 6/2022, Kuwarit

<sup>395</sup> FGD with 004 Boys, April 18/2022, Kuwarit

<sup>396</sup> 'Interest' indicates middle/late adolescent girls will be married only if they consent for the arranged marriage by their parents. According to the findings of the study parents will not force an adolescent girl after attaining 15 or more years. This age is culturally considered as the age of consent. From adolescent girl in-depth participants of the study, most (8 out of 12) consented for the arranged marriage by their parents. In-depth interview with Adolescent Girl 03, April 6/2022, *Kuwarit*; In-depth interview with Adolescent Girl 04 & 05, April 10/2022, *Kuwarit*; In-depth interview with Adolescent Girl 06, April 11/2022, *Kuwarit*; In-depth interview with Adolescent Girl 08, April 12/2022, *Kuwarit*; In-depth interview with Adolescent Girl 09, April 17/2022, *Kuwarit*; In-depth interview with Adolescent Girl 10, March 31/2022, *Kuwarit*; In-depth interview with Adolescent Girl 11, April 14/2022, *Kuwarit*.

<sup>397</sup> See supra note 38.

<sup>398</sup> Young girls' marriage is linked with rampant multi-faced adverse outcomes see (Batyra and Pesando 2021c)

<sup>399</sup> In-depth interview with A04, April 1/2022, Kuwarit.

be raped by the groom, even if they return to their parents later, ending their marriage with divorce. An interview with Kuwarit *woreda* culture and tourism office indicated that “12 is considered as ‘*akeme hywan*’ (socially appropriate age for marriage), and often they are expected to give birth by the age of 16”.<sup>400</sup> A study by Jones et al. (2015) indicates many communities in Ethiopia do not consider marriage after 15 as child marriage.<sup>401</sup> Comparatively, the current study identified a relatively lower age as socially appropriate age of marriage for girls. In support of that, three of the government informants strongly argued during an FGD discussion that “if the marriageable age is lowered to 15, the community will accept it. At 14/15, girls have already started menstruation which triggers sexual urges. Moreover, hence, 18 is very late”.<sup>402</sup> Another government informant from a separate interview also stated, “the current 14 years old girls are more mature than the previous 18 years, so the interest of adolescent girls themselves coupled with the social pressure necessitates lowering the legal marriageable age”.<sup>403</sup> No government participant openly argued to the contrary, despite an attempt is made to facilitate discussion in this regard. This shows that government officials are bound by their cultural views on one hand and their role in implementing the national law, eventually creating dual loyalty. Accordingly, building local government stakeholders' capacity shall be made, mainly because they can be used as an entry point to resolve the contestation on girls' marriageable age.

In line with vernacularization theory, religious-based framing that raises girls' biblical marriageable age to 22 shall be broadly used to convince the grassroots community to delay girls' marriage since *Kuwarit woreda* holds only Orthodox Christians. This framing fits with the statutory law on marriageable age in terms of the pre-requisite it sets for concluding betrothal agreement and consent elements in addition to satisfying the minimum marriageable age requirement. Besides, it has a strong religious 'ideology' base and seems to have a potential to be successfully used for convincing parents. However, refuting the

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<sup>400</sup> Conducted on April 1/2022, Kuwarit.

<sup>401</sup> See also Hamilton (2020). The age of puberty indicates the capacity of reproduction and is taken as a guide for determining the marriageable age of girls in most cultures. Research from Ethiopia by Presler – Marshall et al. (2020) also shows the first incidence of menstruation as an indicator of marriageable age.

<sup>402</sup> FGD 010, April 20/2022, Kuwarit

<sup>403</sup> AA04, April 22/2022; Finote Selam; In-depth interview with AA002, April 29/2022, Bahir Dar

counterargument interpretation of biblical girls' marriageable age of 15 is a challenge. The study also shows that the clergy widely hold the counterargument; till rejected, this interpretation will keep on validating the socio-cultural base of the marriage age setting. Both the religious based framing of 15 and socio - culturally based framings are unacceptable considering Ethiopian commitment to be abided by the international and regional laws on marriageable age.<sup>404</sup> Moreover, as per the recent decision of the African Court on Human and Peoples' Rights against Mali, religious and cultural reasons will no longer be a viable ground.<sup>405</sup>

The other aspect of the implication of existing contestation shows that parents are in the 'driving seat', but all the local norm holders have a role in fixing 'appropriate' girls' marriageable age in their local setting. Accordingly, it is essential to rectify the fears of all local norm holders about delaying girls' marriage till legal adulthood, in addition to a human rights-based approach that empowers girls to resist child marriage. Protection of virginity is a justification for fixing low marriageable age for girls at first marriage, as voiced by male parents, religious fathers, local elders, and boys. The wildly held belief in the protective factor of "*chagula merget*," '*kumo ker*' social sanction, and misconceptions about girls' sexuality are the central justifications for setting girls' marriageable age below 18. This implies state and non-state actors shall employ continuous awareness raising targeting a change in these gender social norms. This study shows gaps in awareness raising through the top-down community mobilization approach. Hence, the awareness raising shall include active community participation being guided by community dialogue programs.

## **Conclusion**

Local communities have been using both socio-cultural and religious-based framings to determine age of marriage. And thus, the age of 18 as marriageable age needs to be more convincing for the community. However, the local context consideration and framing of girls'

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<sup>404</sup> See supra note 22.

<sup>405</sup> See supra note 18.

marriageable age in Kuwarit *woreda* unveils internal debate and contestation among different local actors. This requires due attention and is important to highlight that the contestations have minimal significance for impacting the statutory law. Lessons from recent studies show that neither increasing nor decreasing girls' marriageable age contributes to declining the practice's prevalence. The focus should, instead, must be on the justifications to be used as a ground for framing girls' marriageable age at the community level. Accordingly, international laws on marriageable age shall be made to be framed with what is already locally acceptable to make it binding at the grass root level. In this regard, education is a key framing used by girls to resist and delay marriage till legal adulthood. Besides, religious-based framing that rises girls' biblical marriageable age to 22 is the most useful. Furthermore, in-depth customized research shall be undertaken to identify the internal debates among the diverse local norm holders to reveal their respective influence and identify central norm holders against the statutory girls' marriageable age.

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