

Normative Motivations and Constructions: Reflections on Bridewealth Payment in Africa

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Abstract

Most traditional societies in sub-Saharan Africa have experienced diverse challenges through their encounters with forces of globalisation, such as colonialism, apartheid and the human rights movement. The legacies of these forces continue to reshape their cultural values, belief systems, practices and legal identities, often leading to their loss or transmogrification. However, the practice of bridewealth payment has survived its encounter with globalisation. Bridewealth payment is notable for its role in legitimising marriages and solidifying an alliance between the families of the bride and the groom. Its resilience amid socio-economic changes, with variations in form and quantum, is remarkable, despite accusations that it undermines women's agency and contributes to gender-based violence. This paper uses comparative analysis of legal interventions in customary laws of marriage in South Africa and Nigeria, drawing on literature, field insights, legislation and judicial decisions to probe the normative motivations behind bridewealth's persistence. These motivations inform how people adapt their practices to ever-changing socio-economic conditions. Furthermore, they are helpful for policymakers to understand how norms emerge, adapt and resist legislative intrusions. This paper reveals the adaptive nature of bridewealth, offering insights into the interaction between tradition and modernity. It calls for policies that are both culturally sensitive and respectful of lasting norms, while also addressing gender equity concerns. The findings reveal that bridewealth's persistence is attributed to its function in legitimising marriages and strengthening family alliances. Its adaptations to socio-economic changes suggest that policymakers should align legal frameworks with cultural experiences to encourage inclusive development.

Keywords: bridewealth; normative construction; legal pluralism; normative motivations; customary marriage; gender equality



Journal of Law, Society and Development
Volume 12 | 2025 | #16952 | 24 pages

<https://doi.org/10.25159/2520-9515/16952>
ISSN 2520-9515 (Online), ISSN 2313-8289 (Print)
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Introduction

In many traditional African societies, the payment of bridewealth is a deeply ingrained aspect of marriage traditions, reflecting its diverse and significant roles within the community (Chitakure 2021; Abdul-Korah 2014). Although it is a widespread practice, its form, quantum and purpose differ from community to community (Akurugu et al. 2022). Firstly, it plays a significant role in legitimising marriages and solidifying an alliance between the two families (Ogbu 1978). Secondly, it serves as a form of wealth redistribution or compensation to the bride's family for losing her labour and contribution to the household (Chae et al. 2021). Dlamini (1984) has argued, however, that it is impossible to fully compensate a parent for the loss of their daughter's labour and contribution to the household because no amount of compensation can truly quantify or replace these contributions. This is because a person's contribution to their family is not solely monetary but includes things such as emotional support, caregiving and household chores. Thirdly, bridewealth symbolises honour, recognition and respect for the bride within her community and that of her husband-to-be (Akurugu et al. 2021). In some communities, it also symbolises the groom's commitment and ability to care for the bride (Ng'ang'a 2010). The cultural legitimacy that bridewealth enjoys is derived from the above functions.

Against the background of significant socio-economic changes, the practice of bridewealth payment has persisted (Sennott et al. 2021). This paper examines the normative motivations behind the persistence of bridewealth in sub-Saharan Africa, drawing on the literature on customary practices, gender dynamics and human rights. It engages with policy debates on the harmonisation of customary law with constitutional equality, as seen in South Africa's Recognition of Customary Marriages Act and judicial reforms in Nigeria. This paper employs a comparative analysis of legal interventions in the customary laws of marriage in South Africa and Nigeria, drawing on legislation, judicial decisions and field insights from interviews conducted between 2016 and 2017 in Southeast Nigeria with traditional leaders, elders, couples and their parents. The paper further draws on normative theory to examine how social norms influence behaviour and resist external pressures (Bicchieri 2016). Normative motivations denote the factors or forces that inform people's adherence to societal norms, moral standards or ethical principles in a given society (Taylor et al. 2018). These forces drive people to behave according to accepted norms and values within their community. The normative motivations for bridewealth persistence can be based on the beliefs and values a person attaches to the practice, as well as external expectations or societal pressure (Kelly 2020).

Many traditional societies in sub-Saharan Africa have experienced diverse challenges through their encounters with forces of globalisation, such as colonialism, apartheid and the human rights movement (Samuel-Mbaekwe 2018; El-Obaid and Appiagyei-Atua 1995). These forces have significantly contributed to the transformation and even loss of cultural values, belief systems, practices and legal identities of African societies

(Diala 2019a). For example, in their agrarian settings, traditional African societies were closely knit, with the extended family systems playing a significant role in the social, economic and political life of its members (Lassiter 2000). Now, this communal life has been eroded and submerged by what Nyasani (1997, 128) describes as “the never-receding tide of cultural imperialism.” Indeed, communal life has been largely replaced by an individualistic way of life alien to pre-colonial Africa (Njoh 2016). Other practices and values that have disappeared or been distorted include indigenous knowledge, natural resources and traditional religion (Diala 2018). Intriguingly, the practice of bridewealth payment has survived.

The resilience of bridewealth payment in the face of socio-economic changes, with variations in form and quantum, is remarkable, especially when weighed against accusations that it undermines women’s agency and contributes to gender-based violence (GBV) (Chitakure 2021). This paper compares legal interventions in customary laws of marriage in South Africa and Nigeria to probe the normative motivations behind bridewealth’s persistence, arguing that they inform adaptation to socio-economic conditions. It further guides policymakers on norm emergence, adaptation and resistance to legislative intrusions.

The paper is structured into four main sections. Following this introduction, the next section briefly examines the literature on the link between bridewealth and GBV by critically analysing the impact of bridewealth on gender equality and women’s agency and how it influences gender-based violence. The subsequent section explores legal interventions in customary laws of marriage in South Africa and Nigeria to broaden understanding of the normative motivations behind the resilience of bridewealth payment. This part also shows how people have socially constructed or adapted the bridewealth practice into a resilient practice that defies changing socio-economic conditions. South Africa and Nigeria were selected because they have large economies, cultural and religious diversity and a shared history of colonialism, which bequeathed them with diverse legal systems. Although not specifically provided in Nigeria’s Constitution, customary laws are recognised under the legal systems of both countries. The final section concludes by highlighting the importance of considering deeply ingrained norms and values when promoting human rights and addressing the potential harms associated with bridewealth. It ends by drawing policy attention to how people resist legislative intrusions and adapt their cultural practices to evolving socio-economic conditions.

Intersection of Bridewealth, GBV and Women’s Agency

This section explores how normative motivations behind the persistence of bridewealth influence its intersection with GBV and women’s agency, revealing how socio-cultural values continue to shape the practice despite ongoing criticism. Socio-economic changes have altered the meaning and significance of bridewealth payment, often leading to its distortion (Diala 2014). In the past, bridewealth was not paid in cash (Ogbu 1978). Rather, it consisted of livestock such as cattle and goats, along with farm produce

and other items, including drinks, clothing and kitchen utensils. Now, it has become commercialised and often requires an exorbitant sum from the groom's family (Chitakure 2021). This shift reinforces normative beliefs that bridewealth legitimises male control, which can undermine women's agency. By giving the impression that women are purchased by men, bridewealth can encourage GBV, prevalent in many parts of the world, especially in Africa (Beyene et al. 2019; Tshilongo 2023).¹ Yet, bridewealth's normative role in attaching cultural legitimacy to customary marriages by symbolising family alliances and social status, complicates its link to GBV.

GBV is a widespread problem that cuts across sex, age, race, class, religion and nationality and affects most aspects of life (Sweeny 2020). It is structurally embedded in institutions and traditions, thus making its link with bridewealth a complex issue (Lomazzi 2023). For instance, although bridewealth is valued as a symbol of respect to the bride, it can perpetuate patriarchal contexts where GBV occurs (Hudson and Matfess 2017). This context is discussed under the following themes: commodification of women, power imbalances and gender inequalities and societal condonation of harmful gender norms.

Commodification of women

Bridewealth typically involves the transfer of wealth or property from the groom's family to the bride's family (Chae et al. 2021). The transfer of wealth through bridewealth often seems one-sided, but it embodies mutual expectations from both families. For example, the groom's family transfers wealth through the payment of bridewealth with expectations such as marital rights over the children of the marriage and any wealth of the bride. These normative expectations sustain the acceptance of bridewealth but also risk commodifying women. The wealth expected from the bride is both material and reproductive. Reproductive wealth may include resources related to the continuation of the family lineage through childbearing and nurturing (Dodoo et al. 2020). Material wealth ranges from contributing to marriage through commercial activities, inheritance and property ownership through the bride's educational and professional achievements (Glenn 1992). Also, material wealth includes domestic/care work, which is unappreciated and underrated in economic terms. Significantly, colonial officials misunderstood the intricate nature and significance of bridewealth payment (Bunting and Lawrance 2016). During the colonial era, the payment of bridewealth was widely referred to as "brideprice", which contributed to perceptions of women as chattel or property bought by the highest bidder in the marriage market (Fuseini and Dodoo 2012; Akurugu et al. 2021). This perception was non-existent in the pre-colonial era due to the absence of a cash economy. Moreover, women enjoyed respect within the complementary gender relations characteristic of Africa's agrarian societies (Amoah-Boampong and Agyeiwaa 2021). Accordingly, in his ethnographic work, Evans-

1 Although GBV affects both men and women, studies have shown that it disproportionately affects women.

Pritchard (1931, 38) argued for the use of “bridewealth” to show the non-monetary and social function of the practice and further “preserve an appearance of continuity.” Studies show that the introduction of a cash economy contributed to the commercialisation of bridewealth and the perception of women as commodities to be bought in marriage (Montle and Moleke 2021; Kgatle 2021). Moreover, in many traditional societies, raising a girl-child is seen as an investment, even though male children are preferred for lineage continuity (Baloyi and Manala 2019). Consequently, the monies expended in training the bride and her level of education influence the bridewealth amount. This assertion is supported by a respondent who noted, “Government did not give free education, so they shouldn’t dictate how much is to be paid as bridewealth after I spend my money in this harsh economic condition raising my daughter” (interview by the author, Diala 2019b, 138). Perceiving girls as commodities whose value is based on their educational level and potential to generate bridewealth reinforces gender inequalities and contributes to the commodification of women.

Additionally, the process leading to bridewealth payment requires much haggling and bargaining without input from the woman for whom the payment is made (Asen 2017; Diala 2019b). The payment is negotiated by the woman’s father and/or any other male representative of her father with the groom often present (Yarbrough 2018). The negotiation process can exacerbate the commodification of women by shifting the focus from recognising them as individuals with rights and agency to treating them as objects whose value is negotiated (Farré 2015). Consequently, women are positioned as passive subjects rather than active participants in decisions regarding their own lives and futures (Farré 2015).

Interestingly, many women recognise the negative impact of bridewealth payment on their agencies but accept it due to cultural pressures, thereby perpetuating patriarchy and unequal power relations in family structures (Diala 2019b). In a study conducted by Ansell (2001, 705) on young people’s perceptions of bridewealth payment and women as chattel, one respondent noted, “It’s not good to be owned, but that’s part of our culture.” Similarly, another remarked that it is no big deal, “besides, it is our custom” (interview by the author, Diala 2019b, 119). As I show below, this attitude of acceptance devalues women’s agency in marriage and increases their vulnerability to GBV.

Power imbalances and gender inequalities

Normative motivations, such as the role of bridewealth in establishing family hierarchies, contribute to gendered power imbalances. Many African constitutions promote gender equality. For example, section 9 of the South African Constitution and sections 15(2) and 42(1) of the Nigerian Constitution guarantee equality for all sexes, respectively, but these constitutional protections often clash with customary practices like bridewealth. In its distorted form, bridewealth continues to sustain a social order that contributes to unequal power relations in marriage (Vengesayi 2018). The payment of bridewealth requires a woman to leave her father’s house and move in with her

husband (Hotte and Lambert 2023; Oseyi and Bello 2018). This exogamous move is often associated with patriarchal norms and structures that prioritise male authority and the subordination of women. It shifts responsibility from the father to the husband and his family (Rudwick and Posel 2015). In some societies, women may lose inheritance rights upon transition, as bridewealth creates economic ties between families and places the woman as part of her husband's lineage (Lastarria-Cornhiel 1997; Ewelukwa 2002), thus perpetuating economic dependence and limiting women's ability to accumulate wealth or assets independently.

As noted earlier, bridewealth transactions often involve the transfer of wealth from the groom's family to the bride's family. The transfer of significant wealth establishes economic ties and power dynamics between the two families, especially in cases where the bride's family is economically disadvantaged (Akurugu et al. 2022). Where this is the case, it can create a viable ground for GBV to thrive (Ansell 2001).² A woman in this situation may become economically dependent on her husband, which an abusive husband can exploit to exert control over his wife.

The distorted form of bridewealth perpetuates gender inequality by treating women as transactional objects rather than agentic partners in marriage. This is usually because the groom or his family paid an exorbitant sum (Akurugu et al. 2022). This is not to say that bridewealth payment always subjugates women or leads to GBV. For example, studies conducted by Sennott et al. (2021) and Smith (2001) in South Africa and Nigeria, respectively, suggest that many women are integrating the payment of bridewealth as a means of achieving their life goals and trajectories. They are using bridewealth to assert their agency, secure themselves economically and attain respectability (Ngubane 2018). But Smith (2001) argued that attaining respectability, viability and stability in marriage cannot always be guaranteed by the payment of bridewealth alone but by the woman's ability to produce offspring. This link between respectability and fertility supports the normative pressures that limit women's primary role in marriage to reproduction, thereby sustaining traditional gender expectations (Dodoo et al. 2014). The consequence is that women's agency in decision-making regarding reproductive choices is limited.

Society and gender norms

Societal norms play a key role in sustaining bridewealth by reinforcing traditional gender roles (Akurugu et al. 2022). In many traditional African societies, especially where bridewealth payment is practised, women are expected to fulfil gender roles and adapt to societal norms surrounding marriage and family (Horne et al. 2018). These roles include household chores, caring for children and elderly family members and childbearing to carry on the family lineage (Okojie 1994).

2 This is also the case where the bride's family is unable to return the bridewealth in the event of divorce or abuse.

A study conducted by Kadengye et al. (2023) provides insight into how gender norms contribute to GBV. It investigates how societal justifications of gender norms, such as wife-beating, contribute to intimate partner violence. Respondents were asked whether beating one's wife was justified under the following circumstances: leaving the house without informing one's husband; neglecting the children; arguing with one's husband; refusing to have sex with one's husband; and burning the food. The findings show that a significant number of women accept wife-beating under these circumstances as a corrective measure, normalising GBV (Kadengye et al. 2023). These norms, linked to bridewealth's role in upholding family honour, drive its persistence but also exacerbate women's vulnerability to violence (Rodelli 2022). They shape acceptable behaviours and their violation is often sanctioned by the community or the husband (Dodoo 2014; Sennott et al. 2021). To avoid these sanctions, most women may endure or overlook instances of violence to preserve family honour or avoid the social stigma that comes with disobedience.

Despite the influence of legislation on the intersection of GBV, bridewealth and women's agency, the payment of bridewealth persists. Countries such as South Africa and Nigeria have reformed their laws to promote women's agency in customary marriages. In what follows, some of these reforms are explored.

Legal Interventions in Customary Laws of Marriage

This section examines how legal interventions in South Africa and Nigeria interact with the normative motivations that sustain bridewealth, showing its adaptation to socio-economic changes. Bridewealth holds significant cultural, social and legal importance within the context of customary law in many African countries (Akurugu et al. 2022).³ It involves elaborate rituals and ceremonies that reinforce cohesion and cultural identity for its observers (Mwamwenda and Monyooe 1997). Its legal significance is evident in its role in governing marriage and family relations in communities that practise it.⁴ In Nigeria and South Africa, the following judicial and legislative interventions have been made in the regulation of customary marriage laws.

South Africa

Customary laws in South Africa predate European colonialism and continue to regulate the private and family lives of those who observe them (Moore and Himonga 2018). During the colonial era, the Roman-Dutch law was the dominant law, whereas customary laws were almost unrecognised (Van Niekerk 2011). During apartheid, courts were allowed to recognise customary laws only insofar as they were not repugnant to natural justice, equity and good conscience (Himonga and Bosch 2000).

3 Customary law will be used interchangeably with indigenous law. Of course, there has been debate about what constitutes customary or indigenous law. However, this paper will not engage with this debate.

4 Section 4(4a) Recognition of Customary Marriages Act 120 of 1998.

Customary laws were allowed to operate alongside the received common law, with the former applying mainly to indigenous disputes between Africans (Grant 2006). Later, the 1994 Constitution placed customary laws on a par with the common law and subjected their validity to the Bill of Rights (Sibanda 2010). Significantly, the Constitution charged the courts with the duty of developing customary law to conform with constitutional values of equality, human dignity and non-discrimination. However, the courts have faced significant challenges with the interpretation of indigenous laws within a constitutional framework because they are largely unwritten (Himonga and Bosch 2000; Lehnert 2005). To ensure alignment with constitutional principles and the Bill of Rights, South Africa intervened in certain aspects of customary marriage (Bekker and Koyana 2012).

The first intervention is the Recognition of Customary Marriages Act 120 of 1998 (RCMA). The RCMA provides for the recognition of customary marriages and further establishes the legal requirements and procedures for registering and dissolving customary marriages.⁵ More importantly, it provides equal status and contractual capacity to spouses, thus ending the minority status of women and legal impediments to their ownership of property under customary law (Robinson 1995).⁶ This provision signifies a normative shift towards gender equality while preserving the cultural role of bridewealth. This is significant because under most customary marriages, the rights and agencies of women are limited compared to their male counterparts, especially in places where the payment of bridewealth is practised (Jaiyeola and Aladegbola 2020). This situation is mainly because of patriarchal ideologies, cultural norms and social structures that have historically placed men above women. For example, men are given authority and control within families and communities. They are often assigned the role of primary decision-makers and heads of households, while women are assigned the domestic and nurturing roles (Bonvillain 2020). These statuses are evident in the negotiation of bridewealth, which is undertaken by the bride's father, brother or eldest male member of her family in her absence. Bennet (1999, 124) noted that one of the consequences of bridewealth is that women are unable to initiate divorce proceedings without the help of their guardians because they lack the requisite legal standing to bring a case before the court.

However, the position that women cannot negotiate bridewealth is changing. This is evident in the case of *Mabena v Letsoalo*, where the court held that the bride's mother was legally competent to negotiate and accept bridewealth payment in the absence of her father, reflecting changing family structures and social norms.⁷ Also, under customary law, women may not directly or independently own land or property except their personal effects due to patriarchal ideologies embedded in customary land laws

5 Sections 2, 3, 4 and 5 of the RCMA.

6 See also ss 6 and 7 of the RCMA.

7 1998 [SA] 1068.

(Mubecua and Nojiyeza 2022).⁸ However, section 6 of the RCMA puts an end to this by providing that a wife under customary marriage has the “capacity to acquire assets and to dispose of them.” Affirming this provision, the Constitutional Court (ConCourt) in *Ramuhovhi and Others v President of the Republic of South Africa and Others* (*Ramuhovhi’s case*) addressed the issue of gender equality within customary law and marriage.⁹ The court held that couples in customary marriages have joint and equal ownership rights of management and control over marital property. Furthermore, each spouse can independently own and administer personal property. This decision demonstrates how legal reforms accommodate normative expectations of reciprocity while promoting gender equality. In *Minister of Justice and Correctional Services v Ramuhovhi and Others*, a sequel to *Ramuhovhi’s case*, the ConCourt reiterated the principle of equality between spouses in the ownership and control of marital property.¹⁰

It further affirmed that all customary marriages are in community of property irrespective of the date they were contracted. This decision helps align bridewealth practices with modern norms of equity without abolishing their cultural legitimacy. These statutes and judicial cases show an improvement in the legal position of women under customary law while strengthening the constitutional values of gender equality and human dignity.

Secondly, the rule of male primogeniture excluded women from inheritance and succession both as daughters and wives. Van Niekerk (2005) and Diala (2014) have argued that the main purpose of the rule of male primogeniture was to preserve and maintain the duty of care owed to the members of the family by the deceased family head. However, the meaning and significance of this rule have been greatly distorted in ways that reinforce patriarchal notions and subjugate women under customary law. With this distortion and socio-economic changes, the hardship caused by male primogeniture becomes visible. However, the cases of *Bhe and Others v Magistrate Khayelitsha and Others*; *Shibi v Sithole*; *South African Human Rights Commission v President of the Republic of South Africa*; and *Shilubana and Others v Nwamitwa* changed this situation by abolishing the rule of male primogeniture for its violation of the constitutional rights of women to equality and dignity.¹¹ These landmark cases reaffirmed the significance of gender equality and the protection of women’s rights within customary law marriages in South Africa, while upholding bridewealth’s legitimising role. What is notable about South Africa’s reforms of customary law, by both the judiciary and the legislature, is that these reforms have been justified by

8 *Mabena v Letsoalo* 1998 [SA] 1068, 327. Women access land through their male kinships. Those who have access to land only work on it but do not have the power or right to make any decision regarding it.

9 (CCT194/16) [2017] ZACC 41.

10 [2019] ZACC 44.

11 [2004] ZACC 17; 2005 (1) SA 580 (CC); 2005 (1) SA 580 (CC); 2009 (2) SA 66 (CC).

constitutional values and prevailing socio-economic conditions. In contrast, this has not been the case in Nigeria.

Nigeria

In pre-colonial Nigeria, indigenous laws governed the personal and family lives of native communities. During the colonial era, these laws were relegated to a subordinate position, while the English common law was dominant (Nwocha 2016). The application of customary laws during this period was subject to the repugnancy clause (Unobe 1989). The Nigerian Constitution does not expressly recognise customary law in the way that section 211 of the South African Constitution does. However, sections 18(3) and 73(1) of the Evidence Act require courts to take judicial notice of customs, rules and practices that have the force of law, provided they are not contrary to public policy, natural justice, equity and good conscience. These laws were allowed to operate alongside the received common law, with the former applying to indigenous disputes between Africans. Here, customary law reflects patriarchal norms that discriminate against women and girls (Nwocha 2016).

Since its political independence, Nigeria has gradually undertaken judicial reforms aimed at modernising and harmonising its legal system in alignment with human rights principles. Nigerian courts have taken significant steps to intervene in cases where customary practices are discriminatory. The male primogeniture rule is an example of judicial intervention in Nigeria (Ezebuilo 2019; Durojaye and Adebajo 2014). In *Ukeje v Ukeje*, judges invalidated the practice, which disallowed female children from inheriting their deceased father's estate in violation of section 42(1) of the Constitution.¹² Following the unanimous decision of the court in this case, the Rivers State Governor, Nyesom Wike, signed the Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law No. 2 of 2022 into law. In the cases of *Mojekwu v Mojekwu* and *Mojekwu v Iwuchukwu*, the courts held that the Oli Ekpe custom, which allows the brother of a deceased man who died without a male child to inherit his estate, is repugnant to natural justice, equity and good conscience.¹³ This decision reflects a normative shift towards gender equity while upholding the practice.

The law reforms in South Africa and Nigeria show that many customary practices have collapsed due to transformations in society. However, the practice of bridewealth remains resilient. The next section examines how bridewealth payment has adapted to socio-economic conditions to retain its acceptability.

Normative Constructions of Bridewealth

How have traditional African societies adapted bridewealth payment into a resilient practice amid changing socio-economic conditions while maintaining its normative

12 (2014) 11 NWLR (Pt 1418) 384–414.

13 [1997] 7 NWLR 283; [2004] 1 NWLR (Pt 883) 196 216–217.

significance? Normative constructions refer to the historical, legal, social and cultural processes that create, shape, reinforce and transform perceptions of acceptable or deviant behaviour in a society (Vatn 2007). These institutions include the family, education, religion, government and the media, which play a significant role in shaping people's attitudes and beliefs (Sherkat 2003). The construction of norms often occurs through the process of socialisation. Through interactions with family members, peers, teachers, religious leaders and other social agents, individuals learn, share, adapt and internalise social norms and values (Poole 2023).

As noted earlier, customary law and practices are often regarded as primitive and incompatible with human rights because of the agrarian settings in which they emerged, the distortion and misinterpretation of their meaning and negative attitudes towards them (Dlamini 1991; Diala 2019a).¹⁴ It is for these reasons that some customary practices have declined, disappeared or been referred to as uncivilised in comparison with statutory laws and the Bill of Rights.¹⁵ For example, practices such as female genital mutilation, rites of passage and tribal markings have declined in some African societies. Despite the negative attitudes and the image of “immemorial and immutable normative practice of unbroken antiquity” that customary law often portrays, it is still flexible enough to meet certain contemporary social needs (Dlamini 1991). Whether the payment of bridewealth has adapted to socio-economic changes in a good or bad way is based on individual perspectives and specific contexts. For example, viewed positively, it may be argued to bridewealth fosters social cohesion between families and economically empowers the bride's family. Conversely, it can be seen to perpetuate patriarchal norms and the commodification of women. So, in what ways has bridewealth payment adapted to socio-economic conditions to retain its acceptability?

Firstly, in many communities in Southeast Nigeria, the groom-to-be is given a marriage list that contains the customary requirements for the conclusion of a valid customary marriage. This list includes items such as money, furniture, food, drinks, fabrics, jewellery and the bridewealth itself, known as *ego isi nwanyi* (Onah et al. 2023). In the pre-colonial period, bridewealth typically consisted of labour by the groom, livestock and a small amount of money, often in the form of cowries. Now, it has changed considerably to include a substantial amount of cash alongside more expensive items such as generators, electronic devices and cartons of drinks. The shift to this astronomical amount and valuable items reflects bridewealth's adaptation to socio-economic forces such as globalisation and the bride's level of education (Mangena and Ndlovu 2013). Although bridewealth retains its functions as compensation to the bride's family for her upbringing and a means of sustaining family honour, respondents note its negotiation is influenced by economic challenges (Diala 2019b).

14 See especially the South African case of *S v Jezile* 2015 (2) SACR 201 (WCC).

15 This paper does not endorse these practices but tries to show how they have been suppressed or eliminated in the face of colonialism, modernisation and changing social norms.

Secondly, in adapting to modern realities, contemporary families now accept symbolic gifts or tokens rather than significant financial payment to reflect changing social norms and show that their daughters are not for sale (Diala 2019b). This shift to token practice allows bridewealth to maintain its symbolic role while mitigating the commodification criticisms. Also, where a groom is not financially able to fulfil all the requirements, many families allow him to negotiate based on his financial circumstances or make payments in instalments (Posel and Rudwick 2014). This flexibility gives bridewealth payment a resilient trait.

Thirdly, the negotiation process of bridewealth used to adhere rigidly to traditional customs where the responsibility to negotiate and receive bridewealth rested primarily on the father, brother or a male member of the bride's family. In response to modern realities, this position is changing, as evident in the case of *Mabena v Letsoalo*, where the bride's mother was held legally competent to negotiate and accept bridewealth payment as her guardian.¹⁶ This legal recognition shows a move towards fairness in society without disregarding bridewealth's role in promoting familial kinship.

Fourthly, the payment of bridewealth was usually made by the groom's family because of the closely-knit or communal nature of pre-colonial African societies. Now, because of individualisation and capitalist economies, the responsibility for bridewealth payment has shifted to the groom. Interestingly, women are now able to contribute to their bridewealth in cases where the groom lacks the financial resources to fulfil the customary requirements (Posel and Rudwick 2014). Traditionally, women could not contribute to their own bridewealth due to cultural norms and the communal nature of wealth production. In the early years of colonialism, only men had the opportunity to earn an independent income, while women worked on the farm and took care of the household. However, with increasing women's participation in Africa's capitalist economies, women now contribute, either directly or indirectly, to funding bridewealth, especially in circumstances such as the groom's inability to pay the full amount or when the couple are already cohabiting and have children. This participation allows women to reshape traditional practices while preserving the cultural legitimacy of bridewealth.

In addition, bridewealth has taken a new form that "challenges and redefines the traditional forms of kinship and kinship obligations" (Sykes and Jourdan 2020, 178). This new form redirects wealth to the parent of the bride who raised her. The basis of this argument is that people's aspirations are now mainly to enhance their socio-economic status and contemporary lifestyle, hence the persistence of bridewealth and the change in its form. The redefinition of traditional forms of kinship and kinship obligations as contemplated by Sykes and Jourdan implies that the extended family structure is making way for nuclear families. As families become more nuclear and individualised due to globalisation and the cash economy, people move out of the villages into the cities and form social, cultural and religious relationships that shape

16 1998 [SA] 1068.

the form of bridewealth. For example, many churches advise their members to choose civil marriages (Diala 2019b). Where the parties are obliged to undertake a customary marriage, they are compelled to only choose items on the marriage list that their religion does not forbid, thereby allowing for greater flexibility and negotiation of obligations (Diala 2019b). This flexibility is rooted in normative values of personal agency and mutual consent, which integrate modern norms into bridewealth practices and contribute to its resilience. Consequently, the obligation of negotiation shifts away from the dictates of tradition or custom, altering longstanding kinship responsibilities.

Within the context of social relationships, especially in more urbanised areas, contemporary values and norms—such as individual autonomy, mobility, social equality and economic independence—are increasingly integrated into the bridewealth practice (Berger 1998). This integration could decentralise existing traditional forms of kinship and kinship obligations by prioritising personal agency and mutual consent in marital relationships. So, instead of mainly recognising bridewealth payment as a transactional exchange of goods or wealth from the groom’s family to the bride’s family, it could be redefined as a symbolic gesture of love and commitment (Kyalo 2011). As noted by Diala (2019b), these contemporary norms, such as personal agency, are already playing a role in the redefinition of bridewealth arrangements. For example, responses from respondents suggest that couples are using their agencies as “breadwinners” and acculturated individuals to negotiate favourable terms of bridewealth for themselves, leading to shifts in the dynamics of bridewealth negotiations and quantum from the extended family to the couple (interview by the author, Diala 2019b, 115).

Furthermore, the practice of bridewealth payment is responding to socio-economic conditions through policy reforms aimed at promoting issues of social justice and economic empowerment. These laws address coercion, exploitation and GBV. An example is the RCMA, which recognises customary marriage practices while safeguarding the rights of women. Also, the Limitation of the Dowry Law in Nigeria regulates the quantum of bridewealth payment.¹⁷ This helps to prevent financial exploitation and reduce the burden on families, particularly in contexts where bridewealth demands have become inflated or financially burdensome. However, this law is generally ignored because of reasons such as economic need and lack of community participation in the formulation of the law. People’s resistance to this law shows how normative motivations, such as economic reciprocity and cultural legitimacy, sustain the practice despite legislative interventions. What then are the normative motivations for the resilience of bridewealth payment despite its encounter with socio-economic changes?

17 Limitation of the Dowry Law, Eastern Region Law No. 23 of 1956 now Cap 76 Laws of the Eastern Nigeria 1963.

Normative motivations for bridewealth resilience

There have been calls for the abolition of bridewealth payment because of its negative impact on gender equality and its contribution to GBV (Taylor 2005; Chireshe and Chireshe 2010). In its concluding observations on Kenya and Uganda, the Committee on the Elimination of Discrimination against Women (CEDAW) classified bridewealth as a discriminatory cultural practice and called for its abolition.¹⁸ There are also concerns that the practice has outlived its usefulness (Bekker and Boozaaier 2007). Despite these reservations about the negative impacts of bridewealth, people still recognise its significance within their cultural, social and economic contexts (Dlamini 1991). Notably, the RCMA did not try to abolish bridewealth because it recognises it as an integral part of a valid customary marriage in societies that observe it (Ngema 2012).¹⁹ Accordingly, the normative motivations for its persistence require close examination.

Firstly, bridewealth is deeply embedded in the mindset and value system of its observers. Dlamini (1991) noted that many Black people cannot conceive of a marriage as valid without the payment of bridewealth, even though it is not a legal requirement for the validity of civil or customary marriage in contemporary South Africa. For observers of this practice, bridewealth provides a distinctive cultural identity that sets them apart from other races or societies. They see the practice as more than its economic value, recognising it as a symbol of alliance between two families, social status and the continuity of lineage (Ogbu 1978). In line with Devlin's (1965, 10) definition of society, bridewealth can be understood not as something "kept together physically [but] is held by the invisible bonds of common thought." Despite new forms of bridewealth due to globalisation and the involvement of people living in cities, the payment of bridewealth often takes people back to their villages (Sykes and Jourdan 2020).

The second normative motivation is societal pressure. For communities that pay bridewealth, members are socially obligated to observe the practice because of the legitimacy it confers on marriage. Diala (2019b) noted that when a groom fails to pay bridewealth, it can lead to social stigma, loss of reputation and strained relationships in the community.

The third normative motivation is the economic and distributional benefits or effects of bridewealth (Borgerhoff-Mulder 1995). As noted by Ensminger and Knight (1997), bridewealth involves the transfer and distribution of legitimacy, power, economic resources and other benefits between two families. It contributes to social cohesion by strengthening kinship ties and fostering reciprocity among families (Neuendorf 2020). Although the cost of bridewealth has risen astronomically and contributed to calls for its abolition, people still cherish its economic significance, particularly poor families.

18 Uganda CEDAW/C/UGA/CO/C (2010) 19–20; Kenya CEDAW/C/KEN/CO (2011) 17–18.

19 Section 1(4), 3(1)b and 4(4) of the RCMA.

The fourth motivation is the sense of mutual obligation and the bonds of reciprocity that bridewealth creates between two families. The contracting families are socially and culturally compelled to uphold their end of the bargain, thereby fostering a feeling of trust and cooperation between them (Parker 2015). This reciprocal obligation not only preserves social harmony and strengthens community ties but also ensures the continued practice of bridewealth across generations. The bonds of reciprocity and mutual obligation created by bridewealth could serve as a form of protection for women within marriage, albeit within the confines of traditional gender roles (Sennott et al. 2021).

Conclusion

This paper has engaged with scholarship on gender dynamics, customary practices and human rights to explore the normative motivations underlying the resilience of bridewealth. As an integral part of marriage practices in Africa, bridewealth plays a crucial role in promoting social bonds, mutual obligations and social cohesion among families and communities. The paper shows its adaptation to socio-economic changes while resisting external pressures. It advances the field by revealing the dynamic nature of bridewealth, as opposed to its GBV-focused critiques.

As a widespread cultural practice, the resilience of bridewealth is due to normative and social factors such as societal pressure, reciprocity, economic benefits and cultural identity. The paper found that bridewealth supports patriarchal notions such as men's cultural superiority over women. However, the way women exercise their agency in bridewealth negotiation reveals that they are finding ways to resist patriarchal control within the marriage system. The legal interventions in Nigeria and South Africa expose how this resistance thrives in the shadow of globalisation and state laws. For instance, South Africa's RCMA, the Nigerian Rivers State Prohibition of the Curtailment of Women's Rights Law and the *Ukeje* case illustrate the complex interplay between tradition, modernity and state law, where policymakers prioritised constitutional values such as gender equality and human dignity. However, the widespread disregard for Nigeria's Limitation of the Dowry Law highlights the deep economic and cultural significance that communities continue to attach to bridewealth. As critics rightly point out, while bridewealth seemingly reinforces patriarchal norms, communities are creatively navigating its negotiation through symbolic/token payments, shared decision-making and women's exercise of socio-cultural agency. Community acts of quiet resistance and adaptation are often ignored in policymaking, even though they should inform reform programmes. The success of South Africa's RCMA and the failure of Nigeria's Limitation of the Dowry Law show that engaging with the normative values of practices ensures the legitimacy and efficacy of law reforms.

Ultimately, the effectiveness of laws depends on the extent to which they engage with people's realities, for instance, women negotiating their bridewealth and elders and community members who see bridewealth as a symbol of kinship and identity rather than a mere transaction. The paper's findings suggest that the persistence of bridewealth

is sustained by norms that are responsive to change yet resistant to external intrusions. Accordingly, policymakers must recognise this paradox and create space for communities to shape the evolution of their practices rather than abolishing or standardising them. Customary practices, such as bridewealth payment, are complex and require engagement with affected stakeholders who can provide significant insights into the underlying drivers of their normative choices.

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