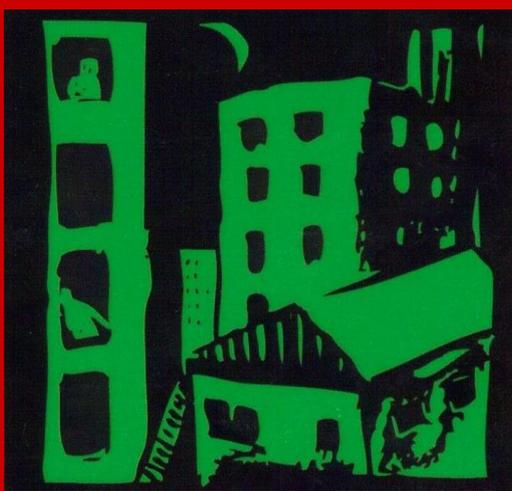


LAW
DEMOCRACY
& DEVELOPMENT



VOLUME 25 (2021) Special Edition

DOI: <http://dx.doi.org/10.17159/2077-4907/2020/idd.v25.spe2>

ISSN: 2077-4907
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**“Talk to my father”:
re-thinking social
exclusion and
access to justice in
the context of
bridewealth
negotiation**

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ABSTRACT

Broadly, the concept of social exclusion denotes a condition in which people are unable to voice their opinion freely and fully in matters affecting their lives. It often manifests as unequal respect for, and protection of people’s rights based on gender, age, race, and similar demographics. Social inclusion has become a concern for policy development and implementation, particularly in cultural matters, where tensions often arise between traditional norms and universalist State laws. In this context, bridewealth payment in Southern Nigeria presents an intriguing lens for examining social exclusion. Here, women’s exclusion from their own bridewealth negotiation illustrates the interplay of agency and unequal power relations, two

twin elements that affect access to justice and policy development. So, in what ways does women's exclusion from bridewealth negotiation broaden understanding of access to justice and development programming? This article argues that women's cultural exclusion from bridewealth negotiation hinders their agency in marriage under customary law. Using data obtained from Southern Nigeria in 2016, it shows how the sustenance of social exclusion stands at the intersection of law, culture, and justice.

Keywords: Social exclusion, policy development, access to justice, social inclusion, bridewealth.

1 INTRODUCTION

This article interrogates the extent to which social exclusion affects access to justice and policy development in the context of bridewealth negotiation in southern Nigeria.¹ The negotiation process of bridewealth payment offers an excellent analytical lens for establishing causality between social exclusion and access to justice, in that both the groom and the bride are, in varying degrees, excluded from the negotiation process. This exclusion also provides significant insight into the intersectional nature of the social fields in which traditional marriages occur in Nigeria.

Significantly, marriage, as an institution, goes beyond mere social interaction. Its impact cuts across all aspects of life, including religion, security, social relations, politics, mental health, psychology, finance, and economics. Since marriage is a life-changing experience, the payment of bridewealth is crucial for understanding the trajectory and distribution of justice. It must be noted that the distribution of justice affects men and women alike, as do social relationships.² Studies have shown that the negotiation and eventual payment of bridewealth payment has distributional effects, with individuals' participation, contribution, and benefits being unequal.³ What this means going forward is that those with lesser negotiating power may be denied access to resources and accompanying justice. This denial demonstrates the inequalities that plague the informal or cultural sphere, which is a site for continuous negotiation, transformation, and appropriation of strategic tools for navigating power relations in social fields.⁴ The causality between access to justice and social exclusion is twofold.

On the one hand, access to justice in its general sense covers formal and informal institutions, procedural rules, and substantive laws that empower individuals to pursue

¹ Southern Nigeria here means South-East Nigeria comprising Imo, Anambra, Enugu, Ebonyi and Abia.

² Kulik CT, Lind EA, Ambrose ML & MacCoun RJ "Understanding gender differences in distributive and procedural justice" (1996) 9(4) *Social Justice Research* 351 at 351-352; Umberson D, Chen MD, House JS, Hopkins K & Slaten E "The effect of social relationships on psychological well-being: are men and women really so different?" (1996) 61(5) *American Sociological Review* 837 at 842.

³ Diala JC *The interplay of structure and agency: the negotiation process of bridewealth payment in South-East Nigeria* (unpublished PhD dissertation, University of Cape Town, 2019). See also Ensminger J & Knight J "Changing social norms common property, bridewealth, and clan exogamy" (1997) 38(1) *Current Anthropology* 1 at 4.

⁴ Nussbaum M "Women and equality: the capabilities approach" (1999) 138(3) *International Labour Review* 227 at 229.

and obtain justice.⁵ It further focuses on solving the problems of community members in their daily lives.⁶ On its own, the word “access” entails the ability to participate, seek, afford and reach.⁷ As a right, access to justice is guaranteed by almost all national constitutions and international bodies.⁸ On the other hand, the concept of social exclusion generally entails a state in which people are unable to voice their opinions freely and fully in matters that economically, socially, politically, and culturally affect their lives.⁹ It also entails unequal accordance of respect for and protection of people’s rights and dignity based on gender, sex, class, age, and racial identity.¹⁰ Social exclusion is driven mostly by unequal power relationships, which usually occur around these facets of social stratification. Thus, recognition of the importance of social inclusion in policy development and implementation is a priority for most governments, especially in cultural matters. This is particularly so because major political, social and economic transformations and successes hinge mostly on how local cultures, traditions, and customs are handled.¹¹ Customs and traditions have been shown to be flexible, especially in the face of socio-economic changes; thus, they could move along the direction State policies direct them.¹²

1.1 Making sense of the problem

In most African communities, bridewealth is paid by the groom’s family to the bride’s family in contemplation of marriage. In the past, grooms were not present during the negotiation of bridewealth, as they were represented by their fathers or elderly male members of the family.¹³ The reason relates to the nature of societies that existed then. In south-east Nigeria, for example, there were close-knit family units, or what

⁵ Nyenti M “Access to justice in the South African social security system: towards a conceptual approach” (2013) 44 *De Jure* 901 at 902-903.

⁶ Ghai Y & Cottrell J *Marginalised communities and access to justice* London & New York : Routledge (2010) at 3.

⁷ Levesquel JF, Harris MF & Russell G “Patient-centred access to health care: conceptualising access at the interface of health systems and populations” (2013) 12(18) *International Journal for Equity in Health* 1 at 9.

⁸ Sections 17(e) and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended); Chap 2 of the Constitution of the Republic of South Africa 1996; Goal 16 of the Sustainable Development Goals 2030.

⁹ Popay J “Understanding and tackling social exclusion” (2010) 15(4) *Journal of Research in Nursing* 295 at 296.

¹⁰ There are implications of being excluded from cultural and social structures that determine access to societal resources ; see Pleasence P, Buck A, Balmer N, O’Grady A, Genn H, & Smith S (eds) *Causes of action: civil law and social justice* United Kingdom: Legal Services Commission (2004) at 77; Rawls J *Theory of justice* Cambridge MA, USA: Harvard University Press (1999) at 3.

¹¹ Büscher M “Socio-cultural factors in economic development” (1989) 24(2) *Intereconomics* 79 at 79.

¹² Adeyi EO “Perspectives on the impact of modern society on the indigenous/traditional society of Nigeria” (2015) 20(4) *Journal of Humanities and Social Science* 67 at 68.

¹³ Isiugo-Abanihe UC “Bridewealth, marriage and fertility in the East-Central States of Nigeria” (1995) 51(3/4) *Genus* 151 at 154-155.

sociologists termed “multiplex” and “kin-dominated” societies.¹⁴ Their close-knit nature was a product of their agricultural settings. In these settings, families worked as united entities to produce family , such as, livestock, economic crops, and farming tools. The head of the family was the primary “breadwinner”, and the one in charge of work parties and the overall income of the family.¹⁵ He oversaw wealth production and distribution for the general welfare of members of the family.¹⁶ The result is that bridewealth payment was strongly influenced by the joint production of family income. Given that bridewealth was often raised by the family, it was usually negotiated by the family head. This is the case for both the groom’s and bride’s families. However, this custom is no longer compatible with the individual nature of income production in contemporary African societies.¹⁷ Now, owing to socio-economic changes, young men and women increasingly earn their own living, and are less dependent financially on their parents. Accordingly, they mostly provide the resources for the payment of bridewealth. These socio-economic changes have negative and positive consequences.

The positive aspect is the issue of mate selection. Today, young men and young women rarely depend on their parents in matters of mate selection.¹⁸ However, they are still guided by cultural criteria, such as, degrees of consanguinity and affinity, and social status, amongst others.¹⁹ The negative aspect relates to the social exclusion involved in bridewealth negotiation. Since traditional marriage in most African societies creates an alliance between families, bridewealth payment is still presided over and overseen by family elders.²⁰ Although bridewealth resources are provided by the groom and the bride, its negotiation often infantilises them by excluding them from the process. While the groom may observe the proceedings, the bride for whom the payment is made, is usually excluded.²¹ She is in most instances represented by her father or an elderly male member of the family.²² Puzzlingly, the groom, though present, is not the lead negotiator, although he is consulted during the process.²³ He is thus able to exert financial influence. This is not the case for the bride, a situation that smacks of gender discrimination.

¹⁴ Barton JH, Gibbs JL & Merryman JH *Law in radically different cultures* St. Paul MINN, USA: West Publishing Company (1983) at 41-42.

¹⁵ Onyeozili EC & Ebbe ON “Social control in precolonial Igboland of Nigeria” (2012) 6(1/2) *African Journal of Criminology and Justice Studies* 29 at 30.

¹⁶ See Onyeozili & Ebbe (2012) at 30.

¹⁷ See Isiugo-Abanihe (1995) at 159.

¹⁸ Adigwe AF “Culture bias in mate selection: the case of ‘Ohu’ caste system in the 21st century Igboland” (2015) 11 *Journal of Culture, Society and Development* 17 at 17.

¹⁹ Okonjo K “Aspects of continuity and change in mate-selection among the Igbo west of the river Niger” (1992) 23(3) *Journal of Comparative Family Studies* 339 at 345-348.

²⁰ See Isiugo Abanihe (1995) at 163.

²¹ See Diala (2019) at 117.

²² See Diala (2019) at 117.

²³ See Diala (2019) at 117.

The cultural constraints and exclusion of women from participating in decision making platforms that affect their lives demonstrate an unequal power relation.²⁴ This unequal power relation occurs in intersectional social fields involving forces of agency, tradition, and policy making. So, in what ways does women’s exclusion from bridewealth negotiation broaden understanding of access to justice and development programming? Given alterations in the social environments in which bridewealth payment emerged, as well as the importance of gender justice and social inclusion to policy development and implementation, this article argues that the ways women are culturally excluded from bridewealth negotiation violate their right to human dignity, social inclusion and access to justice.²⁵

Using data collected in 2016 in southern Nigeria, this article further argues that the understanding of social exclusion is at the intersection of law, culture, and justice. The method of data collection includes literature review, non-participant observation of the bridewealth negotiation process, and in-depth interviews of 50 key informants. These informants are elders, traditional leaders, parents of couples, and engaged and married couples.

Following this introduction, Part 2 of the article examines cultural hierarchy as it relates to gender and access to justice. It shows the link between gender and social exclusion, drawing attention to studies on how the exclusion of women is structurally sustained, reinforced, institutionalised and regulated. It also reveals the means through which dominant societal norms and practices, such as gender inequality, become institutionalised, thus making it difficult for women to develop and access resources for their day-to-day living. Part 3 looks at the politics of law, culture, and justice. It argues that whereas development in human societies goes through several processes, justice takes different forms (distributive, procedural and restorative, amongst others), and cuts across competing claims (such as, redistribution and recognition) and challenges. It further argues that the prevailing societal norms created by reinforced structural order place people on a scale in which some individuals are excluded or privileged, thus creating a puzzling intersection. Part 4 concludes the article by reflecting on social exclusion as a threat to development, and making some policy recommendations.

2 THE PRESSURE AND REALITY OF CULTURAL HIERARCHY

As defined by North, institutions are the formal or informal humanly devised constraints that shape human interactions.²⁶ While formal constraints or rules include, amongst others, the constitution, the informal constraints are the socially transmitted

²⁴ Fraser N & Honneth A *Redistribution or recognition? A political-philosophical exchange* London & New York: Verso (2003) at 1-3.

²⁵ Lukow P “A difficult legacy: human dignity as the founding value of human rights” (2018) 19 *Human Rights Review* 313 at 322. See also Hammel J, Magasi S, Heinemann A, Whiteneck G, Bogner J & Rodriguez E “What does participation mean? An insider perspective from people with disabilities” (2008) 30(19) *Disability and Rehabilitation* 1445 at 1445-1460.

²⁶ North DC “Institutions” (1991) 5(1) *The Journal of Economic Perspectives* 97 at 97.

information or behaviour of which culture is a part.²⁷ The recognition and observance of culture as a socially transmitted behaviour occupies a significant place in the development of a given society.²⁸ This is so because culture as an instrument of development influences peoples' way of life through its connection with social structure, history, demography, and ecology.²⁹ Within the scope of this article cultural hierarchy is defined as the organisation and distribution of roles based on gender, social status, power and wealth.³⁰ Given that the payment of bridewealth has distributional effects, its negotiation process reveals power dynamics, as well as the cohesion and structure of a society. A hierarchical institution in this respect denotes a gendered society and a gendered society denotes unequal power, unequal distribution of roles, resources and skills for realising and accessing justice.³¹

2.1 Cultural hierarchy and justice

What have hierarchy and power got to do with access to justice? According to Homan, the concept of power is the "more primitive phenomenon" underlying distributive justice.³² Similarly, Hon-Lam Li described dominance or power as the "culprit of injustice".³³ What this means is that power plays a huge role in everyday social interaction and distribution of justice.³⁴ Power dynamics in a given society undermine and prevent the marginalised from accessing justice for their development.³⁵ In south-east Nigeria, the negotiation process of bridewealth payment presents an intriguing analytical lens for understanding power dynamics, cultural hierarchies, and access to justice. The process involves an intricate bargaining interaction between the groom's and bride's families. It reveals the distributive consequences of power dynamics and how people exercise their agency while bargaining for privileges and power. In its traditional setting, the payment of bridewealth occurs in three stages. These stages

²⁷ North DC *Institutions, institutional change and economic performance* Cambridge: Cambridge University Press (1990) at 37. Thus, culture and institutions will be used interchangeably in this article. Where a distinction needs to be made, that will be emphasised.

²⁸ Njoh AJ *Tradition, culture and development in Africa: historical lessons for modern development planning* London & New York: Routledge (2006) at 2.

²⁹ See Njoh (2006) at 2.

³⁰ Schwartz S "A theory of cultural value orientations: explication and applications" (2006) 5(2/3) *Comparative Sociology* 137 at 141.

³¹ Acker J "From sex roles to gendered institutions" (1992) 21(5) *Contemporary Sociology* 565 at 567.

³² Homans GC *Social behavior: its elementary forms* London: Routledge & Kegan Paul (1976) at 23; for gender and power, see Mackinnon CA *Feminism unmodified: discourses on life and law* Cambridge MA, USA: Harvard University Press (1987) at 8.

³³ Hon-Lam Li "Economic justice" in RC Elliot (ed) *Institutional issues involving ethics and justice* Oxford, United Kingdom: EOLSS Publishers (2009) 280 at 280-290.

³⁴ Simpson JA, Farrell AK, Oriña MM & Rothman AJ "Power and social influence in relationship" in Mikulincer M & Shaver PR (eds) *APA Handbook of personality and social psychology* Washington DC, USA: American Psychological Association (2015) 393 at 393-395; Reis HT, Collins WA & Berscheid E "The relationship context of human behavior and development" (2000) 126(6) *Psychological Bulletin* 844 at 844-845.

³⁵ Dancer H "Power and rights in the community: paralegals as leaders in women's legal empowerment in Tanzania" (2018) 26 *Feminist Legal Studies* 47 at 49.

show the dynamics of power relations and how they undermine justice distribution. The three stages are: pre-negotiation; negotiation and payment; and sharing of marriage gifts.³⁶

2.1.1 Pre-negotiation process and access to justice

The first step in this stage is the introduction. Here, the groom-to-be introduces himself and his family to the family of the bride-to-be. They make their intention known to the bride's family. If there is a positive response after this first step, the bride's and groom's families embark on a journey of investigation of the different families. This investigation is done independently by the different families. Issues to be investigated are: whether the groom's or bride's family is an outcast popularly called *Osu* in south-east Nigeria or *Diala* (freeborn); the degrees of consanguinity and affinity; and generational diseases, amongst other things. *Osu* people are believed to be an untouchable caste in south-east Nigeria, and are seen as persons dedicated to a deity as its servants.³⁷ They are not allowed to intermarry with other members of the community, who are referred to as the *Diala* (freeborn).³⁸ With the reception of Christianity in most parts of the region, it is almost impossible to see any Igbo or south-easterner that still serves any deity. However, discrimination against supposed descendants of *Osu* still exists.

Investigating whether an individual's family is *Osu* or *Diala* shows an unequal power relation amongst people of the same community. For marriage purposes, the *Osus* are regarded as social outcasts while the *Diala* are regarded highly or perceived to be normal. Despite the growth of Christianity and the Constitution, which forbids discrimination based on gender, status, and circumstances of birth, intermarriage between the *Osu* and *Diala* is still widely forbidden.³⁹

The main actors in this stage are the elders and the parents of the couple, while the minor actors are the bride and the groom. Often, the main actors put pressure on the couple to cancel their marriage if one of them is an *Osu* and the other is *Diala* or vice-versa. In some instances, most couples succumb to this pressure, while others try to navigate the cultural constraints through negotiation. According to Reskin, “differentiation is the sine qua non of dominance”.⁴⁰ When people in the same community are differentiated based on their status, behaviour and sex, unequal

³⁶ Marriage gift here refers to other materials, such as , livestock, clothing and foodstuffs, provided by the groom's family, other than cash.

³⁷ Nwaosuji E “An appraisal of *Osu* and *Oru* caste systems in *Nnokwa* Community *Anambra* State” (2015) 9 *Global Journal of Applied, Management and Social Sciences* 103 at 103; Onwubuariri F “Appraising the *Osu* caste system in *Igboland* within the context of complementary reflection” (2016) 2(4) *Igwebuikwe: An African Journal of Arts and Humanities* 58 at 61.

³⁸ Igwe AW & Akolokwu GO “The scar that has resisted erasal: the discrimination of *Osu* of *Igboland*, Nigeria: assessing the human rights implications” (2014) 4(1) *American International Journal of Contemporary Research* 277 at 277-285.

³⁹ See Igwe & Akolokwu (2014) at 277-282. See also ss 37 & 42 of the 1999 Constitution and Art 12 of the Universal Declaration on Human Rights, 1948.

⁴⁰ Reskin BF “Bringing the men back in: sex differentiation and the devaluation of women's work” (1988) 2 (1) *Gender and Society* 58 at 64.

treatment is fostered and institutionalised. In looking at the effects of differentiation, Scott notes that this division affects social interaction, human dignity and sharing of benefits.⁴¹ It must be noted that because of the stigma that follows such labelling, this group of people (*Osus*) are most likely to win or gain more benefits when they control social power and resources that permit them to make demands.⁴² Thus, in forbidding the intermarriage of *Osus* and *Dialas*, the *Osus* are socially excluded, and could consequently, lose power and authority. The differentiation of the *Osus* from the *Dialas* is one of inequality which restricts their rights and access to justice.⁴³

The elders and traditional rulers act as the justice institutions in the study area, and thus play a key role in the distribution of power and rights. Traditional rulers here refer to all holders of leadership positions and traditional titles who enjoy considerable legitimacy that stems from the observance of tradition.⁴⁴ By their roles it can be said that they regulate access to resources since they serve as a liaison between the community and government. When a positive feedback is received after the investigation, the next step is the receipt of marriage lists from both families.

2.1.2 Negotiation and payment

This stage entails the bargaining of the bridewealth. Here, the elders, usually the kinsmen and kinswomen, of both families gather according to their sexes to bargain the quantum of the bridewealth and other marriage gifts. During this process, the groom-to-be is present but not directly involved, while the bride-to be is not present.⁴⁵ The reality of this experience for women is that gendered power relations are situated within local legal structures.⁴⁶ Thus, women are constantly facing the challenge of negotiating customary law power dynamics. The challenge for women is how to effectively negotiate these power relations in practice. The ideology of excluding women from decision making that affects their lives lies in masculine control of women's agency.⁴⁷ Women in this regard are therefore subdued into submission to this practice, which is deeply embedded in structural inequalities and given cultural justification in the society. Below are excerpts from an interview with two potential brides to show women's submission to and maintenance of this practice:⁴⁸

(A)

⁴¹ Scott J *A dictionary of sociology* 4 ed Oxford: Oxford University Press (2014) at 63

⁴² Of course, the power of migration, acculturation, and other socio-economic changes (education, Christianity) cannot be over-emphasised.

⁴³ Allport GW *The nature of prejudice* Cambridge: Addison-Wesley Publishers (1979) at 52.

⁴⁴ Harneit-Sievers A "Igbo 'traditional rulers': chieftaincy and the state in Southeastern Nigeria" (1998) 33(1) *Afrika Spectrum* 57 at 58.

⁴⁵ The presence of the groom is significant for the understanding of access to justice.

⁴⁶ See Dancer (2018) at 53.

⁴⁷ Porter E "Women, political decision-making, and peace-building" (2003) 15(3) *Global Change, Peace & Security* 245 at 251.

⁴⁸ Asa & Cynthia (pseudonyms) interview conducted in 2016.

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“Interviewer: I observed you were nowhere around the negotiation area, why?

Participant: Yes, I am not allowed to be there. Even my husband-to-be was not there.

Interviewer: Yes, I noticed that also; but on some occasions, he was consulted. I saw him giving out money. When I asked him, he said they (his brothers) needed more money to add to what they have because your people demanded more than they prepared for. However, I didn’t see anyone consulting you despite this ceremony being more about you. Why is this so?

Participant: Erm, well as a woman, I am not allowed to be there.

Interviewer: But why?

Participant: It is our culture besides my mum was there.

Interviewer: Yes, your mother was around during the negotiation of marriage gift at the women’s side but not during the payment of bridewealth.

Participant: That’s why I said women are not allowed.

Interviewer: You didn’t feel the need to go there and know how much is being paid as your bridewealth? Don’t you think your presence and opinion could have made a difference on the quantum of your bridewealth?

Participant: It would have been good to be there since I know the financial capability of my husband-to-be; but culturally I am not allowed to be there.”

(B)

“Interviewer: You were not present during the negotiation and payment of your bridewealth payment?

Participant: No.

Interviewer: Why?

Participant: According to our custom and tradition, I am not supposed to be there.

Interviewer: Was your mother present?

Participant: No.

Interviewer: You didn’t feel you should be there since this is an issue that concerns you?

Participant: My father and younger brother were there, so they represented me. They will protect my interest. It is no big deal. Besides, according to our custom, I am not supposed to be there even if I wanted to.”

The responses from these participants show how the lives of women are regulated by social norms that are deemed and accepted to be the underlying values of the community. The practice of excluding women from making an important decision that affects their lives thrives because of a patriarchal social mindset that is being reinforced by members of the community and women by their unquestioning acceptance.⁴⁹ As

⁴⁹ See Reskin (1988) at 64.

earlier stated, the institution of marriage affects every aspect of life. Thus, the patriarchal mindset is reinforced in other aspects of the marriage, such as finance and contraception.

2.1.3 *Distribution of marriage gifts*

This stage is the sharing of marriage gifts (material and cash) received after the negotiation process. These marriage gifts are shared among established groups or persons in society, such as, parents of the couple, *umunna*, *umuada*, age grades etc. These groups other than the parents make competing claims on the number of items to be given to them despite not contributing to the raising of the bride. The bride also has no say on who benefits from the items given in contemplation of her marriage.⁵⁰ Amongst these groups the items are not equitably shared: only those who have contributed to the group monetarily, those in higher positions (receive more), and then others. What this means is that where, for instance, as a parent your in-laws were unable to provide the number of items or not provide at all due to financial constraints, you as a parent will not receive anything when marriage items are shared in other families. You become excluded on that basis, and in most instances the engaged couples are denied social recognition of their marriages by the community.

It is worthy to note that ascribed roles and identities are the major source of social exclusion.⁵¹ Given that social roles are the major determinants of power dynamics in society, the above excerpts show the significance of gender inequality and social exclusion for access to justice and development.⁵²

2.2 **Gender and social exclusion**

The influence of the family as a semi-autonomous social field in making and enforcing its own rules, settling its disputes and transmitting social behaviour, is important for understanding how it creates and reinforces social exclusion in the execution of its roles.⁵³

In *Social choice and inequalities*, Lansky et al noted that “economic development and social change have brought about steady narrowing of the differences between economic and social indicators of the lives of women and men”.⁵⁴ These changes manifest in the ability of women to earn income, education of men and women, and mate selection which can now be done by the young people rather than their parents. Despite these changes, family socialisation in traditional societies raises an intriguing

⁵⁰ See generally Diala (2019) chap 5.

⁵¹ Judge PS *Mapping social exclusion in India: caste, religion and borderlands* New York: Cambridge University Press (2014) at 4.

⁵² McDonald RI & Crandall CS “Social norms and social influence” (2015) 3 *Current Opinion in Behavioral Sciences* 147 at 147-148.

⁵³ Moore SF “Law and social change: the semi-autonomous social field as an appropriate subject of study” (1973) 7(4) *Law & Society Review* 719 at 722.

⁵⁴ Lansky M, Ghosh J, Méda D & Rani U “ Social choices and inequalities “ in Lansky M, Ghosh J, Meda D & Rami U (eds) *Women, gender and work (vol 2): social choices and inequalities* Geneva: International Labour Office (2017) at 3.

tension when trying to achieve gender equality. This tension manifests in intense pressure on community members to either conform to changing socio-economic conditions or face ridicule from family members for not adhering to laid down traditional principles. While navigating and negotiating this tension, interactions between men and women continue to create an asymmetric relationship both in their private and public lives. Feminist scholarship has supported this assertion.⁵⁵

Feminist scholarship in seeking to broaden understanding of the ways institutions confer and distribute power between women and men in social settings argue that gendered structures construct gendered interests, ideas, and identities.⁵⁶ In other words, whether individuals are acting structurally (for example, as law makers, rulers, or enforcers) or as agents, there is an element of gender bias in play, in that individuals manifest varying shades of maleness and femaleness.⁵⁷ These gender manifestations affect the distribution of justice, outcome of behaviour, rules, and power, irrespective of whether individuals are interpreting, breaking, or complying with norms. In the negotiation of bridewealth payment, the exclusion of women from participating in this decision-making process has direct effect on other aspects of their life. According to Walby, the cultural life of people, especially women, plays a significant role in the opportunities that they may or may not have to integrate into mainstream society.⁵⁸ Against, this backdrop, I argue that the issue of access to justice is mutually constituted by and inextricably connected to social exclusion, cultural and gender injustice, political injustice and economic injustice.⁵⁹

3 THE INTERSECTION OF CULTURE, LAW AND ACCESS TO JUSTICE

Law and distributive access to justice occur within the spheres of culture and social interaction.⁶⁰ In other words, access to justice, law and culture are intertwined in a web of normative practices that stems from both formal and informal interaction.⁶¹ This intertwined relationship is important for understanding the extent to which social exclusion affects access to justice and policy development. It is evident in the developmental processes of society and the different forms justice takes while

⁵⁵ Nussbaum M *Women and human development: the capabilities approach* Cambridge: Cambridge University Press (2000) at 1-5

⁵⁶ Mackay F, Kenny M & Chappell L “New institutionalism through a gender lens: towards a feminist institutionalism?” (2010) 31(5) *International Political Science Review* 573 at 583. See also Acker J “Hierarchies, jobs, bodies: a theory of gendered organizations” (1990) 4(2) *Gender and Society* 139 at 139 & 145-146.

⁵⁷ Walby S “Is the knowledge society gendered?” (2011) 18(1) *Gender, Work and Organization* 1 at 5-10.

⁵⁸ Walby S *Gender transformations* London & New York: Psychology Press (1997) at 184-187.

⁵⁹ Sen A *Development as freedom* New York: Oxford University Press (1999) at 5.

⁶⁰ Banakar R *Rights in context: law and justice in late modern society* New York: Routledge (2016) at 36; Mautner M “Three approaches to law and culture” (2011) 96(4) *Cornell Law Review* 839 at 845.

⁶¹ Ewick P & Silbey S *The common place of law: stories from everyday life* Chicago: The Chicago University Press (1998) at 23-30.

permeating competing claims and challenges.⁶² In this context, the dominant societal norms created by reinforced structural order place people on a scale of privilege and exclusion, thus creating a problematic intersection.⁶³ Part 3.1 explores this complex and contested relationship between law, culture, and justice.

3.1 Conflict and relationships between law, culture and access to justice

Law and culture are two distinct social fields which are in one way or another interrelated because they influence and constrain each other.⁶⁴ Here, law is defined as the multiplicity of human normativity (formal and informal laws).⁶⁵ Therefore, the relationship between law and culture cannot be described by merely regarding culture as regulating the private milieu and law as regulating the public sphere. For example, “family” as a structure that transmits culture is a product of laws. According to Minow, what and who constitute family and by extension a traditional society are defined by law, amongst other things, such as, history, beliefs, and tradition.⁶⁶ These laws include observance of the degrees of affinity and consanguinity in cases of marriage, defined power, privileges and rights that accrue to each member of the family both under the customary and State laws, defined rules of inheritance and succession, divorce, legitimacy, and parental responsibilities.⁶⁷ All these are laid down laws and rules (institutions) that govern and transcend both the private and public spheres. In this Part, I will be looking at the relationship between law and culture, paying attention to legal pluralism, its benefits, and its consequences as it relates to access to justice. I will then look at the intersections between culture and law as they relate to access to justice.

3.1.1 Relationship between law and culture: implication for justice.

According to Devlin, a society is a “community of ideas; ... If men and women try to create a society in which there is no fundamental agreement about right and wrong, they will fail; ... For society is not something that is kept together physically but by bonds of common thought”.⁶⁸ Human interactions are shaped and structured by institutions whether formal or informal.⁶⁹ Therefore, it is difficult to separate law from

⁶² Branco P & Izzo VN “Intersections in law, culture and the humanities” (2017) 112 *Revista Crítica de Ciências Sociais* 45 at 49-50. See also Coombe R “Is there a cultural studies of law?” in Miller T (ed) *A companion to cultural studies* Hoboken NJ, USA: Wiley-Blackwell (2001) at 43.

⁶³ Sarat A & Simon J “Beyond legal realism? Cultural analysis, cultural studies, and the situation of legal scholarship” (2001) 13(1) *Yale Journal of Law & the Humanities* 3 at 19.

⁶⁴ Sarat A & Kearns TR “Cultural lives of law” in Sarat A & Kearns TR (eds) *Law in the domain of culture* Michigan, USA: University of Michigan Press (2000) 1 at 7-20; Merry SE “Law, culture, and cultural appropriation” (1998) 10(2) *Yale Journal of Law & the Humanities* 575 at 575.

⁶⁵ Demiray MR “Natural law theory, legal positivism, and the normativity of law” (2015) 20(8) *The European Legacy* 807 at 807.

⁶⁶ Minow M “All in the family & in all families: membership, loving, and owing” (1992) 95(2) *West Virginia Law Review* 275 at 276-280.

⁶⁷ See Minow (1992) at 279-292.

⁶⁸ BP Devlin BP *The enforcement of morals* New York: Oxford University Press (1968) at 10.

⁶⁹ Dowding K “Agency and structure: interpreting power relationships” (2008) 1(1) *Journal of Power* 21 at 21; Searle JR “What is an institution?” (2005) 1(1) *Journal of Institutional Economics* 1 at 3 & 18-20.

culture. Understanding the relationship between law and culture entails amongst other things viewing law as culture. Law as culture does not intend to show the pervasive power of law or culture, nor downplay the independence of each of them without recourse to the other.⁷⁰ Thus, to understand their relationship I will be looking by using examples at how law and culture influence each.

First, the recognition of customary law by most constitutions and other legislation as a source of law is evidence of the relationship between law and culture.⁷¹ Thus, when adopting a new policy or law, attention is paid to the existing cultural practice in the community and how the new law will influence the lived realities of people.⁷² Section 17 (1) of the 1999 Constitution of Nigerian provides that the social order of the country is built on freedom, justice, and equality for all persons. As a signatory to the Universal Declaration on Human Rights, Nigeria agrees to the recognition of the inherent dignity, and equal and inalienable rights of its citizens in pursuit of happiness. It can be argued that these laws have an influence on culture. An example is the issue of mate selection and involvement of the groom-to-be in the negotiation of bridewealth payment. As earlier mentioned, mate selection in most traditional communities is usually done by the families of both the man and the woman. This is to ensure the integration of the man and woman into each other's family. There are other reasons, as enumerated by Kamene Okonjo, such as, preventing their wards from marrying into a hostile village or family, issues of caste and class, and the need to avoid families with a history of delinquent behaviour.⁷³ Recently, mate selection by parents is declining, as young men and women now rely on love amongst others to check their compatibility and adaptability.

On the other hand, as in the past, the groom-to-be is usually not consulted during the negotiation of bridewealth because the source of wealth is owned, controlled and administered by the family with the eldest male member at the forefront. With the inception of the individual income generation, this is changing. Now, the groom-to-be though not directly involved can be consulted during this process. This change may not be huge but it's impact on culture reflects the gradual discontinuities and continuities in the traditional communities.⁷⁴ It also reflects the flexibility of culture as a product of learning. Culture here is a language that closes the gap between different communities and stimulates pride, and economic, social, political and personal development.⁷⁵

⁷⁰ Saguy AC & Stuart F “Culture and law: beyond a paradigm of cause and effect” (2008) 619 *The Annals of the American Academy of Political and Social Science* 149 at 151-154.

⁷¹ Sections 30, 31 & 211 of the South African Constitution 1996; s 2 of the Constitution of the Republic of Uganda, 1995; arts 11 (2) & 26(2) of the Constitution of the Republic of Ghana 1992; s 3 of the Constitution of Zimbabwe 2013; s 3(2) of the Judicature Act of Kenya, cap 8 (rev ed 2012) [2010].

⁷² Provost R *Culture in the domains of law* Cambridge: Cambridge University Press (2017) at 8.

⁷³ See Okonjo (1992) at 344-350.

⁷⁴ See Coombe (2001) at 43-57.

⁷⁵ Van der Borg J & Russo AP *The impacts of culture on the economic development of cities* European Institute for Comparative Urban Research (EURICUR), Erasmus University, Rotterdam (Draft, Sept 2005) at 7.

Various scholars agree that policies that are not sensitive and attuned to the lived realities of its people may sometimes fail.⁷⁶ This is because people's lived realities inform the way they use their agency to modify and shape institutions whether formal or informal. An example is a policy that tends to prohibit children from hawking especially during the day. As most homes make their daily bread from this business, this policy might fail if the government has no alternative to sustain them.

The second is the Limitation of Dowry Law (Dowry Law) in Nigeria which purports to regulate the quantum of bridewealth in south-east Nigeria.⁷⁷ This law is regarded as a "zombie law" because it is obeyed more in the breach than in practice. People continue to demand high sums as bridewealth despite the existence of the law. The reason is that the law affects their economic life, fails to recognise power dynamics in bridewealth payment, and lacks enforcement.⁷⁸

Drawing from the consequences that may emanate from the examples given above, it is noteworthy that the presence and absence of laws affect the day-to-day lives of people in a given society. The payment of bridewealth has distributional effects and its negotiation process affects the relative bargaining power of men and women. The fact that the Dowry Law is flagrantly flouted and the fact that women are totally excluded from the negotiation process of bridewealth are reflective of the relationship between culture and law for access to justice. How?

First, the regulation of the quantum of bridewealth by the Dowry Law purports to change, amongst other, the idea that women are not commodities or objects to be bought. Secondly, it seeks to maintain a balance on how much wealth is distributed and to maintain an equal society. Thirdly, the Dowry law only regulates quantum rather than the negotiation process.⁷⁹ Fourthly, the Dowry Law does not regulate the distribution of the marriage gifts.⁸⁰ Owing to socio-economic changes, the quantum of bridewealth continues to be inflated, resulting in an unequal society. In other words, members of the community during the negotiation process exert relative power of coercion against each other that results in an unequal society. By excluding women in the negotiation process, they (women) are constantly made to fight for equal rights. The fact that culture through the elders allows the groom to be present during the negotiation process reflects the intention of men to continue to hold bargaining and distributional power. As Rosen put it: "Not standing out from the group and asserting claims that contravene the social hierarchy contributed to the legal forms that have,

⁷⁶ Von Benda-Beckmann F "Scape-goat and magic charm: law in development theory and practice" (1989) 21(28) *The Journal of Legal Pluralism and Unofficial Law* 129 at 129-141; Izunwa MO "A critique of certain aspects of the grounds, procedure and reliefs attaching to customary divorce law in Southern Nigeria" (2015) 7(5) *Journal of Law and Conflict Resolution* 31 at 35.

⁷⁷ See the Preamble to, and s 4 (a)(c) of, the Limitation of Dowry Law, Eastern Region Law No 23 of 1956, now cap 76 Laws of Eastern Nigeria 1963.

⁷⁸ See Diala (2019) at 141.

⁷⁹ See the Preamble to, and s 4(a)(c) of, the Dowry Law.

⁸⁰ Dowry Law s 4(c).

nevertheless, begun to change in recent years.”⁸¹ It is worthy to note, therefore, that the failure of these laws and policies also reflects the interaction and conflict between law and culture. It also reflects the denial of justice.⁸²

3.1.2 *Tensions between law and culture: the implication for justice*

The failure of development projects and policies is mostly linked to the application, interaction and conflict of laws.⁸³ The relationship between law and culture may not be a beneficial or positive one, with law often invoked to modify harmful cultural practices that violate human rights, thereby creating a tension between law and culture.⁸⁴ This tension manifest itself when culture is seen as the ‘scapegoat’ and law as the ‘magical charm’.⁸⁵ The recognition and application of culture by State law is mostly a source of conflict.⁸⁶ This is the origin of the concept of legal pluralism, which is the co-existence and interaction of two or more normative orderings in a given social field.⁸⁷ In the case of bridewealth payment, this tension can be seen in the enactment of the Dowry Law and its violation by many members of the community.

In many instances, culture has been argued and used as an excuse to deny women their identity as humans.⁸⁸ In this sense, culture is said to contradict the norms set out in the formal laws of the country. For example, customary practices of succession, inheritance, *ukuthwala*, child marriage, and the negotiation process of bridewealth payment, in one way or another deny women the ability to exercise their agency.⁸⁹ It is noteworthy that social exclusion is processual which often leads to deprivation.⁹⁰ For example, the Nigerian Constitution prohibits discrimination based on gender, thus promoting gender equality.⁹¹ However, culture in the context of bridewealth payment continuously struggles with law for superiority, especially in what is considered a private domain. This statement finds support in the responses of my female research informants below.

⁸¹ Rosen L *Law as culture: an invitation* Princeton & Oxford: Princeton University Press (2006) at 97.

⁸² Newcombe A “Book review: Jan Paulsson, ‘Denial of justice in international law’” (2006) 17(3) *European Journal of International Law* 692 at 694.

⁸³ Bob Hudson B, Hunter D & Peckham S “Policy failure and the policy-implementation gap: can policy support programs help?” (2019) 2(1) *Policy Design and Practice* 1 at 3.

⁸⁴ Abdulla MR “Culture, religion, and freedom of religion or belief” (2018) 16(8) *The Review of Faith & International Affairs* 102 at 110.

⁸⁵ See Von Benda-Beckmann (1989) at 129-141.

⁸⁶ Bennett TW “Conflict of laws: the application of customary law and the common law in Zimbabwe” (1981) 30(1) *The International and Comparative Law Quarterly* 59 at 60.

⁸⁷ Von Benda-Beckmann F “Who’s afraid of legal pluralism?” (2002) 34(47) *Journal of Legal Pluralism and Unofficial Law* 37 at 66-67.

⁸⁸ Ssenyonjo M “Culture and the human rights of women in Africa: between light and shadow” (2007) 51(1) *Journal of African Law* 39 at 39.

⁸⁹ McCleary-Sills J, Hanmer L, Parsons J & Klugman J “Child marriage: a critical barrier to girls’ schooling and gender equality in education” (2015) 13(3) *The Review of Faith & International Affairs* 69 at 71.

⁹⁰ Castel R *From manual workers to wage laborers: transformation of the social question* New York: Routledge (2003) at xvii.

⁹¹ See s 42(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria.

(C)

“Interviewer: Who do you see has the role of reducing the high demand of bridewealth apart from churches that you mentioned? Do you see the role of law?

Participant: No, law has no role to play. Law is meant for people and you will not force it on them. It is the entire community/town that will come together to solve their problem, only through this will it stand. Government cannot do anything. How will government even know that the law is being obeyed or not unless they are invited? This area of interest (bridewealth) we are talking about is very sensitive in Mbaise....”

(D)

“Interviewer: ... Do you see the role of law or the government?

Participant: No, there should be no law for marriage. So, if I give out the hand of my daughter in marriage you take me to court because I violated the law? The government is very far. There was once a law regulating the price of bridewealth, but nothing happened because it has become the custom of the people. You can't tell people to change their culture overnight.

Interviewer: So, nobody adhered to it, is that what you are saying?

Participant: Yes, and nobody is ready to listen to them. The problem is execution and implementation of the law. Who will execute it?”

The excerpts from the first two Participants (A and B) are of importance. They constantly responded “it is our culture” to the question of their submission to discriminating practices. Consciously and unconsciously, these women want to confront this culture, they want to be heard, they want to be seen and they want to participate, but are restrained by cultural forces. However, their hesitation and willingness to confront this cultural practice shows their quest for survival, “their perceptions of themselves (*limitation of their agency*) and the quality of their relationships with others”.⁹²

Another way to look at this tension is through the disjuncture between law and practice and Sen's capability approach to freedom. According to Sen, the prerequisite for participation and access to justice is capability.⁹³ The capability approach to freedom here entails “the processes that allow freedom of actions and decisions, and the actual opportunities that people have, given their personal and social circumstances”.⁹⁴ The law might provide for equality amongst all humans, but if the members of the community lack the capability to benefit from this provision due to their isolation in the name of culture, then there is a tension.⁹⁵ Thus, the agency and functioning of individuals in a given society should be addressed for the realisation of justice. It is worthy to note, however, that inaccessibility of justice by people, especially women,

⁹² Auerbach JS *Justice without law?* (1983) at 3 (emphasis mine). See also Scutt JA (ed) *Women, law and culture: conformity, contradiction and conflict* London: Palgrave Macmillan (2016) at 286.

⁹³ Sen (1999) at 54-86.

⁹⁴ See Sen (1999) at 17.

⁹⁵ See Sen (1999) at 31.

through their exclusion presents a conundrum of gender disadvantage, which later finds itself in formal institutions in the form of laws and policies.

In the foregoing context, the payment of bridewealth has a distributional effect, as it places on men economic, social and political control, since they receive bridewealth payment on behalf of the family. This economic, social and political deprivation limits the opportunities of women in other spheres of social life.

3.1.3 Interdependence of culture and law: the needs-based approach

The needs-based approach argues for justice accessibility and distribution to be more attuned to the needs of people rather than to the interest of the dominant groups.⁹⁶ The co-existence of culture and law means that both men and women have to continue negotiating power dynamics in order to achieve their desired justice. Since most national laws acknowledge the existence and application of customary law, and by extension, customary practices which are not in contradiction to human rights, it is pertinent to look at the interdependence of culture and law for achieving justice. Before looking at this, it is important to understand the reason behind the customary practices assumed to be harmful to women and children.

In the case of inheritance and succession, Diala argued that the meaning behind the traditional inheritance by the eldest male son was to take care of the family.⁹⁷ This he termed “foundational value of care”.⁹⁸ In other words, the eldest male son inherits the family property not for his benefit but for the overall benefit and interest of the family. This is the rationale for the male primogeniture rule in pre-capitalist society. This rationale has been overtaken by changes in the agrarian basis of society, some of which have made society to become more patriarchal and more obstructive of women’s agency.⁹⁹ Despite the dynamic nature of customary law in the face of changing conditions, women are still unable to inherit properties.

In *Muojekwu v Iwuchukwu*, the Supreme Court held that there is a limit to the application of gender equality principles.¹⁰⁰ This ruling is ironic since it acknowledges the need to respect the lived realities of people. However, in its landmark cases of *Ukeje v Ukeje*¹⁰¹ and *Anekwe & another v Nweke*¹⁰² the Supreme Court ruled that the disentitlement of female children from inheriting property is a breach of section 42(1) of the Constitution. Although this ruling has been celebrated widely, its implementation

⁹⁶ This approach was developed in Diala (2019).

⁹⁷ Diala AC “The concept of living customary law: a critique” (2017) 49(2) *The Journal of Legal Pluralism and Unofficial Law* 143 at 153. See also Diala A “Reform of the customary law of inheritance in Nigeria: lessons from South Africa” (2014) 14 *African Human Rights Law Journal* 633 at 635-636.

⁹⁸ See Diala (2017) at 153.

⁹⁹ Chanock M “Neither customary nor legal: African customary law in an era of family law reform” (1989) 3(1) *International Journal of Law and Family* 72 at 76.

¹⁰⁰ *Mojekwu v Iwuchukwu* (2004) NWLR (Pt 883) 196.

¹⁰¹ *Ukeje v Ukeje* (2014) 11 NWLR (Pt 1418) 384.

¹⁰² *Anekwe & ano v Nweke* (unreported) 2014 LPELR-22697(SC).

has been marred by territorial reach and the need to maintain ancestral homes by members of traditional societies.¹⁰³

In the case of bridewealth negotiation, a research participant stated that her father and brother will protect her interest even though she is not present in the negotiation process. As Ansell puts it, “the negotiation process of bridewealth payment involves the gift-givers and gift-receivers (elders mostly men), and women being the gift in exchange are not part of the process” hence their exclusion.¹⁰⁴ Furthermore, Schmidt stated that the negotiation and payment of bridewealth happens between two groups of men rather than a man and a woman.¹⁰⁵ The fact that bridewealth is still being negotiated by men gives them a certain amount of control over women. According to Sen, being able to choose and do a range of valuable things that constitute an empowered life reflects access to justice.¹⁰⁶

In the light of this, I use the needs-based approach to explain the interdependence of culture and law for access to justice. The needs-based approach for access to justice reveals the interplay of culture and law, which is evident in the complex web linking the observance of culture and socio-economic changes. Here, the interaction of culture and law is seen as both the medium and outcome of choices reached after logical assessments and negotiation, which are driven by socio-economic needs. This interaction entails looking at gradual closing up of the gap between the public and private spheres. It is about making sure that the two concepts reflect the lived realities of people on the ground. Many of my research informants are cautious of starting a new trend that may not be taken lightly by the community, or that can result in community sanctions. However, they wished that they had an opportunity to voice their opinion on the quantum of their bridewealth.

Practices from elsewhere, such as China, shed light on the above assertion. Since the mid-1980s in China, brides have been motivated to participate actively in the negotiation of marriage.¹⁰⁷ The reason is to accumulate wealth for herself and new family, to be heard and seen, and to exercise her agency as a human. In all these, the bride often has the backing of the groom. The implication of this is that her agency as a woman going forward is established and respected from the private sphere to the public

¹⁰³ Okoli A, Odu I, Nwaiwu C, Okutu P, Alaribe U, Adonu C, Okonkwo N, Alozie C & Ozor C “Supreme Court’s decision on female inheritance divides Igbo” (2020) *Vanguard Newspaper* available at <https://www.vanguardngr.com/2020/08/supreme-courts-decision-on-female-inheritance-divides-igbo/> [accessed 28 August 2020]. See also Smith DJ “Rural-to-urban migration, kinship networks, and fertility among the Igbo in Nigeria” (2011) 25(2) *African Population Studies* 320 at 325.

¹⁰⁴ Ansell N “Because it’s our culture! (Re)negotiating the meaning of ‘lobola’ in Southern African secondary schools” (2001) 27(4) *Journal of Southern African Studies* 697 at 702.

¹⁰⁵ Schmidt E *Peasants, traders and wives: Shona women in the history of Zimbabwe, 1870-1939* London: James Currey (1992) at 17.

¹⁰⁶ See Sen (1999) at 74-76.

¹⁰⁷ Yan Y “The individual and transformation of bridewealth in rural North China” (2005) 11(4) *The Journal of the Royal Anthropological Institute* 637 at 642.

domain.¹⁰⁸ The exclusion of people from social spaces that reflect and affect their day-to-day lives leads to underdevelopment of their individuality and inaccessibility to justice.

Three points are worthy of note in the Chinese story for social inclusion and participation of young men and women in matters that concern them. The first is that the cultural practice of bridewealth payment remained intact in that region despite changes in who participates in the negotiation process and benefits from bridewealth payment. There is often fear by custodians of culture of the drastic distortion that socio-economic changes can have on customs.¹⁰⁹ However, in some other way, they accept these changes insofar as they favour them. For example, the elders I interviewed about reasons for the demand of great bridewealth all responded by referring to changes in the economy of the country. These are notably education of their ward, religion, migration, high standard of living, etc. In other words, culture can change only to the extent that they retain their power to make such changes and benefit from them.

Secondly, despite autonomy in mate selection and the exercise of individual agency by young men and women in bridewealth negotiation in China, the youth still depended on their parents for support and advice on marriage issues. This means that the importance of family involvement and the age-old belief that marriage is an alliance of both families was not broken. Thus, young men and women still choose to observe the practice of bridewealth payment. Although most of my research informants complained of the demands of bridewealth, they were reluctant to abandon the practice no matter the price.

The third point reflects the interaction of culture and law. It shows that the exercise of agency by the brides does not occur in isolation. According to Yan, the young men and women were empowered to exercise their autonomy and power through “the marriage laws, state policies, and political campaigns”.¹¹⁰ The participation of elders and the engaged couples in the negotiation process of bridewealth payment, the continuity of the practice of bridewealth payment, the shift in inter-generational power, and the continuity of dependence on parental support on marriage issues, could lead to promotion of access and delivery of justice. What this means is that both law and culture need each other to ensure justice delivery.

4 CONCLUSION

Irrespective of their gender, age, and status, the extent to which people in a given society become active citizens and can participate in decision-making that affects their everyday day lives is the main goal of development policies. Thus, policy development and development projects should be founded on justice. Having analysed the negotiation process of bridewealth payment in southern Nigeria, this article finds that the exclusion of women from bridewealth negotiation highlights weaknesses in the

¹⁰⁸ See Yan (2005) at 646.

¹⁰⁹ See generally Okoli et al (2020).

¹¹⁰ See Yan (2005) at 652-653.

social structure of a given society. This weakness in the social structure is reinforced by socio-economic changes that have shaped individual experiences. These changes do not operate in isolation at the formal or State level. Therefore, the problem of social exclusion needs a multi-dimensional approach that addresses every aspect and indicators of social exclusion. For development and policy makers to promote development and increased access to justice, they must develop a multi-faceted approach that aims to address human experiences holistically. In other words, rather than solving economic issues alone it must also look at other factors , such as, social, cultural and political participation, personal security, and access to education.

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