

“Wife Inheritance” and the Fate of Widows in Luo Society in Kenya: A Philosophical Appraisal

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Abstract

“Wife Inheritance” was initiated with good intentions and had many functional values. The custom once held an honourable promise as it protected and catered for the welfare of the widowed and orphaned members of the Luo community. The main aim of the study was to give a critical appraisal of the levirate custom among the Luo of Kenya. The paper specifically examines the impact of the custom on the freedom and individual development of the Luo widow. The research was qualitative with its sources being both library and field study. It employed the Critical-Analytical, Phenomenological and the Speculative Philosophical methods, thus the Holistic approach. It also used the rational and Historical methods to trace the historical development of the custom. The questionnaires and tape-recording were some of the tools used in data collection. Tables, graphs and charts were used in data analysis and presentation. The major findings of the study indicate that the Luo levirate custom is oppressive to the widow. It undermines her freedom of choice, growth and development. The custom perpetuates male dominance and female subordination. The Levirate custom, as a means of taking care of the widowed and orphaned members of the society, should be continued but in a modified, new form, devoid of abuses and elements that are incongruent with the contemporary existential challenges. The aspects which undermine individual freedom, growth and development, the dignity of human sexuality and those that spur the spread of HIV/AIDS in the community should be discarded, whereas those that are valuable and relevant to the needs of the modern man be continued. A lot of research has been done on the Luo custom; however, this study provides a new approach in addressing the problems posed by the practice.

Key Words: Levirate Custom, Fate, Widows, Luo Society, Kenya

INTRODUCTION

A clear understanding of the Luo levirate custom requires a good grasp of the concepts ‘widow’ and ‘widowhood’ among the people. It is, therefore, imperative that a brief treatment of the concepts be given here.

The term “widow” is a harsh sounding and hurtful word. In the common English usage, it refers to a woman who has lost her husband to death and has not remarried. The Hebrew word for “widow” (*almanah*) has its root in the word *alem*, meaning “unable to speak”. *Almanah* was used especially to refer to the widow as helpless or exposed to oppression and harsh treatment. A widow was the “silent one”, the —voiceless. The word widowhood (*almenuth*), therefore, meant “silence” and the term expressed in poetic form exactly the legal status of the widow in the ancient world. She was not spoken for. The

Greek word for "widow" (*Chera*) means "forsaken" or "left empty". Thus its original meaning is "a person without" or "left without." *Chera* can mean not only a widow in the modern sense of the word, but, anyone destitute and miserable, anyone living in solitude" (Bowman, 1989, p. 9-10).

In the contemporary times, the word "widow" often connotes not only status but also social and economic status. In many parts of Africa, a widow is often left without money and financial support as well as or a result of being without a husband. The word has strong social and economic connotations more appropriate to a widow than a widower. Thus the more passive and impoverished status of women means that a widow who is left without a husband is potentially a person "left empty" (*odong' buga*). Widows are likely to suffer from loss of their financial support, property and health, even their own identities, after their husbands' death. This has become almost uniformly the case on the African continent, although it was not so in the traditional society. The term "widow" has come to mean a second class person, one who cannot stand on her own, but who needs sympathy and protection from other people. Being a widow in the contemporary society is a terrible experience. Luos, for instance, treat their widows like outcasts who must be cleansed (Mae, 1999, p. 46). A widow was required to adhere to certain rituals and customs governing the life of a widow which included ritual cleansing and subsequent entry into a levirate union with one of her in-laws.

Although traditionally widowhood was mainly associated with elderly women who were assumed to have accomplished their mission on earth and were therefore living on "borrowed time", the trend is different today. Kenya's statistics show that women are becoming widows at much younger ages (Odaga, 1995).

Statement of the Problem

The custom was initiated with good intentions and had many functional values. The custom once held an honourable promise as it protected and catered for the welfare of the widowed and orphaned members of the Luo community. As Owino (2000, p.18) contends, it was "...very imperative in the context of perpetuating the duties and responsibilities of the dead husband ". This continuity was of great psychological value, it gave a deep sense of security in an otherwise insecure world in which the Luo woman lived. The custom had many values that were quite beneficial to the individual bereaved families and the Luo community at large.

However, the custom, as it is today, seems antiquated, irrelevant and to have been seriously abused. The practice, it seems, has been corrupted and works against the very ideals that it was meant to serve. Over the times, it seems to have ignored the dynamic nature of culture and the widow's existential situation. The belief in cultural determinism has taken command and the widow's freedom and role in determining her destiny have been undermined. Total conformity is what is demanded today. This has resulted into slavish submission to the cultural demand.

With the existential challenges of the contemporary society, the increased enlightenment on human rights and concerns for women's liberation, gender equality and the upsurge of the HIV/AIDS pandemic, there was need to subject the custom to critical evaluation,

challenge the outmoded facets and modify the useful ones to make the custom more responsive to the changing circumstances and relevant to the existential needs of the contemporary widow and Kenyan society. It is in this context that the paper attempted a critical investigation into the implications of the custom for the widow's freedom, and its bearing on her personal health and development.

The study was a critical appraisal from the existentialists' philosophical perspective. It restricted itself to the custom's bearing on the widow's freedom, personal growth and development and its relevance today, in light of the contemporary existential challenges, particularly, concerns for women's liberation and the escalating situation of HIV/AIDS scourge. The Luo foundation rituals are many; one cannot do justice to them within the scope of a study of this nature without compromising clarity and exhaustive treatment of the study. Other variables were therefore only mentioned in passing and basically to shed more light on the issues being discussed.

MATERIALS AND METHODS

This study utilized both primary and secondary data. The former were obtained through the Socratic Method and questionnaires. Field interviews (discussions) were conducted in the five divisions of Homabay District, namely Asego, Rangwe, Riana, Ndhiwa and Nyarongi. The respondents were selected from different groups of people, namely: widows, elders, local politicians, academicians, married men and women and members of NGOs. The criteria used to select correspondents from these groups included purposive and random sampling. The discourses were tape-recorded for review and analysis. The later data were retrieved from written materials obtained from several resource centres, mainly libraries of institutions of higher learning. The key sources of data included books and periodicals.

The study was essentially considered in the light of philosophy as an academic discipline. As such, Philosophy, as it were, is a second order inquiry and gives insight and knowledge through critical analysis or assessment of matters pertaining to real life. As a second order inquiry, Philosophy works on existing theories, principles and assumptions put forward in other inquiries (Chukwu, 2002, p. 25).

It employed the critical-analytical method, phenomenological method, the synthetic and speculate philosophical methods. In addition, the historical method was also used. However, due to the nature of the study, qualitative analysis was widely used. Data was presented and analyzed by the use of discussions and critical analysis. Quantitative data, collected within Homabay County, was employed mainly to verify and support my findings.

The Historical Method used entails a critical survey of events, developments and experiences of the past. The major sources of data for the historical method of research are found both in oral traditions and the written testimony preserved in Libraries, Archives and Museums in both published and unpublished forms. The author picked the historical method because he was not starting from scratch. The problems of Luo levirate custom and human freedom are historical issues. The study thus went into the historical treatment of the problem and saw the development of

thought as regards the problem. Besides, the study dealt with human situation, which comes out of the past and has a historic depth (Mrinal, 1990, p. 430). The levirate custom as a cultural phenomenon is a historical phenomenon. The author made use of this method to chronologically bring forth the historical information regarding the Luo community and also to unravel the historical developments of the levirate custom over the ages.

The author also employed the Critical-Analytical Method to challenge the Luo traditional beliefs and the participatory, collective assumptions regarding the levirate custom, in order to make it clear and responsive to change. Through this method, the author gave a critical assessment of the custom in the light of increasing stock of new knowledge and current existential challenges. The rational method was also used to examine the levirate custom and its contemporary relevance and bearing on widow's freedom, growth and development in the contemporary society.

The Phenomenological method was particularly crucial for the realization of objectivity, fairness and non-biasness of the study especially since the researcher is a product of the same cultural outfit. The approach enabled the author to go beyond common, taken for granted, opinions of the community, thus transcending the face value of the people's views and instead going for the underlying facts.

Finally, the data generated in the study were synthesized and the findings were compiled to form the logical body of facts that we have in the form of this paper. Not all the questions in the questionnaire were shown on graphic, chart or table form because responses to the questions tabulated were sufficient for the realization of the study objectives.

DISCUSSION

Luo Widows: "Wives of the Grave"

In the Luo language, the word for a widow is *Chi liel*, which literally means "wife of the grave" (not widow of the grave). The Luo widow could at least be *chi liel* or *Chi a tera* (a product of leviratic union) (Malo, 1999, p. 50; Ogutu, 1995, p. 115; Oruka, 1990, p. 108). This connotes continuity of the marital bond beyond the grave. The Luo marriage union survives death. The custom of marriage ideology established a principle that death alone does not dissolve the marriage contract. A husband may die, but the Luo wife still remains the legal wife of the deceased man and is expected to raise children to his name through her leviratic husband, that is, a close agnatic kinsman of the dead husband (Abong'o, 2014, p. 3; Potash, 1986, p. 44; Ocholla, 1976, p. 44). Mae (1999, p. 85) more explicitly expounds that, in the traditional Luo society:

A woman got married once in her lifetime, there was no dissolution of her marriage due to the death of her husband; the widow continues to be regarded as a functioning wife. In the Luo tradition, there was no "until death do us part" agreement between the bride and groom as in

the Christian marriage.... Lineage relationships were seen to continue even beyond the barriers of physical death.

The Luo widow, therefore, remained the wife of the original (dead) husband and continued to live with his relatives from whom she was expected to get a *levir*. This is an expression of the Luo belief that marriage involves both the individual and his lineage, that is, marriage involves both a personal and social alliance; hence, the Luo saying "*Dhako chogo madiere gir libamba ng'amodong to gwene* (a woman belongs to the lineage in perpetuity)". So when a bride gets married in the traditional way, she is regarded as both *Chi chuore* (wife of her husband) and *Chiwa* (our wife), that is, wife of his lineage (Mae, 1999, p. 85; Ogutu, 1995, p. 11). From the foregone exposition, it is clear that the custom undermined the widow's fundamental right and demeans her dignity. As a human person, a widow cannot be rationally and justly married to the grave (the deceased).

The Widow and Pre-Levirate Rituals

The Luo widow was subject to many ritualistic ceremonies. Both the pre-levirate and the levirate rituals that the widow had to undergo help unravel the Luo conception of widowhood and the widow's place in the society. The whole process leading to the levirate union among the Luo can be traced back to the very moment the death of a Luo man was announced. From that instance, the deceased widows wailed loudly to announce the demise of their husband as they ran to the gate and back into the death hut. The loud wails announced to the clan that one of their own was no more. During this time the widows stripped naked to symbolize the emptiness, vulnerability and total loss suffered due to the death of the one who used to dress and protect them (Mboya, 1983, p. 112). It is important to note that, the act of stripping naked at Luo funerals was not unusual. In any case people had little, if any, clothing those days.

As mourners poured into the compound, the widows wore the husband's clothes inside out. Each carried an item of his. These days widows prefer photographs. Why wear a husband's regalia the wrong way? Ong'ong'a (1983, p. 59) explains:

Apart from showing that death has disrupted the order of events; clothes also help the society to know who is a mourner and how to treat her. For the Luo, she is religiously a person set aside, worthy of everyone's sympathy and respect.

The symbolic act shows that, at least temporarily, before entering into the levirate union, the widow resumed the roles of the husband; she became the sole head of the homestead.

During this period of mourning, the widow and the bereaved family members were said to have "*Chola*", that is to say, made unclean by handling and touching the dead body and also by *joywak magore kuomgi* (the touches of the sympathizers). *Chola*, therefore, implies the death related impurities that the bereaved contracted during the mourning and entire funeral period. With these impurities, the widow remained a special person barred from performing certain duties and highly restricted socially. Engagement in a fight was forbidden while in this status. This was believed to cause *muma* (a taboo or

curse leading to *Chira*). A ritual ceremony known as widow cleansing marked the end of *chola* and was therefore held in high esteem.

Burial took place either on the second or the third day, depending on prevailing circumstances. After the burial ceremony, a grandson from the country of a married daughter (*Nyakwaro maka mugogo*) was then called to perform the conventional symbolic act of *turo osuri* (breaking the roof centre stick at the top of each wife's hut), to signify that the head of the home is dead and the woman is a widow (Malo, 1999, p. 6; Gordon, 1968, p. 131). This is analogous to flying the flag at half mast and was meant to inform people that the head of that homestead has died (Ogutu, 1995, p. 12). Elsewhere, Hollis (1994, p. 144) records a similar interpretation that, "... a flag flown at half mast meant that a death was being mourned". There after followed the shaving ceremony.

The Shaving Ceremony

When a child was born in Luo community, the ghost hair was shaved off, to mark its separation from the world that was, the mother's womb, and incorporation into the community of this world. At the death of a husband, this birth ritual was repeated. The bereaved left the life with the deceased and moved into one without him. The deceased also moved into a new life, that of the living dead. He cannot mark this transition himself, so the society of the living does it on his behalf (Mbiti, 2002, p. 84).

The shaving ceremony was performed a day after the burial. On this occasion, each widow gathered with her children in her hut, and as they moved out, she pulled the pole supporting the hut by the door side. Together with her children, they carried the pole towards the gate in silence. There, seated on the ground on the road outside the home, the shaving ceremony was performed by an elderly woman (Gordon, 1968, p. 131). Amollo (1999, p. 8) explains:

The hair of the family members were shaved to symbolize the departure of the old self and the former person (deceased) and the new growth of the hair in the head symbolized a new growth. Sorrow has been overcome with joy, happiness and growth. The houses were swept clean and people were sprinkled with some special water of purification.

The *liedo* (shaving) ceremony was a ritual of purification. It purified or freed the widow and other bereaved members of *Chola* (the death related impurities). Besides, as already indicated, to cut the hair is to separate oneself from the previous world with the deceased and mark the incorporation into a new world without him (Gennep, 1960, p. 166). The survivors were enjoined to shave their head as a sign of mourning. It was easier for the society to identify the chief mourners. Just by the very look of them, one instantly knew how to relate with them. The ceremony is still observed by many Luos, however, only little hair may be shaved off these days.

After the shaving ritual, an elderly widow from the clan made strings out of dry banana fibres or grass herbs and tied them on the waist of the widows to identify them as the

main mourners. It was on this day that the bereaved washed for the first time since death. Okok (1989, p. 42) explains:

On the fourth day early morning, the chief mourners went to the river and dipped themselves into water. While still underneath, they untied the skins which were tied on their wrists, and the strings...on the waists of the widows. When they returned home, the old widow again tied another string on the waists of the widows, which was supposed to last until the day of their "inheritance".

The chord tied round the widows' waists was called *Kode*; it was made from banana fibres or the bark of acacia tree (*kudho*). On the day of shaving, a ghost goat (*Diend gut*) was slaughtered and eaten only by widows and widowers. These are the people who were believed to have "killed" (*timo agwambo* or *jemo*). The Luo secretly suspect a widow or widower for the death of a spouse! The goat was used to *dilo jachien* (exorcise the evil spirit).

The Purification Ceremony

The Luo believed that a widow becomes a tabooed person through the acts of stripping naked in front of her children, wearing a man's clothes in an abnormal fashion and remaining unwashed for several days after the death. In fact the death of her husband itself made her a tabooed person, for she was a suspect. These acts, together with handling the corpse, polluted both the bereaved family members and the entire society. Okok (1989, p. 43) elaborates:

The Luo believe that the death of the husband leaves the main mourners, especially the widows, defiled and dangerous to the surrounding.... To purify and to bless the surrounding, the old lady (*jagut*) prepared *manyasi* (herbs crushed and mixed with water), put in a pounding mortar, and gave it to the wife to carry, while the co-wives carried empty baskets.

The widows visited all the homes of the clan sprinkling each home they entered with water. The senior wife led the procession. From each home they were given millet in the baskets carried by the other wives. The exercise was known as *huno*. The millet would be used later by the widows to make a local brew for their levirate ceremony (Okok, 1989, p. 44). This ceremony gave the widows some limited freedom to have contact with others in the society. They were now free to mingle with other members of the community or even visit them.

The Mourning Period

Widows in traditional Luo society used to mourn their husbands for one to two years. During this period, as Gordon (1968, p. 130) notes, "... a dutiful wife ought to have wailed every morning and evening out of respect. She ought not to have sexual relations with any man. In fact, it was a taboo for a widow to conceive before official engagement into the levirate union. Mboya (1983, p. 130) thus concedes, —...*Ka dhako omako ich gi*

kode, bang' tho chuore, dhakono oketho kode; otimo marach ahinya kendo oketho ywak (a widow who conceived before levirate union has contravened a serious law, and has disrupted the mourning).¹

The Luo widow constantly wore her *kode* and her husband's regalia. After the shaving ceremony, she must never shave again until she is purified later. By the end of one or two years, the widow was indeed a sorry sight. According to Gennep (1960, p. 147), "...it seems right that ...widows should belong to this special world for a long time; they leave it only a moment when even physical relationship is no longer discernible". This scaring state of the widow protected her from possible advances of men. During the period she was known to be in mourning, a widow was highly restricted socially. She was not allowed to visit other homes, shake hands with others or hold their babies. This was because the community believed that a widow had been adversely affected by her husband's death and close contact with her could bring disaster upon them. The question is, how? This fear and belief which led to the infringement on the widow's freedom seems to have been unfounded.

When the mourning period ended, the widow was told that she had mourned enough and she was free to re-enter the community. At that time she was expected to remove her mourning clothes and put on new ones (Mae, 1999, p. 44). Removing her mourning garments served as a rite of passage or an acceptable way to end the official period of mourning and bring the widow back into the normal life of the community. It was a sign that the widow was now ready to enter into the levirate union with one of her in-laws. It is the *chodo kode* (the first sexual union with a *levir*) or simply the levirate union that finally liberates the Luo widow.

The Luo Custom: Levirate Union or Wife Inheritance?

In Africa there are several types of marital unions possible for a woman upon the death of her husband. In one of them, a widow becomes the legal wife of the dead husband's brother and the relationship becomes a legal marriage. The children of this union belong to and inherit through the new husband, who is their legal father. This kind of custom is called 'Widow Inheritance' or 'wife inheritance' (Mbiti, 2002, p. 44).

Although the term 'wife inheritance' is often used in a generic sense, strictly speaking, it is different from the levirate union. Under the levirate custom, a widow retains her status as wife of the dead husband. A brother of the deceased husband cohabits with her, but he is merely the genitor and the ritual leader (*Jatiek liswa* or *kwer*) (Gordon, 1968, p. 130), and any children born of the union are considered the children of the dead husband who continues to be their legal father.

The practice among the Luo is, therefore, the levirate custom and not "wife inheritance" as it has been mistakenly dubbed. This is further illustrated by the Luo word for a widow being *chi liel* (wife of the grave). Otherwise she could at best become widow of the grave, so as to have possibility of entering a new marriage with a man of her own choice. It however implies that the widow remains a functioning wife of the dead husband (Mae, 1999, p. 85). The custom among the Luo, in its original context was not wife inheritance, but levirate custom and was to facilitate widow guardianship (Owino,

2000, p. 18). Stamp (1991, p. 831) too attests to the fact that "...the Luo practiced the levirate custom and not wife inheritance."

The term 'wife inheritance' would mean a widow becoming a property of the 'inheritor' which is not the case among the Luo where the widow and the subsequent children, if any, still belonged to the deceased and his clan. Potash (1986, p. 45) emphatically asserts that, —Luo widows are not inherited... they are taken over in the levirate....‖ The erroneous dubbing of the practice is, according to Abuya (2002, p. 94), attributed to the fact that the custom has been widely corrupted and abused. The term has demeaning effect on the dignity of the widow as a human person and consequently, cannot be condoned in a philosophical study of such a calibre. This paper maintains that a widow, as a human person, cannot be inherited. Any reference to the custom among the Luo as wife inheritance is therefore a misconception which is to be corrected.

The Levirate Custom and the Widow's Freedom

What is the import of the levirate custom on the widow's freedom? Does the custom enhance or demean the widow's freedom? Is the widow free to choose for or against the custom? Is she free to take a *levir* of her choice? And finally, is the widow free to terminate the union with a *levir*? These are critical questions which the contemporary mind must ponder. It is now clear, from the reviewed literature, that the levirate custom among the Luo to a great extent violates the widow's existential freedom. It denies her freedom to design her own lifestyle and future.

The findings reveal that the Luo widow had 'no freedom' to defy the levirate law, to remarry or remain single (celibate). She was duty bound to contract a levirate union. The law applied to all Luo widows, so strictly that once a widow, one found herself within the communal confines of the custom. According to the custom, every widow must be taken over by her dead husband's brother (Mae, 1999, p. 45). The levirate was not only mandatory, but also urgent. Widows found themselves carrying a heavy social luggage on their shoulders and, too weak to fight back, they succumb to the demands and go for *levirs*. It was therefore not debatable whether or not to enter levirate union.

As noted earlier, the choice of the *levir* was either made by the ailing husband, the clan elders or the widow herself (Wanjiku, 1997, p. 108). When the choice was made for the widow by her dying husband, the latter could inform the wife of the same before telling the *levir* to be. It is important to note that, it was simply passing information; there was no consultation or negotiation. And usually, the words of the dying person were taken very seriously and followed to the letter. Neither the widow nor the brother could question or defy the "will" of the deceased. This was due to fear of offending the spirit of the dead. *Levirs* could also be directly nominated by the clan elders. Traditionally, she is taken over by a man chosen as a *levir* for her by the elders. A widow could not defy the choice of the elders.

When the choice was made by the widow herself, it was subject to the consent and approval of the lineage elders (Potash, 1986, p. 55). A widow is theoretically free to choose any man from within the lineage, but the choices are not random, they must be

done in accordance with the laid down mechanisms. She had to restrict her choice to the eligible brothers of the deceased. If she was adamant, that is, against being taken by them, elders could counsel her and suggest possible marches. However, in the traditional Luo society, the elders' apparent suggestions were the widows' commands. They had to comply. The choice largely did not depend on the widow's liking.

Luo widows therefore do not have much sexual freedom; and normatively, they are not expected to remarry or take lovers other than their *levirs*. However, levirate relationships are impermanent and widows are free to send levirs away; they may also seek another *levir* (Potash, 1986, p. 63). This time round following a more simplified procedure, the approval of elders would suffice. But generally still, the custom infringes upon the widow's freedom. It is however to be asserted that the widow is essentially a free and autonomous person with an inalienable right to choose whether or not to enter the levirate union and if so, the man to settle with. She must be the navigator and take charge of her life and personally determine her future. Every widow has to make her own informed choice and must be responsible for the consequences of her choices.

The Levirate Custom and HIV/AIDS Pandemic among Widows

The current debates on the levirate custom tend to be centred on its links with HIV/AIDS. Whereas some people rule out any links between the custom and AIDS, others hold that it does not only increase the risk of HIV/AIDS but seriously contributes to the spread of the scourge (Abuya, 2002:100). At the cultural symposium held at Oginga Odinga's home in 1995 to discuss matters and rituals pertaining to Luo customs, some contributors felt that it was erroneous to associate levirate custom with the spread of AIDS (Ogutu, G.1995, p. 2). Similarly, Kenya's former Ambassador to the Soviet Union, Adala Otuko, contends that, "...the claim that levirate custom aggravated the spread of AIDS was farfetched" (Adala, 1994, p. 5).

On the contrary, the study findings reveal that there is a strong relationship between the levirate custom and the spread of the HIV/AIDS among widows. The custom exacerbates the spread of the 'disease' due to the pattern of sexual networking whereby *levirs* and widows have multiple sexual partners (Tuju, 1996, p. 18). When a HIV infected man dies and his widow quickly taken in the levirate, she could spread the 'disease' not only to her *levir* and his other sexual partners, but also to the children she might bear thereafter (Cohen & Odhiambo, 1992, p. 113). The custom thus sets a vicious cycle; a *levir* infects his wife, he dies and she is taken over by another *levir* who further gets infected and in turn infects his wife. The cycle is often fed by denial. Those afflicted with HIV/AIDS take cover in *Chira*. If the man dies of HIV/AIDS related complications, the tendency is to attribute it to *Chira* and since *Chira* is not considered to be contagious, *levirs* will still take his wife. They are likely to be infected and in turn infect their wives. This is how the 'disease' may be spread in the community. In most cases *chira* is being used in myopic perspective as a consequence of failing to observe some aspect of cultural norms which remains a mystery, and not as failing to observe moral ethics. This is done to divert the attention from the relatives. Given the stigma attached to HIV/AIDS, most infected and

affected Luos are more comfortable with *Chira* under the mysterious perspective than HIV/AIDS. This kind of comfort means that when one dies of *Chira*, the remaining widow is not stigmatized and can be taken into levirate.

The Office of the Vice President and The Ministry of Planning & National Development (1996, p. 116) confirms our claim further that:

If either the inheritor or the inherited is already infected, then the spread continues. It is worse if the inherited is the one who is infected, because she infects the inheritor who will in turn infect his official wife (wives) who may later remain to be inherited.

The custom has consequently become an impediment in HIV/AIDS prevention, control and management. In fact, the practise of *ter* is quite suicidal today (Ogutu, 1995, p. 25). The Luo must stop playing the Ostrich, hiding their heads in the sand of *Chira* and pretending that there is no danger. Unfortunately, some Luos have opted for a fatalistic stance and have adopted an anti "zero grazing" attitude, saying that, —*Ruath tho gi lum edhoge* (a bull dies while grazing)!. It is a fact there are other factors spreading Aids among the Luo, but the custom is currently escalating the spread.

Some people today think that the levirate can help to curb the spread of the disease by confining the "dangerous woman" to one man and probably his wife. Supposing both the widow and the *levir* are HIV carriers and are to remain faithful to each other? Can infected individuals be identified and made to pair up in levirate union as a way of using the custom to combat the pandemic? These are questions asked by many people today.

The taming theory is a rather bright argument; however, the flaw in it is that there is no regulatory mechanism to sustain it. There are no assurances that the widow will keep to the man or that the man will get "tied" to the widow alone. The contemporary society is characterized by promiscuity and moral decadence; and if there lacks faithfulness among some married couples, what is the guarantee that a loosely contracted arrangement such as this, will hold? The conducts of the "professional inheritors", who often have multiple sexual partners, make the theory simply unworkable. The taming theory is also quite absurd, one cannot confine a widow and let her *levir* free to move from one widow to another and still expect the system to work. Besides, every human life is precious and should be respected and appreciated.

The idea of identifying and pairing up HIV-infected persons in levirate union is equally problematic. The virus has many strains and subsets, and therefore in that rotational population, we may have people with several strains of the virus. The viral load increases per sexual activity. So, if a widow is infected and stays without exposure to a different strain of the virus, her viral load might stay dormant at some point. Otherwise, her viral load will not only increase but do so with various mutations - a very dangerous scenario that could speed up her death when she could have lived long enough to continue caring for her children. Victims of HIV who

abstain from sexual intercourse often live longer than those who engage in the activity more often (Ruzindaza, 2002, p. 53).

CONCLUSION

The study reveals that the levirate custom seriously violates the widow's human rights and greatly undermines her dignity and personal growth. Essentially, the custom is an expression of an oppressive mental structure against widows and an institutionalised violence against the female folk at large. It has also been underscored that because of the sexual aspects and more so the —sexualization and commercialization of the custom and the moral indiscipline which today characterize the levirate custom, it is to a great extent, responsible for spurring the spread of HIV/AIDS among the female folk and in the entire Luo society today. The study thus contends that the custom should be made responsive to the societal changes. The Luo should expunge its outmoded and repugnant facets which undermine human freedom and dignity, and those that fuel the spread of the virus. They should, however, modify and keep those elements of the custom that are valuable and relevant to the contemporary society.

The existentialists' philosophical contentions on human freedom and responsibility therefore have far reaching implications for the Luo levirate custom. If entrenched into it, the custom would be made more relevant to the contemporary widow. It would uphold the widow's individual's freedom and enhance her growth and development. The sense of responsibility would also go a long way in making the custom fruitful and beneficial. It would restore sanity and order into the custom and also check its contributions to the spread of HIV/AIDS.

RECOMMENDATIONS

The Levirate custom, as a means of taking care of the widowed and orphaned members of the society, should be continued but in a modified, new form, devoid of abuses and elements that are incongruent with the contemporary existential challenges. The aspects which undermine individual freedom, growth and development, the dignity of human sexuality and those that spur the spread of HIV/AIDS in the community should be discarded, whereas those that are valuable and relevant to the needs of the modern man be continued. The study recommends both continuity and discontinuity in the levirate custom.

The Luo should observe precautionary actions to curb the proliferation and exacerbation of the spread of HIV/AIDS. Parties involved should be screened for the virus and the exercise called off if either or both of them turned positive. Only those found to be negative should enter into a sexual levirate union.

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BIO-DATA

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