

An Existentialist Enquiry into the Impact of the Levirate Custom on the Contemporary Kenyan Society

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Abstract

The traditional Kenya Luo community, in which the existing levirate custom was born, was communalistic in nature. Traditional Luo society thus put more emphasis on the community than the individual person, more on solidarity than on the needs and aspirations of the individual, and more on the communion of persons than on their autonomy. In fact, the society was more important than the individual. The main aim of this study is to give a critical appraisal of the levirate custom among the Luo of Kenya. This paper specifically examines the impact of this custom on the Luo society in particular and extends the discussion to show how it has affected the Kenyan society at large. The study was a qualitative type of research which was both library and field based. It employed the critical-analytical, phenomenological and the speculative philosophical methods, thus the holistic approach. It also used the Socratic 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 were used in data analysis and presentation. One of the major findings of the study indicates 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. It exacerbates poverty and spurs the spread of HIV/AIDS pandemic. The findings add to the limited yet much needed data on widows. It is also useful to policy makers and the different agencies dealing with gender equity, human rights, development and HIV/AIDS pandemic in the contemporary society.

Key Words: Impact, Levirate Custom, Luo, Society, Kenya, Poverty, HIV/AIDS, Individual Freedom

INTRODUCTION

Background to the Study

The Luo community has many traditional practices that are fulfilled in married life only by the husband and wife and such are indispensable. In the event of death of a spouse, therefore, there are customary requirements that must be adhered to, to enable one lead a normal life. For women, the levirate is not only mandatory but also urgent. Thus in traditional Luo society widows were —taken over in the levirate by an agnate of the husband (Potash, 1986, p. 53).

The levirate is a custom where the widow is taken over by a —brotherl of the deceased husband. This —brotherl was traditionally meant to continue the demanding duties of the husband in the traditional Luo home. This custom was founded on the fact that in Luo tradition, marriage involves both individuals and their lineage, that is, both a personal and social alliance. Thus, when a bride gets married in the traditional way, she is regarded as both —wifel of her husband and —wifel of his lineage. In addition, a Luo woman got married only once in her life time, there was no dissolution of her marriage due to the death of her husband; she continued to be regarded as his functioning wife. (Kirwen, 1993, p. 65; Osogo, 1987, p.34; Potash,1986, p.394). In effect therefore, another man could not validly marry the widow.

Levirate custom was not a practice that prevailed in traditional Luo community alone. It is a phenomenon, which was fairly common in Africa (Mbiti, 2002, p.144). It was however not unique to Africa, since it was practised by the Jews as described in the Bible in Deuteronomy (Kayongo – Male, 1991, p.7). It was perceived as morally and socially important in the traditional setting of many African communities; for instance, it was practised by the Sebei and the Bakiga in South West Uganda and by some tribes in Southern Nigeria and Zambia, among many others (Nduati, 1996, p. 55; Turyahikayo, 1983, p. 100; Goldschmidt, 1976, p. 240). In these communities, it was believed that the best that could be given to a woman who had lost her husband through death is either a replacement or a helper (Maillu, 1988, p. 12). In Kenya, beside the Luo, the custom was practised by the Nandi, the Abagusi, Abaluhya, Akamba and the Giriama, among other communities. Among these groups, the Luhya and the Abagusi have continued the usage of the custom, but today it is more pronounced among the Luo (Abuya, 2002, p. 94).

The custom seems to repress individual freedom and to prevent discovery of individual talent, thus hindering personal growth and development. It is arguably one reason the Luo region is reeling from HIV/AIDS today. Others being poverty, loose morals and unfaithfulness characterized by multiple sexual partners. Because of the sexual relations involved in the practice, its critics have more ammunition against it than its defendants. They argue that the traditional custom is primitive, uncivilized, obsolete and lethal in the HIV/AIDS era. Actually, in the light of the on going AIDS pandemic, it becomes extremely difficult to advance a philosophical argument to justify the continuation of the practice in its traditional form.

There is need to review the custom and bring it into tune with modern times. This insight is in line with the dynamic nature of custom and tradition vis-a-vis the dynamicity of the society and human needs. This study comes in to jumpstart the process of making the custom more relevant to the contemporary society. Even though the custom served important purposes in the traditional Luo society, the people have to realize that circumstances have since changed and the custom has to be made responsive to the dynamicity of man's existential needs. Tuju (1996, p. 67), a prominent Luo politician concedes that:

While it is important for us (the Luo) to respect various aspects of our cultures, we must not glorify them out of context. The inadequacy of the traditional...system and its conflicts with the contemporary

culture, is such that it would not serve us well today within the context of the HIV/AIDS Pandemic.

This study thus attempts a critical appraisal of the levirate custom among the Luo of Kenya, focusing on its most controversial aspects today, namely its implications for women's liberation, particularly its bearing on the widow's freedom, growth and development; its contribution to the spread of HIV and perpetuation of poverty in the society.

Freedom of the Widow to Remarry

In Luo custom, marriage is permanent. There is no "until death do us part" agreement between the bride and the groom as in the Christian marriage. Instead, the African Luo believes that marriage bond survives even physical death. For them when people marry, there is the unspoken agreement between the two families that this relationship will survive even the husband's untimely death. The man's family pledges to carry on the marriage by caring for the wife and the children in the event of the husband's demise. This was a very sacred and essential part of the Luo marriage (Kirwen, 1993, p. 9). Death alone does not dissolve the marriage contract *ipso facto* among the Luo. A husband may die but the wife still remains his legal wife, thus —wife of the gravel and can therefore not be legally married again to another man. The basis of this is that marriage in Luo community was extended to the clan. This was the epistemological base of marriage in the African context.

The Luo marriage lasts forever. Those who have received the cattle cannot consider it simply as an event of the past, but rather as an ongoing process in which they have personal interest" (Blum, 1989, p.51). Traditionally, a Luo wife belongs to the husband's clan. Thus when the husband dies, the rights over the widow's sexuality and future children remain with his lineage. Consequently, the late husband's brother "replaces" him as a "husband" (Keesing, 1981, p.260). Kirwen(1993,p.65) further explains:

The Luo woman is married only once in her lifetime. The bride wealth paid to her father's lineage comes from the joint effort of her husband's lineage. There is no dissolution of her marriage legally or otherwise due to the death of her husband; the widow continues to be regarded as a functioning wife.

Consequently, by Luo customary law, a widow could never be legally remarried and no Luo man could have her as a wife in these circumstances (Osogo, 1987, p.34). Potash (1986, p.394) records similar findings thus:

A few men would want a wife who had been "used". The issue here is not virginity or a question of the return of bride wealth. Many have sexual experience prior to marriage today...rather the issue is the public character ...and the change in status from unmarried girl to that of a widow.

Statement of the Problem

The Luo levirate 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, of late, the custom has evoked a lot of heated debate in Kenya and has elicited varied reactions from different quarters depending on one's cultural and philosophical orientation. Nevertheless, no consensus has yet been reached on its definite value and relevance today. Instead, many of the existing literature on 'wife inheritance' carry grossly distorted views that hardly clarify anything, but complicate the debate on this Luo age-old custom even further. This study attempts to clarify these issues.

The custom, as it is today, seems antiquated, irrelevant and to have been seriously abused. The practice, it seems, "...has been corrupted to the extent that men take advantage of widows and squander and plunder their wealth ...and there is no proper guardianship..." (Abuya, 2002, p. 97). The levirate in its current practise seems to work 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. Dull and 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 and challenge the outmoded facets that negatively impact the individual person and the entire society; 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 and in light of Existentialist Philosophical perspective that the study set out to examine the impact of the levirate custom on the Kenyan society.

MATERIALS AND METHODS

This study was a qualitative type of research. It utilized both primary and secondary data. The former were collected through informal but in-depth interviews, commonly known as the Socratic Method in Philosophy and questionnaires. These were conducted in the five divisions of Homabay District, namely Asego, Rangwe, Riana, Ndhiwa and Nyarongi; with populations of 76778, 76263, 47968, 43231 and 41300 respectively, according to the 1999 census. The respondents were selected from the following group of people: 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 later following 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 (journals and newspapers). The main books were those on widows, levirate custom, freedom existentialism and other related literature.

The study was essentially considered in the light of philosophy as an academic discipline. As such, a number of methods were employed in the study. They include 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 our findings.

RESULTS, DISCUSSIONS AND WAY FORWARD

The findings of the study revealed that the levirate custom indeed has far reaching implications not only for the individual widow and Luo community but also for the entire Kenyan society.

The Individual and Society: An Existentialists' Perspective

Existentialists contend that man is a social existence. Human reality, for them is that of being-with-others. Man has to deal with others in the frame work of social reality. He is born into a society, which gives him the existing modes of communication (Mrinal, 1990, p. 524). Existentialists thus accept both the individual and society; however, according to them, there is an eternal hostility between them. Man exists in the society and though there is an enmity between him/her and society, man cannot exist independently of the society. He/she is born into a society and has to live with other people. However, he/she is to approach the world and other human beings as an individual person. He/she has a unique role in choosing any course of action. This means that every man has freedom.

For Heidegger, man's consciousness is of himself developing in the context of mutual recognition in the society. —Man is primarily a social being, a being-with-others! (Mrinal, 1990, p. 313). Man's *everydayness*, he says, makes him an undifferentiated-self, lacking individuality and personal decision. He is the inauthentic self, the group self or the public self and exists as part of the social existence in which the self is dispersed falling into anonymity and depersonalization. The anonymous individual, who is submerged into the crowd, is susceptible to *publicness*, the existential character acquired by exchanging of personal self for a public one. Here, the individual accepts and conforms to public opinion and socially established standards, thereby withdrawing from responsible independent thinking, decisions and commitments based upon his own personal choice (Mrinal, 1990, p. 350). This is typical of the traditional Luo community, where many people would rather hide behind the anonymity of the crowd/community and retreat into social structures when the roll call of accountability is read.

The Luo widow has many possibilities, but in the character of being-with, the existence of the public self, she has resigned her right to project these possibilities for herself. The possibilities are disposed of by the public instead of by oneself. These do not become one's own responsibility. In such a case, the power to determine one's being does not belong to oneself and thus the self of man is not a personal self. It is the self of the anonymous public (Mrinal, 1990, p. 315). Many Luo widows live such impersonal lives, in which they do not have to make personal decisions but rest in the 'peaceful abode' of the anonymous crowd.

Traditional Luo Mindset and Existentialism

The traditional Luo community, in which the levirate custom was born, was communalistic in nature. Kwame (1987, p. 208) explains:

Communalism is the doctrine that the group constitutes the main focus of the lives of the individual members of that group, and that, the extent of the individual's involvement in the interest aspirants, and welfare of the group is the measure of that individual's worth. This philosophy is given institutional expression in the social structures of African societies.

Traditional Luo society thus puts more stress on the group than the individual, more on solidarity than on the activity and needs of the individual, and more on the communion of persons than on their autonomy (Senghor, 1971, p. 4). In fact, the society was more important than the individual. Communalism held a most significant place in Luo social thought. The community upheld a kind of collective thought system or —collective consciousness (Hollis, 1994, p. 114), in which decisions were collective property of all the individuals of a culture holding collective values. Indeed the communal values tend to submerge the individual personality within the collectivity. The Luo communalistic mindset is affirmed by marriage as monogamy and emphasized by polygamy and levirate custom as institutions.

The Luo thought system promotes a kind of group mindset and unanimity in social and moral spheres of life. Individuals submit to communal thought or world views; a collective consciousness which entails uncritical acceptance of traditions, such as the widespread slavish submission to the levirate custom, most of which are irrelevant to the struggle for liberation (Imbo, 1998, p. 46; Chukwu, 2002). The situation of the widow is encased within such a collective thought pattern where the community is advocated as base of the being of a person. Mbiti's (2002, p. 109) aphorism, —I am because we are ..., is a more direct claim to the primacy of the community over the individual as the basis of African (Luo) social theory. This cultural thought system is a strong epistemological base for communalism and African Socialism upon which the Luo levirate custom was founded. This, according to Mbiti (ibid) places emphasis on the social good and on the unity of the group over the free agency and freedom of the individual. The African individual person is inconceivable without bringing into perspective the whole extended family. The affirmation of the individual is through collective and communal identity. The widow is regarded as —our wife and a property of the community to be taken over by the surviving members (Mae, 1999, p. 85). In light of such a mental structure, many

Luo widows live under the cover of anonymity, perceiving themselves as predestined to contract the levirate union. They uncritically adhere to the cultural belief and practice of the custom.

Existentialists, on the other hand, emphasize individual existence and thought over and above the so called folk or communal thought. They contend that the individual must rise above collective participatory thought system and assert his/her own existence. Man should strive for his/her authentic self in every situation, irrespective of what culture demands. The individual Luo widow should therefore break loose from the social framework and free herself from the chains of social or corporate thinking. She should exist by paying attention to her being-oneself. Her choices and actions have to be determined by herself and not the community; they must be based on personal values. As a free being, she must transcend the bounds of collective thought so as to realize her authentic existence. She must embrace a subjective morality and shun the collective morality advocated by the Luo society.

The widow is set free for individual thought process by embracing existential consciousness which seeks freedom, independence or autonomy and better existence for the individual person (Odera, 1987, p. 61). She should shun the traditional collective thought system whose conventional values and morality inhibit, rather than encourage individual freedom and growth (Barry, 1983, p. 52). The widow is ultimately free to think, choose and act however she wishes. She must stand out as an individual in her thinking and actions. She must not succumb to being what the public wants of her, but strive to be her authentic self. Individual thought opens avenues for individual development and advancement.

The Impact on the Widow's Individual Growth and Development

The levirate custom has been used by the Luo to the disadvantage of women. As a socio - cultural practice, it subjects women to subordinate status to that of men. It further undermines their full participation in the development process.

The custom, as it stands today, does not contribute significantly to the development of the widow. In most cases it is a burden and an impediment for her development. Many widows find the levirate custom too costly and too demanding. Maintaining *levirs* has become too expensive, at least for most widows. In fact, "...nowadays being taken over does not help the widow; rather, it puts a big financial burden on her..." (Mae, 1999, p. 94). This has relevance for the well being of the widow and her children and implications for their growth and development. More often than not, it jeopardizes the widow's financial future. Many *levirs* today simply exploit the resources of the bereaved family and plunder everything, leaving the widow and her children destitute and dejected.

When the *levir* is a more distant agnate or a "commercial inheritor" he may be expected to have only a limited interest, if any, in the deceased's family, but what of a closer agnate, the brother of the deceased? Here we need to distinguish between the ideal and the praxis. As Potash (1986, p. 61) explains:

Luo believe that brothers should help one another, and men do regularly provide assistance in ... helping with bride wealth payment. But there are also strong competitive and individualistic tendencies in Luo culture. Thus it is regarded as a good thing if a man helps his brother, but men are not really blamed for concentrating their resources on building their own families...*levirs* are usually married and concerned with the growth of their own families.....

The modern economic conditions have exaggerated the competitive tendencies between brothers, many of whom are unable to sufficiently provide for their own families. The main responsibility for economic support therefore rests with the widow herself. The widows spend a lot of family resources maintaining the *levirs* who are there to loot and quit, after even infecting them with the virus which further impedes the widow's growth and development. They become sick, unable to work and a lot of resources spent in medication. The custom therefore undermines the widow's individual growth and development. It is only in freedom that man can develop himself authentically. Since the levirate custom tends to invalidate the widow's freedom, creativity and inventiveness, it hampers and undermines her personal growth and development

The Impact of Levirate Custom on 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. We pursue them further. It is now clear, from the foregoing postulations, 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 (GOK/UNICEF, 1992, p.32; 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 succumbed to the demands and went 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. As Odera (1992, p.

68) contends, —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. However, 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.

Impact of the Luo Levirate Custom on the Kenyan Society

Does the Luo levirate custom have any bearing on the larger Kenyan society? Or, are its effects limited to the Luo community alone? Some people argue that the custom is a Luo issue and not a Kenyan affair; therefore it has no implications for the Kenyan people beyond Luo land. This argument is faulty and cannot survive critical analysis. The Luo society is a miniature of Kenyan society, it is a smaller part of the larger Kenya and what affects the part affects the whole too. The levirate custom therefore bears directly or indirectly on the entire Kenyan society. The researcher thus reached out to find out whether Luo levirate Custom actually affects the Kenyan nation in any way. The findings were as presented in table 1.

Table 1: Does the custom affect the Kenyan society?

Response	Frequency	Percentage (%)
Yes	71	59.2
Somehow	12	10.0
No	35	29.2
I Don't know	02	01.6
Total	120	100

The custom undermines not only the country's democratic progress; it also throws cold water on her campaigns for gender equality and women's liberation. As already ascertained, the custom perpetuates the oppression and debasement of the female folk. This particularly, has no place in the contemporary Kenyan society which has made an option for affirmative action so as to uplift the dignity and place of women in the society.

The levirate custom also impacts negatively on the country's development index. By undermining the freedom, inventiveness and consequently the development of the individual widow, the custom hinders the country's industrial and technological advancement. Its links with the spread of HIV/AIDS makes the custom lead to loss of resourceful manpower. The custom spurs the spread of disease and has led to increased AIDS related deaths. This robs the country of skilled and energetic men and women who are important resource for national development. This subsequently slows down the development and industrialization progress of the country.

The custom also exacerbates poverty, not only in Luo land, but in the entire Kenyan nation. *Levirs*, most of whom are lazy and don't contribute much to development, exploit the resources of the deceased's family, leaving them poorer than ever. Besides, where it leads to HIV infections, a lot of resourceful personnel and family bread winners are lost to AIDS. A lot of resources are also spent caring for orphans, and the jobless orphans are often a security threat in the country, scaring away potential investors. In this way the custom undermines development of the entire Kenyan society.

The Implications of Existentialism for the Levirate Custom

Existentialism has many implications for the Luo levirate custom. Its contentions may help enhance discipline, order and sanity in the custom. It becomes more liberal and respectful to the individual's freedom and dignity. As a humanist philosophical movement that advocates for freedom and responsibility of the individual human person, it looks at the Luo widow and provides a message of hope for improving her existential condition. The philosophy that advances the course of individual freedom, and views freedom as man's birth right, bears heavily on the Luo custom (Kasyoka, 2006, p. 149). What is at stake in the levirate custom is human freedom and responsibility.

Existentialism, first and foremost, challenges the very foundations of the levirate custom. By emphasizing on individual existence, it shakes the pillars of the Luo traditional society, that is, corporate existence (egalitarianism or communalism), in which the individual was swallowed up into the community and the interest and welfare of the community took precedence over that of the "faceless" and "insignificant" individual. It is on this basis that a Luo woman was referred to as *chiwa* (our wife), and bound to be taken over in *levirate* union by the surviving members of the lineage upon the death of the husband. The same reason made it a brother's obligation to 'take care' of the deceased's widow. Existentialism elevates the position and dignity of the individual Luo widow over and above that of the crowd. The consciousness of the widow must not be sacrificed on the altar of collective participatory thought system. Rather, as a free, autonomous and self-determining being, she must be able to choose her own lifestyle. Existentialism challenges the Luo widow to take charge of her life and be actively involved in forging her own destiny (Kasyoka, 2006, p. 122). The widow must step out of the collective thought pattern in which her situation is encased, and begin to assert her own individuality and autonomy. To do this, she must distance herself from the crowd or the mass-man which is —... a collection of individuals who retreat into social structures whenever the roll call of accountability is read (Romanynshyn, 1974, p. 205). She must develop a personal worldview and make personal choices in accordance with her existential situation.

The Luo widow, as a person, is an open possibility. She is in the process of becoming and is capable of becoming whatever she wants to be. She has many possibilities, many alternatives to choose from, countless ways of living her life and making sense of her existence (Kasyoka, 2006, p. 46). The widow's "essence" and lifestyle is for her to make. The burden of freeing herself from oppressive customs is on her. This is a message of hope and inspiration for Luo widows, who come to the realization that things need not be what they have been or are; they can be changed. The change must, however, come from the individual herself. The widow must not sit back and wait for outsiders to change her situation.

Existentialism advocates that culture respects human reality, which is free. As Javier and Eugenio (1992, p. 90) contend, "...we are born free and free we should always be." The Luo widow is a free, autonomous and self determining person who, in freedom, determines her destiny. Kierkegaard (Stumpf, 1966, p. 444) for instance, gives the freedom of choice the most important place in man's life. For him, freedom of choice is the mark of the truly existent individual. Such an individual is set apart from the crowd. The Luo widow should therefore disentangle herself from the untenable dictates of the community and make her own choices in accordance with her existential situation. In the context of advocating for freedom of personal choice with no fixed structures within which one has to fall. The school challenges the deterministic and predetermined elements of the Luo levirate custom which undermine the widow's freedom. Existentialism therefore presents a means for struggle against the dominant ideology of the Luo that, —*Dhako nyaka ter* (a woman must be taken into levirate union). With a lot of passion, the school set up a paradigm that would allow the Luo widow to assume control of her self in the context of freedom and self determination. The widow is challenged to assert an authenticity which eventually will express itself as a radical rejection of debasement and rebellion against the rationality of domination by the male context of humanity of the Luo community.

The levirate custom should uphold and cherish the widow's freedom. It should be a matter of personal choice. One must not be coerced into the union against her own informed free choice (Abuya, 2002, p. 97). The Luo widow must know that she is free and what matters is that she chooses for herself, not that she chooses the predetermined, levirate custom. Existentialism attempts to sensitize the widow on her individual freedom and the need to avoid dull conformity by transcending the obsolete facets of the custom that undermine her individual freedom. She must reject all ideas of conformity that would make her oblivious of her freedom.

The widow should therefore face her freedom. Though many individuals fear to acknowledge their freedom, for existentialists, it would be better for the widow to suffer the despair and anxiety which accompany her consciousness of freedom than to be secure and comfortable in the transient happiness of an uncritically accepted set of crowd-driven "reasonable" values (Mrinal, 1990, p.211). Luo widows should desist from defining themselves in terms of a general concept of "men - together". They must emerge out of the crowd and assert their individual existence and freedom. In keeping with the existentialist contentions, a widow needs to strive for a personal essence and move a way from communal-participatory essence. She has to struggle to come out of the communal enslavement and discover her authentic self (Masolo, 1994, p. 29). The existentialist contentions, applied to the levirate, would make it a more liberal and humane custom - more

respectful to the individual's human dignity and more beneficial to the widow. The Luo widow should recognize that she has the power and responsibility to liberate herself from the crowd designed end, so as to become the individual self. She must escape from sinking corporately into the untruth of the community.

The levirate custom as it stands today has been infiltrated by a lot of irresponsibility. Most *levirs* ignore their duties; many are irresponsible and keep multiple sexual partners. Many widows, too, are quite irresponsible. Existentialist's postulation that, "existence precedes essence", poses further implications for the custom in this regard. It introduces the concept of responsibility into human actions which are executed in freedom. Existence must precede essence because if essence was fixed, the responsibility would be lessened and a person would not be answerable for what she does. For, if one's fate or destiny is already predetermined, it is illogical to hold the person responsible for what she is or for the situation in which she is. Human freedom is thus freedom with responsibility. In fact, "...responsibility is the fruit of freedom..."(Javier & Eugenio, 1992, p. 80). Man has to bear the consequences of his choices. Existentialism therefore frowns at any kind of irresponsible behaviour and lifestyle. It injects a sense of duty and commitment into the levirate custom. It challenges *levirs* and widows to be more responsible in life. They must desist from irresponsible acts and control their sexual cravings; hence, lead a more dignified life. A sense of responsibility will enhance respect for the human dignity and curb the abuses of the levirate custom. A custom that cherishes responsibility does not entertain laziness and utilitarian tendencies which are evident in the current practise of the custom. Widows and *levirs* must be committed to each other and responsibly execute their duties. They must provide food, shelter, school fees and other needs to their families. A responsible *levir* will not abandon his legal family. Instead, he will work hard and continue providing for it.

Responsibility goes hand in hand with self-reliance, which has further implications for levirate custom. Existentialism advocates that an individual human person should be self-reliant and independent, able to stand on her own against her future. The widow should strive to be self-reliant and able to be the navigator of herself to her destiny. She must strive to gain independence from the male folk and be able to stand on her own without leaning on a *levir* for survival.

Critics think that existentialism does not admit of the existence of any other self than the individual person. But on the contrary, existentialism is opposed to any solipsism (holding that I alone exist), which actually is the problem of Descartes' *Cogito ergo sum*, because existence, which is the relationship with other beings always extends beyond itself towards the being of those other entities. It is transcendence (Kasyoka, 2006:27). The critics' notion is thus mistaken. Existentialists contend that an individual is born in the society and he realizes his own existence by breaking himself free from the society. If there is no society, the individual cannot realize his own existence. Rather, as Kierkegaard concedes, "...an individual exists as a being-with-others!" (ibid, p. 149). The Luo widow is born and exists within a given society from which she must therefore liberate herself. She must also care about the welfare of others.

The foregoing indicates that an individual widow and *levir* have responsibility towards the larger society. In the context of social responsibility, they become conscious of the social impact of their conduct within the levirate union. HIV infected individuals would therefore

uphold moral constraints and desist from deliberately spreading the virus to other members of the society. Thus, a HIV positive widow and *levir* would refrain from entering into any sexual union with other persons as this would injure them. A person would rather lead an authentic life in the spirit of social responsibility than plunge into the traps of death. They would also refrain from indulging in careless and indiscriminate sex which would complicate their viral load status and lead to earlier death. Responsibility would help them prolong their lives so as to continue supporting their children.

Existentialist contentions on human freedom and responsibility can also promote responsible parenthood in the levirate custom. In the current practice, *levirs* do not care about the number of children they beget with widows, irrespective of their ability to support them. Many *levirs* are mere genitors and widows mere birth giving "machines". The upbringing of the children is solely left to the widow. Parenthood is, however, not a mere biological function. Responsible as they have been for the children's conception both the *levir* and the widow must likewise be for their upbringing. Neither of them should shirk this grave moral obligation. Responsible parenthood means the knowledge and respect for the biological process involved in the generation and nurturing of human life. However, as regards the tendencies of instinct or passion and in relation to the levirate custom, responsible parenthood means that a *levir* must have sufficient self mastery to enable him subject these tendencies to the control of reason. He should not be carried away by the impulse of a disordered concupiscence (Javier & Eugenio, 1992, p. 84).

The Luo levirate custom is today characterized by a high level of unfaithfulness. Both widows and *levirs* often have multiple sexual partners. This further complicates the already bad situation of HIV/AIDS pandemic. Existentialism offers some hope. In the light of Gabriel Marcel's concept of "fidelity" (Mrinal, 1990, p.407) those who enter into levirate union should remain faithful to each other. The *levir* and the widow ought to establish a friendly relationship, what Martin Buber calls the "I - Thou" relationship; in which the dignity of each partner is upheld; and, in which according to Marcel, each is present to the other and promises to be with each other always. In such relationships the intimate being of each is present to the other. This implies that the *levir* and the widow being intimately present to each other in fidelity of love and friendship (Mrinal, 1990, p. 412). The partners are to be authentic to each other. This would help solve the problems of infidelity in the levirate custom

CONCLUSIONS AND RECOMMENDATIONS

From the study findings and discussions in this paper, it was established that the Levirate custom has many impacts not only on the individual Luo man and widow but also on the Community and the Kenyan society at large. The study established that the Levirate custom violates the widow's existential freedom as a human person by denying her right and freedom to decide and design her own future and destiny. It thus undermines the global concerns for the liberation of the female folk and gender equity. The custom hinders the development of the widow and the Kenyan society and puts a lot of financial burden on her. It also spurs the spread of HIV/AIDS and impedes its prevention, control and management. In effect, therefore, the custom exacerbates poverty which has already reached worrying levels in the Trans Saharan Africa. For the Luo community to emerge from this self destructive path, it must become realistic and cognizant of the changed

existential circumstances and the challenges that the contemporary man faces. It must also admit that the levirate custom, as a cultural phenomenon, is never static; it has to continually evolve and develop in order to respond to the emerging issues and needs of man. Finally, it is also evident from the foregoing postulations that, the levirate custom has many benefits to get from the existentialists philosophic contentions. These should be entrenched into the custom so as to make it more relevant to the contemporary society.

The study therefore recommends that Kenyans should intensify the campaigns against the repugnant and oppressive aspects of the custom in the entire society. These campaigns need to be carried by the members of the community and should be culture specific. During the campaigns, the available options or alternatives should be pointed out for the widows.

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BIO-DATA

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