

A Critical Analysis of the Functionalist Arguments for the Levirate Custom among the Luo Community in Kenya

Abong'o Ngore Vitalis (Corresponding author)
Department of Social Sciences, Philosophy & Religion and Community Development
Maasai Mara University, P.O Box 861 Narok
E-mail: abongovitalpubl@gmail.com

Abstract

The recent debates and campaigns against the Luo levirate custom have tended to castigate the custom and to focus mainly on its demerits and abuses. However, the custom had many important functions and has been sustained mainly by the values attached to it by the people. However, with the changed context, coupled with the wake of democratic values, the upsurge of HIV/AIDS and other existential challenges, the custom has become a controversial issue today. Arguably, it undermines the very ideals it was thought to promote. The purpose of this paper was to examine the philosophical foundations of the levirate custom among the Luo community of Kenya and precisely to give a critical assessment of the functional values attributed to the custom in the traditional Luo society. This study was based on a critical review of existing literature on the Levirate custom among the Luo in Kenya. The results indicate that the Luo levirate custom has been sustained by the functional values attached to it by the people. However, it was also revealed that the custom no longer fulfils a number of the said functions. The initial spirit, which was taking care of the widows and orphans, is still relevant today. The study further illuminates how a modification and moderation would make the custom contribute to the campaigns for the liberation of the female folk and the fight against HIV/AIDS pandemic.

Keywords: Critique, Functionalist Arguments, Levirate Custom, Luo Community, Kenya

1. Introduction

Levirate is the practice whereby a brother takes over the widow of his deceased brother so as to provide continuity, security and protection among other needs of the widow and her children (Kayongo – Male, 1991, p. 7). In the Luo society most widows are taken over in the levirate by an agnate of the husband. Nevertheless, as Potash (1986, p.53) observes, "Some of these may be nominal and purely ceremonial rather than real relationships". When a Luo man died, the custom demanded that one of his brothers cohabits with his widow. Such a man was called *Jater*. This was however not regarded as a new marriage. Instead, it was looked upon as a way of perpetuating homeostasis in the home of the deceased man. It was not strictly a marriage in the strict sense of the word. The widow remained the wife of her deceased or "graved" husband and hence a "wife of the grave." Levirate relationships were often characterized by separate residence and widows typically continued living in their deceased husband's home (Mae, 1999, p. 86; Potash, 1986, p. 44).

A widow was theoretically free to choose any man from within the lineage; however, studies reveal that the choice was not random. The clan elders ensured that men of bad reputation or whose lineages had a stigma and men of questionable characters and strangers were not chosen as *levirs*. According to Wanjiku (1997, p. 25), "...the clan was cautious not to let the widow introduce strange genes into it."

There were also incidents when the choice of the *levir* was done not by the widow, but by the husband before his death, as Gordon (1968, p. 130) notes, "...the widow was taken over by the person either named by her husband in his death bed or chosen by herself. Okumba (1997, p. 108) reiterates that "... a man on his death bed may summon a brother ... and tell him ... to take care of his wife and children." It is worth noting that even when the choice of the *levir* was her prerogative, the Luo widow had no freedom to disregard the custom, which was mandatory for all. It was a taboo to ignore it.

The levirate custom could either be practically or symbolically performed. However, whichever way, the custom was mandatory to all Luo widows. Let us now turn to the two categories of levirate unions.

In the Sexual or normal levirate the union is consummated by actual sexual intercourse with the widow. Here, the *levir* has to penetrate the widow just like in normal coitus. This is the most common among the Luo of Kenya. The practice among the Luo has been that widows of child bearing age were situated in conjugal relationships with *levirs*. Sexual interactions within such arrangements were socially sanctioned and approved. Under this type of the custom it was mandatory that the *levir* had sexual intercourse with the widow. Only then was it regarded as efficacious and legitimate. Okeyo and Allen (1994, p.20) elaborate:

Sexual intercourse had to take place between the widow and her *jater* on the first night together. If this failed to happen then the man would be accused of having broken the law of *ter* and subsequently was dismissed the following day.

Mbiti (2002, p. 147), Odaga (1995, p. 58), Cohen and Odhiambo (1992, p. 63), Mboya (1983, p. 123) and Ochola (1976, p. 106) all concur that the *levir* was expected to consummate the union. Hence the saying "*Nindo otero*

Jater kuma nyoro odhi tere mi ok otero (sleep overwhelmed a *levir* and he failed to perform the duty)". Men are despised on failure to consummate a levirate union.

In the second type, asexual or Symbolic levirate, the process was the same, only that, on the night of the union, there was no actual sexual union. The *levir* would only symbolically free his brother's widow from the supposed taboo. Due to the widow's prevailing condition, sickness or old age, the union was not normally consummated but only symbolically. These included the cases of *Pim* (old widows, past menopause), *joneko* (mad widows) and *jombiko* (lepers).

The case of *janeke* is obvious. It was not practically possible to tame or convince a mad person to do things the normal way; a close contact or union with *jambiko* could lead to the contagion and spread of the disease (leprosy), and finally it was a taboo to have sexual intercourse with a *Pim*. In Luo custom and belief, "...a woman's sexual life terminates with the onset of menopause. Consequently, the Luo fear intercourse with a menopausal woman. They believed that it could cause death" (Potash, 1986, p. 54). It is on these grounds that a Luo *pim*, *janeke* and *jambiko* were not subjected to actual sexual intercourse. The sexual taboo was eradicated symbolically. Women past child bearing age would symbolically share a room overnight with the *levir*, and be given token presents in place of sex the following morning (Cohen & Odhiambo, 1992, p. 68). Both Odera (1987, p. 82) and Ogutu (1995, p. 24) concede that such a widow could be given *ndawa* (tobacco) to graduate into Luo widowhood.

1.1 Statement of the Problem

The Luo levirate custom has remained resilient despite vicious campaigns against it. The custom, as a cultural phenomenon, could not have survived to date without any values attributed to it. However, the custom, as it is today, seems antiquated, irrelevant and to work against the very ideals that it was meant to serve. Consequently, with the existential challenges of the contemporary society, there was need to subject the functionalist arguments for the custom to critical evaluation so as to establish their validity in the contemporary Kenyan society.

2. Methodology and Theoretical Framework

The study was based on theory of functionalism as expounded by Emile Durkheim, Bronislaw Malinowski and Talcott Parsons. The theory states that "...functionalism is the analytical tendency within Anthropology that exhibits a particular interest in the functions of social or cultural phenomenon (Eliade 1987:448). Function here has to do with the general needs of societal organisms which a social phenomenon serves.

The theory served as a model for this study. This is because Luo levirate custom as a socio-cultural phenomenon had certain functional values. It served the needs of the Luo society as a whole and the widow in particular. The custom has been perpetuated mainly due to its functional significance. It served moral, psychological, social and economic functions in the Luo community. The functionalists theory was thus of great relevance to this study. It is a suitable model for my research.

The study used the historical method to trace the development and functional basis of the custom and the critical, rational and reflective philosophical methods to assess the viability and validity in the contemporary society.

3 The Functions of the Levirate Custom in Traditional Luo Society

The custom, as a cultural phenomenon, in its original form had its own significance and values. It served honourable purposes in the traditional Luo society. These are discussed in details below.

3.1.1 The Propagation Function

The levirate custom among the Luo, first and foremost, served the procreative purpose. It was for the propagation of children, a mechanism put in place by the Luo for continued child bearing. It catered for the widow's sexual and procreative needs (Mae, 1999, p. 85). According to Bohannan and Curtis (1971, p. 247), women tend to marry at a younger age than do men; consequently, they are more likely to be widowed. Thus, the levirate is for maximizing the widow's fertility potential which after all served the ultimate aim of marriage, that is, procreation. The custom was seen to advance the widow's reproductive concerns. Young widows were taken over in order to continue having children in the name of the deceased husband. Gordon (1968, p. 90), Mbiti (1981, p. 214) and Mae (1999, p. 56) are all in agreement that the levirate system, by which a male agnate on the same patrilineal side of the deceased enters her hut to raise up seed in the dead man's name, guarantees birth of children. The custom also served to raise children in cases where a man died leaving no children behind. The levirate was, therefore, such a treasured custom among the Luo, especially due to its connection with fecundity. Through it, human life was preserved, propagated and perpetuated (Mbiti, 1981, p. 100).

3.1.2 The Continuity Purpose

The levirate ensured continuity in many aspects of life in the Luo society. It ensured continuity of the marriage, family and the lineage. It also ensured continued stability (homeostasis) in the home of the deceased, there by maintaining family identity and stability in authority structure. Therefore, the main reason why the Luo

cherished the levirate custom was continuity of life. According Mae (1999):

The purpose of the levirate union is to continue the marriage of a widow and bring the family to full fruition in the name of her deceased husband. There is no dissolution of the marriage...due to the husband's death. The custom arises out of a social system, which ensures that each and every marriage maintains its identity and achieves its goals even in the face of physical death (p. 86).

The custom was a temporary adjustment made in the family relationships so that the deceased's family can maintain its identity and continue to grow and develop. It was significant as a means of continuing the family line. It catered for smooth continuity in the family when a husband died (Owino, 2002, p. 15). Through the custom, it was possible for the deceased's family to continue moving on. Maillu (1988, p. 13) elaborates:

It enabled the widow and children to continue staying at the deceased's home. This is the only home that the children have known... it makes it possible for the children and their mother to continue living here where their true home is.

The custom did not only save the family from disintegration. It also spared the widow and her children of the trouble of seeking a new family and adapting to the new environment. The arrangement facilitated stability after death and created homeostasis within the family and kept the family ties alive. It ensured continuity of the deceased's lineage as the children born in the union continued the genealogical lines of Luo families. According to Wanjiku *et al.* (1997, p. 107), the levirate maintained authority structure within the homestead and household. The *levir* provided structural services that a man offered in a homestead and protected the widow from abuse by other members of the community. He took up the roles of the husband and became the protector of the widow, her children and the entire home.

3.1.3 The Guardian Function

In traditional Luo society, it was the responsibility of the husband to take lead in controlling the life of his family as it appertained to socio-cultural, economic and political aspects. He was expected to instruct his family members on the requirements and the consequences of not observing some important cultural norms, traditions, practices and ceremonies. Furthermore, the husband was the owner of all the family resources like land and livestock among others. In this respect, he was expected to ensure that resources were properly utilized for the maximum benefit of the entire family (Owino, 2000, p. 18). The husband was to provide for the needs of his family including food, security and guidance.

The levirate custom was therefore initiated to provide guardianship to the families of deceased male members of the Luo community. It was these demanding duties and responsibilities expected of Luo husbands within their families that the society provided for the smooth continuity after their death through the levirate union. The custom was therefore seen to be very imperative in the context of perpetuating the duties and responsibilities of the dead husband. This was of great psychological value to the widow who experienced a sense of security in the arrangement. Within the custom, the *levir* performed all the duties of the husband (Mbiti, 2002, p. 144). His main duty was to shoulder the responsibilities of the deceased. He was regarded as the widow's guardian and was to protect, and support her and the children (Mae, 1999, p. 86). Tuju (1996, p. 18) reiterates that, "He was to provide security and guidance and not merely to have sex with the widow and squander any wealth left behind by the deceased which seem to be the case with professional inheritors today".

The levirate custom was meant to ensure that a bereaved woman was not left uncared for. It was one of the social security nets put in place in the traditional Luo society to ensure that the family was well taken care of by the clan and the community (Nduati & Kiai, 1996, p. 55). It ensured that no child could become destitute just because a father had died. Basically, the *levir* was a caretaker; he was to take care of the family, lest it disintegrates. The arrangement was meant to take care of her in the same way as her husband would have (Maillu, 1988, p. 12; Tuju, 1996, p. 18). The custom was also meant to comfort the widow and her children and to ensure that there was a bread provider in the home.

3.1.4 The Moral Function

The custom also had a moral function in the traditional Luo society. It helped to maintain moral integrity by minimizing sexual immorality in the society. The levirate custom made it possible for the widow who was still sexually active, to have a socially accepted sexual partner to meet the vital need. This ensured that there was no sexual immorality on the side of the widow. The Luo widow was to engage in levirate union with her in-law who was to have sexual intercourse with her as may be convenient to satisfy her sexual urge, so as to bar her from indulging in indiscriminate sex with men. It was to prevent the widow from going about with anybody. Abuya (2002, p. 96) confirms that "The practice ... helped to guard against *bayo* (roaming) on the part of the widow, to restrain her so that she was not everywhere roaming about". Essentially, therefore, the motive behind the levirate union was to prohibit sexual immorality on the side of the widow, that is, to avoid sneaking men into the home of the deceased husband. The system was very useful for ensuring moral purity in the traditional Luo society

(Oruka & Masolo, 1983, p. 59; Stamp, 1991, p. 837). The custom put the widow in checks and stopped her from roaming about and engaging in promiscuity with strangers. It thus helped to reduce "unfaithfulness" and prostitution in the Community (Mbiti, 2002, p. 143).

The custom thus helped to tame the sexual and physical movement of the widow. By "tying" her to a particular man (*levir*), the practice helped to check her movements to ensure that she doesn't abuse her perceived sexual freedom after the demise of her husband. This is what Ocholla (2004, p. 15) refers to as "The Taming Theory". The theory holds that the practice confines the widow, reduces her movements and creates some stable state of family life. The argument today is that this is of a particular importance in the era of HIV/AIDS pandemic. Arguably, in application of this theory, HIV-infected widow's movement can be tamed by the levirate union whereby she would kill only one man, her *levir*, and probably his wife. Thus for Ocholla, the levirate custom helps in the control and management of HIV/AIDS. The validity of this argument is, however, subject to critical analysis.

3.1.5 The Social Function

Levirate custom had many social functions. According to Oruka and Masolo (1983, p. 59), the custom served the function of fostering social cohesion in the Luo society. It enhanced and reinforced the traditional way of life of the community. This is where people shared a feeling of togetherness with strong emotional ties. There was a common feeling of solidarity, reciprocity and a maximum of co-operation between the peoples. Because there is a cultural identity among them, culture helps to serve as a system of social control in the sense that it provides sets of patterns for groups within a society for a proper behaviour and punishments for those who violate the norms of the society (Ademola and Odetola (1987, p. 42).

The levirate was a boost to the Luo kinship ties. It strengthened the kinship ties among the people by laying an obligation on the part of the widow to continue rendering services to her dead husband's descent group and also on the part of the husband's descent group to continue providing for the widow and her children. The custom not only continues the line of the deceased, it reaffirms the young widow's place in the home of the deceased husband. It helped to socialize the widow into the Luo society. The children that ensued from the union were used to show kinship solidarity.

Finally, in the levirate, further at work is the philosophical awareness of the African Luo that, "I am because we are and since we are therefore I am". The existence of the individual is the existence of the corporate; and where the individual may physically die, this does not relinquish his socio-legal existence since the "we" continues to exist for the "I" (Mbiti, 2002, p. 145).

3.1.6 The Ritualistic Function

The levirate custom also had a ritualistic function. Through it, the widow was ritually cleansed and freed of the spirits of death or death related impurities. It would be recalled that the *levir* was a ritual leader whose main role was performing rituals. As Abuya (2002) observes:

There are certain cultural expectations and requirements that a woman cannot satisfy on her own; hence, the need to have a *Jater (levir)*. Some of these are putting up a house/home. Culture requires that a man has to *chung'e* (stand in) such activities, that is, a home cannot be put up by a woman on her own.... The marriage of children, *kweche mag kodhi* (cultural rites in connection with seeds) i.e., rites related to sowing, tasting the first product of the farm, all required the presence of a husband.

These were ritually observed and required the presence of a man. The levirate served this purpose by ensuring the provision for the husband figure after the demise of the original husband.

4. A Critique of the Functionalist Argument for the Levirate Custom

As presented above, the levirate custom served a number of functions in the traditional society. Proponents of the custom base their arguments for the custom on these functions. Arguably, the custom has persisted to date because of its perceived functional values. However, it seems to have lost some of its practical significance with some outliving their usefulness.

The custom was initiated to meet the widows' sexual and reproductive needs. It was for the procreation of children. This was of particular relevance in a society that experienced high infant mortality rate and labour shortage. Through it, the effect of death was reduced and neutralized considerably through child bearing. However, this is no longer the case. The custom is no longer a sure mechanism for continued child bearing. It no longer necessarily affords widows the opportunity of continuing their reproductive career. With HIV/AIDS scourge reeling the contemporary society, the levirate has turned against the very ideals it cherished, "...that which was life propagating has become life destructive" (Owino, 2000, p. 19). A widow who is taken by a HIV-infected *levir* is likely to be infected and instead of acquiring life, in the form of a child, she is given death in the form of HIV/AIDS. She can only be sure that her *levir* along with the children she expects to have with him and

herself will all perish. Instead of reducing and neutralizing the effects of death, as it were, the custom today seriously aggravates it. The current practise tends to stop the flow of life. According to the Luo, "...anything that goes towards the destruction or obstruction of human life is regarded as wicked and evil (Mbiti, 1981, p. 98). Consequently, the levirate in this respect has turned wicked.

Furthermore, in the contemporary society, with varied existential challenges, having or begetting many children is no longer a virtue or an achievement to strive for. The custom cannot be imposed on widows for the procreative reasons since it no longer necessarily affords them the opportunity of continuing their reproductive career. Family planning, for improved quality life, is a force behind women's freedom today. A widow may decide to use contraceptives in order to defeat the procreative expectation of the levirate custom.

The main reason the Luo cherished the levirate custom was continuity of life, marriage, family and lineage. However, in the hands of the ruthless and irresponsible "professional inheritors" of today, coupled with the wake of HIV/AIDS scourge, the noble instrument for continuity has become a means of discontinuity. With the "sexualization", and commercialization of the custom, a culture of death has crept in. The widow is often at a high risk of contracting the deadly virus and die soon after the husband, leaving the family not only thrown into disarray but disintegrated. It often leads to the dissolution of marriage and discontinuity of lineages. The children are left dejected with no home to turn to. The custom is therefore currently detrimental to Luos and is incapable of preserving lineage purity and keeping strange genes at bay (Wanjiku, 1997, p. 25). Neither does it provide for the continuity of the authority of the husband and father in the family. Since the *levirs* are often absent from the deceased's home most of the days, they cannot guarantee or maintain an authority structure within the homestead.

Traditionally, the levirate was a means of perpetuating the presence of the male figure to take care of the demanding duties and responsibilities of a husband within a family. It provided guardianship, care and protection to the bereaved. However, this has since changed. Although a few kinds of aid are reported today, when they are analyzed, it is apparent that where assistance is given it is an occasional reflection of good will, rather than a formal duty. Basically, it is entirely up to the widow to fend for her children. There is no practical assistance which *levirs* offer in most cases. The economic burden of the levirate today is too much on the widow. Mae (1999, p. 93) concurs that:

The current practise of the levirate custom, far from providing care and guardianship to the widow and her children, puts a heavy financial burden on the widow, unlike in the past when the practice helped to gain protection for herself and her children.

Currently, being taken over, does not help most widows. *Levirs* hardly take care of them. Economic pressures today weigh heavily on brothers-in-law who are hardly able to feed their own families adequately. This, coupled with the fear of contracting HIV/AIDS, has made many unwilling to take care of widows. The task has since been left to professional inheritors who have no real interests of the deceased's family at heart. Besides, a *levir's* primary responsibility is to his own wife and children and he cannot support the widow socially or economically to the same extent as a wife. Most of today's *levirs* are poor and irresponsible individuals who are on the run from responsibilities in their own families. Majority of them are lazy opportunists who want to lead an easy and comfortable life without a genuine interest of the widow's family at heart. It is therefore illogical to expect such men to provide and care for the social and financial needs of the deceased's families. They become unnecessary burden to the widow. Sometimes when the widow falls sick, they run away without offering any nursing care or medication. The custom is in fact of little, if any, benefit to most widows today.

In the traditional society, because of their socio-economic and political status, there was need to house, feed and protect Luo widows whatever their age or condition. However, today many women are educated, have well paying jobs and are self-reliant. Many are hard working and can support their families without the purported help of the lazy *levirs*. Widows can therefore run their homes and take care of their families on their own.

The moral role of the levirate custom has not been sidelined in the degeneration facing the custom today. With regards to this function, the custom could be said to have outlived its usefulness. The current practise, in any case, spurs moral impurity in the society. The custom has lost its originality and meaning and is currently being used to justify moral decadence. It has failed to guard against "roaming about" both on the part of women and men. Many widows today just like their "professional inheritors" have multiple sexual partners and keep jumping from one partner to another, indulging in indiscriminate sex with strangers. The custom has been turned into an altar of sexual gratification, sexual indiscipline and lack of moral restraints (Owino, 2000, p. 19). Immorality, unfaithfulness and prostitution have gripped the custom today.

No community has maintained its strength after accepting to tolerate moral degeneration. Morality is the pillar of any society and once it collapses, the entire society is likely to crumble down, as Chinua Achebe (1988) once noted, "Things fall apart when the center cannot hold" (p. i). Contemporary Luo widows are rational and free beings who need not be physically or socially pegged to men in order to "tame" them. They are capable of employing critical thinking and exercising self control so as to desist from promiscuity. They should not let the desires of the flesh have the better of them. Levirate union is therefore, a practice which one can do without and still remain a moral Luo woman. Of primordial importance is to mould or tune one's epistemological mental

structure accordingly by thinking and choosing as an individual self and not as an insignificant part of the crowd.

The foregoing exposition indicates that the levirate custom, to a greater extent, no longer serves its social function. As Tuju (1996, p. 18) contends, "Levirate was one of those social security nets put in place so that no child could become destitute just because a father had died". But, today the custom actually, and in contradiction to this noble function, leads to many children becoming destitute by opening the avenues for HIV/AIDS to take away the life of the only surviving parent they have sooner than it could have happened. The custom no longer fosters social cohesion; instead, it ruins kinship solidarity and weakens kinship ties.

It is important to underscore the fact that the traditional view (of the largely patriarchal Luo community) of women as a moveable property of men has been overtaken by events. To view women as belonging to the entire crowd of the Luo community (clan) is untenable in the contemporary society which emphasizes the promotion of human dignity and rights, especially the liberation of the female folk. Looking at the widow as a "property" violates her human right and is demeaning to her dignity as a human person.

All said and done, it is admissible that the social functions of the levirate custom were quite noble and of great help to the widow and her children. In the context of the contemporary society, and in view of the current existential challenges, the social functions of the custom still remain beneficial and relevant to the contemporary widow. However, the aspects that undermine the dignity and the right of the individual person should be redressed.

Ultimately, the basis of the ritualistic functions of the custom is equally untenable. The Luo believed that a widow was made ritually unclean by the death of her husband and thus needed ritual cleansing, which was done through sexual intercourse with a *levir*. Through critical analysis, it is however clear that, the ritual cleansing of widows, whether practically or symbolically performed, would be unacceptable to the contemporary mind for a number of reasons: First, it undermines the dictates of reason. How does death make one ritually unclean? Furthermore, the "cleansing rituals" are not capable of purifying a human being. Sexual intercourse cannot, at least to the rational mind, ward off the said agents of death from the widow or clan as the Luo claim, least of all, by a mad man. Secondly, it is based on an unfounded belief of death which cannot pass the test of reason. The reasons given by the Luo society in support of the custom, for instance, the ritualistic function cannot be supported by scientific proof or logical arguments.

Thirdly, it merely seeks to appease the spirits of the dead. Conformity to the custom is ensured by the threat of being haunted by the spirit of the dead husband. It is to be rationally refuted that the dead have any reasonable existential effect on the living. The dead have no knowledge of the survivors and their spirit cannot act upon them (Mae, 1999, p. 51). Besides, the conformity is also based on unfounded fear of calamity. If a widow refuses to be cleansed or taken in the levirate, there is the belief that disaster will befall her dead husband's family or clan. There is no scientific proof of this so far. Fourthly, the practice undermines the dignity of human life and sexuality. It violates the dignity of the widow and tends to turn her into an object (or even worse, a dustbin) which is void of emotions and feelings and is only there to let into herself anything or anybody in the form of a man – sane or insane, healthy or sick – all in the name of cleansing an imaginary impurity. The *levir* on the other hand becomes the "cleansing tool" that may indiscriminately "cleanse" anything – widow or corpse. The custom does not respect human dignity and abuses human sexuality which is, as it were, sacred.

The fifth reason for rejecting the practice in its current form is that it increases the risk of "disease". The onslaught of HIV/AIDS has affected people of all parts of the world. Within Kenya, no one ethnic group can be singled out or stigmatized. All groups are affected. However, it is clear that the widow who is ritually "cleansed" by a mentally deranged man or a stranger (*Jakowiny*) could easily become a victim of the dreaded "disease" (HIV/AIDS), which is mainly spread through sexual intercourse. From philosophical and medical points of view, adherence to such custom would be untenable, especially in cases where fully fledged sexual intercourse is involved, since these *levirs* usually engage in indiscriminate "cleansing" rituals.

The commercialization of the levirate custom, the practice of hiring *Joter*, has reduced the custom to a mere "cleansing" affair rather than aiding widows. Sex has become the main focus of the ritual and it does not matter, then, who is being "cleansed", whether old, young, sick or dead. This is a perfect recipe for disaster because if sex is the focus, then precautionary measures will not matter at all, as it is the "cleansing" that shall be given priority - what is disheartening about this is that somebody must have sex at certain time in order for a given family or clan to be spared of the curse (*chira*). This makes the levirate a very repugnant and a lethal custom today.

5. Conclusion and Recommendations

In criticising the functionalist propositions for the continued practice of the levirate custom among the Luo people of Kenya, this paper settles for a moderate stance. The author does not advocate for total abolition of the levirate custom – as do the abolitionists – nor does it endorse the conservative view that it should be continued *in toto*. Rather, arguing that the custom has many functional values still relevant today, the author contends that the custom be freed of its abuses, the oppressive and repugnant elements and be continued in the modified form which is compatible with

the contemporary society. The study concludes that devoid of the abuses and the obsolete facets, the custom, with its many values is still beneficial to the contemporary widow and Luo society at large. However, it must not be mandatory; the widow should be left free to decide either to enter into the levirate union or not. To be true to the existential tradition, the levirate custom should guarantee man's right to choose his future, and not hand it to him in ready-made fashion.

The Luo should de-link the levirate custom – that is, the care of widows and orphans – from sexual intercourse. They should desist from laying unwarranted emphasis on the sexual aspects of the custom which have turned it into a mere platform for sexual gratification. To be noted are cases where levirate custom did not involve sexual intercourse.

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