The Luo Care for Widows (*Lako*) and Contemporary Challenges

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Thought and Practice: A Journal of the Philosophical Association of Kenya (PAK)

New Series, Vol.4 No.1, June 2012, pp.91-110

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http://ajol.info/index.php/tp/index

Abstract

This paper examines the Luo custom of caring for a 'widow' and for the home of a deceased husband, its rationale and some of its contemporary challenges. The paper maintains that this custom is still the best alternative available to the Luo *widow* and for the care of the *home* of one's deceased brother, especially in the context of Luo culture. However, it recommends a number of adjustments to the practice to discourage some of the abuses that are becoming prevalent in it, with a view to making it more amenable to some of the challenges of our time.

Key Words

Levirate, Wife Inheritance, Luo, Lwo, Kenya

Introduction

The Luo (Lwo) as a cultural group are found in South Sudan, Ethiopia, Kenya, Uganda, Tanzania and the Democratic Republic of Congo (Ojwang' 2005, 72). The Luo are a patrilineal group that practises *levirate* as a means of taking care of the wife and home of a deceased brother. The custom is called *lako* or *ter* in the Luo language. It is noteworthy that most patrilineal communities in Africa practice or used to practice levirate (Ojwang' 2005, 63-67).

Lako has in the recent past, particularly in Kenya, come under heavy criticism especially from some feminist activists, government administrators and academics. It has been accused of, among other

things, being anachronistic, a violation of the widow's right to freedom of choice to marry or not, treating a widow as property to be *inherited* by a brother-in-law, and partly being responsible for the spread of HIV/Aids. Many in Kenya believe that HIV/Aids cases are some of the highest among the Luo. This belief is reinforced by the numerous TV and radio programmes that highlight the effects of the epidemic in Luoland. Interestingly, when funding is available for HIV/AIDS intervention, the figures for the high prevalence of the disease in Luoland are disputed. The criticisms listed above call for a re-examination of the practice of *lako*.

Consequently, this paper examines the Luo custom of *lako*, its rationale and some of its contemporary challenges. It recommends a number of adjustments to the practice to discourage some of the abuses that are becoming prevalent in it, with a view to making it more amenable to some of the challenges of our time. It sets out by examining the institution of *lako*, where it interrogates the presuppositions of the institution and the practice of the custom. It then presents some clarifications of concepts associated with this custom. Next, it examines some contemporary challenges to the custom, before drawing some conclusions.

The Institution of *Lako* (Levirate)

Presuppositions of *Lako*

To understand the Luo institution of *lako*, one needs to appreciate two fundamental presuppositions on which it is based, viz.:

1. Mutual responsibility in society.
2. Immortality through one's children.

I would like to explain the second presupposition first. According to the Luo culture, the only person who is *dead* is one who dies childless. They say, *ng'at ma onyuol ok otho*, which means that whoever leaves behind children after physical death is not dead. The physically dead lives on in the presence of the children, and indeed performs some responsibilities in society that ensure the safety and prosperity of the children.

It is interesting to note that to the Luo culture, being alive and acquiring social status imply the fulfilment of social responsibilities. So, one who does not carry out such responsibilities is as good as nothing - socially worthless. Such a person is referred to as 'no person' - a human being with no social value. The Luo would say that 'N*g'ane to ok dhano*' which, in a literal sense, means 'so and so is not a person'.

Therefore, to the Luo, to live a meaningful life is to have children and to care for them. This is considered a sacred duty of everybody (Kirwen 1987, 59); but having children calls for responsibilities that go beyond physical death. The physically dead (spirits) still have responsibilities towards the physically living members of their families (p'Bitek 1986, 19). Thus it can be seen that through marriage and giving birth to children and nurturing them one is immortalized. And to the Luo, immortalization has meaning only within the communal setting where obligations are discharged (Kirwen 1987, 74, 78).

The first presupposition is related to the second in that the Luo realize that the continuity of society (humanity) requires procreation and mutual care for members. On its part, mutual care requires love which is one of the fundamental principles of virtually all institutions of the Luo culture. Love of one another is so important in the Luo culture that it is expressed in quite a number of rules of conduct. According to Okello (1996, 6), the Luo have 13 rules, of which two are as follows:

> *-Kik ijar ng'ato nikech ikiaye, kata nikech ojadhoot mopogore, kata nikech engi ng'ol moro*. (Do not despise any person because s/he is a stranger, or from a different ethnic/racial group, or because of any infirmity).
> *-Her jadalau kaka in iwuon kendo rit mwandune kod ngimane kaka mari iwuon*. (Love your kin as you would love yourself, and care for his property and life, as you would for your own).

According to Paul Mboya (1978, 26), the Luo have 14 rules of conduct, one of which is: "*Her owadu kata juogi mopoyi (juogi en wendo")*". (Love your kin or any stranger, be it a person or a ghost). Due to this principle of love, the Luo treat human life with the highest respect and dignity. This makes the killing of a human being a grave offence which automatically leads to social and psychological isolation. Even in self-defence, killing of a human being must be ritually cleansed; and even after that, it is 'very hard' for one to avoid psychological isolation. 'Woe unto him by whose hands human life is destroyed' seems to capture the feeling of dread at the prospect of terminating human life.

In the Luo culture love of a fellow human being, but more so a member of one's family, forms the basis of mutual responsibility which goes beyond physical life. The sense of mutual responsibility is founded on the feelings of empathy and sympathy, since the Luo seem to realize that people encounter problems at different times in their lives, and there is none who is immune to them. Anyone who suffers needs help from the rest of the community, and this realization is expressed in various Luo sayings, as indicated below.

Ero laki tar inyiero! (Your teeth are white, you are ever laughing!) This is said as a mockery to a person who seems to have no compassion for others; but no one can escape the ups and downs of life. Every dog has its day (Odaga 1994, 15).

Another saying that reinforces the same feeling is: "*Bende ka laki tar!* (So your teeth are so white!)" (Odaga 1994, 6). This saying simply means that 'misfortunes spare nobody'. It is a mockery to a person who never takes anything seriously. The following saying is even more vivid: *Ero tinde ileny, mit kachieng' moro ituo!* These days your skin is sparkling (you are feeling good), but one day, you may dry up (experience difficulties)! This means that "wheels of fortune are ever turning and changing for better or for worse for every person. No good fortune/wealth is guaranteed permanence" (Odaga 1994, 15; Mboya 1984, 205).

However, the two presuppositions we have explained are most meaningful within the family setting, which is the smallest unit of society. From the family, benefits can radiate to the rest of society and humanity. This brings us to the Luo institution of the care for widows which is based on a profound understanding of marriage and hence, the family. As Ogutu observes, marriage, the creation of the family unit, and death were "the hub of Luo morality, and is where it found its roots. Furthermore, the rituals relating to children, livestock, crop production, and even the lineage structure depended on the family unit" (Ogutu 1994, 13).

Lako is inextricably linked to the very meaning of marriage in the Luo culture, hence the aptness of Kirwen's observation:

> … a rejection of the levirate as a cultural institution involves, in fact, a rejection of African marriage systems entwined with a patrilineal corporate kin-group, since the two are fundamentally related (Kirwen 1979, 204).

The Practice of Lako

Lako as an institution stipulates that upon the death of a husband, his 'brother' takes up the roles and responsibilities of the deceased's 'home' including towards his wife (wives) and children; that is, he assumes the care of the deceased's 'home' (*dala*). The 'brother' who takes up the roles of the deceased is referred to as *jalako* or *jater*; and as Kirwen aptly puts it, the arrangement "is the cohabitation of a widow with her brother-in-law in which the brother-in-law relates to the widow as a substitute for her deceased husband" (Kirwen 1979, 3).

Jalako is a brother-in-law (*yuoro*) of the widow. He can be either the brother of the deceased, or a paternal first cousin, or a clan cousin (agnate), or an adopted stranger (*Jadak mocham musumba*)

(Kirwen 1979, 30; Wilson 1961, 120-122). All these would generally be referred to as 'brother' of the deceased. So, 'brother' in this context would be wider in meaning than its usual narrow meaning in English. For instance, in the Luo cultural universe, there are no cousins, but instead those referred to as 'cousins' in English are referred to as 'brothers' or 'sisters'. The Luo concept of brother is well captured by Gordon Wilson when he states, in reference to levirate:

> ... the levir, JATER, is usually a full brother, half-brother or close agnatic kinsman who stands to the dead man as brother. Occasionally a JADAK, or servant, who is well known to the family of the dead man, may be chosen by the widow. Her preference is always respected in this regard. She may choose anyone within the LIBAMBA[1] of her husband without opposition (Wilson 1968, 132)

Lako is a means by which the Luo attempt to cope with death and its adverse socio-economic and psychological implications, filling the gaps created by the death of a husband, thereby maintaining social normalcy as much as possible. It is therefore a means of checking the disruptive consequences of death. It ensures continued family stability by providing for the missed roles and duties of a dead husband (Kayongo-Male and Onyango 1984, 70; Nyarwath 1994b), and more so where there is still a strong gender role ascription. In this practice one sees the outworkings of the mutual corporate responsibility upheld by the Luo culture.

The practice of *lako or ter* is so central to the Luo culture that it is taboo (*kwer*) to violate it. Its violation is believed to bring serious misfortunes, *chira* (Kirwen 1979, 36, 177; Ogutu 1994, 12-13; Mboya 1983, 125-126; Okello 1996, 18; Nyarwath 1994a, 228; Odwesso 1994).
However, to understand the institution requires an appreciation of the Luo conception of marriage and death. Kirwen succinctly puts it across through his Luo mouthpiece, Riana:

> It is through our marriage rites that the adult world is entered, controlled, shaped and lived. It is the central institution that sets the tone for our whole society. Without marriage, we would be a people without roots, without stability, and without responsibility. We would be little better than animals that breed promiscuously. And this is why marriage is the concern of more than just the bride and the groom - it is the concern of the lineal families of both partners (Kirwen 1987, 60).

In the light of the fact that the institution of *lako* makes sense only in the context of Marriage, Riana goes on to explain the Luo understanding of marriage:

> You see, when people marry, there is the unspoken agreement that this relationship will survive his untimely death. That is, the man's family pledges to carry on the marriage by caring for the wife and children in the event of the husband's death. This is a very sacred and essential part of our marriage. This is why the families of both the bride and the groom are very concerned that the partners are properly selected and carefully scrutinized prior to any agreement for marriage.

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[1] *Libamba* is a Luo word for a patrilineal lineage that traces its ancestry four to seven generations back.

> Indeed, it is through marriage that one becomes an adult, that one takes responsibility before the community for passing on the gift of life, the greatest gift that one has received from the great *Kiteme*[2]. Life is not a personal possession that one can manipulate for one's own purposes. No, life is a shared reality received from the ancestors to be passed on to the next generation (Kirwen 1987, 59).

In the light of the foregoing explanation, it should be clear that to the Luo culture, marriage is intended to be an everlasting contract whose purpose and function extend beyond the physical death of one or both of the spouses. To the Luo, therefore, the Western or Christian marriage vow of fidelity and loyalty by the spouses to each other 'till death do us part' (Matt.19:6; 1 Cor.7:8-9, 39) is a hollow slogan (Kirwen 1987, 60-70; Kirwen 1979, 175; p'Bitek 1986, 19). This is because to them, physical death does not end one's life, and human life is a social reality which has meaning and value only in the context of a social network of rights and duties:

> For the Luos, a person physically dead is still considered alive, present, and capable of influencing the living. These relationships are seen to continue on intact through the barriers of physical death (Kirwen 1979, 34).

The above position has been ably and forcefully explained by Okot p'Bitek, one of the great African conceptual analysts:

> Man cannot, and must not be free. 'Son', 'mother', 'daughter', 'father', 'uncle', 'husband', 'grandmother', 'wife', 'medicine-man', and many other such terms, are the stamps of man's unfreedom. It is by such complex terms that a person is defined and identified (p'Bitek 1986, 20).

All the terms above imply duties, rights and privileges that one owes and is owed in society. The society comprises both the visible and invisible members. p'Bitek therefore asserts of a person: "In African belief, even death does not free him" (p'Bitek 1986, 19). In other words, the above relationships do not end with death. One does not cease to be a mother, father, brother, or sister, by death. They are everlasting relationships once acquired; and so are the responsibilities that they entail (Kirwen 1987, 71, 73; Kirwen 1979, 168, 202).

The Luo did not married for companionship; may be these days they do - in fact, none of them was lonely! They married as a sacred duty in order to partake in life and the act of passing on the gift of life by which one is immortalized. Full life implies carrying out social responsibilities; but it can only be realized within the institution of marriage, where one shares in the procreation and nurturing of life (Kirwen 1987, 59).

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[2] *Kiteme* is a word for the Creator-God in the language of the Zanaki adopted by the Luo of North Mara District in Tanzania.

Since, to the Luo, life is a social reality, it implies corporate responsibility. Therefore, everyone has a duty towards ensuring the continuity of human life, which includes the family lineage and the human race in general. Kirwen has observed:

> The custom for widows must be seen as a temporary adjustment in the marriage of a deceased brother to ensure that his family achieves its goals as if he were alive…. Moreover, if one refuses to care for a brother's wife, it shows that you do not love your brother. Such a breach of trust could cause the deceased to put the evil eye on you and bewitch you, seeing how you have treated his wife and family unjustly (Kirwen 1987, 64-65).

Therefore, the Luo institution of *lako* is based on fundamental principles of love and respect towards one's kin. These principles are the basis for the presupposition of mutual responsibility, and the virtues of empathy and sympathy. The principle of love and all that it entails continues beyond one's grave (Okello 1996, 20). Since physical death (of a husband) brings 'loss' in the family, the bereaved wife and children experience 'lack' which in most cases brings suffering, and the Luo culture through the institution of *lako* intended to provide a 'surrogate' or a 'substitute' for the deceased, to carry on with the roles and duties he used to perform. The culture would discourage the possibility of seeing a member suffer without extending a helping hand. So, *lako* is an institution of care, or was intended to be so.

The two principles of love and respect have been well articulated by both Kirwen and Okello. Kirwen writes:

> The levirate union arises out of a covenant, a solemn pledge made between the bride and groom at the time of marriage by the lineage of the groom. It is part of the mutual agreement, based on love and respect, to do all to continue the family of the groom if he should be removed by death (Kirwen 1979, 205).

Okello writes: "*Mise mar chike Joluo ka anyalo wacho eyo machiek to en bedo gi luor kod hera ma kelo dak eyo ma ochanore e kind oganda* [The foundation of the Luo custom (rules and taboos) are respect (*luor*) and love (*hera*) that bring good and organized living among a people]" (Okello 1996, 7). In reference to love as the foundation of the institution of *lako*, Okello writes:

> Mogik chikni chuno ni kar ng'at ma otho nyaka riti maber. Ka ng'ato otho to oweyo dhako kod mwandu, to owete ng'atni nyaka ne ni dhakoni gi nyithinde kod mwandune duto nyaka rit maber…. Gima duong' e wach ter ok en riwruok kod chi liel, to en rito chi liel gi nyithinde kod mwandune mondo kar ng'at ma othono kik kethre kata nyithinde kik thagre (Okello 1996, 7).

The quotation states that the principle of love requires that the family of a deceased man must be properly taken care of. If a man dies and leaves behind a wife and children, then the brothers of the

deceased must ensure that they are well taken care of. The most important thing in the institution of *lako* is not the sexual intercourse with the widow (*chi liel*) but to take good care of the wife, children and property (wealth) so that the family of the deceased prospers and the children do not suffer.

Conceptual Clarifications

Before we look at some of the challenges to the institution of *lako* that have been advanced as criticisms against it, I would like to make some clarifications of the concepts that have been associated with it. This is necessary because of some conceptual confusion which has arisen in the debate on the institution.

Lako/Ter

Lako or *ter*, in DhoLuo (Luo language), literally means *rito* (care or protection). It is from the verb *lago* (to care or provide for). As an institution, *lako* (*laku* in Acholi) or *ter* means assumption of the roles of a deceased husband, hence caring for the family of the deceased (wife/wives, children and property). Whoever assumes the roles is referred to as *jater* or *jalako* (*lalaku* in Acholi). So, *jalako*, as Odera Oruka puts it, is at best only a guardian of the family: he has no right whatsoever to help himself to any of the property of the deceased or any member of the family of the bereaved (Oruka 1994a). Therefore the guardian cannot claim anything from the home of the deceased; not even the wife, the children or property (Ojwang' 2005, 65-67).

Chodo okola and *Lako*

There seems to be some confusion between the concepts *chodo okola* (or *golo chola*) and *lako*. For instance, in the following citation, the concepts are used in such a way that one can easily think that they mean the same thing:

> … finally *Lago/Tero mon* or *chodo okola/kode* or *Golo Chola* (widow cleansing often including levirate union and assuming agnate responsibilities), *Duoko Osuri* (returning the roof stick), and finally, *Loko udi* (building new houses for the widows). Widow cleansing has turned out to be the most abused and scoffed at ritual and yet it was the most elaborate and solemn ritual among the Luo (Ogutu 1994, 12).

The following quotation is another instance in which one can discern the confusion:

> *Ter/Golo Chola* (widow cleansing and levirate union) is another ritual that takes place after burial… For the first time the act is known as *chodo kode* with the act being purely a cleansing exercise (Mitullah 1995, 39).

Okola is a string made from dry banana stem. *Chola* is the state of a person whose close relative has died or who has committed a taboo. In the case of the death of a close relative, the state of *chola*

used to be expressed by wearing a strip made from the skin of a ram referred to as *dend chola* (Wilson 1961, 121; Wilson 1968, 131). Nowadays people only talk of the state of mourning without wearing the *dend chola*. Some people consider the state of *chola* ritually unclean (Gunga 2009, 169; Odaga 2005); but that is controversial. *Chola* or *tora* is definitely a taboo state, which simply means a state 'marked off', 'under ban' or 'prohibited'. *Kode* is a tassel made of bark cloth mostly worn on the wrist by a person whose spouse has died. *Okola* was tied by a widow around her waist as a sign of mourning and hence an indication of being under ritual prohibition (*chola*). Therefore *chodo okola* (cutting or breaking the banana string) or *golo kode* (removing the tassel) was part of a cleansing rite that marked the end of mourning and the beginning of a new life with a surrogate spouse. This was the last funeral rite that also ushered in the institution of *ter/lako*. One only goes through the ceremony inaugurating *lako* once in a lifetime. A widow may have subsequent surrogate husbands, but she cannot go through the ceremony of *lako* again.

Thus *chodo okola* or *golo kode* is not the same as *lako*/ *ter*. *Chodo okola* or *golo kode* is the symbolic untying or removing of sorrows associated with the death of a spouse. It is a cleansing rite and the last funeral rite (in the case of the death of a husband). It is a very elaborate rite which restores normalcy in the family (Mboya 1983, 122-124; Ogutu 1994, 12; p'Bitek 1974, 22-24). It is therefore a rite of passage.

The restoration of the normalcy begins with *jalako* or *jater* (guardian) moving into the deceased's home and untying the *okola*[3] that was tied around the waist of the wife of the deceased. *Okola* was tied during the period of mourning to symbolize the sorrow she had. The rite ushers her out of the state of mourning and back into normalcy under the care of her home guardian. After the rite, there are no more activities to do with the mourning in the home since it would negate the presence of *jalako* who will have assumed the position of the deceased, and who therefore represents him.

Thus *chodo okola* and *lako* are not identical. *Chodo okola* is just one of the acts in the process of instituting *lako*. It is the last act in the inauguration of the institution of care, namely, *lako*. This

[3] *Okola* is a dry bark of a banana stem. Historically, Luo *widows* used to tie *okola* strings around their necks and waists during the period they were mourning their husbands. This symbolized the sorrow they had –literally, tied to the sorrows. But during the cleansing rite, when the guardian moves into a *widow's* house, these strings were removed or cut off, hence implying that the sorrows that were on her during to the death of her husband were removed by the coming into her house of the guardian. The removal of the strings marked the end of the mourning period. However, we need to observe that nowadays Luo *widows* do not tie *okola* during mourning of their husbands. Therefore, the phrase *chodo okola* or *golo okola* is used nowadays to refer to the moving of the guardian into a widow's house.

clarification is important in the light of the current customary practice and lifestyle. It is instructive to know that nowadays, a widow does not tie the *okola* (string) around her waist as a symbol of mourning a deceased husband. These days, *chodo okola* is simply a phrase that has no literal corresponding act. However, the institution of *lako* is still there as part of the Luo culture.

The performance of the rite of *chodo okola* does not necessarily entail sexual intercourse. Sexual intercourse may be part of it, but is not a requirement. It can be performed without sexual intercourse and still be complete. For example, in the case of an old woman who no longer has the desire or the capacity for sexual intercourse but in whose home some husband roles are still required, she would get a *jater* who would always perform the required roles except sexual intercourse. In such a case the man either hangs his coat or puts his walking stick in her bedroom, or gives her some tobacco or spends the night in her house until morning, and the rite of *chodo okola/kode* would have been fully performed and the institution of *lako*/ *ter* upheld (Mitullah 1995, 10; Oruka 1994a; Nyarwath 1994b).

The presence of a couple, at least during such a rite, is symbolically significant. It represents the minimum condition necessary for procreation, hence sharing in the sacred mission of passing on the gift of life. Even the peace, harmony and prosperity of a family depend, as a minimum requirement, on the warm relationship between a man and a woman (Okello 1996, 17-18).

Wife (widow) Inheritance and Levirate

This patrilineal institution of care, *lako* in Luo, is often and widely referred to as *wife (widow) inheritance* (Mbiti 1969, 144; Kayongo-Male and Onyango 1984, 70; Odaga 1991, 69). The use of the concept *wife (widow) inheritance* has created confusion in the conceptualisation and evaluation of the institution, and subsequently contributed to its misrepresentation (Gunga 2009, 169). The following quotation is an example of such a misrepresentation:

> First of all, the concept of inheritance to me is repugnant. You inherit property, objects; you do not inherit people…. It is understandable because at that time women were taken as objects of pleasure, sexual and otherwise. They were part and parcel of men's property. They basically did not have independent minds. And that is why men thought of the concept of inheriting them (Nzomo 1994a).

The reference to this institution of care as wife (widow) inheritance has led some people to view it as an institution that commoditizes women, all for their domination and exploitation by men (Jommo 1994). However, since *lako* as an institution of care is conceptually, and in principle and practice, different from *wife (widow) inheritance*, the feeling of repugnance towards it is misplaced. Even the claim that it is based on a perception of women as objects of sexual pleasure and

extensions of men's property then becomes unfounded. I have to unequivocally assert that, in principle, this institution does not denigrate women.

To refer to *Lako* as *wife (widow) inheritance* is a manifestation of ignorance of the historical meaning of the two concepts and cultural practices. In strict cultural studies, *wife (widow) inheritance* alters kinship relationships and rules of inheritance, thereby changing the social identity of the widow and her children. It is, in principle, a new marriage where the wife belongs to the new husband and the children born of the new marriage belong to their biological father, and not to the former deceased husband as is the case in levirate union (Evans-Pritchard 1951, 112; Cunnison 1959, 96-97; Kirwen 1979, 163-164). In wife/widow inheritance, a man takes over and marries his brother's widow or widows. In this case, the children inherit from their biological father, and not from the deceased (Shorter 1973, 157). However, in wife/widow inheritance, the identity of the children of the deceased remains ambivalent, unlike in the case of *lako* (Gluckman 1950, 183). In this respect, Cunnison observes:

> … in levirate marriage future children address their genitor by the same term as do their mother's other children, and that in widow inheritance the genitor is their father, and their mother's other children may address him by different names (Cunnison 1959, 97).

In the light of the foregoing exposition, it becomes difficult to see how, even mistakenly, one would confuse the two concepts, namely, *lako* and wife inheritance. The Luo institution of *lako* is fundamentally different from *wife (widow) inheritance*. The reference to *lako* as *wife (widow) inheritance* seems more likely to have resulted from a deliberate effort to make the institution appear evil or simply due to ignorance.

A question still remains, namely, is the institution of *lako* a levirate? This institution has also been referred to as levirate union, or simply, levirate (Kirwen 1979, 200; Deuteronomy 25: 5-10). However, since the word *levirate* is derived from the Latin word *levir* which means a 'husband's brother', it is taken to mean an institution by which, upon the death of a husband, the brother of the deceased enters into union with the widow to substitute for the deceased (Cunnison 1959, 96-97; Evans-Pritchard 1951, 112; Kirwen 1979, 3).

However, this understanding poses some problems when the concept is applied to the Luo institution of *lako*. Furthermore, the problem is compounded when the institution is understood in the sense in which Shorter defines it, which is very close to the biblical definition:

> When a man dies without children, his brother may take his widow and raise up children to the dead man, who are reckoned as his legal children and who inherit

> from him and not from their biological father (Shorter 1973, 157; cf. Deuteronomy 25: 5-10).

The problem arises in the usage of the words "*without children"* and "*brother"*. If the words "*without children"* are deleted, and the word "*brother"* is understood in the wider sense as I earlier explained and not necessarily limited to a male sibling of the deceased husband, then the Luo institution of *lako* can be referred to as levirate; otherwise it cannot. Among the Luo, only those culturally defined as 'brothers', and not even 'older brothers', of the deceased can be surrogate husbands to his wife (Ojwang' 2005, 64).

Consequently, despite the clarification of the concepts of wife (widow) inheritance and levirate, I would still prefer to use Odera Oruka's coinage of "*home guardianship)*[4] to levirate union when referring to the Luo institution of *lako* (Oruka 1994a) to avoid a possible narrow usage of the term levirate, brother or brother-in-law of a widow.

Some Contemporary Challenges to *Lako*

The institution of *lako* has aroused a very sharp debate in Kenya since about 1994 to date. This is majorly, but not only, due to the advent of HIV/ Aids and the wind of gender sensitivity. Of course, opposition to this institution by some Christian denominations began long before the two events, not only in Kenya but in the whole of Africa (Kirwen 1979, 1-4). This time round, however, *lako* has not come under criticism from the church as such, but from some gender and apparently pro-Western protagonists (Ojwang' 2005, 65).

[4] H. Odera Oruka's article "Wife Inheritance –A Colonial Nickname" in which this term appears was published in the *Sunday Nation*, January 23, 1994 under the title "'Wife Inheritance' is a bad name for this great practice".

The following are the main criticisms currently being levelled against the institution of *lako*:

1. That the institution violates a wife's right to freedom of choice, that is, the choice to remarry or not to do so after her husband's death (Jommo 1994).
2. That the institution is one of the main factors in the spread of HIV/Aids, with some critics even expressing the fear of the extinction of the Luo community (Gunga 2009; Okoth 1995; Owuor 1994; Odwesso 1994; Ogalo 1996; *Daily Nation* reporter 1994b).
3. That the institution encourages the economic exploitation of widows and their families by imposing on them the so-called *guardian (jalako*) who denies the widow and her children the power to inherit the deceased's property (Juma 1994).
4. That therefore the institution is socially repugnant (*Daily Nation* reporter 1994a; Nzomo 1994b).

Let us examine these charges in the order in which they are listed above.

On the Widow's Right to Freedom of Choice

The criticism based on the widow's right to freedom of choice has been two-pronged:

1. That the institution denies a widow the right to choose to either remarry or not.
2. That the requirement that the widow chooses a guardian from within the husband's clan is a limitation on her freedom.

It should be clear that in the Luo cultural universe, to choose to marry (leave alone remarry) or not, in itself, does not arise. Not marrying and getting a child would be self-annihilation, and hence an abdication of the sacred duty of partaking in and perpetuating life. It should therefore be noted that for the Luo, failing to perpetuate oneself by having children is a great misfortune (Ojwang' 2005, 74).

Once one is married and has children, one should create an environment conducive to their proper nurture - a condition not guaranteed or greatly limited for a woman whose husband is dead, and who has no guardian, and particularly if she has young children (Kirwen 1979, 211-212; Kayongo-Male and Onyango 1984, 70). Even in the case of an old woman, the guardian would still be required to create a symbolic minimum condition for the partaking in the creative act of life and to perform the roles that her husband would otherwise have performed (Kirwen 1987, 74).

However, the main reason why a woman must never remarry after the death of her husband is that the death of a spouse does not dissolve marriage, at least, in the Luo traditional culture. In a patrilineal society, an already married woman cannot be remarried unless the former marriage is nullified: this is logical. Marriage, for the Luo, is only dissolved through divorce, and divorce is not a matter solely for the spouses, but for their lineages as well (Wilson 1961, 122; Wilson 1968, 132). Therefore, despite the death of her husband, the woman remains a wife (*chi liel*, the wife of the

grave) of the deceased, and by extension, of the clan into which she is married; and so long as she remains a wife, she cannot be married again (Kirwen 1979, 201, 208-209; Kirwen 1987, 73, 165; Oruka 1990, 107-108). It should be clear by now that in the Luo cultural universe, there is no 'widow' or 'orphan' in the ordinary English senses of the terms. A woman is either married or unmarried (Kirwen 1979, 212), and any other status, in this respect, is illegitimate.

Since for the Luo marriage survives the death of a spouse, in this case of a husband, it is preferable and sensible that *chi liel* ("wife of the grave" - widow) chooses a *guardian* from the husband's clan. Given that a guardian is not a husband, this is not an instance of remarriage. This requirement minimizes any possible disruption to the marriage and family. The Luo culture requires that the *chi liel* chooses and presents a guardian to the elders for scrutiny and approval. As the Luo say, '*ok nyal tiel dhako e dichwo moro, mak mana moyiero owuon'* (A widow should never be forced to live with any man except the one she chooses) (Mboya 1938, 123). The fact that traditional Luo culture provides for the choice of a guardian by the widow should be emphasized because this is either forgotten or abused (Achieng' 2002, 117; Wilson 1961, 121-122; Wilson 1968, 132). However, *chi liel* can choose a guardian from outside the clan, but on condition that she does not desert her matrimonial home (Oruka 1994b)[5].

Let me introduce, at this juncture, the issue of a 'professional cleanser' (*jatiek kwer*) (Gunga 2009, 170), who is to have the first sexual intercourse with the widow and thereby to assume the state of contamination associated with widowhood, and hence paves the way for the guardian to take over. This professional cleanser is supposed to be a psychopath, social misfit, and hence a pervert who is chased away after performing the cleansing rite so that the guardian can move in. The *jatiek kwer* can be from within the clan of the deceased or a *jakowiny* (a man from afar unknown land) who has been adopted into the clan (Ojwang' 2005, 71). The practice of *jatiek kwer* has become common in contemporary *lako*.

I believe, and my guess is most likely correct, that the practice of professional cleanser (*jatiek kwer*) is a relatively recent introduction into the Luo custom of *lako* for at least four reasons. *First,* it does not exist in the description of *lako* found in the earliest documentation of Luo customs and practices (Mboya 1938; Wilson 1961, 1968). Mboya's book *Luo Kitgi Gi Timbegi* (roughly translated as "Luo Customs and Practices") (1938) was first translated into English by Jane Achieng' (Mboya

[5] This article by H. Oder Oruka "Wife guardianship and the issues of personal liberty" was published in *Sunday Nation*, February 20, 1994 under the title "'Inheritance debate': why Nzomo didn't score much".

2002). *Second*, the practice of professional cleanser is inconsistent with the requirement that it is the *chi liel* who chooses a guardian, since *chi liel* could not possibly choose such a person as a professional cleanser (*jatiek kwer*). *Third*, there is no culture, unless a perverted one, that would ascribe a positive role to a psychopath within such a central custom as *lako*. *Fourth*, it is difficult to see how a culture would sensibly rationalize the subjection of a member of society to such an undignified act as that of a professional cleanser simply on account of the death of a spouse that was not caused by the member. Consequently, though cultures do change, the practice of a professional cleanser (*jatiek kwer*) is a perversion that violates the dignity of a widow (*chi liel*), and hence an abuse of the custom of *lako* that should be discouraged.

However, some critics may argue that the requirement that a woman gets a guardian from the husband's clan or that she remains in her matrimonial home is an infringement on her personal liberty; and since she has individual autonomy, "she should be accorded conducive environment and resources to exercise and enjoy that autonomy" (Nzomo 1994b). To some extent this criticism is justified, especially at this time in history when there is great recognition and respect for autonomy and the attendant individual rights. If *chi liel* then decides never to marry again, then it should be gracefully permitted. However, if she decides to marry, especially where there are surviving children from the deceased husband, then I think it would be preferable to get a guardian from the clan of the deceased husband to avoid the dislocation of the children and the possible creation of ambivalence in their social identity.

Nevertheless, it is instructive to note that the enjoyment of individual autonomy should be controlled by moral requirements and social good. No one should be allowed freedom to do what is morally wrong or socially undesirable (Nyarwath 1999, 211-218), and therefore, no one can have absolute freedom. Furthermore, the very fact of marriage entails the acceptance of the limitation of one's individual autonomy. Both Okot p'Bitek and Odera Oruka aptly explain this point. p'Bitek writes:

> Man is not born free. He cannot be free. He is incapable of being free. For only by being in *chains* can he be and remain 'human'. What constitutes these chains? Man has a bundle of *duties* which are expected from him by society, as well as a bundle of *rights* and *privileges* that the society owes him. In African belief, even death does not free him. If he had been an important member of society while he lived, his ghost continues to be revered and fed; and he, in turn, is expected to guide and protect the living (p'Bitek1986, 19).

Oruka writes:

> No human being both now and in history has ever had absolute liberty. Not even autocratic kings and presidents ever have absolute freedom. Absolute liberty is perhaps only possible for God. But even here, it is argued in some deep

> philosophical and theological circles that even God, given his goodness, is restricted, i.e., God cannot act ungodly (Oruka 1994b).

On *Lako* as a Catalyst to the Spread of HIV/Aids

Some of the critics of the institution of *lako* have argued that it enhances the spread of HIV/Aids among those who still practise it, so that to continue practising it is suicidal. As such, it is retrogressive and repugnant. Thus they aver that with the presence of HIV/Aids, *lako* should be outlawed.

However, the criticism seems to be based on two questionable assumptions:

1. That sexual intercourse is an indispensable component of the institution.
2. That the cleansing rite of 'untying sorrow' (*chodo okola*) of necessity involves sexual intercourse, and that it is one and the same thing as *lako* - the institution of *home guardianship*.

Nevertheless, as I earlier explained, these assumptions are incorrect. Sexual intercourse may be involved in *lako*, but it is not mandatory. The institution can be practised without necessarily involving sexual intercourse. Moreover, I have indicated some possible ways by which the rite can be performed without involving sexual intercourse. Odera Oruka makes a distinction in the conception of *home guardianship*. In his coinage, there is a *vulgar and* an *honorific home guardianship*. Vulgar guardianship conceives the institution as necessarily involving sexual intercourse, while honorific guardianship conceives it without necessarily involving sexual intercourse (Oruka 1994a). Therefore, those who associate the institution with the spread of HIV/Aids conceive of it in the vulgar sense; but Oruka states:

> Indeed, wife guardianship in the deeper honorific sense means *home guardianship*. The man is a protector not just of the wife; he is in the first place the protector of the children and home of the deceased. This is why it is important that the function be performed by a relative and not a stranger (Oruka 1994a).

Furthermore, elementary reasoning would show that the spread of HIV/Aids is partly caused by sexual intercourse, and therefore can partly be checked by good sexual moral behaviour. If an infected person engages in risky sexual intercourse be it within the institution of marriage or guardianship, or outside them, then HIV/Aids disease is likely to be contracted and spread; and it is because of this fact that some people argue that given the presence of HIV/Aids, if *chi liel* cannot absolutely abstain from sexual intercourse, then it is even better if she has a guardian because this restricts her sexual relations. Otherwise, the possibility of her getting infected or re-infected is higher when she does not have a guardian than when she has one (Barack1995; Okoth 1995; Ondiek 1994; Owuor 1994; Ogaga 1994).

However, it is obvious that the practice of professional cleanser poses a great risk of spreading sexually transmitted diseases including HIV/Aids, and as such should be stopped. Therefore, where sexual intercourse poses a risk of infection because one of the parties is infected, then *lako* should be observed without the sexual intercourse, or with adequate protection. There is a Luo cultural provision for such an exception. In this respect, the fear of breaching taboo by refraining from intercourse should be rationally debunked.

On Economic Predation

Some of the critics argue that the so-called guardians are simply economic predators (Kirwen 1987, 73). Take, for example, the following attacks:

> The women have no choice because those who say that they are giving guidance are also inheriting immediate property of the husband, so in fact that financial support they say they are giving is the real property which should have gone to her. What she lacks is the legal capacity to own that property (Nzomo 1994a).

> The wife inheritance becomes especially attractive to them when there is property involved, and it is therefore a means of disinheriting their brother's widow. No one is interested in inheriting poor women, custom or no custom (Jommo 1994).

Indeed it is true that instances of economic or material exploitation have been known to occur within the institution, but they are unfortunate cases of abuse rather than the accurate observation of the custom. The institution of *lako* is, in principle, an institution of care and not of exploitation of any kind. Besides, in the Luo cultural universe, it is never known of any case where *chi liel* fails to get a guardian on account of her poverty. In fact, it is considered a taboo for any *chi liel* not to have a guardian. However, some *mond liete* (plural of *chi liel*) have ignored the threat of taboo and made do without guardians whenever there are good reasons to do so.

The Luo believe that any mistreatment of a widow or an orphan is to court the wrath of the spirit of the deceased husband or parent, hence trouble for oneself and one's family. Such conduct constitutes grave offence, and the woman, with assistance of the elders, has the right to chase away such a man (Kirwen 1979, 206-207; Oruka 1994a). Therefore, a family into which such abuses occur fails in its collective duty to protect the household of a deceased member.

Abuses of the Institution

It is true that most people nowadays are not aware of the religious and moral principles or presuppositions on which the institution of *lako* was, and should still be based. This ignorance,

coupled with the apparent moral levity of our present generation, has led to some serious abuses of the institution.

Some men have entered the institution, not because they want to assist and care for the family, but to perversely enjoy either the material benefits of the *home* or the warmth of sparkling wives. These kinds of men are seen in homes only during meal times or bed times. It is a real insult to this sacred institution! The absurdity of such behaviour should be seen in the light of the fact that the institution of *lako*, in principle, is so tasking that any man of good sense and goodwill would not impose himself on *chi liel* (Kirwen 1987, 65). There have also been reported cases of evil brothers-in-law, fathers-in-law and mothers-in-law who plunder the wealth of the immediate family of the deceased, thereby subjecting it to undue material and psychological suffering.

On the other hand, there have been some *mond liete* (widows) who have rejected the institution in order to have unrestrained sexual relations. Some of them, in an apparent attempt to justify their objection to the institution, have eloped, taking along with them the resources that their deceased husbands left them. In some cases, they have abandoned their children at their matrimonial homes, hence causing unnecessary conflicts and suffering within the family.

Conclusion

The *parents* and *brothers* of the deceased ought to fulfil their sacred moral duty to protect the bereaved family. This requires at least two conditions:

1. That the *chi liel* (widow) chooses a guardian, but presents him to the parents-in law and brothers-in law (in other words, to her family in the wider sense of the term).
2. That the brothers-in-law must never allow the guardian, be it one of them or not, to exploit or oppress the immediate family of their deceased brother. The so-called guardian should not be allowed to perform only the cleansing rite or sexual duty, but should be committed to the care of the family of the deceased.

However, *chi liel* should also develop a warm relationship between herself and her in-laws. In other words, there should be a family spirit. This calls for a spirit of mutual respect and care within the family.

The presence of the HIV/Aids scourge is a serious challenge today not only to the institution of *lako*, but to humanity in general. To the institution, it becomes imperative that the vulgar sense of guardianship be discouraged or abandoned all together. However, for the young and apparently energetic people, they should undergo medical examinations to ascertain their status before the rite, and maintain moral behaviour within the institution.

Therefore, given the sacred and moral implications of the fundamental presuppositions of the institution of *lako*, it still seems to be the best alternative open to most *mond liete* (widows) in the Luo cultural set up, and there does not seem to be any compelling reason at the moment to abandon the institution. It preserves the fundamental aim of marriage in the Luo culture.

However, in situations where it is evident that there is no likelihood of care for the home of the deceased, it would be moral and rational to do away with any pretence of this institution. The practice of exclusive ritual cleansing or the vulgar sense of it, *chodo okola*, without care, has no moral or rational force. It is morally and socially repugnant to reduce this institution to a mere cleansing ritual. Of course, this suggestion may appear reckless; but that remains only an appearance. The duty of care is imperative and cannot rationally be overridden by any other consideration. Therefore, the absence of care makes the whole institution of *lako* meaningless, and no other rite related to it can even be sanctioned by a taboo injunction. Taboos derive their efficacy from morality and rationality. As such, they ought not to be used to enforce immoral and senseless practices.

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