A COMPARATIVE STUDY OF THE LEVIRATE MARRIAGE IN THE DEUTERONOMIC CODE AND THE GUSII PRACTICE OF OGOCHIA NYOMBA.

By

Orangi Josphat

MTH/NRB/3959/13

This dissertation is submitted in partial fulfilment of the requirements for the Award of the Degree Master of Theology (MTH) Old Testament from St Paul's University

Supervisor: Prof Dchosefu Chemorion

June 2018

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DECLARATION

This dissertation is a product of my own work and is not the result of anything done in collaboration. It has not been previously presented to any other institution. I agree that this dissertation may be available for reference and photocopying, at the discretion of the University.

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Table of Contents

LIST OF ABBREVIATIONS V
ACKNOWLEDGEMENT VI
ABSTRACT VIII
CHAPTER ONE: INTRODUCTION 1
1.1 BACKGROUND 1
1.2 THE PROBLEM STATEMENT 2
1.3 PURPOSE OF THE STUDY 2
1.4 THE SIGNIFICANCE OF THE STUDY 3
1.5 METHODOLOGY 3
1.6 RESEARCH DESIGN 4
1.7 CONCEPTUALIZATION 4
1.7.2 Levirate Marriage 5
1.7.3 Social Economic 6
1.7.4 Ogochia Nyomba 7
CONCLUSION 7
CHAPTER TWO: LITERATURE REVIEW 8
CHAPTER THREE: LEVIRATE MARRIAGE IN THE DEUTERONOMIC CODE 13
3.1 INTRODUCTION 13
3.2 ANCIENT NEAR EASTERN BACKGROUND 13
3.2.1 The Hittites 14
3.2.2 The Ancient Assyrians 14
3.2.3 Ancient Babylonians 14
3.2.4 Levirate in Genesis 38 and Ruth 4 15
3.3 EXEGETICAL ANALYSIS OF DEUTERONOMY 25:5-10 18
3.3.2 Overview of the Text 20
3.3.3 Own translation 21
3.3.4 Social Historical Background 21
3.3.5 Text unit and its Genre 23
3.3.6 Grammatical and Contextual Analysis 28
3.3.7 The Nature and purpose of the levirate law in Israel 33
3.3.8 Theological and Ethical Relevance 34
CONCLUSION 40
CHAPTER FOUR: OGOCHIA NYOMBA AMONG THE ABAGUSII 41
4.1 INTRODUCTION 41
4.2 ORIGIN AND LOCATION 41
4.3 SOCIAL – CULTURAL 42
4.4 MARRIAGE 42

4.4.1 Forms of marriage among the Gusii people....43
4.4.1.1 Female husbands....43
4.4.1.2 Ghost wives/ wives of the grave....44
4.4.1.3 Ogochia nyomba....44
4.4.1.3.1 On death Husband....45
4.4.1.3.2.1 The process of Picking an inheritor....47
4.4.1.3.2.2 Duties of a caretaker husband....48
4.4.1.3.2 Dead seed....49
4.4.1.3.3 Testing fertility....49
4.5 FINDINGS OF THE FACE TO FACE INTERVIEW....50
CONCLUSION....50
CHAPTER FIVE: RELATING THE LEVIRATE MARRIAGE IN THE DEUTERONOMIC CODE AND THE PRACTICE OF OGOCHIA NYOMBA....52
5.1 INTRODUCTION....52
5.2 THE NATURE, FUNCTION AND PURPOSE....52
CONCLUSION....55
CHAPTER SIX: CONCLUSION OF THE STUDY....56
6.1 SUMMARY....56
6.3 RECOMMENDATIONS AND FURTHER RESEARCH....59
GLOSSARY....60
BIBLIOGRAPHY....61

List of Abbreviations

OT	Old Testament
DC	Deuteronomic Code
Gen.	Genesis
Lev.	Leviticus
Num.	Numbers
Josh.	Joshua
Ruth	Ruth
Neh.	Nehemiah
Matt.	Mathew
Mark	Mark
Luke	Luke
Acts	Acts

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Abstract

Despite the long existence of Christianity in Gusii land, few people have a proper understanding of it basic teachings in regard to the biblical teaching on levirate marriage. This ancient custom in Israel was a cultural practice that secured the right and possession of a sonless widow.

Similarly, the custom of *ogochia nyomba* (widow inheritance) amongst the pre-colonial Gusii people was cultural structure that guaranteed the welfare of the sonless widow. Both cases were a process of ensuring that the lineage of the dead man without an heir does not die out. Nonetheless, the two practices; levirate marriage and *ogochia nyomba* have evolved with time and have caused confusions and conflict within the African biblical interpretation.

Thus the thrust of the current study is focused on establishing the areas of divergence and convergence on the subject of levirate marriage and the Gusii custom of *ogochia nyomba;* which established that there is an imperceptible difference between the two practices.

The study ascertains that levirate marriage was only possible when a man died without children especially a son whereas *ogochia nyomba* was possible even when there were children both sons and daughters; for the purpose of *ogochia nyomba* included "caring and giving birth". Lastly, both the levirate marriage and *ogochia nyomba* institutions are not value neutral but reflect structures that empower men and disenfranchise women in this case the widow. Consequently, this calls for a critical and inclusive reading of the Deuteronomy 25:5-10.

CHAPTER ONE: INTRODUCTION

1.1 Background

Widow or dead man's wife inheritance is a common marital practice in many communities around the world. Thus, Manor while writing on the history of the levirate marriage as it relates to the Bible, notes that levirate marriage was not exclusively a Hebrew phenomenon. Over time the other cultures have had similar customs. These included the Greeks and Persians, the Hittites, the Ugarits, the Assyrians, the Moabites, the Hindus, the Mongols, Afghans, Abyssinians and the later American Indians (1984:130-131).

Similarly, wife inheritance is live in Africa even today. For example the practice of inheriting widows is common in Nigeria among the Igbo and the Yoruba, the Dinka and Nuer of southern Sudan, the Alur of Northern Uganda west of the Nile, Supyire of Mali,Akan of Ghana and also in Zambia. In Kenya communities like the Kuria, the Luo, and Nandi, the Kamba, the Gusii people are known to practice it.

According to this practice, a widow is inherited by the brother or other male relative of her deceased husband. According to Dosthuizen (1968:179) widow or brother's wife marriage in Africa is closely related to the Old Testament levirate, a type of marriage that the Israelites based their approach to polygamy. Consequently, the Old Testament custom of levirate marriage has attracted African readership due to its correlations to African social cultural life and African ideological orientation.

In Deuteronomy 25:5-10 the surviving brother of the deceased man is obliged to marry his brothers' widow so that he can bear an heir for the deceased man. This practice is said to have been popular especially when the brother dies childless. This was possible in the assumption that a married man having sexual intercourse with "unattached woman raised no concern". (Calo and Sharon, 1992:56)

Comparatively, wife inheritance in African communities is probably due to the same reasons as mentioned in Deuteronomy however, the two practices are not the same. For instance, in Kenya; the Gusii, are among the tribes who practice wife inheritance, and it is practiced even if the wife of the dead man is with children, male or female. Sometimes it was a customary legal method for an impotent man to have children through another. So as testified by a majority of those interviewed *ogochia nyomba* is one of the institutions

that has remained alive to the present day among the Gusii. The ideology behind this was that the idea of "community" whereby a woman is not only married to an individual but a community.

Some African people think that the custom of wife inheritance fulfils a social need like levirate marriage in the Old Testament. Wife inheritance is considered a solution to barrenness, and social injustice against the widows, Orphans and strangers. For this reason, it is often claimed that "the worldview of African people is close to the Old Testament to the extent that some Africans feel more at home with the Old Testament than the New Testament" (LeMarquand, 2001:72). For instance, assuming that levirate union in the Bible is a form of widow inheritance, then marriage in the Old Testament is an unbreakable covenant as it in the African worldview and perspective such that by the widow being married by a brother in-law or next of Kin; she is retained in the family as a wife of the deceased husband. This is contrary to the Christian Church teaching on marriage "till death do us part".

1.2 The Problem Statement

There are confusions surrounding the interpretation of the levirate marriage in Deuteronomy 25:5-10 among Christians in Africa. The Abagusii have looked at the levirate marriage and regarded it to be the same as traditional widow and wife inheritance which is known as *ogochia nyomba*. This has led a majority of Gusii Christian men, to be engaged in extra marital sex under the justification of the levirate practice. The research questions for this study are: "Is Levirate marriage really the same as *ogochia nyomba"*? If not, what then is the theological relevance of the levirate marriage law to the contemporary Christian among the Abagusii?

1.3 Purpose of The Study

The thrust of this study is to compare the levirate marriage in the Old Testament especially in the book of Deuteronomy 25:5-10 with the Abagusii traditional custom of *ogochia nyomba* (widow inheritance). The specific objectives of the study are:

i. To explore the practice of the levirate marriage in the OT
ii. To examine the practice of *Ogochia nyomb*a among the Abagusii
iii. To compare and contrast the levirate marriage law in the OT and the practice of *Ogochia nyomba* among the Abagusii.

iv. To analyse the theological relevance of Levirate marriage to Christians in Kisii.

1.4 The Significance of the Study

A comparative study of the levirate marriage and the concept of *ogochi nyomba* among the Abagusii people will clarify the confusion that exists between the two customs. So the study seeks to address the confusions and contradictions that rise from the literal reading of Deuteronomy 25:5-10 among the Abagusii people of western Kenya; and hence provide theological pointers to the Christian marriage in Africa. Since little has been done in terms of study in this area,the study supplements already literary materials that exist especially on levirate marriage and encourage the readership of the book Deuteronomy. Lastly, since the current study is a small contribution to the scholarship of biblical studies in the African context and from an African perspective; it enhances hermeneutical and theological reflections on the levirate marriage with and from the Abagusii people who share similar social-cultural orientations with the biblical Hebrews of the Old Testament.

1.5 Methodology

The current study employs a comparative approach. This approach to biblical studies in Africa has become popular. As noted by Anum (2001:470) comparative method underscores the "importance of African Traditional religion in doing biblical interpretation". Consequently, many African scholars have produced quite a substantial comparative material on "specific concepts from African life, thought and the Bible. Among them John Mbiti on eschatology, Justin Ukpong on sacrifice" (2001:464). The interpretive interest here is to comparatively interact with the social-cultural contexts of the Old Testament levirate marriage practice and the contemporary Abagusii African social-economic and cultural contexts that mandated the practice of *ogochia nyomba.* The researcher interrogates the levirate marriage legislation in the Deuteronomic Code (DC) and the practice of *ogochia nyomba* among the Abagusii. The researcher will make use of historical grammatical method of exegesis in the study of Deuteronomy 25:5-10. The study is also contextual in nature because the researcher comes from a particular context and makes use of the hermeneutical experiences and of that particular context in the act of interpretation.

1.6 Research Design

This study is comparative in nature. It takes both historical and descriptive approach and mainly based on library reading with a few cases of primary data collection. by way of purposive sampling ten women and eight men and three church leaders were interviewed but their names are not disclosed due to ethical reasons.

Employing a comparative approach, the study explores the differences between the levirate marriage in the Old Testament and *ogochia nyomba* highlighting the areas of divergence and convergence between the OT levirate marriage and the concept of *ogochia nyomba* among the Abagusii people of Western Kenya.

1.7 Conceptualization

The study acknowledges the importance of considering the link between the "three worlds" (behind the text, within the text and in front of the text). In this regard Tate (2008:5) rightly suggests that "meaning results from a conversation between the world of the text and the world of the reader, a conversation that is informed by the world of the author". Thus, the reader is obligated to fill up gaps for experience and religious tradition have taught us to interpret what we see. Further, in support to this view Cole and Peterson (2014: 85) contend that the culture, nationality and place of birth of the biblical reader provides a large part of the 'text' which (s) he brings to the scripture. This implies that gender, age, race and culture of the reader influences biblical interpretation.

Further, Malina as quoted by Tate (2007:) asserts that the bible is a culturally conditioned book written in a different place and time and in a different social location. Also it is worth noting that at least to date most professional OT interpreters on the subject of levirate marriage institution have come from societies that are unfamiliar with the practice. Hence Holter (2001:80) correctly notes that cultural difference complicates the interpretation of OT texts. Further, Kirwen hypothesis in LeMarquand in the book "The Bible in Africa' asserts that the old Testament levirate marriage traditions are certainly understandable amongst a people who have similar traditions (LeMarquand, 2001: 72).

From the forgoing thoughts, this study concerns itself with the biblical, contextual study of leviratic marriage institution in the the old testament and in comparison with the Abagusii custom of *ogochi Nyomba.* Nonetheless, the study's assumption here is that this practice is harmful, disrespectful and gender biased.

Lastly, the following brief descriptions of the concepts used in this study helped in understanding the discussion of the main question of this study. Though, these conceptual representations may not be exhaustive but may serve as a guide to the reader in grasping the necessary knowledge of the issues that may not be understood in a general research or have different meanings in other contexts. Thus, the following may be understood as the writer's usage of the following concepts in the current study:

1.7.1 Deuteronomic Code

The book of Deuteronomy is generally accepted as the Mishneh haTorah (second retelling of the law). The Deuteronomic code would be seen to refer to legal section found in the book of Deuteronomy. They have a link to the ten commands given on Sinai and further form an explanation to the Decalogue as found in the book of exodus (Matlock,2007: 269). As a conclusive remarks of the covenantal giving in Moab, the DC falls under the juridical corpus which defines the national institutions, principal obligations of citizenship, offices and social policies divinely mandated to enable Israel to live faithfully and securely in her homeland. (Sakenfeld,2009:109)

Thus, the Deuteronomic Code refers to the legal corpus of the biblical book of Deuteronomy. This itemized legal statements are found in chapters 12-26. Westermann (1976: 82) holds that the specific purpose of this law is to give legal requirements in all aspects of human life. For instance, the laws on people and slaves, marital laws, laws for the needy, and the protection. He further suggests that the "DC forms the heart of the book of Deuteronomy" (1976:77). According to Green,(2011:227) Deuteronomy as a Torah is a understood as a program of ethical, political and theological catechesis". This implies that the DC addresses both ethical, theological and community government issues. Thus, current study shall endeavour to steer a conversation on the ethical dilemma of the levirate marriage custom, and the tradition of *ogochia nyomba* among the Abagusii Christians today.

1.7.2 Levirate Marriage

It is derived from a Latin word *levir* which means brother in-law (Garland 2012:299). In the levirate marriage, the brother-in-law (yavam) marries the widow sister

in-law (yevamah). This custom of early Hebrew society is found as a legal prescription for brothers living together especially on same estate (Meek,1950:63).

In the current study, levirate marriage here has twofold meaning. First, it refers to the biblical holy duty for a brother of a man who dies without a male child to widow of the deceased man. That is having sexual relations to give birth to a son who is named after the name of the deceased brother and secondly it refers to widow inheritance.

1.7.3 Social Economic

These are the related economic factors that influence the creation of social institution. It includes the kinship, marriage forms, family structures, rules, taboos and norms. In this study Economic refers to land and the activities that take place on land. In this view Adams, rightly observes that "The family stood at the centre of life in Judah, before and after the exile. A long-standing kinship system played a fundamental role in determining settlement patterns, social hierarchies, and the distribution of wealth" (2014:8) He further proposes that despite a hierarchical framework in which women and children faced many challenges and often found themselves on the margins, many of them made important contributions to the economy. (2014:42)

This study proposed that the factors are tied together since they influence each other. It is evident that social economic factors influenced the levirate marriage practice. Walton and Mathews (1997:258) supports this view by saying that "the law was designed to provide the widow with security attendant upon marriage and having a son focusing on the rights of the deceased husband".

In the deuterocanonical book of Tobit it is indicated that the widow with children and who was young, had an option of moving to the family of her father or brother(Tobit 1:80 while if she was elderly, one of her sons was to care of her but, if she was financially secure she was to stay alone (Judith 8:7). Hence, as suggested here some of this social and economic factors are tied together in influencing leviratic marriage practice as well as to the custom of *ogochia nyomba among the gusii* people.

1.7.4 Ogochia Nyomba

This refers to a customary legal practice among the traditional Gusii people where a man (brother or nearest kin to the deceased) married a widow who was of a child bearing age for the purpose of siring a son or children who were or was named after the deceased. Most preferably, the man inheriting was of same age group as the deceased.

It is worthy to note that the children born out of this arrangement belonged to the husband of the wife whether dead or life since ogochia nyomba was practice to to both the widow who had lost her husband with children or not. Likewise, the practice was possible even when the husband was alive incase of infertility on the side of the husband. So in this arrangement the wife was inherited but did not belong to the caretaker husband. This calls for a bether straight forward term such as woman custody, management of a brothers home.

Conclusion

In the above discussion l have provided the background to the current thesis which is a comparative study of the levirate marriage in the Deuteronomic Code and the concept of *ogochi nyomba* among the Abagusii people. The next chapter focuses on what others have said about the levirate marriage in the Old Testament.

CHAPTER TWO: LITERATURE REVIEW

The current study undertook an examination of the studies that has been carried out by various scholars on the levirate marriage legislation. To begin with MacConville (1986:1) notes that "the laws of Deuteronomy have attracted overwhelming attention by scholars of the book". So here l shall endeavour to review and evaluate what has been written on the levirate marriage and make observations. Additionally, other widow marriages alluded to elsewhere in the Old Testament such as the marriage of Tamar the wife of Er (Gen.38:6-11) Ruth the Moabite and wife of Mahlon (Ruth 2-4:17), are also explored.

Roland devaux suggests that in Deut 25:5-10 if brother live together and one of them dies without a son on of the surviving brothers takes his widow to wife and the firstborn of this new marriage is regarded in law as the son of the deceased. The brother in-law can however decline this obligation.

There are only two classical examples of this marriage arrangement. One is found in genesis 38:6-7 where Judah's first born son dies without a son. Following this his son Onan by law takes up the widow Tamar. Because of his selfishness, he does not want to have a son who by law would not be his own son. Hence he frustrates this union with Tamar a sin which God was annoyed with leading to his death. The remaining son of Judah by the name Er besides being young as per the testimony of Judah misses to marry Tamar an action which makes Tamar to play a trick upon her father in-law.

As proposed by Roland (1965:37) the duty of levirate sometimes fell on the father in-law in an event there was no other sons a practice that was popular then and available among many other peoples. In support of this Meek, (1950:64) quotes the Assyrian Law (MAC33) which says that in case the brother in-law who was meant to marry the widow dies then the father in-law fills that role. This he argues might have led to justification of Tamar's trickery whereby she was enabled to marry her father in-law Judah when he procrastinated about letting her have another of his sons after the death of his first two sons (Gen.38). However this claim by Roland and Meek indicated here can be challenged on the premise that Tamars' action was out distress and desperation due to the bizarre experiences with attendant embarrassment and aggravation of childless widow in Ancient Israel.

Further it should be noted that the levirate and goel marriage in the book of Ruth indicates that the levirate marriage underwent transformation whereby the levirate was a matter of the clan rather than for the family in as strict sense (Roland,1965:38). Concerning its functions, he argues that it was to perpetuate a male descent, the name, or the house. Secondly to avoid alienation of family property since it was attached to blood ties preferably males.

Similarly, the researcher observes the custom as early as a characteristic of the patriarchal era. In a narrative about Judah, his sons and Tamar and later in the book of Ruth 4. sonless widow is depicted as a social misfit, powerless and vulnerable. Hence the only solution to safe her image from stigmatization was by getting married to brother in-law.

The solution to social marginalization of the sonless widows was attachments to male relatives visa a vis fathers, brothers, uncles and sons or children. Thus, Moses in his farewell speech spells outs constitutional boundaries that was to ensure that rights of the widow and the dead man were not violated (Deut. 25:5-10). However, it was such a loose legislation in that the l*evir* would escape the obligation with small penalty of public ridicule.

A review of the previous studies carried out so far depict that scholars suggest diverse opinions regarding this subject. Among them is Weisberg who notes that passages in the Old Testament that mention the levirate marriage seemingly are in direct opposition. For instance in Genesis 38 "offers a narrative that includes a levirate union , but while the union between Tamar and Onan correlates with the law set forth in Deuteronomy, the union between Tamar and her father-in-law Judah seems be at odds with Deuteronomy' Weisberg notes (Weisberg, 2004: 403). Critical analysis of this claim notes at least one grey area that needs to be clarified. First Weisberg erroneously claims that the trickery of Tamar on his father-in-law to be regarded as levirate. The study presumes that Tamar was desperate and was trying to safe her image from public ridicule as unmarriageable and dangerous woman. Nonetheless l support her assertion that that the same relationship described in Ruth chapter four, portrays a totally different institution,(Weisberg, 2004: 404) in the sense that the son Obed was named after his biological father Boaz.

Moreover, it is noted that it seems that in Genesis 38 the levirate obligation is mandatory whereas in Deuteronomy and Ruth it is portrayed to be optional. Further, a study by Leggett cited by Davidson shows that "in patriarchal times the levirate duty would be performed by a father-in-law as well as brother in law and that Tamar's trickery to cause Judah to have sex with her was to force him to carry out his levirate responsibility to make her pregnant". He further holds that even the ANE societies like the Hittites law allowed a father in law to perform such duty (Davidson, 2015:463). Interestingly, however, this kind of relationship is condemned elsewhere in the Holiness Code. Consequently, tension and conflict is observed between the DC and the holiness code. "You shall not uncover the nakedness of your daughter-in-law: she is your son's wife; you shall not uncover her nakedness". (Lev. 18:15) "And if a man lies with his daughter in law, both of them shall surely be put to death: they have wrought confusion; their blood shall be upon them". (Lev.20:12).

In the book of Ruth, the legislation is devolved further to include a distance kinsman whose obligation includes redemption. Herein Boaz is described as generous but not duty bound to the levirate obligations. Also, Obed who was born out this levirate like relationship was never named after the deceased father, instead he is named after his biological father Boaz. Though the arrangement here in the book of Ruth seems to be similar with the Abagusii practice of *ogochia nyomba,* it is completely different on the ground that the son Obed was named after his biological father something which is contrary to the practice of *ogochia nyomba* among the Abagusii.

Further divergence is noted by Nelson who observes that the Deuteronomy version of the levirate diverges from the patterns reflected in Genesis 38 and Ruth 4. He contends that the surviving brothers responsibility was not mandatory (Nelson, 2002:297). To him levirate marriage was unattractive option.

Wachege (2003:172) seems to suggest that levirate marriage is similar to widow/wife inheritance in Africa and that it helped to minimize the number of single mothers or women in the society. Giving an example of Abagusii he observes that:

> Within the Abagusii, the issue of widows remaining single was minimized through the practice of oche(sic) nyomba (levirate). The widows used to be inherited or taken care of by brothers-in law. The latter acquired sexual rights

> over the widow mothers as kind of shadow husband. They also had custody of the children and the welfare of the family.

Telford, work argues that the leviratic marriage relations alluded to here was a "provision for polygamy in special circumstances" whose aim is to protect the voiceless and vulnerable group in Deuteronomy's patriarchal society (2009: 225). On the contrary, Vos (2009:104) suggests that the *levir* in Deuteronomy is single and was obliged to marry the widow get the first born son who will be named after the deceased brother and then proceed with the marriage and get more children who would be named after himself. Whilst Telford assertion can be contested it contradicts the biblical teaching of marriage. Too, Vos argument lacks merit since the levirate legislation allowed the *levir* to be in the engagement till the birth of the heir to the deceased brother a case that is similar to the Abagusii practice of *ogochia Nyomba*.

In regard to the function of the levirate institution, McConville, dismisses the economical need of the widow by arguing that widows were not poor (1984:370). However, Ketchum, holds to the view that the Pentateuchal laws were meant to provide protection to the Israelite family as whole (2010:1). In the current study this protection is understood to be both social and economic. The same views are alluded by Vos (2009:103) who asserts that marriage was aimed at guarding extinction and safeguarding the inheritance.

Conclusion

It is apparent from the study here that the scholars are divided on the issue of levirate marriage in the old testament. For instance, Wachege confuses levirate marriage with the custom of *ogochia nyomba* among the Abagusii while work asserts that levirate in the old testament provided for polygamy since the marital status of the *levir* is not very clear from the readings of the OT texts though some suggest that the *levir* was unmarried.

Whereas I concur with most scholars here, it is my opinion that the levirate marriage is not the same as *ogochia nyomba* despite the impalpable difference observed. Too the marital status of the l*evir* is not very clear and therefore for supposedly the Genesis 38

narrative suggests that Judah was unmarried for there is no mention of widow left by him when he died. But in the Deuteronical code there is purely no indicators on the marital status of the *levir*. This leads to the assumption that leviratic unions were a form of polygamy.

Therefore, in the current study, the marital status of the *levir* shall be investigated together with his qualifications to serve as a *levir*.

CHAPTER THREE: LEVIRATE MARRIAGE IN THE DEUTERONOMIC CODE

3.1 Introduction

In the previous chapter the study surveyed the available scholarly studies related to the levirate marriage institution in the Old Testament. Thus, in this chapter the researcher explores the functions and significance of the levirate institution. First highlights of the practice in the Ancient Near East is discussed to provide background information.

3.2 Ancient Near Eastern Background

It has been noted that the Deuteronomic law codes shows connections and affinities with the law collections of ancient near east, making it evident that a long history of keeping written records of legal decisions existed and was familiar with ancient Israelites. In this view Walton (2009:470) quotes several scholars who discuss the Mosaic Law and in the background of the ANE. He quotes Millard who notes that the Laws of Moses compares with the laws of Hammurabi but differ in one aspect whereby in the Mosaic corpus people are of more value that the property. He also quotes Rendsburg who holds that the laws of Moses and the Mesopotamian laws are similar in "form and content" and further argues that the "laws of Israel were generated as a reaction against the legal practices of her Canaanite neighbors". This position can be contested in consideration to the legislation of the levirate marriage discussed here. The study suggests that the levirate legislations in the Hebrew bible are more less a photocopy of the ANE.

It is further argued here that the DC laws were meant to expand, clarify, and where necessary modify the rulings of the book of the covenant (Walton, 2009:379). Manley, further contends that the laws in the DC corpus "show signs of an early adaptation to Hebrew religious ideas"(Manley, 1957: 66); alongside Desmond and Baker opinion that "it is impossible to study biblical law without recognizing that a substantial number of Pentateuchal laws especially in the book of the covenant have recognizable parallels in either form or content in the other ancient Near Eastern laws, particularly from Mesopotamia"(Desmond and Baker, 2003: 505)

Therefore, in this section the study explores the levirate tradition in the ancient near east communities. This seeks to appreciate the human concerns in the ancient world and justify the close affinities of the levirate custom in the biblical world because Gods revelation finds man in his own social cultural enviroment.

3.2.1 The Hittites

To begin with, the study considers the Hittites. According to their law number 195, it shares almost a similar thought as the levirate one. It says " if a man has a wife and the man dies, his brother shall take his wife , then his father shall take her, if in return his father dies, one of his brothers sons shall take the wife whom he had"(Pritchard, 1969: 196) . Benjamin and Mathews (2006:118) article 193, the Hittite law clearly resembles what levirate practice found in the book Genesis 38, Deuteronomy 25:5-10, and Ruth 4. Thus: "If the father of a household dies, then his legal guardian [Hittite brother] marries the widow, if the father of the household and his legal guardian die, the guardian's father marries the widow. If the father of a household, his legal guardian, and his father die, then one of his brother's sons marries the widow" (Benjamin and Mathews,2006:269)

Despite the fact that the levirate law was similar with the biblical one, the Hittites law is silent on the reasons that warranted the custom.

3.2.2 The Ancient Assyrians

The custom was similar to above though it was extended further to include the betrothed woman. It further noted that the both male child and female were able to be heir unlike the case of Deuteronomy. Likewise the widow had rights to inherit the property of her husband even to the exclusion of their children (Nwaoru, 2002: 6). This flexibility is further witnessed by Benjamin and Mathew (2006:126) who indicate that the widow had freedom to go wherever she wished. In other words, she was not tied to the household after the death of her husband.

3.2.3 Ancient Babylonians

The law code of Hammurabi King of Babylon contains 282 section which contains laws dealing with a range of topics one of which is on marriage and adoption (VanGeren, 1997:540). Hence, Davis (1981b: 1) rightly observes that "in ancient Babylon the widow

was entitled to inherit the estate of their husband and enjoy the proceeds from the land. Similar to the Assyrian practice, the widow however, was to have the estate in trust for his firstborn son". In case the widow had no male child the levirate union would apply.

In summary, there are striking similarities and minimal differences on the levirate marriage in the ANE and the biblical account. Walton (2009:505) notes that: "Hittites laws and the Nuzi, levirate marriage legislation was common. For the Hittite a widowed wife was to marry either a brother in-law or father in law or a son of her brother in-law." Recent findings suggest that the purpose for this law was to keep the property within the family. He further proposes that in middle Assyrian laws the "wife of son who died could be given by the sons father to another of his sons even if he were betrothed to someone else but not yet married if the father of that betrothed daughter does not agree to this, the father of the deceased son may proceed as planned and give the betrothed bride to his son or he may withdraw from the entire process.

If the betrothed daughter dies before the marriage her father may give his prospective son in law another daughter. If a wife's husband dies while living in her father's house, if she has borne no children her father in law may marry her to the son of his choice or she could be given in marriage by her father to her father in law. This was not allowed in Israel though Judah found himself in the same scenario unknowingly (Gen 38)

3.2.4 Levirate in Genesis 38 and Ruth 4

In order to provide a biblical background and context of the levirate marriage in the Deuteronomic code, a review of the levirate marriage practices in other OT books is required. Following this Stone, (2013:195) rightly observes an intertextual connection between Deuteronomy 25:5-10, Genesis 38 and Ruth 4:7-10. This sub-section seeks to establish if this qualifies to be a levirate marriage and secondly, the ideology and context under which it takes place in case it is a levirate marriage.

As indicated here the perfect example of levirate marriage is found in Genesis 38 but also presents another ambiguity viz. when the father in law sires a child with the daughter in-law against other Holiness code in the Pentateuch (Lev.18:15). Here Tamar is married off to Judah's eldest son Er but soon widowed and childless (vv 7). Following

the levirate legislation she is married off to Onan the second born to Judah (v8). Onan seems not to be comfortable to raise an heir for his brother (v 9).

Consequently, in several occasions he had intercourse with Tamar but spills the seed so as not to give an offspring to his brother (v 9). As Nichol (1978:435) observes that Onan's act displayed lack of affection to his deceased brother and selfish spirit of covetousness for his possessions and inheritance. This act offended God and He strikes him dead also (v 10). Though young Judah is reluctant to give his third son to Tamar referred here as אַלְמָנָה in fear that he may also face tragic death. He perceives Tamar as a cursed woman. That is why Von Rad (1972:358) suggests that perhaps Judah suspected that the woman was responsible for the deaths. Hence Judah seems to treat Tamar dishonestly.

Further, Von rad argues that the levirate marriage was not binding only to the brother in law (ibid p. 359). Thus, along desperate waiting for the third born to grow up and give her a child, while in her father's home led her decide to seduce her father in law and consequently she gave birth to twins one of whom becomes the ancestor of the Messiah (Mathew.1:6,16).

Hartley (2000:319) notes a major deviation between levirate marriage as described in this narrative and that prescribed in Deuteronomy in that father in law takes the initiative while in Deuteronomy it's the brother in laws responsibility. However, Judah by deceit performed his function as the last levir for his family that is why he did not continue to have intercourse with his daughter in law (Wildavsky, 1994:37-48).

Though this act is at odds with the sexual laws within the Pentateuch, we appreciate the fact that God sanctioned the levirate legislation in a strict sense. Seemingly יבם did not have a choice as it is the case in Deuteronomy 25:5-10. In this view from a feminist perspective, woman may be seen as victims within patriarchal world forced to resort to manipulation and deceit in the book of Ruth 4 and Genesis 38 narratives because they do not have power, they are seen as active agents changing the social order. Thus, the line of law itself shifts as a result of life force (Adelman, 2012:87-109). This puts the patriarchal ideologies that mandated the levirate legislation in jeopardy while the social economic context stands prominently.

In the contrary, the analysis of the Ruth 4 narrative we observe some ambiguities that needs to be clarified. For instance, in chapter 1, Naomi does not qualify for the levirate marriage. But Ruth qualifies and she is given freedom to marry whoever she wishes. This is true simply because Naomi did not have any more children and she seems to be beyond the age of getting children. In this regard Naomi suggests to Ruth, her daughter in law, to approach Boaz a rich, kind and married man who was not the nearest kin. This means that Boaz was not legally bound to marry her but morally obliged as a sensible member of the community.

Ruth 4:10 clearly indicates that Ruth was a wife of the deceased אשׁת־המת next she was to be married so as to continue the family line and secure the land for the deceased. As noted by Bush (1996:225) the threefold purpose of this marriage is identical to that of levirate marriage that is to provide descendants for the deceased, to prevent the alienation of the family estate and provide for the protection and security of the widow; which can be described as social-economic.

Nonetheless, Bush (1996:227) concludes that "the name levirate should be restricted to the legally required social custom prescribed in Deuteronomy 25:5-10 and evidenced in the narrative of Gen.38." This claim refuting the presence of levirate marriage in the Ruth may be supported by the internal evidence of the narrative whereby Boaz says that he had bought all that belonged to Elimelech, Chilion and Mahlion. This implied the land, Naomi, and Ruth the Moabite. In a levirate arrangement the land belonged to the deceased, the son born belonged and was named after the deceased but here Obed the son born of Ruth and Boaz was named after Boaz but not after the deceased. (Ruth 4:20). In the contemporary African communities such as Abagusii, this arrangement can not be regarded as levirate. The children and the property strictly are supposed to remain in the title of the deceased.

In conclusion, there is lack of consistency in the levirate legislation in both the Genesis 38 and Ruth 4 accounts in comparison to Deuteronomy 25:5-10. Bush (1996:225) levirate in Deuteronomy 25 and Genesis 38 is first a legal obligation, secondly it is restricted to brothers of the deceased, it gives the widow legal obligations and powers to act in order to achieve her rights, and lastly refusal incurred serious penalty of social

stigma. The brothers must be living together on the same estate. Not all of this features are available in Ruth 4:5,10. Presumably, this law might have undergone some devolution; assuming that either the Ruth version of the levirate marriage might have been an earlier or late development.

When we analyse the ideological context of the above biblical texts Weisberg suggests that both genesis 38 and Ruth 4 share one common characteristic that "discontent of the levir". Walter Breggeman while writing on Ezekiel 18:6-8, identifies a very unique linkage of sexuality to economics something that we have identified in this study. He argues that "the linking of sexuality and economics, fertility and justice is evident at many places in the bible" (Brueggemann, 1991:237)

3.3 Exegetical Analysis of Deuteronomy 25:5-10

In order to address the above concerns, in the following section an exegetical analysis is carried out to establish the meaning, function, and use of the levirate law in the Deuteronomic Code.

Exegesis has been defined by Stuart, (2009:1) as a theological and analytical study of a passage so as to arrive at useful interpretation. Here the study concerns itself with the overview of the text, determining the historical and literary context, formal analysis, an in-depth analysis of the various aspects in the text, and lastly establish the theological significance and show the relevance of the text Deuteronomy 25:5-10 to the contemporary Christian world. Firstly, the researcher begins by identifying and confirming the limitations of the text in Hebrew and followed by own translation.

3.3.1 Background

It is imperative here to provide background information to the whole of book of Deuteronomy on the authorship, time, themes and the intended audience. The book is placed in its context in the Pentateuch and Old Testament canon. The genre and the literary background to the text are discussed.

The section begins by looking at the authorship of the book Deuteronomy. The book of Deuteronomy is generally accepted that it was written by Moses and contains his

address to the Israelites as they cross over to the Promised Land. Though highly disputed the conservative position that Moses may have written the book, "partially, substantially, or ultimately Mosaic" makes a lot of sense (Hamilton, 2005:368). Internal evidence shows that the book was written by Moses. For instance, 31:9, 24, 26 precisely indicates that the book was written by Moses; v9 "and Moses wrote down this law and gave it to-----", v 24 when Moses had finished writing down in a book the words of his law to the end."

Nonetheless, Driver (1961:82) holds that it is difficult to sustain Mosaic authorship of Deuteronomy. His hypothesis is based on the premise that Deuteronomy conflicts with the legislation found in exodus to Numbers. In this study we subscribe to the traditional view of Mosaic authorship.

In support of this position, Garland and Longman,(2012:461) testifies that the OT and the NT books also attribute the book to Moses as well (Josh 1:7,8:31-32,23:6 2King 14:6,Neh. 8:1,13:1,2Chro.25:435:12) NT books also refers to the laws that Moses commanded Israel to obey (Math 8:4,19:7,-8,22:24,Mk 1:44,7:10;10:3-4) Law of Moses (Lk 5:14,2:22,24:44,Jh 7:23,Ac 13:39,15:5,28:23,1Col 1:9:9 Heb. 10:28) and the book of Moses (Mark 12:26)

They further propose three hypotheses on the date of its authorship first by arguing that the date of exodus provides a benchmark for dating Deuteronomy i.e. 967/966 BC. and since the book claims itself to have originated in the plains of Moab, at the end of Israel's conquest of Canaan,(34:1-8) and since the wanderings in the desert took forty years, then Moses must have completed this book in 1407/1406. (ibid p. 461). So the book is historically placed at the close of the forty years in the wilderness (1:3) a time when all the adults had died because of their disobedience. On the plains of Moab Moses gave his final speech articulating on the rules and regulations of living in the Promised Land (Crossley 2002: 156).

Like any other biblical book, Deuteronomy discusses a number of theological themes which includes Yahweh who is portrayed as the God of Israel and the Lord of the covenant. Here, Yahweh is sovereign and is portrayed as the one central to all of Israel's

life. The patriarchal promises given to this pastoral community are subject to loyalty and obedience to Yahweh.

Garland and Longman (2012:465) rightly observes that the "covenant serves as the bond between Yahweh and his people". They further suggest that the covenant is grounded in the past, gives meaning to the present, and promises hope for the future." In this view the covenant forms a major theological theme that runs through the book of Deuteronomy. This theme of the covenant is also portrayed as the source of unity between God and Israel and the Israelites themselves a community of God. That is why Haber (1999: 3) argues that the "horizontal unit of Israel is emphasized through references to the members of the covenant as being *ahim* or brothers. (1:16; 3:18, 20; 10:9; 15:3, 7, 9, 11).

This covenant theme probably is the premise under which the levirate marriage is founded on. Perhaps that is the reason for Dillard and Longman (1994:117) assertion that "possessing the land in the first place and keeping it in the second place are both tied to Israel's obedience to God's commands". Hence, the choice of the elect community Israel, a place of worship and promise for land, God emphasized on obedience as a mandatory requirement. The researcher exhaustively discusses more on the theology of the text under investigation at the end of this this section.

Another theme highlighted in the book is land. As indicated in this study, this theme is supposedly tied to the levirate marriage legislation. The retaliation of the term land through the Pentateuchal code and Old Testament proofs this assertion.

3.3.2 Overview of the Text

The levirate marriage institution forms part of legislations found in the Deuteronomic Code. Precisely, it is located in the Deuteronomy 25: 5-10. Additionally, this can be said to be farewell address of Moses which reveals the experiences of Israel at the verge of crossing the Jordan onward to the promised land (Robertson and Judith,2006:355). Though Moses did not enter the promised land he is Israel's legislator and proclaimed it in the desert (Siebeck,2009: 208,209). So the main focus and motivation of the speech in the book of Deuteronomy is in view of the land.

The text Deuteronomy 25:5-10

כִּי־יֵשְׁבוּ אַחִים יַחְדָּו וּמֵת אַחַד מֵהֶם וּבֵן אֵין־לוֹ לֹא־תִהְיֶה אֵשֶׁת־הַמֵּת הַחוּצָה לְאִישׁ זָר יְבָמָהּ יָבֹא
עָלֶיהָ וּלְקָחָהּ לוֹ לְאִשָּׁה וְיִבְּמָהּ׃
[6] וְהָיָה הַבְּכוֹר אֲשֶׁר תֵּלֵד יָקוּם עַל־שֵׁם אָחִיו הַמֵּת וְלֹא־יִמָּחֶה שְׁמוֹ מִיִּשְׂרָאֵל׃
[7] וְאִם־לֹא יַחְפֹּץ הָאִישׁ לָקַחַת אֶת־יְבִמְתּוֹ וְעָלְתָה יְבִמְתּוֹ הַשַּׁעְרָה אֶל־הַזְּקֵנִים וְאָמְרָה מֵאֵין יְבָמִי
לְהָקִים לְאָחִיו שֵׁם בְּיִשְׂרָאֵל לֹא אָבָה יַבְּמִי׃
[8] וְקָרְאוּ־לוֹ זִקְנֵי־עִירוֹ וְדִבְּרוּ אֵלָיו וְעָמַד וְאָמַר לֹא חָפַצְתִּי לְקַחְתָּהּ׃
[9] וְנִגְּשָׁה יְבִמְתּוֹ אֵלָיו לְעֵינֵי הַזְּקֵנִים וְחָלְצָה נַעֲלוֹ מֵעַל רַגְלוֹ וְיָרְקָה בְּפָנָיו וְעָנְתָה וְאָמְרָה כָּכָה יֵעָשֶׂה
לָאִישׁ אֲשֶׁר לֹא־יִבְנֶה אֶת־בֵּית אָחִיו׃
[10] וְנִקְרָא שְׁמוֹ בְּיִשְׂרָאֵל בֵּית חֲלוּץ הַנָּעַל

3.3.3 Own translation

5When brothers live together and one of them dies, without a son, his wife should not be married outside the family but be taken up by his brother. 6So that the firstborn son shall raise up the name of his dead brother not to be blotted out of Israel. 7But, if the brother in-law is not willing to marry the sister in-law, she shall go up to the elders at the gate and and say "my husbands brother refuses to raise up to his brothers name in Israel; he will not perform the duty of a husbands brother to me. 8Then the elders shall summon and speak to him: and if he still holds to his stand and say l do not want to take her, 9Then the sister in-law in the face of the elders shall draw off sandal from her husband's brother foot then spit at his face saying thus is to be done to the man who does not built a house of his brother. 10So he shall be called in Israel a man whose sandal was drawn off.

3.3.4 Social Historical Background

The levirate marriage is a rare occurrence in the Hebrew bible. Moreover, it can be traced from the patriarchal times (Gen 38:19-30) and in the ancient near east cultural environment. While this practice cannot be assigned only to the Hebrew people, it was indeed the only possible remedy for the childlessness and social support to the widow. Supposedly, this is why Mays (2002:1) rightly observes that Deuteronomy is a farewell address by Moses to the Israelites while standing in the land of Moab just before he died and they crossed over to the Promised Land. He says that: Moses begins his address by reviewing previous events (1-3) and the experience at Mount Horeb (chapt 5). Admonitions, warnings and encouragements in order to inspire attentive obedience

(chapt. 4,6-11). Then he promulgates, explains and motivates a wide ranging law code (12-26) by which Israel is to shape its life in the land as Yahweh faithful people.

As stated above the ideal covenant community rules and regulations can be seen in 23:15-25:19. The motif is personal and community life which includes areas like economic and commercial practices, spirituality, family life issues, legal and judiciary matters, personal relationships between slave and master, the rich and the poor, lender and borrower, husband and wife, captives of war, buyer and seller (Ryken and Ryken,2007:270).

According to Craigie (1976:18) "the events described in Deuteronomy occur right at the end of the Mosaic period and immediately prior to the entry of the Israelites into the promised land". So the levirate law was addressed to the Israelites and was applicable in the Promised Land. Vogt (2009:137) supports this view by arguing that the speech of Moses was given in a critical moment of transition a teaching that would "help them deal with challenges facing them in the land"

The social setting can be derived from the context of the levirate law in Deuteronomy 25:5-10. Thus, "when brothers live together "this means the brothers must be living together on the same land or household, belong to the same family and apparently the widow must be childless or that law was in force even if the widow had daughters. The levirate law ensured a marriage arrangement that involved "female mobility and male stability. The woman left her own household upon marriage and became a member of her husband's household. She was regarded as chattel or possessions of their husbands and the land upon which they lived was transmitted along patrilineal lines (Gowan, 2003:315).

Further, Athaly notes that the levirate institution prevented sociological misfit in the society and reaffirmed the young widows place in the deceased husband's family(Brenner-Idan, 1994: 146). Too, McConville, (2002:369) seems to be in support of this social context when he argues that "the phrase outside the family might itself mean outside the smallest kinship group the fathers house (beta'ab). He further contends that 'there was probably an economical aspect to this concern of keeping the woman within the family". Despite this argument there is contention on the marital status of the *levir.* Hill and Burge contends that the legislation was to be complied to "even if the brother-in-

law was married (2012:170) whilst Vos, (1999:104) argues that the brother in-law is a "single brother". In this study we presumes that the marital status of the *levir* did not matter.

The above suggestions of various scholars presumably point to the sense of male dominance and patriarchal ideology and kinship system apparently copied from the ANE, that might have influenced the levirate legislation in Israel early enough. That is alluded to by Alexander and Baker (2003:293) "the head of the household or paterfamilias whether the father (eldest male) or eldest son had complete charge of the household's property, represented the family in court and was responsible for maintaining its prosperity". They further hold that among the factors that were considered in choice of life partner "social parity, economic advantage and expansion of kinship network with one aim that of producing an heir"(Baker,2003:293) This led to the formulation of legal strategies like adoption, surrogacy and levirate marriage legislations to be put in place.

3.3.5 Text unit and its Genre.

Deuteronomy 25:5-10 belongs to the legal corpus of the miscellaneous legislations found in chapter 25 and which form part and partially of the Deuteronomic code running from chapter 12 to chapter 26.

The text Deuteronomy 25:5-10 falls under the law. Since this is obvious, the study identifies what type of law this is. In the Hebrew bible laws there are two major kinds of law namely Casuistic law which present a particular case and describes the form of punishment inflicted on the one who goes against it demands. The study also find another kind of law called apodictic law which are presented as declarations. There is no case presented but the individual only listens to commands.

The typical example of this form of laws is the Ten Commandments. Vogt (2009:139) further classifies the laws in the Pentateuch in different types such as: *Criminal laws* that specify offenses that are regarded as contrary to the best interest of the community, *case laws* that describe particular cases and how they should be resolve, *family laws* that regulate relationships within families and responsibilities of members of a family including the role of the patriarch, *sacrificial laws* the detail regulations concerning sacrifices, *symbolic laws* that describe and establish the system of clean and unclean. *Sacred calendar laws* regulate the Sabbath and other feasts and festivals that

provide a rhythm to Israel life in a relationship to Yahweh. *Compassionate laws* regulate how the people in community are to treat one another.

The immediate context of this law has been described by Rofe (2002:169) as "Family and Sex laws", which he argues are homogenous and have of the same origin. A syntactical examination of this laws indicate that they are written in the third person and begin with a lengthy protasis preceded by כי (if or when) and followed by apodosis which states the legal ruling for that particular case and the mention of the subcase beginning with וְאִם־לֹא (but if not). The jury is the elders at "the city gate".

Thus, text Deuteronomy 25:5-10, falls under the casuistic law and classified under family law. "The Deuteronomy's typical conditional formula "if……..you form of casuistic law" (Nelson 2002:166) two family cases are presented first presenting the conditions and requirements for the levirate legislation and secondly giving guidelines in case the *levir* was not willing to comply. We can notice the same characteristic in the family laws on sex (22:12-29,24:1-5). The underlying principle was for social economical concerns for the widow and the dead brother in Israel.

In bridging the literary contexts of levirate marriage legislation, we recognize Moses exposition of the many other legislations in chapters 6-11 which cover total obedience to Yahweh and commitment in worship alone and the terms of the covenant in chapter 12:2-16:17. From here henceforth we find stipulations on the applications of those terms especially in their new environment as they cross the Jordan.

Further, Christensen (2002:465) suggests that the levirate marriage falls under readings number 6 which he describes as "laws on Human affairs in relation to others (21:10-25:19) positioned within the DC. A literary analysis of this portions reveals that laws focus on four key areas of human life that are interrelated. These are: security, family life, social justice, and humanitarian aspects. An assessment of Deuteronomy 25:5-10 in respect to its immediate literary context indicates that is Deuteronomy 21:13-21,22:13-29,24:1-5 is part of Deuteronomical family laws whereby a woman is described in her social economic position in terms of her relationship to man. Here, family is defined in relation to men (22:21). It is between the prohibition that say you shall not "muzzle an ox when it is treading out grain" and the directive to "cut off the hand of a woman who seizes the private parts of a man".

Similarly, the case in Deut.25:5 is stated that two brothers live on the same land that presumably has not been subdivided, one of them dies without a son בן אין לו . The same phraseology is used in another book of the Pentateuch Numb. 27:8 which deals with the case of a man who died without son but with daughters who were later married. The narrative says that the daughters came to Moses and asked "why should the name of our father be taken away from his clan because he had no son? Give to us a possession among our father's brothers. (Numb. 27:4). The word "name" as suggested by Kilchor (2015:432) refers to inheritance. Then Moses gives further legislations on the event of a man who had no son but daughters viz. give his possessions to his daughters, his brothers, his father's uncles, nearest kinsman. Hence, scholars agree that the passage falls with the wider literary context of the Pentateuchal codes and immediate context of the deuteronomic code which runs from Chapters 12-26 which in return form literary unit when considered against the background of the Pentateuchal codes. Thus:

> Pentateuch connects the law passages in Exodus through numbers to the events which occurred at Mount Sinai, and it presents the deuteronomic legal texts as a recapitulation of the Sinaitic law. The covenant law within these four books, Exodus through Deuteronomy, summarized the Lords expectations for his people in terms of their relationship with Him and with one another" (Bruce, al etal 2002:244)

Kauffman, supports this view when he says that: The literary structure taken by the book is "literal/legal form" (VanGemerem, 1997:538) It forms a literary unit dealing with levirate marriage law. It comprises six paragraphs with the first and the third starting with conditional participle כי

The first paragraph (v 5) specifically presents a case where two brothers live together in the same family property and one of them dies without a son. Specific legal stipulations are given that the almana (אָלְמָנָה) should not be married outside the family cycle but to be married by the surviving יָבָם (husbands brother). The second paragraph (v 6) stipulates that the first born son out of this marriage shall inherit the dead man's share of the property and propagate his name in Israel. However paragraph three and four (v 7-8) gives freedom and conditions for the levir to make a choice. Lastly in v 9-10, stipulations on the haltiza ceremony are given and form the climax.

The section is held together by six subunits as outlined in the next paragraph.

Vv1-3 Justice and punishment in the context of neighbourly respect. The focus here is establishing a statute that guards on the respect and self esteem of a brother.

V 4 Legislation on ensuring justice and humane treatment of the animals. The oxen is justified to modicum of satisfaction while performing her duty. Figuratively used in the new testament to refer to communal support itinerant missionary and local church minister (1Tim 5:18,1Cor 9:9)

Vv 5-6 Legislation to ensure justice to the sonless deceased brother. The concern here is not the widow who has been left but a patriarchal concern that the "name" or "house" of the deceased should not be blotted out. So family continuity is the overriding agenda here with emphases on community with all members committed to its welfare (Ps.133:1).

Vv 7-10 Justice and mitigation procedures on the kinsman's shirking of levirate duty. In the spirit of encouraging communal coherence, the brother in-law has an option to accept the responsibility of marrying a the widow and siring a son for for his deceased brother or not by choosing two acts of humiliation as spitting in his face or removal of the sandal.

Vv 11-12 Justice in a dispute among two men. Here the punishment administered to the woman show how men are give priority whilst we observe the irrelevance of women social power.

Vv 13-16 Justice in the marketplace to ensure equitable economic transactions. A call for fair commercial transactions a condition of living in the land.

Vv 17-19 Inclusivity and exclusivity. This durable hostility against the Amalek is forward looking to a time when the covenant community shall settle in the land. Whether their extermination is a justice before God or not is a theological debate that requires a separate discussion.

In the chapter the study notices a thesis an ant-thesis. That is in v 6 the blotting out is discouraged whereas in v19 Israel is commanded to blot out the memory of Amalek.

After this outline the study now shall embark on the exegetical analysis of the text Deuteronomy 25:5-10 within the context outlined above. The emphasis here is to identify the nature function and purpose of the levirate marriage legislation in the DC.

The text presents theological and ethical challenges further contradicting the biblical teaching on marriage and its sanctity. Hence causing certain tension in the mind of the modern reader. The study notes that the concern is not per see the status and security of the widow but of the deceased in that the widow was not to marry outside the family to a stranger. Also what was the role and function of the levir? Suppose the levir was already married does this legislation promote polygamy?

Further it is noted that the marriage with a brother in-law is prohibited in the holiness code (Lev 18:16). Then under what circumstances was this allowed and for what purpose? And lastly who is the brother in this text?

So inorder to find out what Deuteronomy says it is necessary to identify key words and phrases so as to arrive at the meaning, function and purpose of the levirate marriage legislation in the DC with an aim of doing a comparative analysis with the nature meaning and function of the custom of ogochia nyomba among the Abagusii in chapter five of the current study.

3.3.6 Grammatical and Contextual Analysis

The study begins by identifying who the brothers referred to here as אַחִים The conjunction כִי (if or when) is joined with the verb יָשַׁב in the Qal the verb means sit or dwell, remain sitting, or live, be inhabited, and in Hop. It refers to being inhabited, be a landowner (VanGeren, 1997:550). Hence the verb יַשְׁבוּ implies that they "own land together". Driver,(1978:282) points out that "when the members of the family were separated , the law did not apply". The question may be Driver needs to answer is that were there a time when brothers lived separate? Given the context of this legislation land was to be assigned on family basis.

Therefore, the position of Driver as stated here can be disputed. Another exception articulated by Noth, (1976:314) is that if the widow had daughters, the laws still applied. So the word "no child "used in the (AKJV) may have twofold meanings, that is, with daughters only or no son. Finally, if the widow was older and had children (sons) seemingly the law did not also apply. The one who was mandated to marry the widow of the deceased was a brother. Who is being referred to here as brother? The answer to this can be achieved by analysis of who are the brothers referred to here as אַחִים . it appears in a number of OT texts as indicated here:

WTT Gen. 42:32 שְׁנֵים־עָשָׂר אֲנַחְנוּ אַחִים בְּנֵי אָבִינוּ הָאֶחָד אֵינֶנּוּ וְהַקָּטֹן הַיּוֹם אֶת־אָבִינוּ בְּאֶרֶץ כְּנָעַן׃

WTT Gen. 49:5 שִׁמְעוֹן וְלֵוִי אַחִים כְּלֵי חָמָס מְכֵרֹתֵיהֶם׃

WTT Num. 27:10 וְאִם־אֵין לוֹ אַחִים וּנְתַתֶּם אֶת־נַחֲלָתוֹ לַאֲחֵי אָבִיו׃

WTT Num. 27:11 וְאִם־אֵין אַחִים לְאָבִיו וּנְתַתֶּם אֶת־נַחֲלָתוֹ לִשְׁאֵרוֹ הַקָּרֹב אֵלָיו מִמִּשְׁפַּחְתּוֹ וְיָרַשׁ אֹתָהּ וְהָיְתָה לִבְנֵי יִשְׂרָאֵל לְחֻקַּת מִשְׁפָּט כַּאֲשֶׁר צִוָּה יְהוָה אֶת־מֹשֶׁה׃ ס

WTT Deut. 25:5 כִּי־יֵשְׁבוּ אַחִים יַחְדָּו וּמֵת אַחַד מֵהֶם וּבֵן אֵין־לוֹ לֹא־תִהְיֶה אֵשֶׁת־הַמֵּת הַחוּצָה לְאִישׁ זָר יְבָמָהּ יָבֹא עָלֶיהָ וּלְקָחָהּ לוֹ לְאִשָּׁה וְיִבְּמָהּ׃

WTT 2 Chr. 21:2 וְלוֹ־אַחִים בְּנֵי יְהוֹשָׁפָט עֲזַרְיָה וְיִחִיאֵל וּזְכַרְיָהוּ וַעֲזַרְיָהוּ וּמִיכָאֵל וּשְׁפַטְיָהוּ כָּל־ אֵלֶּה בְּנֵי יְהוֹשָׁפָט מֶלֶךְ־יִשְׂרָאֵל׃

WTT Ps. 133:1 שִׁיר הַמַּעֲלוֹת לְדָוִד הִנֵּה מַה־טּוֹב וּמַה־נָּעִים שֶׁבֶת אַחִים גַּם־יָחַד׃

WTT Prov. 6:19 יָפִיחַ כְּזָבִים עֵד שֶׁקֶר וּמְשַׁלֵּחַ מְדָנִים בֵּין אַחִים׃ פ

WTT Prov. 17:2 עֶבֶד־מַשְׂכִּיל יִמְשֹׁל בְּבֵן מֵבִישׁ וּבְתוֹךְ אַחִים יַחֲלֹק נַחֲלָה׃

WTT Isa. 13:21 וְרָבְצוּ־שָׁם צִיִּים וּמָלְאוּ בָתֵּיהֶם אוֹחִים וְשָׁכְנוּ שָׁם בְּנוֹת יַעֲנָה וּשְׂעִירִים יְרַקְּדוּ־שָׁם׃

WTT Hos. 13:15 כִּי הוּא בֵּן אַחִים יַפְרִיא יָבוֹא קָדִים רוּחַ יְהוָה מִמִּדְבָּר עֹלֶה וְיֵבוֹשׁ מְקוֹרוֹ וְיֶחֱרַב מַעְיָנוֹ הוּא יִשְׁסֶה אוֹצַר כָּל־כְּלִי חֶמְדָּה׃

WTT Amos 1:9 כֹּה אָמַר יְהוָה עַל־שְׁלֹשָׁה פִּשְׁעֵי־צֹר וְעַל־אַרְבָּעָה לֹא אֲשִׁיבֶנּוּ עַל־הַסְגִּירָם גָּלוּת שְׁלֵמָה לֶאֱדוֹם וְלֹא זָכְרוּ בְּרִית אַחִים׃

It is important to identify who the brothers refered to here as אַחִים plural of the word **אָח** ʾ**ach,** *awkh;* a primitive word; a brother (used in the widest sense of literal relationship and metaphorical affinity or resemblance (like 1)):—another, brother(-ly); kindred, like, other.

In the ANE among the Akkadians, Ugarit and Egyptians אח refers to a person's own blood brother. In a broader sense it refers to "kinsman, fellow country man" (Botterweck and Helmer, 1974:188-194). There are many biblical occurrences of the word in reference to the own blood brother or fellow Israelite. This instances includes Gen 4:8-11, referring to Cain and Abel, 25:26,(Esau and Jacob), 37:2,4,42:3,7 (Joseph and his brothers), Ex. 4:14 Aaron the brother of Moses. Botterweck and Ringgren (1977:189) further notes that the Old Testament lacks in distinguishing sharply those who are full brothers from the half-brothers. They suggest that this distinction is realized by the reference "son of" whenever they share the mother. This premise is perhaps true due to strong emphasis on "community" an aspect that is shared by most African communities.

In other biblical usage it refers to "kinsman". For instance, brother is used in Gen. 14:14, 16 to refer to Abraham's nephew Lot. In some instances it refers to "fellow countryman" e.g. Gen. 31:32 (Jacob and Laban),Ex. 2:11,4:18,(Hebrews are brothers of Moses) Lev. 10:4 (the sons of a cousin)25:25 (one responsible as go'el) numb. 20:3 the word brethren refers to Israelites (ibid. p. 190)

Legally, brothers are mentioned in the Old Testament especially on hereditary rights. "The oldest son was given a double portion" (Deut. 21:17). In Deuteronomy 25:5-9,יבם the brother of dead man is obliged to marry his sister in-law and also the duty of גאל (redemption) belonged to a brother (Lev.25:25).p. 191. VanGeren, (1997:346) the word refers to kinsmen especially when addressing family matters. He further contends that in Deuteronomy in most cases it does not refer to blood brothers but to a brother who belongs to the covenant family hence means fellow Israelite or fellow citizen. (VanGeren, 1997:348)

Theologically, “the idea of brotherhood to all fellow tribesmen and fellow countrymen came also due to the increased demand of solidarity. In the holiness code and also Deuteronomy there are numerous references to the duties towards a brother”(Botterweck and Ringgren,1977:192). Further, the word אָח as noted by Lawson, (2002:401) in Deuteronomy 25:5-10, and Ruth 4:14-15 is used with nuance of a clan relative.

Following this analysis, the word אח is used in direct contrast with the “stranger”. In reference to this, a blood brother was mandated to marry the wife of the dead brother. In case he was not interested, the member of the extended family was to marry her. An Israelite was a brother, so to keep the family property within the tribal family the widow was to be married within the tribal brotherhood which was accompanied with brotherly responsibilities as indicated in the Deuteronomic code.(15:7-8,15:12-15,23:19-20,24:10-13).

Comparatively, in Kenya especially among the Gusii people, brother refers to blood brother (same mother), half-brother in a polygamous marriage *momura omino bwe enyomba ende*,(brother from another mother or son of an uncle or aunt within the same family) cousin or distance brother(within the clan). All this were legible to enter into levirate relationship with the childless widow. In this case a stranger was someone outside the clan.

Also in the contemporary Christian world, the Greek word άδέλφός born from the same womb, close relative. Metaphorically it was used to refer to companion, friend, fellowman, fellow official or fellow member of society. Later it was used to refer to “brother in faith” (Brown, 1986:254-255)

Thus, in the contemporary Christian world brother refers to a member in the community of faith. In this context it can be suggested that a Christian widow can be married within the community of believers regardless of tribe.

Another word used here that needs our discussion is the word יְבָמָה The word יְבָמָה comes from the root יבם which appears in vv 5,7 meaning brother in-law. As a verb in the piel form it refers to “to fulfill the duty as a brother in law” (VanGeren,1997:292-393) So the word יְבָמָה is nominative, feminine singular means sister in-law. The יבם was duty bound to marry the sister in-law and provide a son for the childless widow.

Further, the state of the widow is referred to as "childless" in (AKJV) while most bible translations such as ESV, NASB, NRSV, NLT, specifically refers to "no son". The Ekegusii vernacular bible translates בן in verse 5 as *omwana* meaning child but in v 6 it is rendered as *omwana omoisia* meaning male child. But textual evidence confirms that the Hebrew וּבֵן אֵין־לֹו rightly translated as *no son*. In light of this the levirate legislation here was possible only when the brother died without a son referred to as**בֵּן** *bēn*; refers to a son as a builder of the family name, in the widest sense (of literal and figurative relationship, including grandson.**בֵּן** *bēn*; an Israelite: additionally, **בֵּן** *bēn*; in Aramaic refers to child, son, young.

Further, the interrogation of this legislation requires a proper understanding of meaning of the expression *If brothers dwell together* rendered as כִּי־יֵשְׁבוּ אַחִים יַחְדָּו in Hebrew.

While this is true and agreed by most scholars, the marital status of the יָהֶם attracts interest. It is assumed that the brother in-law was either married or not but Merrill asserts that he was "the next eldest son who was himself unmarried" (Merrill, 1994:136 It should be noted that the marital status of the brother in law is not very clear from the passage but it can be inferred within the social cultural context.

(Deut. 25:5 WTT) this phrase ן אֵין־לֹוֹוּבֵ (*and has no son*) phrase is found also in the book numbers 27:8 where a legal injuction is placed by the brother less daughters. Thus, we note the same phraseology כִּי־יָמוּת וּבֵן אֵין (i*f a man dies and has no son)* in the book of numbers where the daughters of Zelophehad are allowed to inherit their paternal property since they did not have a brother and their father had died.

Seemingly, the really crisis is not the inheritance of the estate but "build the brother's house". Perhaps this is the reason why Moses gives other forms of legislation elsewhere in Numbers 27:6,7,8, authorizing daughters of Zelophehad to inherit their fathers estate; and in 36:6 the Lord commanded them to get married within their father's family in order to build their fathers household.

In an attempt to explain this Budd, (1984:300,301) holds that inheritance was in order of precedence that is sons, daughters, brothers, uncles, other relatives. Though it is argued here that the context of this passage in to show how Manasseh occupied the land west of Jordan Budd's assertion that this legislation is no longer in conflict with the

Deuteronomic levirate principle but confirms it by adding extra details to cover situations in which there were no brother to marry the אַלְמָנָה (widow) is convincing.

Finally, the removal of the נַצַל and the ceremony of shame require exposition and clarification. It is noticed that when the living brother was not willing to take the dead man's widow, both of them, the widow and the brother, were to notify the city elders or judges and widow remove the sandal from the foot of his brother in law as a gesture of renouncing his right. The study further identifies a major discrepancy on the role of the sandal in Deuteronomy and the narrative of Ruth 4 while the sandal misses out in Genesis 38. The same observation is made by Jacob and attempts to give an explanation that "in Deuteronomy and Ruth the role of the sandal is not similar at all. The removal of a shoe in the civil context in Ruth indicates transfer of property and in Deuteronomy symbolically refers to shame of not progressing in life. Hence the "shoeless" means forfeit position and progress" (Chinitz, 2007:42,43).

Additionally, Walton, (2009:504) clarifies that wearing of sandals was common in Canaan Syria and Mesopotamia and was used symbolically as a token of payments. At Nuzi the seller removed his foot from a piece of land he was selling and place the buyer's foot in his place. Thus a pair of shoes and garments is presented as a fictitious payment to accommodate some unusual transactions." The same explanation is alluded to by Driver (1978:283) by suggesting that in Ruth 4:7 "it was a custom in Ancient Israel when property was transferred or right ceded to take off the sandal and in handing it to the person in whose favour the transfer or cessation was made". It is noted that the shoe was kept within the city court by the elder as evidence.

What then is the implication of shoe removal by the sister in-law in Deuteromomy? As indicated in the above paragraph, Cook (2005:318) argues that this was a token of taking from unwilling brother all rights over the wife and property of the deceased". He further proposes that "planting the foot on a thing was unusual symbol of lordship and taking possession". From this argument, the study assumes that the wife of the "dead man" was also inherited and owned just like property as per the levirate legislation.

The nature and purpose of the levirate marriage in the Pentateuchal code is best represented by the pharase יקוּם עַל־שֵׁם אָחִיו הַמֵּת וְלֹא־יִמָּחֶה שְׁמוֹ מִיִּשְׂרָאֵל Deut.25:5 in

relation to the firstborn of the levirate marriage was to succeed to or literally rise over/upon the name of the deceased brother so that his name may not be blotted out of Israel. The same way similarly it refers to "building up his brother's house". This now shall lead to the discussion on the nature and purpose of the levirate marriage which an attempt to highlight the key elements of the levirate marriage legislation.

3.3.7 The Nature and purpose of the levirate law in Israel

Having done a grammatical and contextual analysis of the text Deuteronomy 25:5-10 in the Pentateuchal codes; this section attempts to evaluates and establish the nature and purpose of this law in Israel. It explores a number of issues regarding the levirate legislation. For instance: what was the intention of the levirate law? Why was this law given? We intend to explore the values promoted by the levirate marriage law and what interests it was meant to protect.

Firstly, the nature of this type of law in the old testament is that they probably might have been borrowed into Israel from the Ancient Near East neighbourhood. Alberto Soggin (1989:169) notes that casuistic formulation is never used in laws connected with cult or ethics hence his argument that this laws are neutral in the religious field. This argument can be contested on the ground that Moses was giving legislation for settlement in Canaan agrarian economy. The laws were binding only as far Israel remained in the covenant land and was mandatory at the beginning of a new generation. This implies that postmodern challenges and changes would have rendered these laws obsolete.

Tsai, (2014) while writing on the Deuteronomic law asserts that "law often shapes social and economic factors". We tend to support this view for it is apparent that the law in the Old Testament seem be the major influence of the culture of the Israelites and the people of the Old Testament.

This law, according to surface survey, seems to have gone through some metamorphosis over time. In light of this view,Heirs (2014:3) holds that the ritual Decalogue (Ex.34:17-38) was the earliest followed by the covenant code (Ex.20-23),Deuteronomic code (Deu.5,20-25),the holiness code (Lev.18-26), revised Deuteronomic code(Deu.12:19,26) and lastly the Priestly code (other laws in Exodus, Leviticus Numbers that are not attributed to the earlier codes). The implication of this is that their usefulness might have also evolved as time went by. That is why he further

argues that the laws were applicable to "Israel" as a whole before 1000 BCE, during the divided kingdom, before and after the exile respectively.

What then was the use of these legislations including the levirate marriage? Heirs suggests that it was "intended for instruction or direction of the people of Israel not as for other people's either during the biblical period or in later times" (ibid.p.2). This suggestion is correct for it is true that the social economic challenges and transformations that have since occurred render the levirate legislation irrelevant.

In this regard the levirate law gave guidelines and directed the Israelites on what to do in the event a man died without an heir. This had threefold significance: First to keep the widow within the family, secondly to maintain family control over the property especially in an agrarian context, and lastly to keep memory of the deceased (25:5-6).

Most likely economic gains might have prompted the brother in-law to opt for *halitza* in place of marrying the brothers' widow. Elsewhere in this study we note that economic reasons might have prompted Onan to "spill the seed" so that the land remains to him since his brother Er was the firstborn and was entitled a big share as per the rules of progenitor. Tigay as quoted by Matlock (2007:306) notes five reasons that might have forced the levir to renounce his duty as follows:

> [1] he might not care for his brother's wife; [2] he might feel that she had brought his brother bad luck;[3] he might calculate that with his brother dead and heirless he could himself inherit a larger share of their father's estate; [4] if already married, he might not want to create arrival for his present wife, or [5] he might calculate that the expense of supporting an extra wife and child who would not be his own would diminish the estate that he could leave for his own children.

In light of this view Nelson (2002:297) rightly argues that the law was primarily to preserve the name of the deceased and secondly to preserve family land tenure rights. Thus, though there is no direct mention of economic issues the underlying principle of this law was both social and economic sustainability. Then if the brother in-law took his role he could lose economically thus abstaining from fulfilling this duty was advantageous to him to some extent. However, the spirit of this law indicates that releasing the widow via the ceremony of *halitza*, freed the widow to be married outside the family.

3.3.8 Theological and Ethical Relevance.

Currently, the number of women becoming widows has become increasingly worrying. There has been a high mortality rate due to HIV/AIDS infections, war,

accidents and many others. This has greatly impacted the social economic status of widows many of whom depend on their husbands for a live hood. Because of this phenomenon the levirate marriage legislation as indicated in this chapter poses complex theological dilemma for it is at odds with what is acceptable in the contemporary Christian world. It is no longer practical and ethical to justify widow inheritance because of the health hazards. Nonetheless, from the "principle approach" we shall endeavour to contextually apply the levirate law within the big story about Israel as community of God and land in the covenant contextual framework.

In light of this, the question which we shall labour to address is what is the relevance of this practice found in the bible to the contemporary context especially to the Abagusii people who shares the same social cultural orientations? Further, to what extend should the contemporary Africa Christian comply to this as advised by Moses at the beginning of the DC "These are the statutes and rules that you shall be careful to do in the land that the Lord, the God of your fathers, has given you to possess, all the days that you live on the earth (12:1)".

This is rather a complex issue given that the law is classified as civic law that regulated life in a community that was well knit together unlike the contemporary world. Moreover, in the Christian church today, there are similar situations that if it were in ancient Israel context would warrant levirate marriage. For instance, young widows exist in the Christian church today who have no children. Most of them opt to stay single while others get married outside the family. Many cases have been reported where in the event of early death; the widow of the deceased is chased away by the family members of the deceased and striped of her husband's property. This leads to many court battles of which in most cases the widow loses due to social- cultural challenges that work against the widow.

Firstly, we shall determine the meaning of the law to the biblical audiences who are the second generation Israelites as they were about to enter the Promised Land. Secondly, identify the differences between their time and our day; and lastly determine the theological principle of the levirate legislation.

This approach is pegged against Doriani's view that "interpretation has two aspects, that is, *exegesis* which is the exposition of text whose objective is to "discover

what the text meant and *application* whose objective is to explore what the text means" (Dorian,2001:18,19).

Right from the narrative in Genesis 38 and Ruth 4 the researcher recognizes a covenant community nearing extinction. This is what David E. Garland and Diana R. Garland alludes to when they suggest that Tamar was not aware that what was at stake was not "her inclusion in the clan of Judah but the family line was dying" (Garland and Diana, 2007:114). Thus, the covenant family was at stake. In view of this, the levirate legislation was one way of checking the extinct of covenant community. Also, the covenant community was meant to be pure and uncorrupted hence the prohibition to marry a stranger. So covenant community therefore depended on one another and social welfare was a function of all members in the community. Nonetheless, levirate marriage affirms the permanence of the marriage covenant as portrayed in scriptures.

Also the study contends that the purpose of the levirate legislation was to provide the widow with economic and social security. Nowadays the majority of women are self-reliant, educated and the availability of legal frameworks that allow women to co-own landed property with their husbands such that in case one of them dies the property is automatically transferable to the surviving spouse. The study therefore suggests the re-reading of the levirate legislation in line with the current social economic context.

Unger (1981:266) contends that: "the spirit of the law was intended to influence us in our brotherly relations. Our brother's name is to be maintained even if at some personal sacrifice. The un-brotherly spirit manifested in the scribes and Pharisees of Jesus' days had little concern for others in distress but the genuine brotherly spirit found perfect expression in the true Kinsman's Redeemer the divine Boaz.

Similarly, Harrison (1988:821) clearly articulates that the levirate marriage "was not strictly commanded, but it was considered a duty of love, the none fulfilment of which brought reproach and ridicule on the man and his family." It was a custom that was as a result of Israel's interaction with her neighbours in the East.

Secondly, it has been identified that the land was central in the establishment of this legislation just before the covenant community closed over to the Promised Land. Brueggemann (1991:239) asserts that land was assigned by Yahweh to the entire community; and it "is not designated as possession but an inheritance". He further points

out that it is “inalienable and endures in perpetuity”. Perhaps this is the reason why the widow was not to be married outside the family and her mandatory mandate to sire a son to build the dead man’s name and inherit the land.

Lastly, applicability of the levirate marriage to the contemporary Christian worldview requires Christocentric redefinition of the Gods people in order to render this legislation relevant.

As suggested in this current study, the purpose of the levirate law was to ensure a pure community. Marrying a stranger meant polluting a holy tribe hence emphasis to marry within the family. Importantly, new covenant Christians are referred to as “a royal priesthood” (1 Pet.2:9) and equivalent of the covenant family of God in the Old Testament. To the Christian commonwealth, Paul admonishes “do not be equally yoked with unbelievers” (2Cor 6:14). So the principles alluded to in the levirate marriage especially that one of purity can be emulated by the contemporary Christian church.

The passion with which Moses articulates this legislation is equal to Yahweh’s jealousy on guarding the integrity of the family. As indicated here every member of the covenant community is encouraged to seek the good and comfort of others in the commonwealth. The study recognizes the value of children, sanctity of life and continuity of parenthood something that gives esteem and contentment to the family at large.

Most importantly, whereas the law was addressed to the Old Testament covenant community; the word brother rendered in Hebrew as אָח which refers to kinsman or fellow Israelite hence from the lens and teachings of Jesus Christ can also refer to a fellow Christian who also share in the eschatological covenant promises. In this purity and adherence to the covenant obligations is mandatory for them now as they look forward to the fulfilment of this promises.

In regard to ethical relevance, Andrew A Kyomo and Sahaya G, Selvan, (2004:184) rightly notes that “there are great waves or storms of changes going through Africa in all spheres of life’. That means that life as it was yesterday is not the same way it is today. By extension this waves of change has affected the institutions like marriage more especially on how the biblical teachings can fit in this gap amidst this social economic changes witnessed in contemporary Africa.

Emerging issues like moral decay, revolution in communication, individualism which contradicts African communal ideology, un-official polygamy where a man keeps a wife in the rural home while engaged in *mpango wa kando* (extra marital affair) especially in town. The existence of many single ladies due to widowhood or by choice, threats from HIV/AIDS, urbanization and high prevalence of separation and divorce, and sophistication on reproductive health are among the contemporary characteristics that dictate the contemporary family life.

Further, in most African societies marriage was recognized as an agreement between one extended family to another an aspect shared by the biblical legislation in Deuteronomy 25:5-10 and the Pentateuch at large. on the contrary, the so called Christian marriage today has been minimized to include only the nuclear members whereby marriage is closed unlike in the Pentateuch where marriage seems to be open in the sense that a man would enter into sexual relationships with other women on account of childlessness or widowhood. Against this background, we enquire; what is the ethical relevance of the levirate marriage in the contemporary context?

Though in the contemporary world, the institution of marriage or rather family has been infiltrated by global ideologies, the researcher appreciates and notes that Deuteronomy 25:5-10 is part of the scripture which the apostle Paul forcefully declares that "all scripture is authoritative and effective for training in righteousness". But, as Daniel Block (2012:589) argues "chapter 25 deals with a specific domestic and economic issues that are culturally conditioned." He however asserts that "the theological and ethical principles apply to the faith and conduct of Gods people in our day".

The study presupposed the potential of Deut. 25:5-10 as an impetus for polygamous marriage relationships and sexual immorality in the name of levirate law. In this regard, many young and old men have resorted to promiscuous life by claiming that "widows are to be cared for" in which they imply having sexual intercourse. The motivation is not necessarily care per see since a majority of women who become widows are economically able; and with those who are needy economically fall victim to this man.

In view of this the contemporary Christian should be aware of the rights of both the widow and deceased husband and have them mitigated appropriately. Further, widow's rights of intimacy and conjugal needs, their social economic security and right

to quality life should never been overlooked. Luckily, many governments in the world today have put in place legislations that protect family rights and ensure excise of liberty.

Thus, the study acknowledges a great distinction between the people of God in the Old Testament and the contemporary world. The levirate marriage law was a civil legislation that regulated a covenant community in a theocratic form of government whereas in the contemporary Christian world, this is a state function. For instance, in Kenya today, marriage is a state regulated institution with clear guidelines on property rights, inheritance and individual bill of rights.

The widow whether young or old, with a child or childless, with or without a son is protected by constitution. Therefore, these laws may not be applicable as the case narrated here is a prerogative of the state while the case of Deuteronomy required local elders.

Further, as suggested by Weisberg (2004:28) levirate marriage or its corollary widow inheritance may decrease or vanish from the community over time due to economical and religious factors. Amazingly, contemporary religion regulates and influences marriage while economic power house determines and dictates the marital status of many individuals. Hence the many religious dogmas prohibit levirate marriage and economically levirate marriage is a very expensive undertaking.

In summary while the above propositions are true, what then is the theology of the leviratic union? The theological issues involved here touches on the marriage and family, inheritance and human sexuality. From the study the leviratic unions found in the Old Testament suggest that marriage is unbreakable covenant even with the husbands' physical death. This is contrary to the New Testament theology on marriage which suggests that marriage "till death do us part". Paul writes "wife is bound to her husband as long as he lives. But if her husband dies, she is free to be married to whom she wishes" (1Cor. 7:39). The same is repeated in Romans 7:2 "a married woman is bound by law to her husband while he lives, but if her husband dies she is released from the law of marriage".

Similarly, the levirate marriage implies life after dead. Only God is immortal (1 Timothy 6:15, 16). The concept of an undying, immortal soul is not found in the Bible, thus, souls are subject to death. So the concept of the levirate marriage contradicts the

Biblical theology about man and state of the dead; for mans name here is closely connected with his property land and wife presumed to his property even at dead.

Conclusion

As per the above discussions, it is evident that the levirate marriage legislation served as a mitigation mechanism to deal with widowhood protection on the issue of family property inheritance and propagation of the deceased name. Further the practice as highlighted so far seems to be a long held custom thus irrelevant to the Morden day Christian for it is a form of widow inheritance a cultural practice that is at odds with contemporary Christianity teaching.

However, it is evident that our contexts are changing daily whilst the essential of the biblical law remains intact. That notwithstanding, the essential attribute of "community" is alluded to in both the levirate marriage law and the custom of *ogochia nyomba* among the Kisii people. Additionally, whereas there slim differences between *ogochia nyomba* and the levirate marriage in the DC, *ogochia nyomba* is not the same as the biblical levirate marriage. Lastly though the linguistically the concept of wife or widow inheritance is missing from the Gusii vocabulary, the practice of *ogochia nyomba* is more close to wife inheritance than to being called levirate marriage as discussed in chapter four of the current study.

To demonstrate the above claim, the study undertakes a brief discussion on the practice of *ogochia nyomba* so a to provide material to enable a comparative analysis. Thus in the next chapter the practice and process of *ogochia nyomba* is discussed.

CHAPTER FOUR: OGOCHIA NYOMBA AMONG THE ABAGUSII

4.1 Introduction

Mary Getui (2005:72) while writing on the causes of polygamy today asserts that levirate custom of caring for the widows is not widespread as it used to be. She further argues that this practice raises complex moral problem for a Christian and then suggests that the widows should be given freedom to choose what to do with their lives instead of being inherited. She further holds that "Christians feel uneasy about leviratic relationships and would prefer to marry outside the family or even remain unattached singles".

In the course of this study, twenty-one people from various Christian denominations across Gusii land were interviewed face to face by the researcher whose classification is as follows: ten women who comprised of five widows aged below 30 years. and five who had their husband still alive of similar age bracket. Others included eight married men who comprised of three who did not subscribe to any Christian faith; and lastly three church leaders from Adventist church, Catholic and Protestant Churches respectively. All the groups interviewed agreed that the *ogochia nyomba* is alive practice despite the fact that many of the Gusii men and women profess to be Christians and other challenges like HIV/Aids not withstanding. Detailed findings of this face to face interview is discussed at the end of this chapter.

Next in order to be able to understand the practice of *ogochia nyomba* among the Abagusii in its right perspective, it seems necessary first to understand the social – economic and political background of the Gusii people. In this chapter therefore the main purpose is to highlight the origin, religious system, social economic and political dynamics of the pre – Christian Gusii society.

4.2 Origin and location

The Gusii people is an ethnic Bantu group who currently occupy the highlands in Nyanza and western part of Kenya, who conform to a strong sense of tradition. Ochieng(1971:22) in his thesis notes that traditions of the Gusii people indicates that in the distant past they were same people as the Kuria, the Logoli, the Suba, the Bukusu, the Kikuyu, the Meru, the Embu and the Kamba. It is further noted that they migrated from "Misiri"

4.3 Social – cultural

In the pre – Christian period, the Gusii people are said to be notoriously religious, believing the one god call *'Engoro'* later changed to *Nyasaye* by the Christian missionaries. Socially the Gusii people are such a cohesive society with families closely knit together by activities like cooking and eating together, farming, large polygamous families with the men possessing a lot of power over women.

In regard to their religious orientations the Gusii people strongly conform to such beliefs as ancestral spirits and other spirits like wizardry, and witchcraft. Bogonko (1977:48) suggests that "their ancestral spirits were not only regarded as guardians of their descendants but also as mediators between them and the supreme being. This belief system is supposedly assumed to have influenced the practice of *ogochia nyomba* among the Gusii people a belief that is still held regardless of the fact that about 80% of them subscribing to the Christianity religion.

Further, the Gusii society was organized on a *patrineal* and *patrilocal* sub clan, clan and *"egesaku"* bases. (Bogonko 1977:35). In regard to land, it was owned on patrineal clan lines and occupied both social – political and magical religious values among the Abagusii. (Bogonko, 1977:32,33).

After providing this background information, next the study concerns itself in providing detailed account on marriage customs among the Gusii people of western Kenya; so as to provide background information and hence shed more light on the custom of *ogochia nyomba* a subject of this study.

4.4 Marriage

As alluded to by Getui (1985:28) marriage was a unifying factor among the Abagusii. It was conducted between clans and it automatically made the people of the two clans recognize each other as relatives. Therefore, the family was defined as permanent group of people related by ancestry, marriage, or adoption who live together and form a social and economic union (Roberson, 1981:350). So an extended family system was a key element among the Abagusii family life; which was characterized by kinship ties, and support infrastructures based on extended family foundations. It should be noted here that the custom of *ogochia nyomba* was founded on this premise.

First and foremost, the most significant reason for marriage among the Gusii people was to bear children, something that rendered failure to get married a very serious crime in the society. By giving birth to children especially boys, the past, present and future generations were bound together. (Mbiti, 1975:104). Also marriage was not regarded as marriage if there were no children born in that marriage. A man was not complete till he had a wife and given birth to boys. In this community bearing of children is the one and only way to prolong the life of their parents, for children are the glory of the marriage. The more a person has, the more the bigger is his glory (Mbiti; 1975:108)

4.4.1 Forms of marriage among the Gusii people

Like the rest of the ethnic groups in Kenya, the Gusii people have observed a number of customs from their beginning as an organized ethnic group. These customs were and to a large extend are still regarded very highly amongst the people. This means breaking or disobeying one of the customs implies direct despise to the ancestors and ruining the whole '*Egesaku'* (Mwamogusii). Some of this customs were concerned with marriage. Because of the importance tied to the significance of child bearing especially to boy child, the pre – Christian even modern day Gusii people practice the following forms of marriage. The philosophy behind this was that children especially boys were regarded as prolongation of self and fulfilment of immortality. Thus, the saying a man who had no child could consider himself dead and his future doomed. It should also be noted that besides regarding this as marriage customs in Gusii; they were also circumstances under which the custom of *ogochia nyomba* was practiced among the Kisii people.

4.4.1.1 Female husbands

This was a woman – woman marriage where husband died without leaving a boy child to his wife. The woman "married" a woman with a boy or without. This woman was to be given to available male relatives to the deceased who were to sire children preferably male children. They were named after the deceased. Thus, the practice of *ogochia nyomba* here enabled the woman to woman marriages to have children who were named after the deceased husband who died without a son or male children. Further woman to woman marriage was still a solution to the widow who had female children but

did not have a male child. Thus the importance attached to male children was the reason for this marital custom.

4.4.1.2 Ghost wives/ wives of the grave

This form of marriage arrangement was possible when a boy child died either at infancy or youthful age before he was married. Alternatively, it was mitigation mechanism for the deceased senior bachelors who delayed get married. Whenever a man died without a male child or children, the family sought a woman who was married to the ghost husband who was not living, popularly called wife of the grave. The woman had children especially males was given priority. This practice was encouraged so as to get children especially for the male children who died at infancy or at youthful age before they were married. Since the woman was married to non- existing husband, the woman was allowed to cohabit with a man of her choice or by selection of the elders so that she can bear more children for the deceased unmarried man.

4.4.1.3 *Ogochia nyomba*

The Abagusii people respected marriage and jealously protected it at all costs. One of the protective measures was the introduction of the custom of *ogochia nyomba* whereby the a brother of deceased was obliged to marry the widow or a man cohabiting with a woman who either does not get children due the infertility of her husband or in the case of woman to woman marriage. The reason for this is that according to the Abagusii people, the death of the husband does not put an end to the marital relationship. In other words, marriage did not end with the death of a husband.

The man who entered that union was sanctioned by the customary law and therefore adultery or its adulteress was warded off by slaughtering and charming a goat to be eaten jointly by the widow together with her children and the *levir* plus his wife or wives and their children. Thus this was an open process.

Among the Gusii people the main purpose of this union was for the widow to be "looked after" by the next of kin and the provision of a male issue for the deceased brother. However, there were three instances where this union was allowed such as on death of a husband, dead seed or when testing fertility of either the husband or the wife.

4.4.1.3.1 On death Husband

Death is the cessation of life. Tradition holds that the death of a man before he fathered children more especially male children was unfortunate and a great loss to the family and community. especially when he died without a male child.

One of the Kisii proverbs says this: "*Amakueri namaganga akona koira kwomo kwomo, buna nyomba mbaichora"* (Death is very bad. It takes our people one by one as if they are very many in the house). It takes anybody young and old, rich and poor, wise and foolish. It was only safe if the man died and left a widow who was to married by a brother in-law for the purpose of keeping the family name and line intact.

This custom was traditionally referred to as *ogochia nyomba* literary translated as "entering in the house". From this expression figuratively the wife was referred to as *mwao* or a "house". Needless to say that according to the Abagusii all forms of death is caused it does not just happen. Thus a number of rituals were performed following the death of a husband.

4.4.1.3.1.1 The ceremonial conduct of a widow before and after inheritance

In the event of death occurring, the body was temporarily kept in the house to await an immediate burial. The husbands or sons body was placed in the sitting room at a place called "*Eero rogoro".* That of the wife/daughter was kept in the bedroom at a place called "*Irungu"*.

Before this union was developed and agreed upon on the death of the husband as per the customary laws all the following four Sacrifices and rites for the deceased person had to be performed.

It should be noted that on the burial day the pinnacle (egechuri) was removed, the widow's right ankle ring (egetinge) was removed and she wore her clothes inside out. Customarily, she was not supposed to shake hands with anybody, or get out of the home compound, or cross the river, walk in the rain, or take bath.

In order to show at what point the union took place the study describes briefly the four funeral sacrifices for the deceased person namely the first sacrifice referred to as *ogokendia Nyomba* done on the first day. This was followed by the second sacrifice *ogotinyoria* which was done on the second day. The third sacrifice called followed *okogororokia ebinto* done on tenth day, the ritual Ceremony *(ribererereka)* done on the

eleventh day, and lastly the fourth sacrifice (*embori yamakora/okwerabia*) performed on the thirtieth day. All this burial rite are described in the following paragraphs.

4.4.1.3.1.2 *Ogokendia Nyomba* – 1st sacrifice or Burnt offering

On the evening of the burial day, the following things were done: For the deceased husband – a bearded he-goat (*Egoree ebwate Oronyo*) was slaughtered for sacrifice. For the deceased wife – a female goat "Esubeni" was sacrificed.

Young men killed the animal by suffocation. The sacrificial goat was burnt whole, without being skinned. The whole animal was burnt on fire and eaten by cutting small pieces. No bone of it was broken (See Exodus 12:46 and John 19:36). It should be noted that only the cousins of the deceased person were allowed to eat the meat.

4.4.1.3.1.3 *Ogotureka Ebinto bia Nyomba* - Ritual Ceremony of the Household Vessels

For the deceased husband, the following household items were inverted upside down: *Ekerogo ki'omogaka* – The four legged stool ,*Orokore* – Beer straw, *Ritimo* (Spear), *Enguba* – (Shield) ,*Buna Egechuri* (Break pinnacle half-mast).

For the deceased wife, the following household items were put upside down: *Enyakaruga* (Cooking pot) ,*Ensiongo* (Water pot) ,*Orogena n'ensio* (Grinding stones) ,*Omogango n'ekeburugo* (Cooking sticks) ,*Ogokobania (*Wear clothes inside out).

4.4.1.3.1.4 *Ogotinyoria* – 2nd Sacrifice

On the second day *Eburu* another goat was killed by way of suffocation for the second sacrifice *Ogotinyoria*. Unlike the first goat, the second one was skinned and the meat was eaten by anybody. Close family members shaved their heads (*Kogingirwa amatati*). After the second day sacrifice, the bereaved family could then cook their meals (*Ogotereka ebinto riiko*)

4.4.1.3.1.5 *Okogororokia ebinto* – 3rd sacrifice

The 3rd sacrifice was performed on the 10th day *amagoro* after burial. The sacrificial goat was killed by suffocation, (*Okogubwa*).The pinnacle was broken and removed. The widow resumed the usual duties. During that ceremony, people ate foods and took drinks.

4.4.1.3.1.6 *Ribererereka*

There was no sacrifice made on that occasion, only beer was needed and served. On the evening of the 10th day, local beer (*amarwa*) was brewed in a big pot whose mouth had a small crack, *Omong'ango*.

The brew was made half full and the pot made to sit on its side. The beer was taken on the evening of the 11th day. It was taken while it was still raw *Amarwa Ributia*. That kind of bear was called *ribererereka* because the pot in which it was brewed was bent on its side, "*Okoberereka"*.

4.4.1.3.1.7 *Embori y'amaikora* – The cleaning goat

The 4th sacrifice was done on the 30th day. The widow brought the goat from her home of birth. The animal was a young bearded he-goat (*Akagoree Kabwate Oronyo.).* It was called a final cleaning goat, "*Embori y' amaikora / Okwerabia*". When she went to her home for the goat, she was not supposed to step into the home compound. The customary law forbade that. The goat was given to her at the entrance "geita".

The animal was sacrificed in the same way like others. That was the last sacrifice *"Okwerabia*".

After that ceremony the widow was free to be inherited, (*Gochiegwa nyomba*) according to the Abagusii customary laws. The widow wore one ankle ring on her left leg. The right remained without any ankle ring signifying that she was now a widow '*Omokungu Omoboraka/Omotakanwa"*

After this ceremony of *Okogororokia Ebinto*, the bereaved were now free to go about their work and even the widow or widows of child bearing age were considered by the elders to enter into levirate like union called *gocheigwa nyomba.*

Senior brothers of the deceased did not take widows of deceased junior brothers nor did junior brothers take seniors widows/senior houses of senior brothers. It did not matter whether those brothers were Brothers-German or brothers-uterine.

4.4.1.3.2.1 The process of Picking an inheritor.

To choose the man to replace a deceased husband or brother, the following method was adopted. Three men were proposed for each widow to choose from. It was upon the widow now to cook a delicious food which she alone took to the one of the men she

wanted and it was done during broad day light. If that food was eaten by the man, it signalled acceptance. If the food was refused to be eaten, the elders were alerted who summoned the man before them for questioning as to the reasons for refusal. If the elders agreed with him and of course he was not to be forced, the second man was to be considered. If all refused, then either the woman remained alone without a a caretaker husband or she deserted the home and went away as a mistress or concubine.

4.4.1.3.2.2 Duties of a caretaker husband

According to elders A, B,C and D, the purpose of such a marriage was to carry on the dead man's name and inheritance. The l*evirs* was to provide the seed and any children of the union belonged to the deceased and inherited the property of the deceased. If the child of the levirate union was a boy, he was named after his deceased father. Then the widow replaced the anklet on the ankle of the right leg. If the child was a girl she replaced the anklet of the left leg. They were not children of the caretaker husband and they never inherited any property of the inheritor or caretaker husband. Surprisingly, this is one area in which the levirate union completely resembles the practice of *ogochia nyomba.*

Huber Hugo (1973:66) while writing on marriage and family in rural Bukwava observes a similar practice and says that "that when the head of the homestead dies, the brother of the deceased inherits the widow. He may come and take possession of the homestead and of his brother's property temporarily".

The caretaker husband also provided guardianship and protection of the widows and children of the deceased. They were also in charge of general administration of that home but the elders and brothers of the deceased were responsible squarely for the legal administration of the property of the deceased and carry out of any ceremonial rituals.

As said above, that the legal administration of that home was conducted by elders or brother of the deceased but if a son of the deceased became of age of maturity, that is the son got married and adjudged by the elders to be mature, it devolved upon himself to take over the administration of the home of his father of course with the advice and assistance of the elders or uncles. This meant that he now took charge and owned the stool, spear, shield and any garniture of his late father. This action did not stop the

inheriting husband or man from providing seed for more children to be born to the deceased.

Any administrator be he so or brothers of the deceased or any elder was to carry on from where the deceased left. He could not change, amend, add to, lessen, revise, reverse or undo the wishes of the deceased.

4.4.1.3.2 Dead seed

There were some husbands who sexually functioned but could be able impregnate their wives. This types of husband stayed with their wives for a long time because it was not easy to be ascertained as to who was to blame between the two.

After fairly a long duration of time, the old mothers (midwives) advised the wife to tap the sperm of the husband and if the mothers found it reddish *Egesero* on examination then they concluded that seed was dead because live sperm is pure white and they could advise the wife to secretly go about with a particular man and of course avoid her husband during that time. If she did so and was impregnated, then the husband was to blame.

This now makes the woman "*gochiegwa nyomba*" because her husband seed is dead.

4.4.1.3.3 Testing fertility

Though feared if a wife slept sexually with another man for the purpose of testing her fertility, the herbal or medicine man, when consulted provided her with charms of immunity against adulteress *Amasangia*. It was top secret and it was the wife and the adulterer including the medicine man who had this knowledge of the adultery arrangement. The husband was also charmed without his knowledge by the wife on instruction.

The husband came to know the fact that his wife was pregnant from his sister in law and the pregnancy was by another man and that he should not touch her sexually.

The husband was openly told to let his wife to continue to bear him children by the secret man whose name and identity were never revealed to him. This is also one way of *ogochiegwa Nyomba"*

Having explained the reason and the process of *ogochiegwa nyomba*, the study assumes that the practice is practiced even today however at small scale. What is worse is that this is found even among Christians perhaps for the same reasons articulated here. This is because despite for Christianity being around for the last decade, it is just at the

surface it is not even an inch deep in the hearts of professed Christians. That is why in most cases whenever Christians found themselves in situation that seem to threaten their life they tend to retreat to their own traditional practices for solutions hence rendering Christianity a religion of convenience. The findings of the face to face interviews indicated here at 4.5 below gives more details.

4.5 Findings of the face to face interview.

As indicated on this chapter, twenty-one people were interviewed who confirmed that widow inheritance is live in Gusii even today even among Christians. This is due to established worldview foundations among the Gusii cultural orientations that have greatly influenced the reading of Deuteronomy 25:5-10.

As by the testimonies of the all the women interviewed, other equally important influences to the practice of *ogochia nyomba* or marrying the wife of a dead man is the importance placed upon the boy child as the only way the dead man can be remembered. All the three widows interviewed confirm this by saying that they are even advised by their in-laws who profess Christianity to give in to the practice of *ogochia nyomba* so as to get a baby boy to propagate the name of their dead husband.

On the re-reading of Deuteronomy 25:5-10 with them, 5 men out of 8 claimed God allows the widow to be inherited, while the 8 women out of 10 shared in the same opinion and 1 church leader out of 3 interviewed said that God approves widow inheritance. The other two church leaders and 8 members interviewed indicated that misinterpretation and misunderstanding of Deureronomy 25:5-10 has led to the practice of *ogochia nyomba*.

Consequently, these findings informed the critical analysis of the text Deuteronomy 25:5-10 to foster worldview transformation among the Abagusii and clarify that levirate marriage is not the same as *ogochia nyomba* among the Abagusii.

Conclusion

As articulated above, the practice of *ogochiegwa nyomba* was possible due a number of reasons prominent among them was to sire children for the deceased brother and ensure social and economic security to the widow. The process by which this was actualized show that this was a well organized and established institution of marriage just like the

biblical levirate marriage institution. Further the custom of *ogochia nyomba* was possible under the following cirmustances: first in the event of woman to woman marriage arrangement, ghost wives marriage arrangement, dead of a husband in general with or without children of either gender.

While the institution seems to be alive, among the Abagusii, the next chapter shall endeavour to explore the areas of divergence and convergence on the custom of *ogochia nyomba* and the biblical custom of the levirate marriage as found in the Deuteronomic Code.

CHAPTER FIVE: RELATING THE LEVIRATE MARRIAGE IN THE DEUTERONOMIC CODE AND THE PRACTICE OF *OGOCHIA NYOMBA*.

5.1 Introduction.

As indicated in chapter one of this present study, the purpose of this study is to interrogate the levirate marriage in the Deuteronomic code, identifying its nature function and and purpose. Secondly seeking to establish areas of divergence and convergence of the levirate marriage law in the Deuteronomic code and the custom of *ogochia nyomba* among the Abagusii of western Kenya.

Thus, the current chapter presents a comparative analysis on the issues that are present in the contemporary Gusii community today that mandated the practice of *ogochia nyomba* and levirate marriage legislation in the Pentateuchal codes. Too the researcher identifies possible areas of tension and application in the contemporary Abagusii Christian society.

So far the study has indicated that there are apparent region-cultural affinities and parallels between the Old Testament levirate marriage institution and the custom of *ogochia nyomba* among the Abagusii. The study shall articulate the similarities and differences in terms of its nature, function, and purpose.

5.2 The Nature, Function and Purpose.

Roland (1961:38) suggests that the purpose of the levirate marriage is endless and proposes that others regard it as platform for ancestral worship and an indication of fratriarchal society. Moreover, the study suggests the following as the purpose nature and function of both the custom of *ogochia nyomba* and the levirate marriage as found in the DC.

In its nature the custom of *ogochia nyomba* among the Abagusii is not a reflection of promiscuity among men but played the role and function of securing a male child to "build the dead brother's house". Levirate marriage likewise does not indicate any hint of promiscuity on the part of the *levir.* According to Kauffman, Davidson writes, (2015:475) levirate marriage is a social institution that provides a sanctioned exception to the basic prohibition of the tenth commandment, an institution through which a man may rightfully claim the wife of his brother.

Additionally, in both the Abagusii cultural tradition and the Old testament social cultural orientations, the study notes that the greatest tragedy that would befall a family was not the dead of a man but the death of man without a son. In both cultures the birth of a boy child meant posterity. Thus, levirate marriage and custom of *ogochia nyomba* was only possible so as to sire a boy child for purposes of prolongation of life.

Further, "land and the seed" are closely tied together in both the custom of *ogochia nyomba* and the levirate marriage institution. This was the reason why the widow was not to marry from outside the family which this study identified as blood brother, neighbour or fellow Israelite for the simple reason that the land belonged to God and was allotted each tribe in perpetuity (Numb. 26:52-56). The assumption here is that the extended family or *bet-'ab* was a basic unit in Israel (Esler, 2006:57).This as indicated in the scriptures was the one predicament of the daughters of Zelophahad whose concern was the "name" of an Israelite was to be taken away or cut off from Israel because he had no son. Thus, the function of the levirate marriage was to maintain the tribal land within the family a case that is share with the Abagusii for land is regarded as family inheritance.

As alluded to by the current study, the practice of *ogochia nyomba* and the levirate institution reveal a domineering patriarchal pre-eminence. This can be attested by the impression created here in the levirate legislation that sons alone had a right to inheritance with the eldest taking a privileged position. The women had no right to the inheritance since the brother less daughters right to inherit was not handed down at Sinai and yet it became law (Brenner,2000:178). In the same way, mong the Abagusii, inheritance is a reserve of sons only. This explains why the many widows who are left without sons suffer loss on the death of their husbands. As a result, it is the researchers well considered hypothesis that the social welfare and concern in both institutions is not the widow but he dead brother; that his estate gets an heir but not the widow. Thus, "the laws that were supposedly given to sons of Israel turned out to be just that- laws for sons not daughters" (Brenner,2000:179)

Some scholars have attributed widow or wife inheritance to mean levirate marriage due to a slim and narrow difference that exists. Further, widow inheritance is linguistically dismissed and considered a missional assumption to erroneously judge the

Abagusii that *ogochia nyomba* is the same as wife inheritance. The simple reason for this is that in the pre- Christian period the word for wife or widow inheritance does not exist among the Abagusii vocabulary. Thus Further, in the custom of *ogochia nyomba* widow remained the wife to the deceased and therefore the issue of inheritance is completely absent in this arrangement. So if *ogochia nyomba* is assumed to refer to wife or widow inheritance then even levirate marriage qualifies to be referred to as such.

In light of the above argument the researcher proposes that the two institutions do not mean the same. For this has a possibility of creating a theological and ethical challenge. Too, both customs present a case of widow remarriage and similarly fulfil the function of providing social security to the widow. For instance, as indicated in chapter four of this study, the purpose and function of *ogochia nyomba* was to provide security to the widow. This was in terms of securing the inheritance by siring a male child, physical protection from external and physical harm and aggression like securing the boundary of a family land. That is why the Gusii people regarded the widow as to be more vulnerable and in need of some security. Similarly, in a narrow way, the same was reason and purpose of the levirate marriage.

This can be evidenced by the fact that in Israel a vow made by a wife was binding even after the dead of the husband (Numb.30:10) and her vulnerability as indicated in Ps 68:5. Apparently the widow seemed more vulnerable when she did not have a male child. Therefore, the levirate marriage was the only option of ensuring her security by the birth of a male child in order to secure here diseased husbands estate and gain status in the family. This implies that a woman before marriage she belonged to her father, upon marriage she belonged to her husband up to including beyond her husbands dead. In other she completely belonged to the family where she was married even after her husband has died.

Further, the current study shows that the in both the custom of *ogochiegwa nyomba* and the levirate marriage, the elders took a key role in mitigation of any challenge that might arise. This conforms to patriarchal norms and un ethical gender bias in favour of men. This motivated the research to suggest that the welfare of the dead brother is more emphasised in this legislation than the welfare of the widow. Nonetheless the aspect of widow care can be implied in both customs.

Lastly, in both customs the idea of community is emphasized, such that the family, clan and tribe is referred to as brethren. Hence the levirate marriage and *ogochia nyomba* was the only way to ensure that the widow of the deceased brother remains in the family. Loosing her by anyway was an economic loose.

Whereas there are notable similarities between the biblical levirate marriage and the custom of *ogochia nyomba* among the Abagusii,the study too identified distinguishable areas of divergence. Firstly, we note that in the custom of *ogochia nyomba* presents multiple reasons for the practice did allow for some level of promiscuity. This included to taste fertility of the husband, a motivation that would encourage sexual infidelity; whilst in the levirate marriage the emphases was to sire a male child and provide security to the widow. A critical look at the biblical levirate marriage outlaws' sexual immorality a case that is not in check in regard to the practice of *ogochia nyomba*.

Additionally, the study observes that the levirate marriage was only possible when the brothers lived in a shared family estate referred to here as כִּֽי־יֵשְׁבוּ֙ אַחִ֔ים יַחְדָּ֖ו whereas in the custom of *ogochia nyomba* was applicable even when they did not live together. However, the brother was in both cases not under compulsion to agree to this engagement for he had a window of escape what is considered here to be result of patriarchal ideological foundation.

Conclusion

Whereas the two institutions seem to look similar they are not the same. *Ogochia nyomba* is a form of immorality and that is against the Christian teachings. This is due to the fact that *ogochia nyomba* was allowed even when the husband is alive and is not limited to the widow marriage. Thus, Deuteronomy 25:5-10 does not refer to *ogochia nyomba* as erroneously understood by a majority of Abagusii people.

CHAPTER SIX: CONCLUSION OF THE STUDY

6.1 Summary

The study was principally interested with the reading of levirate marriage law in the Deuteronomic code in light of the custom of *ogochia nyomba* among the Abagusii of western Kenya. Here the study presents a summary and the findings of the study.

The first chapter presented and stated the problem, the need and significance of this study. In chapter two the study surveyed the ANE cultural backgrounds to the levirate marriage legislation and discovered very close affinities between the biblical legislation and the culture of the time. Indeed, it is true that the Israel did not exist in an island were part and partially of the broader ANE culture. Therefore, the divine oracles were packaged in the culture of the ANE. This implies that when interpreting the scripture, we need to take into consideration the cultural background of the text.

Chapter three held discussion of the levirate legislation in the Deuteronomic Code. So far it has been demonstrated that Deuteronomy chapter 25 consist of a variety of legal legislations that cover a number of community and family issues of which the emphases as by this study is justice; and that the levirate law was basically concerned with the marrying a brother's widow. Here the study from literary-cultural perspective the study articulates that the tragedy of of the death of a man without a male heir necessitated the levirate marriage legislation in an attempt to guard the patriarchal interests.

Concerning the controversial question on who qualified to be a levir in this arrangement, the study explored three possible hypotheses. First, the law was applicable when the death brother newly married and left a young widow such that it was a loss for the family to leave get married outside the family. This assertion further claims that *levir* was supposedly younger than the deceased brother who was himself unmarried (Dobson et al, 1994:368). Secondly, the levirate marriage was an exception that allowed the polygamy. So the levir is presumed as already married though the marital status of the *levir* is non issue. So whether married or unmarried the brother out love was obliged to marry the widow of a deceased brother out love and community spirit.

Another finding that came out of this study is that the levirate marriage law was an ancient custom that might have gone through a number of amendments. This is evidence by the discussion on the daughters of Zelophehad who were orphaned in the

desert and had no male siblings who were allowed to take over their fathers' inheritance. Later they law of inheritance was amended to ensure that the heiress was not married outside the family. Further we notice some amendments the levirate law in the narrative of Ruth 4 so that the levir comes from a distant kinsman and the son Obed out of this arrangement is named after his biological father but not the deceased father thus, in the Tanakh, Obed (Hebrew: עוֹבֵד, 'Ōḇêḏ, "worshipper") was a son of Boaz and Ruth (Matt. 1:5)

While Moses recognized the importance of this legislation he included in the Torah with a primary purpose of carrying on the inheritance within the tribe with the spiritual and physical inheritance promise to Abraham being in view. The basic assumption here is that the women rather than owning property are themselves a form of property (Brenner,2000:176).

Apparently, this legislation is irrelevant to the contemporary Christian; for it seems to be culturally conditioned. Further is contravention of the gospel teaching that marriage engagement becomes dissolved at the death of one of the spouse (Adeyemo, 2006:323). Moreover, the principles and spirit underlying this legislation can be applicable in the contemporary Christian world.

In chapter four, the study explored the custom of *ogochia nyomba* among the Abagusii of western Kenya. To ensure proper understanding of this tradition a highlight of the origin, location and social cultural orientation of the Abagusii is pursued. Immediately in chapter five, the study showed the relationship that is present between the biblical levirate marriage and the traditional custom of *ogochia nyomba* among the Abagusii. By definition therefore, levirate marriage is an ancient custom sanctioned by practice and by legislation. It is different from widow inheritance in sense that widow inheritance the children inherit from the biological father, whereas in the levirate marriage the children do not belong to the levir but to the deceased brother and do not inherit from him. The finding here was that there is a seamless difference between the two customs hence causing challenges in understanding and interpretation upon the Abagusii reading of Deuteronomy 25:5-10.

Further, the researcher observes that the levirate institution failed to take into consideration the individual rights of the widow. For instance, the woman seem to have been married to the community and therefore she does not enjoy her right to make decision on the man to marry her or whether she is interested to get married anyway. So in as far as the legislation articulated the blight of the widow social and intimate needs, it lacks in articulating her individual rights and dignity.

6.2 Conclusion on the objectives of the study

The main thrust of this study was to compare and contrast the Kisii traditional practice of *ogochia nyomba* and the biblical levirate marriage especially in Deuteronomy 25:5-10. This was motivated by the fourfold objectives namely: to explore the levirate marriage in the old testament, examining the practice of *ogochia nyomba* among the Kisii people, seeking to know the areas of divergence and convergence and the theological relevancy of the the practice among the Gisii people who share the similar social cultural orientations.

The study so far demonstrated that the levirate marriage legislation was culturally influenced and a loose legislation that underwent a number of changes to the point of almost getting extinct. Further it has striking similarities with the custom of *ogochia nyomba* among the Gusii people hence causing theological ethical and contextual challenges in interpretation. Lastly the levirate marriage law seems to lack theological relevancy in the contemporary Christian world. However, the case of leviratic union discussed here brings out the following theological foundations: To begin with the inalienable aspect of land points to God as the owner of land and therefore for it is the basis for not allowing the widow to marry outside the family circles. Another pointer is the covenant which is represented by the marriage union here. The covenant people must at all costs remain undefiled. Nonetheless other relevant theologies can be suggested from this passage. This included the theology on sexuality and marriage, inheritance,

6.3 Recommendations and further research

From this study a number of issues have come up that calls for further research and investigation. Prominent among them is the dialogue between the biblical culture and the African cultural practices on marriage. This calls for Contextual Bible Study a prominent tool for attempting to seek proper biblical hermeneutics with various contextual environment. West (2012:392) argues that it is required of the reader to bring his or her contextual realities into the process of reading the biblical text. By doing so, the Bible becomes authentic and God's word is experienced practically in terms of the real challenges that confront the people of faith. By doing so, the Bible becomes authentic and God's word is experienced practically in terms of the real challenges that confront the Christian faith especially in Africa.

Significantly, Schlimm, (2015:54) commenting on the dynamic nature of the law observes that one of the important features of the biblical law is that while the essentials remain fairly constant other parts are reshaped in different times and seasons. Consequently, the Deuteronomic levirate legislation requires a critical and inclusive reading to ensure value neutrality in order to address the realities of the widow here who seemingly is marginalized.

Thus, I propose a post colonial re-reading of the Deuteronomic levirate legislation within the African cultural context from an ethical perspective so that the widows are ensured of care with dignity and recognition of their individual rights.

GLOSSARY

Abagusii	Interchangeably used to refer to the Gusii tribe
Amarwa	Traditional beer
Amarwa ributia	Traditional beer not sour
Eburu	Second funeral rite
Egechuri	Pinnacle of a grass thatched house
Egeseri	Reddish sperm (sign of infertility)
Egoree	He goat
Ekerogo	Three legged stool for elders
Engoro	Name of god in kisii
Ensiongo	Water pot
Enyakaruga	Cooking pot
Geita	Gate
Gochia nyomba	Marrying a widow/wife of a brother
Okoberereka	Bend
Okoguba	Suffocate
Okogororokia ebinto	Turning vessels up
Ogokobania	Wearing clothes inside out
Ogotureka ebinto	Turning vessels up side down
Omogango	Cooking stick
Omotakanwa/omoburaka	Widow
Orogena na ensio	Grinding stones
Orokore	Beer straw
Ritimo	Spear

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