

## **POLICY PARALYSIS: A CALL FOR ACTION ON HIV/AIDS-RELATED HUMAN RIGHTS ABUSES AGAINST WOMEN AND GIRLS IN AFRICA**

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## I. SUMMARY

*If it can be said, as it can, that by the year 2020, the number of deaths from AIDS in Africa will approximate the number of deaths, military and civilian combined, in both world wars of the 20th century, then it should also be said that a pronounced majority of those deaths will be women and girls. The toll on women and girls is beyond human imagining; it presents Africa and the world with a practical and moral challenge which places gender at the centre of the human condition. The practice of ignoring a gender analysis has turned out to be lethal. . . .For the African continent, it means economic and social survival. For the women and girls of Africa, it's a matter of life or death.*

—Stephen Lewis, U.N. Secretary-General's Special Envoy on HIV/AIDS in Africa, July 2002.

The story of the HIV/AIDS crisis in Africa, which has already claimed more than 20 million lives, is one of massive neglect and denial. Millions of Africans had already died before the continent's AIDS epidemic even registered on the global radar screen or was publicly recognized as a problem by decision-makers in affected countries. It took even longer for Africa and the world to notice that in this epidemic, unlike AIDS in other regions of the world, women and girls became ill and died in greater numbers than men and boys. Sadly, policymakers still are not taking into account the extent to which AIDS prevalence in Africa is a direct result of relentless human rights abuses that women and girls suffer because of their gender.

The protection of the rights of women and girls in sub-Saharan Africa is a key to turning around the continent's AIDS crisis. Relative to the scale of the problem, however, such protection is virtually ignored as a policy tool and certainly not viewed as a central element in ever larger national AIDS programs. The challenge of protecting women and girls from these AIDS-related human rights abuses is enormous. The abuses are many and varied, including rape within and outside of marriage, other sexual violence and coercion often abetted by poverty, domestic violence, unequal property and inheritance rights, divorce laws that exacerbate women's economic dependence on their husbands, and discriminatory barriers to education and health services. All of these human rights abuses have existed for a long time and many have been life-threatening, but with HIV/AIDS they are lethal on a massive scale.

HIV/AIDS impoverishes families. Its spectral presence in the household makes it less likely that girls will be enrolled or kept in school because families prefer to use their scarce resources for boys' education. Girls are also more readily called upon to care for

the sick or to earn income in times of need. The absence of antiretroviral treatment, still the rule and not the exception in Africa, means that people are dying, not living, with AIDS. Women widowed by AIDS suffer the injustice of both statutory and customary law that militates against their being able to retain marital property. The stigma of AIDS often leads to their being abandoned or abused. The millions of children orphaned by AIDS face a stunning array of human rights abuses, many of them more frequent and deadly among girls than boys. Girls and women in households touched by AIDS and by poverty frequently find their choices and possibilities so diminished that they have to turn for survival to the sex trade or to situations of lodging or work that expose them to sexual abuse and violence, increasing the risk that they themselves will die of AIDS.

Human Rights Watch has documented many gender-based human rights abuses in Africa that fuel the epidemic and make unbearable the lives of women and girls already living with HIV/AIDS. Our research is based largely on the moving and often horrifying stories told to us by African women and girls who have suffered abuse; many such stories are featured in this report. It is our hope that some understanding of the human reality of these abuses will lead to greater protection of the rights of the girls and women like those who have courageously told us of their experiences at the center of a deadly epidemic.

AIDS distinguishes itself from other high-mortality infectious diseases by the fact that young adults are disproportionately stricken. This also means that the orphaning of children is a consistent feature of AIDS deaths. In several African countries, Human Rights Watch has documented a range of atrocious violations of the rights of children orphaned by AIDS or whose parents are ill with the disease. These include physical and sexual violence by those who care for them in the absence of parental care, trafficking for their labor, hazardous labor of other kinds, abuses associated with living on the streets, and abusive treatment in schools. Girls are more likely to suffer the worst consequences of these abuses, especially sexual and physical violence. The plight of girls affected by AIDS in Africa, as of all AIDS orphans, constitutes a human rights emergency.

Even for girls whose families are not directly stricken by AIDS, entrenched poverty, the favoring of boys' over girls' education, and lack of legal protection against discrimination and exploitation often contribute to situations in which they see no options but to trade sex for survival. As a girl in Kenya told us, "I may have to go into prostitution, and then I know I will get HIV and die; I would rather have a real business, but it is not easy." Even if they understand the risk of AIDS, girls may through economic desperation resign themselves to sex without condoms if there is a greater return in money, food or other elements of survival. Others find themselves unable to negotiate condom use out

of fear of violence or coercion. In spite of these abuses, it is difficult to find programs of significant scale that attempt to protect African girls from sexual abuse and coercion as part of national AIDS programs. It is rare to find a decision-maker on the continent who links these sexual and gender-based abuses to the strikingly higher HIV prevalence among girls and young women than their male counterparts that persists in many countries.

Child trafficking is a shocking and long-standing crime in many parts of Africa, and it, too, takes on lethal dimensions in the face of a raging AIDS epidemic. Orphans and other children without parental care are plainly more vulnerable to being lured into trafficking with the promise of schooling or lucrative work, as Human Rights Watch discovered in its encounters with previously trafficked children in Togo. Boys are also trafficked, but girls may be the first to be pulled out of school and sent abroad in cases where parents cannot afford school fees. Trafficking of girls is also more likely to lead to situations of domestic work or work in streets and markets where sexual violence is a high risk. A number of girls who told us their stories had also been exposed to the risk of sexual and physical violence in the course of their transportation from Togo to another country in the region. Combating child trafficking has been the subject of numerous high-profile declarations by virtually all affected countries in Africa, but states continue to allow anti-trafficking programs to be underfinanced and inadequately supported by effective national and regional laws and law enforcement practices. The link between child trafficking and AIDS appears not to be appreciated at the policy level.

Girls who have the opportunity to stay in school too often face sexual abuse in school or on their way to or from school. In South Africa, for example, Human Rights Watch encountered many girls who had been raped and sexually harassed by teachers or school administrators, a heinous abuse of power by those in authority over children. Others recounted having been raped or harassed by fellow students as school managers stood by and did nothing. South Africa is hardly alone in this regard. To date there have been few well financed programs that address protection for girls at school.

Married women in Africa may not be any more protected from HIV/AIDS risk than other women and girls. In African society, as in many parts of the world, married women often face violence and abuse if they demand condom use or refuse sex from their husbands or long-term partners. Human Rights Watch's investigation of the link between domestic violence and HIV/AIDS in Uganda showed that men were often ready to beat their wives rather than confront the reality of AIDS or allow their wives to seek HIV testing and counseling. In story after story, women were confronted with the presumption that marriage entails automatic consent to sexual relations of which the terms are dictated by the husband. In Uganda as in many countries, this presumption is

shored up by divorce and property laws and customary practices that disadvantage women who try to escape abusive marriages. With few exceptions across Africa, marital rape is not recognized as a crime, and domestic violence is seen as a right of married men. Even in Uganda, the African country cited most frequently for its success against HIV/AIDS, domestic violence and abusive subordination of women do not figure in AIDS program priorities.

HIV/AIDS will cause many millions of African women to be widowed, and widowed at a younger age than would have been the case in its absence. Gender inequality in property and inheritance laws in Africa poses a grave threat to women in these circumstances. African women's rights to own, inherit, manage, and dispose of property are under constant attack from customs, laws, and individuals, including government officials, who believe that women cannot be trusted with or do not deserve to own or control property. The devastating effects of property rights violations—including poverty, disease, violence, and homelessness—are only magnified and made more lethal for women who face the stigma of having been widowed by AIDS or who are themselves HIV-positive.

An in-depth study of property rights violations by Human Rights Watch in Kenya recounted many stories of women excluded from inheriting property, evicted from their lands and homes by in-laws, stripped of their possessions, and forced to engage in risky sexual practices in order to keep their property. Many widows we met were coerced into the customary practice of “wife inheritance,” whereby a widow is taken as a wife by a relative of her late husband, or ritual “cleansing” whereby widows are obliged to have sex (usually unprotected) one time or over a short period with a man who is a social outcast. Not only do these practices demonstrate that many African women have virtually no control over their own bodies but they also place the women at risk of contracting and spreading HIV. Their destitution in being stripped of all they have removes their last hope for caring for themselves and their children. Injustices in women's property rights have been ignored for decades by governments across Africa, and redressing them seems to figure nowhere in HIV/AIDS policies and programs.

Property ownership and domestic violence are examples of areas where customary law is a major obstacle to the realization of women's equal rights in Africa. Customary laws are mostly unwritten, constantly evolving and prone to subjective interpretation. In some countries, there are as many customary laws as there are ethnic or tribal communities. Most African countries have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which obliges them to eliminate customary laws and practices that are based on the idea of inferiority of

women (or of men) or on stereotypes of women. But the application of customary laws that embody injustice for women still goes unchallenged across the continent.

Among the most horrific gender-based violations of human rights in Africa in recent years has been the use of rape as a weapon of war. Although not as geographically widespread as other abuses described in this report, sexual violence in war goes hand in hand with the near universal subordination of women and girls on the continent. Women and girls in the Democratic Republic of Congo, Sierra Leone, northern Uganda, and Burundi told Human Rights Watch of unimaginably horrific abuses they suffered in those country's civil conflicts. Rape is used strategically in these cases to terrorize the population and destabilize the economy, which is very effectively done when women's economic activities are impeded by fear and violence. The international bodies that can exercise some leverage in these situations have done virtually nothing to push for basic protections that could reduce these abuses and mitigate their worst effects.

With respect to virtually all of the gender-based abuses described here, Human Rights Watch has consistently found that legal and judicial remedies for women and girls are inadequate or nonexistent. Even where sexual violence laws are adequate, the laws are rarely enforced. The stigma of rape keeps it underreported and its perpetrators safe from prosecution. When women or girls are courageous enough to file complaints, law enforcement officials are rarely trained for sensitive and effective handling of sexual and domestic violence cases.

Though the abuses are many and deep and are often shrouded in shame and secrecy, they are not impervious to policy, legal and program solutions. This report offers recommendations for concrete measures that can have immediate and long-term impact on the worst manifestations of HIV/AIDS-related human rights abuses against women and girls. These include actions to promote equal access to health services and education, equality in property and inheritance laws and related elements of economic dependence, and measures to protect women and girls from sexual abuse and to ensure that perpetrators are brought to justice. In some cases, because these are relatively new areas for policy and programs, it may not be easy to get the policy right on the first try. But the policy paralysis that now surrounds gender-based human rights abuses linked to AIDS in Africa is scandalous and deadly.

There are some signs that since the U.N. General Assembly Special Session on HIV/AIDS and the creation of the Global Fund to Fight AIDS, Tuberculosis and Malaria, both in 2001, HIV/AIDS in Africa is beginning to attract international funding, though still on a small scale relative to the scale of the epidemic's destruction. As

national AIDS control programs across the continent draw greater national and international resources, they provide an opportunity to transform the level of support that the fight against gender inequity in Africa has so far enjoyed.

It is a shame that a crisis of the proportion of HIV/AIDS is necessary to focus attention on human rights abuses of women and girls in Africa, but it would be unconscionable for governments to miss this opportunity. African governments and donors alike must begin to see protection and fulfillment of the rights of African women and girls as a central strategy in the fight against HIV/AIDS. This means more than occasional rhetorical flourishes or poorly funded gender components in larger projects. It means real resources, real coordination across sectors, and real participation by women in decision-making. Without this commitment, the conspiring forces of HIV/AIDS and gender inequality in Africa will win the day.<sup>1</sup>

## II. ABUSES OF WOMEN AND GIRLS THAT FUEL HIV/AIDS

*There is a direct correlation between women's low status, the violation of their human rights and HIV transmission. The reason that AIDS has escalated into a pandemic is because inequality between women and men continues to be pervasive and persistent. It is time for the AIDS community to join hands with the international women's community to hold governments accountable.*

—UNIFEM Executive Director Noeleen Heyzer, June 2001

Over 20 million persons have died of AIDS in sub-Saharan Africa since the early 1980s, most of them adults under age thirty-five. Three quarters of the persons estimated to be living with the disease worldwide are in sub-Saharan Africa. It is a reflection of global health research priorities that the question of why HIV prevalence rates in Africa are so high compared to other parts of the world remains to a great degree a matter of speculation.<sup>2</sup> Africa's HIV/AIDS epidemic is distinctive in that more than half the

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<sup>1</sup> Note on methodology: this report relies heavily on Human Rights Watch's extensive documentation of human rights abuses against women and girls in Africa and our experience advocating for elimination of these abuses. A list of prior Human Rights Watch reports drawn upon for this report, each of which includes detailed policy and legal recommendations, is found on the back cover. These reports provide first-hand testimony and additional legal and policy analysis related to many of the issues discussed here.

<sup>2</sup> See, e.g., D.D. Brewer, S. Brody, E. Drucker, D. Gisselquist, S.F. Minkin, J. J. Potterat, R.B. Rothenberg, F. Vachon, "Mounting anomalies in the epidemiology of HIV in Africa: Cry the beloved paradigm," *International Journal of STDs and AIDS*, vol. 14, no. 3, pp. 144-147, March 2003.

persons living with the disease are women and girls,<sup>3</sup> a higher proportion than in any other region.<sup>4</sup> This aspect of the epidemic in Africa, as much as the overall high prevalence of HIV in the population, is a grossly neglected aspect of research on the epidemiology of the disease.

Although it is difficult to quantify clinically, there is strong evidence that women and girls are physiologically more vulnerable than men and boys to HIV infection through heterosexual sex.<sup>5</sup>

Vulnerability to HIV transmission is heightened for girls and young women because the vaginal lining is less well developed and the cervix more vulnerable to injury and erosion.<sup>6</sup> The increased physiological risk borne by women and girls in Africa is compounded by the HIV risk they bear from subordination, discrimination, and inequality under the law.

It is only in the last few years that some consensus has emerged among experts that the subordination of women and girls in Africa and related human rights abuses constitute a major driving force of the AIDS epidemic on the continent. Even so, those abuses remain little studied and vastly underrepresented in policy discussions and decision-making. Relative to the scale and severity of these abuses faced by African women and girls, laws, policies, and programs to combat HIV/AIDS by protecting the rights of women and girls are negligible. The attitude of fatalistic resignation to gender inequality

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<sup>3</sup> In this report, the word "child" refers to anyone under the age of eighteen and "girl" refers to female children under eighteen. Article 1 of the Convention on the Rights of the Child defines a child as "every human being under the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25,

ratified by all member states of the United Nations except the United States and Somalia.

<sup>4</sup> UNAIDS, AIDS Epidemic Update December 2002 (Geneva, 2002), p. 8 [online],

[http://www.unaids.org/worldaidsday/2002/press/update/epiupdate\\_en.pdf](http://www.unaids.org/worldaidsday/2002/press/update/epiupdate_en.pdf) (retrieved July 20, 2003).

<sup>5</sup> A number of determinants of this higher risk have been cited, including the large surface area of the vagina and cervix, the high concentration of HIV in the semen of an infected man, and the fact that many of the other sexually transmitted diseases (STDs) that increase HIV risk are asymptomatic in women, which may lead to their being untreated for longer periods. Girls and women may also face discriminatory barriers to treatment of STDs, such as needing permission of a husband or male relative for certain services. See, e.g., Global Campaign for Microbicides, "About Microbicides: Women and HIV Risk," at <http://www.global-campaign.org/womenHIV.htm> (retrieved July 24, 2003); UNAIDS, "AIDS: Five years since ICPD—Emerging issues and challenges for women, young people and infants," Geneva, 1998, p.11, also at <http://www.unaids.org/publications/documents/human/gender/newsletter.pdf> (retrieved July 22, 2003); and Population Information Program, Center for Communications Programs, The Johns Hopkins University Bloomberg School of Public Health, "Population Reports: Youth and HIV/AIDS," vol. XXIX, no. 3, (Baltimore, MD, Fall 2001), p. 7.

<sup>6</sup> See Population Information Program, p. 7.

remains far too common while bold initiatives to address abuses against women and girls and their grave implications for HIV/AIDS are virtually nonexistent.

African girls and women face numerous human rights abuses at all stages of life—as children in school or, as is increasingly the situation of girls affected by HIV/AIDS, out of school; as adults, in long-term unions where decision-making authority over sex is too rarely theirs and where economic dependence and inequality under the law limit their options for redress; in widowhood where gender discrimination is the rule rather than the exception for inheritance and control of property; and in war and civil conflict where rape is used strategically as a weapon. Sexual abuse, violence, coercion and discrimination are the overarching violations they face at all stages of life.

This chapter summarizes the range of human rights abuses against women and girls that is fueling HIV/AIDS in Africa. The discussion that follows divides the abuses into eight overlapping categories: (1) abuses targeting girls; (2) risks facing women and girls in long-term unions; (3) the effects on susceptibility to HIV/AIDS of discrimination in property and inheritance rights; (4) persistence of at times deadly traditional practices; (5) the ways in which treatment of sex workers exacerbates the epidemic; (6) the failure to properly address wartime rape and related abuses; (7) the failure to provide timely assistance to rape victims; and (8) discrimination in access to basic health information and services. These topics are addressed in turn in the sections below.

### ***HIV/AIDS and Abuse of Girls***

In many countries of eastern and southern Africa, HIV prevalence among girls under age eighteen is four to seven times higher than among boys the same age, a disparity that means a lower average age of death from AIDS, as well as more deaths overall, among women than men. There is increasing evidence that abuses of the human rights of girls, especially sexual violence and other sexual abuse, contribute directly to this disparity in infection and mortality. Certainly consensual sex is part of this picture, but too many girls and young women find that coercion—physical, psychological or economic—figures importantly in their sexual experiences.<sup>7</sup> In Africa, hundreds of thousands of girls, including many orphaned by AIDS or otherwise without parental care, suffer in virtual silence as governments fail to provide basic protections from sexual abuse that would lessen their vulnerability to HIV/AIDS.

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<sup>7</sup> See, e.g., Judith Mirsky, *Beyond victims and villains: Addressing sexual violence in the education sector* (London: Panos Institute, 2003), pp. 6-7.

Human Rights Watch's work in a number of African countries, including Zambia, Togo, South Africa and Kenya, has documented several categories of abuse that heighten girls' risk of HIV infection, including (1) abuse of girls who are heads of household or otherwise relied upon as breadwinners and have few options other than trading sex for their and their dependents' survival, (2) sexual assault of girls by family members or guardians, particularly the shocking and all too common practice of abuse of orphan girls by men who are charged to assist or look after them, (3) abuse of girls who live on the street, of whom many are there because they are without parental care, (4) trafficking of girls for domestic or market work, and (5) rape and sexual assault against girls in school or going to and from school. In some parts of Africa, there is evidence that rape and sexual coercion of girls are fueled by men's targeting for sex younger and younger girls who are assumed to be HIV-negative or seeking them out based on the myth that sex with virgins will cure AIDS. All of these situations of abuse must be addressed as part of combating the HIV/AIDS epidemic in Africa. Sexual abuse of boys was also reported to us, but abuse of girls is predominant.

### ***Sexual abuse, poverty, and girls as breadwinners***

*After my mother died, I went to my mother's mother. In 2001, she died, so I stopped school. . . . Then we went to my auntie, my mom's younger sister. . . . Most girls find that they start keeping up with [having sex with] stepfathers or uncles. Most are raped. They have no say. They think if you bring them to the police, there will be no one to keep me. So they keep quiet.*

—Patricia M., sixteen, who lost her parents to AIDS, Lusaka, Zambia<sup>8</sup>

*My stepmother stopped paying [my] school fees. Father gave her money for school fees, but she bought flour for fritters, and sent me to sell them. If all the fritters weren't sold, she wouldn't let me eat—I went to sleep hungry. I told my father, but he did nothing. So I went to mother's mother. My uncle died, he was paying some school fees—then went to grandmother in Lusaka. Once, I was about to be abused by my uncle—he said he wanted sex, I don't know what. He wanted to remove my clothes. I started crying. In the morning, I ran away.*

—Gwendolyn P., fifteen, a street child, Lusaka, Zambia<sup>9</sup>

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<sup>8</sup> Human Rights Watch interview, Lusaka, Zambia, May 22, 2002.

<sup>9</sup> Human Rights Watch interview at Fountain of Hope, Lusaka, Zambia, May 23, 2002.

Girls interviewed by Human Rights Watch in several African countries have recounted dramatic and, in some cases, nearly unimaginable abuses of their rights—violations of their childhood and their innocence—that have exposed them to sexual assault and sexual coercion. A good many of these depend on both the subordinate status of women and girls in Africa and the intransigent poverty that seems to fall first and most heavily on women and girls. These factors often conspire to force girls into hazardous working situations that expose them to sexual abuse with attendant risk of HIV infection. In 2002, Human Rights Watch spoke with over 100 girls in Zambia about their experiences of rape and sexual abuse. Margaret T., a fifteen-year-old Zambian girl with a young child, told Human Rights watch what happened when she was forced by poverty to work as a housemaid:

I was employed at Arakan barracks, a military camp, where I worked as maid for an officer. One day, he sent to me to a pub for something, and I met other officers. A certain captain followed me and took me to his house. He took me to his house six times last year in June [2001] . . . He told me ‘if you tell anyone, I’ll beat you.’ I was too scared to tell. I was fourteen at the time and only had had one period. But I got pregnant.

Sara A., twenty, interviewed by Human Rights Watch in Kafue outside Lusaka, Zambia, lost her father when she was a girl. Five of her siblings also died, three apparently from tuberculosis. She was unable to continue in secondary school because of financial pressures on the family. "I was seventeen when I left school. I wanted to be a journalist in Lusaka. That didn't work, but I wanted to start working and find a job, even to be a maid. But if you look here, you can't find any work," she said. She eventually found work serving drinks in a bar where, she said, the main money-making opportunities for girls were in trading sex.

Many girls interviewed by Human Rights Watch in Zambia echoed Sara A.'s view that trading sex was difficult to avoid if girls wanted to survive or help others in their households survive. Polly A. was sixteen. After her mother died, there was no one to take care of her and her siblings. "Our relatives refused to help us; they said we should take care of ourselves," she said. "I was eight; my sisters were ten and thirteen. My elder brother took us, and we went to Livingstone [Zambian border town]. He stopped school and went looking for piece work, carrying heavy things. My sister started prostitution."<sup>10</sup>

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<sup>10</sup> Human Rights Watch interview at Anglican Children's Project, Lusaka, Zambia, May 18, 2002.

Workers in Zambian nongovernmental organizations (NGOs) that provide services for girls said they were at particular risk of being drawn into prostitution in border towns and trucking routes. Chirundu is on the Zambia-Zimbabwe border, and trucks are often stuck there for days waiting to cross. One NGO worker described the situation: “There’s no water in Chirundu, so rural girls carry twenty-liter containers and sell them for 500 kwacha [U.S. \$0.12]. You can do that two or three times a day, or you can get 10,000 kwacha [U.S. \$2.30] for an hour’s [sex] work. Once they end up at the border, it’s almost too late.”<sup>11</sup> Dr. Kwasi Nimo of World Vision, which oversees a project in Chirundu, said the truckers call these girls “village chickens”:

They come from near-by villages, and sell bananas, oranges, muffins, and then get entangled. The truckers tell them to climb up to the trucks and get extra money. The truckers say “you buy chickens from the villages cheaper than from supermarkets.”<sup>12</sup>

Claire S. in western Kenya, who became the head of her household at age seventeen when her mother died, explained her struggle as a breadwinner for her remaining siblings:

I tried to do anything to keep us going – I made chapatis and sold them, I washed cars, and now I’m working for a woman with a small kiosk, but I don’t think it’s going to last. The government should lend money to people so they can start a business and be self-reliant. I may have to go into prostitution, and then I know I will get HIV and die. I would rather have a real business, but it is not easy.<sup>13</sup>

Trafficking of girls, a particularly shocking form of child labor, is sadly a common human rights violation in many parts of Africa. Child trafficking is a phenomenon that predates HIV/AIDS and only stands to grow much more widespread in the face of profound poverty, including the impoverishment of AIDS-affected families. Girls and boys are both trafficked in many parts of Africa, but girls are in some families the first to be withdrawn from school when families cannot pay school fees or need an extra source

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<sup>11</sup> Human Rights Watch interview with Karen Doll Manda, Country Director, Family Health International, Lusaka, Zambia, May 21, 2002.

<sup>12</sup> Human Rights Watch interview with Dr. Kwasi Nimo, World Vision, Lusaka, Zambia, May 22, 2002.

<sup>13</sup> Human Rights Watch interview, Kisumu, Kenya, February 28, 2001.

of income. Girls are also more likely to find that the work to which they are sent, even if it is not sex work, puts them at risk of sexual abuse.

In Togo, Human Rights Watch interviewed a number of girls trafficked into domestic work who were physically abused by men and boys in their workplaces and faced high risk of sexual abuse on a regular basis. “Girls can be cornered in a bedroom. Sometimes someone abuses their kindness—they say ‘bring me a cigarette, bring me water’ and then they corner them,” said Professor Djassoa Gnansa of the University of Togo, who counsels trafficked children sheltered by the NGO Terre des Hommes in Lome.<sup>14</sup>

In addition to abuse they face in their places of work, girls trafficked in West Africa are sometimes left to fend for themselves at intermediate points in their trafficking voyages, a situation ripe for abuse. Birgit Schwarz, a German journalist who interviewed several trafficked children in Togo, told Human Rights Watch she met girls who, while waiting for boats to arrive in Nigeria, were raped, prostituted themselves, and sold their belongings to survive.<sup>15</sup> All were reportedly abandoned by their intermediaries, the women who promised not only to accompany them to their destinations but to find them work or send them to school.

Human Rights Watch documented similar experiences. Some girls told us that, after being recruited in their villages, they were driven to meeting places in Nigeria where they were told to wait for a boat to arrive. The journey to Nigeria lasted about a day, with some traffickers stopping along the way to pick up other recruits. When they arrived in Nigeria, girls were brought to small towns and left to their own devices. They reported waiting up to two months with nothing to eat and nowhere to stay. Some slept outside; others slept in abandoned buildings. All had to scrounge for food or steal from the local market. “We waited for two months with nothing to do,” one girl said. “We would fight and hit each other. We did not have enough food to eat, so we would steal manioc from the market and get beaten by the shopkeeper.”<sup>16</sup>

### ***Abuses Exacerbated by Orphanhood or Other Lack of Parental Care***

HIV/AIDS is distinctive among the great infectious disease epidemics of human history in that most of the lives it claims are of young adults rather than of young children or

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<sup>14</sup> Human Rights Watch interview, Lome, Togo, May 8, 2002.

<sup>15</sup> Human Rights Watch telephone interview with Birgit Schwarz, New York, June 4, 2002.

<sup>16</sup> Human Rights Watch interview, Bassar, Togo, May 3, 2002.

the elderly. In many of the most affected countries, the vast majority of young adults are also parents. The rate of orphaning associated with HIV/AIDS is thus unprecedented in the history of human epidemics. The plight of millions of African children who have lost their parents to HIV/AIDS or whose parents or main caregivers are ill with HIV/AIDS constitutes one of the gravest humanitarian crises in history. It is frequently overlooked that this humanitarian crisis is also a human rights crisis.

Children orphaned and otherwise affected by HIV/AIDS face a wide range of human rights abuses. Virtually all of them either affect girls more often than boys or put girls in particularly risky circumstances. Some those that have been most consistently documented are discussed below.

### **Sexual abuse by guardians**

In an investigation of HIV transmission risk linked to human rights abuse of girls, Human Rights Watch interviewed scores of Zambian girls who faced sexual abuse as a regular part of their lives. Nearly every abuse we heard about from these girls posed an even greater risk for girls who were orphaned or otherwise without parental care. In Zambia, a country of about 10 million persons, an estimated 600,000 to 1 million children have been orphaned by AIDS or are in households where a parent is ill with AIDS.<sup>17</sup> A number of orphaned girls reported horrific abuse at the hands of the persons charged to be their guardians or care-givers, often suggesting that they were threatened with being turned out of the household, or worse, if they reported the abuse. Catherine R., seventeen, told Human Rights Watch:

When I was eight, my parents both died. First my mother got sick, then father died a year later. My auntie came to pick me. I stayed with her, but then my uncle started sexually abusing me. He was about thirty-four. He threatened he'd kill me if I told anyone about it. Last year, I saw a program about the YWCA and came here and reported it. I'm scared to go for an HIV test. Cecilia [the counselor] talked to my auntie, but she got so mad. Another auntie came to pick me. I'm scared. Sometime he [the uncle] hurt me—he slapped me, threatened me. I want to go for a test to see if I'm OK or not. I feel if it can happen to me, it can also happen to other girls my age. People like that are so

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<sup>17</sup> See, e.g. UNAIDS, "Report on the global HIV/AIDS epidemic 2002" (Geneva: July 2002), p. 190, and Government of the Republic of Zambia, "Orphans and Vulnerable Children: A Situation Analysis, Zambia 1999," Joint USAID/UNICEF/SIDA Study Fund Project, November 1999, p. 151.

cruel—they should be locked behind bars. I only told my closest friend and aunts. We need to teach girls about what is abuse, and about sex.<sup>18</sup>

Melanie Y., twelve, explained to Human Rights Watch what followed the death of her parents:

I went to live with my uncle and aunt—they used to mistreat me. I had to fetch water from long distances, and I didn't used to eat most of the day. I used to get sick, and nobody looked after me. My uncle used to beat me with electricity wires. Before I went to live with my uncle and auntie, I stayed with my big sister's mom and my brother used to take me in the bush, then he raped me. I was eight or nine. I was scared—he said, "I'm going to beat you if you ever tell anyone." He was fourteen or fifteen.<sup>19</sup>

A social worker at a youth-friendly clinic in Lusaka, Zambia described to Human Rights Watch a case involving Joan S., now sixteen, who had been abused since the age of nine by her stepfather. Because she was afraid to tell her mother about the abuse, she told her aunt, who in turn told her mother. The mother's reaction was to chase the girl out of the house. The case was never reported to the police. "They kept it within the family," the social worker noted.<sup>20</sup> Joan S. was eventually diagnosed with several sexually transmitted diseases.

### Girls forced to drop out of school

Withdrawing children from school or not enrolling them at all appears to be a common coping mechanism for families affected by AIDS, which both impoverishes families and creates the need for children to help with care of an ill person or with bringing income into the family. A 1999 UNICEF report, for example, cites a study in rural Zambia that showed that 68 percent of orphans of school age were not enrolled in school compared to 48 percent of non-orphans.<sup>21</sup> UNAIDS' annual report on the state of the HIV/AIDS epidemic in 2000 noted that several studies have confirmed AIDS in the family as a direct cause of school dropout. For example, in a study of heavily AIDS-affected

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<sup>18</sup> Human Rights Watch interview at YWCA, Lusaka, Zambia, May 22, 2002.

<sup>19</sup> Human Rights Watch interview at Messiah Orphanage, Lusaka, Zambia, May 19, 2002.

<sup>20</sup> Human Rights Watch interview with Jayne Kunda Mwila, Kalingalinga Health Centre, Lusaka, Zambia, May 30, 2002.

<sup>21</sup> UNAIDS and UNICEF, *Children Orphaned by AIDS: Front-line Responses from Eastern and Southern Africa* (New York: United Nations, 1999), p.17.

communities in Zimbabwe, 48 percent of primary school-age orphans had dropped out of school, most often at the time of a parent's illness or death, and of the children of secondary school age interviewed, there were no orphans who were able to stay in school.<sup>22</sup> These aggregate figures, as alarming as they are, fail to highlight that in most countries the majority of school drop-outs associated with AIDS in the family are girls. Ministry of Education officials in Kenya told Human Rights Watch in 2001 that in the country's Eastern Province, the region least affected by HIV/AIDS, 42 percent of primary school children passing into grade five were girls, but heavily AIDS-affected Nyanza Province, the corresponding figure for girls is only 6 percent.

It is not surprising that girls are pulled out of school first when a family is touched by HIV/AIDS. In investigating human rights abuses faced by orphans in several African countries, Human Rights Watch heard consistently from many respondents the view that girls are naturally more suited than boys to care for sick persons. Education for boys is more valued than for girls in many African communities, partly because of the belief that it will yield a greater long-run return on the family's investment. For families economically strapped by AIDS, girls have immediately marketable skills as housemaids, child care workers and vendors or transporters in and around markets, and society does not disapprove when a school-aged girl is seen as a full-time laborer. In an interview with Human Rights Watch, an expert on child trafficking in Togo put it this way:

The education of young girls is a different priority than the education of young boys. Parents think they can do what they want with a little girl—for example, send them to get married and bring back money—and she has no choice. When a boy is a victim of trafficking, the parents are more willing to talk; but when it's a girl, there has usually been an agreement with the trafficker.<sup>23</sup>

Tragically, girls in AIDS-affected families too often find themselves being relied upon as breadwinners by struggling relatives and see no alternative to trading sex for food or other elements of survival. HIV/AIDS both causes them to be laborers and makes their labor mortally dangerous.

When girls in AIDS-affected families are withdrawn from or not enrolled in school, a vicious cycle of HIV/AIDS risk is perpetuated. As noted above, whatever possibility schools offer for arming girls with knowledge of HIV transmission—and boys and girls

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<sup>22</sup> UNAIDS, *Report on the Global HIV/AIDS Epidemic: June 2000*, pp.28-29.

<sup>23</sup> Human Rights Watch interview with Victoire Lawson, project coordinator, BICE-Togo, Lome, May 14, 2002.

with knowledge of appropriate sexual behavior—is negated by the widespread inability of orphans and other children in AIDS-affected families to be in the classroom. According to UNICEF, the biggest successes in lowering rates of HIV infection in Africa have been among girls and women who completed secondary school, not only because of information received in school but because these girls and women are more likely to “have the status and confidence to assert their rights.”<sup>24</sup>

### Loss of inheritance rights

In many African countries, inheritance rights of AIDS widows and orphans have not been respected or protected. The stigma and overwhelming mortality of HIV/AIDS are overlaid on a legal system that in many countries has long disadvantaged women through unequal property and inheritance laws (see discussion below). The unlawful appropriation of the property of AIDS widows and orphans by relatives or others in the “community” is widely documented in Africa. To the degree that their surviving mothers are disadvantaged by law and practice in keeping the property associated with their marriages, children are disadvantaged too, and then even more if their mothers die. Although widows and orphans from other causes may also experience the loss of their property and inheritance rights, many studies suggest that these abuses are much more severe and frequent when HIV/AIDS is in the picture. Ten-year-old Susan B., living with a neighbor in a Nairobi slum after her parents both died of AIDS, told Human Rights Watch an all too typical story:

My father’s relatives said that the property didn’t go with me and my sister, and they said go back to Nairobi to what you’re used to. They didn’t help my mother when she was sick. We got no assistance. When we were there up-country with them, they made my mother sleep in the kitchen [a lean-to away from the house] and not in the main house. We had to come back to the house my mother had here [in Nairobi]. But then [after my mother’s death] my uncle took that house, and I have to live somewhere else.<sup>25</sup>

Children’s deprivation when denied their inheritance rights is compounded by the paucity of options they have for legal recourse. Laws on child protection in many African countries are premised on the idea that children deprived of parental care will be looked after by members of their extended families. It is a tragic consequence of

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<sup>24</sup> UNICEF, “A Fair Chance: Attaining Gender Equity in Basic Education by 2005,” New York: April 2003, p.2.

<sup>25</sup> Human Rights Watch interview, Korogoro, Kenya, March 15, 2001.

HIV/AIDS that in the communities most affected by AIDS—those most likely to have significant numbers of orphans—extended families are also most likely to be decimated by the disease. Children who might be able to find some assistance in seeking to be able to inherit property that may represent their only hope for not sinking into destitution may discover that courts in many African countries provide no avenue of redress for them. Juvenile courts are set up to deal with children in conflict with the law, and family courts that might be more appropriate for inheritance issues exist in only a few jurisdictions. A teacher in western Kenya who cares for two orphans in addition to her own children, note:

I have not been able to get the legal papers to be the official guardian of these children and help them with their property. I went to the Children's Department, and they sent me to the Probation Department, and Probation sent me to Social Services, and Social Services sent me to the chief, and finally I went to the district commissioner, but still I was not helped. I know that means I can't bring a case to court on behalf of these children and the property they have a right to.<sup>26</sup>

With respect to inheritance of property, girls are especially disadvantaged in the way that their mothers have been for centuries. A boy who reaches the age of majority in many countries will at least have the law on his side in claiming property and inheritance rights. Boys in AIDS-affected families may still suffer discrimination, but girls in similar situations will be doubly disadvantaged by inequality before the law and the stigma of HIV/AIDS.

### **Risks associated with life on the street**

The phenomenon of children orphaned by AIDS swelling the numbers of homeless children in Africa has been noted in the popular press and expert reports alike. In Lusaka, the Zambian capital, the population of street children more than doubled from 1991 to 1999, an increase the U.N. agencies in the country attribute largely to AIDS.<sup>27</sup> Even in the Sudan, a country not reported to be among the most heavily affected by AIDS, church workers estimated in 1999 that thousands of AIDS orphans were among the street children of Khartoum.<sup>28</sup> Nongovernmental organizations have documented many risks to street children. As the work of Human Rights Watch and others has

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<sup>26</sup> Human Rights Watch interview, Kisumu, Kenya, March 3, 2001.

<sup>27</sup> UNAIDS and UNICEF, *Children Orphaned by AIDS: Front-line Responses from Eastern and Southern Africa* (New York: United Nations, 1999), p.16.

<sup>28</sup> See Nhial Bol, "AIDS Orphans Throng the Streets," Inter Press Service, January 13, 1999.

shown, street children in Africa are likely to face police abuse and certainly face being treated as criminals rather than victims.<sup>29</sup> A 2000 report by Save the Children-Sweden confirmed AIDS as an important part of what drives children to the streets. The same report concludes, based on extensive interviews with service providers in Kenya, Uganda, Tanzania, and Ethiopia that, almost inevitably, "an unprotected girl working on the streets will sooner or later end up working as a prostitute."<sup>30</sup>

## Trafficking and hazardous labor

As noted above, because of entrenched poverty and lack of educational and income-earning opportunities, girls in many parts of Africa, whether orphaned or not, are frequently forced to take on risky labor, including trading sex for survival. AIDS in the household often pushes families deeper into poverty because of medical care, difficulty of replacing lost earnings of an ill breadwinner, and eventually funeral expenses. It is not surprising, then, that orphaned girls and boys are more vulnerable to risks associated with hazardous labor than other children. A 2001 UNICEF study in six heavily AIDS-affected countries of eastern and southern Africa concluded that children's being in AIDS-affected families is a consistent and strong determinant of their being forced into the workplace, often into hazardous jobs. "The AIDS pandemic has turned African children into orphans and labourers," concludes the report. "It is safe to say that eastern and southern Africa will have a disproportionate number of . . . working children by 2015 unless immediate action is taken to reverse this trend."<sup>31</sup>

Human Rights Watch's investigation of trafficking in west Africa, referred to above, concluded that orphans were especially vulnerable to being trafficked for their labor. In Tchamba, Togo, for example, we documented the case of a child being trafficked after her father had died of AIDS. Hodalo S., who was in primary school when her father became ill, told Human Rights Watch she was sent by her grandmother to live with an aunt,<sup>32</sup> who then took her to Gabon to work. For a month she sold milk in the market without pay, and by the time she returned home her father had died.<sup>33</sup> Human Rights

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<sup>29</sup> Human Rights Watch, *Juvenile injustice*:

<sup>30</sup> Stefan Savenstedt, Gerd Savenstedt, and Terttu Haggstrom, *East African Children of the Streets – A Question of Health* (Stockholm: Save the Children-Sweden, 2000).

<sup>31</sup> UNICEF Eastern and Southern Africa Regional Office, *Child Workers in the Shadow of AIDS: Listening to the Children* (Nairobi: UNICEF, 2001).

<sup>32</sup> According to a 1998-1999 ASI study on the trafficking of girls between Benin and Gabon, the women responsible for trafficked girls are often called "auntie" to give an illusion of a familial bond. A.F. Adihou, "Trafficking of children between Benin and Gabon," p. 10. Human Rights Watch was not able to confirm in most cases whether the "aunt" or "auntie" referred to by a trafficked child was indeed a relative by blood or marriage.

<sup>33</sup> Human Rights Watch interview, Tchamba, Togo, May 2, 2002.

Watch interviewed a social worker familiar with this case, and he said the health worker who cared for Hodalo S.'s father confirmed the diagnosis of HIV/AIDS. In other instances, orphans who were recruited by child traffickers were unable to identify their parents' cause of death. There is an urgent need for further research on the connection between HIV/AIDS and child trafficking in Africa.

### ***Sexual abuse in school***

A category of sexual abuse of girls that directly undercuts their right to education is sexual abuse in school. Evidence is mounting that sexual violence targeting girls in school or on their way to or from school is a significant problem in many parts of Africa, though it is only relatively recently coming to light, partly out of concern for its link to HIV/AIDS.<sup>34</sup> In 2001, Human Rights Watch documented widespread sexual abuse perpetrated against girls in school by male classmates, teachers, school administrators and other employees in South Africa. As one fifteen-year-old girl stated:

All the touching at school, in class, in the corridors, all day everyday bothers me. Boys touch your bum, your breasts. Some teachers will tell the boys to stop and they may get a warning or detention, but it doesn't work. Other teachers just ignore it. You won't finish your work because they are pestering you the whole time.<sup>35</sup>

Overall, girls described to Human Rights Watch an environment in which violent, harassing and degrading sexual assaults are so normalized in many schools that they constituted a systemic problem for education, not merely a series of incidents.

Zambian NGOs reported to Human Rights Watch numerous incidents of teachers preying on vulnerable girls, exchanging answers to the tests or higher grades for sex. Most abuses by teachers are not reported, and few teachers are penalized, they said. "The laws are strict, but there's no real attempt to find out what goes on," said one experienced NGO worker.<sup>36</sup> The more likely outcome is that a teacher would be cautioned and possibly transferred. Advocates for girls' education have been trying to enact stiffer penalties against teachers who abuse students and to ensure that those found responsible are dismissed. However, the onus is on the girl's parents, not the school, to report the case to the police so that criminal charges can be brought. School

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<sup>34</sup> Mirsky, *Beyond victims and villains*, pp. 20-25.

<sup>35</sup> Human Rights Watch interview, Johannesburg, March 18, 1999.

<sup>36</sup> Human Rights Watch interview with Cosmas Musumali, Lusaka, Zambia, May 16, 2002.

administrators sometimes interfere with the process by transferring the teacher elsewhere, which makes it extremely difficult for the case to proceed. In addition, the process of lodging a formal complaint or filing charges is not always clear. "Where do parents go to complain?" asked Elizabeth Mataka of Family Health Trust in Lusaka. "Often there's no police within miles, and the Ministry of Education is at the provincial level, so the headmaster is the ultimate authority. . . . Teachers escape ethical sanctions."<sup>37</sup>

NGO representatives in Zambia and South Africa also told Human Rights Watch that girls' safety and security on their way to and from school was often threatened. The length of the girls' commute to school was an important factor since their risk of sexual abuse by minibus drivers or conductors, if they were transported, or abuse by others along the road, if they walk, could be significant. One youth development counselor in Braamfontein, South Africa, told this story:

In January, a sixteen-year-old girl came to me and told me that she had a problem. A teacher in the school, who gave her lifts to and from school, was bothering her. She lived very far away from the school, she would have to rise at 5:00 a.m. if she took public transport, and her parents had made an arrangement with the teacher, who lived near her to drive her to school in his car. There were two other kids that he drove to school with her. She started receiving lifts this year. She told me that the teacher would always drop her off last, and that he would make remarks, like "I'm tired. I need a bath. I need to be rubbed." "My wife hasn't been home. I need to be rubbed." She told him that she didn't like that kind of talk and would he stop. I advised her to tell her parents but she doesn't want to. She's afraid of him and she's dependent on him for a ride. Her parents are unemployed and the public transport fare would be too much, her sister is the only one working in the family. She was afraid that her parents would approach him and take action against him, and that he would harm her. He's a big and intimidating man. You don't argue with him. He carries a cane around the school and uses it liberally with the kids.<sup>38</sup>

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<sup>37</sup> Human Rights Watch interview with Elizabeth Mataka, Family Health Trust, Lusaka, Zambia, May 20, 2002.

<sup>38</sup> Human Rights Watch interview, Braamfontein, South Africa, March 17, 2000.

In some cases, the long distance to school, often two hours walk or more, made some girls stay in insecure sheds nearer to school during the week, which then exposed them to abuses by men who could walk in at will.

Some of the girls Human Rights Watch interviewed in South Africa found sexual violence in school so threatening or injurious that they left school. Others performed poorly because of the fear they experienced, according to teachers or parents. All of this abuse carries the risk of HIV and other sexually transmitted infections, not only from the sexual abuse itself. For those who can't take it anymore and leave school, it deprives them of the best chance they have of empowerment—sexual, economic, intellectual and otherwise—and, sadly, what may be the best chance they have to protect themselves from HIV/AIDS. In addition, while classroom programs on HIV/AIDS leave much to be desired in some locations, they are in many countries one of the most important means of conveying to children basic information on HIV transmission, AIDS treatment and care, and the importance of compassion for people living with and affected by HIV/AIDS. Many school-based “life skills” programs also include elements of assertiveness training for girls and prevention of sexual harassment and abuse.

### ***Criminal justice systems and sexual abuse of girls***

A central problem in many African countries is the failure of the state and particularly the criminal justice system to deal appropriately with complaints of sexual abuse from women of all ages, but perhaps particularly from girls and young women. There are many barriers to effective reporting and prosecution of crimes of sexual assault. For orphaned girls being abused by men who are meant to be their guardians or otherwise to be helping to look after them, reporting the abuse may mean risking abandonment or violent punishment. Families will often go to great lengths to conceal this abuse. In other cases, victimized girls remain silent in the face of legal and social services systems that fail to act to protect girls' rights. To report a crime of sexual violence or abuse, a girl would face a police department that is rarely child- or gender-sensitive, health service providers that may scold her for being promiscuous, a court system lacking any facilities for youths, and a social structure that teaches girls to be submissive to men. Even if she did report an abuse, chances that officials would act against the abuser are minimal. Official inaction on the part of the criminal justice system helps to perpetuate the abuse by contributing to a climate in which girls who suffer sexual violence decide it is not worth reporting to the police because of the unlikelihood of punishment of perpetrators and by sending the message to perpetrators that they can commit abuse with impunity. As a result, the perpetrators remain free to abuse again.

In most African countries, the police play a central role in facilitating the access to justice and to judicial mechanisms of sexual abuse survivors. The police hear complaints and are often a survivor's gateway to forensic medical services, which are important to prove sexual offences cases and may be essential where corroborative evidence is required. A number of African countries have established special units of the police department for dealing with rape and sexual assault cases, but few of these are specialized in handling cases of sexual abuse of children. The Child Protection Units of South Africa are an exception. In Zambia, the Victim Support Units (VSUs) found in some police stations handle sexual abuse cases, including those involving children. Although the VSU has intervened effectively in some cases, the potential impact of the VSU has been undermined by a fundamental shortage of resources, equipment, and training. For example, in 2002 the VSU had only two vehicles for the whole country.<sup>39</sup> There were 100 women officers in the VSU, and one woman officer was supposed to be assigned to each police post. A VSU spokesperson said that this system was difficult to implement because many women refuse to be assigned to police stations in remote areas.<sup>40</sup>

While the mandate of the VSUs is laudable, many observers told Human Rights Watch that the VSUs were tainted by their association with a police force that did not enjoy the confidence of the people in Zambia. Eugene Sibote, a spokesperson for the VSU, said VSU was willing to try to set up liaison functions with schools as a way "to target children and let them know about their rights and about the work of the police. Because they mistrust the police, they fail to seek police assistance."<sup>41</sup> Karen Doll Manda of the NGO Family Health International, put it more starkly: "The concept of the VSU is a step – but you need a whole overhaul of the police system before people will have faith in the VSU. People go there out of desperation."<sup>42</sup> Girls often expressed fears that they would not be believed. In other cases the basic logistics—distance to the police station and medical clinics, and the cost of the police report—dissuaded people from reporting.

Moreover, when faced with a complaint, the VSU all too frequently failed to respond or was ineffective. Juliet Chilengi, director of the New Horizons orphanage for girls, lamented this lack of follow-through:

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<sup>39</sup> Human Rights Watch interview with Eugene Sibote, Lusaka, Zambia, May 22, 2002.

<sup>40</sup> Human Rights Watch interview with Jayne Kunda Mwila, Kalingalinga Health Centre, Lusaka, Zambia, May 30, 2002.

<sup>41</sup> Human Rights Watch interview with Eugene Sibote, Lusaka, May 22, 2002.

<sup>42</sup> Human Rights Watch interview with Karen Doll Manda, Lusaka, May 21, 2002.

The laws are there, but no one enforces them. Most cases of abuse here have gone through the VSU—but they don't follow up or do anything about it. I can't sit on the phone and remind them. If you don't take action, you're out of sight, out of mind. When there's a docket, I don't know who closes it.<sup>43</sup>

In one case reported to Human Rights Watch, a girl was allegedly raped by an army officer and her family reported the case to the VSU. Although the VSU expressed support for the family, they were unable or unwilling to deliver the summonses to the parties involved. Therefore, the girl's father had to track down each party and deliver a summons. When none of the parties appeared, the VSU did nothing.<sup>44</sup> The case of Tina B., thirteen, who lived with her grandmother and then in an orphanage after the death of her parents, is another of the numerous cases reported to Human Rights Watch where the police failed to respond:

My grandmother couldn't look after me, so I worked as a maid for a [man]. . . . He beat me and threatened that he'd kill me before sunset. I told grandmother about the beatings, and she reported it to the police. They didn't do anything.<sup>45</sup>

The VSU is limited in the options it has to deal with abuses against girls. At the moment, it can remove a girl from her family or from the street, but there are few safe places to send her. The VSU lacks child-friendly resources that aim to address the needs of abused girls. As Alick Nyirenda of the Copperbelt Health Education Project (CHEP) put it: "The child goes through the regular police station; the environment is not appropriate."<sup>46</sup>

As noted above, there are also problems of the VSU's standing within the police department itself. "Some police officers are in weak positions," explained Eugene Sibote. "They may be frustrated or intimidated locally."<sup>47</sup> Sibote said he has told all VSU officers to report to him if they experience any interference by local authorities and offered to handle the case from Lusaka.

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<sup>43</sup> Human Rights Watch interview at New Horizons orphanage, Lusaka, June 1, 2002.

<sup>44</sup> Human Rights Watch interview at YWCA, Lusaka, May 22, 2002.

<sup>45</sup> Human Rights Watch interview at Jesus Cares Ministries, Lusaka, May 24, 2002.

<sup>46</sup> Human Rights Watch interview, Kitwe, Zambia, May 25, 2002.

<sup>47</sup> Human Rights Watch interview, Lusaka, May 22, 2002.

Given all of these negative factors, it is relatively rare in Zambia as in many other countries for police to investigate these cases or for prosecutors to bring them before a court. The responsibility for failure to follow up in abuse cases does not exclusively reside with the VSU, however. Sometimes, the failure to follow up is due to corruption, where court officials as well as police may be paid off by perpetrators.<sup>48</sup> In other cases the family may not want to press charges. Judge Lombe Chibesakunda, who chairs Zambia's National Human Rights Commission, observed, "The chances of coming to court are almost nil; it's an embarrassment to the family, to the girl. They try to hide it under the carpet."<sup>49</sup>

Other constraints to prosecution in child abuse cases in Zambia and elsewhere include the attitude of the legal and law enforcement agencies toward girl victims, the inadequate training and resources for investigation (as noted with respect to the VSU above), the difficulties of using a child's testimony in court, and the lack of trained prosecutors to pursue cases of child and gender violence. Chapter 88 of the Criminal Procedure Code of Zambia requires that a child's testimony be corroborated to be admissible as evidence, a feature of the law not unique to Zambia. Even the government acknowledges that this presents obstacles to prosecuting perpetrators of child abuse. The judge can use his or her discretion to determine whether the child is competent and therefore whether his or her evidence is admissible.<sup>50</sup> Although evaluating the competency of a child witness is a standard part of common law doctrine, it tends to work to the disadvantage of the child when he, or especially she, is the victim. The courts often do not take her case seriously and, in the case of an older girl with a complaint of sexual abuse, the case may hinge on whether or not the judge believes she "asked for it." This problem underscores the need for effective child protection units that could investigate cases of abuse and provide corroboration.<sup>51</sup>

The law on rape in Zambia, as in a number of countries, also leaves much to be desired. Some Zambian women's groups have called for an expanded definition of rape, stressing the need to restructure the law to provide for circumstances of aggravated rape, which

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<sup>48</sup> Human Rights Watch interview with Sibote, May 22, 2002.

<sup>49</sup> Human Rights Watch interview with Judge Lombe Chibesakunda, chair of National Human Rights Commission, Lusaka, Zambia, May 30, 2002.

<sup>50</sup> CRC report, p. 19 and 23.

<sup>51</sup> Human Rights Watch telephone interview with Prof. Muna Ndulo, Cornell University School of Law, July 15, 2002.

should lead to stiffer penalties. They have also called for stiffer, mandatory minimum sentences as a way of addressing the lenient sentences.<sup>52</sup>

In 2002, a group of Zambian women's organizations published an NGO commentary on the government's official report to the U.N. on the implementation of CEDAW. The NGO report underscores the vulnerability of girls to violence and HIV, and the state's failure to protect them:

The media carries almost daily reports of children being raped or defiled by adults often within the home because of mythical hopes of getting cured of AIDS or avoiding HIV infection by having sex with virgins. The following illustrate: 'Man 23 in court for defiling girl 7', 'HIV+ man gets 30 months for defiling girl 13', 'Grandfather 64 gets 2 years for defiling girl 5'. The result is that children are getting infected and dying and the courts are passing light sentences on the perpetrators.<sup>53</sup>

The NGO commentary further condemns the light sentences meted out to offenders:

Law enforcement officers and courts do not accord the same level of seriousness to these offences as they do to other crimes. Under the Penal Code, the offences fall under the title "offences against morality" rather than injuries against the person. Thus, the focus of the provisions is the moral wrong done to society as a whole, to the detriment of the individual victim of violence.<sup>54</sup>

### ***International human rights law on sexual abuse of children***

The Convention on the Rights of the Child (CRC) is the most widely ratified human rights treaty in history. It has been ratified by every country except the United States and Somalia. The CRC contains provisions to protect children from abuse and exploitation. Article 2 requires states to take all appropriate measures to ensure that children are protected from discrimination. Article 19 requires state parties to take all appropriate measures to protect children from "all forms of physical or mental violence,

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<sup>52</sup> Women and Law in Southern Africa Trust - Zambia, "Gender Violence: The invisible struggle," (Lusaka: 2001), p. 25.

<sup>53</sup> Women in Law and Development in Africa (WILDAF)-Zambia, "NGO Commentary on the Government of Zambia Combined Third and Fourth Report on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)," Lusaka, May 2002, p. 16.

<sup>54</sup> NGO Commentary, p. 16.

injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” Article 24 recognizes the right of children to enjoy “the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” Article 32 recognizes the right of children “to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” Article 34 requires states to undertake to protect children “from all forms of sexual exploitation and sexual abuse,” and in particular take all appropriate measures to prevent “(a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices.”<sup>55</sup>

Child trafficking is prohibited under international law as both a “practice similar to slavery” and one of the “worst forms of child labor.”<sup>56</sup> The CRC obliges states parties to “take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form.”<sup>57</sup> It further obliges states to ensure that children are not separated from their parents against their will; to take measures to combat the illicit transfer and nonreturn of children abroad; and to protect children from economic exploitation, hazardous labor, involvement in drug trafficking, sexual exploitation and abuse and any other form of exploitation.<sup>58</sup> Of additional relevance to child trafficking is the CRC’s guarantee of protection against abuse and neglect within the family. Article 20(1) provides that “a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”<sup>59</sup> This provision is especially relevant to children who have already been trafficked, particularly where parents have been complicit in the trafficking.

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<sup>55</sup> Convention on the Rights of the Child, G.A. res. 44/25, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990.

<sup>56</sup> See, e.g., ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), art. 3(a).

<sup>57</sup> U.N. Convention on the Rights of the Child, art. 35. Although it prohibits child trafficking, the Convention on the Rights of the Child does not provide any definition of the practice.

<sup>58</sup> U.N. Convention on the Rights of the Child, art. 9, 11, 32-34.

<sup>59</sup> This provision reinforces article 24(1) of the International Covenant on Civil and Political Rights guaranteeing children “the right to such measures of protection as are required by his status as a minor,” as well as the Convention on the Rights of the Child’s article 19(1), which guarantees protection from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s).”

## **Risks to Women and Girls in Long-Term Unions**

### ***Domestic violence and marital rape***

*Early marriage and vulnerability associated with their age and norms may promote respect of men's authority in sexual matters and contraceptive use, and dictate sex as a wife's duty, regardless of risks to herself. Thus, marriage can be a major risk factor for women who are powerless to negotiate condom use or their husbands' extramarital behaviour. Studies indicate that in some regions, a high proportion of HIV-positive married women are most likely infected by their husbands, their only sexual partner.*

—U.N. Population Fund, February 2002<sup>60</sup>

*When you say, "I do," you have consented to sex anytime, anyplace, anyhow.*

—Dr. Josephine Kasolo, director, Women and Children's Crisis Centre, Kampala<sup>61</sup>

In its work on HIV/AIDS around the world, Human Rights Watch has encountered numerous women living with HIV/AIDS who said in their lifetimes they had had sex only with their partner in a long-term marital or nonmarital union. The tragedy of high HIV transmission risk among monogamous women has begun to gain attention in Africa but continues to go unnoticed among policymakers. That African men in long-term unions face little or no social constraint in engaging in sex outside those unions is well documented. Decision-making on when and how sex will be had in long-term unions—to say nothing of decisions related to conception and contraception—is too rarely within women's control in African communities. Combined with economic dependence on men, this lack of sexual autonomy puts women in long-term unions at grave risk.

The degree to which men resort to violence to maintain control over sex in long-term unions is little understood and woefully neglected as a research question. Human Rights Watch recently investigated this category of abuses in detail in Uganda and concluded that even in the country most frequently cited as an AIDS "success story," women are

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<sup>60</sup> U.N. Population Fund, "Addressing gender perspectives in HIV prevention," *UNFPA Programme Briefs*, no. 4, February 2002.

<sup>61</sup> Human Rights Watch interview, Kampala, Uganda, December 10, 2002.

becoming infected with HIV in large numbers because the state is failing to protect them from domestic violence.

For many women in Uganda, as in much of Africa and the world, domestic violence is not an isolated and aberrant act, but arises from and forms part of the context of their lives. Too many African women confront an environment that sustains unequal power relations, contend with persistent social pressure to tolerate violence, and are routinely subjected to coercion and emotional abuse from husbands or partners and members of their extended family. Many of the women interviewed by Human Rights Watch in Uganda had been raped in marriage, were unable to protect themselves from infection, and were prevented from utilizing HIV/AIDS services because their husbands physically attacked, threatened, and intimidated them, and did so with impunity. Sules K., a widow in Tororo, Uganda, described her situation:

My husband would beat me to the point that he was too ashamed to take me to the doctor. He forced me to have sex with him and beat me if I refused. . . . Even when he was HIV-positive he still wanted sex. He refused to use a condom. He said he cannot eat sweets with the paper [wrapper] on.<sup>62</sup>

Human Rights Watch's investigation showed that Ugandan women become vulnerable to HIV infection as a result of domestic violence in complex and intertwined ways. Most women interviewed saw domestic violence as innate to marriage, and viewed sex with their husbands as a marital obligation. Traditional attitudes that dictate that women are the physical property of their husbands deprive them of any authority over marital sexual relations. Customs such as the payment of "bride price" (payment made by a man to the family of a woman he wishes to marry), whereby a man essentially purchases his wife's sexual favors and reproductive capacity, underscore men's socially sanctioned entitlement to dictate the terms of sex, and to use force to do so. The story of Sara K., thirty-one, reflected the idea of unsafe sex as a wife's duty:

My husband would beat me often. . . . He used to beat me when I refused to sleep with him . . . . He wouldn't use a condom. He said "when we are man and woman married, how can we use a condom?" . . . .It's a wife's duty to have sex with her husband because that is the main reason you come together. But there should be love. . . . When I knew about his girlfriends, I feared that I would get infected

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<sup>62</sup> Human Rights Watch interview, Tororo, Uganda, December 16, 2002.

with HIV. But he didn't listen to me. I tried to insist on using a condom but he refused. So I gave in because I really feared [him].<sup>63</sup>

Violence, or the threat of violence, deprives women of bodily integrity by eliminating their ability to consent to sex, to negotiate safer sex, and to determine the number and spacing of their own children. In many cases, other forms of violence, such as abandonment or eviction from the home (which are often accompanied by physical violence), hold even greater terror for economically dependent women, who, confronted by a hostile social environment, ignore their husbands' adultery, and acquiesce to their husbands' demands for unprotected sex.

In an environment where the stigma of AIDS remains high in spite of the much vaunted openness around HIV/AIDS in Uganda, a fear of violence prevented many women from seeking and gaining access to HIV testing, information and other services. Some women attended HIV/AIDS clinics in secret, and were afraid to discuss HIV/AIDS with their husbands, even when they suspected that the men were HIV-positive and were the source of their own infection.

Elizabeth N., a married woman from Tororo, Uganda, said: "I told him I was going to get tested. He refused. There was only one center. . . . You had to produce a letter from your husband so I forged one."<sup>64</sup> Some HIV-positive women Human Rights Watch encountered had been evicted from their homes and abandoned, often after being physically attacked. Their in-laws stripped HIV-positive widows of their property and means of support when they were at their most physically vulnerable. Their lack of economic autonomy hampered their capacity to escape abusive relationships, thereby exacerbating their vulnerability to violence and HIV infection.

Women in Africa who seek to flee violent marriages through divorce face enormous obstacles. Ugandan marriage and divorce laws, for example, discriminate against women and contravene constitutional provisions providing for nondiscrimination,<sup>65</sup> equal protection of the law,<sup>66</sup> and equal rights in marriage, during marriage, and at its

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<sup>63</sup> Human Rights Watch interview with Sara K., Naguru, Uganda, January 15, 2003.

<sup>64</sup> Dr. Hitimana-Lukanika, executive director of the AIDS Information Centre, established in February 1990 to provide anonymous, voluntary, and confidential HIV testing and counseling services, confirmed that women are not required to provide letters of approval from spouses at AIC centers. E-mail message from Dr. Hitimana-Lukanika to Human Rights Watch, May 28, 2003.

<sup>65</sup> Constitution of the Republic of Uganda, 1995, art. 21(2).

<sup>66</sup> *Ibid.*, art. 21(1).

dissolution.<sup>67</sup> In 1999, the government admitted, “[I]n the laws of marriage, divorce or inheritance, there is no gender equity or fairness to date. The woman is always in a subordinate position. This position is aggravated by the requirement in most marriages, that bride price be paid to the parents of the female so that the family and clan of the husband tend to take the woman as property.”<sup>68</sup>

Statutory divorce laws in Uganda, in particular, provide little in the way of protection for battered women. The grounds for divorce available under the Divorce Act impose an inequitable burden on women attempting formally to terminate their marriages.<sup>69</sup> Under the act, a woman cannot simply accuse her husband of adultery but must couple her claim with either cruelty or desertion, or claim that the adultery has been incestuous or bigamous or is accompanied by (polygynous) marriage.<sup>70</sup> There is no such legal requirement for men. As the “aggrieved party,” only husbands may claim damages for adultery from co-respondents,<sup>71</sup> implying that only the husband’s rights have been violated and underscoring women’s subordinate position in marriage. In general, under customary law, husbands have numerous grounds for divorce available to them, including infidelity, infertility, adultery, witchcraft, or insubordination. The grounds available to wives are limited to impotence, excessive cruelty, and desertion.<sup>72</sup> Laws to protect the interests of women in nonmarital unions are even less helpful. The situation in Uganda is similar to that in a number of other countries in the region.

### ***Lack of redress in the police complaint process and the courts***

*Bear in mind he [my husband] would go away for two weeks and then come back and force me, with his might. I did not complain to anyone after that...It’s culture, there is no way you can go to the police and say your husband has raped you. They*

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<sup>67</sup> Ibid., art. 31(1).

<sup>68</sup> MGLSD “Third Country Status Report,” p.70.

<sup>69</sup> Under the Divorce Act, neither spouse can claim cruelty as a sole ground of action. The Divorce Act, section 2(v), (Chapter 215, Laws of Uganda), 1<sup>st</sup> October 1904. The Customary Marriage (Registration) Decree says nothing about grounds for divorce, nor does it mention cruelty. The same holds true for the Marriage and Divorce of Mohammedans Act.

<sup>70</sup> The Divorce Act, section 5.

<sup>71</sup> Ibid., section 22(1). A co-respondent is the person charged as having committed adultery with one’s spouse.

<sup>72</sup> Sylvia Tamale, “Law Reform and Women’s Rights in Uganda,” *East African Journal of Peace and Human Rights*, (vol. 1:2 1993), p. 173.

*say "he brought you from your home and this is the job you came to do." There is no way you can report him or seek legal advice.*

—Rita M., Nakulabye, Uganda, January 15, 2003

Many governments in Africa have failed to ensure that domestic violence is adequately investigated by the police and prosecuted in the courts. Interviews conducted by Human Rights Watch in Uganda showed that the belief that domestic violence is a private concern that should not involve the state was prevalent within the police force and at the local council level. Interviews with police and state prosecutors indicated that women's economic vulnerabilities made efforts to pursue domestic violence cases difficult, and that although a small number who filed charges followed their cases through to their conclusion, most ultimately withdrew their complaints in order that their partners could return home and provide for the family. Often this resulted in further violence. One state prosecutor told Human Rights Watch that biased attitudes in the police force and economic constraints meant that those cases that were prosecuted were usually the most egregious, often those that resulted in the woman's death.<sup>73</sup>

The Ugandan government has taken steps to improve the police response to family matters. Family protection units have been established in thirty-three out of forty-eight districts,<sup>74</sup> and a domestic violence unit has been established at Kawempe police station. However, Superintendent of Police Helen Alyek at the Child and Family Protection Unit at Nsambya Police Station pointed out that sensitization was largely restricted to the urban areas and there was little funding for it.<sup>75</sup> Although women were increasingly employed in the family protection units, the numbers of male officers continued to far outstrip their female counterparts.

Lawyers described the level of police response to domestic violence cases in Uganda as erratic and dependent on the particular station. A number of lawyers referred to complaints of domestic violence being treated lightly and on occasion even with scorn. Martha Nanjobe at the Legal Aid Project told us, "Women complain about the police when they report domestic violence. I have those complaints. The police are

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<sup>73</sup> Human Rights Watch interview with Simon Byabakama-Mugenyi, deputy director of public prosecutions, Directorate of Public Prosecutions, Kampala, Uganda, January 8, 2003

<sup>74</sup> Human Rights Watch interview with Helen Alyek, superintendent, Child and Family Protection Unit, Nsambya Police Station, Uganda, December 19, 2002. (According to the government, out of fifty-six districts, only forty-eight are "fully fledged.")

<sup>75</sup> Human Rights Watch interview with Helen Alyek, superintendent, Child and Family Protection Unit, Nsambya Police Station, December 19, 2002.

unsympathetic, jeering at the women even.”<sup>76</sup> Joanne Apecu of the Law Reform Commission stressed: “The police look at it [domestic violence] as a domestic issue. The perception [is] that the man has discipline rights. They should be looking at it as a criminal assault. Most times they will send the woman back home.”<sup>77</sup>

Economic constraints are an obstacle to obtaining medical evidence to support domestic violence allegations. In principle, outpatient health care at government clinics is free;<sup>78</sup> numerous NGO representatives reported that, in practice, women have to pay. In addition, hospitals charge high fees for physical examinations that most women cannot afford. The police surgeon is based in Kampala, which is often too far and too expensive for many women to reach. There is also an official fee for the forensic examination. In a 2003 investigation, Human Rights Watch found that in South Africa, where forensic examinations are supposed to be free, some rape survivors were told by police that a fee was required to open the case before they could be examined.<sup>79</sup>

**Corruption and sexism may combine to limit police response to domestic violence**

Endemic police corruption plays a central role in impeding the prosecution of domestic violence in Uganda, according to a Human Rights Watch investigation, and Uganda is likely far from alone in this regard. Lawyer Maureen Owor worked at the Directorate of Public Prosecutions for seven years prior to setting up in private practice. She has handled a number of criminal and family law cases, and sat on a commission of inquiry into corruption in the police force as lead counsel. She described her experiences with the police’s treatment of domestic violence cases: “The few cases [of reported domestic violence] that I know of are killed off at the police station. They [the police] are the first to negotiate with the wife. If the man pays a handsome fee, the files are not sent to the court. If it is not sent, the [prosecutor’s] office will not know it was reported. Many of my present clients will say they went to the police but it was not followed up, or the relatives exerted pressure. I never prosecuted domestic violence cases [at the Directorate of Public Prosecutions].”<sup>80</sup>

Some women accused the police of imposing “unofficial fees” when they tried to lay complaints. Our interviews with lawyers, victims, and police officials such as

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<sup>76</sup> Human Rights Watch interview with Martha Nanjobe, executive director, Legal Aid Project Offices, Kampala, January 8, 2003.

<sup>77</sup> Human Rights Watch interview with Joanne Apecu, senior legal officer, Law Reform Commission, Kampala, January 7, 2003.

<sup>78</sup> The Movement ended cost-sharing during the 2001 elections.

<sup>79</sup> Human Rights Watch interview with Dr. V.B. Mohammed, Durban, South Africa, May 15, 2003.

<sup>80</sup> Human Rights Watch interview with Maureen Owor, advocate, Owor & Co. Advocates, Kampala, January 6, 2003.

Superintendent Saboni, revealed that in some stations, fees were levied for the form that provides for medical examinations of victims. Other unofficial fees included photocopying and transport. Alice N. told Human Rights Watch that in about 1998, her husband hit her above her eye and her aunt advised her to go to the police. She went to Entebbe (Uganda) police station, where they charged her UShs3000 (U.S.\$1.52)<sup>81</sup> for making the statement and asked for UShs5000 (U.S.\$2.54) to arrest her husband, which she did not have. They took her statement but did not give her a medical form although they could see her injury.<sup>82</sup> Officer Chris Salongo is in charge of the Child and Family Protection Unit at Kawempe Police Station. He informed us that they did not charge for the PF3 form, although the medical examination cost UShs5000 (U.S.\$2.54). Officer Salongo also asserted that the doctor charged UShs10,000 (U.S.\$5.08) to undertake an examination for rape or assault, a fee few women could afford.<sup>83</sup>

The absence of a specific domestic violence statute in Uganda, as in many other countries, leaves in the hands of police officers the discretion to classify the offense and decide whether victims of domestic violence will receive medical attention. Officer Salongo told us, “We are the ones to categorize the offence because domestic violence is not stipulated by law... We decide based on her injuries whether she goes for a medical examination. There is common assault where there is a slap. That does not get a medical form.”<sup>84</sup> The absence of a standardized investigation protocol makes for a haphazard response to domestic violence, and risks serious injuries being ignored by less committed officers.

In many African countries, aside from a few convictions in particularly heinous cases, few complaints of domestic violence reach the courts. Uganda, again, is a case in point. As one government prosecutor told Human Rights Watch, “We get some cases of domestic violence. Certainly not many. From my experience the cases are hardly prosecuted. [You’d] be lucky if the man is charged in court in the first place. Prosecution hardly happens . . . . The majority of domestic violence cases go unreported. What is reported I think is less than 10 percent.”<sup>85</sup> In the few cases that may be reported and prosecuted, women and girls may encounter discriminatory or

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<sup>81</sup> Throughout this report the exchange rate used is 1,969.64 Uganda Shillings to the U.S. dollar, the rate at which the Bank of Uganda was selling the U.S. dollar as at March 26, 2003. See Bank of Uganda, [online], [http://www.bou.or.ug/majorates\\_260303.htm](http://www.bou.or.ug/majorates_260303.htm) (retrieved March 31, 2003).

<sup>82</sup> Human Rights Watch interview with Alice Namagembe, Entebbe, Uganda, December 13, 2002.

<sup>83</sup> Human Rights Watch interview with Officer Chris Salongo, officer in charge, Child and Family Protection Unit, Kawempe Police Station, Kampala, December 12, 2002.

<sup>84</sup> *Ibid.*

<sup>85</sup> Human Rights Watch interview with Simon Byabakama-Mugenyi, deputy director of public prosecutions, Directorate of Public Prosecutions, Kampala, January 8, 2003.

hostile attitudes. Ugandan lawyer Maureen Owor described the judiciary's attitude towards domestic violence cases as "very negative."<sup>86</sup> In 1999, the Ugandan Ministry of Gender found that, "Despite the efforts to be impartial and objective, members of the judiciary are affected by societal-based prejudices and stereotypes with regard to property ownership, standards of proof in criminal cases especially relating to sexual offences or violation of the person such as rape, defilement and domestic violence."<sup>87</sup>

Numerous factors combine to limit African women's access to justice. A lack of access to formal education, limited legal literacy, and a lack of familiarity with the language of the courts may make court navigation difficult. Women's low economic status often makes it impossible for them to meet court expenses, while nepotism and corruption in the courts may favor their more economically powerful husbands. Women's lack of awareness of court and police procedures exacerbates the problem. Martha Nanjobe of the Legal Aid Project in Kampala noted too that many women in Uganda, for example, were not even aware that domestic violence was an offense.<sup>88</sup>

Lawyers interviewed by Human Rights Watch in Uganda explained that many cases were lost at the outset because women relied on their husbands for money and permission to travel to the court. Martha Nanjobe recounted the difficulties for women in getting access to their services: "Our branch in Jinja covers more than ten districts. There is one advocate and one volunteer. [The area from Jinja] up to Mbale [is covered] by one office. Women from Mbale cannot run to Jinja! The legal officer leaves the office to go to another district. Clients find the office empty. People can walk seventy kilometers to get to it."<sup>89</sup> She argued, "We need clinics at the district level. This must involve the government. This is their problem. The least they can do is partner with people providing the services."<sup>90</sup>

In summary, government failure to identify and tackle the role of violence within long-term unions in the transmission of HIV to women is proving fatal to women. The fight against HIV/AIDS is not conceived to include combating domestic violence and rape within marriage as important determinants of HIV risk. Current approaches focusing on fidelity, abstinence, and condom use do not address the ways in which domestic violence

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<sup>86</sup> Human Rights Watch interview with Maureen Owor, advocate, Owor & Co. Advocates, January 6, 2003.

<sup>87</sup> MGLSD, "Third Country Status Report," p. 65.

<sup>88</sup> Human Rights Watch interview with Martha Nanjobe, executive director, Legal Aid Project, Kampala, January 8, 2003.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

inhibits women's control over sexual matters in marriage, minimize the complex causal factors of violence, and incorrectly assume that women have equal decision-making power and status within their intimate relationships.

### ***Relevant international human rights law on domestic violence***

The CEDAW Committee has established that violence against women violates the principle of nondiscrimination and equality enumerated in the Convention.<sup>91</sup> A state's responsibility to protect women from nondiscrimination extends to ensuring "that public authorities and institutions shall act in conformity with this obligation,"<sup>92</sup> and to "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."<sup>93</sup> CEDAW requires States to: "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."<sup>94</sup> Discriminatory marriage and divorce laws, unequal property and inheritance rights, and the unequal treatment of women within the justice system violate the principle of nondiscrimination.

International human rights law recognizes state accountability for abuses by private actors, such as domestic violence, and requires states to show due diligence in preventing and responding to human rights violations. In General Recommendation 19, the CEDAW Committee on the Elimination of Discrimination Against Women emphasized, "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence."<sup>95</sup> In other words, the fact that domestic violence is committed in the privacy of the home does not absolve states of their responsibility to remedy it. The privacy of marriage is not inviolable, and states are legally obligated to ensure that laws governing marital relations are nondiscriminatory, and to criminalize violations of bodily integrity, whether committed by an intimate partner or otherwise. States are obliged to guarantee that victims of domestic violence have recourse to laws that protect them from domestic violence, and that perpetrators of domestic violence are punished.

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<sup>91</sup> CEDAW Committee, General Recommendation No. 19, para. 6.

<sup>92</sup> CEDAW, art. 2(d).

<sup>93</sup> *Ibid.*, art. 2(e).

<sup>94</sup> *Ibid.*, art. 2(f).

<sup>95</sup> Committee on the Elimination of Violence Against Women (CEDAW Committee), General Recommendation 19, Violence against women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HR/GEN/1/Rev.1 at 84 (1994), (contained in document A/47/38), para. 9.

The duty of the state goes beyond the enactment of laws prohibiting domestic violence. The U.N. Special Rapporteur on Violence Against Women has noted that, “States must find other complementary mechanisms to prevent domestic violence. Thus, if education, dismantling of institutional violence, demystifying domestic violence, training of State personnel, the funding of shelters and other direct services for victim-survivors and the systematic documentation of all incidents of domestic violence are found to be effective tools in preventing domestic violence and protecting women's human rights, all become obligations in which the State must exercise due diligence in carrying out.”<sup>96</sup> The United Nations Declaration on the Elimination of Violence Against Women also calls on States to exercise due diligence to investigate and punish acts of violence against women, whether committed by the State or by private actors.<sup>97</sup> A state’s consistent failure to do so amounts to unequal and discriminatory treatment, and constitutes a violation of the state's obligation to guarantee women equal protection of the law.<sup>98</sup>

CEDAW explicitly acknowledges social and cultural norms as the sources of many women’s rights abuses, and obliges governments to take appropriate measures to address such abuses. Article 5(a) of CEDAW provides for a State’s obligation to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” The ICCPR also provides that “Everyone shall have the right to recognition everywhere as a person before the law.”<sup>99</sup> The U.N. Human Rights Committee, the body that monitors compliance with the ICCPR, has interpreted this to prohibit the treatment of women “as objects to be given together with the property of the deceased husband to his family,”<sup>100</sup> which clearly proscribes the practice of widow inheritance.

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<sup>96</sup> Special Rapporteur on Violence Against Women, its causes and consequences, “Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85,” (Fifty-second session), U.N. Doc. E/CN.4/1996/53, February 6, 1996, para. 141.

<sup>97</sup> Declaration on the Elimination of Violence against Women, G.A. res. 48/104, 48 U.N. GAOR Supp. (no. 49) at 217, U.N. Doc. A/48/49 (1993), art. 4.

<sup>98</sup> See CEDAW, art. 15, and ICCPR, art. 26. For further discussions of international obligations with respect to violence against women by private actors, see Dorothy Q. Thomas and Michele Beasley, “Domestic Violence as a Human Rights Issue,” *Human Rights Quarterly*, vol. 15, no. 1 (February 1993), Human Rights Watch, *Global Report on Women's Human Rights* (New York: Human Rights Watch, 1995), pp. 39-44, and Ken Roth, “Domestic Violence as an International Human Rights Issue,” in Rebecca J. Cook, *Human Rights of Women: National and International Perspectives*, (Philadelphia: University of Pennsylvania Press, 1994), p. 326.

<sup>99</sup> ICCPR art. 16. See also UDHR, art. 6.

<sup>100</sup> Human Rights Committee, General Comment 28, Equality of rights between men and women (art. 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000). para. 19.

Human rights law also requires that governments address the legal and social subordination women face in their families and marriages. Article 16(1) of CEDAW provides: “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.” In particular, states are required to afford to women the right to enter into marriage only with their free and full consent,<sup>101</sup> equal rights with their spouses in marriage and during any separation or divorce,<sup>102</sup> equal parental rights and responsibilities,<sup>103</sup> equal rights with regard to the number and spacing of their children,<sup>104</sup> and equal rights of “ownership, acquisition, management, administration, enjoyment and disposition of property.”<sup>105</sup>

International human rights law increasingly recognizes women’s right to sexual autonomy, including the right to be free from nonconsensual sexual relations. The right to sexual autonomy is reflected in a number of international declarations and conference documents.<sup>106</sup> Sexual autonomy is closely linked to the rights to physical security and bodily integrity,<sup>107</sup> the right to consent to and freely enter into a marriage, as well as equal rights within the marriage.<sup>108</sup> When women are subjected to sexual coercion with no realistic possibility for redress, a woman’s right to make free decisions regarding her sexual relations is violated. Lack of sexual autonomy may also expose women to serious risks to their reproductive and sexual health. In many parts of Africa, women’s rights to

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<sup>101</sup> CEDAW, art. 16(1)(b).

<sup>102</sup> *Ibid.*, art. 16(1)(c). See UDHR art. 16, for rights to marry, equal rights during marriage and at its dissolution, and requirement for free and full consent.

<sup>103</sup> CEDAW, art. 16(1)(d).

<sup>104</sup> *Ibid.*, art. 16(1)(e).

<sup>105</sup> *Ibid.*, art. 16(1)(h).

<sup>106</sup> At the U.N. International Conference on Population and Development held in October 1994 in Cairo, Egypt, and the U.N. Fourth World Conference on Women held in September 1995 in Beijing, China, governments explicitly endorsed women’s sexual autonomy. In the 1994 Cairo Programme of Action on Population and Development, delegates from governments around the world pledged to eliminate all practices that discriminate against women and to assist women to “establish and realize their rights, including those that relate to reproductive and sexual health.” In the 1995 Beijing Declaration and Platform for Action, delegates from governments around the world recognized that women’s human rights include their right to have control over and decide freely and responsibly on matters related to their sexuality free of coercion, discrimination and violence. See United Nations, *Programme of Action of the United Nations International Conference on Population and Development* (New York: United Nations Publications, 1994), A/CONF.171/13, 18 October 1994, para. 4.4(c) and United Nations, *Beijing Declaration and Platform for Action* (New York: United Nations Publications, 1995), A/CONF.177/20, 17 October 1995, para. 223.

<sup>107</sup> ICCPR, art. 9. Article 9 of the ICCPR guarantees to everyone “liberty and security of person.” This right, although traditionally applied to conditions of arrest or detention, has been expanded over time to cover non-custodial situations.

<sup>108</sup> ICCPR, art. 23 and CEDAW, art. 16. See also article 16 of the UDHR.

sexual autonomy, physical integrity, and security of person are violated when women are forced to undergo traditional rituals like wife inheritance involving nonconsensual sex.

### ***Discrimination in Property and Inheritance Rights and HIV/AIDS***

*When my husband died I was chased from my home by my husband's cousin. . . . He came with a club and chased me, running. He said, "A woman that has been bought by cattle can't stay in his homestead." He said I should go away so that he could till the land. If I had had a son, he wouldn't have chased me out of the homestead.*

—Margaret A., a disabled widow in western Kenya<sup>109</sup>

*I told my in-laws I'm sick . . . but they took everything. I had to start over. . . . They took sofa sets, household materials, cows, a goat, and land. I said, "Why are you taking these things when you know my condition?" They said, "You'll go look for another husband." My in-laws do not believe in AIDS. They said that witchcraft killed my husband.*

—Imelda O., twenty-five, a widow living with AIDS in Kenya<sup>110</sup>

*A woman and the cows are a man's property.*

—Wilson Tulito Molill, senior chief, Ngong, Kenya<sup>111</sup>

In many parts of Africa, women's rights to property are, by law, unequal to those of men. Their rights to own, inherit, manage, and dispose of property are under constant attack from customs, laws, and individuals, including government officials, who believe that women cannot be trusted with or do not deserve property. The devastating effects of property rights violations—including poverty, disease, violence, and homelessness—harm women, their children, and Africa's overall development. For decades, governments have ignored this problem. Governments that fail to act to rectify this insidious and—especially in the face of a raging AIDS epidemic—lethal form of discrimination will see their fights against HIV/AIDS and their development agendas stagger and fail.

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<sup>109</sup> Human Rights Watch interview with Margaret Atieno, Siaya, November 2, 2002.

<sup>110</sup> Human Rights Watch interview with Imelda O., Kisumu, Kenya, November 4, 2002.

<sup>111</sup> Human Rights Watch interview, Ngong, Kenya, October 25, 2002.

Human Rights Watch's investigations in several countries have highlighted that many African women are excluded from inheriting, evicted from their lands and homes by in-laws, stripped of their possessions, and forced to engage in risky sexual practices in order to keep their property. In some countries, these abuses seem to be more frequent and severe for HIV-affected women. When women divorce or separate from their husbands, they are often expelled from their homes with only their clothing. Married women can seldom stop their husbands from selling family property. A woman's access to property usually hinges on her relationship to a man. When the relationship ends, the woman stands a good chance of losing her home, land, livestock, household goods, money, vehicles, and other property. These violations have the intent and effect of perpetuating women's dependence on men and undercutting their social and economic status.

Women's property rights violations are not only discriminatory, they may prove fatal. Recent research by Human Rights Watch highlighted ways in which the HIV/AIDS epidemic magnifies the devastation of women's property violations. Our in-depth investigation took as an example Kenya, where approximately 15 percent of the adult population is infected with HIV. Widows who are coerced into the customary practices of "wife inheritance"—whereby a widow is taken as a wife by a relative of her late husband—or ritual "cleansing"—whereby widows are obliged to have sex (usually unprotected) one time or over a short period with a man who is a social outcast and is paid for this purpose—run a clear risk of contracting and spreading HIV. Western Kenya, where these practices are most common, has Kenya's highest AIDS prevalence; the HIV infection rate in girls and young women there is six times higher than that of their male counterparts. AIDS deaths expected in the coming years will result in millions more women becoming widows at younger ages than would otherwise be the case. These women and their children (who may end up AIDS orphans) are likely to face not only social stigma against people affected by HIV/AIDS but also deprivations caused by property rights violations.

A complex mix of cultural, legal, and social factors underlies women's property rights violations. In many countries, customary laws—largely unwritten but influential local norms that coexist with formal laws—are based on patriarchal traditions in which men inherited and largely controlled land and other property, and women were "protected" but had lesser property rights. Past practices permeate contemporary customs that deprive women of property rights and silence them when those rights are infringed. Constitutional provisions in most African countries prohibit discrimination on the basis of sex but undermine this protection by condoning discrimination under customary laws. The few statutes that could advance women's property rights defer to religious and

customary property laws that privilege men over women. Sexist attitudes are pervasive: men interviewed by Human Rights Watch in Kenya said that women were untrustworthy, incapable of handling property, and in need of male protection. The guise of male “protection” does not obscure the fact that stripping women of their property is a way of asserting control over women’s autonomy, bodies, and labor—and enriches their “protectors.”

### ***Abuses against widows especially damaging***

The experiences women in Kenya described to Human Rights Watch were horrifyingly consistent in their cruelty. Some of the widows we interviewed indicated that having no sons was a grave liability for them: women with no children or only daughters are often considered worthless and undeserving of property. “I was thrown out of my home when my husband died because I had only given birth to girls,” said Theresa M., a widow from rural Bungoma. Until her husband’s death in 1994, she lived in a hut on her husband’s homestead, where she grew potatoes and maize. Her experience included coercion by her late husband’s family to have her be “inherited” by one of his relatives:

When my husband died, his relatives came and took everything. They told me to take my clothes in a paper bag and leave. I left, because if I had resisted they would have beat me. The relatives identified someone to inherit me. It was a cousin of my husband. They told me, ‘Now you are of less value, so we’ll give you to anyone available to inherit you.’ I didn’t say anything. I just left and went to my parents’ home. . . . This is customary. If I had married the cousin, I could have lived where I was. I decided not to because he was polygamous—he had five other wives. . . . I know if a woman is inherited, she is normally mistreated by the one who inherits her. If I had sons instead of daughters, they would have apportioned land to me. . . . When they told me to leave, they said there was no way they could recognize my daughters since they’ll marry and leave the homestead. They said I shouldn’t have given birth at all. . . . My in-laws took everything—mattresses, blankets, utensils. They chased me away like a dog. I was voiceless.<sup>112</sup>

Theresa M.’s in-laws expected her to undergo a traditional ritual involving sexual intercourse with her dead husband’s body, but she avoided this because her brothers were there with machetes to protect her. Her in-laws were angry, and they and other

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<sup>112</sup> Human Rights Watch interview with Theresa M., Nairobi, October 20, 2002.

villagers harassed her. One night, a group of five men came to her hut shouting threats. She believes that the village elder sent them to punish her for rejecting the traditions.

Frightened, Theresa M. left her home and went to her parents, where she stayed for four years without getting land to cultivate. “I felt like a foreigner in that homestead,” she remarked. In 2001, she was having so much trouble paying her children’s school fees that she went back to her in-laws to ask permission to cultivate her late husband’s land. “My brother-in-law sent me away. He said I am no longer his relative and he doesn’t know who I am.” She now lives in Nairobi in a dilapidated one-room shack without electricity. “Even feeding my children is hard now,” she said. She did not seek help from authorities. “Whom could I tell?” she asked. “I felt that if I went to the elders, they wouldn’t attend to me because I only have daughters.”<sup>113</sup>

Alice A. also lost her rural land and household goods because she had no sons. A thirty-five-year-old widow, she lived on and cultivated her husband’s land until he died. She recalled:

My father-in-law told me that he was taking the property because I only gave birth to girls. . . . He gave my husband’s land to a stepbrother. . . . I was sent away by my brother-in-law. They said I don’t have boys, so they could not give me a piece of land to settle on. I went to stay in my parents’ home. . . . All I could take were clothes.<sup>114</sup>

Before Alice A. left the homestead, her brother-in-law tried to inherit her. “I didn’t want to be inherited because he had other wives and I thought he was not in a position to inherit me,” she said. She did, however, undergo the cleansing ritual with a so-called *jater*.<sup>115</sup> “The ritual involved having sex,” she said. “I didn’t want to have sex, but I had to because of custom.” Her father-in-law paid the *jater* KSh1,000 (U.S.\$12.50).

Alice A. said that, as a woman, she could not protest her eviction from her home and land. “I said nothing because I was feeling helpless. I thought if I had a boy child, he could have resisted.” Her family discouraged her from asserting her rights. “My mother advised me against making a formal complaint to the police because that would mean

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<sup>113</sup> *Ibid.*

<sup>114</sup> Human Rights Watch interview with Alice A., Nairobi, October 21, 2002.

<sup>115</sup> “*Jater*” is the name in Dholuo, a western Kenyan language, for a man who is generally a social outcast and is paid to have sex one time or over a short period with a newly widowed woman.

going against my father-in-law.” After living with her parents for several years, Akelo moved to a shanty in the Quarry slum in Nairobi, where she sells groundnuts.<sup>116</sup>

Having sons does not always help women keep their property, at least not all of it. Rimas K., a Maasai widow with four sons and three daughters, lost all of her cattle and sheep to her brother-in-law. One month after her husband died, her brother-in-law “took twelve cattle and twenty sheep. He said, ‘I want you to go from here because I want my brother’s property.’” Rimas K. managed to stay on her land because she and her husband, who worked for her father, lived on her father’s land. She told the village elders that her brother-in-law had taken her livestock, but they did nothing. Her troubles did not stop there. In 2001, her brother-in-law abducted six of her children. She said he felt entitled to them because she married into his family even though some were fathered by a man other than her late husband. “For Maasais, this doesn’t matter,” she said. “Once you’re married, they consider any children part of the husband’s family.” Rimas K. reported the abduction and the earlier property-grabbing to the police. “The police asked if it was possible for me to go live with my brother-in-law, and I said no.” She got her children back, and the brother-in-law was fined two sheep and one cow. She did not get the other livestock.<sup>117</sup>

Lucia K., a thirty-three-year-old widow from the Kamba ethnic group, lived and farmed on land in eastern Kenya with her husband until he died in 1997. After he died, her brother-in-law told her and her children to leave, claiming that she was never married and he now owned the land. “He claimed that I wasn’t married to my husband because not all of the customary steps were completed.” Lucia K. considered herself married, as did her other in-laws, even though a few customary rituals were not done. “Even the clan knew we were married,” she said. “The first time anyone said we were not married was a week after the burial.”

Lucia K.’s brother-in-law demanded the land title deed and her late husband’s identification card. “He threatened me,” she said. “He told me, ‘I’ll burn you with fire if you don’t put the title and I.D. card on the table right now.’ He told me if I dared talk back to him he’d beat me.” Terrified, she gave him the documents. “I feared that my brother-in-law might attack me. I was afraid for the children.” Soon after that, Lucia K. moved to Nairobi, taking only clothing for herself and her children and leaving behind livestock and other property. “My brother-in-law took everything,” she said. “He did all this to evict me. . . . This man was jealous of me because he didn’t have boys. He

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<sup>116</sup> *Ibid.*

<sup>117</sup> Human Rights Watch interview with Rimas K., Ngong, Kenya, October 24, 2002.

thought my son would claim the land.” Her brother-in-law and his wife now live in her house.

Although Lucia K. informed the local chief of these threats, he did nothing. She did not report this to the police, who were far away. In early 2003, she wished she could live on her land but feared going back. She lived with her children and those of her sister (who died of AIDS) in Nairobi’s Mukuru slum in a metal shack with no running water or electricity.<sup>118</sup>

Muslim widows from rural areas also complain that their property rights under Islamic law are infringed as custom supplants their religion.<sup>119</sup> Amina J., a Muslim woman from the Kikuyu ethnic group, said that when her husband died, her in-laws grabbed her property. The property included a pension fund, canoes, fishnets, a house on the island of Rusinga, cows, and household items. She explained:

After my husband died, my mother-in-law . . . came to the Rusinga house and took things. I never said anything because asking would cause problems because of the culture of that community . . . . I took my children and came to stay with my father in Kisumu. I didn’t take any property. Just clothes for myself and my children . . . . I was afraid for my life if I pursued my property. I think they would have killed me—definitely. In my ethnic group, women don’t hassle over property. According to Islamic law, Muslim women are entitled to inherit property. This didn’t happen in my case because my in-laws are ruthless.<sup>120</sup>

Prior to his death, Amina J. and her husband lived in a large house with water, electricity, trash pickup, and schools nearby. After her in-laws took her property, she could no longer afford to live there. She now lives in a structure made of iron sheets and mud walls. There is no running water, electricity, or sanitation. She can barely pay for basic

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<sup>118</sup> Human Rights Watch interview with Lucia K., Nairobi, October 20, 2002.

<sup>119</sup> The Koran’s basic intestacy rules provide that a son generally inherits double the share of a daughter. When a husband dies leaving a wife and children, the widow receives one-eighth of the net estate. If there are no children, the widow gets one-fourth of the estate. Wives in polygynous unions share the one-eighth (if there are children) or one-fourth (if there are no children).

<sup>120</sup> Human Rights Watch interview with Amina J., Kisumu, Kenya, November 1, 2002.

needs, and one child dropped out of school. “If I had gotten my husband’s property, it would have been easier to pay school fees,” she said.<sup>121</sup>

Widow inheritance, featured in several of the stories above, is not unique to Kenya. An old tradition, it has been used for generations in a number of African countries for men to take responsibility for their dead brother’s children and household. However, widow inheritance may also expose women to HIV infection, particularly when accompanied by violence, as Human Rights Watch’s recent investigation in Uganda showed. Jamila N. recounted her ordeal after her husband died: “His brother tried to inherit me. I was living with my husband’s family. He tried to rape me. I fought with him and screamed and people came.”<sup>122</sup> Zebia I.,<sup>123</sup> a thirty-six-year-old woman living with AIDS whose husband died of AIDS, explained what occurred after her husband’s death:

They [the relatives] wanted me to live with the brother-in-law but I didn’t want to. ... That time he tried to get me to marry him and when I refused he beat me. He wanted to share a bed with me. He was drunk. He beat me. My husband had just died. Why should I have an affair with a man? The sisters tried to help and he [the brother-in-law] beat them. The parents wanted him to inherit me. They encouraged him. I was young so I didn’t know what to do. So I did nothing. I left and went to my parents.<sup>124</sup>

Women succumb to widow inheritance primarily as a result of economic vulnerability, including the fact that they are often left without property or any viable means of supporting their children. The practice can often result in the widow having sexual intercourse with an array of male in-laws. One AIDS counselor told Human Rights Watch,

Wife inheritance really contributes [to women’s vulnerability to HIV]. Those days it was very organized where the family sat down and chose someone to look after the widow. Today it’s not systematically done. That evening [after the funeral], many men come to her and there is no control. She would have the ability to say no but for economic factors.

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<sup>121</sup> Ibid.

<sup>122</sup> Human Rights Watch interview with Jacqueline N., Naguru, Uganda, January 15, 2003.

<sup>123</sup> Real name used at her specific request.

<sup>124</sup> Human Rights Watch interview with Zebia I., Tororo, Uganda, December 17, 2002.

If this man is giving you soap, this man is giving you meat, you cannot say no. It is only those women that are economically empowered that can say no to sex. This man comes with inducements, with inducements she needs.<sup>125</sup>

### ***Unresponsive local authorities and ineffective courts***

*The problem with the police is that they don't like these cases of disinheritation of widows. They say it's normal.*

—Eunice Awino, paralegal, Education Centre for Women in Democracy, Siaya, Kenya

*The courts and judiciary are strong arms to disinherit women.*

—Ann Njogu, executive director, Centre for Rehabilitation and Education of Abused Women, Nairobi<sup>126</sup>

Since many African women do not have the means or information to take a case to court to claim property, they may turn to local authorities, both governmental and traditional, to resolve disputes. Although informal dispute resolution can help limit the financial and social costs of claiming property rights, local officials are more apt to apply customary law than statutory law, which can disadvantage women. Women in Kenya told Human Rights Watch that local authorities were occasionally helpful but more often unresponsive or ineffective. “We have poor local leadership,” one NGO representative remarked. “They’re not responsive to the community.”<sup>127</sup> Moreover, police and central government officials acknowledged that women do not have equal property rights in Kenya, but officials do not consider this a pressing issue.

Many local officials are loath to get involved in women’s property cases, which they justify as a desire “not to interfere with culture.”<sup>128</sup> Lydiah W., a thirty-seven-year-old widow, told an elder that her brothers-in-law took her land in Meru, Kenya when her husband died. The elder “kept quiet and said he would answer later,” but nothing

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<sup>125</sup> Human Rights Watch interview with Erasmus Ochwo, counselor, The AIDS Service Organisation (TASO), Tororo, Uganda, December 17, 2002.

<sup>126</sup> Human Rights Watch interview, Nairobi, October 15, 2002.

<sup>127</sup> Human Rights Watch interview with Elijah Agevi, regional director, Intermediate Technology Development Group, Nairobi, October 20, 2002.

<sup>128</sup> Human Rights Watch interview with Wilson Tulito Molill, senior chief, Ngong, Kenya, October 25, 2002.

happened.<sup>129</sup> Ellen A., whose husband beat her, went to her local chief to ask if she could live in the matrimonial home and have her husband move out. The chief told her to go back to her husband.<sup>130</sup> Monica W., a widow whose in-laws forced her out of her home, told village elders that she wanted to remain in her home. “The elders said I had to move out,” she said.<sup>131</sup>

Women seldom go to police about property problems—unless their children are endangered—because they believe the police will turn them away, dismissing them as family or clan disputes. “The problem with the police is that they don’t like these cases of disinheritance of widows,” said a paralegal in western Kenya. “They say it’s normal.”<sup>132</sup> A police official acknowledged: “Women can’t come here [for property cases]. We can’t go into family cases on inheritance. Each tribe has its custom. Unless the law is changed to come to the criminal point, [we can’t get involved]. For now, the elders sit together and decide . . . . When it comes to physical harm, we step in . . . . Evictions [by families] are handled under customary law.”<sup>133</sup> Police corruption can also make women’s property problems worse. Gacoka N. said that while she and her husband battled in court over dividing their family property, her husband influenced the police to harass her with spurious trespass (on her own property) and motor vehicle charges. “The police stopped me all the time,” she said. “My husband paid off the police to punish me. I wasted a lot of time in police stations.”<sup>134</sup>

Women in much of Africa encounter many obstacles in making use of formal judicial mechanisms to try to rectify property-related injustices. Again taking Kenya as a case in point, Human Rights Watch’s investigations indicate that governmental authorities often ignore women’s property claims and sometimes make the problems worse. Courts overlook and misinterpret family property and succession laws. Women often have little awareness of their rights and seldom have means to enforce them. Women who try to fight back are often beaten, raped, or ostracized. In response to all of this, the government of President Daniel Arap Moi did almost nothing: bills that could improve women’s property rights languished in parliament and government ministries have no

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<sup>129</sup> Human Rights Watch interview with Lydiah W., Nairobi, October 20, 2002.

<sup>130</sup> Human Rights Watch interview with Ellen A., Nairobi, October 28, 2002.

<sup>131</sup> Human Rights Watch interview with Monica W., Nairobi, October 28, 2002.

<sup>132</sup> Human Rights Watch interview with Eunice Awino, paralegal, Education Centre for Women in Democracy, Siaya, Kenya, November 2, 2002.

<sup>133</sup> Human Rights Watch interview with P.O. Etyang, officer in charge, Police Division, Siaya, Kenya, November 4, 2002.

<sup>134</sup> Human Rights Watch interview with Gacoka N., Central Province, Kenya, November 9, 2002.

programs to promote equal property rights. At every level, government officials shrugged off this injustice, saying they did not want to interfere with culture.

Lawyers and individual women complain that Kenya's courts are biased against women, slow, corrupt, and often staffed with ill-trained or incompetent judges and magistrates. These perceptions discourage women from using courts to assert property claims. "There are biases on the bench," observed a lawyer at one women's NGO. "Access to justice is lacking, but actually biases against women in the court are worse than anything else."<sup>135</sup> Some say judges embody the attitude that women are inferior to men. "Judges are men who were brought up to believe less in the rights of women," said one property rights lawyer. "Judges say, 'Why should women get property?'"<sup>136</sup> Even a government official who handles succession matters admits: "Men judges do not apply the law. Our men are men whether they are judges or not. [Men judges] may believe a wife should not inherit."<sup>137</sup>

Sometimes, courts simply do not enforce laws that could protect women's property rights. "Most law is in writing, not in practice. The courts are far behind . . . I don't think the courts enforce the law per se," said one government official.<sup>138</sup> This can happen if they think they have no jurisdiction or choose not to exercise the jurisdiction they have, as exemplified by the remarks of a magistrate who, when asked if a court could order a man to leave the family home upon divorce, said: "A woman can't come to court if she wants her husband to leave rather than her. . . . We don't interfere with the community setup."<sup>139</sup> There is also a risk that judges' personal beliefs could interfere with application of the law. One Court of Appeal justice said that the Law of Succession Act should not apply to any rural land. He so firmly believes that customs sufficiently protect women that he denied women suffer property rights violations. He said:

It's idiotic to say that women can't get land in Luo land [in western Kenya]. If a woman says she's having difficulty getting land, it's crap. She ought to know that clan land can't be inherited by a woman. It has

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<sup>135</sup> Human Rights Watch interview with Judy Thongori, then deputy head of litigation, FIDA-Kenya, Nairobi, October 16, 2002.

<sup>136</sup> Human Rights Watch interview with Martha Koome, Martha Koome & Co. Advocates, Nairobi, November 6, 2002.

<sup>137</sup> Human Rights Watch interview with Mary Njoki Njuya, principal state counsel, Office of the Attorney General, Nairobi, November 11, 2002.

<sup>138</sup> *Ibid.*

<sup>139</sup> Human Rights Watch interview with Francis Makori Omanta, senior resident magistrate, Siaya, Kenya, November 4, 2002.

been this way since time began. If a [husband] dies, the widow has a life interest. It has nothing to do with women's human rights. . . . Brothers-in-law don't interfere. There is no room for interference . . . . A daughter would not inherit [rural land] under any circumstances. . . . Suppose I give [land] to my daughter and son, and then [my daughter] marries a Nigerian? . . . The Law of Succession Act can't apply [to rural land] because women are supposed to be married and go away. . . . Clan land must stay where it is. If you don't control the transmission of clan land, you'll bring in strangers from other cultures that undermine the culture protected by customary law.<sup>140</sup>

The new government of President Mwai Kibaki has promised to take another look at property and inheritance laws and judicial practice in the country. In many countries, even such a promise appears to be a distant dream.

### *International human rights law on women's property rights*

A number of particular treaties and rights are implicated when women's property rights are violated.<sup>141</sup> CEDAW obliges states to "refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation" and to "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."<sup>142</sup> It also requires that states "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."<sup>143</sup> The fact that men in most African countries have greater rights than women when it comes to owning, accessing, and inheriting property under both statutory and customary laws violates the principle of nondiscrimination.

Human rights law also requires that governments address the legal and social subordination women face in their families and marriages. Under CEDAW, states must:

take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular to ensure, on a basis of equality of men and women: . . . (h) The same rights

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<sup>140</sup> Human Rights Watch interview with Justice Richard Otieno Kwach, Court of Appeal, Nairobi, November 7, 2002.

<sup>141</sup> For an extensive overview of the international human rights instruments relating to women's equal rights to land, housing, and property, see Benschop, *Rights and Reality*.

<sup>142</sup> CEDAW, art. 2.

<sup>143</sup> *Ibid.*

for both spouses in respect of the *ownership, acquisition, management, administration, enjoyment and disposition of property*, whether free of charge or for a valuable consideration.<sup>144</sup>

Interpreting these provisions, the CEDAW Committee noted that violations of women's marriage and family rights are not only discriminatory, but stifle women's development.<sup>145</sup>

Women also have a human right to equal legal capacity. CEDAW calls on governments to accord women a legal capacity identical to that of men and the same opportunities to exercise that capacity. It provides that governments must "give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals."<sup>146</sup> Similarly, the International Covenant on Civil and Political Rights (ICCPR) provides that everyone has a right to be recognized everywhere as a person before the law.<sup>147</sup> Unlike men, women in most of Africa face significant obstacles to realizing their right to administer property, an aspect of the right to equal legal capacity. Moreover, the Human Rights Committee says that this right means that "women may not be treated as objects to be given together with the property of the deceased husband to his family."<sup>148</sup> Practices such as wife inheritance violate this human right.

The "right to property" is guaranteed under the African Charter on Human and Peoples' Rights (African Charter), which also requires that all rights be implemented in a nondiscriminatory way.<sup>149</sup> The Universal Declaration of Human Rights, which is widely regarded as customary international law, provides, "Everyone has the right to own

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<sup>144</sup> Ibid., art. 16. The International Covenant on Civil and Political Rights in article 23(4) also provides that governments must guarantee the equal rights of spouses as to marriage, during marriage, and at its dissolution.

<sup>145</sup> See CEDAW Committee, General Recommendation 21, Equality in marriage and family relations (Thirteenth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 90 (1994), para. 28.

<sup>146</sup> CEDAW, art. 15.

<sup>147</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N.

GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. ICCPR, art. 16.

<sup>148</sup> Human Rights Committee, General Comment 28, Equality of rights between men and women (art. 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), para. 19. The Human Rights Committee is the U.N. body charged with monitoring implementation of the ICCPR.

<sup>149</sup> African Charter, art. 14.

property alone as well as in association with others.”<sup>150</sup> At a minimum, this right means that men and women must have equal property rights.

Women’s equal right to inherit, while not explicit in international treaties, can be inferred from rights to equality and nondiscrimination. Moreover, several treaty bodies have recognized women’s equal inheritance rights. The Human Rights Committee, for example, noted in a general comment, “Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.”<sup>151</sup>

International law also guarantees housing rights, which include equal rights to security of tenure and access to housing and land. The ICESCR recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate . . . housing.”<sup>152</sup> CEDAW also requires states to ensure rural women’s right to enjoy adequate living conditions, particularly in relation to housing.<sup>153</sup> The ICCPR prohibits arbitrary or unlawful interference with one’s home<sup>154</sup> and guarantees the right to choose one’s residence.<sup>155</sup> Other international treaties, such as those relating to children, race, and refugees, also include housing as a human right.<sup>156</sup> States must progressively realize the right to adequate housing and immediately end discrimination that creates a barrier to the enjoyment of this right.<sup>157</sup> Women’s insecure tenure in their homes and on their land, as well as the dismal housing conditions they typically experience after their property is grabbed, are evidence of housing rights violations. The government’s failure

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<sup>150</sup> UDHR, art. 17.

<sup>151</sup> Human Rights Committee, General Comment 28, para. 26.

<sup>152</sup> ICESCR, art. 11(1). The CESCR interpreted this right in its General Comment 4, which set forth the following factors for analyzing adequacy of housing: (a) legal security of tenure; (b) availability of services, materials, facilities, and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. CESCR, General Comment 4, The right to adequate housing (art. 11(1) of the Covenant)(Sixth session, 1991), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.1 (1994), p. 53.

<sup>153</sup> CEDAW, art. 14(2)(h).

<sup>154</sup> ICCPR, art. 17.

<sup>155</sup> ICCPR, art. 12.

<sup>156</sup> Convention on the Rights of the Child, U.N. Doc. A/44/25, entered into force on September 2, 1990 and ratified by Kenya on July 30, 1990, art. 27(3); International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force on January 4, 1969 and acceded to by Kenya on September 13, 2001, art. 5(e)(iii); Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954 and acceded to by Kenya on May 16, 1966, art. 21.

<sup>157</sup> ICESCR, art. 2(1).

to remedy discrimination against women with respect to property leads to and exacerbates housing rights violations.

### ***Traditional Practices that Increase HIV/AIDS Risk to Women and Girls***

The traditional practices of wife inheritance and ritual cleansing described above are not the only ones that carry an elevated risk of HIV/AIDS for African women and girls. Two such practices are described below.

#### ***Female genital mutilation***

Female genital mutilation (FGM) is an umbrella term for a number of culturally motivated practices that involve partial or complete cutting of female genitals, usually performed in childhood or adolescence.<sup>158</sup> The World Health Organization (WHO) estimates that between 100 and 140 million women and girls have undergone FGM and that about 2 million more are added to that number each year.<sup>159</sup> According to WHO, the practice is widespread in twenty-eight African countries, which account for the vast majority of FGM cases worldwide, with Burkina Faso, Central African Republic, Cote d'Ivoire, Eritrea, Ethiopia, Gambia, Guinea, Mali, Somalia, Djibouti, Sudan, Liberia and Sierra Leone among the countries in which more than 40 percent of girls are estimated to be affected.<sup>160</sup> Some 15 percent of women and girls who have undergone FGM have suffered the most severe form, infibulation, whereby the clitoris and labia are removed and the vaginal opening is stitched shut, leaving only a small space.<sup>161</sup> But over 80 percent of FGM cases in Somalia, Djibouti, and Sudan involve infibulation.<sup>162</sup> Although few clinical studies have been conducted, it is clear that at least some forms of FGM increase the HIV transmission risk faced by women and girls, both in that unsterile instruments may be used in the cutting and because some FGM is associated with

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<sup>158</sup> Center for Reproductive Rights, "Female circumcision/female genital mutilation (FC/FGM): Legal prohibitions worldwide (fact sheet)," June 2003 [online] at [http://www.crlp.org/pub\\_fac\\_fgmicpd.html](http://www.crlp.org/pub_fac_fgmicpd.html) (retrieved July 24, 2003).

<sup>159</sup> World Health Organization, Female Genital Mutilation: Fact Sheet no. 241, June 2000 [online] at <http://www.who.int/inf-fs/en/fact241.html> (retrieved July 20, 2003).

<sup>160</sup> WHO, Estimated prevalence rates of FGM, updated May 2001, available at <http://www.who.int/docstore/frh-whd/FGM/FGM%20prev%20update.html> (retrieved July 24, 2003). WHO notes that the national prevalence estimates vary in quality and reliability.

<sup>161</sup> United Nations Population Fund, "Forms of gender-based violence and their consequences: Female genital mutilation," available at <http://www.unfpa.org/intercenter/violence/gender2c.htm> (retrieved July 24, 2003).

<sup>162</sup> Center for Reproductive Health, FGM Fact Sheet.

chronic genital injury and tearing, ulceration, and delayed healing of injuries, all of which may increase HIV risk.<sup>163</sup>

Twelve countries have criminalized FGM by law, including some of those noted above as having high prevalence of the practice. According to the Center for Reproductive Rights, as of January 2003, perpetrators of FGM had been prosecuted only in Burkina Faso, Ghana, Senegal, and Sierra Leone among sub-Saharan countries.<sup>164</sup> In spite of legislation, FGM gets little policy and program attention in Africa, and there is certainly little evidence that it is linked at the policy level to HIV/AIDS. Attention to HIV/AIDS programs and policy and to the importance of basic protections for women and girls provides an opportunity to energize decision-makers to enforce existing legislation and take other measures to limit the practice of FGM.

### *Dry sex*

In some parts of Africa, so-called “dry sex” is frequently practiced whereby girls and women attempt to dry out their vaginas in an effort to provide more pleasurable sex to men.<sup>165</sup> Human Rights Watch found that in Zambia, dryness is achieved by using certain herbs and ingredients that reportedly reduce vaginal fluids and increase friction during intercourse. Given the likelihood that dry sex will cause tears and lacerations in the vaginal wall, especially among adolescent girls, the practice increases the risk of HIV transmission.<sup>166</sup> A 1999 report by the Zambian Ministry of Health and the Central Board of Health stated: “to enhance male pleasure, a number of women continue to practice dry sex, which can increase vulnerability to infection through exposing genital organs to bruising and laceration.”<sup>167</sup>

While in Zambia the practice is being discouraged by counselors working with young people and in official government documents, it is hard to know whether it is on the decline. “Like condoms, it is difficult to say if people follow what they know,” noted Brenda Yamba, an NGO official in Lusaka.<sup>168</sup> AIDS educators discuss the dangers of dry sex in outreach programs, explaining that it is an easy way to transmit HIV. But, as

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<sup>163</sup> Margaret Brady, “Female genital mutilation: Complications and risk of HIV transmission,” *AIDS Patient Care and STDs*, vol. 13, no. 12, pp. 709-716, December 1999.

<sup>164</sup> Center for Reproductive Rights, “FGM fact sheet.”

<sup>165</sup> National HIV/AIDS/STD/TB Council, “Strategic Framework 2001-2003,” (Lusaka: October 2000), p. 9.

<sup>166</sup> *Ibid.*

<sup>167</sup> Ministry of Health/Central Board of Health, p. 49.

<sup>168</sup> Human Rights Watch interview, with Brenda Yamba, project manager, SCOPE-OVC (Strengthening Community Partnerships for the Empowerment of Orphans and Vulnerable Children), Lusaka, May 19, 2002.

one counselor told Human Rights Watch, “Men love dry sex. If you’re wet, they think it’s not normal. So we talk about it in outreach; we say ‘stop using those herbs.’”<sup>169</sup>

Counselors at the YWCA (Young Women’s Christian Association) drop-in center in Lusaka, Zambia, one of the main NGOs providing counseling for abused girls, explained that girls are made to believe that they are supposed to be dry. There is even a name given to girls who are too wet—Chambeshi River, referring to a river in Zambia.<sup>170</sup> Some men tell girls that being wet means that they have been with too many men. Service providers working with sex workers noted that they do not generally practice dry sex; rather, it occurs more in “stable” unions where the girl or woman is seeking to maintain the relationship.<sup>171</sup>

### ***Abuse of Sex Workers***

Sex workers in Africa, as around the world, face especially high risk of HIV/AIDS, frequently compounded by rape, stigma, discrimination, and entrenched poverty. It is rarely understood that a sex worker can be a victim of rape; policies or programs to prevent such abuses and provide redress when they occur are all but unheard of in the continent. In Africa as in many parts of the world, mainstream women’s rights groups have largely not included the rights of sex workers among their priorities. With a few notable exceptions, such as the Sex Workers Education and Advocacy Task Force in South Africa, sex worker collectives or support groups have been relatively rare on the African scene. This is in stark contrast to parts of southern and eastern Asia where large and prominent sex workers collectives have enjoyed remarkable success in raising rates of condom use among their clients and some progress in protecting sex workers from violence.<sup>172</sup>

In the context of the entrenched poverty and the absence of organized sex worker collectives in sub-Saharan Africa, sex workers are at particular risk because they often do not have the luxury of refusing clients who are violent or who insist on sex without condoms. In several African countries, Human Rights Watch spoke with girls and young women working in the sex trade who understood the risks of sex without

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<sup>169</sup> Human Rights Watch interview with women from PALS, Lusaka, May 23, 2002.

<sup>170</sup> Human Rights Watch interviews with counselors at YWCA, Lusaka, May 20, 2002.

<sup>171</sup> Human Rights Watch interview with Professor Nkandu Luo, Lusaka, May 21, 2002.

<sup>172</sup> See, e.g., Celia Dugger, “Going Brothel to Brothel, Prostitutes Preach about Using Condoms,” *New York Times*, January 4, 1999, at A1; and SANGRAM, “Of Veshyas, Vamps, Whores and Women” (a summary of ten years of SANGRAM’s work), Sangli, India, 2001.

condoms but did not feel they had much choice in the matter. In Togo, Human Rights Watch met seventeen-year-old Sefako K. working in the sex trade in Lome. Her mother had died about a year previously after becoming very thin; her grandmother told her that her mother was bewitched. Soon after, a woman approached her and asked her if she wanted to make some money in Lome. The woman brought her to another woman who sold rice in Dekon, a neighborhood of Lome, and she was offered a room and 200 CFA (U.S.\$0.30) per day to wash dishes. Although the money was reportedly deposited into a savings scheme on her behalf, she said she was never allowed to withdraw. She decided to go live with a girlfriend who turned out to be engaged in sex work and suggested she start going out with her. Sefako K. was making about 1,000-1,500 CFA (U.S.\$1.50-\$2.25) per night as a sex worker. Once, she said, a man offered her 6,000 CFA (U.S.\$9) to have sex without a condom and she said yes.<sup>173</sup> A 1992 study of sex workers in Lome reported that nearly 80 percent of the women tested were HIV-positive.<sup>174</sup>

In interviews with Human Rights Watch, most child sex workers said they did not make their clients use condoms at first, but they did now because of the efforts of outreach workers.<sup>175</sup> However, some girls said clients continued to offer them extra money to forgo condom use, and that sometimes they welcomed the extra income. Nineteen-year-old Efua S., who came to Lome from Ghana, added that fears of violence made it difficult to insist on condom use. “If I don’t pay my rent, they beat me up,” she told Human Rights Watch. “I try to use condoms, but sometimes the clients get rough. Three days ago, some guy invited me to his house, and when I got there there was a group of men wanting to sleep with me, one after another. I had to run away.”<sup>176</sup>

As in many parts of the world, sex workers are especially susceptible to police abuse in addition to the abuse and stigma they face from the larger society. In Zambia, as in many African countries, though prostitution is not forbidden by law, it is illegal to solicit customers or to live off the earnings of someone engaged in sex work.<sup>177</sup> It is therefore

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<sup>173</sup> Human Rights Watch interview, Lome, Togo, May 17, 2002.

<sup>174</sup> WHO/UNAIDS, “Togo,” Epidemiological fact sheets on HIV/AIDS and sexually transmitted infections, p. 3.

<sup>175</sup> The girls interviewed by Human Rights Watch were identified through Forces en Action pour le Mieux Être de la Mère et de l’Enfant (FAMME), an outreach organization that specializes in women’s health and condom distribution.

<sup>176</sup> Human Rights Watch interview, Lomé, Togo, May 17, 2002.

<sup>177</sup> Section 146 (1) of the Zambian Penal Code states: “Every male person who—(a) knowingly lives wholly or in part on the earnings of prostitution; or (b) in any public place persistently solicits or importunes for immoral purposes; is guilty of a misdemeanor.” And Section 147 states: “Every woman who knowingly lives wholly or in part on the earnings of the prostitution of another or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a misdemeanor.”

difficult for sex workers who suffer physical violence or rape to report it to the police. Social attitudes against sex workers and the stigma associated with them further discourage reporting. Police conduct round-ups of sex workers and charge them with loitering or indecent exposure. Usually, the women pay 10,000 kwacha (U.S. \$2.30) and are freed in the morning;<sup>178</sup> other times, the police take the women's money or demand sexual services as payment.<sup>179</sup> In April 2002, a group of sex workers publicly complained about abuses by Zambian police officers who they said had repeatedly arrested them and abused them sexually.<sup>180</sup> Several persons interviewed by Human Rights Watch said this case has simply faded away as the investigations are not being pursued.<sup>181</sup> Stigma and abuse may also contribute to a reluctance of sex workers to be tested for HIV or otherwise to seek HIV/AIDS services.<sup>182</sup>

Two Zambian NGOs providing services to sex workers are Tasintha, which means “we have changed” in the Nyanga language, and MAPODE or Movement of Community Action for the Prevention and Protection of Young People Against Poverty, Destitution, Diseases and Exploitation. These groups describe a life of violence and deprivation among sex workers: “Girls die in a very short time—that’s the bottom line. STDs, HIV/AIDS, violence, mental abuse, physical abuse. They don’t have time to make money,” said Clemire Karamira of MAPODE. She noted that the majority of prostitutes she had worked with were twelve to eighteen years old. “They are dramatically young—that’s one aspect of vulnerability.”<sup>183</sup> Professor Nkandu Luo, founder of Tasintha, former Minister of Health and professor of microbiology and immunology, told Human Rights Watch: “There have been so many deaths [among sex workers]—we’ve lost a lot. That’s one of the biggest tragedies. The majority are from HIV-associated deaths.”<sup>184</sup>

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<sup>178</sup> Human Rights Watch interview with Eric Ngoma, Tasintha program manager, Lusaka, Zambia, May 23, 2002.

<sup>179</sup> Human Rights Watch interview with Clemire Karamira, MAPODE, Lusaka, May 20, 2002.

<sup>180</sup> BBC News, “Sex-workers ‘raped’ by Zambian police,” April 23, 2002.

<sup>181</sup> See also electronic mail message from Winstone Zulu, director of the Zambia Network of People with HIV/AIDS, to Human Rights Watch, August 31, 2002.

<sup>182</sup> Human Rights Watch interview with Caroline Chanda, Lusaka, Zambia, May 17, 2002.

<sup>183</sup> Human Rights Watch interview with Clemire Karamira, Movement of Community Action for the Prevention and Protection of Young People Against Poverty, Destitution, Diseases and Exploitation (MAPODE), Lusaka, May 20, 2002.

<sup>184</sup> Human Rights Watch interview with Professor Nkandu Luo, Lusaka, May 21, 2002.

Emily Joy Sikazwe, executive director of Women for Change, an NGO in Lusaka, Zambia has worked with a number of girls and young women who have turned to sex work. She observed:

A girl [orphan] told me: “HIV is not a monster . . . what I see [of it] is hunger. I’m fourteen—my siblings are crying for food, so I sell my body. I use condoms sometimes; otherwise, it’s raw sex. I need to buy mealie meal<sup>185</sup> and relish for the children. Yes, I know I’ll die. But my brothers and sisters are crying.”<sup>186</sup>

### ***Rape and Other Gender-based Abuses in War and Civil Conflict***

Rape is a common weapon of war in Africa. During the Rwandan genocide on 1994, in the war in Sierra Leone, and to this day in the war in the Democratic Republic of Congo (DRC), among other instances, regular armies and guerrilla forces have used rape to terrorize, humiliate, punish, and ultimately control the civilian population into submission. It also disrupts communities dependent on the labor and household leadership of women. In northern Uganda, thousands of children have been abducted by the Lord’s Resistance Army and have suffered sexual abuse and sexual slavery, part of that group’s campaign of terror and violence. In all these cases, HIV transmission is only one of the consequences of horrific sexual abuse suffered by women, girls, and sometimes boys, but it is a consequence that amplifies the stigma of rape and adds to the medical and psychological injuries of these violations.

In DRC, Human Rights Watch’s investigation took place in North and South Kivu provinces, an area controlled since 1998 by rebel forces fighting the government of President Kabila, the Rassemblement congolais pour la démocratie (RCD) and RCD’s patron, the Rwandan army. The Rwandan army, which occupies large parts of eastern Congo, and the RCD are opposed by several armed groups operating in eastern Congo, including Burundian armed groups and rebel Rwandans associated with the forces involved in the Rwandan genocide of 1994. Rape has been used as a weapon of war by most of the forces involved in this conflict. Combatants of the RCD, Rwandan soldiers, as well as combatants of the forces opposed to them—Mai-Mai, armed groups of Rwandan Hutu, and Burundian rebels of the Forces for the Defense of Democracy (Forces pour la défense de la démocratie, FDD) and Front for National Liberation

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<sup>185</sup> Mealie meal is a staple food in southern Africa and is made from maize flour.

<sup>186</sup> Human Rights Watch interview with Emily Joy Sikazwe, Lusaka, May 31, 2002.

(Front pour la libération nationale, FNL)—frequently and sometimes systematically raped women and girls in the last year.

In some cases soldiers and combatants raped women and girls as part of a more general attack in which they killed and injured civilians and pillaged and destroyed their property. They did this to terrorize communities into accepting their control or to punish them for real or supposed aid to opposing forces, particularly if they themselves had recently been attacked by these forces. In cases where there were no larger attacks, individuals or small groups of soldiers and combatants also raped women and girls whom they found in the fields, in the forest, along the roads, or in their homes.

The war which has ravaged this region of Congo intermittently since 1996 has destroyed the local economy. Driven by desperate poverty, women who provided the resources to keep their families alive continued going to the fields to cultivate, to the forest to make charcoal, or to markets to trade their goods even though doing so put them at risk of rape. Soldiers and combatants preyed upon such women and girls as well as on others who had fled combat to live in temporary and fragile structures in the forest. Bijou K., a young mother living near the Kahuzi-Biega National Park, described an incident from June 2001:

I left my house in the evening to buy food for my children. A soldier attacked me and pushed me off the road. He asked me in Kinyarwanda for my identity card. He wore a uniform and had a rifle. He threw me into the bushes. My baby, who was one month and one week old, was on my back. He threw the baby off my back—the baby was on his stomach on the ground—and put a gun to my chest. When I reached to save my baby, he took off my clothes and raped me. It happened fast; he wasn't there a long time. Afterwards, he took off. I picked up the baby and went home. I told my husband what happened. I had just had a baby and I needed help. I was treated [at a clinic]. It turns out that I got a sexually transmitted disease, and now my husband has it too.<sup>187</sup>

In many cases in the eastern DRC, combatants abducted women and girls and took them to their bases in the forest where they forced them to provide sexual services and domestic labor, sometimes for periods of more than a year. Sophie W., a young mother living near the rain forest in Shabunda, was held for over a year with her four young

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<sup>187</sup> Human Rights Watch interview, Murhesa, D.R.Congo, October 19, 2001.

children. Her testimony exemplifies many stories told to Human Rights Watch by women abducted to forested areas:

We went into the forest at the beginning of the war. My husband thought the forest was safer, and there was nothing to eat in town. But we moved back to town in 2000. In July 2000 the Mai-Mai came and took my husband. They beat me up and shot him and then cut up his body in front of me. They said my husband was a spy for the Tutsi. There were eight Mai-Mai. Two of them held me down and the others raped me. They put two knives to my eyes and told me that if I cried, they would cut out my eyes . . . . They were filthy—they had fleas. We had no shelter. There were only leaves to sleep on, and when it rained, we got soaked. We had mats with us, but the Mai-Mai took them away.<sup>188</sup>

Some rapists aggravated their crimes by other acts of extraordinary brutality, shooting victims in the vagina or mutilating them with knives or razor blades. Some attacked girls as young as five years of age or elderly women as old as eighty. Some killed their victims outright while others left them to die of their injuries. The mother of a young woman whose breasts were cut off by soldiers told Human Rights Watch that this horrific act occurred partly because her daughter so vigorously resisted being raped.<sup>189</sup>

Unimaginable brutality also characterized much of the sexual violence in the Sierra Leone war. Throughout the armed conflict from 1991 to 2001, thousands of women and girls of all ages, ethnic groups, and socioeconomic classes were subjected to widespread and systematic sexual violence, including individual and gang rape, and rape with objects such as weapons, firewood, umbrellas, and pestles. The main perpetrators of sexual violence, including sexual slavery, were the rebel forces of the Revolutionary United Front (RUF), the Armed Forces Revolutionary Council (AFRC) and the West Side Boys, a splinter group of the AFRC. From the launch of their rebellion from Liberia in March 1991, which triggered the war, the RUF perpetrated widespread and systematic sexual violence. Its ideology of salvaging Sierra Leone from the corrupt All People's Congress (APC) regime quickly degenerated into a campaign of violence, including such horrible abuses as amputation of limbs, whose principal aim was to gain access to the country's abundant diamond mines.

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<sup>188</sup> Human Rights Watch interview, Shabunda, D.R.Congo, October 22, 2001.

<sup>189</sup> Human Rights Watch interview, Murhesa, D.R. Congo, October 19, 2001.

In Sierra Leone, as in Congo, thousands of women and girls were abducted by the rebels and subjected to sexual slavery, forced to become the sex slaves of their rebel "husbands." Abducted women and girls who were assigned "husbands" remained vulnerable to rape by other rebels. Many survivors were kept with the rebel forces for long periods and gave birth to children fathered by rebels. Escape for these women and girls was often extremely difficult: In many instances, the women and girls, intimidated by their captors and the circumstances, felt powerless to attempt escape and were advised by other female captives to tolerate the abuses "as it was war." The rebels sometimes made escape more difficult by deliberately carving the name of their faction onto the chests of abducted women and girls. If these marked women and girls were caught by pro-government forces, they would be suspected of being rebels, and often killed.

As in the Congo war, in Sierra Leone these crimes of extraordinarily brutal rape were frequently preceded or followed by other egregious human rights abuses against the victim, her family, and her community. Although the rebels raped indiscriminately irrespective of age, they targeted young women and girls whom they thought were virgins. Many of these younger victims did not survive these crimes of sexual violence. Adult women were also raped so violently that they sometimes bled to death or suffered from tearing in the genital area, causing long-term incontinence and severe infections. Many victims who were pregnant at the time of rape miscarried as a result of the sexual violence they were subjected to, and numerous women had their babies torn out of their uterus as rebels placed bets on the sex of the unborn child.

Fifteen-year-old F.K. was raped by the RUF in Lunsar in Port Loko district (Sierra Leone) in May 2000 and witnessed the sexual mutilation of a pregnant woman as well as the killing of her three male relatives, and six amputations:

I was raped when the RUF attacked Lunsar by four rebels including one man called "Put Fire," who had made me his rebel wife from 1997 to 2000. One of the other rebels was called "Kill Man No Blood." While I was being raped, the rebels found my three male relatives who were hiding under their beds. They stabbed them with their bayonets and then shot them. They raped me in my bedroom and then brought me into the living room. Three men and three women were also brought into the room. They were put in line and then the rebels gave them the choice between their life or their money. The rebels strip-searched each one and then killed them on the spot. The group was forced to watch as each was killed. One of the women was six months pregnant and slightly disabled. She was last in the row. When it was her turn, she was

stabbed in the neck and fell down. The rebels started to discuss whether she was carrying a boy or a girl. They bet on the sex of the baby so they decided to check it. Kill Man No Blood split open her belly. It was a boy. One of the other rebels took the baby out and showed everyone that it was a boy. The baby was still alive when he threw it on the ground next to the woman but died shortly after. As the rebels took me away, I saw six men who had just been amputated. Some had an arm cut off below the elbow, others above the elbow. They were screaming, "Please kill us, don't leave us this way."<sup>190</sup>

S.G., a fifty-year-old widow, was raped by a teenage rebel called Commander "Don't Blame God" and subsequently had both arms amputated in Matru village in Bo district prior to the 1996 elections:

I pleaded but Commander Don't Blame God said he was going to kill me if I didn't lie down. I told him it had been such a long, long time since I had sex. During the rape I was pleading with him saying, "Don't kill me, please don't kill me." He was so rough with me. Then he took me up a big dune above Matru village. As we were walking, he said he was going to kill me. I pleaded with him and he then said, "I've changed my mind, I'm going to give you a letter." Once we got there I saw many more rebels, about twenty. I was stripped naked down to my underwear. It was humiliating. Then they asked me to sit down and wait. Commander Don't Blame God said: "I have a letter for you but wait for the cutlass man to come." Then the one with the machete came and told me to put out my left arm. It took them three chops with the cutlass to cut off my arm. After this I begged them not to cut my other arm but they struggled with me and a rebel held it down and cut it off. The cutlass man said, "We belong to Foday Sankoh's group." Then one of them took my left arm and put it under my vagina and kicked me twice in the vagina . . . very, very hard.<sup>191</sup>

R.F., a thirty-three-year-old farmer, described being gang-raped by West Side Boys, including four child combatants, at Petifu village in Port Loko district in November 1999:

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<sup>190</sup> Human Rights Watch interview, Freetown, Sierra Leone, May 25, 2000.

<sup>191</sup> Human Rights Watch interview, Bo, Sierra Leone, March 2, 2000.

Four children between ten and twelve years used me. They were so small I could barely feel them inside me. The small ones tried to imitate the older ones and one of them kept saying, "I'm trying it, I'm trying it." It was the war that brought that humiliation. I kept comparing them to my own children; my first-born son is ten. I forgave them because they are children. It was not of their own making. They must have been drugged.<sup>192</sup>

In December 1994, thirty-year-old A.B. was abducted with six other women from Yonibani in Tonkolili district by the RUF when they launched a surprise attack with the collusion of the SLA. The RUF made the women carry looted items to their camp, where A.B. stayed for a week before escaping. She herself was repeatedly raped by two rebels, including one Liberian, and witnessed the rape of an old woman with gray hair:

At least four of the women I had been abducted with were raped. Before they raped me, the rebels went for an old woman with white hair. When she realized what they wanted, she took off her headscarf to show her white hair and said, "I'm old, I have stopped having sex." At first the commander said the rebels should not touch her because she was old. But the other rebels got annoyed and started insulting the commander saying, "Fine, you can fuck any woman you want, anytime you want, but now that we have one we want, you say no." The commander finally said that they could go ahead so all five rebels, including a small boy of fifteen years raped her. One was on his knees with his trousers down while the others stood around watching.<sup>193</sup>

In both Congo and Sierra Leone, the humiliation, pain, and fear inflicted by the perpetrators serve to dominate and degrade not only the individual victim but also her community. Combatants who rape in war often explicitly link their acts of sexual violence to this broader social degradation. The perpetrators in both wars sought to dominate women and their communities by deliberately undermining cultural values and community relationships, destroying the ties that hold society together. Combatants raped women who were old enough to be their grandmothers, soldiers raped pregnant and breastfeeding mothers, and fathers were forced to watch their daughters being raped.

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<sup>192</sup> Human Rights Watch interview, Port Loko, Sierra Leone, November 27, 1999.

<sup>193</sup> Human Rights Watch interview, Bo, Sierra Leone, February 9, 2000.

To date there has been no accountability for the thousands of rapes or other appalling human rights abuses committed during the war in Sierra Leone but, unlike the case of Congo, there are at least mechanisms that may be able to bring some of the perpetrators to justice. The Special Court for Sierra Leone and the Truth and Reconciliation Commission have been established with U.N. assistance and are tasked with investigating the human rights abuses, including sexual violence and sexual slavery, committed by all parties during the war. Investigating crimes of sexual violence and sexual slavery were from the very beginning part of the prosecutorial strategy and as such an integral part of the work of the SCSL's investigation team.<sup>194</sup> In a pioneering action, the SCSL promptly appointed two gender crimes investigators, and a majority of the indictees at this writing have been charged with crimes of sexual violence as crimes against humanity and violations of international humanitarian law. A challenge for the Special Court is to ensure that the upcoming trials are conducted in a manner sensitive to the survivors of these crimes as well as to further develop the jurisprudence on crimes of sexual violence. Human Rights Watch calls on the SCSL to ensure appropriate training of judges, and of defense and prosecution personnel as soon as possible.

As a war crime, rape in both Congo and Sierra Leone has been obscured by inattention and denial. Until recently, little attention has been paid either nationally or internationally to this less visible human rights abuse, although sexual violence was committed on a much larger scale than the highly visible amputations for which Sierra Leone became notorious. The underreporting is a reflection of the low status of women and girls in Africa as well as the shame that rape survivors suffer and their fear of rejection by family and communities. Women and girls in Sierra Leone and the DRC are subjected to structural discrimination by practice, custom and law. They face discrimination in education and employment, in property ownership, in the political arena, and in other walks of life.

Legal mechanisms to prosecute rape in both countries stem from a tradition of inadequate treatment of rape as a crime even in peacetime. In Sierra Leone, the provisions pertaining to rape under general and customary law offer little protection to victims. The misinterpretation of the complicated provisions of general law by the police and courts means, for example, that those who are alleged to have sexually assaulted a minor are generally charged with "unlawful carnal knowledge of a child," for which the sentence is lighter, rather than rape. Under customary law, the perpetrator is generally required to pay a substantial fine to the victim's family as well as to the chiefs. The victim may also be forced to marry the perpetrator. The concept of rape as a crime

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<sup>194</sup> Corinne Dufka, researcher, Africa Division, Human Rights Watch.

in itself is a very recent one in Sierra Leone's patriarchal society. Only rape of a virgin is seen as a serious crime. Rape of a married woman or a non-virgin is often not considered a crime at all: as in many countries, there is often a belief that the woman must have consented to the act, or she is seen as a seductress. In Congo, similarly, the system of justice never favored adequate prosecution of rapists, and the continuing hostilities in eastern Congo make judicial reform an unlikely prospect. NGOs have recently reported to Human Rights Watch that after much effort and with concerted support, some women are beginning to find the courage to speak about these crimes and to take the first steps to filing formal complaints. But real justice is a long way off.

The fear of being stigmatized also kept rape survivors in both wars from seeking medical attention. Many others who wished medical help had nowhere to go because of the deterioration of services associated with war and decades of misrule in both countries. The lack of such assistance was particularly critical given that the prevalence of HIV and other STDs among soldiers and irregular combatants both is generally estimated to be much higher than in the general population. In Congo, it is estimated that more than half the combatants may be HIV-positive.<sup>195</sup>

These crimes of sexual violence have direct, profound, and life-changing consequences for the women and girls attacked and for their wider communities. Many women and girls will never recover from the physical, psychological, and social effects of these assaults and some will die from them. A significant number became pregnant as a result of rape and now struggle to provide for the children they have borne. Some women and girls have been rejected by their husbands and families and ostracized by the wider community because they were raped or because they are thought to be infected with HIV/AIDS. Survivors of rape and other forms of sexual violence must now attempt to make a new life for themselves, sometimes by relocating to communities far from their former homes.

The abuses still being committed in Uganda by the insurgent group called Lord's Resistance Army (LRA), known for the brutality of its tactics, represent another form of sexual and gender-based violence, particularly targeting children. Since the beginning of the LRA's conflict with the Ugandan government, it has abducted, by a conservative estimate, more than 20,000 children<sup>196</sup> and subjected them to brutal treatment as soldiers, laborers and sexual slaves. Since June of 2002, an estimated 5,000 children have been

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<sup>195</sup> US Institute for Peace citation

<sup>196</sup> UNICEF reports that over 38,000 adults and children have been abducted during the course of the conflict, with children making up the majority of abductions. Data provided to Human Rights Watch by UNICEF, February 3, 2002.

abducted from their homes and communities—a larger number than any previous year in the conflict and a dramatic increase from the less than 100 children abducted in 2001.

Children are abducted from their homes, schools, and off the streets. They are frequently beaten and forced to carry out raids, burn houses, beat and kill civilians, and abduct other children. They must carry heavy loads over long distances and work long hours. Many are given weapons training and some are forced to fight against the Ugandan army. The LRA uses brutal tactics to demand obedience from abducted children. Children are forced to beat or trample to death other abducted children who attempt to escape, and are repeatedly told they will be killed if they try to run away. Children who fall behind during long marches or resist orders are also killed. Many others have been killed in battle or have died from mistreatment, disease and hunger.

Although not as numerous as boys, girls are abducted in large numbers by the LRA. They are used as domestic servants for commanders and their households. At age fourteen or fifteen, many are forced into sexual slavery as "wives" of LRA commanders and subjected to rape, unwanted pregnancies, and the risk of sexually transmitted diseases, including HIV/AIDS.

After abduction, younger girls are assigned to commanders as *ting ting* (servants). They often begin work before dawn and continue until evening. Janet M., who was twelve when she was abducted in November 2002, explained: "You must work all of the time. The moment you refuse to work, they will kill you or beat you to death." She, like other girls, was forced to carry heavy loads, fetch water and firewood, cook, wash, "dig" (farm), and tend the commanders' children.

After reaching puberty, girls are forced to become "wives" to commanders. Angela P. was abducted at age ten and became a "wife" at age fifteen. She said, "when I became a wife I was smeared with shea nut butter and told my loyalty was to [the] Commander." Forced into sexual relationships, many girls become pregnant and give birth in the bush, with only other young girls to assist them. For Angela P., life was better as a *ting ting*. She said: "As a wife, I was beaten and sexually abused. As a *ting ting*, I was beaten twice; as a wife, I was beaten so many times I couldn't count."<sup>197</sup>

Christine A. was released with her two young sons in June 2002 after ten years in captivity. She said she feared that the LRA would come back for her and had heard

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<sup>197</sup> Human Rights Watch interview, Gulu, Uganda, February 4, 2003.

from children who escaped the LRA more recently that the LRA leadership now regretted their decision to release child mothers, especially those with boy children. Christine A. had no relatives in towns that are thought to be safe, so felt she has no choice but to return to the village from which she was abducted.<sup>198</sup> According to one girl, by the late 1990's, over 800 children had been born to young LRA "wives."

Many "wives" contract sexually transmitted diseases (STDs). A nurse at World Vision's center for children who have escaped abduction in Gulu, Uganda reported that of the children who came to the center in early 2003, about 50 percent had STDs, including syphilis, gonorrhea, and chlamydia. Two years earlier, when returnees were more likely to have been in captivity for longer periods, the rate was much higher—nearly 85 percent.<sup>199</sup> The rate of HIV infection among abductees is unknown. World Vision has offered HIV testing to children in its center; not all accept. As of March 2003, they had tested eighty-three formerly abducted children, and thirteen or 15 percent were positive in this self-selected group.

Brutality against civilians, and specifically sexual violence, is an integral part of the war in eastern Congo and the conflict in northern Uganda, and it was a heinous weapon in Sierra Leone. The wars of gender-based violence within these wars are grossly underrepresented as the focus of action by governments of affected countries and international actors alike. Exemplifying the cruelest and most violent edge of the subordination of African women, these abuses leave no room for protection from grievous bodily harm, including HIV/AIDS.

### ***Humanitarian law and international human rights law on rape in war***

Rape is explicitly prohibited under international humanitarian law governing both international and internal conflicts. The Fourth Geneva Convention of 1949 specifies in Article 27 that "women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault."<sup>200</sup> Further, Article 147 of the same convention designates "willfully causing great suffering or serious injury to body or health," "torture," and "inhuman treatment" as war crimes

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<sup>198</sup> Human Rights Watch interview, Gulu, Uganda, February 5, 2003.

<sup>199</sup> Human Rights Watch interview with nurse at the World Vision rehabilitation center, Gulu, Uganda, February 10, 2003.

<sup>200</sup> Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), August 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, art. 27. The reference to rape solely as an attack on women's honor is problematic in that it fails to recognize explicitly rape as an attack on women's physical integrity.

and as grave breaches of the conventions.<sup>201</sup> As the International Committee of the Red Cross (ICRC) has recognized, rape constitutes "willfully causing great suffering or serious injury to body or health" and thus should be treated as a grave breach of the convention.<sup>202</sup> The ICRC has stated in its authoritative *Commentary* that "inhuman treatment" should be interpreted in light of Article 27 and its specific prohibition against rape.<sup>203</sup> The Geneva Conventions specify that governments are obliged to find and punish those responsible for grave breaches and to make those accused available for trial.

As with international armed conflicts, humanitarian law clearly prohibits rape in internal conflicts, such as the civil wars in Sierra Leone and D.R. Congo. Rape committed or tolerated by any party to a non-international conflict is prohibited by Common Article 3 of the Geneva Conventions insofar as it constitutes "violence to life and person," "cruel treatment," "torture," or "outrages upon personal dignity." Moreover, Protocol II of 1977 to the Geneva Conventions, which applies to conflicts between a government's and its opposition's armed forces that control territory within the country, prohibits "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault" committed by any party.<sup>204</sup> The ICRC explains that this provision "reaffirms and supplements Common Article 3 . . . [because] it became clear that it was necessary to strengthen . . . the protection of women . . . who may also be the victims of rape, enforced prostitution or indecent assault."<sup>205</sup>

Rape committed not in the course of conflict but as part of political repression is also prohibited under international law as torture or cruel, inhuman or degrading treatment. The Universal Declaration of Human Rights, the International Covenant on Civil and

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<sup>201</sup> War crimes are criminal violations of the laws of armed conflict committed by persons, military or civilian, during an armed conflict and that involve individual criminal responsibility and universal jurisdiction. War crimes include "grave breaches" of the 1949 Geneva Conventions and Optional Protocols. See H. Victor Condé, *A Handbook of International Human Rights Terminology* (Univ. of Nebraska Press, 1999), p. 137; see generally, Theodor Meron, "Rape as a Crime Under International Humanitarian Law," 87 *American Journal of International Law* 424 (Washington, D.C.: American Society of International Law, 1993).

<sup>202</sup> Meron, p. 426, citing International Committee of the Red Cross, *Aide Mémoire*, December 3, 1992.

<sup>203</sup> *Commentary on the Geneva Conventions of 12 August 1949: Geneva Convention Relative to the Protection of Civilian Persons in time of War*, Oscar M. Uhler & Henri Coursier, eds. (1958), p. 598.

<sup>204</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), opened for signature Dec. 12, 1977, 1124 U.N.T.S. 609, 16 I.L.M. 1442 (1977), art. 4(2)(e).

<sup>205</sup> *ICRC Commentary on the Additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Yves Sandoz, Christophe Swinarski, Bruno Zimmerman, eds. (Geneva: Martinus Nijhoff Publishers, 1987), p. 1375, para. 4539.

Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment all promote the dignity and physical integrity of the person and prohibit torture and other mistreatment. Various international authorities have recognized rape to constitute a form of torture, as defined by the Convention against Torture, when it is used in order to obtain information or confession, or for any reason based on discrimination, or to punish, coerce or intimidate, and is performed by state agents or with their acquiescence.<sup>206</sup>

International criminal tribunals have recognized rape and other forms of sexual violence as war crimes and crimes against humanity.<sup>207</sup> The Rome Statute of 1998 that established the International Criminal Court, which came into effect in 2002, recognizes “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity” as war crimes within the jurisdiction of the court.<sup>208</sup> These same crimes, when “committed as part of a widespread or systematic attack directed against any civilian population” are recognized as crimes against humanity by the court.<sup>209</sup> These provisions allow for prosecution of the specified sexual crimes by the International Criminal Court if they occur in a country where the court has jurisdiction.

Rape during armed conflict — committed by government forces or armed insurgents as a matter of policy or as individual acts of torture — constitutes an abuse of power and a grave violation of international law. Official involvement and acquiescence in wartime rape is all the more striking given that, until recently, it has not been condemned like other war crimes, but treated as an inevitable consequence of war. Differential treatment of rape makes clear that the problem in large measure lies not in the absence of adequate legal prohibitions but in the international community's willingness to tolerate sexual abuse against women.

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<sup>206</sup> See, for example, Meron, "Rape as a Crime Under International Humanitarian Law," p. 425; Report by the Special Rapporteur on Torture, P. Koojijmans, appointed pursuant to Commission on Human Rights resolution 1985/33, U.N. Document E/CN.4/1986/15 (February 19, 1986), para. 6.

<sup>207</sup> See, e.g. International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Furundzija*, Case No. IT-95-17/1 (Trial Chamber), December 10, 1998, para. 172-173 ("Rape may . . . amount to . . . a violation of the laws or customs of war"); International Criminal Tribunal for Rwanda, *Prosecutor v. Jean Paul Akayesu*, Case No. ICTR -96-4-T (Trial Chamber), September 2, 1998.

<sup>208</sup> Rome Statute of the International Criminal Court, opened for signature July 17, 1998, Article 7, reprinted in 37 I.L.M. 999 (1998), art. 8.2.b.xxii. The Rome Statute entered into force on April 11, 2002 and the ICC has the authority to prosecute the most serious international crimes from July 1, 2002.

<sup>209</sup> *Ibid.*, art. 7.1.g.

## ***Lack of HIV Prevention for Rape Survivors***

Whether in war situations or in times of peace, many African women and girls face rape with little hope for redress from local officials and the courts. At the very least, however, they should be able to hope for basic protections that keep rape from being a death sentence. In wealthy countries, survivors of sexual violence where the perpetrator is HIV-positive or could be HIV-positive have access to post-exposure prophylaxis (PEP), a short course of treatment with antiretroviral drugs that reduces the risk of HIV transmission in these cases. PEP, which was first developed for occupational exposures to HIV (such as needle-stick injuries to health care workers), has been the standard of care for high-risk occupational exposures and survivors of rape in industrialized countries for some years.

In April 2002, the government of South Africa, recognizing the epidemic levels of sexual violence in the country, took the ground-breaking step of pledging to provide PEP to rape survivors throughout the country. PEP for rape survivors is provided on a very limited basis in a few other southern African countries but across most of the continent has not even been raised at the policy level. The pioneering experience of South Africa has illustrated that providing effective PEP is feasible and affordable. A recent investigation by Human Rights Watch showed, however, that the South Africa experience also illustrates many challenges that continue to keep PEP services from some rape survivors in spite of supportive policy at the central level.<sup>210</sup> These include:

- **Widespread lack of information about PEP:** Many rape survivors did not get PEP services simply because neither they nor the various agencies charged with providing services to them had any idea that they existed. Health care providers, police, and rape crisis center staff are inadequately informed about the service. An information campaign for the general public and for health care providers, police, social workers, teachers and others likely to be key contact points for rape survivors is urgently needed.
- **Lack of guidance regarding administration of PEP to children:** Although the South African government has developed national guidelines for PEP treatment of individuals fourteen years and older, there are no corresponding guidelines for children under fourteen. As a result, many health care providers lack basic information about how—and even in what circumstances—to provide PEP to children under fourteen.

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<sup>210</sup> Further detail and first-hand testimony on all of these problems are found in Human Rights Watch's report *Deadly Delay*, forthcoming.

- **Legal issues specific to children:** Children under fourteen cannot consent to HIV testing (a prerequisite to PEP treatment under current government protocols), and to medical examination and treatment. Problems obtaining consent are of particular concern in communities hard hit by HIV/AIDS, where children are often cared for outside of their biological families and locating an appropriate guardian in a timely fashion (or at all) is difficult. Consent may likewise be a problem where a parent or guardian is suspected to have committed the sexual assault at issue, or where the parent or guardian refuses medical examination, treatment and/or HIV testing against the child's best interests.
- **Stigma and discrimination:** Stigma associated with HIV/AIDS and attendant discrimination against people living with the disease and their families impedes access to PEP and related services. The stigma of rape and shame associated with the sexual abuse of children also interferes with access to PEP services by discouraging rape survivors and their guardians from disclosing abuses and seeking care.
- **Arbitrary denial of PEP and medico-legal services:** Administrative requirements imposed by police and health care providers significantly interfere with access to PEP and other services for sexual assault survivors. The lack of oversight with respect to implementation of PEP and related services permits this interference to continue, at the cost of sexual assault survivors' lives. In Eastern Cape and KwaZulu-Natal, for example, health care providers and counselors reported that sexual assault survivors were required to file a complaint with the police before they could be examined or receive medical treatment. This requirement may prevent a sexual survivor from receiving PEP within the necessary seventy-two-hour timeframe because of the time required to report a case (which may be hours, or in some cases, days), or because sexual assault survivors may not want to report the case to the police (as is often the case where survivors fear retaliation by the perpetrator or rely on him for economic support).
- **Inadequate investigation and prosecution of sexual offences:** Only a fraction of rape survivors report the assault to the police; of these, very few are fully investigated; and of those only a small number are prosecuted in court and result in convictions. A recent study in South Africa reported that in 1997, for example, for every 394 women who were raped, 272 went to the police; seventeen were turned into cases for investigation; and five were referred to court for prosecution. The

overwhelming failure to successfully prosecute sexual offences is often cited as a deterrent to reporting a rape in the first instance.

- **Unequal access to PEP and related services to rape survivors who are poor and who live in rural areas:** PEP is unavailable outside of most major urban centers and access to health care and other services are poor to nonexistent. As a result, rape survivors who lack resources to travel to a health care facility where PEP and related services are available are often denied treatment altogether. There are, however, some NGOs and grassroots organizations that facilitate access to PEP and related services (including counseling and court support) to rural women and provide community education for women and children on issues related to sexual assault.
- **Relevant services lacking resources:** Health services, social services, and the specialized police services that provide the structures and personnel for making PEP provision work are severely understaffed and under-resourced in many parts of South Africa. Police officers who are meant to transport rape survivors to health facilities for their examinations find themselves without enough vehicles to provide that essential service. Medical staff and counselors working with rape survivors lack funding and transportation to provide necessary follow-up to ensure compliance with PEP. Police and health care providers are already extremely overworked in some settings, undermining their respective capacities to provide adequate assistance to rape survivors.

In spite of these challenges, the South African experience represents a breakthrough for survivors of sexual violence. Access to PEP for rape survivors is a matter of life and death. Other African countries are failing in their human rights commitments to women and children in neglecting this affordable and feasible measure.

### ***Unequal Access to Information and Health Services***

Information about HIV transmission and AIDS treatment and care is essential for any country, community, or person to be able to mount an effective fight against HIV/AIDS. The right to information about HIV/AIDS, though recognized as a core element of the right to the highest attainable standard of health,<sup>211</sup> is far from being fully

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<sup>211</sup> See Committee on Economic, Social and Cultural Rights, General Comment 14. The Right to the Highest Attainable Standard of Health, U.N. Doc. E/C.12/2000/4 (2000), paras. 12(b), 21, 34, 36 and note 8; CRC, art. 24(2)(e); see also Office of the United Nations High Commissioner for Human Rights and the Joint United

realized in Africa. Survey after survey show that even in countries where there have been HIV/AIDS awareness programs for a fairly long time, large segments of the population appear to be unaware of the basics facts of HIV/AIDS. In Africa, many studies have concluded that as widespread as this problem is in the general population, it is even more pronounced among girls and women than among boys and men. A major study of a number of AIDS awareness indicators by the U.N. Population Office in 2002 concluded that in most African countries where surveys have been done, women and girls are generally significantly behind men and boys in their knowledge of HIV/AIDS and exposure to relevant information.<sup>212</sup>

To the degree that schools are a vehicle for dissemination of information on HIV/AIDS, this disparity is not surprising since girls face greater obstacles to enrolling or remaining in school than boys in many African countries, particularly girls in AIDS-affected families. In addition, health workers and health facilities are an important source of HIV/AIDS information for women and girls in many African countries; to the degree that they face discriminatory obstacles in access to those services, the information gender gap will persist.

In its regional analyses of Africa, the Center for Reproductive Rights has concluded that women's and girls' access to such health services as HIV and STD prevention and contraception are integrally linked to the discrimination they suffer in customary and religious law, including property and divorce law, social condoning of violence against women, and lack of equal access to education.<sup>213</sup> This conclusion was confirmed in the accounts of many women to Human Rights Watch. In Uganda, for example, domestic violence was a direct impediment to women's ability to seek and gain access to HIV information, testing, and other services.

Numerous Ugandan women told Human Rights Watch that a fear of violence prevented them from openly attending HIV/AIDS sensitization programs and that, despite feeling unwell themselves, they were unable to go for HIV testing or were too scared to pick up the results. Alice N., for example, tested HIV-positive in 1996. She has never revealed her HIV status to her husband. She explained, "I am married but I came alone [for

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Nations Programme on HIV/AIDS, "HIV/AIDS and Human Rights-International Guidelines" (from the second international consultation on HIV/AIDS and human rights, 23-25 September 1996, Geneva), U.N. Doc. HR/PUB/98/1, Geneva, 1998, paras. 31(a), 38(b, g).

<sup>212</sup> United Nations Department of Economic and Social Affairs, Population Division, *HIV/AIDS Awareness and Behaviour* (ST/ESA/SER.A/209), New York: United Nations, 2002, pp. vii, 5.

<sup>213</sup> See, e.g., Center for Reproductive Rights, *Women of the World: Anglophone Africa Progress Report 2001* (New York, 2001), p. 166.

testing]. I never informed him. He said, if I know you're positive I'm going to kill you. We used to quarrel. He beat me. I never talked about it." Her fear of her husband prevented her from having her children tested: "I get scared that [the children] will tell him they were injected. I can't even test the children because he'll be angry and ask why."<sup>214</sup>

Some Ugandan women who were experiencing symptoms or otherwise sought care were also unable to reach testing and information centers because they had no money to travel or to pay for care, and were too scared to ask abusive husbands for funds, or because their husbands would simply not allow them to leave the home. Rebecca S. told us, "I got counseling after he had died. I wanted to go before but I didn't have the means. I wouldn't ask him. He would quarrel [fight]."<sup>215</sup>

Doctors in Uganda told Human Rights Watch that some women used the opportunity of antenatal care to test for HIV.<sup>216</sup> Dr. Hafsa Lukwata is a general practitioner and works with the Association of Uganda Women Medical Doctors (AUWMD). She confirmed that women were using antenatal visits for HIV testing, but cautioned that because of this, some women were being prevented from going for antenatal care: "Men have refused women to go for antenatal. For prevention of MTCT (mother-to-child transmission) we are testing for HIV. Men are warning women not to go to the antenatal clinic or, if so, not to take the test. Once I was doing a pap smear. Women don't know how we test for HIV. I told her I was going to take a sample of her cervical mucus. She warned me not to test for HIV."<sup>217</sup>

Some women managed to attend HIV/AIDS clinics secretly, or joined support groups without their husbands' knowledge. Jane N., forty, had been with her husband since their marriage was arranged when she was fourteen, and she was the second of three wives. She and her husband were HIV-positive, as was one of her co-wives. She went for testing secretly in 1999 when she found out he was sick. She explained: "I was scared to tell him that I had tested HIV-positive. He used to say that the woman who gives him AIDS, 'I will chop off her feet.' I have never told him. I told my children

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<sup>214</sup> Human Rights Watch interview with Alice N., Entebbe, Uganda, December 13, 2002.

<sup>215</sup> Human Rights Watch interview, Luwero, Uganda, December 18, 2002.

<sup>216</sup> Professor Florence Mirembe, head of Obstetrics and Gynaecology at Mulago Hospital, confirmed that antenatal patients are provided with the option of being tested for HIV and that the tests are administered solely at the request of the patient. Human Rights Watch telephone interview with Professor Florence Mirembe, head, Obstetrics and Gynaecology, Mulago Hospital, Uganda, May 28, 2003.

<sup>217</sup> Human Rights Watch interview with Dr. Hafsa Lukwata, Association of Uganda Women Medical Doctors (AUWMD), Kampala, December 19, 2002.

secretly.” She joined the National Community of Women Living with HIV/AIDS in Uganda (NACWOLA), without telling him. “I feared telling him about my HIV-positive status because he would think I was a loose [sexually immoral] woman. He could chase me away from his home or beat me up. He always vowed to beat up whoever brought it.”<sup>218</sup> Sandra Kyagabe is a counselor at NACWOLA, which operates in twenty-three districts providing support and care for HIV-positive women. She described the constraints that many NACWOLA members operate under: “A lot of women come to us secretly. When we do home visits, in some places we can’t go in NACWOLA vehicles. We have to park a distance away. We don’t put on uniforms and we say that we’re friends or from the church or other community groups. When we give them information they hide it. They hide the medical information they got from clinics.”

Nevirapine, a drug that reduces the risk of mother-to-child transmission is available to women in Uganda. However, HIV-positive women attempting to obtain nevirapine are advised that they should not breastfeed while taking the drug.<sup>219</sup> According to women’s rights NGOs and women themselves, some women who are fearful of revealing their HIV-positive status to violent husbands will go ahead and breastfeed their children because either their husbands or female in-laws may notice. In an environment where breastfeeding is traditional, members of the community of relatives may interpret a mother’s failure to breastfeed as an admission of her HIV-positive status.<sup>220</sup> A 2001

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<sup>218</sup> Human Rights interview with Jane N., Pallisa, Uganda, January 10, 2003.

<sup>219</sup> According to a WHO Technical Consultation on Behalf of the UNFPA/UNICEF/WHO/UNAIDS Inter-Agency Task Team on Mother-to-Child Transmission of HIV held in Geneva in October 2000, the prevention of mother-to-child transmission of HIV should be included in the minimum standard package of care for HIV-positive women and their children. A joint UNAIDS/WHO press release outlined the policy on breastfeeding and nevirapine: “An HIV-infected women should receive counseling, which includes information about the risks and benefits of different infant feeding options, and specific guidance in selecting the option most likely to be suitable for her situation. The final decision should be the woman’s, and she should be supported in her choice. For HIV-positive women who choose to breastfeed, exclusive breastfeeding is recommended for the first months of life, and should be discontinued when an alternative form of feeding becomes feasible.” See Joint UNAIDS/WHO Press Release, “Preventing Mother-to-Child Transmission: Technical Experts Recommend Use of Antiretroviral Regimens Beyond Pilot Projects,” Geneva, October 25, 2000, [online], [http://www.who.int/reproductive-health/rtis/MTCT/documents/press\\_release\\_arv\\_25\\_10\\_00/Press\\_ARV-25-10-00.en.html](http://www.who.int/reproductive-health/rtis/MTCT/documents/press_release_arv_25_10_00/Press_ARV-25-10-00.en.html) (retrieved June 3, 2003).

<sup>220</sup> At a conference held in April of 2003, Dr. Phillipa Musoke the head of Makerere University’s Paediatrics Department and a pediatrician at Mulago Hospital reportedly stated, “In our society when a baby cries, the husband, aunties, uncle, and in-laws tell the mother to breastfeed it. There is no way she is going to tell them she cannot because she has HIV/AIDS. The nurses themselves keep shouting to the mother to breastfeed her baby when it cries. There are so many pressures on the HIV/AIDS positive mother.” See Lillian Nalumansi, “HIV mums pressured to breastfeed their babies,” the *New Vision*, April 21, 2003, [online], <http://www.newvision.co.ug/detail.php?mainNewsCategoryId=9&newsCategoryId=34&newsId=129127> (retrieved May 19, 2003). A recent article in *The Lancet* quotes Francis Mmiro, chairman of the technical committee for the prevention of mother-to-child HIV transmission in Uganda, as stating that 61 percent of the HIV-positive mothers who attended antenatal clinics at the National Referral Hospital, Mulago, choose to breastfeed even after being informed that HIV can be transmitted through breastfeeding. Saul Onyango, the

report by the International AIDS Vaccine Initiative found that breastfeeding in Uganda remained prevalent among infected women “partly due to social stigma: formula feeding can be tantamount to a public declaration of HIV infection.”<sup>221</sup> The deputy director of the UNAIDS New York office, Bertil Lindblad, recently stated, “Women do not breastfeed their babies because they are unaware of the risks. They do so because they do not know their HIV status and they are afraid of condemnation or they cannot afford to use breast milk substitutes safely.”<sup>222</sup> Or as Kyagabe explained, “They breastfeed because the man harasses them and they can’t ask for money for milk.”<sup>223</sup> Alice N. illustrated this point when she explained why she breastfed her daughter despite her HIV-positive status: “I breastfed the children. The girl breastfed for three months. I knew that you shouldn’t breastfeed. When I had my daughter I knew I was HIV-positive but I breastfed because there was no money for milk.”<sup>224</sup>

In spite of difficulties of the kind experienced by these women, investments in HIV/AIDS programs and services, however inadequate to the scale of the problem, have probably improved access to counseling and information about reproductive health for some women on the continent. According to the Center for Reproductive Rights, however, adolescent girls still face serious barriers to reproductive health information and services.<sup>225</sup> With promised restrictions from the United States, an important donor in the health sector in Africa, access to information about condoms and to condoms

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medical officer in charge of prevention of mother-to-child HIV transmission, is quoted as estimating that as many as 80 percent of rural HIV-positive mothers choose to breastfeed. See Charles Wendo, “Most Ugandan HIV-positive mothers insist on breastfeeding,” *The Lancet*, vol. 358 • August 25, 2001, [online], <http://pdf.thelancet.com/pdftdownload?uid=llan.358.9282.news.17420.3&x=x.pdf> (retrieved May 19, 2003). The MTCT-Plus Initiative, in which the mother and her family continue to receive antiretroviral treatment after delivery, is based at Columbia University’s Mailman School of Public Health and supported by a coalition of nine foundations. Dr. Peter Mugenyi, director of the Joint Clinical Research Center in Uganda, expressed the view that if sufficiently funded, the program should be effective in decreasing mother-to-child transmission of HIV and should contribute significantly to the prevention of HIV transmission generally. Human Rights Watch telephone interview with Dr. Peter Mugenyi, director, Joint Clinical Research Centre, Kampala, May 29, 2003, and e-mail from Dr. Mugenyi to Human Rights Watch, June 2, 2003.

<sup>221</sup> Emily Bass, “Is There a Role for Vaccines in Protecting Infants Against HIV in Breast Milk?,” *International AIDS Vaccine Initiative Report: Women & AIDS Vaccines*, vol. 5 no. 8, July-September 2001, [online], <http://www.iavi.org/reports/259/breastfeeding.htm> (retrieved May 20, 2003).

<sup>222</sup> Bertil Lindblad, deputy director UNAIDS, Forty-Seventh Session of the Commission on the Status of Women, New York, March 5, 2003, [online], <http://www.unaids.org/whatsnew/speeches/eng/47thcsww%5F050303%5Fen.html> (retrieved May 19, 2003)

<sup>223</sup> Human Rights Watch interview with Sandra Kyagabe, counselor, NACWOLA, Kampala, December 19, 2002.

<sup>224</sup> Human Rights Watch interview with Alice Namagembe, Entebbe, December 13, 2002.

<sup>225</sup> See Center for Reproductive Rights, *Women of the World: Anglophone Africa Progress Report 2001* (New York, 2001), pp. 155-56.

themselves may be further threatened by mandated adherence under U.S. regulations to “abstinence-only” education programs.<sup>226</sup>

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<sup>226</sup> Under legislation that has already been enacted, a substantial portion of U.S. financial assistance for international HIV/AIDS prevention programs for 2006 through 2008 must be spent on abstinence-until-marriage programs. United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, Pub. L. No. 108-25, 117 Stat. 711 (2003), sec. 403.

### III. REGIONAL AND NATIONAL LEGAL REGIMES

It is tempting to say, as many policy-makers have found it easy to do, that the wide range of abuses against women and girls described above is difficult or impossible to address because so many of the abuses have deep cultural roots. But the problems persist in large part because the legal, policy, and program environment in Africa allows them to persist. Changes in the law, more gender-sensitive policies, and more well-conceived programs are a necessary if insufficient step toward eradicating these abuses. In countries with some measure of democratic processes, changes in law and policy are likely to generate wider debates that may eventually influence cultural and social norms.

All sub-Saharan African countries except Somalia and Sudan have ratified CEDAW.<sup>227</sup> CEDAW includes numerous commitments to eliminate gender inequality in the law and ensure equal access to services. CEDAW also requires governments to take steps to modify traditions that are based on women's inferiority or stereotypes of women or men.<sup>228</sup> The Declaration on the Elimination of Violence against Women, which exhorts U.N. member states to pursue a range of measures to prevent gender-based violence and ensure accountability for perpetrators, was passed by the General Assembly in 1993.<sup>229</sup> The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both widely ratified in Africa, also prohibit discrimination based on sex.<sup>230</sup>

As noted above, international human rights law recognizes women's right to sexual autonomy, including the right to be free from nonconsensual sexual relations. The right to sexual autonomy is reflected in a number of international declarations and conference

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<sup>227</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981. Ratification information can be accessed at <http://www.unhcr.ch/pdf/report.pdf>.

<sup>228</sup> CEDAW, art. 5 ("States Parties shall take all appropriate measures: ...To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.")

<sup>229</sup> United Nations General Assembly resolution 48/104, December 20, 1993. Published as A/RES/48/104 February 23, 1994. The declaration can be accessed at

[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.48.104.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En?Opendocument).

<sup>230</sup> ICCPR, art. 2(1); International Covenant on Economic, Social and Cultural Rights ICESCR, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, art. 2(2).

documents.<sup>231</sup> Sexual autonomy is closely linked to the rights to physical security and bodily integrity,<sup>232</sup> the right to consent to and freely enter into a marriage, as well as equal rights within the marriage.<sup>233</sup> When women are subjected to sexual coercion with no realistic possibility for redress, a woman's right to make free decisions regarding her sexual relations is violated.

In addition to CEDAW and other global instruments, a number of regional human rights instruments in Africa are relevant to the abuses discussed in this paper. The African Charter on the Rights and Welfare of the Child (the Charter), which entered into force in November 1999 and is widely ratified, contains many of the protections contained in the Convention on the Rights of the Child. Where the CRC refers to "a child temporarily or permanently deprived of his or her family environment," the Charter refers to "a child who is parentless or who is . . . deprived of his or her family environment," but the protections noted are otherwise similar.<sup>234</sup> Article 16 of the Charter refers to protection of children from "all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse."

The formulation of the African Charter on Human and Peoples' Rights was drafted in the late 1970s and has been widely ratified on the continent.<sup>235</sup> Article 2 of the Charter includes a guarantee of freedom from discrimination based on sex, but women's rights are otherwise not well elaborated. In July 2003, however, the African Union adopted a

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<sup>231</sup> At the U.N. International Conference on Population and Development held in October 1994 in Cairo, Egypt, and the U.N. Fourth World Conference on Women held in September 1995 in Beijing, China, governments explicitly endorsed women's sexual autonomy. In the 1994 Cairo Programme of Action on Population and Development, delegates from governments around the world pledged to eliminate all practices that discriminate against women and to assist women to "establish and realize their rights, including those that relate to reproductive and sexual health." In the 1995 Beijing Declaration and Platform for Action, delegates from governments around the world recognized that women's human rights include their right to have control over and decide freely and responsibly on matters related to their sexuality free of coercion, discrimination and violence. See United Nations, *Programme of Action of the United Nations International Conference on Population and Development* (New York: United Nations Publications, 1994), A/CONF.171/13, 18 October 1994, para. 4.4(c) and United Nations, *Beijing Declaration and Platform for Action* (New York: United Nations Publications, 1995), A/CONF.177/20, 17 October 1995, para. 223.

<sup>232</sup> ICCPR, art. 9. Article 9 of the ICCPR guarantees to everyone "liberty and security of person." This right, although traditionally applied to conditions of arrest or detention, has been expanded over time to cover non-custodial situations.

<sup>233</sup> ICCPR, art. 23 and CEDAW, art. 16. See also article 16 of the UDHR.

<sup>234</sup> African Charter on the Rights and Welfare of the Child, OAU Doc. CAM/LEG/24.9/49, 1990, arts. 25(2) and 16.

<sup>235</sup> African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc.

CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986

“Protocol to the African Charter of Human and Peoples Rights on the Rights of Women” that includes many of the principles and much of the language of CEDAW and the Declaration on the Elimination of Violence against Women. The protocol will enter into force after fifteen countries ratify it. It asserts the right “to be protected against sexually transmitted infections, including HIV/AIDS” (article 14). It calls for the prohibition of FGM (article 5) and protection from sexual violence in armed conflict (article 11). At the same meeting in July 2003, the African Union also adopted a declaration on HIV/AIDS that noted the vulnerability of women and girls to HIV/AIDS, “particularly in societies marked by gender inequality, where the burden of care for the sick and for the children orphaned by AIDS falls overwhelmingly on women.”<sup>236</sup> It is a missed opportunity that recent African Union decisions do not reflect a serious analysis linking human rights violations against women and girls with HIV/AIDS beyond the fact that the burden of care for people affected by AIDS falls disproportionately on women.

Equally important, national law and policy in many African countries fail to reflect the principles of gender equality found in international law, the Organization of African Unity, and its successor, the African Union. In particular, many domestic laws and policies lack protections for women’s and girls’ rights in the areas of rape, domestic violence, property and inheritance rights, right to education, and right to information—all crucial for protection against HIV/AIDS. Conclusions of the Center for Reproductive Rights’ excellent analysis of national law in fourteen sub-Saharan countries<sup>237</sup> are revealing, including:

- With the exception of South Africa, sexual violence laws around the continent fail to recognize rape in marriage as a crime. In countries such as Ghana and Kenya, consent to sex is considered to be implied by marriage, so a husband cannot rape his wife by definition. In a number of countries, evidentiary rules disadvantage the prosecution in criminal cases, for example by requiring independent corroboration of rape survivors’ statements before allowing rape survivors’ testimony in their own cases. The Center for Reproductive Rights also notes, as Human Rights Watch found in numerous countries, that rape laws are generally very poorly enforced.
- Domestic violence is poorly embodied in the law in most African countries. (Senegal, South Africa and Zimbabwe are exceptions; Tanzanian law prohibits domestic violence but does not establish penalties for offenders.) In a number of

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<sup>236</sup> African Union, Maputo Declaration on HIV/AIDS, Tuberculosis, Malaria and Other Related Infectious Diseases, approved 12 July 2003.

<sup>237</sup> Center for Reproductive Rights, *Women of the World: Anglophone Africa Progress Report 2001* (New York, 2001), especially pp. 166-173; and the Center’s *Women of the World: Laws and Policies Affecting their Reproductive Lives—Francophone Africa* (New York, 2000), especially pp. 190-200.

countries, such as Kenya and Nigeria, there is no provision in the law to criminalize domestic violence. Women, as a result, must rely on customary law, which gives husbands the right to “chastise” or “correct” their wives with physical punishment.

- In the case of both marital rape and domestic violence, the shortcomings of the law are compounded by very young legal ages of marriage for girls (as opposed to boys).
- Divorce laws increasingly seem to recognize women’s equal right to dissolve a marriage, but in many countries customary law and practice appear to trump statutory law. In Kenya, for example, it remains the case among some ethnic groups that a husband’s adultery is never considered grounds for divorce, but a husband can dissolve the marriage based on a single act of adultery on the part of his wife.
- A number of countries, such as Ghana and Kenya, have had law reform or constitutional reform commissioners who have called on their governments to harmonize and modernize marriage law so that statutory, customary, and religious laws are not in conflict, but those reforms have not taken place.
- Sexual harassment (short of rape) is not prohibited by law in most countries; Senegal and Ivory Coast are exceptions, but even there, prosecutions are few.

States must not only facilitate women’s exercise of their human rights by ensuring that the conditions for such exercise are free of coercion, discrimination, and violence,<sup>238</sup> they must also provide an effective remedy if human rights are violated and enforce such remedies.<sup>239</sup> Most national governments in Africa have done almost nothing to create conditions conducive to women’s exercise of their property rights, for example, as evidenced by coercive wife inheritance and cleansing practices, discriminatory laws and customs, and the violence women face if they try to assert their rights. Moreover, it is clear in a number of countries that judges, magistrates, police officials, and local authorities do not apply legislation and case law on inheritance and division of property, demonstrating that these states are in violation of their obligation to provide an effective remedy to women’s property rights violations.

Taken together with inequitable inheritance and property rights and other abuses described in this report, it is clear that there is a legal and human rights crisis for women in Africa. As the Center for Reproductive Rights concluded:

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<sup>238</sup> United Nations, Programme of Action of the United Nations International Conference on Population & Development, para. 7.3.

<sup>239</sup> ICCPR, art 2(3).

Those rights that have been granted to women, by both domestic legislation and international legal instruments ratified by many governments are still mere formalities. In all the countries, the family is the basic unit of society and primary means for socialization of individuals. At the same time, it is a source of discrimination that blocks women's access to knowledge and, in turn, to economic and social power. In many of the countries, custom and religion, which treat women as a social minority, are a source of law. This reliance on traditional law and norms blatantly contradicts the public commitments governments have made to promoting women's rights.<sup>240</sup>

### ***The South African Experience: Legislation and Special Courts***

The government of South Africa has taken some pioneering steps to establish legal and judicial frameworks for dealing with rape and domestic violence. South African legislation on domestic and sexual violence, sometimes cited as a model for the continent, offers useful guidance for other countries in drafting and implementing legal protections for rape survivors. The 1998 Domestic Violence Act breaks new ground by covering rape within marriage and violence in both marital and nonmarital relationships and abuse by parents, guardians, other family members, and anyone co-resident with the victim.<sup>241</sup> The Act imposes duties on the police to provide necessary assistance, including arrangements for suitable shelter and medical treatment, to victims of domestic violence, as well as information about their rights; there are sanctions for noncompliance with these duties.<sup>242</sup> A 2001 evaluation found, however, that the failure to allocate sufficient resources to police, courts, and other support services undermined the implementation of the Act.<sup>243</sup>

South Africa's draft law on sexual offenses (Sexual Offences Bill), currently being reviewed by a parliamentary committee, proposes important changes to broaden legal protection of rape survivors and to facilitate prosecution of sexual offenses. These include expanding the definition of rape to make it gender-neutral and to include anal as

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<sup>240</sup> Center for Reproductive Rights, *Women of the World: Laws and Policies Affecting their Reproductive Lives—Francophone Africa*, p. 200.

<sup>241</sup> South Africa, Domestic Violence Act, Act No. 116 of 1998, Section 1(vii); see also South African Police Service, *Domestic Violence National Instruction 7/1999*, Section 2.

<sup>242</sup> Domestic Violence Act, Sections 3, 18(2, 4); South African Police Service, *Domestic Violence National Instruction 7/1999*, Sections 7-10, 13.

<sup>243</sup> Penny Parenzee, "While Women Wait . . . Monitoring the Domestic Violence Act," *Nedbank ISS Crime Index*, vol. 5, no. 3 (May-June 2001).

well as vaginal penetration; establishing procedures such as testimony by closed-circuit television for children and other “vulnerable witnesses”; and changing common law rules that allow courts inappropriately to devalue some victims’ testimony.<sup>244</sup>

The bill that is under consideration as of this writing fails to include an earlier provision obliging the state to provide medical care and counseling for survivors of sexual violence who have sustained injuries or psychological harm or have been exposed to sexually transmitted infections. The deletion of this provision was apparently due to cost considerations. Advocates have noted that inscribing these obligations into law is essential to ensure accountability of the government in meeting its commitment to provide PEP and other services to rape survivors.<sup>245</sup> In view of earlier experiences, including with the Domestic Violence Act, they have urged that sufficient resources be allocated to ensure meaningful implementation and enforcement of the new law.<sup>246</sup>

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<sup>244</sup> South Africa, Criminal Law (Sexual Offences) Amendment Bill, 2003, Sections 2-4, 14, 15, 18, 24.

Advocates have criticized the bill for limiting the definition of rape to penetration by genital organs and creating separate statutory offences to cover penetration by objects or by body parts other than genital organs or involving penetration of the mouth and recommended that Parliament look to Namibia’s Combating of Rape Act (defining “rape” as the intentional commission of a sexual act with another person under coercive purposes and “sexual act” to cover a number of penetrative and non-penetrative acts (including the insertion of the penis, any other body part and any object)) and to the International Criminal Tribunals for Rwanda and for the former Yugoslavia, which acknowledge that rape is a form of aggression and that the central elements of the crime cannot be captured in a mechanical description of objects and body parts, as alternative models for definitions of rape. See, e.g., Combrinck, Gender Project, Community Law Centre, University of the Western Cape and Lillian Artz, Institute of Criminology, University of Cape Town, *Defining Rape and Indecent Assault*, submission to Parliamentary Portfolio Committee on Justice and Constitutional Development on Sexual Offences Bill, September 15, 2003 (including proposed redefinition of offense of rape); Rape Crisis Cape Town Trust and IDASA, *Submission on the Sexual Offences Bill to the Committee on Justice and Constitutional Development*, September 15, 2003; Women’s Legal Centre, *Submission to the Justice and Constitutional Development Committee in Response to the Criminal Law (Sexual Offences) Amendment Bill Published in Government Gazette No. 25282 Dated 30 July 2003*, September 15, 2003. The bill also has been widely criticized for including in the definition of rape situations where a person “intentionally fails to disclose to the person in respect of whom an act which causes penetration is being committed that he or she is infected by a life-threatening sexually transmissible infection in circumstances where there is a significant risk of transmission of such infection to that person.” Advocates argue that this provision is likely to increase women’s vulnerability to a charge, because women, who are more likely to know their HIV status due to testing done at antenatal clinics, may risk violence or other serious consequences if they reveal their status, insist on condom use or refuse sex and therefore fail to disclose their status. It has also been criticized as counterproductive to public health efforts to curb the spread of disease and further entrenching discrimination and stigmatisation of people with HIV. See *ibid.*

<sup>245</sup> See, e.g., Rape Crisis Cape Town Trust and IDASA, *Submission to the Sexual Offences Bill to the Committee on Justice and Constitutional Development*, September 2003; see also Heléne Combrinck, “Positive Duties of State Officials Towards Victims of Sexual Assault,” submitted on behalf of the Gender Project, Community Law Centre, University of the Western Cape, as part of the submission to the South African Law Commission Discussion Paper 102, by the Children’s Rights Project, Community Law Centre, University of the Western Cape; Department of Forensics and Toxicology, University of Cape Town; Gender, Law & Development Project, Institute of Criminology, University of Cape Town; Gender Project, Community Law Centre, University of the Western Cape; and Women’s Legal Centre, March 2002.

<sup>246</sup> *Ibid.*

South Africa has also taken steps to improve the prosecution of sexual offenses by establishing specialized sexual offenses courts.<sup>247</sup> These courts aim to reduce the trauma experienced by sexual assault complainants during the investigations and prosecution; to improve coordination among criminal justice agencies; and to increase the reporting, prosecution, and conviction rate for sexual offences. To this end, training is provided to officials involved in the investigation and prosecution of sexual offences, and courts are equipped with special facilities to minimize contact between victims and perpetrators (such as closed-circuit television and two-way mirrors, and separate waiting and interview rooms). Cases are managed by specially trained prosecutors who handle lighter-than-average caseloads to allow them more time for case preparation.

The Wynberg Sexual Offences Court, the first such court in South Africa, was established in 1993, in response to advocacy on the part of women's organizations to improve the treatment of rape victims in the criminal justice system.<sup>248</sup> In 1999, the Sexual Offences and Community Affairs unit was created within the National Prosecuting Authority to improve the handling of sexual offences cases against women and children. The unit's priorities include the establishment of sexual offences courts throughout South Africa and of multidisciplinary care centers for victims of sexual and domestic violence. To date, the National Prosecuting Authority has established 43 sexual offenses courts,<sup>249</sup> while continuing to monitor the courts' performance and provide staff training.<sup>250</sup> The National Prosecuting Authority, together with the Ministry of Health and the South African Police Services, has also established several multidisciplinary centers for victims of sexual offenses and domestic violence at hospitals in Eastern Cape, Western Cape, and Gauteng.<sup>251</sup> These centers are staffed by

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<sup>247</sup> The Wynberg Sexual Offences Court, the first such court in South Africa, was established in 1993, in response to advocacy on the part of women's organizations to improve the treatment of rape victims in the criminal justice system. The Wynberg Sexual Offences Court is described in the Human Rights Watch report, *Violence Against Women in South Africa* (1995), pp. 118-121. The Durban Magistrate's Court established a specialized sexual offences court in 1994. Human Rights Watch interview with Val Melis, Senior Public Prosecutor, Durban Magistrate's Court, May 16, 2003.

<sup>248</sup> See *ibid.*

<sup>249</sup> Human Rights Watch interview with Thoko Majokweni, director, Sexual Offence and Community Affairs Unit, National Prosecuting Authority of South Africa, New York, October 2, 2003. The National Prosecuting Authority hoped to have 60 such courts by end-2004.

<sup>250</sup> "Fighting Sexual Offences Against Women and Children: Specialized Courts and the Changing Legal Framework," Presentation by Anton du Plessis, head of the Crime and Justice Programme, Institute for Security Studies, Pretoria, South Africa, Second South African Gender Based Violence and Health Conference, May 7, 2003; Overview of Sexual Offences and Community Affairs Unit, <http://www.npa.gov.za/SOCA/SOCADefault.asp> (retrieved August 24, 2003).

<sup>251</sup> The Thuthuzela Mult-disciplinary Care Centre at G.F. Jooste Hospital in Cape Town was launched in July 2000. Similar centres have since been opened in Limbode and Mdantsane, Eastern Cape; and in Soweto,

health care professionals, counsellors, police, and prosecutors who work together as a team, enabling rape survivors to receive medical treatment and counselling and to report an offence to police at one site.

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Gauteng. The National Prosecuting Authority plans to open up ten such centres by the end of 2004. Anton du Plessis presentation, May 7, 2003.

## IV. RECOMMENDATIONS FOR ACTION

Human Rights Watch calls on all African governments to address gender inequity not only as an abuse in its own right but also as a central element of HIV/AIDS policy and programs. Resources for AIDS programs in Africa, while still grossly deficient in view of the magnitude of the problem, have become somewhat more abundant in some countries, reflecting increases in Global Fund, bilateral, and multilateral assistance. Countries that ignore human rights abuses against girls and women as they scale up their national HIV/AIDS programs should expect less success against the epidemic than those that do

Governments need to take action in three areas. They must take measures to (1) protect women and girls from sexual and domestic violence and ensure prosecution of the perpetrators of those crimes; (2) eliminate gender inequities related to property, inheritance, divorce, and other areas related to economic dependence; and (3) ensure equal access of girls and women to health and education services. Priorities within each of those areas, derived from previous investigations by Human Rights Watch, are highlighted below. All of these measures should be regarded as important elements of national AIDS control efforts.

### **1. Sexual and domestic violence**

An urgent priority is protecting women and girls from sexual and domestic violence, including abuse in marriage and other long-term unions. In all cases, measures should be taken to ensure that improvements in statutory law are not undermined by customary or religious law or practice.

#### ***General***

- Programs designed to ensure basic protection against sexual violence and abuse should be high priorities in governments' allocation of financial and human resources. These include:
  - nationwide awareness campaigns, including for schoolchildren, of the problem of sexual violence, with locally appropriate illustration of examples of sexual abuse and coercion;
  - urgent action to train police, social welfare officers and workers, health workers, legal and judicial officers, teachers and school administrators on the nature and extent of sexual violence and its prevention;

- urgent action to amend laws to include acts of sexual abuse other than rape (which is already included in the law in most countries). Inheritance of widows as marital or sexual partners without their consent and any other forced marriage should be understood as sexual violence.

These measures should include a particular focus on girls and young women who are the most vulnerable in most countries and monitoring mechanisms to ensure their reach.

### ***Domestic violence and marital rape***

- Sexual violence laws should be amended urgently to prohibit rape in marriage. The marital rape laws in South African law may provide a useful model.<sup>252</sup> These changes should be accompanied by sufficient resources to ensure the enforcement of the laws, training of relevant officials, and fair prosecution of perpetrators.
- All countries should enact legislation and accompanying policy to ensure prohibition of domestic violence, including physical violence that does not include rape. In addition, accompanying policy measures should support the following actions:
  - establish a clear and deliberate policy to remedy domestic violence within the justice system (police, local councils, and courts);
  - issue guidelines and provide training on appropriate responses to domestic violence and enforce guidelines for police intervention in cases of domestic violence, including standardized arrest policies for perpetrators and the separate categorization of domestic violence in police records;
  - ensure police training in appropriate investigative methods for cases of domestic violence, including techniques for interviewing victims, and methods for protecting victims and witnesses from harassment.
- Governments should move to end harmful customary practices such as “wife inheritance” and ritual “cleansing” of widows, including by prosecuting rape and forced marriage cases and by providing education on the harmful effects of these practices.

### ***Police and judicial proceedings***

- Governments should create centers where sexual violence can be reported with privacy and sensitivity toward survivors, staffed by trained police, medical personnel,

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<sup>252</sup> See South Africa, Domestic Violence Act, Act No. 116 of 1998, sec. 1 (defining complainant to include “any person who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence” and “domestic relationship” to include marriage recognized by any law, custom or religion, and relationships “in the nature of marriage,” including same-sex relationships.

and counselors. The experiences of the special sexual offenses courts in South Africa and the child protection units of the police department, while not perfect, have elements that may serve as useful models.

- Governments should ensure the rights and physical security of witnesses and victims in sexual violence or abuse cases tried in courts. As suggested in the Rome Statute of the International Criminal Court, these may include the possibility of *in camera* proceedings, withholding the victim's identity from the general public, providing protection for the security of witnesses and victims, and providing counseling services within the courts. Judicial staff should be trained on the management of sexual violence cases, and efforts should be made to ensure adequate trained women staff members in judicial bodies.
- If national justice systems are not willing or able to prosecute widespread instances of systematic sexual violence, as in situations of armed conflict, the responsible parties should be prosecuted by the International Criminal Court as its jurisdiction allows.

### ***Other services***

- Strengthen support and treatment services for survivors of rape and other sexual violence, including provision of HIV post-exposure prophylaxis (PEP), voluntary and confidential HIV testing, testing and treatment for other sexually transmitted diseases, legal assistance, and other appropriate counseling. Personnel in facilities providing these services should be trained to address the particular needs of children and young women who survive sexual abuse. States should ensure PEP and related medical and legal services are available on an equal basis to all survivors of sexual violence. They should ensure wide dissemination of information about these services (including what they are, why they are important, and where to get them) in the general community, as well as among health care providers, police, social workers, teachers, and others likely to serve as important contact points for sexual violence survivors.
- All governments should ensure nationwide access to affordable male condoms at all times. Governments should improve distribution and access to female condoms and increase awareness of the link between sexual violence and HIV transmission and awareness of HIV reinfection.

- In all countries, ministries of education should work with other relevant ministries and national AIDS control programs to formulate and implement national programs of protection against sexual violence in schools, including strengthening of education on sexual abuse in the formal curriculum, training and binding codes of conduct for school employees, guidelines for schools detailing appropriate responses to allegations of sexual abuse by students, and procedures for disciplining offenders. Mechanisms should be established to monitor schools' records in all these areas, and headmasters or other school directors should be held accountable for failure to respond to allegations or to follow guidelines adopted nationally.
- All governments should strengthen the collection and dissemination of comprehensive national statistics on sexual abuse and domestic violence, detailing the nature and degree of abuse, rates of prosecution and conviction, and the nature of punishment applicable, but using methods that protect the privacy of survivors of these crimes.

### ***Rape of sex workers***

- Sex workers who are victims of rape and other sexual violence should have equal standing under the law to bring formal complaints, be received by the police with dignity, and expect prosecution of offenders. The high degree of vulnerability of sex workers to sexual abuse should be included in training programs mentioned above.

### ***Sexual violence in war***

- Military personnel in all countries should be trained in prevention of and receive clear orders against any action that might constitute sexual abuse. Military authorities must be held accountable for full investigation of allegations of sexual abuse by their personnel and appropriate prosecution of offenders. The well-being, privacy, and dignity of complainants and witnesses must be protected in all proceedings. Civil society should be allowed to operate freely to monitor rape and other sexual abuse and assist the survivors of these crimes. In areas of armed conflict, most notably in the D.R. Congo and Burundi, international pressure is needed on all parties to the armed conflict to ensure immediate cessation of all sexual violence against women and girls. In Sierra Leone, the government must take urgent steps to ensure the release of girls and women still held as sexual slaves by former combatants, and diligence on the part of all parties is needed to ensure that the Special Court for Sierra Leone will adequately pursue cases of sexual violence and sexual slavery.

## **2. Gender inequity in property ownership and control, inheritance, and divorce**

- All countries should amend or repeal all laws that violate women's property rights, including the rights of widows. Countries should hold accountable those authorities who undermine statutory protection of women's equal right to property by applying discriminatory provisions of customary law. Adequate legislation will normally include a presumption of spousal co-ownership of family property and of equal division of property upon the termination of marriage; registration of all marriages in a central registry; equal inheritance rights; a requirement of family consent for transfers of family land and housing; and a clear recognition that payment of dowry is not a legal requirement for any type of marriage. Legal changes should be accompanied by resources that ensure enforcement of the law and establishment of appropriate judicial mechanisms, such as family courts, for prosecution of offenders.
- Governments should undertake nationwide awareness campaigns to inform the public about women's property rights, including ensuring availability of information in local languages about rights to inheritance and division of family property; writing wills; registering marriages; co-registering property; and the health risks of customary sexual practices tied to property rights, such as the risk of contracting HIV/AIDS. Governments should encourage the sharing of information across sectors, such as by including informational materials on inheritance rights in health facilities and by distributing health-related HIV/AIDS information through women's networks and organizations as well as in police stations and court offices.
- Governments should provide training for judges, magistrates, police, and relevant local and national officials on laws relating to women's equal property rights and their responsibility to enforce those laws and should include women's property rights in the required curriculum of police training academies and law schools.
- Governments should ensure access of indigent women to legal assistance to pursue civil property claims. Governments and donors should support the activities of nongovernmental organizations that provide legal services to women whose property rights have been violated.
- Divorce laws should be amended to reflect the presumption of spousal co-ownership of family property and of equal division of property upon the termination of marriage. They should also reflect equality in the ability to claim wrongful conduct as grounds for divorce. Most importantly, governments must take steps to

ensure that provisions of divorce law that recognize women's equality under the law are not undermined by customary law and practice. Authorities failing to respect this principle should be brought to account.

### **3. Unequal access to social services and information**

Ensuring equal access to education for girls is the key to protecting them from many of the abuses highlighted in this report and ensuring their access to life-saving information. The Convention on the Rights of the Child guarantees all children free primary education, but this remains an elusive goal in many African countries, especially for girls. Most African governments have made commitments and formulated plans of action around the "education for all" goals established at the education summit in Dakar, Senegal in June 2000, but these have not been backed up by resources and political commitment. In many countries, girls and women face discriminatory barriers in access to health services and information, as noted above. Social service policies and supporting legislation are an essential area of action for redressing gender-based injustices that contribute to risk of HIV/AIDS. In particular:

- Governments should make equal access to education for girls an urgent priority and should understand it as a central element of fighting HIV/AIDS along with measures to ensure freedom from sexual and gender-related abuse in schools. UNICEF has noted that real progress will not be made in this area until governments and donors make a priority of and allocate more resources to education, including to schools in marginalized rural and urban slum areas and for better training and compensation of teachers in all areas. Until that happens, measures should be taken at least to ensure that girls are not discriminated against in education, including by ensuring equal access to school meal programs that may help children stay in school, stipends for secondary school girls who would otherwise be under pressure to become breadwinners, and legislation that prohibits marriage for girls under age eighteen. Public awareness of the importance of girls' education, including its link to lower risk of HIV/AIDS, should be promoted.
- Governments should amend or repeal all policies and laws that pose discriminatory barriers to women and girls in access to health services and information. Women should not be required to provide evidence of their husbands' permission for reproductive health services.
- Governments should provide training to health care providers to ensure that girls and women receive appropriate, discreet, and nonstigmatizing counseling and

information on HIV/AIDS and reproductive health concerns. Health sector reform measures should make nondiscriminatory access to services a central part of their activities.

## V. CONCLUSION

In 1998, Gugu Dlamini, a courageous South African woman, was beaten to death after she declared openly that she was HIV-positive. The incident drew international attention to the plight of women affected by HIV/AIDS in Africa and more generally to the stigma and discrimination that continues to be associated with the disease, even after so many millions of deaths. The cases detailed in this report demonstrate that the illness, mortality, abuse, and stigma associated with HIV/AIDS owe their existence in large part to a long tradition of subordination and violent abuse of women and girls in Africa. Reformed national laws and policies to date have not been effective in counteracting this tradition and abusive practices condoned in customary law have exacerbated the problem.

Some have argued that since the U.N. General Assembly Special Session on HIV/AIDS and the creation of the Global Fund to Fight AIDS, Tuberculosis and Malaria, both in 2001, HIV/AIDS in Africa is beginning to find a noticeable place on the global stage, however inadequate it may still be relative to the scale of the epidemic's destruction. As national AIDS control programs across the continent draw greater national and international resources, they provide an opportunity to transform the level of support that the fight against gender inequity in Africa has so far enjoyed.

It is a shame that a crisis of the proportion of HIV/AIDS is necessary to focus attention on human rights abuses of women and girls in Africa, but it would be inexcusable to miss this opportunity. African governments and donors alike must begin to see protection and fulfillment of the rights of African women and girls as a central strategy in the fight against HIV/AIDS. This means more than occasional rhetorical flourishes or poorly funded gender components in larger projects. It means real resources, real coordination across sectors, and real participation by affected women in decision-making. Without this commitment, the conspiring evils of HIV/AIDS and gender inequality in Africa will win the day.

## **HUMAN RIGHTS WATCH REPORTS ON GENDER-RELATED ABUSES AND AIDS IN AFRICA**

“Just Die Quietly: Domestic Violence and Women’s Vulnerability to HIV in Uganda”

August, 2003: <http://www.hrw.org/reports/2003/uganda0803/>

“Abucted and Abused: Renewed Conflict in Northern Uganda,” July 2003:

<http://www.hrw.org/reports/2003/uganda0703/>

“Stolen Children: Abduction and Recruitment in Northern Uganda,” March, 2003:

<http://hrw.org/reports/2003/uganda0303/>

“Double Standards: Women’s Property Rights Violations in Kenya”

March, 2003: <http://hrw.org/reports/2003/kenya0303/>

“Borderline Slavery: Child Trafficking in Togo”

April, 2003: <http://hrw.org/reports/2003/togo0403/>

“Suffering in Silence: Human Rights Abuses and HIV Transmission to Girls in Zambia”

January, 2003: <http://hrw.org/reports/2003/zambia/>

“We’ll Kill You If You Cry: Sexual Violence in the Sierra Leone Conflict”

January, 2003: <http://hrw.org/reports/2003/sierraleone/>

“The War Within the War: Sexual Violence Against Women and Girls in Eastern Congo”

June, 2002: <http://hrw.org/reports/2002/drc/>

“In the Shadow of Death: HIV/AIDS and Children’s Rights in Kenya”

June, 2001: <http://www.hrw.org/reports/2001/kenya/>

“Scared at School: Sexual Violence Against Girls in South African Schools”

March, 2001: <http://www.hrw.org/reports/2001/safrica/>

“South Africa: Violence Against Women and the Medico-Legal System,” August, 1997:  
<http://www.hrw.org/reports/1997/safrika/>

“South Africa: The State Response to Domestic Violence and Rape,” November, 1995:  
<http://www.hrw.org/reports/1995/Safricawm-02.htm>

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