

## I. SUMMARY

*Shortly after Emily Owino's husband died, her in-laws took all her possessions—including farm equipment, livestock, household goods, and clothing. The in-laws insisted that she be "cleansed" by having sex with a social outcast, a custom in her region, as a condition of staying in her home. They paid a herdsman to have sex with Owino, against her will and without a condom. They later took over her farmland. She sought help from the local elder and chief, who did nothing. Her in-laws forced her out of her home, and she and her children were homeless until someone offered her a small, leaky shack. No longer able to afford school fees, her children dropped out of school.*

—Interview with Emily Owino, Siaya, November 2, 2002

*When Susan Wagitangu's parents died, her brothers inherited the family land. "My sister and I didn't inherit," said Wagitangu, a fifty-three-year-old Kikuyu woman. "Traditionally, in my culture, once a woman gets married, she does not inherit from her father. The assumption is that once a woman gets married she will be given land where she got married." This was not the case for Wagitangu: when her husband died, her brothers-in-law forced her off that homestead and took her cows. Wagitangu now lives in a Nairobi slum. "Nairobi has advantages," she said. "If I don't have food, I can scavenge in the garbage dump."*

—Interview with Susan Wagitangu, Nairobi, October 29, 2002

Women's rights to property are unequal to those of men in Kenya. 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 Kenya's overall development. For decades, the government has ignored this problem. Kenya's new government, which took office in January 2003, must immediately act to eliminate this insidious form of discrimination, or it will see its fight against HIV/AIDS (human immuno-deficiency virus/acquired immune deficiency syndrome), its economic and social reforms, and its development agenda stagger and fail.

This report recounts the experiences of women from various regions, ethnic groups, religions, and social classes in Kenya who have one thing in common: because they are women, their property rights have been trampled. Many 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. When they 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. The deadly HIV/AIDS epidemic magnifies the devastation of women's property violations in Kenya, where approximately 15 percent of the population between the ages of fifteen and forty-nine is infected with HIV. Widows who are coerced into the customary practices of "wife inheritance" or ritual "cleansing" (which usually involve unprotected sex) run a clear risk of contracting and spreading HIV. The region 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. Kenya's 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. Kenya's constitution prohibits discrimination on the basis of sex, but undermines this protection by condoning discrimination under personal and 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 infused in Kenyan society: men that Human Rights Watch interviewed said that women are 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.”

Currently, women find it almost hopeless to pursue remedies for property rights violations. Traditional leaders and 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 Kenyan government has done almost nothing: bills that could improve women's property rights have languished in parliament and government ministries have no programs to promote equal property rights. At every level, government officials shrug off this injustice, saying they do not want to interfere with culture.

As important as cultural diversity and respecting customs may be, if customs are a source of discrimination against women, they—like any other norm—must evolve. This is crucial not only for the sake of women's equality, but because there are real social consequences to depriving half the population of their property rights. International organizations have identified women's insecure property rights as contributing to low agricultural production, food shortages, underemployment, and rural poverty. In Kenya, more than half of the population lives in poverty, the economy is a disaster, and HIV/AIDS rates are high. The agricultural sector, which contributes a quarter of Kenya's gross domestic product and depends on women's labor, is stagnant. If Kenya is to meet its development aims, it must address the property inequalities that hold women back.

Unequal property rights and harmful customary practices violate international law. Kenya has ratified international treaties requiring it to eliminate all forms of discrimination against women (including discrimination in marriage and family relations), guarantee equality before the law and the equal protection of the law, and ensure that women have effective remedies if their rights are violated. International law also obliges states to modify discriminatory social and cultural patterns of conduct. Kenya is violating those obligations.

With a new government in office and a new draft constitution containing provisions that would enhance women's property rights set for debate, this is a pivotal time for Kenya to confront the deep property inequalities in its society. It must develop a program of legal and institutional reforms and educational outreach initiatives that systematically eliminates obstacles to the fulfillment of women's property rights.

This report is based on more than 130 interviews conducted in Kenya in October and November 2002 and prior and subsequent research. The interviews took place in Nairobi, Kajiado district, Kisumu district, and Kiambu district. Human Rights Watch interviewed individual women and men from a variety of locations and ten ethnic groups (Kikuyu, Luhya, Luo, Kamba, Kisii, Meru, Nandi, Maasai, Maragoli, and Asian/Punjabi) as well as government officials, United Nations representatives, nongovernmental organizations (NGOs), lawyers, paralegals, academics, judges, members of law review commissions, religious officials, local traditional leaders, and donor government officials. The names of individual women and men have been changed to protect their privacy unless otherwise indicated. Other identifying information has been withheld where necessary.