

# Compound Grief: Widows in Kenya

## Lamenting Loss of Husband and Home

Kenyan widows must not only grieve the loss of their husbands, but also the loss of everything they spent their lives building. Widows in Kenya face eviction by in-laws who invoke customary law to claim that they have no right to their matrimonial homes. Other widows are coerced into unions with a male relative of their deceased husband, to be “inherited” by him as part of their husbands’ estate. A woman refusing to be “inherited” faces eviction from her home and banishment from her community. Still other women are required by custom to have unprotected sexual relations with a so-called “cleanser” who is believed to rid the widow of her deceased husband’s spirits. This practice puts widows at increased risk of HIV infection. As a result, Kenya’s highest HIV/AIDS rates occur in regions, in particular Western Kenya, where widow inheritance and cleansing are most common.

Women who have been evicted from their homes are thrust into dire economic circumstances. Lacking a place to go, many widows look for shelter in “slums,” or people’s settlements, where they and their children are often forced to resort to survival sex and where they face grave risk of exposure to HIV infection.

## Living Homeless and HIV Positive

The government of Kenya stated in its 1997-2001 National Development Plan that the deprivation of women’s property rights is one of the major determinates of poverty in Kenya. According to the UN-HABITAT Commission on Sustainable Development, women head 70 percent of all squatter households in Kenya.<sup>1</sup> These women often must eke out a living in the “slums,” or informal peoples’ settlements. They, along with their children, face the risks of homelessness, poor health, malnutrition, and enjoy few educational and vocational opportunities.

Following a visit to Kenya, the Special Rapporteur on Adequate Housing reported that “[f]emale-headed households in urban slums live in poorer housing than their male-headed counterparts and struggle to provide for their needs.”<sup>2</sup> A Land Policy Coordinator interviewed in Nairobi lamented that: “[W]hen women...go to the slums with the children... [T]he children will not go far in school...The boys become thieves. So it really becomes a vicious cycle within that family.”<sup>3</sup>

### Definitions

#### Widow Eviction

The coercive removal of a widow from the home she shared with her husband by her in-laws / his family upon his death.

#### Widow Inheritance

The union of a widow to a male relative of her deceased spouse, by which she becomes his wife and property along with the land and property from her husband’s death.

#### Widow Cleansing

Forced sex between a widow and a man compensated to have sex with her, which is thought to cleanse the widow of her dead husband’s spirit. It may also refer to a widow having sex with the male relative of her deceased husband.

In the era of HIV/AIDS, widow inheritance and cleansing spread the virus across families. The Kenyan Ministry of Health reports that close to 21 percent of widows and divorced women are living with HIV and AIDS, compared with an overall HIV prevalence rate of about 7 percent.<sup>4</sup> In its 2006 Report to the Committee overseeing the implementation of the Convention Against All Forms of Discrimination Against Women (CEDAW), the Kenyan government recognized the link between widow inheritance and HIV/AIDS: “Wife inheritance is still practiced in Kenya by some communities. This has led to the infringement of women’s rights to choose who to marry and has also consequently led to the spread of HIV/AIDS.”<sup>5</sup>

## Kenyan Laws Entrench the Plight of Widows

### The Constitution

- Kenya’s Constitution prohibits discrimination. In 1997, section 82(1) section was amended to include sex as a prohibited ground for discrimination. Yet, section 82(4) contains a clawback that allows for discrimination under customary law, and in matters of inheritance, marriage, divorce and other personal status law.
- The Constitutional clawback encourages judges to bypass the gender-neutral law on succession and apply sex-discriminatory customary law to inheritance.

### The Law of Succession Act

- The Law of Succession Act governs the intestate distribution of property for all Kenyans, except Muslims, who are exempted under Section 2(3) of the act.
- Sections 35(1) and 36(1) grant widows a life interest to their deceased husbands’ estates. That life interest terminates when widows -- but not widowers -- remarry.
- In practice, widows who are “inherited” by their husbands’ male relatives lose their life interest afforded by the act. The deceased husband’s estate reverts to the male kin who inherits the widow as part and parcel of the deceased’s estate.
- Section 39(1) devolves the property of a person who dies intestate with no surviving spouse or children first to the father, and only if dead, to the mother.
- Because of lack of enforcement, widows often do not benefit from act’s progressive provisions. Many rural communities remain unaware of the act, which grants widows their matrimonial home, and instead apply customary law which leads to the eviction of widows.

### The Registered Land Act

- While the act provides for joint registration of land, in practice land is early exclusively registered in the name of the male head-of-household, granting him “absolute ownership” under sections 27(a) and 28.
- While women provide the vast majority of agricultural labor, including 89% of the subsistence farming labor force and over 70% of labor in cash-crop production, they hold only 1% of registered land titles and only 5-6% of jointly registered titles.

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<sup>1</sup> Marjolein Benschop, UN-HABITAT Commission on Sustainable Development, *Women’s Rights to Land and Property*, para. 3.1 (Apr. 22, 2004).

<sup>2</sup> U.N. Special Rapporteur on Adequate Housing, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living: Mission to Kenya*, para. 45, delivered to the Committee on Economic, Social and Cultural Rights and the Commission on Human Rights, U.N. Doc. E/CN.4/2005/48/Add.2 (Dec. 17, 2004)

<sup>3</sup> Interview with Ruben Mwenda Murugo, Land Policy Coordinator, in Nairobi, Kenya (Apr. 2, 2008).

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<sup>4</sup> Ministry of Health, National AIDS and STI Control Programme, Kenya AIDS Indicator Survey (July 2007), at 17-18.

<sup>5</sup> Republic of Kenya, *Combined fifth and sixth periodic reports of the states parties*, ¶193, U.N. Doc. CEDAW/C/KEN/6 (2006).