

Letting Them Fail

Government Neglect and the Right to Education for Children Affected by AIDS

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I. Summary and Main Recommendations

When Mother died, I really lost all hope. No one bothers to look after you when you have no mother and no father.

—A seventeen-year-old boy orphaned by AIDS in Uganda

Governments in sub-Saharan Africa have failed to address the extraordinary barriers to education faced by children who are orphaned or otherwise affected by HIV/AIDS. An estimated 43 million school-age children do not attend school in the region. HIV/AIDS has caused unprecedented rates of adult mortality, leaving millions of children without parental care to ensure their access to education. While providing limited support to community efforts that support orphans, governments have failed to address the unique disadvantages faced by AIDS-affected children, with the result that these children are less likely than their peers to enroll, attend, or advance in school. This form of *de facto* discrimination places AIDS-affected children—whether orphans or those whose parents are terminally ill—at higher risk of sexual exploitation, unemployment, hazardous labor, and other human rights abuses, as well as at higher risk of HIV infection.

This report is based on detailed interviews with dozens of children affected by HIV/AIDS and their caregivers in three sub-Saharan African countries—Kenya, South Africa, and Uganda. Their testimonies revolve around a common theme: neglect and abuse within families, in communities, and by schools and governments have hindered AIDS-affected children's ability to enroll, remain, or advance in school. Children whose parents were terminally ill dropped out of school to act as caregivers to their parents and younger siblings. The successive death of multiple family members to HIV/AIDS led to the gradual erosion of children's extended-family safety net, resulting in inadequate financial support for schooling. Parental illness or exploitation by subsequent caregivers led children to work long hours to offset lost family income or provide basic sustenance. The stigma associated with HIV led to taunting by peers, and made it difficult for children to communicate with their teachers about illness or death in the family. Children who were themselves HIV-positive experienced prolonged absences from school due to ill-health, poor access to essential medicines, and AIDS-related stigma and discrimination.

In the face of these hardships, the governments of Kenya, South Africa, and Uganda have turned their backs on the education of AIDS-affected children. In each country, it was official government policy not to deny education to any child who could not afford to pay school fees and related expenses. Kenya and Uganda offered free and universal primary education, while South Africa had a system of school-fee waivers for children

who could not afford to pay. However, AIDS-affected children interviewed by Human Rights Watch in all three countries said that headmasters or teachers had prevented them from enrolling in or attending school because they were unable to pay school fees or other costs, or because they were unable to produce documents proving they were eligible for free tuition. While the same could be said for poor children generally, the deprivation of parental care caused by HIV/AIDS—combined with the lack of an effective system of alternate care for all children who needed it—made it harder for AIDS-affected children to obtain these documents or to pay fees in the first place. In addition, few schools provided any support to children caring for sick parents or bereaving their parents' death, and most simply acquiesced when emotionally scarred children dropped out of school or fell behind. In Kenya, many AIDS-affected children had enrolled in “informal schools” established for children who could not afford government schools, but these schools often functioned with a single teacher, virtually no scholastic materials, and a complete lack of government support or oversight.

Ensuring equal access to education for AIDS-affected children does not require giving them “special treatment” in the provision of basic education, or singling them out as the only population at heightened risk of poor school outcomes. Some of the educational barriers associated with HIV/AIDS, such as difficulties paying school fees or having to provide household labor, also afflict children affected by diseases other than HIV/AIDS, as well as children living in extreme poverty or otherwise prone to discrimination or social exclusion. In some cases, AIDS-affected children who are relatively wealthy may enjoy greater access to education than poorer children who are not AIDS-affected. At the same time, statistical surveys of thousands of households in sub-Saharan Africa, illuminated by the testimony in this report, suggest that children who experience the sickness or death of a parent are more likely than their peers to fall behind or drop out of school, and that children affected by HIV/AIDS are at an even greater peril than children orphaned by other causes. By not confronting the special vulnerabilities of children affected by AIDS and extending basic protections to them and their families, governments create the conditions for *de facto* discrimination in access to education and undermine progress towards the goal of education for all.

As HIV/AIDS claims the lives of extended families, it is particularly incumbent on governments to ensure that children affected by AIDS have access to foster parents or an alternate form of parental care. In South Africa, the provision of formal foster care placements and cash grants to needy children (whether AIDS-affected or not) has made some progress towards this goal. However, these benefits were developed before the era of HIV/AIDS, and are reaching only a small fraction of children who need them. Government grants intended for foster children require a court order and a cumbersome bureaucratic process, with the result that few bother to apply and only two percent of

orphans in one region were receiving them. A means-tested “child support” grant reached more children but represented less than a third of the value of the foster child grant. The situation was even more dire in Kenya and Uganda, where there was no foster care or comparable system to ensure that children had access to alternate parental care where needed. Instead, governments relied on overstretched extended families and community and faith-based organizations to fill this role, essentially delegating their human rights obligations to private citizens.

Wherever Human Rights Watch conducted research for this report, governments seemed content to let the poor help the poor, rather than assuming responsibility for children whose families had been decimated by HIV/AIDS. Churches and community groups pooled meager resources to help children apply for school-fee waivers, monitor school attendance, and do home visits to ensure that sickness in the family was not interfering with access to education. They survived on shoestring budgets despite the availability of significant international resources for interventions targeting AIDS-affected children. Worse, community-based organizations encountered numerous obstacles such as sudden suspensions in funding from national and local governments and donors, cumbersome bureaucracy in applying for social benefits on behalf of orphans or other needy children, and lack of monitoring and legal recognition from state authorities. This lack of government oversight further exposed children to abuse by unregulated and ill-intentioned caregivers.

Unequal access to education is far from the only human rights challenge that AIDS-affected children face. The loss of parental care due to HIV forces children to become caregivers or breadwinners at a young age, leading to the risk of hazardous labor and sexual exploitation. When AIDS claims the lives of multiple family members, children may be forced into a succession of sometimes abusive foster care arrangements. AIDS-affected children are at risk from factors both within their household and outside of it. Too often, extended family members either subject AIDS-affected children to harsh labor or sexual abuse, or else discriminate against them in favor of their biological children. The stigma associated with HIV contributes to rejection and isolation by family members, as well as to direct and *de facto* discrimination in access to government services. Property grabbing and other violations of AIDS-affected children’s legal rights are common, and the belief that these children are themselves HIV-positive may exacerbate these violations compared to children affected by other diseases.

In this context, it may legitimately be asked why education should be singled out among the range of human rights issues facing AIDS-affected children. Yet education is not only a basic human right; it is also essential to the enjoyment of a range of other human rights. Keeping children in school can help to safeguard them from abuses such as

hazardous labor, sexual exploitation and discrimination in the workforce. Education increases children's survival and development prospects, contributing to increased employment opportunities, improved family health and nutrition, lower maternal and child mortality, and lower rates of unwanted pregnancy and sexually transmitted diseases. In the context of HIV/AIDS, schools may be the one place where children can obtain accurate information about HIV prevention, as well as life skills that empower them to resist unwanted sex and early marriage. Education can be considered a "social vaccine" against HIV/AIDS: evidence suggests that HIV prevalence is lower among those with higher levels of education.

It is part of the cruel logic of the AIDS epidemic that when parents become sick or die, it reduces their children's access to education, which in turn makes them more vulnerable to HIV. Governments must do far more to break this cycle and ensure that AIDS-affected children enjoy their right to education on an equal basis with all others. To date, governments have failed in this obligation by failing to adapt their education and child protection systems to the unique challenges posed by HIV/AIDS. Far from addressing the specific educational disadvantages of AIDS-affected children, governments are simply letting them fail.

Human Rights Watch recommends that the governments of Kenya, South Africa, and Uganda,¹ as well as their international donors, take the following steps to ensure equal access to education for children affected by AIDS. More detailed recommendations, as well as more immediate steps governments can take, appear at the end of this report.

National, provincial, and local governments should

- **Enact and enforce protections against both direct and *de facto* discrimination in access to education.** Governments should review relevant legislation and judicial decisions to ensure that the right of AIDS-affected children to non-discrimination in access to education and other social benefits is explicitly recognized in national law.
- **Fulfill the right to free primary education.** Governments should ensure that no child is ever denied his or her right to education because of school fees or related costs of education.

¹ As noted below, the recommendations in this report are not intended to single out Kenya, South Africa, and Uganda as the only countries where AIDS-affected children suffer disadvantages in access to education, and other countries are urged to consider these guidelines as well.

- **Provide alternate parental care for all children who need it.** Governments should review their constitutions and child protection legislation to ensure not only that child abuse and neglect are punishable offenses, but that all children deprived of parental care have access to legally recognized foster care or its equivalent.
- **Strengthen the capacity of community-based organizations.** Governments should lift restrictions on the ability of community-based organizations to provide effective care to children.
- **Protect parents and other caregivers from abuse.** Governments should identify and immediately remedy human rights abuses—such as property grabbing, wife inheritance, and unequal access to social benefits, including health care—that impede parents and caregivers’ ability to provide for their children.
- **Review school policies and practices.** School officials should re-evaluate their policies, including registration requirements, to ensure they do not place undue burdens on children deprived of parental care.

International agencies and donors should

- **Advocate for legal and policy reform.** International agencies and donors should encourage governments both publicly and privately to enact basic protections for children affected by AIDS, including the right to alternate parental care to all those who need it and protection from all forms of direct and *de facto* discrimination.
- **Support education for all.** Donor governments should meet existing pledges made at the 2002 International Conference on Financing for Development (the Monterey Consensus) to work with governments to provide long-term technical and financial support to ensure every child is in school by at least 2015.
- **Support programs that strengthen extended families and community-based organizations (CBOs).** Donors should prioritize investment in CBOs among interventions to assist AIDS-affected children in attending and remaining in school, and should identify and eliminate bottlenecks in international funding

for CBOs both at the level of international donors and national and local governments.

- **Develop best practices for schools.** International agencies and donors should identify, pilot, and scale up good practices in creating innovative, supportive school environments for children affected by AIDS.

II. Methods

This report is based on detailed interviews with dozens of children affected by HIV/AIDS and their caregivers in Kenya, South Africa, and Uganda in June 2005, as well as extensive prior and subsequent research.² Interviews were conducted in major cities in each country (Nairobi, Johannesburg, and Kampala), as well as in Nyanza Province, Kenya; Kwa-Zulu Natal Province, South Africa; and Mbale District, Uganda.³ Some children related experiences from other provinces or districts than the one in which they resided during the interview.

Evidence of AIDS-affected children's disadvantage in access to education exists throughout sub-Saharan Africa, and research for this report could have been conducted in any number of countries. Kenya, South Africa and Uganda were chosen because of the existence of rigorous statistical evidence showing the comparative disadvantage faced by orphans in access to education, the presence of a reliable network of nongovernmental organizations that could assist with the research, and/or previous Human Rights Watch research in these countries on the situation of children affected by AIDS. The recommendations in this report are directed to these three governments because that is where research was conducted for this report. Governments of other countries are urged to consider the relevance of the recommendations as well.

For the purposes of this research, Human Rights Watch defined "children affected by AIDS" as individuals under the age of eighteen who (a) are living with HIV/AIDS, (b) have lost one or both parents or guardians to HIV/AIDS, or (c) have one or both parents or guardians suffering chronic illness due to HIV/AIDS. Children who have

² A full listing of Human Rights Watch's reports on children affected by HIV/AIDS is available at the end of this report.

³ A total of sixty-two children and ten caregivers were interviewed for this report, eighteen of them from Kenya, twenty-three from South Africa, and twenty-one from Uganda. An additional forty-nine interviews were conducted with representatives of non-governmental organizations, schools, government ministries, and international agencies.

lost either one or both parents before age eighteen are considered orphans. Children may also be affected by HIV/AIDS in other ways than the ones addressed in this report, for example when they are living in families caring for orphans, living in families with a sick relative who is not a parent or guardian, or even living in communities hard-hit by the AIDS epidemic.⁴

Some children interviewed for this report were eighteen or older when they were interviewed but related experiences they had encountered as children. All interviewees were of either primary or secondary school age when their parents died or became terminally ill, and it is important to note that governments' obligations differ with respect to access to primary and secondary education. The obligation to ensure non-discrimination in access to education, however, applies equally to children (and adults) of all ages.

The testimonies in this report represent a tiny fraction of the overall number of children affected by AIDS in Kenya, South Africa, and Uganda. Human Rights Watch identified children for this report through HIV/AIDS service organizations in areas heavily affected by the AIDS epidemic. We did not interview children not known to service providers, street children, or those in the worst and most exploitative environments and thus unreachable. The bias is such that the testimonies in this report are not representative of the general population of children affected by AIDS, and indeed that the situation of children not interviewed for this report may be worse than what is described in this report. The continued stigma surrounding HIV/AIDS in many communities, combined with the fact that medical records often do not register HIV/AIDS as a cause of death, made it difficult to confirm HIV/AIDS as a cause of sickness or death of the parents of children interviewed for this report. However, most children volunteered that HIV/AIDS had been the cause of their parents' sickness or death, and where they did not, child-care workers known to the children were able to confirm whether HIV/AIDS had been a feature of their situation.

⁴ See, e.g., Joint United Nations Programme on HIV/AIDS (UNAIDS), United Nations Children's Fund (UNICEF) and United States Agency for International Development (USAID), *Children on the Brink 2004: A Joint Report of New Orphan Estimates and a Framework for Action* (July 2004), p. 3. The term "orphans and other vulnerable children" (OVC) is often used in the context of HIV/AIDS' impact on children. "Vulnerable children" has been defined by international agencies as "those children whose survival, well-being, or development is threatened by HIV/AIDS" (*Children on the Brink*, p. 6), "those who are living with HIV/AIDS, those whose parents are sick with HIV/AIDS and, more generally, children who are especially vulnerable because of poverty, discrimination or exclusion, whether as a consequence of HIV/AIDS or not" (UNICEF, *Africa's Orphaned Generations* (November 2003), p. 13), and "groups of children that experience negative outcomes, such as loss of their education, morbidity, and malnutrition, at a higher rate than their peers" (World Bank, "OVC Core Definitions," online: <http://info.worldbank.org/etools/docs/library/108875/toolkit/howknow/definitions.htm> (retrieved August 9, 2005)).

The interviews conducted for this report focused on AIDS-affected children's experiences with the formal school system, including barriers to school enrollment and attendance, the impact of parental sickness or death on formal schooling, and the availability of governmental and non-governmental services to address these issues. Interviews were private and open-ended, with English translation provided by service providers where necessary. In one case, Human Rights Watch conducted a group interview at the request of a service provider. The names of all children have been changed in order to protect their privacy.

Human Rights Watch also interviewed parents, caregivers, service providers, and other experts for this report. We reviewed statistical evidence of AIDS-affected children's enrollment and attendance in school, as well as other secondary materials such as government policy documents and reports prepared by non-governmental organizations. We contacted government officials in Kenya, South Africa, Uganda, and the United States, and were granted interviews in most cases. All documents and interviews referred to in this report are either publicly available or on file at Human Rights Watch.

III. Background

HIV/AIDS and access to education

HIV/AIDS has had a devastating and unprecedented impact on the human rights of children. More than 2.2 million people died of HIV/AIDS in sub-Saharan Africa alone in 2004, the vast majority of them adults of child-bearing age. By the end of 2004, more than 25 million people were living with HIV/AIDS in the region, meaning the worst is yet to come in terms of AIDS-related mortality unless HIV/AIDS treatment becomes vastly more available. Despite increased efforts to prolong the lives of people living with AIDS through antiretroviral treatment, such treatment remains available to just 11 percent of people in sub-Saharan Africa who need it.⁵ The AIDS epidemic is increasingly affecting more women than men, with thirteen women infected for every ten men in sub-Saharan Africa in 2003.⁶ As the primary caregivers to children in many countries, it is also the women—grandmothers, aunts, sisters, neighbors—who shoulder the heaviest childcare burden, and whose burden will only increase as AIDS orphans generations of children.

⁵ UNAIDS and World Health Organization (WHO), *Progress on Global Access to HIV Antiretroviral Therapy: An update on "3 by 5"* (June 2005), p. 13.

⁶ J. Stover, "Projecting the demographic consequences of adult HIV prevalence trends: the Spectrum Projection Package," *Sex Transm Infect*, vol. 80, Suppl. 1 (2004), pp. i14-i18.

Long before AIDS claims the lives of parents, however, HIV-related illnesses impair their ability to generate household income and support and protect their children. HIV/AIDS is also more likely than other diseases to kill both parents in a short time span. At the death of one or both parents, AIDS-affected children join the ranks of millions of orphans who must depend on other family members, foster parents, community-based organizations, and other guardians for their survival and basic needs. HIV/AIDS has contributed to a staggering increase in the number of the world's orphans, a trend seen most dramatically in sub-Saharan Africa. By 2003, the number of orphans in the region stood at 43.4 million, close to one in eight children.⁷ Almost 30 percent of these, or 12.3 million children, were orphaned by HIV/AIDS. In the countries hardest hit by the HIV/AIDS epidemic, such as Botswana and Zimbabwe, children orphaned by AIDS represent over 75 percent of all orphans in the country. These figures do not include the millions of additional children who are affected by AIDS as a result of the chronic illness of one or both parents, a population for whom no reliable data exist. Some children affected by AIDS are HIV-positive themselves, having been infected either as infants through their mother's pregnancy, childbirth, or during breastfeeding, or as adolescents, primarily through sex.

Education is an essential human need, yet even before HIV/AIDS it remained out of reach to millions of children worldwide. In April 2005, the Global Campaign for Education estimated that 60 million girls and 40 million boys of primary-school age were out of school.⁸ While this number is declining, it is not declining quickly enough to achieve the goal of universal primary education by 2015.⁹ For the 2002-2003 school year, The United Nations Educational, Scientific and Cultural Organization (UNESCO) estimated net primary school enrollment in Africa to be 70 percent among boys and 63 percent among girls. These figures dropped significantly at the secondary school level, to 32 percent among boys and 28 percent among girls. In more than half of sub-Saharan African countries, more than one third of children do not complete grade five.¹⁰ Although progress is being made on addressing gender disparities in education in some countries, UNESCO estimates that this gender gap will not be closed by 2015.¹¹

⁷ *Children on the Brink*, pp. 8, 29. These estimates of the number of orphans vary widely and, in this case, are inferred from data on adult mortality, fertility rates, and child survival. See *Children on the Brink*, pp. 33-35.

⁸ Global Campaign for Education, *Missing the Mark: A School Report on Rich Countries' Contribution to Universal Primary Education by 2015* (April 2005), p. 3

⁹ United Nations Millennium Task Force, *UN Millennium Development Goals*, Goal 2 ("Achieve universal primary education"), online: <http://www.un.org/millenniumgoals/> (retrieved August 11, 2005); Education For All (EFA) Global Monitoring Report Team, *Education for All: The Quality Imperative: EFA Global Monitoring Report 2005*, p. 1.

¹⁰ EFA Global Monitoring Team, *The Quality Imperative*, p. 16.

¹¹ United Nations Educational, Scientific and Cultural Organization (UNESCO) Institute for Statistics (UIS), *Global Education Digest 2005: Comparing Education Statistics Across the World* (Montreal: UIS, 2005), p. 55.

It is particularly disturbing that as overall school attendance improves in many countries, inequalities are deepening between AIDS-affected children and their peers. HIV/AIDS exacerbates many of the factors that have long impeded access to education. The first among them is poverty: numerous experts have observed that as parents fall ill and become unable to work, a common coping mechanism is to withdraw children from school either to save the cost of school expenses or use the child for household or other labor.¹² High medical and funeral bills may also make the costs of education prohibitive. Even in countries that guarantee free access to primary education, including Kenya, South Africa, and Uganda, other prohibitive costs such as mandatory uniforms, textbooks, and examinations preclude children from attending school. Indeed, numerous children interviewed for this report identified inability to pay for school fees or related costs as the proximate cause of their withdrawal from primary school, even in countries such as Kenya and Uganda that have an official policy of free primary education.

But HIV/AIDS does more than impoverish families. It also deprives children of the care of their parents and extended family members, exposing them to a range of hardships both within and outside their households. The deep stigma associated with HIV/AIDS, as well as the potential for HIV/AIDS to kill multiple family members in quick succession, increases the potential for abuse against AIDS-affected children compared to those affected by other diseases. In previous reports on Kenya, Togo, Zambia, and India, Human Rights Watch documented numerous abuses against parentless AIDS-affected children including abandonment, hazardous child labor, trafficking, sexual abuse, disinheritance and other violations of legal rights, and discrimination in access to public benefits.¹³ Too often, these abuses occur at the hands of extended family members or foster parents meant to be caring for these children. Governments bear the ultimate responsibility for protecting children from abuse and neglect, however most have failed to establish and enforce effective legal mechanisms to hold caregivers and other abusers accountable. The absence of effective legal oversight of foster parents, including in all three countries visited for this report, contributes to an environment where abuse against AIDS-affected children can flourish with impunity, further threatening children's access to education and other basic needs.

¹² See the discussion in Martha Ainsworth, Kathleen Beegle and Godlike Koda, "The Impact of Adult Mortality and Parental Deaths on Primary Schooling in North-Western Tanzania," *The Journal of Development Studies*, vol. 41, no. 3 (April 2005), pp. 413-415.

¹³ Human Rights Watch, *In the Shadow of Death: HIV/AIDS and Children's Rights in Kenya*, vol. 13, no. 4(A) (June 2001); Human Rights Watch, *Borderline Slavery: Child Trafficking in Togo*, vol. 15, no. 8(A) (April 2003); Human Rights Watch, *Suffering in Silence: The Links Between Human Rights Abuses and HIV Transmission to Girls in Zambia* (New York: Human Rights Watch, 2002); Human Rights Watch, *Future Forsaken: Abuses Against Children Affected by HIV/AIDS in India* (New York: Human Rights Watch, 2004).

Surveys of AIDS-affected children's school performance

Given the many stresses faced by AIDS-affected children, it might be expected that they would report lower school enrollment and attendance rates than their peers in statistical surveys. Comparisons between AIDS-affected children and their peers are difficult to conduct, due in part to the difficulty of determining the cause of parents' death, the difficulty of following representative samples of children over time, the stigma surrounding the epidemic, and difficulties in sampling and controlling for other factors that affect a child's access to education such as poverty and place of residence. However, surveys in highly AIDS-affected areas in numerous countries have found that orphans are less likely to attend school than non-orphans; less likely to be at the appropriate grade given their age; and more likely to have their schooling interrupted. In 2003, based on demographic data from thirty-one countries, UNICEF concluded that "orphans are less likely to be in school and more likely to fall behind and drop out."¹⁴ UNICEF estimated the risk to be greatest for children who had lost both parents: in Kenya, for example, 70 percent of children who had lost both parents were in school, compared to almost 95 percent of children who had at least one living parent.¹⁵ Differential attendance rates between orphans and non-orphans were most pronounced where school enrollment rates were already low, further illustrating the way in which orphan-hood exacerbates existing disadvantage.

Recently, a number of studies conducted in heavily AIDS-affected areas of east and southern Africa have shown that children who experience the sickness and death of one or both parents are more likely over time to drop out or fall behind in school than their peers.¹⁶ According to a recent survey of 11,000 households in South Africa's Kwa-Zulu Natal province, for example, children whose parents died during a three-year period were more likely than their peers—including those living at comparable levels of poverty—to drop out or fall behind in school, and their guardians spent less money on their education on average compared to the household's biological children.¹⁷ A similar, five-year survey of 20,000 children in rural western Kenya found that the death of a parent led to a reduction in school participation rates by an average of 5 percent, regardless of the assets of the household.¹⁸ This study built upon an earlier survey of

¹⁴ UNICEF, *Africa's Orphaned Generations*, p. 27.

¹⁵ *Ibid.*

¹⁶ For recent studies from sub-Saharan Africa that follow a representative sample of children over time, see Takashi Yamano and T.S. Jayne, "Working-age adult mortality and primary school attendance in rural Kenya," *Economic Development and Cultural Change*, vol. 53, no. 3 (2005), pp. 619-54; Anne Case and Cally Ardington, "The impact of parental death on school enrollment and achievement: Longitudinal evidence from South Africa," unpublished manuscript, February 7, 2005; David Evans and John Miguel, "Orphans and Schooling in Africa: A Longitudinal Analysis," unpublished manuscript, March 2005; and Ainsworth, Beegle and Koda, pp. 412-439.

¹⁷ Case and Ardington, "School enrollment in South Africa," pp. 8-15.

¹⁸ Evans and Miguel, "Orphans and Schooling in Africa," pp. 2-3.

orphans in Kenya, which found that both parental sickness and parental death contributed to school drop-out, more so for children living in relatively poor households.¹⁹ A study conducted in Kagera, Tanzania based on interviews with 913 households from 1991-94 found that the death of a mother or both parents adversely affected school enrollment.²⁰

These surveys have many advantages over one-time “cross-sectional” comparisons of orphans and non-orphans. By comparing school enrollment both before and after the death of a parent for the same child, they refute the argument that orphans might have been less likely to enroll in school even if their parents had not died. In addition, by comparing the enrollment rates of children whose parents eventually die with those whose parents do not die, they provide some insight into the comparative impact of parental sickness and parental death on access to education. Finally, when conducted in areas of high HIV prevalence where a majority of deaths are AIDS-related, they indirectly shed light on the impact of HIV/AIDS on school enrollment, even without recording the cause of death in individual cases.

Many explanations exist for AIDS-affected children’s apparent disadvantage in access to education, none of them complete.²¹ There is convincing evidence that the death of a mother, in particular, has a causal effect on school enrollment over and above the effects of poverty. In the Kwa-Zulu Natal survey cited above, children whose mothers died did not immediately become poorer, but were still more likely to fall behind in school.²² Children whose fathers died, by contrast, were more likely to live in poorer households, but their educational attainment was similar to that of non-orphans who were just as poor. In the Kagera survey, enrollment rates for children who lost their fathers (but not their mothers) were similar to those of comparably poor children who had two living parents.²³ Similar patterns have been found in survey data from other parts of sub-Saharan Africa, including Malawi, Niger, Tanzania, and Zambia.²⁴ The authors of the Kwa-Zulu Natal study suggest that the death of a child’s mother deprives that child not only of emotional support, but also of an “education champion”—someone who will defend the interests of that child within the household and ensure that a fair share of whatever resources are available are spent on him or her.

¹⁹ Yamano and Jayne, “School attendance in rural Kenya.”

²⁰ Ainsworth, Beegle and Koda, “Parental Deaths in North-Western Tanzania,” pp. 428, 434.

²¹ See, e.g., *ibid.*, p. 415.

²² Case and Ardington, “School enrollment in South Africa,” pp. 8-9.

²³ Ainsworth, Beegle and Koda, “Parental Deaths in North-Western Tanzania,” pp. 428, 434.

²⁴ Case and Ardington, “School enrollment in South Africa,” pp. 21-22.

Consistent with this analysis, a census of 8399 households in Manicaland, Zimbabwe in 2000 found that primary school completion rates were lowest among children who had lost their mothers, even though these children were found to live in wealthier households than those who had lost their fathers or both parents.²⁵ The authors attributed the difference to lack of support from fathers and stepmothers. Apparently, regardless of the wealth of the household overall, the distribution of wealth within households shifted, to the disadvantage of the orphans. Children whose fathers had died, by contrast, benefited from living in female-headed households despite the fact that these households tended to be poorer; this was in part because women were more likely to secure outside assistance from non-family members. In 2003, UNICEF cited evidence showing that the primary determinant of orphans' access to education was the strength of the familial tie between the orphan and the head of his or her household.²⁶ "The closer the tie, the greater the chance that the child will go to school," the agency concluded. This confirmed the widespread view that it is preferable for orphans to be fostered by extended family members than by non-relatives.

If AIDS-affected children are withdrawn from school to perform household labor or care for sick parents, it might be expected that girls would be the first to be withdrawn before boys. The Kenya study cited above found that young girls were the most likely to fall behind in school on the death of a parent, perhaps because of the perception that educating daughters is less important than educating sons, or because girls are traditionally relied upon to perform household labor in the place of their parents.²⁷ Other studies, including the Kwa-Zulu Natal study cited above, have not found a wider gender gap in education among orphans, although they have found that girls are less likely than boys to be enrolled in school in the first place.²⁸

Ultimately, there is no one explanation for AIDS-affected children's disadvantage in education that could account for the varied circumstances of all of these children. Experts interviewed for this report emphasized that household income alone—

²⁵ Constance Nyamukapa and Simon Gregson, "Extended family's and women's roles in safeguarding orphans' education in AIDS-afflicted rural Zimbabwe," *Social Science & Medicine*, vol. 60 (2005), pp. 2155-2167.

²⁶ UNICEF, *Africa's Orphaned Generations*, p. 28, citing A. Case, C. Paxson, and J. Ableidinger, *Orphans in Africa*, Center for Health and Wellbeing, Research Program in Development Studies, Princeton, New Jersey (January 2003).

²⁷ Evans and Miguel, "Orphans and Schooling in Africa," p. 31. See also, studies cited in Human Rights Watch, *Policy Paralysis: A Call For Action on HIV/AIDS-Related Human Rights Abuses Against Women and Girls in Africa* (New York: Human Rights Watch, 2003), p. 9.

²⁸ Martha Ainsworth and Deon Filmer, "Poverty, AIDS and Children's Schooling: A Targeting Dilemma," World Bank Policy Research Working Paper 2885 (September 2002), p. 28. Case and Ardington's Kwa-Zulu Natal study, discussed above, did not find a gender gap in school drop-out among orphans but found that girls were less likely to be in school in the first place.

important as it was—was not sufficient to ensure an orphan’s right to education. These children also needed someone who was willing to fight for them in the community and within the extended family. “These orphans have nobody, no one even to ensure their basic essentials,” said Anne Wanjiru of Grassroots Organizations Operating Together in Sisterhood (GROOTS)-Kenya, an organization providing care and support to female-headed households and children affected by AIDS. “When a child is poor and has a mother, she will at least go from church to church asking for food. But for the orphan, who will look for funds?”²⁹ Sylvia Ofumbi Nsiyona, a social support officer with The AIDS Service Organization (TASO) in Uganda said, “If kids with parents are dropping out of school, it’s worse for orphans. Even the ones with caregivers, they put their own children first.”³⁰ School authorities and NGOs consistently observed that children affected by AIDS constituted the overwhelming majority of students at risk of school drop-out. “In the Nairobi slums, most of the kids who don’t go to school are orphans,” said GROOTS-Kenya’s Wanjiru. “I was brought up in the slums. I see them, and I know them.”

Human rights standards

Education is a fundamental human right enshrined in numerous international human rights instruments, including the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1976), the Convention on the Rights of the Child (1989), and the Convention on the Elimination of All Forms of Discrimination against Women (1979).³¹ These instruments specify that primary education must be “compulsory and available free to all.” Secondary education, including vocational education, must be “available and accessible to every child” with the progressive introduction of free secondary education.³² Unique among the rights enshrined in the Covenant on Economic, Social and Cultural Rights, the right to primary education is subject to a special provision that obligates states “to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge

²⁹ Human Rights Watch interview with Anne Wanjiru, Grassroots Organizations Operating Together in Sisterhood (GROOTS)-Kenya, June 13, 2005.

³⁰ Human Rights Watch interview with Sylvia Ofumbi Nsiyona, social support officer (children), TASO-Mulago, Kampala, June 17, 2005.

³¹ Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), art. 26; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXXI), 993 U.N.T.S. 3 (entered into force January 2, 1976), art. 13; Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (entered into force September 2, 1990), art. 28; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted December 18, 1979, G.A. Res. 34/180, U.N. Doc. A/34/46 (entered into force September 3, 1981), art. 10.

³² Convention on the Rights of the Child, art. 28(1); ICESCR, art. 13(2); see UDHR, art. 26(1).

for all.”³³ The Convention on the Rights of the Child specifies that states must “take measures to encourage regular attendance and the reduction of [school] drop-out rates.”³⁴

The right to education is also recognized in the African Charter on the Rights and Welfare of the Child (1990), which calls on states to “provide free and compulsory basic education” and to “encourage the development of secondary education in its different forms and to progressively make it free and accessible to all.”³⁵ The African Charter specifically calls for “measures to encourage regular attendance at schools and the reduction of drop-out rates.” Its education provisions contain a broad guarantee of non-discrimination for all disadvantaged groups, calling on states to “take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.”

Because states have different levels of resources, international law does not mandate exactly what kind of education must be provided, beyond certain minimum standards. Accordingly, the right to education is considered a right of “progressive realization.” by becoming party to the international agreements, a state agrees “to take steps . . . to the maximum of its available resources” to the full realization of the right to education.³⁶

Although the right to education is a right of progressive realization, the prohibition on discrimination is not. The Committee on Economic, Social and Cultural Rights, the expert body responsible for monitoring compliance with the International Covenant on Economic, Social and Cultural Rights, has stated: “The prohibition against discrimination enshrined in article 2(2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.”³⁷ Thus, regardless of its resources, the state must provide education “on the basis of equal opportunity,” “without discrimination of any kind irrespective of the child’s race, colour, sex, language, religion, political or other opinion, national ethnic

³³ ICESCR, art. 14.

³⁴ Convention on the Rights of the Child, art. 28(1)(e).

³⁵ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (entered into force November 29, 1999), art. 11(3).

³⁶ ICESCR, art. 2(1); see also, Convention on the Rights of the Child, art. 28.

³⁷ Committee on Economic, Social and Cultural Rights, *The right to education (Art. 13)*, E/C.12/1999/10 (August 12, 1999), para. 31.

or social origin, property, disability, birth, or other status.”³⁸ “Other status,” as explained below, includes children’s or their parents’ HIV status.

Discrimination in access to education need not be overt or intentional in order to breach rights standards. *De facto* discrimination, or discrimination caused by underlying factors rather than intent or law, is prohibited under international law. The Committee on Economic, Social and Cultural Rights has clarified that education should be accessible to “especially the most vulnerable groups, *in law and in fact*,” and that “States parties must closely monitor education—including all relevant policies, institutions, programmes, spending patterns and other practices—so as to identify and take measures to redress any *de facto* discrimination.”³⁹ Merely eliminating formal barriers to education without taking steps to address underlying social conditions that impede educational access may be insufficient to ensure equality for vulnerable populations.

Historically, examples of *de facto* discrimination in access to education have included lower school enrollment and completion rates among girls, poor access to education for children with disabilities, or consistently lower quality of education among ethnic minorities. In many cases, the underlying factors that contribute to *de facto* discrimination may themselves be human rights abuses, as when unremedied violence or discrimination against girls, including sexual violence, contributes to diminished school enrollment or completion rates. *De facto* discrimination can be accompanied by formal discrimination, as when children affected by AIDS are both barred from school due to stigma and vulnerable to school drop-out due to loss of parental care and other hardships.

Interpretations of the Convention on the Rights of the Child show that children affected by AIDS constitute a protected class for the purpose of the guarantee of non-discrimination in international law. As noted above, the Convention on the Rights of the Child specifically prohibits discrimination on the basis of “the child’s or her or his parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth *or other status*” (emphasis added). The Committee on the Rights of the Child, the expert body that monitors the Convention on the Rights of the Child, interprets “other status” to include HIV status of the child or his or her parents.⁴⁰ In its General Comment on HIV/AIDS and the Rights of the Child, the Committee specifically recognizes the particular disadvantage

³⁸ Convention on the Rights of the Child, arts. 28(1), 2(1); ICESCR, arts. 2, 13. See also, CEDAW, art. 10.

³⁹ Committee on Economic, Social and Cultural Rights, *The right to education*, paras. 6, 37 [emphasis added].

⁴⁰ Committee on the Rights of the Child, *General Comment 3: HIV/AIDS and the rights of the child* CRC/GC/2003/1 (January 13-31, 2003), para. 7.

faced by AIDS-affected children in access to primary education and calls on governments to address this disadvantage:

[T]he Committee wants to remind the States parties of their obligation to ensure that primary education is available to all children, whether infected, orphaned or otherwise affected by HIV/AIDS. In many communities where HIV has spread widely, children from affected families, in particular girls, are facing serious difficulties staying in school States parties must make adequate provision to ensure children affected by HIV/AIDS can stay in school and [to] ensure the qualified replacement of sick teachers so that children's regular attendance at schools is not affected, and that the right to education (Article 28) of all children living within these communities is fully protected.⁴¹

This interpretation of the Convention on the Rights of the Child ought to be read alongside the Convention's provisions on children deprived of parental care. Article 20 of the Convention 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." This provision captures the situation of many children affected by HIV/AIDS and should compel governments to ensure alternative means of support for such children—both as a right in itself and as a means of safeguarding other rights, including the right to education. Finding ways to support and monitor extended families, foster parents, community-based organizations, and other alternative means of support is one of the key steps governments can and should take to ensure AIDS-affected children's equal access to education.

Education is not only a basic human right; it is also a pre-condition for the enjoyment of other human rights, including civil and political rights. The Committee on Economic, Social and Cultural Rights has stated:

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and

⁴¹ *Ibid.*, para 15.

hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth.⁴²

In the context of HIV/AIDS, education has been recognized as a safeguard against abuse for AIDS-affected children, as a way of mitigating the impact of HIV/AIDS on families and communities, and even as a “social vaccine” against HIV infection. Ensuring equal access to education for AIDS-affected children is thus essential both to fulfilling governments’ human rights obligations and to combating the HIV/AIDS pandemic.

Note on Kenya, South Africa, and Uganda

Some background about the AIDS epidemic and the education system in Kenya, South Africa, and Uganda will assist readers in understanding the testimony in this report. In **Kenya**, HIV/AIDS was not declared a national emergency until 2001, by which time the epidemic had claimed an estimated 140,000 lives.⁴³ At the end of 2003, Kenya was home to some 650,000 children orphaned by AIDS, representing 37 percent of the country’s orphans.⁴⁴ Unlike many other sub-Saharan African countries, the number of orphans in rural areas in Kenya is 20 percent higher than in urban areas.⁴⁵ Kenya abolished school fees for primary education in 2003, a move that is often cited as having increased educational opportunities for orphans and other vulnerable children. However, primary schools still levy fees for books, uniforms, examinations and other services, and numerous children interviewed for this report said this kept them out of school. Kenya announced in June 2005 a system of cash grants to families caring for orphans, however, as of this writing, it is too early to assess the impact of this policy.⁴⁶ The government also provides some bursaries for primary and secondary school through local government funds, but these programs have limited reach and are prone to corruption. Kenya has ratified international treaties guaranteeing the right to education and has included a guarantee of free primary education in its draft constitution.

HIV/AIDS has claimed more lives in **South Africa** than in any other country in the world. An estimated 1.1 million South African children have been orphaned by AIDS;

⁴² Committee on Economic, Social and Cultural Rights, *The right to education*, para. 1.

⁴³ UNAIDS, *2004 Report on the Global AIDS Epidemic*, p. 193.

⁴⁴ *Children on the Brink 2004*, p. 26.

⁴⁵ UNICEF, *Africa’s Orphaned Generations*, p. 12.

⁴⁶ Lucas Barasa, “State Sets Up Scheme for Orphans’ Upkeep,” *The Nation* (Nairobi), June 17, 2005.

this figure represents 48 percent of South Africa's orphans.⁴⁷ Slightly more orphans live in rural areas than urban areas.⁴⁸ Despite a constitutional guarantee of free education until age seventeen and ratification of international treaties guaranteeing the right to education, South Africa still allows schools to levy fees, and many do. However, schools are required to grant waivers to children who cannot afford to pay, and some children interviewed for this report said they were attending primary school for free. The requirement that schools grant waivers is not always observed, however, and many schools, citing the need for the revenue generated by school fees, refuse to waive fees even for orphans. South Africa also provides two types of cash grants to the parents or guardians of needy children. The parents or guardians of all poor children are eligible for a child support grant of R160/month (U.S.\$25.00) per child under fourteen, while foster families are eligible for a foster child grant of R500/month (U.S.\$78.00) for each child "in need of care," a term designed for children who have been abused or neglected but routinely applied to orphans as a whole.

Uganda has been widely praised for its successful efforts to reduce HIV prevalence since the late 1980s. However, there remains a grave orphan crisis as a result of high death rates early in the epidemic and continuing mortality today. The country was home to an estimated 940,000 children orphaned by AIDS in 2003, representing 48 percent of the country's orphans.⁴⁹ Unlike Kenya, there are about 30 percent more orphans in Uganda's urban areas than rural areas.⁵⁰ In addition to the large number of children orphaned by AIDS, Uganda is also home to large numbers of children orphaned by war and civil conflict. Uganda introduced a policy of universal primary education (UPE) in 1997, and since then the percentage of children who have never attended school has dropped from 19 percent to 6 percent for boys and 36 percent to 22 percent for girls.⁵¹ The so-called "UPE bulge" of 1997 led to a shortage of qualified teachers, strained infrastructure, and a host of other quality issues in the education sector; many parents interviewed for this report said they chose private schools over free "UPE schools" despite living in deep poverty. They also said UPE schools were not free in any case; like Kenyan schools, they often charged for books, uniforms, and other necessities. The Ugandan constitution calls for the progressive realization of the right to education, and Uganda has ratified international treaties recognizing this right. According to an education official interviewed by Human Rights Watch, the Ugandan government does

⁴⁷ UNAIDS, *2004 Report on the Global AIDS Epidemic*, p. 193; *Children on the Brink 2004*, p. 28.

⁴⁸ UNICEF, *Africa's Orphaned Generations*, p. 12.

⁴⁹ UNAIDS, *2004 Report on the Global AIDS Epidemic*, p. 193; *Children on the Brink 2004*, p. 28.

⁵⁰ UNICEF, *Africa's Orphaned Generations*, p. 12.

⁵¹ Angela Wakhweya, Crecentia Kateregga, Joseph Konde-Lule, Rebecca Mukyala, Lora Sabin, Megan Williams, and H. Kristian Heggenhougen, *Situation Analysis of Orphans in Uganda* (Ministry of Gender, Labour and Social Development and Uganda AIDS Commission, November 2002), p. 122.

not provide cash subsidies to orphans or other vulnerable children, but instead supports community-based organizations in providing assistance to these children.

IV. Findings from Kenya, South Africa, and Uganda

In interviews with children and caregivers in Kenya, South Africa, and Uganda, Human Rights Watch found that governments had repeatedly failed to address AIDS-affected children's extraordinary risk of school drop-out and poor performance. Governments failed to intervene when parents fell ill and children left school to act as caregivers or breadwinners in the family; when parents died and children found themselves deprived of parental care and often completely on their own; and when children entered the care of extended family members, foster parents, and institutions, many of whom subjected them to abuse, neglect, and discrimination. Often children experienced this cycle of sickness and death numerous times, as mothers, fathers, siblings, aunts, uncles, and other family members successively succumbed to HIV/AIDS. When extended families proved unable to support orphaned children, community-based organizations often provided critical educational support, including paying for school fees, applying for government benefits, and advocating for their right to education before school authorities. However, governments often failed to support or even recognize these local efforts, leaving the burden of safeguarding children's right to education largely to already poor and overburdened private citizens.

Children as caregivers in the home

In every country visited, Human Rights Watch documented numerous cases of children dropping out or falling behind in school when their parent or guardian became ill and unable to care for them due to HIV/AIDS. In Uganda, Martin P. said he lost his father to HIV/AIDS when he was twelve and his mother four years later. When his mother was sick, he and his sister took turns leaving school to care for her:

When Mother was sick, it was us who were looking after her. . . . I left school for one term and then went back. Then my sister left school for one term, and we traded back and forth like that. But even when I was in school, it was not good, because my mind was back with my mother, and it was not easy to concentrate on my studies.⁵²

⁵² Human Rights Watch interview, Mbale, Uganda, June 27, 2005.

Martin P.'s story is not unique. Moyo L., from Johannesburg, South Africa, said that when he was seventeen, his mother withdrew him from school because she was too sick to run the household. "Things started getting harder because she stopped going to work for weeks at a time," he said. "She started going to and from the hospital every day until she died." Moyo L. described the impact this had on his school performance:

I didn't have time to study. I would go home from school and find nothing in the house—no love, nothing. I had to do a job my parents should have been doing. I was a teenager, I should have been going out with my friends, playing soccer, dating. I tried to make it work, but I couldn't. When I got my report card last December, I'd failed.⁵³

A persistent theme in children's testimonies was the almost complete absence of government support as children struggled with the terminal illness of their parents. In Kenya, Philip G., whose mother died of AIDS when he was thirteen, said that his mother's sickness both forced him to miss school and distracted him in class. "When my mother had the disease, it really affected her," he said. "I really took care of her—anytime she needed anything, I was around. Sometimes in school, I could not even hear what the teacher was saying, because I felt the pain when I remembered my mother was sick."⁵⁴

Children who were withdrawn from school to care for sick parents described performing long hours of difficult household labor. "I would care for Mother and Father when they were sick," said Nora P., from eastern Uganda, whose parents died when she was sixteen. "I would prepare the meals for the family, I would help with the digging to get food, and I would do the washing."⁵⁵ Asked how this affected her school performance, Nora P. said, "Once I got to secondary school, it was sporadic. I could do a few terms and then drop out and then go back." In Kenya, Peter O. said, "I used to take care of my mother and father when they were sick. They needed water, porridge, and other things, so I used to stay close to them in case they needed anything."⁵⁶ Peter O. dropped out of primary school in Standard Five⁵⁷ at age ten, and at age seventeen had not returned.

⁵³ Human Rights Watch interview, Johannesburg, South Africa, June 11, 2005.

⁵⁴ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

⁵⁵ Human Rights Watch interview, Mbale, Uganda, June 27, 2005.

⁵⁶ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

⁵⁷ The Kenyan school system consists of an eight-year primary course (Standards One through Eight), followed by a four-year secondary course (Forms One through Four) and a four-year university course.

In some cases documented by Human Rights Watch, parents and guardians faced ostracization by extended family members for being HIV-positive, leaving the children to run the household completely by themselves. Sihle S., from Johannesburg, South Africa, said when she was thirteen, her mother died and her sister became her primary caretaker. When her sister was later diagnosed with HIV, their aunts and uncles rejected them:

They didn't want to stay close to my sister, because they thought they'd also get infected [with HIV]. They kept a distance from her. They would say, "Your sister is HIV-positive, we don't want to get close to her." They'd go around the whole hostel and warn people she might infect them. I knew better, because we learned in school how HIV is really transmitted. They were so cruel about it. I think they knew they wouldn't get infected, it's just that they were so cruel.⁵⁸

Sihle S. said she had to take care of her sister and her sister's baby by herself. Eventually, she failed a grade:

It was very hard, because I had to take care of my sister and her baby. Sometimes I would leave school for a whole week to take care of them. The baby was only six months old, so I had to wash the nappies, clean the house, everything. . . . I got my report card last December, and it said "Fail." I was angry. I asked myself, why do I have to fail?

Children left on their own

For many children interviewed by Human Rights Watch, the death of a parent to HIV/AIDS left them without any effective support for their education, least of all from their governments. Attendance in school often declined as children found themselves without their primary source of support, encouragement, and financial assistance. "My mom used to do many things to keep me in school," said Henry M., sixteen, a child orphaned by AIDS in Johannesburg, South Africa. "She used to try hard. She'd sell clothing in the street, just like a small business, and pay our school fees with that money. . . . She'd sell things for other people—belts, trousers, gloves in the winter—and keep some of the money. When she died, that's when I started suffering."⁵⁹

⁵⁸ Human Rights Watch interview, Johannesburg, South Africa, June 4, 2005.

⁵⁹ Human Rights Watch interview, Johannesburg, South Africa, June 6, 2005.

For many, the death of a parent meant being chased from school because of an inability to pay school fees or other mandatory expenses, even in countries with policies of free primary education. “We were going to school, but the teacher said to stop coming to school if we didn’t have money for exams,” said Marian A., eight, an orphan in Kenya who is also living with HIV/AIDS. “So today, I didn’t go to school. I woke up, then I took my drugs and went to look for firewood.”⁶⁰ Pammy N., also from Kenya, said her mother could not afford to pay for secondary school fees since the death of her father to HIV/AIDS in 2002, when Pammy N. was sixteen. “[The principal] agreed to allow us in, because my mother talked to her,” she said. “But because we couldn’t pay fees, they retained our diploma until we paid them.”⁶¹ Anne Wanjiru, an employee of GROOTS-Kenya who was caring for numerous orphans in addition to her own children, said that the cost of education remained a major barrier to primary school access in Kenya. “My kids stay out many days when I don’t have money,” she said. “I’m still in debt to the school. I have one who I haven’t paid a single cent. He was chased on Monday, and I begged to let them stay until June.”⁶²

But losing a parent meant not only the loss of family income, but also the loss of an advocate, someone to defend children’s legal rights. “After Dad died, we lost hope, there was often no food,” said Martin P., from Uganda, who lost his father when he was twelve. “But mother tried very hard to keep us in school. We didn’t lose our home, because mother fought the uncles.”⁶³ Martin P. dropped out of secondary school when his mother died four years later, but at age seventeen had re-enrolled in Senior 2.⁶⁴

Sihle S., from South Africa, said that before her mother died, she took great pains to pay for Sihle S.’s secondary school through donations and government grants. Even when she ran out of money, Sihle S. said, her mother would ask the principal for a waiver of school fees.

When my mother was sick, she didn’t work. She got a grant of 500 rands every month [U.S.\$2.60/day], so she used that money to maintain us. She spent the money on my school uniform, on school fees, and on

⁶⁰ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

⁶¹ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

⁶² Human Rights Watch interview with Anne Wanjiru, GROOTS-Kenya, Nairobi, June 14, 2005.

⁶³ Human Rights Watch interview, Mbale, Uganda, June 27, 2005. In many parts of sub-Saharan Africa, including Uganda, widows and their children are often stripped of their homes and property by their in-laws under discriminatory property and inheritance laws and customary practices.

⁶⁴ The Ugandan school system consists of seven years of primary school (Primary 1-7), four years of ‘O levels’ (Senior 1-4), and two years of ‘A levels’ (Senior 5-6), and university.

something to eat. It wasn't enough, but there was nothing we could do. If there was no money for food, we didn't eat. If there was no money for school fees, my mother would go to the principal and ask him to let me stay in school.⁶⁵

The impact of parental death on children's access to education was not always permanent. In many cases, children dropped out of school temporarily only to return later; in others, the death of a parent concluded a period of instability caused by the parent's sickness, particularly when extended family members offered to support the child's education. Too often, however, orphans were abandoned by their extended family members and left to support their own education. "My aunts who were with me when my mother was alive, they all turned away from us," said Philip G. from Kenya, who was thirteen when his mother died. "Even sometimes when we ask for shoes, they say they don't have any money. So we wonder, what kind of aunt is that?"⁶⁶

Moyo L., from Johannesburg, said that when his mother finally succumbed to AIDS when he was seventeen, his relatives turned away from him. "After my mother died, it was so bad," he said. "People started looking at us in another way, even our relatives. I hated it, I just wanted to be a normal person."⁶⁷ Eventually an uncle gave Moyo L. a construction job so that he could earn money to attend a technical college. "I failed there, too," he said. "I was too busy trying to make money." At the age of twenty-one, he was still trying to complete grade eleven.

Emotional burdens and AIDS-related stigma

Interwoven with all of the experiences described by orphaned children was the emotional hardship of losing a parent to HIV/AIDS. Some children interviewed by Human Rights Watch found ways to express the psychological difficulties they experienced on the death of their parents, and the ways in which these difficulties affected their school performance. Joseph M., fourteen years old and from Johannesburg, South Africa, said:

When my mother died, I started disrespecting my granny, and I didn't want to listen to her. I made funny faces and started hiding in the cupboards. . . . I'm not sure why I was doing it. When I felt like crying,

⁶⁵ Human Rights Watch interview, Johannesburg, South Africa, June 4, 2005.

⁶⁶ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

⁶⁷ Human Rights Watch interview, Johannesburg, South Africa, June 11, 2005.

it was easier to act silly. . . . Sometimes in class I would sit alone, go to the back of the class, and cry.⁶⁸

For children who lost multiple family members to HIV/AIDS in succession, school may have been particularly difficult. “After [my father] died, I lost other people in my family—my uncle, my grandfather, my granny, my auntie, and my sister,” said twelve-year-old Dipo L. “Sometimes you don’t know how to work. You remember your parents in class. I don’t tell the teacher, and the teacher doesn’t say anything.”⁶⁹

Children orphaned by AIDS said that on top of the emotional difficulty of losing a parent, they were sometimes teased by classmates for being orphans or for “having AIDS.” Charles W., who was orphaned at age eight and had his school fees subsidized by The AIDS Service Organization (TASO) in Uganda, said that his classmates and teachers nicknamed him “TASO Child” and treated him differently from other children:

My classmates, they knew my parents had died, they caused problems for me. I was segregated. I was known as ‘The son of AIDS,’ and teachers and students would call me ‘TASO Child.’ . . . When we were sharing desks, the kids wouldn’t want to sit next to me. . . . It would be terribly hurtful as a child to be called ‘TASO Child.’ It was only name-calling, no physical abuse, but still.⁷⁰

Charles W. went on to say, however, that things had improved for him since then, in part because his secondary school had an AIDS club that helped to break the stigma around the disease. “When I reached S [Senior]-1 it changed,” he said. “There was a club for AIDS, and there were activities at the school for learning more about the disease. . . . Also by that time, many of the students at the school were somehow affected by AIDS.”

Schools ill-equipped

Faced with an increasing burden of children affected by AIDS, many schools in sub-Saharan Africa are taking modest steps such as establishing “AIDS Clubs,” introducing HIV-prevention education, and providing occasional counseling to orphans and other vulnerable children. However, in most cases documented by Human Rights Watch,

⁶⁸ Human Rights Watch interview, Johannesburg, South Africa, June 8, 2005.

⁶⁹ Human Rights Watch interview, Johannesburg, South Africa, June 6, 2005.

⁷⁰ Human Rights Watch interview, Mbale, Uganda, June 27, 2005.

schools proved ill-equipped to address the complex hardships faced by AIDS-affected children, other than to acquiesce to their need to miss school. “I told my teacher my mom was sick, and he said it was fine for me to miss school,” said twelve-year-old Diplo L. from Johannesburg. “So I stopped going to school and helped her. I had to stay behind a year.”⁷¹ In Nairobi, Kenya, Florence N. said that her teacher did nothing when she explained that she needed to work to support her mother who was living with HIV:

I'd wake up in the morning and we wouldn't have anything to eat. Our clothes would be dirty, and we didn't have any soap to wash them. So I'd do casual work, maybe do some washing for someone and get 20 shillings [U.S.\$0.25] to buy soap, or maybe some food. I'd stay home from school about two days a week. When I explained to the teachers why I wasn't coming, they said nothing.⁷²

In many cases, schools showed needless inflexibility in the face of AIDS-affected children's inability to meet certain administrative requirements. Alfred D., sixteen and from Pretoria, told Human Rights Watch that his mother had tried to switch him to a school closer to home so that he could care for her more easily when she fell sick; however, the new school refused him entry because he could not produce a birth certificate. “I stayed away [from school] for a year,” he said. “I was just at home helping my mom. . . . When they started asking for the birth certificate, my mother said that until she could sort out the registration, I should stop going.”⁷³ Alfred D.'s mother died before she could obtain the proper papers. “She died before she could get a birth certificate for me,” he said. “She tried to get me in [without it], but the teachers wouldn't accept that.”

A frequent response of schools to the needs of orphans was to provide free meals to encourage orphans to attend school. But principals readily acknowledged that these measures were not enough, and that AIDS-affected children continued to drop out in large numbers. “They disappear,” said one principal in Johannesburg. “They become truant, because there's no one looking after them.”⁷⁴ Moreover, the government did not support feeding schemes in secondary schools, and secondary school teachers observed that AIDS-affected children frequently fell behind in school because of hunger. At one Johannesburg school, counselor Nelly Hleza wrote to local businesses asking for food

⁷¹ Human Rights Watch interview, Johannesburg, South Africa, June 6, 2005.

⁷² Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

⁷³ Human Rights Watch interview, Pretoria, South Africa, June 10, 2005.

⁷⁴ Human Rights Watch interview with Hilda Thema, principal, Vezokuhle Primary School, Johannesburg, South Africa, June 9, 2005.

donations because her students were hungry in class. “Most of our learners are orphans, others their parents are not working . . . and others are from the upbringing of elderly people who cannot provide for them,” the letter reads.⁷⁵ Hleza explained that it was very common among her students for AIDS-affected children to be cared for by their grandparents. “A lot of them drop out,” she said.⁷⁶

Abuse and discrimination within extended and foster families

Following the death of one or both parents to HIV/AIDS, children interviewed by Human Rights Watch entered a variety of child-care arrangements, many of them grossly unsupportive of their education. Most orphans were taken in by relatives or close family friends, many of whom were already caring for their own biological children. Some entered formal or informal foster care arrangements—of the three countries visited by Human Rights Watch, only South Africa had a formal foster care system, but unregulated foster care arrangements nevertheless existed in all three countries. A few children were living in child-headed households with no adult supervision.

Orphans’ access to education was often impeded by overt and unpunished abuse and neglect by their caregivers. Seventeen-year-old Sipo M., from South Africa, said that after her mother died in 2003, she moved from Eastern Cape to Johannesburg to live with an aunt. But her aunt refused to register her for school or pay for her school fees, instead subjecting her to difficult household labor and physical abuse. “She was only looking for a helper,” Sipo M. told Human Rights Watch. “She sent money to my relatives in Eastern Cape so I could come [to Johannesburg], but when I arrived, everything changed. She didn’t want to pay school fees for me.”⁷⁷ Sipo M. registered herself in school, but her household responsibilities interfered with her studies.

I didn’t have time to sit and study at home, because I was always working. I wasn’t even allowed to turn on the light late at night. I didn’t have time to concentrate on my studies. I had to wake up at 5:00 a.m. for school, and it was an hour’s walk. I went to a different school from my aunt’s kids. They were already in school when I arrived, so I had to register myself. My aunt just didn’t want me going to school.

⁷⁵ Letter from Nelly Hleza, school counselor and head of social sciences, Emadwaleni High School to concerned individuals, June 8, 2005.

⁷⁶ Human Rights Watch interview with Nelly Hleza, school counselor and head of social sciences, Emadwaleni High School, Johannesburg, South Africa, June 9, 2005.

⁷⁷ Human Rights Watch interview, Johannesburg, South Africa, June 4, 2005.

At times, Sipo M. said, her aunt physically abused her for not performing her chores properly:

She wasn't really a mother to me. She used to love her own children the right way, but she used to beat me. There were four others. She used a *sjambok*⁷⁸ to beat me. Sometimes when I was washing the dishes and a plate fell, she beat me. When I was late putting the washing up on the line, she beat me.

When Human Rights Watch met Sipo M., she had moved in with Elizabeth Rapuleng, a former school teacher who ran a drop-in center for AIDS-affected children in Soweto. “[She] was going to school, but she wasn’t getting results,” Rapuleng said. “She’d go irregularly. It was so far away, and her aunt didn’t give her money for transportation or school fees. We had to write a letter to the principal to let her continue going to school.”⁷⁹ Rapuleng noted that because Sipo M.’s aunt hadn’t paid any school fees, the school was planning to expel her.

In 2004, Sipo M. failed Grade Ten.⁸⁰ That same year, Rapuleng said, she tried to commit suicide. According to Rapuleng:

She just vanished. She didn’t show up [at the drop-in center] for her lunchbox one day, and we couldn’t find her at school or at home. We had to contact the social workers in town. She was trying to kill herself, because life was so tough. We had to report it to the police. Her aunt couldn’t have cared less.

Rapuleng proceeded to take Sipo M. into her home, and as of June 2005 she was back in school. She said school was easier now that she was no longer living with her aunt. “I used to compare the way I was living with my cousins,” she said. “I always had to ask

⁷⁸ A *sjambok* (pronounced shambok) is a type of cane, used by police in some countries as a method of crowd control.

⁷⁹ Human Rights Watch interview with Elizabeth Rapuleng, managing director, Sizanani Home-Based Care, Johannesburg, South Africa, June 4, 2005.

⁸⁰ South Africa’s school system consists of three years of junior primary school (Grade A, Grade B, and Standard Three), three years of senior primary school (Standards Four through Six), three years of junior secondary school (Standards Seven through Nine) and three years of senior secondary school (Standards Ten through Twelve). The terms ‘Standard’ and ‘Grade’ are often used interchangeably in South Africa, reflecting changes to the education system in the 1990s.

for things. When they stayed behind after school for extra help, I had to rush home to do the housework.”

Such cases of abuse and neglect by orphans’ own extended families were disturbingly common among children interviewed by Human Rights Watch. Sixteen-year-old Alfred D., from Pretoria, South Africa, said that he resorted to living in the streets following his mother’s death:

When [my mother] died, I stayed in the house where we lived, but I depended on my relatives for food. They took too long to bring the food, so I left the house and went to the park. I spent two weeks there before coming to the shelter. It was hard. I had to wait for a long time before I could get any food. I got it by begging. I was alone.⁸¹

Asked whether he could have turned to his relatives for support, he said, “They didn’t even know I was living in the park for two weeks. They told me they had their own kids, so they couldn’t cater for me. They didn’t give me any advice on what to do.”

In cases where orphans moved in with caregivers who had their own biological children, Human Rights Watch consistently found among the small sample of children we interviewed that the orphans were less likely to be in school than the biological children. Such differential treatment is reflected in population-based surveys: in a three-year longitudinal survey of 11,000 households in Kwa-Zulu Natal, South Africa, for example, children who lost their parents ended up having less money spent on their education on average than non-orphans living in similarly situated households.⁸² In interviews with both children and caregivers, Human Rights Watch found that some caregivers would have liked to provide education for all children in the home but were simply overstretched, while others practiced overt favoritism. Sixteen-year-old Henry M., from Johannesburg, said that he and his brother, Jacob, aged twelve, moved in with an aunt after losing their mother to HIV/AIDS in 2003. He contrasted the treatment he and Jacob received from their aunt with the way she treated her own children:

My aunt treats us badly when we do things wrong. It’s like James and I are always the ones making the problem. I might come home late after visiting friends, so she’ll shout at me. It’s not the same with her own

⁸¹ Human Rights Watch interview, Johannesburg, South Africa, June 10, 2005.

⁸² Case and Ardington, “School enrollment in South Africa,” pp. 14-15, 19.

son. She treats her child better than she treats us. She buys him clothes and gives him spending money. We don't spend anything.⁸³

Despite this mistreatment, Henry said that he and his brother were still able to attend school. But his aunt got their school fees from a charity while paying for her biological children out of her pocket, making him feel discriminated against:

The social workers at the center pay our school fees, but my aunt pays for her son's school fees. We get our uniforms at the center, and all of our books. For my cousin, my aunt buys his uniform. It makes me feel bad. It makes me remember my mother and how she never used to treat us badly. She would treat all children the same way.

Joy T., from Mbale, Uganda, said that after she lost her mother to HIV/AIDS at the age of sixteen, she was sent to live with her biological father, whom she had never met and who had long since remarried. She also had to rely on donations to attend school:

I was sent by myself as the only child of my first dad, to live with my dad and his wife. It was not easy, because my stepmother didn't like me and had other children of her own. A friend in the church paid for me to continue schooling until S [Senior]-6.⁸⁴

In some cases, traditional practices such as polygyny and wife inheritance underpinned the discriminatory treatment of orphans within extended families.⁸⁵ Charles W., from eastern Uganda, said that when he lost his mother at age eight, his stepfather abandoned him in order to support the children of his three other wives.

It was only after my Mom died, that the family split up and I went to live with grandmother. [My stepfather] went to his other wives with the kids when my mom died. His second wife also had kids and so they

⁸³ Human Rights Watch interview, Johannesburg, South Africa, June 6, 2005.

⁸⁴ Human Rights Watch interview, Mbale, Uganda, June 27, 2005.

⁸⁵ Some studies have observed cultural reasons why orphans may be treated worse than biological children. Among the Luo people of western Kenya, for example, placing an orphan with a matrilineal as opposed to patrilineal family is viewed as culturally inappropriate and may result in disparaging treatment by caregivers and step-siblings. E.O. Nyambheda, S. Wandibba and J. Aagaard-Hansen, "Changing patterns of orphan care due to the HIV epidemic in Western Kenya," *Social Science and Medicine*, vol. 57, no. 2 (2003).

were all living together, but these aren't really my siblings since they have a different mother and father.⁸⁶

Eight years old and in Primary Two, Charles W. was forced to leave school. "From P [Primary]-3 to P-4, I stayed home for one year and interrupted school," he said. He spent that year living with his grandmother and hanging out in the streets.

During that year when I was not in school, I played football and hung out on the streets. The problems were there, it was food mostly, I could not get food. . . . I would say I was gambling with life, because during that time I was running around on the streets and it could have gone very badly for me.

Derrick D., sixteen, also from Uganda, said that when his father died his mother was "inherited" by her brother-in-law, Derrick D.'s uncle, who already had a wife and six biological children. Derrick D. also had four siblings, bringing the number of children in the household to eleven. Asked how many of the eleven children were in school, Derrick D. said,

Some are and some are not. This is because of money. For example, my sisters don't have money to buy sanitary pads, so they can't go to primary school even if it is free.⁸⁷ But some of [my uncle]'s kids are not going to school either. It is really hard to have that many children in the house and not enough money.⁸⁸

He said that his uncle favored his biological children over Derrick D. and his siblings. "There is a big difference in how the kids are treated in the house," he said. "For example, if [my uncle] brings home something, the step-mom and her kids don't want to share. They say we are orphans so they don't have to share, then [my uncle]'s kids will get it. Other times if [my uncle] is not there, we don't have enough to eat and it is us orphans that don't get the food."

⁸⁶ Human Rights Watch interview, Mbale, Uganda, June 27, 2005.

⁸⁷ The broader issue of lack of access to safe, clean, and private sanitation facilities has been identified by experts as a barrier to education for girls. See, e.g., UNICEF, "Water, sanitation and education," online: http://www.unicef.org/wes/index_schools.html (retrieved August 19, 2005).

⁸⁸ Human Rights Watch interview, Mbale, Uganda, June 27, 2005.

Girls' exposure to sexual violence and exploitation

For a number of girls interviewed by Human Rights Watch, being neglected by caregivers and dropping out of school contributed to their vulnerability to sexual violence and exploitation. Josephine A., from Kenya, moved in with an aunt and uncle and their children after her mother died when she was nine. She left school when her mother died and, even though her uncle was a head teacher with some influence, never returned. “I went through a lot,” she said, adding:

I was beaten most of the time. I had to learn how to do housework because I was forced to do a lot of house duties. I was also frustrated by her children. They were a little older—there were boys older than me. They were in school. They used to tell us, “We didn’t kill your mother, why are you coming to eat our food?” Even my uncle used to beat me, even though he was a head teacher in a school. He could have used his influence to get us into school.⁸⁹

After five years of being out of school, she said, she turned to sex work at the age of fourteen to support herself:

I went to stay with an older lady in Mathare who introduced me to selling illicit brew. She also introduced me to commercial sex. It was 2002. She just said, “Make sure you satisfy the men, and don’t let me hear a bad report that you didn’t do what he wanted.” She got the money, and the best she ever gave us was supper and a place to sleep. We were with other ladies the same age. Sometimes we’d be sent to three people a day. I was treated like something that could be bought. I never made any money, but sometimes the guys would buy me alcohol. It made it easier. But when somebody’s under the influence, they get very rough, and when I didn’t do what the clients wanted, the lady would get mad.

Josephine A. tested positive for HIV in 2004, at the age of sixteen.

Florence N., also from Kenya, moved in with an aunt at age twelve after losing her mother to HIV/AIDS. She was able to finish primary school, she said, but could not attend secondary school because her aunt could not afford the fees. “She used to send

⁸⁹ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

me into town to beg for money,” Florence said. “And when I didn’t come back with any, she would chase me out of the house.”⁹⁰ In 2001 at age fifteen, Florence became pregnant:

I used to roam around asking people for money to help me, just like a street girl. I’d make 20 shillings [U.S.\$0.26], maybe 50 shillings [U.S.\$0.66] in one day. . . . Boys would come up to me and say, “I’ll give you money, I’ll give you food if you come with me.” That’s how I ended up being pregnant.

When Human Rights Watch met Florence N., she was taking a weaving class from the nongovernmental organization GROOTS along with several other young women who had all dropped out of school following the death of a parent. Another young woman in the class, Modiba A. also dropped out of school the year her mother died, when she was thirteen. Like Florence N., Modiba A. had moved in with an aunt who favored her biological children. “She didn’t treat me very well,” Modiba A. said. “Sometimes she decided to leave the house without leaving any money for food, so I ended up going to sleep hungry.”⁹¹ On those occasions, Modiba A. found casual labor in the street—washing clothes, doing domestic work—so that she could buy clothes and food for herself. The previous year, she was lured into an empty building by a group of boys and raped.

There are bad things that happen. . . . People can beat you if you don’t do what they want. Earlier this year, a group of us were raped. They have these video shows in the slums, and when we went to watch a video, there were boys there. After the video ended, the boys asked us if we wanted to watch another one. So we went back inside with them, and they shut the door behind us and raped us. There were five of us girls. They chased everyone else out of the room. They said, “The video is over, it’s time to leave,” until we were all alone.

. . .

We reported it, and we were told that if we saw the person who raped us and can confirm it, we should bring them to the police. I haven’t seen them since. We didn’t go to the hospital, because then people will know we’ve been raped. The police didn’t ask us any questions or start an investigation.

⁹⁰ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

⁹¹ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

School drop-out may not only be a contributor to sexual violence and exploitation; it may also result from it. In Soweto, South Africa, Gladys Legodi, a primary school principal, told Human Rights Watch that she was familiar with numerous cases of orphaned girls who dropped out of school following an episode of sexual violence. “Most of the girls who are sexually abused, they don’t have mothers,” she said, giving the example of an eleven-year-old girl who had recently been raped by an eighteen-year-old. “The case went to court, and the perpetrator was acquitted because the child wouldn’t point at him,” she said. “I asked her why she wouldn’t point at him, and she said he had threatened to gorge her eyes out.”⁹²

Abuses against parents and guardians that in turn harm children

In numerous interviews, Human Rights Watch found that the inability of AIDS-affected children to attend and remain in school was exacerbated by unremedied human rights abuses against their caregivers. Among the people we spoke to, caregivers were typically women living in deep poverty, many of them widows, most of them also caring for their own biological children.⁹³ In some cases, their poverty had been exacerbated by violations of their property rights upon divorce or the death of their husbands. The lack of an effective legal remedy for property grabbing was yet another example of how government neglect contributed to AIDS-affected children’s inequality in access to education.

In Uganda, Human Rights Watch met Barbara W., thirty, at an outreach center run by The AIDS Service Organization (TASO). Herself HIV-positive, Barbara W. had been recently divorced and was caring for three school-aged orphans. Her five biological children were in the care of her husband, who had since remarried and moved to a different village. “He took all the property in the house,” Barbara W. said. “We had 250 hens, ten pigs and two cows. I took one cow to my village and I’m still there.”⁹⁴ The three orphans in her care started missing school, while her five children remained in school because of their father’s support:

My kids go to school because there’s a father who can take care of them. But because I’m a poor African woman, I can’t raise enough money for the three orphans. The one in secondary school, sometimes she misses

⁹² Human Rights Watch interview with Gladys Legodi, principal, Thusanang Primary School, Johannesburg, South Africa, June 9, 2005.

⁹³ Estimates suggest that orphans are increasingly more likely to be living in female-headed households, as well as households headed by grandparents. See, e.g., *Children on the Brink*, p. 10; UNICEF, *Africa’s Orphaned Generations*, pp. 22-23.

⁹⁴ Human Rights Watch interview, Kyetume, Uganda, June 20, 2005.

first term because I'm looking for tuition. The others miss school for two or three days at a time. I had a cow I used to milk, but as time went on the cow died, so I can't find any other income. . . . I used to get a ten liter jerry can of milk and raise school fees for the child in secondary school. But now that the cow died, I have nothing.

Property grabbing affected not only divorced women, but also widows. Thirty-five-year-old Prossy N., also from Uganda, said that her husband's family abandoned her and her five children after her husband died, because she refused to surrender her property to them. As a result, she could not afford to send any of her children to school. She recalled:

As they were coming to get the property from me, I shouted, "I'll burn you if you take my property!" I wasn't going to let them take everything my husband and I had built. So instead of taking the property, they withdrew all the care they could provide for the children. I have five children, and none of them is in school.⁹⁵

Other widows said that their in-laws successfully grabbed their property, leaving them destitute and unable to send their children to school. Mary W., a Ugandan mother of six who is also caring for two orphans, said:

My husband died in 1996. All of my property was taken and I was left with nothing. So I struggled to raise my kids. . . . It was the mother-in-law. She took everything, including the bed and mattress. I didn't complain. The mother-in-law was so tricky, she sometimes tried to beat me up. At first the relatives thought my husband had been bewitched and that I'd bewitched my husband. So I was neglected by all the relatives. Now I'm taking care of all the kids without any help from anyone. Many of my brothers and sisters died of AIDS, and now I'm left alone.⁹⁶

Herself HIV-positive, Mary W. aspires to start her own business. "I try to get a little money from people," she said. "I dig for people. There's nothing, but if I had capital I'd be a businesswoman."

⁹⁵ Human Rights Watch interview, Kyetume, Uganda, June 20, 2005.

⁹⁶ Human Rights Watch interview, Kyetume, Uganda, June 20, 2005.

Such cases of property-grabbing against widows or divorced women, combined with the lack of an effective legal remedy for this problem, are all too common. In a 2001 survey of AIDS-affected families in two districts of Uganda, half of the adult respondents identified property-grabbing as a problem.⁹⁷ In Kenya, Human Rights Watch has documented numerous cases of widows sinking into poverty after having had their property grabbed following divorce, separation, or the death of their parents or husbands.⁹⁸

Dolphine A., forty-years-old and living in a slum of Nairobi, Kenya, said that she was caring for eight orphans in addition to her seven biological children. The orphans, who were from two different sets of parents, did not inherit any property after their parents died. “They left nothing,” Dolphine A. said. “The children only had the clothes they were wearing. The family of the children[’s father], they took everything. They took everything the parents owned.”⁹⁹ With the money she earned from selling vegetables, Dolphine A. sent the eight orphans to an unregulated “informal school” in the slums. The hardest thing, she said, was sending them to school on an empty stomach. “I make 200 shillings [U.S.\$2.50] a day,” she said. “I buy two packets of maize flour and use the rest for vegetables. . . . If I give them one meal per day, I can save.” One of the orphans, she said, had recently dropped out of school and run away, but she did not know where.

Child-headed households

As noted above, some AIDS-affected children interviewed by Human Rights Watch were living (or had lived) in child-headed households, cared for by a brother or sister under the age of eighteen.¹⁰⁰ Regular attendance in school proved next to impossible in these cases, unless the household was receiving significant charitable support. Lisa W., the first-born of five children in Kenya, said she lost her mother to HIV/AIDS when she was seventeen. Her mother had just given birth when she died, and she dropped out of school to care for her baby sister and three other siblings:

⁹⁷ L.Z. Gilborn et al., *Children Affected by AIDS in Uganda*, cited in UNICEF, *Africa’s Orphaned Generations*, p. 20.

⁹⁸ Human Rights Watch, *Double Standards: Women’s Property Rights Violations in Kenya*, vol. 15, no. 5(A) (March 2003).

⁹⁹ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

¹⁰⁰ While official estimates of the number of child-headed households in sub-Saharan Africa are quite low, these estimates do not include children who have adults living in their homes but are nevertheless forced to assume significant household responsibilities because of the sickness or death of one or both parents or other reasons. R. Monasch and J.T. Boerma, “Orphanhood and childcare patterns in sub-Saharan Africa: An analysis of national surveys from 40 countries,” *AIDS*, vol. 18, Suppl. 2 (2004), pp. S55-65.

I was not able to make decisions, because I was still young and I didn't have a job. I was in Standard Seven, but I dropped out of school to get a job washing clothes for people so that I could feed my siblings and pay rent. When I got some money, we ate. When I didn't, we stayed hungry. . . . I also enrolled as a vocational student. I studied hairdressing, and after I finished I started looking for a job, and times if someone needed their hair done, I did it.¹⁰¹

Lisa W. said she did not even consider staying in school after her mother died, and that all of her siblings had to drop out as well. She did not have any other relatives to turn to, and the community rejected her because her mother had been HIV-positive:

It was very difficult, because there was a lot of stigma. People would say we were suffering because our mother was promiscuous, that's why she died. Our neighbors disliked us and didn't listen to anything we said. When our mother was sick, they wouldn't even pass by the door or come into our house. At school, the kids knew my mother was sick but we never told them she had HIV. When she died, we just left school immediately. I didn't even find it important to stay. Even if they had let me stay free of charge, I still needed to go and find odd jobs so I could feed the family and pay the rent.

When Human Rights Watch met her, Lisa W. was still working as a hairdresser and receiving support from Women Fighting AIDS in Kenya (WOFAK). She said that her siblings never returned to school.

Peter O., also from Kenya, said he lost his mother to HIV/AIDS when he was thirteen and his father the following year. The third of seven children, he was forced to care for his younger siblings from the age of fourteen. "My older brothers are not so responsible, so they're not taking care of us," he said. After burying his father in their village, Peter O. brought his siblings back to Nairobi and looked for casual work.

When we got here, we looked for casual jobs. If we earned 20 shillings [U.S.\$0.25], we saw among us what we could buy, and we shared it. We still live on our own, in a place in Mathare. . . . We have a neighbor who sells water, so in the evenings I go work for him, and he decides how

¹⁰¹ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

much to pay me. I also found work with a carpenter who takes orders for people. I make about 30 shillings [U.S.\$0.35] in the evenings, and on the weekends if there's a job I can make 70 shillings [U.S.\$0.50]. I work until about 7:00 or 7:30 every night. My brother and sister sit next to the house where I'm selling water, so I can supervise them.¹⁰²

Peter O. said that while his younger siblings attended school, he dropped out when his parents were sick and never returned. He had completed standard five and, when Human Rights Watch met him, was enrolled in a technical school learning carpentry.

Lettie L., from Mpumalanga Province, South Africa, was six years old when her mother died and she went to live with her older sister, then fifteen. "My sister had trouble in school," Lettie L. recalled. "She had trouble taking care of us while she was still in school. She dropped out at Standard Nine. She didn't work, she just stayed at home."¹⁰³ Lettie L. said that when her sister was about seventeen, she became pregnant. "He never gave us anything," Lettie L. said of the father. "He does not support his child, but at least the child is still able to go to school."

Child-care workers and school principals interviewed for this report observed that numerous children they knew were effectively being raised by their siblings. "You have a grade nine learner caring for a grade three learner, and the parents are deceased," was how Nelly Hleza, a school counselor in Johannesburg, described a typical case from her experience.¹⁰⁴ Experts said it was difficult to say whether a household was "child-headed" when adults in the home delegated significant household and child-care responsibilities to the children. "To me, although there is a granny, this is a child-headed household," said Dorah Mashita, a social worker in Johannesburg, referring to household in which three children under the age of twelve were staying with their grandmother. "The granny is not old, but she leaves home at 6 a.m. while the kids are still sleeping and comes home after dark. So this girl [the oldest, who is twelve] has to take care of her brother and sister all day."¹⁰⁵

¹⁰² Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

¹⁰³ Human Rights Watch interview, Johannesburg, South Africa, June 4, 2005.

¹⁰⁴ Human Rights Watch interview with Nelly Hleza, Johannesburg, South Africa, June 9, 2005.

¹⁰⁵ Human Rights Watch interview with Dorah Mashita, social worker, Emdeni Children's Home, Johannesburg, June 6, 2005.

Orphaned and living with HIV/AIDS

At least six of the AIDS-affected children interviewed by Human Rights Watch for this report were also living with HIV/AIDS, infected either as infants or as adolescents. Their testimony illustrated that infection with HIV, combined with inadequate support and accommodation from school systems, both contributed to poor educational outcomes (for example, if children had to miss school for long periods due to sickness) and followed from them (for example, if children were pushed into prostitution after dropping out of school). It is important to reiterate that the HIV-positive children interviewed for this report constitute only a small and non-representative sample of the overall number of children living with AIDS in Kenya, South Africa and Uganda.

Daniel W., nineteen at the time he was interviewed for this report, described the impact of living with HIV on his education. Orphaned by HIV/AIDS in 2003 at the age of seventeen, Daniel W. dropped out of Form Three and did not return to school for two terms. He said he had already fallen sick by the time his mother died. “I was not feeling well when my mother died, so I had to drop out to get proper medical attention,” he said.¹⁰⁶ A child-care worker at the NGO where Human Rights Watch met Daniel W., Women Fighting AIDS in Kenya (WOFAK), said that doctors diagnosed Daniel W. with tuberculosis and administered an HIV test. After testing positive, he decided to remain in school. “It was hard at first,” he said, “but now I have medicine.” Although he had not yet fallen behind, he said he sometimes missed classes when he wasn’t feeling well. The difficulty of discussing his illness with his teachers and classmates contributed to the problem, he said.

No one at school knows I’m HIV-positive. Sometimes I have to miss days, maybe once a week. . . . I hope to go to college. Maybe I’ll study hairdressing or catering. It’s not easy to tell people in school [about my HIV status], but one day they’ll find out.

Ibrahim A., eighteen at the time of his interview, said that having access to antiretroviral medicines helped him resume his education following his HIV-positive diagnosis a few years earlier. This was only after missing three years of school, however:

I stayed at home for three years without going to school and being sick. . . . Then I got TB, and I visited TASO [The AIDS Service Organization]. They treated me for HIV and then when I started getting better, they sponsored me for school. This is good for me, because I came back to

¹⁰⁶ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

school and I am liking it. . . . The first time I had a CD4 count,¹⁰⁷ it was 106, and now my count is up to 675. I have been on ARVs for one year.¹⁰⁸

Ibrahim A. said that despite his access to HIV/AIDS medicines, discrimination by his extended family members continued to disrupt his education. His father had two additional wives besides Ibrahim A.'s mother, he said, and one of them discouraged his father from sending Ibrahim A. to school.

Even now with my siblings and step-mother, I am discriminated against. They live in Kumi district, and they don't want me to come there. My stepmom says not to visit. . . . Even my siblings in Kumi don't want me to visit, they don't want to share food or cups with me. The stepmom in Kumi didn't want to let my Dad pay for my schooling, because she said "This boy is going to die anyway."

Asked how he was treated by his classmates, he said:

Some students, they look at you and say that boy is HIV positive. They don't want to talk to you, they don't want to eat with you. . . . They will be in a group and start talking about you in front of you, saying you are sick.

In more severe cases, children may be effectively barred from school on the basis of their HIV status. Until a landmark court victory in January 2004, certain government schools in Kenya refused to admit children from the Nyumbani Children's Home, Kenya's oldest and largest home for children living with HIV/AIDS, on the grounds that schools were full to capacity and the children could not produce birth certificates.¹⁰⁹ This was despite the fact that many schools were overcrowded in Kenya and that births were often unregistered. Nyumbani's victory in court marked an important milestone that resulted in greater access to education for children living with AIDS; however, it did not solve the ongoing problems of children living with AIDS having difficulty

¹⁰⁷ A CD4 count is a measure of the number of helper T cells, a type of white blood cell, in the blood and is used to measure the prognosis of patients infected with HIV.

¹⁰⁸ Human Rights Watch interview, Mbale, Uganda, June 27, 2005.

¹⁰⁹ Kenya AIDS NGO Consortium, "Kenya: AIDS-law sensitization results in schooling for orphans" (undated press release). See also, "Landmark Suit a Big Victory for the Kenyan Child," *The Children Act Monitor*, no. 0013/04 (January 2004).

performing in school, or of parents placing pressure on schools to refuse admission to HIV-positive children.¹¹⁰

Many of the difficulties faced by children living with HIV/AIDS were not unlike those described elsewhere in this report. Marian A., eight-years-old and from Kenya, said she lost her father to HIV/AIDS in 2001 and was living with her mother, twin sister, and four other siblings in a small rented house in Kayole, a suburb of Nairobi. Although she was taking medication for HIV and was in good health, Marian A. could not afford to go to school on her mother's salary from selling fish. She said that she and her siblings tried to persuade the principal to let them learn, but to no avail. "We went to school and asked our teacher if we could do the exams, and when our mother got a job, she would pay them," she explained. "But the teacher refused. The teacher just said to stay home as long as we didn't have any money."¹¹¹

Lack of support to community-based organizations

Consistently among the children we interviewed, Human Rights Watch found that children's first line of defense when their parents or guardians proved unable to support their education were community-based organizations, churches, and women's groups that provided care and support to orphans on extremely limited budgets. Often staffed by people who were themselves poor and AIDS-affected, these organizations were essentially meeting an obligation to protect vulnerable children that had been left unmet by governments. While sometimes funded by governments or international donors, community-based organizations faced a range of burdens ranging from sudden suspensions of funding, arbitrary funding bottlenecks, and lack of legal capacity to make decisions on behalf of children in their care.

Numerous experts have described community-based organizations (CBOs) as "alternate extended families" for children who suffer abuse and neglect or whose extended families are strained beyond the capacity to care for them. Individuals who staff these organizations often take responsibility for AIDS-affected children as though they were their own, paying out of their own pockets for basic items like food, detergent, and school supplies. As one expert has described their role:

Faced with huge numbers of vulnerable children, communities are fighting back, providing care and support. These small-scale, local

¹¹⁰ "Kenya: Focus on Primary Schools Coping with HIV-Positive Pupils," *UN Integrated Regional Information Networks (IRIN)*, February 16, 2004.

¹¹¹ Human Rights Watch interview, Nairobi, Kenya, June 15, 2005.

initiatives can best understand the needs of children in their communities. Indeed, in many countries in Africa, the most effective ‘aid’ currently consists of the poor helping the destitute. Out-of-pocket spending on HIV/AIDS represents the largest single component of overall HIV/AIDS spending in most countries in sub-Saharan Africa.¹¹²

Another expert writes, “[w]hether outside bodies intervene or not, families and communities are going to be dealing with the impacts of HIV/AIDS, often with great difficulty.”¹¹³ The Committee on the Rights of the Child, the expert body responsible for monitoring implementation of the UN Convention on the Rights of the Child, recognizes the importance of CBOs when it calls on governments to “ensure that their strategies recognize that communities are at the front line of the response to HIV/AIDS and that these strategies are designed to support communities in their determinations as to how best to provide support to the orphans living there.”¹¹⁴

Human Rights Watch found that CBOs not only provided material support to AIDS-affected children such as meals and school uniforms, but also served a critical advocacy function with respect to the right to education—a function made all the more necessary by school systems’ lack of assistance to children in the greatest need. A CBO in Soweto, South Africa negotiated with school officials to provide waivers of school fees to children orphaned by HIV/AIDS in their care. (These waivers are guaranteed under the law, but many schools refuse to grant them.) An organization in Kenya providing community-based support to AIDS-affected women and children paid school fees for children, provided vocational training to children who had dropped out of school, and urged principals to allow children who were in debt to the school to continue learning. In Uganda, local branches of The AIDS Service Organization (TASO) and other groups subsidized the school expenses of orphans and conducted workshops in schools to fight AIDS-related stigma. Each of these activities helped to ensure that AIDS-affected children could realize their right to education on an equal basis with other children.

Despite the existence of significant donor resources for HIV/AIDS programs, and despite the fact that governments are ultimately responsible for safeguarding the human

¹¹² Geoff Foster, *Bottlenecks and Drip-feeds: Channelling resources to communities responding to orphans and vulnerable children in southern Africa* (Save the Children, June 2005).

¹¹³ J. Williamson, *Finding a way forward: Principles and strategies to reduce the impacts of AIDS on children and families* (Washington, D.C.: United States Agency for International Development, 2000), cited in Linda Richter, Julie Manegold and Riashnee Pather, *Family and Community Interventions for Children Affected by AIDS*, research monograph commissioned by the Social Aspects of HIV/AIDS and Health Research Programme (Human Sciences Research Council, 2004), p. 6.

¹¹⁴ Committee on the Rights of the Child, *HIV/AIDS and the rights of the child*, para. 31.

rights of children, CBOs assisting AIDS-affected children in all three countries visited by Human Rights Watch operated under numerous financial and administrative constraints. A CBO in Soweto, Sizanani Home-Based Care, told Human Rights Watch that although it had a contract with the provincial department of social development to provide home-based care to over 300 orphans, the government was five months behind in its payments. The organization's director of services for orphans and vulnerable children said that children were continuing to pour into the center seven days a week, and that she and her staff were working for free. "If I don't wake up in the morning and go and cook for these kids, who will?" she asked.¹¹⁵ An official with the department of social development said that there was "not necessarily a delay as such" in funding, and that government funding cycles meant that funds sometimes were distributed late in the fiscal year.¹¹⁶

Individuals and organizations caring for orphans in South Africa may be eligible for foster child grants worth Rand (R)500 (U.S.\$78.00) per month per child. Such grants require a formal foster care order, however, which deterred most CBOs from applying. "It takes forever," said Sizanani's director of OVC services. "A guardian can wait three to five years to get a grant. By the time the grant comes, the kids are too old to qualify." A survey of 12,000 households in Kwa-Zulu Natal Province found that of children who had lost both parents, only 2 percent were receiving foster child grants.¹¹⁷

The result of this burdensome process is not only that orphans fail to benefit from foster child grants—it is also that their caregivers go unregulated by child welfare authorities, because (unlike grant recipients) they lack a court order recognizing them as foster parents. When Human Rights Watch met Elizabeth Rapuleng, the director of a CBO in Soweto, South Africa, in June 2005, she had taken six orphans into her home because she felt their existing foster care arrangements placed them at risk of abuse and neglect. One child had recently attempted suicide. Others had been in the care of caregivers who were only interested in them because they were eligible for foster child grants. Ironically, because Rapuleng was too busy caring for the children, she did not have time to apply for the foster child grant that would have given her legal recognition as a caregiver. The result was that she was performing a parental function without either help or oversight from child welfare authorities.

¹¹⁵ Human Rights Watch interview with Dorothy Rapuleng, director of OVC services, Sizanani Home-Based Care, Johannesburg, June 2, 2005.

¹¹⁶ Human Rights Watch interview with Elizabeth Lepee, assistant director, HIV/AIDS subdirector, Gauteng Department of Social Development, Johannesburg, South Africa, June 7, 2005.

¹¹⁷ Case and Ardington, "School enrollment in South Africa," p. 23.

An attorney with the AIDS Law Project in Pretoria, Liesl Gerntholtz, told Human Rights Watch it was extremely common for orphans to “fall through the cracks” because informal caregivers such as Rapuleng were invisible in the law.¹¹⁸ Another group of children who were not part of the foster care system were those whose parents were sick. Because their parents were alive and not abusing or neglecting them in the traditional sense, the children were not “in need of care” according to the statutory definition, and were ineligible for foster care grants.

In Kenya, Human Rights Watch interviewed officials from three established, grassroots women’s organizations that had been providing community-based care to women and children affected by HIV/AIDS since the late 1990s. Staff members of these organizations described constantly having to take money out of their own pockets to provide basic needs to children such as food, rent, and school expenses. “We get money from the government,” said Helen Ochieng, a home-based care worker with Women Fighting AIDS in Kenya (WOFAK). “But they’re not reliable. They don’t see our programs as sustainable, even though they’ve been funding us for twelve years. Sometimes there are delays in funding.”¹¹⁹ Loreen Racho, also a home-based care worker with WOFAK, said that the government funding WOFAK had been promised for a vocational training program for orphans did not arrive on schedule. “These are children who dropped out after primary school because they couldn’t afford fees for secondary school,” Racho said. “They’ve dropped out because of their parents’ illness and probable death. So we want to give them some skills. We thought the money would come early this year, but it seems there was a problem somewhere.”¹²⁰

The availability of unprecedented international resources for HIV/AIDS programs should alleviate some of this burden, but often international funding fails to reach local CBOs in a timely or effective manner. In “Bottlenecks and Dripfeeds,” a report commissioned by Save the Children-United Kingdom, Dr. Geoff Foster argues that many CBOs face chronic funding shortages as a result of artificial “bottlenecks” created by international agencies. He describes these bottlenecks as follows:

[T]here are bottlenecks at all levels of disbursement, where money gets “blocked,” and much of it never reaches community groups. The money flow is slow partly because of lack of staff and experience—from

¹¹⁸ Human Rights Watch interview with Liesl Gerntholtz, AIDS Law Project, June 11, 2005.

¹¹⁹ Human Rights Watch interview with Helen Ochieng, home-based care worker, Women Fighting AIDS in Kenya (WOFAK), Kayole, June 13, 2005.

¹²⁰ Human Rights Watch interview with Loreen Racho, home-based care worker, Women Fighting AIDS in Kenya (WOFAK), Kayole, June 13, 2005.

national level down to the smallest administrative level. Conditions placed at all levels on spending make it hard for community-focused organizations to access funding. It can be hard to apply for funding where there is little information about what is available, and where and how to apply. The process for making applications is also often demanding and time-consuming. Often donors and big international or national NGOs do not know how to “find” small local community groups.¹²¹

Two bottlenecks identified by CBOs interviewed by Human Rights Watch were the requirement of partnering with large “implementing agencies” in order to receive international funding, and having to tailor funding proposals according to the mandates of these agencies rather than the needs of the community. Johannesburg’s Sizanani Home-Based Care, for example, said that in order to receive funds from the U.S. government’s five-year, \$15 billion President’s Emergency Plan for AIDS Relief (PEPFAR), they would have had to enter into a contract with Nurturing Orphans of AIDS for Humanity (NOAH), an agency based in a wealthy suburb of Johannesburg that wanted to serve 100 fewer children and replace most of the Sizanani staff with unpaid volunteers. Representatives of Sizanani said they had chosen to forego PEPFAR funding rather than to alter their program in this way. Another CBO, which chose to pursue PEPFAR funding, said that NOAH required them to construct a new “resource center” for orphans rather than paying salaries to their staff.

The chief of the program services department at the Office of the U.S. Global AIDS Coordinator (OGAC) in Washington, D.C., Michele Moloney-Kitts, told Human Rights Watch that OGAC was committed to providing direct support to local CBOs, but that working through implementing agencies like NOAH was essential for administrative purposes. Asked why implementing agencies could not allow CBOs to set their own priorities, Moloney-Kitts said that in many cases they did so, but that this depended on the strength of the CBOs in the country in question.¹²²

Governments’ failure to regulate and support CBOs’ responses to Africa’s orphan crisis is tantamount to abrogating their human rights obligations, ultimately leaving children’s welfare to the vagaries of charity. Under Article 20 of the UN Convention on the Rights of the Child, when a child is temporarily or permanently deprived of his or her “family

¹²¹ Foster, *Bottlenecks and Drip-Feeds*. See also, Geoff Foster, “Supporting Community Efforts to Assist Orphans in Africa,” *New England Journal of Medicine*, vol. 346, no. 24 (June 13, 2002), pp. 1907-1910.

¹²² Human Rights Watch interview with Michele Moloney-Kitts, chief, Program Services Department, Office of the U.S. Global AIDS Coordinator, August 10, 2005.

environment,” he or she is entitled to “special protection and assistance provided by the state,” consisting of “alternative care” such as foster placement, Kafala of Islamic law, adoption, or if necessary institutional placement. International donors to AIDS-affected countries that have ratified the International Covenant on Economic, Social and Cultural Rights similarly have an obligation to assist local efforts to realize economic, social and cultural rights—including the right to education—to the maximum of their available resources.¹²³ Relying on CBOs to provide this assistance without providing them with adequate support not only exploits their goodwill, but also invites fraudulent or unqualified organizations to take advantage of the lack of government oversight and exploit children. This is especially troublesome when CBOs are themselves staffed by individuals who are living in deep poverty and burdened by HIV/AIDS.

V. National and International Responses

Human Rights Watch contacted government officials from Kenya, South Africa, and Uganda for this report, as well as officials from the World Bank, the United Nations Children’s Fund, and the Office of the Global AIDS Coordinator in the U.S. Department of State, which administers the five-year, \$15 billion President’s Emergency Plan for AIDS Relief (PEPFAR). We also reviewed policy documents and official statements from the governments of Kenya, South Africa, and Uganda, as well as from numerous international agencies. Our interviews and other research showed that while governments and donors had generally recognized the issue of equal access to education for AIDS-affected children, they had barely begun to implement strategies to address it.

In 2004, the government of **Kenya** released an “Education Sector Policy on HIV/AIDS,” which called on the education sector “as much as possible, to assist OVC [orphans and vulnerable children], learners who are ill or with special needs so that they are able to continue with education.”¹²⁴ The policy specifically called on primary schools to “give special attention to factors that affect the performance of OVC and learners with special needs, and find ways to assist them.” Kenya also announced in June 2005 a “Cash Subsidy Programme” similar to the system of foster child grants in South Africa, whereby parents or guardians caring for orphans would receive a stipend of Sh500 (U.S.\$6.60) per month for each eligible child. The government did not describe how it would prevent the abuse of this scheme by individuals seeking to exploit orphans for their eligibility for cash grants. The program aims to reach 2500 children by November

¹²³ Committee on Economic, Social and Cultural Rights (CESCR), *The nature of States parties obligations (Art. 2, par. 1): CESCR General comment 3* (December 14, 1999), paras. 13, 14.

¹²⁴ Republic of Kenya, *Education Sector Policy on HIV and AIDS* (May 2004), p. 21.

2005 and as of June 2005 had received Sh40 million (U.S.\$528,400) in funding from UNICEF. When Vice President Moody Awori announced the program, she said, “There are about 10 million families in the country and if we give Sh500 to Sh1000 [U.S.\$6.60-\$13.20] a child, we will be able to end street children and other child problems.”¹²⁵

As of this writing, **South Africa** does not have a national policy to address the needs of AIDS-affected children deprived of parental care. In July 2005, the Department of Social Development announced it had drafted a plan to strengthen “local structures” to provide care and support to orphans and vulnerable children.¹²⁶ An official from the Department of Social Development in Gauteng Province, where numerous children were interviewed for this report, told Human Rights Watch that her department’s strategy was to expand funding for CBOs and provide technical assistance so they could “sustain themselves, either by raising funds or creating income generating activities.”¹²⁷ Unlike Kenya and Uganda, South Africa does have a formal system of foster care, however it has many flaws. Among them are that the system reaches a tiny fraction of eligible children; does not generally benefit non-orphans whose parents are sick; creates perverse incentives for unscrupulous “caregivers” to take in orphans for financial motives; and imposes such cumbersome bureaucratic requirements that few people bother to apply for foster child grants.¹²⁸ A proposal to develop a single, streamlined grant for all needy children, regardless of orphan status, is being considered in the context of debates over a national Children’s Bill. With respect to South Africa’s continuing policy of allowing schools to charge fees even for orphans, one recent report predicted that the government would continue levying fees as an essential source of income for schools, while meeting its constitutional obligation of free primary education by providing waivers for children who cannot afford to pay.¹²⁹

The government of **Uganda** does not provide cash grants to AIDS-affected children, but instead relies on CBOs—funded by the government as well as donors—to address

¹²⁵ Lucas Barasa, “State Sets Up Scheme for Orphans’ Upkeep,” *The Nation* (Nairobi), June 17, 2005.

¹²⁶ “South Africa: New action plan to assist OVC underway,” *UN Integrated Regional Information Network (IRIN) News*, July 4, 2005.

¹²⁷ Human Rights Watch interview with Elizabeth Lepee, Assistant Director, HIV/AIDS Subdirector, Gauteng Department of Social Development, Johannesburg, June 7, 2005.

¹²⁸ Some of these concerns are discussed in Helen Meintjes, Debbie Budlender, Sonja Giese, and Leigh Johnson, *Children in ‘need of care’ or in need of cash? Questioning social security provisions for orphans in the context of the South African AIDS pandemic* (Children’s Institute and Centre for Actuarial Research, University of Cape Town, December 2003).

¹²⁹ See, e.g., “South Africa: New action plan to assist OVC underway.”

the full range of these children's needs.¹³⁰ In June 2005, the Ministry of Gender, Labour and Social Development issued a request for applications for thirteen grants totaling 1.3 billion Ugandan Shillings (approximately U.S.\$800,000), one of the goals of which was to link orphans and vulnerable children to "essential social sectors" such as education.¹³¹ The grants were funded by the U.S. President's Emergency Plan for AIDS Relief (PEPFAR) and reflected the priorities laid out in Uganda's national policy and five-year strategic plan for orphans and vulnerable children, released in June 2005. The request placed a particular emphasis on child protection initiatives, calling for proposals to assist local government officials and child advocates in "inspecting children's homes, investigating reported cases of child abuse and defilement, and serving as advocates for and protectors of children."¹³²

As noted above, most organizations providing services to AIDS-affected children in sub-Saharan Africa to date have been churches, women's groups, and small CBOs, many of which rely on local donations, often from the poor themselves. International donors such as the U.S. Agency for International Development (USAID), the United Kingdom's Department for International Development (DFID), the Global Fund to Fight AIDS, Tuberculosis and Malaria, and the World Bank now spend some U.S.\$6 billion on international HIV/AIDS programs each year, but these donors have only recently begun to develop comprehensive strategies to address the needs of AIDS-affected children. Officials at these institutions are at this writing weighing the merits of numerous program interventions, including cash grants to needy families; encouraging institutional changes to make services, including schools, more accessible to all poor children including those affected by AIDS; and supporting CBOs that, among other things, can help identify children in especially difficult circumstances. Officials at UNICEF and some large donor-funded nongovernmental organizations told Human Rights Watch that most CBOs were "unsustainable," although this may be because these organizations encounter numerous funding bottlenecks imposed from the outside and because the best CBOs are unknown to these officials. In Uganda, a country with a strong pre-existing network of CBOs, the U.S. government was funding a wide range of CBOs; however, the U.S. approach in South Africa was to fund large external agencies to provide CBOs with policy advice, technical assistance, and training.

¹³⁰ Human Rights Watch interview with Sam Okuonzi, Uganda Ministry of Gender, Labour and Social Development, June 21, 2005; Human Rights Watch interview with James Kaboggoza Ssembatya, OVC Programme Officer, Uganda Ministry of Gender, Labour and Social Development, Kampala, June 27, 2005.

¹³¹ Uganda Ministry of Gender, Labour and Social Development, "Request for Applications #05-002: Services and Institutional Capacity Building for Orphans and Other Vulnerable Children" (undated), p. 4; see also, Ministry of Gender, Labour and Social Development, *National Orphans and Other Vulnerable Children Policy and National Strategic Programme Plan of Interventions for Orphans and Other Vulnerable Children: Fiscal Year 2005/6-2009/10* (November 2004).

¹³² *Ibid.*, p. 6.

VI. Conclusion

When it's Friday, my heart becomes so sore. Who will be looking after these children? There's no one, nothing at home.

—A school principal in Johannesburg, South Africa

Children in sub-Saharan Africa faced obstacles to education long before the HIV/AIDS epidemic began. However, HIV/AIDS has exacerbated these obstacles by striking at children's main source of material and emotional support for their education: their parents and extended families. More than other infectious diseases, AIDS has the potential to erode entire extended families and to leave children with the burden of deep stigma and social isolation. The traditional recourse for children whose parents are sick or deceased—their extended families and communities—is increasingly overstretched and unavailable in the era of HIV/AIDS. The inaction of governments in the face of this overwhelming strain virtually ensures that AIDS-affected children will drop out or fall behind in school at disproportionate rates compared to their peers.

While the contribution of parents and extended families to children's education may seem intuitively obvious, the testimony in this report deepens our understanding of the specific contributions parents and extended families make: providing financial support for education; offering an emotional refuge during non-school hours and providing help with homework; advocating for children's right to education before school authorities, particularly in countries that levy fees for school enrollment, books, uniforms, examinations, and/or other services; and acting as a bulwark against rejection by the extended family and the community. Many children told Human Rights Watch that the death of their parents marked the moment their extended family members or neighbors stopped looking out for them, and that foster parents favored the needs of their biological children over those of orphans in their care. This helps to explain statistical surveys in heavily AIDS-affected areas showing that children who experience the sickness or death of a parent are more likely than their peers to drop out of school or fall behind.

The findings of this report argue strongly for governments to act to protect children deprived of parental care, and to recognize, regulate and support the impromptu strategies that communities have already developed to protect these children. Governments must address the burdens faced not only by children, but by their caregivers and by CBOs who have stepped in to fill their parents' shoes, in order to guarantee AIDS-affected children's right to education. Concrete actions such as

protecting women from property-grabbing and taking expeditious steps to keep parents alive on antiretroviral treatment can help to ensure that AIDS-affected children enjoy their basic rights. Enticing people to care for AIDS-affected children with the promise of financial rewards, or recruiting individuals from outside the community to volunteer time on behalf of orphans, are strategies with limited potential. More fundamentally, governments must focus on children's right to protection by giving legal effect to the innate generosity of caregivers and communities, and clearly spelling out their rights and responsibilities in law and policy.

As governments and multilateral donors establish policies to assist orphans and other children affected by HIV/AIDS, they must take urgent steps to ensure that these children enjoy their right to education on an equal basis with others. In implementing their education policies, governments must also take special account of AIDS-affected children and address the particular vulnerabilities that prevent them from making reasonable progress through school. Investing in programs that support AIDS-affected children in their efforts to attend and stay in school could be a signal achievement of the global struggle against HIV/AIDS. Not doing so will only further marginalize this large and growing vulnerable population.

VII. Detailed Recommendations

Human Rights Watch recommends that all governments and international donors address the issue of access to education for AIDS-affected children through the framework of internationally recognized human rights. A human rights framework guarantees the right to education for all children, cautioning against special treatment for any population but mandating steps to address the particular factors that keep the most vulnerable children out of school. It further recognizes the right of all children to an alternate means of care if they are temporarily or permanently deprived of the care of their parents.

To national, provincial, and local governments in Kenya, South Africa, and Uganda¹³³

- **Immediately follow up on existing policies and proposals to extend protections to AIDS-affected children.** The governments of Kenya, South Africa, and Uganda have begun to draft or implement national strategies to assist orphans and other children affected by AIDS, and these strategies should be completed and implemented with the greatest urgency. Immediate actions might include: in Kenya, expanding plans to provide cash subsidies to 2500 orphans to include all AIDS-affected children in need of financial assistance; in South Africa, completing the national action plan on orphans and vulnerable children and finalizing local strategies for supporting community-based organizations; and in Uganda, implementing small grant programs to community-based organizations that link children to social services and serve a child protection function.
- **Enact and enforce protections against both direct and *de facto* discrimination in access to education.** Governments should review relevant legislation and judicial decisions to ensure that the right of AIDS-affected children to non-discrimination in access to education and other social benefits is explicitly recognized in national law. This right should include protection against *de facto* discrimination, or discrimination resulting from underlying vulnerabilities as well as from intent or animus. Governments should use demographic and household surveys, as well as studies of children not captured by these surveys (for example, ‘street’ children), to monitor school enrollment among AIDS-affected children, including orphans and children whose parents are chronically ill. At the policy level, they should create links between ministries of education and national human rights commissions to develop a specific policy and strategic plan for preventing systemic discrimination in access to education for AIDS-affected children.
- **Fulfill the right to free primary education.** Lifting financial barriers to primary education benefits AIDS-affected and non-AIDS-affected children alike. Governments should ensure that no child is ever denied his or her right to education because of school fees or related costs of education. Strategies to eliminate or reduce the costs of attending school could include lifting fees, providing stipends conditional on school attendance, provision of free uniforms

¹³³ As noted above, the recommendations in this report are not intended to single out Kenya, South Africa, and Uganda as the only countries where AIDS-affected children suffer disadvantages in access to education, and other countries are urged to consider these guidelines as well.

or lifting of uniform requirements, provision of free textbooks, provision of transportation or free school meals to attract poor children to school.

- **Provide alternate parental care for all children who need it.** Governments bear the responsibility to ensure that children deprived of parental care due to AIDS-related sickness or death are cared for by alternate means, such as foster care. Governments should review their constitutions and child protection legislation to ensure not only that child abuse and neglect are punishable offenses, but further that all children deprived of parental care have access to foster care or its equivalent. They should provide the necessary legal recognition and oversight to caregivers to ensure that children are protected from abuse and neglect in the home, including discrimination in favor of biological children and denial of access to education. They should set out clearly, in law and policy, the rights and responsibilities of all individuals and organizations caring for children affected by AIDS. They should ensure all children access to a mechanism, such as an official child advocate, to ensure that the best interests of the child are taken into account in any determination of alternate parental care.
- **Strengthen the capacity of community-based organizations.** Governments should strengthen the capacity of national, provincial, and local departments of social development to support community-based organizations (CBOs) that provide support to AIDS-affected children. They should lift restrictions on the ability of CBOs to provide effective care to children, such as arbitrary funding bottlenecks and needless bureaucracy in access to government grants. Provincial and local governments should provide timely and effective assistance, oversight and technical support to both caregivers and CBOs. They should specifically support the efforts of CBOs to monitor abuse and neglect in the home, ensure care for AIDS-affected children whose extended families do not care for them and advocate for children's right to education before school authorities.
- **Protect parents and other caregivers from abuse.** With particular attention to female-headed households, governments should identify and immediately remedy, in both law and enforcement, human rights abuses—such as property grabbing, wife inheritance, and unequal access to social benefits, including health care—that impede parents (including those living with HIV/AIDS) and caregivers' ability to provide for their children, including providing support for education.
- **Review school policies and practices.** School officials should be restricted from barring children from school for actual or perceived HIV status, HIV status of their parents, or difficulty meeting expenses or administrative

requirements (such as birth certificates) due to HIV/AIDS. Ministries of education should consider appointing a focal point on HIV/AIDS who has expertise on AIDS-affected children in addition to HIV/AIDS curricula. School administrators should re-evaluate their policies, including registration requirements, to ensure they do not place undue burdens on children deprived of parental care. They should liaise with community-based organizations to identify AIDS-affected children, and facilitate CBOs' efforts to monitor these children's school attendance and performance. Schools should also develop explicit policies on AIDS-affected children and facilitate the creation of counseling, peer support, and HIV/AIDS education programs that include addressing AIDS-related stigma and discrimination.

To international agencies and donors to HIV/AIDS programs operating in Kenya, South Africa, and Uganda, including the World Bank, the Global Fund to Fight AIDS, Tuberculosis and Malaria, the United Nations, and bilateral donors

- **Advocate for legal and policy reform.** International agencies and donors should encourage governments both publicly and privately to enact basic protections for children affected by AIDS, including the right to alternate parental care to all those who need it, and to non-discrimination in access to education. They should provide technical support to law reform efforts. They should develop model legislation for children affected by AIDS and model policies for departments of education on HIV/AIDS and access to education.
- **Support education for all.** Donor governments should meet existing pledges made at the 2002 International Conference on Financing for Development (the Monterey Consensus) to work with governments to provide long-term technical and financial support to ensure every child is in school by at least 2015. Donors should prioritize increased aid to developing countries that have developed and adopted sound national education plans to achieve universal primary education as part of the Education for All-Fast-Track Initiative.
- **Support programs that strengthen extended families and community-based organizations (CBOs).** Donors should prioritize investment in CBOs among interventions to assist AIDS-affected children in attending and remaining in school. They should identify and eliminate bottlenecks in international funding for CBOs both at the level of international donors and national and

local governments. They should proactively map the existence of CBOs in targeted communities and assess their quality and eligibility for funding. They should develop program indicators that measure not only the number of children served by CBOs, but also the educational outcomes of these children and the precise services with which they are reached.

- **Develop best practices for schools.** Schools are often ill-equipped to deal with the increasing burden of children affected by AIDS and in need of feasible strategies within the constraints of limited resources. International agencies and donors should identify, pilot, and scale up good practices in creating supportive school environments for children affected by AIDS. Possible strategies include training teachers or guidance counselors to address bereavement issues, supporting school-based peer support groups, keeping schools open at night, liaising with community-based organizations to identify the most vulnerable children, and sensitizing teachers to the needs of AIDS-affected children.

To the abovementioned governments and donors

- **Exercise caution and oversight in supporting cash grants.** Cash grants can be of great assistance to all poor children, including AIDS-affected children, but grants targeted exclusively at orphans or children in foster care can be prone to exploitation by those seeking to take advantage of benefit-eligible children, difficult to monitor, and administratively cumbersome. Governments and donors supporting grant programs should instead consider using financial need as a criterion for grants, or providing in-kind benefits to children deprived of parental care, such as school uniforms or waivers of school fees. They should work with community-based organizations to ensure that cash or in-kind benefits go to the neediest children in the community and are not diverted or exploited.
- **Involve children.** Governments and donors should meaningfully involve AIDS-affected children in the formulation of education policies and programs. They should conduct evaluations of AIDS-affected children's school outcomes in which children are asked about the difficulties they face in enrolling, remaining, and advancing in school. They should support research into the precise hardships that contribute to AIDS-affected children's disadvantages in access to education and develop protocols for involving children in this research.

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Appendix: Human Rights Watch's Work on HIV/AIDS and Children's Rights

"Failing Our Children: Barriers to the Right to Education," September 2005:
<http://hrw.org/reports/2005/education0905/>

"Positively Abandoned: Stigma and Discrimination against HIV-Positive Mothers and Their Children in Russia," June 2005: <http://hrw.org/reports/2005/russia0605/>

"The Less They Know, the Better: Abstinence-Only HIV/AIDS Programs in Uganda," March 2005: <http://hrw.org/reports/2005/uganda0305/>

"A Dose of Reality: Women's Rights in the Fight against HIV/AIDS," March 2005:
<http://hrw.org/english/docs/2005/03/21/africa10357.htm>

"Future Forsaken: Abuses against Children Affected by HIV/AIDS in India," July 2004:
<http://hrw.org/reports/2004/india0704/>

"Deadly Delay: South Africa's Efforts to Prevent HIV in Survivors of Sexual Violence," March 2004: <http://hrw.org/reports/2004/southafrica0304/>

"Policy Paralysis: A Call for Action on HIV/AIDS-Related Human Rights Abuses Against Women and Girls in Africa," December 2003:
<http://www.hrw.org/reports/2003/africa1203/>

"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/>

"Ignorance Only: HIV/AIDS, Human Rights and Federally Funded Abstinence-Only Programs in the United States; *Texas: A Case Study*," September 2002:
<http://hrw.org/reports/2002/usa0902/>

"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/>