

CONSEQUENCES OF EVICTING WIDOWS

Displacement and women's housing, land and property rights in the Central African Republic



INTERNATIONAL LEGAL PROTECTION OF WOMEN'S HOUSING, LAND AND PROPERTY RIGHTS

HLP rights are about having a home, free of fear of forced eviction; a place that offers shelter, safety and the ability to secure a livelihood. HLP rights are referenced and defined in several international human rights instruments which include a number of universally recognised human rights, particularly the right to adequate housing. Since the early 1990's humanitarians have called attention to the importance of HLP rights in providing durable solutions for both internally displaced persons (IDPs) and refugees.¹

In international law, women's rights to own, manage, enjoy and dispose of property are inherent in the rights to be free from discrimination; to an adequate standard of living (including adequate housing); to enjoy financial independence; and to earn a livelihood. Taken together, this bundle of rights goes some way towards securing women's HLP and inheritance rights. It should be noted that neither the right to land nor the right to inheritance appear as independent rights in international human rights law. For this reason, the right to housing is particularly important in the struggle for women's HLP rights, as is the principle of non-discrimination.²

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Background: This brief forms part of a larger research project on displacement and housing, land and property (HLP) rights in the Central African Republic (CAR) conducted between August and October 2014. Research focused on three areas where the Norwegian Refugee Council (NRC) is operational – the capital, Bangui, the eastern city of Carnot and the central city of Sibut.³ The research uncovered some issues which specifically affect displaced women's HLP rights – most significantly the practice of evicting widows from the marital home.⁴

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1 More information on HLP rights in humanitarian response and on the international legal frameworks protecting women's HLP rights is available in Sanchez Bermudez, M, Cunial, L and Farmer, K, 2014 *Life Can Change: Securing housing, land and property rights for displaced women*, Norwegian Refugee Council. <http://womenshlp.nrc.no/wp-content/uploads/2014/03/GlobalReportWHLP.pdf>

2 For more details on the international legal framework for displaced women's HLP rights, see Sanchez Bermudez, M, Cunial, L and Farmer, K, *op cit.*, p.19.

3 *Displacement and Housing, Land and Property Rights in the Central African Republic*, Norwegian Refugee Council (forthcoming).

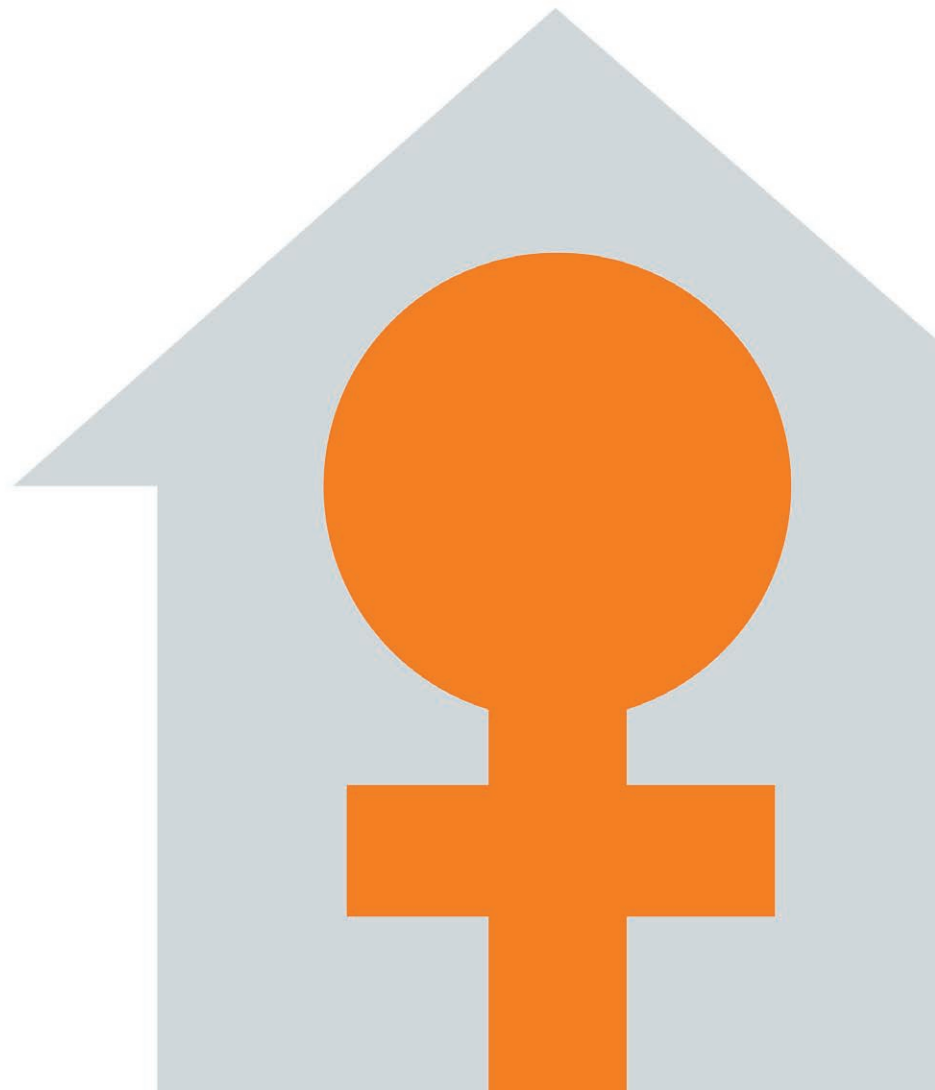
4 Given the broader scope and limited geographical focus of the research, this brief does not present either nationally representative findings nor an exhaustive overview of violations of (displaced) women's HLP rights.

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CENTRAL AFRICAN REPUBLIC **BRIEF**

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INTRODUCTION

A coup d'état in March 2013 and subsequent revenge-motivated violence (often of an inter-communal nature) led to widespread human rights violations, including violations of HLP rights. Pillaging, burning, destruction and occupation of housing and land occurred in several parts of the country. At the peak of the crisis, in January 2014, almost one million Central Africans – around one in five of the population – were displaced.

The conflict has had a devastating impact on civilians. In 2014, the UN Security Council detailed crimes including “extrajudicial killings, enforced disappearances, arbitrary arrests and detention, torture, sexual violence against women and children, rape, [and] recruitment and use of children.”⁵ The UN International Commission of Inquiry on CAR has also found evidence of numerous violations of the right to property, mostly widespread and systematic looting and destruction of housing.⁶ The UN Committee on the Elimination of Discrimination against Women issued a statement in July 2014 which highlighted how all parties to the conflict have exacerbated discrimination and violence against women and girls.⁷

FACTS ON CAR

Internal displacement in CAR has occurred intermittently as a result of coups, internal armed conflict, generalised violence, human rights violations and natural hazards. The state lacks the authority and capacity to provide services in the provinces. A climate of widespread impunity has allowed armed groups to proliferate.⁸ Though rich in natural resources, CAR is chronically poor, ranked 185th of 187 countries in terms of human development.⁹ It has a gender inequality ranking of 142 out of 149 countries with available data.¹⁰ Maternal mortality is high and only slightly more than ten per cent of women have some secondary education.¹¹ Conflict has been detrimental to development and has exacerbated inequality.¹²

5 S/RES/2149, preamble, April 2014.

6 *Preliminary Report of the International Commission of Inquiry on the Central African Republic*, submitted pursuant to Security Council resolution 2127 (2013), 26 June 2014, p.18 and 23.

7 CEDAW Statement July 2014.

8 Internal Displacement Monitoring Centre, 2014, *Central African Republic: amid extreme poverty and state fragility, more robust response needed*. <http://www.internal-displacement.org/sub-saharan-africa/central-african-republic/2014/central-african-republic-amid-extreme-poverty-and-state-fragility-more-robust-response-needed>

9 UN Development Programme, 2013, Human Development Index Report 2014, <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf>

10 http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/CAF.pdf

11 *Ibid.*

12 CEDAW Statement July 2014.



WOMEN'S ACCESS TO HLP RIGHTS IN CAR

As in many other developing countries, women's access to HLP in CAR is limited and often depends on their relationship with a man. Husbands are entitled by law to decide places of familial residence¹³ and wives usually have little say in HLP issues. Documents showing ownership or rights to housing and land are often in the name of the husband or a male relative. Local government officials (*chefs*¹⁴) interviewed for this research indicated that single, divorced or widowed women could be allocated land for residential or agricultural purposes. However, it would seem that when and if this happens such women are only regarded as land users, not owners.¹⁵

For Central African women inheritance is often the only way to accumulate HLP assets. CAR family law does not discriminate against women with regard to inheritance rights. However, this report shows there are serious concerns with regards to women's ability to inherit in practice. These challenges have been exacerbated by the increased numbers of women-headed households as a result of men killed or missing due to conflict. By far the biggest reported challenge for displaced women is eviction from the family home.

DISCRIMINATORY INHERITANCE PRACTICES: EVICTION OF WIDOWS

CASE STUDY

RETURNEE WOMAN SEEKS TO RECLAIM DAMAGED HOUSE

Christine* fled her village with her four children during clashes between armed groups. Her husband was working their land at the time and remains missing. After having spent several months with a host family in a town a hundred kilometres away, Christine decided to return to her village as it became increasingly difficult for the host family to feed extra mouths. On return, Christine found her house badly damaged and all the family's belongings

stolen. She has taken up shelter in the village church. She hopes that with income from agricultural labour and support from a humanitarian organisation she can repair her home. Christine remains concerned as her parents-in-law, who are currently still displaced, may when they return not allow her to stay in the house if her husband remains missing.

*All names in case studies are pseudonyms.

¹³ Family Law, Article 254.

¹⁴ The *Chef de Village* (in rural areas) or *Chef de Quartier* (in urban areas) are (elected) local government officials who report to the mayor of the area and the Ministry of Territorial Administration, Decentralisation and Regionalisation. Often mistakenly considered as part of a customary system, *chefs* are often the sole providers of administration and dispute resolution services.

¹⁵ Interviews with community members and *chefs* in Sibut and Carnot in August and September 2014.

The eviction of wives/partners from the marital home after the death of men was one of the most frequently raised issues during discussions on women's HLP rights. Although the dynamics around the practice appear to vary significantly, experts interviewed for this research confirmed that this is a nation-wide occurrence, although mostly among non-Muslim communities.¹⁶ This is confirmed by previous studies¹⁷ that refer to the 'traditional' practice whereby the family of a deceased husband evicts his widow, and in some cases also their children, from the marital home. The widow is expected to return to live with her parents or other remaining family.

NRC's research found that the parents or family of the deceased husband/partner appear to have the final say in deciding whether a wife/partner may stay in the house or is requested to leave. They are often referred to as the *conseil de famille* (family council), a structure envisaged by the family law to decide on succession matters in case of a death within the family.¹⁸ Such councils are not always set up in a formal manner or in accordance with the law.¹⁹

Various factors appear to be taken into consideration when deciding the fate of the wife/partner. The nature of the couple's relationship (legal marriage, customary/traditional marriage or co-habitation) was hardly raised in research interviews. This can be explained by the surprisingly low number of legal marriages in CAR. The most frequently cited and more pertinent question was whether the couple had children.

In the best-case scenario, interviewees explained that children (regardless of their age) would, following the death of their father, inherit the house and their mother would be allowed to stay with them. She would not be allowed to remarry or commence a new relationship. In other instances, interviewees explained that minors would inherit the house but would be placed under the guardianship of their father's family until they reached the age of 18. In such situations the mother would not be considered part of the family unit and would therefore be asked to leave. However, many interviewees agreed with, or had experienced, the eviction of the wife/partner as well as her children upon the husband/partner's death. In some of these cases if the mother had been unable to take care of the children the father's family agreed to take care of at least some, often depending on their age.²⁰

In situations where the couple did not have children, most interviewees explained that the wife/partner would be asked to vacate the property. Only a few interviewees noted that this would depend on the duration of the relationship. Where the relationship had been longer than a few years the woman could be permitted to stay, although often on condition

16 Full details of interviews and methodology is given in the report *Displacement and Housing, Land and Property Rights in the Central African Republic*, Norwegian Refugee Council (forthcoming).

17 USAID 2010 *op. cit.*, p.7 and Mercy Corps 2009, *Fighting for their homes*.

18 Family law, articles 747 – 754.

19 Interviews with evicted wives/partners, community members, IDPs, returnees, *chefs* and staff of the Association des Femmes Juristes de Centrafrique (AFJC), the Ministry of Social Affairs and Humanitarian Action and UNFPA in Bangui, Carnot and Sibut in August, September and October 2014.

20 Interviews with evicted wives/partners, community members, IDPs, returnees, *chefs* and staff of AFJC, the Ministry of Social Affairs and Humanitarian Action and UNFPA in Bangui, Carnot and Sibut in August, September and October 2014.

MARRIAGES IN CENTRAL AFRICAN REPUBLIC

In CAR a legal marriage consists of union between a man and a woman that is legalised by a civil registrar and includes payment of some type of dowry. A traditional/customary marriage is not legalised by a civil registrar but only witnessed by local authorities (usually the *chef*). A couple may also simply co-habit. Non-legalised marriages and co-habitation, however, are not recognised by law. Experts estimate that only ten per cent of couples living together in CAR are legally married.²¹ This percentage may have been higher in the past.²² Explanatory factors emerged during the research:

- ▶ **Lack of financial means:** Fees for legal marriages are high. A ceremony on a Saturday costs around 30,000 Central African Francs (\$60).²³
- ▶ **Family pressure/ignorance:** Legal marriage is often discouraged by family members since they believe that a legal spouse has the right to claim all a deceased husband's property and possessions.
- ▶ **Lack of trust/commitment:** Some interviewees explained that many couples want to live together and have a family but are not yet ready to officially commit. Male partners may want to be free to start relationships with other women.

she did not remarry or commence a new relationship. Another reason to occasionally allow a childless wife/partner to remain in the house appears to be age. Some interviewees explained that an older woman should not have to leave the house since she would not necessarily have any family to return to.²⁴ Another important determining factor appears to be the relationship that the widow/partner had with the family of her husband/partner. Many interviewees explained that even if the couple had children, the mother (and sometimes the children) would automatically be asked to vacate the property if she was perceived to have 'misbehaved' during their relationship. This term is extremely randomly applied. Examples given varied from infidelity and laziness to lying and disrespecting parents-in-law.²⁵

The practice of evicting wives/partners is not limited to less well educated, poorer and rural families. Several interviewees confirmed that among 'middle-class' families, the expectation that a wife/partner should vacate the marital property still dominates.²⁶ This practice appeared to be most frequent among non-Muslim communities. Most Muslim leaders and IDPs interviewed explained that a deceased man's estate (including the house and/or land) would be divided in accordance with *sharia* and the wife/partner (or wives/partners) has the right to receive one part of it. Interviewees generally agreed that male inheritors would receive twice as much as females.

21 Interviews with staff of AFJC and the Ministry of Social Affairs and Humanitarian Action in Bangui in September and October 2014.

22 *Ibid.*

23 Interview with AFJC staff in Bangui, September 2014.

24 *Ibid.*

25 *Ibid.*

26 *Ibid.*

Researchers found that women are not just forced to leave their homes upon the death of spouses. There were a significant number of additional reports of wives being forced out after their husband/partner found another wife/partner. In all cases discussed, the children remained with the father, often because the mother had no means of taking care of them.²⁷

Pauline met Sylvestre in 2003 in Bangui. They lacked the means to formalise their relationship. After the birth of their second child, the couple decided to build a house on a plot of land they had bought. Sylvestre, as the breadwinner, paid for the plot and the building materials while Pauline assisted

with the construction. In 2014, Sylvestre told Pauline that he had met another woman and asked her to leave their home. Having no means of support, Pauline moved in with her parents, while the children, aged nine and seven, remained with Sylvestre and his new partner.

EVICTED CASE STUDY 1

Claire was in her early thirties when her partner, Joseph, died. Joseph, who had moved to Claire's hometown for work, had bought a house to live in with their five children. Upon Joseph's death, his brother, who still lived in Joseph's hometown, informed Claire that he would sell the house. Claire had not heard Joseph talk about this and protested. The brother, nevertheless, sold the property and Claire moved into the house of her parents with her five children. She did not receive anything from the sale of the house. Since the chef of the locality did not

support Claire's objection, she considered taking the matter to court. However, Claire was very aware that that she and Joseph had not been legally married and that she lacked the means to cover administrative and legal fees. She therefore eventually decided against litigation. Five years later, she still lives with her parents and works a small piece of agricultural land that she obtained from her sister and her brother-in-law. Claire hopes to save enough money through the sale of her crops to purchase a new home.

EVICTED CASE STUDY 2



²⁷ *Ibid.*



LEGAL FRAMEWORK FOR HLP RIGHTS IN CAR

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND NATIONAL LAW

CAR is a party to an array of international and regional human rights instruments which protect women's HLP rights.²⁸ CAR's constitution²⁹ accords precedence over national law to the rights guaranteed in these instruments. It guarantees equal rights for women and men (Article 5) and states that no one may be deprived of their property except in cases of legally determined reasons of public use and with fair compensation (Article 15).

LAND GOVERNANCE

Land tenure in CAR is principally governed by the *Code Domanial* of 1964 (law no. 63.441) which classifies land as being either in the public or private domain of the state. The private domain of the state includes, among others, all unregistered land. Only 0.1 per cent of land is registered,³⁰ leading to a popular perception that all land belongs to the state. Obtaining ownership rights over land is possible, but requires a fairly lengthy and costly registration process.

The 1964 Land Code recognises customary rights to land although these are limited to use rights.³¹ Weak land management and administration systems mean that most Central Africans access land and housing through inheritance or the *chef* of their locality.

28 CAR has ratified or acceded to the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW); the Great Lakes Regional Protocol on the Property Rights of Returning Persons; The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention); the International Conference of the Great Lakes Region Protocol on the Protection and Assistance to Internally Displaced Persons and the International Conference of the Great Lakes Region Protocol on the Property Rights of Returning Persons.

29 Article 97 of the Constitutional Charter of the Transition of 18 July 2013.

30 USAID 2010 op. cit., p.9.

31 ARD, Policy Review: Statutory Property Rights to Land and National Resources in the Central African Republic (final version),³¹ August 2007, p.5.

NATIONAL LEGAL PROVISIONS RELEVANT TO WOMEN'S HLP RIGHTS

CAR's family law (*Code de la Famille*, 1997) regulates HLP issues such as inheritance. In case a couple is legally married without a prenuptial agreement then the legal regime of *la communauté réduite aux acquêts* applies.³² In 2010, it was estimated that 95 per cent of legally married couples did not have an official prenuptial agreement.³³ Property acquired during such a marriage is considered to belong to both spouses (with a few exceptions³⁴) and the wife or husband has the right to half of the estate of the deceased spouse. Any possessions acquired before the marriage belong to the owning spouse. In the division of these possessions (and succession in general), the surviving wife or husband is third in line (after the children and parents). No distinction is made between sons and daughters in the question of succession and inheritance.³⁵ Article 780 of the *Code de la Famille* confirms the right of the surviving spouse to stay in the main residence for at least two years after the demise of the deceased spouse until succession arrangements have been finalised.

Article 254 stipulates that the husband is the head of the household. The wife replaces her husband as head of the family in case he is incapacitated, absent, separated from his family or has voluntarily abandoned family life. Article 1059 stipulates that a surviving spouse is not obliged to marry a member of the deceased spouse's family. Furthermore, it confirms that the surviving spouse is the legal guardian of the couple's minor children.

In 2010 the Ministry of Social Affairs, National Solidarity and Family initiated a process to compare the family law with relevant national and international legislation and highlight possible contradictory or discriminatory provisions. Several challenges were identified and discussed at two workshops in Bangui in 2010. Since the law allows polygamy,³⁶ this was discussed at length and amendments were proposed. Provisions on succession and inheritance were not deemed to be discriminatory against women. However, the high number of co-habiting couples and lack of legal protection of partners was highlighted as a concern.³⁷ The status of proposed amendments to the law is currently unclear.³⁸

³² Article 360.

³³ Report on the Pre-Validation Workshop on the revised provisions of the Code de la Famille from 30 September to 1 October 2010 in Bangui, p.5.

³⁴ Family law, articles 365 – 381.

³⁵ Family law, articles 745 – 789 and 939, interview with Association des Femmes Juristes de Centrafrique (AFJC) in Bangui in September 2014 and Pre-Validation Workshop Report 2010 op. cit., p.5.

³⁶ Family law, articles 216 and 230.

³⁷ Pre-Validation Workshop Report, op. cit. and Report on the National Validation Workshop on the revised provisions of the Code de la Famille on 23 November 2010 in Bangui.

³⁸ Interviews with officials of the Ministry of Social Affairs and Humanitarian Action and AFJC in Bangui in September 2014.

ACCESS TO JUSTICE FOR HLP DISPUTES

The *chef* of the locality is generally accepted as the authority for disputes of a civil nature. Interviewees confirmed that women at risk of (or having been) evicted sometimes approach the local *chef*. Responses vary significantly, depending on the *chef's* personal views on the matter. Some *chefs* confirmed that they would not allow in-laws to evict a wife/partner under any circumstances, explaining that times have changed or citing gender equality or the need to protect women. Others explained that they would consider the number and age of the couple's children or the duration of the time they had spent together. The result of the *chef's* intervention depends on the level of authority he asserts in the community since he has no means to enforce his decision. More than half of *chefs* interviewed accepted this practice and confirmed that the family council had the final say.

In the case of a non-legalised marriage, options for an evicted wife/partner are mostly limited to filing a complaint with the local *chef*. Non-legalised marriages and co-habitation in CAR are not recognised by law, making it extremely difficult to claim any rights over property that was purchased by the husband or built by the couple but generally considered the property of the husband. In the absence of a marriage certificate, a wife/partner seeking to claim ownership over property will depend on her ability to demonstrate proof that she contributed to the purchase or construction of the house. Clearly, this is often extremely problematic.³⁹

A legally married woman facing eviction threats or other violations of her right to inheritance, as per the family law, has the option to take the matter to court, although she is likely to face several obstacles. She may have limited means to cover lawyer's fees, which may cost upwards of CFA 250,000 (\$500). In other areas, especially outside of Bangui, there may simply be a shortage of lawyers or a dysfunctional court system.

³⁹ Interview with staff of AFJC in Bangui in September 2014.

CONCLUSION

Previous NRC research has identified several challenges that displaced women often face in exercising their HLP rights.⁴⁰ These vary from discriminatory practices – which remain in place despite notional equality in law – limited understanding of HLP rights and a lack of options to seek redress when rights are violated, as well as the potential for severe consequences when claiming their HLP rights. Further research is required to identify the exact obstacles that displaced Central African women are confronted with. The practice of evicting women from their homes upon the death of their spouse/partner is of concern, particularly the implications for displaced women, following the conflict. Many women have lost their husband and are likely to face similar challenges upon their return. Conflict has contributed to a breakdown in social values/family relations, increasing discrimination against women, as well as evictions and disputes over property.

RECOMMENDATIONS

- ▶ The Ministry of Humanitarian Action (specifically the Directorate on the Promotion of Women) and the Ministry of Justice should undertake a study on the challenges facing IDP and returnee women in exercising their HLP rights. This should be supported by the Gender Unit of the United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA), UN Women, UN Population Fund (UNFPA), HLP Working Group and other relevant organisations.
- ▶ The Directorate on the Promotion of Gender, the MINUSCA Gender Unit, UN Women, UNFPA, HLP Working Group and other relevant organisations should undertake awareness-raising activities on the equal rights of men and women, including in the domain of HLP rights.
- ▶ Legal assistance should also be made available to IDP and returnee women (and women generally affected by displacement) to increase their access to collaborative dispute resolution mechanisms and statutory and ‘traditional’ processes in order to be able to claim their HLP rights and seek redress when evicted.
- ▶ The Ministry of Humanitarian Action’s Directorate on the Promotion of Gender, the MINUSCA Gender Unit and other relevant organisations should continue the work that commenced in 2010 on the prevalence of non-legalised marriages and co-habitation, its consequences and possible solutions.

40 Sanchez Bermudez, Cunial and Farmer, *op. cit.*

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