

Republic of Haïti
Submission to the UNITED NATIONS HUMAN RIGHTS COUNCIL
26th session of the Working Group on the Universal Periodic Review

On the abuse and sexual exploitation of Women, Girls, and young Men by United Nations agents, and the violation of the right to access remedies

Submission by a coalition of grassroots organizations for human rights in Port-au-Prince & Saut-d'Eau (Plateau Centrale) engaged in assistance to victims, promoting the rights of women, girls and of victims of sexual abuse, and fighting for an end to impunity for all perpetrators.

Presented by the Following Coalition:

Kòdinasyon Nasyonal Ansyen Mawon Viktim Dirèk (KONAMAVID)

Organisation des Femmes Actives de Rivière Canot (OFARC)

3428-0978 (KONAMAVID), 2943-2106 (OFARC)

Via adresse BAI : #3, 2^e Impasse Lavaud, Port-au-Prince, Haïti

Approved by these Human Rights Organizations in solidarity with the Coalition:

Bureau des Avocats Internationaux (BAI)

Réalité Femme Fort-National en Action (RFFA)

Programme d'engagement civique de Boucan Carré

Programme d'engagement civique de Saut d'Eau

Programme d'engagement civique de commune Lachapelle

Mouvement des Étudiants pour Libérer Haiti (MELA)

Fanm Viktim Leve Kanpe (FAVILEK)

Kouraj

Institute for Justice & Democracy in Haiti (IJDH)

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SUMMARY

Vulnerable Haitians, especially children, women and girls, face increasing risks of exploitation and sexual violence (“sexual exploitation and abuse,” or SEA), due to the presence of 5000 civilians, military members and members of the police force of the United Nations peacekeeping mission in Haiti, MINUSTAH. This presence poses institutional obstacles in matters such as access to justice and creates a negative balance of power for women and victims facing a foreign police and military presence. Despite numerous protections in the Haitian law and in international laws on rights of victims of sexual violence and sexual exploitation, and of mothers to protect children abandoned by their fathers, these victims do not have access to remedy. The State remains responsible to clarify what immunity is applicable to UN agents, to identify solutions for the prosecution of perpetrators, and to follow the prosecutions when they occur abroad to prevent impunity for acts against Haitian victims.

I. THE VULNERABILITY OF THE HAITIAN POPULATION TO SEXUAL EXPLOITATION AND ABUSE BY UN AGENTS

What does SEA mean?

The acronym “SEA” is used by the 2003 bulletin of the United Nations Secretary General, which states that sexual exploitation is “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically,” and that sexual abuse is “the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.”¹ These definitions are useful to discuss the actions of the UN, but it’s important to acknowledge that in the terminology of human rights, SEA can refer to a wide range of human rights abuses, including discrimination, violence, rape, exploitation of prostitution, exploitation of children, torture or trafficking, when committed by UN agents. In Haiti, SEA is committed by agents of the United Nations Stabilization Mission in Haiti (MINUSTAH), which operates at the invitation of the Haitian State; thus, the state remains accountable for MINUSTAH’s actions within its territory.

The allegations of sexual exploitation by MINUSTAH agents takes on many different forms. One form is that of “transactional relations”, where goods are exchanged for sexual favors. Those relations are built on an imbalance in power between the MINUSTAH agent and the Haitian woman. The peacekeepers or UN staff are often older, benefit from access to resources and wealth, have a protected status as a foreigner and as a member of an international organization and thus are exempt from social and communal stigmatization.² The women in those relations, “don’t have equal control over the relationship”, they feel they

¹ *Special measures for protection from sexual exploitation and sexual abuse*, ST/SGB/2003/13 (2013)

² Athena Kolbe, ‘It’s Not a Gift When It Comes with Price’: *A Qualitative Study of Transactional Sex between UN Peacekeepers and Haitian Citizens*, 4(1) STABILITY: INTERNATIONAL JOURNAL OF SECURITY & DEVELOPMENT 44, page 20 (2015) <http://dx.doi.org/10.5334/sta.gf>. [KOLBE]

cannot speak openly and cannot insist on their own physical and emotional wellbeing, including demanding the use of condoms to prevent STDs or pregnancy.³ Fear is also deeply seeded in that transactional relationship. One woman has explained: “He is armed. You are lucky that he doesn’t simply rape you. Instead of this, he sweet-talks, provides you with food and money.”⁴ In certain cases, the transactional relationships give way to sexual abuse, psychological and physical violence, harassment or threats.⁵

There also exist cases where there are no pretenses of relationships, where women, girls, and young men are harassed by UN staff, sometimes assaulted and raped, and in most cases, there is little to nothing a victim can do.⁶ The victims feel defeated knowing they cannot prosecute the perpetrators once they leave Haiti. They feel they will never have the chance to see those perpetrators “facing the judge.”⁷ Despite the extent and gravity of these acts, the government doesn’t take any measure to publicly acknowledge the issue of SEA by MINUSTAH agents, to research and document these cases, or even to work with the UN to ensure the implementation of preventive measures.

There is also the issue of support for the children of MINUSTAH agents, often known as “blue helmet babies”, or “MINUSTAH children” by the local population. The Bureau des Avocats Internationaux has collected 10 cases of mothers of children of MINUSTAH soldiers. In those cases, some children were born from consensual sexual relations within personal relationships, but others are transactional relationships involving the exchange of money, and in one case, as a result of rape. There has been no assistance from the United Nations to these mothers. In one case, MINUSTAH gave contradictory information to the mother, guaranteeing they will provide reimbursement of medical fees for the pregnancy, and a settlement to support the child, but only days later, the mother reports she was turned away and told she had no right to any of that. She also did not receive assistance for DNA testing, and neither medical nor legal referral or assistance. Many such cases are known to Haitian lawyers and grassroots groups working within these communities. The children are often stigmatized, and due to the lack of monetary support from the fathers, they don’t attend school and are not well-nourished. All of this occurs because the State makes little effort to fight the impunity of these fathers, and does not take any steps to hold these men accountable.

The dramatic extent of the problem

A recent report of the UN states that peacekeeping and political missions of the UN recorded 480 official allegations concerning SEA worldwide between 2008 and 2013, with more than

³ *Id.* at 16.

⁴ *Id.*

⁵ *Id.* at 17.

⁶ *Id.* at 19.

⁷ Lisa Armstrong, *United Nations in Haiti: Justice Invisible for Victims of Rape*, 100REPORTERS, <http://www.kogainon.com/100Reporters/MINUSTAH/Title.html>. [ARMSTRONG]

a third of the allegations involving a minor victim.⁸ The number of SEA cases reported in Haiti is unusually high - the allegations against MINUSTAH represent more than 26% of the sexual assaults committed by UN agents worldwide, despite the marginal place MINUSTAH forces in Haiti occupy among peacekeeping troops, representing only 7% of the number deployed worldwide.⁹

In Haiti, the UN reported 14 allegations of SEA committed by agents of MINUSTAH in 2014, 17 allegations in 2013, and 8 allegations in 2012, the first year the UN has published those numbers.¹⁰ This considerably underestimates the real incidences of SEA that are actually committed by MINUSTAH. In fact, an inquiry conducted by the UN in 2015 by a team of researchers has identified 231 persons in Haiti that were involved in “transactional” sexual relationships with MINUSTAH agents (229 of the 231 being women)¹¹. The UN recognized that this demonstrates a severe problem of underreporting, because each instance of a transactional sexual relationship should have been reported as sexual exploitation under the policies of SEA, but none of these cases were counted in official statistics.¹²

II. THE INTERNATIONAL AND HAITIAN LEGAL FRAMEWORK FOR THE PROTECTION OF VULNERABLE POPULATIONS FACING ABUSE AND SEXUAL EXPLOITATION

The Haitian Constitution guarantees the right to life, and the respect of human rights of every citizen without distinction, consistent with the Universal Declaration of Human Rights (UDHR).¹³ According to the constitution, international treaties, once ratified, become part of Haitian law and repeal all pre-existing contradictory legislation.¹⁴ Haiti ratified numerous treaties, such as the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and the Convention Against Torture.¹⁵

A. Obligations to fight sexual violence, sexual exploitation, and gendered-base violence

The State has the obligation to protect against gender-based violence including the exploitation of prostitution and harassment.

⁸ RAHUL SUR ET AL., EVALUATION OF THE ENFORCEMENT AND REMEDIAL ASSISTANCE EFFORTS FOR SEXUAL EXPLOITATION AND ABUSE BY THE UNITED NATIONS AND RELATED PERSONNEL IN PEACEKEEPING OPERATIONS, ¶ 7, 12 MAY 2015 [OIOS EVALUATION REPORT].

⁹ ARMSTRONG, *supra* note 7.

¹⁰ *Statistics*, UNITED NATIONS CONDUCT AND DISCIPLINE UNIT, <https://cdu.unlb.org/Statistics/AllegationsbyCategoryofPersonnelSexualExploitationandAbuse/AllegationsbyCategoryofPersonnelPerMissionSexualExploitationandAbuse.aspx>.

¹¹ KOLBE, *supra* note 2.

¹² OIOS EVALUATION REPORT *supra* note 8, ¶48.

¹³ LA CONSTITUTION DE LA REPUBLIQUE D'HAÏTI, art. 19. [HAITI CONST. 1987]

¹⁴ *Id.*, art. 276.2.

¹⁵ Comité Contre la Torture, Commentaire Général No. 2, *Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008).

Article 9 of the International Covenant on Civil and Political Rights stipulates that every person has a right to freedom and to security of their person. Article 7 of the ICCPR ensures all persons must be free from torture, cruel, inhuman and degrading treatment.¹⁶ The United Nations Human Rights Council found that rape constitutes a form of torture according to article 7.¹⁷

These obligations exist to protect all Haitians, but the State is also accountable to protect two of the most vulnerable groups in society, children and women, as follows.

i. Obligations of the State to fight violence against women

In these last observations, the Committee of Human Rights noted their preoccupation with "the weakness of protection against violence against women" in Haïti.¹⁸ Articles 1, 2, 3 and 5 of the CEDAW and General Recommendation no. 19 of the CEDAW council pressure the Haitian state to protect women from all forms of violence and gender-based exploitations. To fulfill this obligation, the government must take proper and efficient measures to eliminate discrimination and overcome all forms of gender-based violence.¹⁹ This must take the form of tangible engagement by the state, to prevent impunity and prevent the perpetuation of gender-based violence and exploitation.²⁰

ii. Obligations of the state to protect children and minors

According to article 34 of the CRC, "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse" and to prevent "the exploitative use of children in prostitution or other unlawful sexual practices."²¹ Article 35 of the CRC makes it mandatory for states to take appropriate measures at the national, bilateral and multilateral levels to prevent the kidnapping, selling and trafficking of children through all means possible. These obligations are there to protect all Haitian children from Haitian and non-Haitian perpetrators. The State cannot refrain from such obligations, and must find ways to enforce them through various means, especially with regard to SEA cases.

B. Obligation to fight exploitation of prostitution and prostitution of children.

Human trafficking, exploitation of prostitution and prostitution of children are frequent issues in Haiti, but are exacerbated by the presence of international armed forces. These conditions

¹⁶ Pacte International relatif aux Droits Civiles et Politiques, art. 7, <http://www.ohchr.org/FR/ProfessionalInterest/Pages/CCPR.aspx>.

¹⁷ See e.g., Le Comité des droits de l'homme, Observations finales, Jamaica, ¶ 19, U.N. Doc. CCPR/C/JAM/CO/3 (Nov. 11, 2011); see also Le Comité des droits de l'homme, Observations finales, Colombia, ¶ 12, U.N. Doc. CCPR/C/COL/CO/6 (August 4, 2010).

¹⁸ Le Comité des droits de l'homme, Observations finales, Haiti ¶13, U.N. Doc. (2014).

¹⁹ *Id.* ¶24.

²⁰ *Id.*

²¹ Convention on the Rights of the Child, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

reinforce vulnerability of the Haitian population, and must be factored into the obligation of government to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”²² To fulfill this obligation, the government must take specific measures, of both preventive and punitive nature, to reduce trafficking and sexual exploitation.²³

Children under 18 years old are protected by the Penal Code, by severe sanctions against adults that encourage child prostitution, and by the facultative protocol of the CRC on the selling of children, child prostitution and pornography (OPSC), ratified by the Haitian government in 2014.²⁴ In Haiti, sexual intercourse with a minor is prosecuted using a combination of the majority age in the Constitution (18), and application of the international norms concerning the non-validity of consent to sexual activity by a minor, as well as the Penal Code’s provisions for harsher penalties for the rape of children.²⁵

C. Obligation to protect the right to effective remedy

The right to effective remedy is largely recognized as fundamental to the enjoyment of human rights.²⁶ Article 2.3 of the ICCPR guarantees the right to effective remedy for the violations of rights independent of the status of the actor who committed the infraction, and calls upon States Parties to ensure that this right is respected. General Observation No. 31 of the Human Rights Committee of the ICCPR noted that the Haitian government must “establish appropriate legal and administrative measures to examine the allegations of violations of rights in respect to domestic law.”²⁷ It also highlights that the right to remedy includes a right to reparation.²⁸ The victims of sexual exploitation and abuse, as well as abandoned children, still have a right to remedies against from MINUSTAH agents.

D. Obligation to protect human rights by regulation of third parties

²² L’Assemblée générale, *Convention sur l’élimination de toutes les formes de discrimination à l’égard des femmes*, Treaty Series, vol. 1249 p. 13 (Dec. 18, 1979), art 6, <http://www.un.org/fr/women/cedaw/convention.shtml>.

²³ Comité CEDEF, *CEDEF Recommandation Générale No. 19*, (1992), ¶24(g).

²⁴ CODE PENAL DE HAITI, art. 281.

²⁵ HAITI CONST. 1987, *supra* note 13, art. 16.2; CODE PENAL art. 278, 279.

²⁶ *See, inter alia*, Déclaration Universelle de Droits de l’Homme, art. 8, <http://www.ohchr.org/Documents/Publications/ABCannexesfr.pdf> (“Toute personne a droit à un recours effectif devant les juridictions nationales compétentes contre les actes violant les droits fondamentaux qui lui sont reconnus par la constitution ou par la loi.”), PIDCP, *supra* note 16, art. 2.3(a) (“Les Etats parties au présent Pacte s’engagent à : Garantir que toute personne dont les droits et libertés reconnus dans le présent Pacte auront été violés disposera d’un recours utile, alors même que la violation aurait été commise par des personnes agissant dans l’exercice de leurs fonctions officielles”); *see also* Committee on Economic and Social Rights, General Comment No 9 on ICESCR at 2-3 (“[c]ovenant norms must be recognized in appropriate ways within the domestic legal order...remedies must be available to any aggrieved individual or group”)

²⁷ Comité de Droits de l’Homme, Commentaire Général No. 31, at 15.

²⁸ *Id.*, at 16.

The government has the obligation to protect human rights by regulating third parties, investigating and punishing violations, and ensuring that individuals whose rights have been violated are given remedies. The human rights council has always emphasized the obligation of States to adopt measures for the prevention and redress of human rights violations, regardless of the perpetrator's identity.²⁹

III. **VIOLATIONS OF RIGHTS CONTAINED IN ARTICLES 2 AND 7 OF THE ICCPR, OF ARTICLES 1,2,3 AND 5 OF CEDAW, ARTICLES 34 AND 35 OF THE CRC, AND ARTICLES 17, 18, 19, AND 276.2 OF THE HAITIAN CONSTITUTION REGARDING PROTECTION AGAINST SEXUAL EXPLOITATION AND ABUSE AND THE RIGHT TO REMEDY.**

The CEDAW council has noted its concern with ongoing sexual relationships based on coercion, and the contribution of the presence of MINUSTAH forces to the precarious situation of victims of forced prostitution and trafficking, including cases of sexual exploitation of women and girls by the staff of the United Nations peace-keeping mission in Haiti in this context.³⁰

A. Violations of the obligations to protect against sexual exploitation and abuse

The extent of the issue of sexual exploitation and abuse by MINUSTAH agents shows that the State has failed to uphold its obligations to protect victims against abuse, prostitution and sexual exploitation, and in particular, children.

B. Violation of the obligations to protect the right to remedy

The Government has failed in its obligations to protect victims' rights to legal remedy and to access to justice in these cases. Many obstacles prevent victims of sexual violence from having access to justice in Haiti, but for victims of SEA committed by MINUSTAH agents, these barriers are even greater. The current UN mechanisms on liability and reparations are largely insufficient and create, in practice, a system of immunity for the staff of MINUSTAH, a system in which the Haitian government is complicit.

Weakness of the UN reporting system

According to the policy of MINUSTAH, victims of SEA should report abuse to the Conduct and Discipline Unit (CDU), or to the Office of Internal Oversight Services (OIOS), an office which, despite the presence of officers on the ground in Haiti, reports directly to the UN headquarters in New York, which makes the process inaccessible for the victims.³¹ MINUSTAH has an obligation to disseminate information relating to the policy of the United

²⁹ Comité des droits de l'homme, Observations finales, Mexico ¶ 89 (c), U.N. Doc. CCPR/C/MEX/CO/5 (May 17, 2010) (l'état doit enquêter et punir les auteurs, sans distinction entre les auteurs privés et publiques).

³⁰ CEDEF para.23.

³¹ *Frequently Asked Questions*, OFFICE OF INTERNAL OVERSIGHT SERVICES, (2015), <https://oios.un.org/page?slug=frequently-asked-questions>.

Nations on the SEA,³² but in the study mentioned above, of the 231 victims, only 7 knew that the United Nations had a policy against sexual abuse, and no one knew that there was a complaints office.³³ The United Nations itself has determined that Haitian women are not sufficiently informed of United Nations procedures that are meant to be broadcasted.³⁴

In addition, the Haitian women who have been victims of SEA on the part of MINUSTAH agents say they are reluctant to report the abuse to the same institution that hosts the perpetrators. They cite the following as reasons for not reporting abuse: language barriers, lack of physical access to the MINUSTAH offices where they can report, the fear of recrimination from other soldiers, stigma from Haitian staff, and the rejection of their complaints by security personal who won't allow them to speak with others.³⁵ The Haitian government can and must do more to ensure that women have access to information, and should recognize that the United Nations complaints and reporting system does not serve the best interests of the victims.

Unclear limits on the immunity of UN officers and prosecutions process

Even if victims overcome these obstacles to report SEA, their complaints rarely lead to prosecutions or remedies. OIOS offices and the CDU are responsible only for the administrative investigations and have no mandate to pursue the civil or criminal complaints related to SEA. They may not provide monetary compensation, restitution on damages as required by local and international laws nor do they direct victims and applicants to these means of remedy.³⁶ Furthermore, the OIOS inquiry process and CDU investigations are extremely long – the UN notes on average it takes more than a year. In addition, they are not transparent, because the victims have no right to participate or request information on the status of the case.³⁷ If the United Nations unilaterally finds that a claim is not warranted, the claim does not come before a judicial system or any independent body. While the United

³² *UN Strategy – Prevention*, UNITED NATIONS CONDUCT AND DISCIPLINE UNIT, <https://cdu.unlb.org/UNStrategy/Prevention.aspx> (un élément clé de le pilier de prévention est la sensibilisation, y compris vulgarisation de la politique de l'ONU sur SEA).

³³ Kolbe *supra* note 2, at 18.

³⁴ *Id.* at 19.

³⁵ See, e.g., OIOS EVALUATION REPORT *supra* note 8, ¶4 (“victim assistance does not include monetary compensation,” - l'assistance des victim n'inclue pas des reparations); see also *UN Strategy: Remedial Assistance*, UNITED NATIONS CONDUCT AND DISCIPLINE UNIT, (2010), <https://cdu.unlb.org/UNStrategy/RemedialAction.aspx>.

³⁶ OIOS EVALUATION REPORT *supra* note 8, at ¶30 (average length was 16 months); see also *Frequently Asked Questions*, OFFICE OF INTERNAL OVERSIGHT SERVICES, <https://oios.un.org/page?slug=frequently-asked-questions> (“Besides an acknowledgement of receipt for your report, OIOS will not generally provide updates on the status of your report.” – Au dela d'un accusé de la reception de votre rapport, OIOS ne n'envoie pas des mise-a-jours de statut de votre rapport).

³⁷ SOFA MINUSTAH, ¶¶ 51(a), 52, 57 (pour les charges des crimes commis par une civile, SOFA 51.a demande que le gouvernement d'Haiti informe le chef de la MINUSTAH de toutes poursuites pénale. Dans le cas ou la MINUSTAH s'oppose a la poursuite, un tribunal indépendant doit déterminer si la poursuit est justifié sous section 57 de la SOFA; pour tous réclamations civiles, le paragraphe 52 de la SOFA UN-HAITI note que les processus civiles peut être initiés contre les personnels de la MINUSTAH si le gouvernement informe le chef de la MINUSTAH, qui est obligé de déterminer si les actes en question sont commis pendant le décharge des devoirs officiels de l'ONU).

Nations is required to conduct its investigations into SEA in conjunction with the Haitian government, including the Haitian National police (PNH), this does not happen in practice. The government took no action to compel the United Nations to adhere to this obligation, to request more transparency in the process of investigation of the United Nations, or to conduct its own investigations into allegations of SEA. The government can and must encourage reports to police and judicial bodies as major means of access to justice, while ensuring that victims are informed that the United Nations system of inquiry is not, in fact, equivalent to a system of justice where victims have rights; but is a complementary internal inquiry system for the benefit of the UN.

The immunity of the United Nations staff presents an absolutely critical barrier for accountability regarding SEA and in getting reparations for victims. According to the "Status of Forces Agreement" (SOFA), which was signed between Haiti and MINUSTAH, the civilian personal of the United Nations (including civilian police) has only functional immunity, which means that immunity applies only to acts accomplished in their official duties.³⁸ The UN itself clarified the limits of immunity in the "Zeid Report", one of the first reports on SEA in 2005, which said that exploitation and sexual abuse are not covered by immunity.³⁹ For this reason, they remain theoretically subject to the Haitian courts' jurisdiction for crimes, civil or financial harms committed in Haiti that are outside the performance of their official duties. In the case of SEA, this should mean that victims can access justice through the local judicial system for all criminal responsibility and civil claims such as paternity. In practice, however, the missions of the United Nations deal with civilian staff as if they enjoyed immunity from local prosecution. Between 2008 and 2012, 44 SEA claims against civilian personnel have been introduced in the various mechanisms of the United Nations, and among them, none resulted in criminal proceedings in the host country or in the country of origin of the personnel involved. Only 9 of these procedures have resulted in a request for the United Nations to the country of origin for a judgment (but after that, no report of the follow-up process was shared).⁴⁰ In Haiti, the government has validated this situation of impunity in practice, by failing to launch prosecutions against civilian personnel of MINUSTAH, failing to inform victims of their rights or failing to support them in civilian complaints (as indicated above), or finally, by failing to require that MINUSTAH honor its obligation to transfer the process to the local courts.

For UN military, the SOFA provides that their country of origin retains exclusive jurisdiction over any criminal charge.⁴¹ Once the complaints are transferred to a foreign court, the process becomes opaque and almost impossible to follow for Haitian victims, witnesses and

³⁸ OIOS EVALUATION REPORT *supra* note 8, at ¶ 37-38 ("member States do not regularly provide such information on taking action or providing information to the United Nations as this lies within Member States' discretion" - les membres Etats de l'ONU ne soumettent pas régulièrement ces informations sur le statut des affaires en cours à l'ONU).

³⁹ United Nations General Assembly, *Comprehensive review of the whole question of peacekeeping operations in all their aspects*, U.N. Doc A/59/710, at ¶ 86, 90 (24 mars 2015), <https://cdu.unlb.org/Portals/0/Documents/KeyDoc5.pdf>.

⁴⁰ SOFA MINUSTAH, *supra* note 36, ¶ 51(b).

⁴¹ OIOS EVALUATION REPORT, *supra* note 8, ¶ 42.

local activists. Moreover, in practice, perpetrators are rarely punished by their country of origin. For example, in 2008, MINUSTAH conducted a mass deportation of 114 Sri Lankan soldiers of MINUSTAH, following allegations of sexual abuse of underage girls in their base in Haiti.⁴² The accusations caused a special survey of the United Nations on these allegations, together with investigators from Colombo.⁴³ Yet eight years after their repatriation, the conclusion of their cases remains unknown. Two other cases (with young male victims) are also useful to illustrate the problem of SEA. In 2011, 6 Uruguayan soldiers of MINUSTAH committed sexual abuse of a young boy in Port-Salut.⁴⁴ In 2012, the Pakistani "Formed Police Unit" within MINUSTAH was accused of the abduction and rape of a minor boy in Gonaives.⁴⁵ Notably, these cases were reported in Haitian and International press, but other cases with female victims were ignored.⁴⁶ But even these cases, which created public outcry, resulted in nothing for the victims. They have never received a judgment with damages, and the perpetrators were minimally sentenced for other disciplinary offences, and not for sexual assault or rape.⁴⁷

In addition, while the military are theoretically subject to the same legal framework as civilian personnel for civil claims, including claims of paternity, in practice no Haitian woman has been able to successfully pursue a case of paternity against a member of MINUSTAH in the justice system. This is because of many factors, including that soldiers are repatriated at the moment when victims receive legal aid, and secondly because MINUSTAH does not inform these women that they can claim compensation, either in Haiti or in the country providing the contingent.⁴⁸ Again, the Haitian government accepts the effective immunity conferred on the UN, and neglects its obligations to protect victims' access to justice and the terms of the SOFA. The government has failed to take steps to ask the troops to prosecute their military personnel for SEA, or at least to support the victims in order to institute proceedings against foreign soldiers in their country of origin, including through the collection of stories or by keeping victims informed of the status of the case. The Government should also inform women of their rights to alimony for their children in paternity cases, through assistance in the collection of personal information of foreigners in Haiti, including soldiers, and by facilitating communication with MINUSTAH.

⁴² Carol J. Williams, *U.N. confronts another sex scandal*, LA TIMES, (15 decembre 2007), <http://articles.latimes.com/2007/dec/15/world/fg-haitisex15/2>.

⁴³ OIOS EVALUATION REPORT, *supra* note 8, ¶ 42.

⁴⁴ *Haiti 'rape victim' testifies in Uruguay*, ALJAZEERA, (May 12, 2012), <http://www.aljazeera.com/news/africa/2012/05/20125115352816737.html>; *see also Uncertainty in Uruguay over Haiti abuse case*, ALJAZEERA, (January 10, 2012), <http://www.aljazeera.com/news/americas/2012/01/20121104537513263.html>.

⁴⁵ OIOS EVALUATION, *supra* note 8, ¶ 17-18.

⁴⁶ E.g., il y avait un cas d'une jeune femme de 18 ans qui été violé par un policier en 2013, qui n'avait pas la même réponse de la communauté. *A new case of UN Peacekeeper Rape in Haiti*, (2013) <http://www.ijdh.org/2013/09/topics/womens-issues/new-case-of-un-peacekeeper-involved-rape-in-haiti>.

⁴⁷ Rosa Friedman, *Why do peacekeepers have immunity in sex abuse cases?*, CNN, (May 25, 2015), <http://edition.cnn.com/2015/05/22/opinions/freedman-un-peacekeepers-immunity/>.

⁴⁸ MINUSTAH, communication personnelle, November 2015.

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It is essential that the government of Haiti use all means available to pursue access to legal remedies for these victims, as prescribed by article 2. As requested by the Committee of CEDAW, the Government must put in place a legal framework to deal with impunity and to take preventive measures to protect women and girls who are vulnerable to sexual exploitation by UN peacekeepers in Haiti, and provide them access to justice.⁴⁹

Measures to promote access to justice are high priority, and the government must ensure that victims are de-stigmatized and encouraged to report the cases, and that the government must guarantee access to effective protection and reparation, including compensation, prosecution and punishment of perpetrators by a competent criminal court.⁵⁰ Reparations and prosecutions are not possible without measures to establish free and effective legal assistance,⁵¹ and ensuring that cases of violence and discrimination against women are placed under the jurisdiction of the Criminal Court, rather than settled by mediation.⁵² It is clear that there cannot be a just remedy for cases of SEA without the involvement of the Haitian State to establish the limits of immunity and put pressure on the MINUSTAH to address perpetrators of SEA, and the fathers of children. The government must take responsibility and inform vulnerable communities of the means to assert their rights.⁵³

IV. RECOMMENDATIONS

- Recognize the prevalence of SEA committed by MINUSTAH in Haiti and take measures to publish UN official figures and collect as well as publish unofficial reports of female groups;
- Conduct investigations by the Haitian National Police (PNH) on allegations of SEA in tandem or in collaboration with MINUSTAH on every possible occasion to ensure a better protection of the interests of victims and their right to access justice;
- Advocate for the referral of cases received by the United Nations to the local judicial system as provided by the terms of the SOFA, and proactively initiate lawsuits against United Nations personnel which fall within the competence of the Haitian judicial system in matters of paternity;
- Require the United Nations to communicate information about the state of the ongoing investigations, repatriated staff or military, and the results of prosecutions that occur in other countries in which cases Haitian victims are involved;
- Clarify the responsibilities of United Nations staff and military units in Haiti, with regard to SEA, and with regard to the rights of victims, and disseminate this

⁴⁹ CEDEF, *supra* note 21, para. 24(f).

⁵⁰ CEDEF Comité, *supra* note 22, 22(c).

⁵¹ CEDEF, *supra* note 21, para. 14(b).

⁵² CEDEF, *supra* note 21, para. 14(d).

⁵³ CEDEF, *supra* note 21, para. 14(c).

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information to officials of the United Nations, the Haitian National Police (PNH), local leaders and women' rights advocates. Establish benchmarks for the government to take measures to fight against SEA.