



Briefing note for UN Victim Rights Advocate

The *Bureau des Avocats Internationaux* (BAI) represents (11) Haitian women impregnated and abandoned by UN Peacekeepers. The briefing note below outlines BAI's requests of the UN Victim Rights Advocate (VRA), Jane Connors in regards to:

- a) the provision of assistance and support to BAI's clients pursuant to the UN's *Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel* ('Victim Assistance Policy')
- b) cooperation in the child support claims being pursued by the BAI's clients in Haitian court, in accordance with the VRA's mandate of ensuring that the "full effect of local laws, including remedies for victims, are brought to bear" in sexual exploitation and abuse (SEA) claims.

This note also makes submissions as to the inadequacies in the UN's response to SEA based on the BAI's direct experience in the above cases, and key areas that require reform.

Background

In December 2017, the BAI filed civil paternity claims with the Courts of First Instance in Port-au-Prince and Jacmel on behalf of 10 Haitian women who were impregnated by UN peacekeepers and abandoned by the fathers without support. These actions were served on the Haitian Minister of Foreign Affairs (MOFA) and on the representative of the Secretary-General of the UN in Haiti on 8 December 2017 (for the following applicants: [REDACTED], [REDACTED], [REDACTED] et [REDACTED]), on 11 December 2017 (for the following applicants: [REDACTED], [REDACTED], [REDACTED], [REDACTED] et [REDACTED]) and on 15 December 2017 (for the applicant [REDACTED]).

The cases were filed following over a year's worth of effort by BAI to seek the UN's cooperation in resolving the women's cases, in accordance with the UN's commitment to support SEA complainants in pursuing paternity claims. BAI's efforts are summarized below:

1. In August 2016, BAI sent legal notifications of intent to file suit in nine (9) of the cases to the Special Representative of the Secretary-General of MINUSTAH and on the Minister of Foreign Affairs and Religion (MOFA). The applicants asked the UN to provide the following information:

- Identification of the fathers, identification documents, their commanders and the officers responsible for investigating these allegations;
 - Information related to any investigation by the UN’s Conduct and Discipline Unit, MINUSTAH or any other UN relevant agency related to the mothers’ paternity claims, and any decisions rendered;
 - A declaration of whether the actions of UN personnel were part of the official duties of the soldiers as members of MINUSTAH, in order to verify if functional immunity of the Status of Forces Agreement (SOFA) applies;
 - Provision of the results of DNA tests conducted.
2. Having received no response from MINUSTAH, on 24 January 2017 BAI sent a letter to MOFA, reiterating applicants’ requests contained in the notifications served on the Ministry and the representative of the Secretary-General relating to the cases of the 9 women. BAI also published this letter in Haitian press. While BAI met with MOFA subsequent to sending this letter, BAI still received no response from the UN.
 3. Throughout 2017, the BAI worked with several journalists to ensure press coverage of the urgent need for remedies to BAI clients in these cases. Several of these journalists reached out to the UN directly to seek response as to its cooperation in the claims. The UN did not contact the BAI following these stories.

Legal submissions have been made in all 10 of the child support claims filed in December 2017, and all cases currently await judgment. The case of [REDACTED] is before the Court of First Instance in Jacmel. The cases of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] are before the Court of First Instance of Port-au-Prince. In April 2018, the BAI agreed to represent [REDACTED], who has three children from three MINUSTAH members and has had DNA tests administered for two of these three children. The BAI will be filing child support claims on behalf of [REDACTED] shortly.

The UN Victims’ Rights Advocate Must Provide the BAI’s 11 clients with assistance and support in accordance with the UN’s Victim Assistance Policy

The VRA must provide adequate aid to the BAI’s 11 clients, as required by the UN’s Victim Assistance Policy. The Victim Assistance Policy applies to “complainants, victims and children born as a result of sexual exploitation and abuse”.

Based on the policy, all complainants will receive “basic assistance and support in accordance with their individual needs directly arising from the alleged sexual exploitation and abuse”, including medical care, legal support, psycho-social support, food, clothing and shelter. Victims and children born of SEA will also receive further support to address the effects of SEA, in

accordance with their individual needs, and for a duration in accordance with their individual needs. Support will be provided through existing services, or where necessary through the establishment of new services.

A summary of each of the 11 women and her children's individual needs are annexed to this note. These needs include:

- Safe shelter;
- Medical assistance for both mother and child;
- Adequate food and other basic material needs;
- Support for the education of children.

The BAI requests that the VRA detail in writing: a) what support will be provided to each of the victims and children pursuant to the Victim Assistance Policy; b) for how long this assistance will be provided; c) how this assistance will be provided, including through which service providers where relevant; and d) how the UN will monitor the provision of the assistance to ensure its adequacy.

The UN VRA must facilitate the BAI's clients' pursuit of child support claims

The UN acknowledges an obligation to facilitate paternity and child support claims, including by working in cooperation with the relevant national governments. Furthermore, the mandate of the VRA is to ensure that "every victim's rights are protected through access to appropriate and timely judicial processes", that the "full effect of local laws, including remedies for victims, are brought to bear", and that each victim receives information on the status of his/her case.

The UN is yet to provide any cooperation to BAI and BAI's clients in the pursuit of their child support claims since they notified MINUSTAH in August 2016. The VRA must ensure such cooperation is forthcoming.

1. Collection and Communication of Information and Evidence

The VRA must ensure that all information previously requested from the UN be forwarded immediately in writing to BAI and the above noted Haitian courts, namely:

- Identification of the fathers, identification documents, their commanders and the officers responsible for the investigating these allegations;
- Written results of DNA tests related to the 10 claims. Note that the informal notification by phone of DNA results to some of the claimants is manifestly insufficient;
- Information related to any investigation by the UN's Conduct and Discipline Unit, MINUSTAH or any other UN relevant agency related to the mothers' paternity claims;

- A declaration that the functional immunity of the UN personnel in question does not apply to these claims. Note that once a civil procedure is initiated against a member of MINUSTAH in Haitian court, in accordance with Article 52 of SOFA, the Special Representative must immediately be informed and must certify to the court whether the proceeding is related to the member's official duties.

2. Facilitation of Claims including facilitation of compliance by respondents

The VRA must forward immediately in writing information explaining efforts the UN has taken to facilitate these claims and, in particular, the UN's correspondence with the defendants and their countries of residence as well as any partners within these countries that the UN has identified as potentially useful in the facilitation of these claims. Transparency and communication of this information is vital to equip victims and their legal representatives with all necessary information to adequately pursue their paternity claims. The VRA must also commit to communicating any favorable judgments to the respondents and their countries of residence and employers, and informing them of their legal obligation to comply with the Haitian court's judgment.

- Note, the UN is obliged to cooperate in cases of paternity and child support concerning victims of SEA. The UN's expressed strategy includes working with Member States to facilitate such claims against uniformed personnel.
- Note that where paternity claims are confirmed, the UN can and should "facilitate the exchange of legal documents to ensure that paternity is legally recognized by courts in the countries of both the mother and father and that arrangements are made for payment of child support."

3. Enforcement of Judgments

The VRA must ensure UN cooperation in the event of a favorable judgment for the applicants, including assistance in executing these judgments.

- Note, the VRA is obliged to work closely with government institutions, civil society and national, legal and human rights organizations to create a network of support for victims and to help ensure that the "full extent of local laws, including remedies for victims, are brought to bear".

If the respondents do not comply with child support orders issued by a Haitian Court, the UN should directly ensure enforcement by applying the UN's policy on Family and Child Support Obligations of Staff Members (ST/SGB/1999/4). This policy states that upon being provided with a court order for payment of support, the UN will deduct the required amount from the staff member's salary to provide to the claimant if that staff member is unable to provide proof of payment in accordance with the order within 30 days. This policy can be applied in to BAI's

cases and other SEA paternity cases by withholding contingent payments to the relevant contributing government if the peacekeeper responsible does not comply with the court's judgment.

- Note, the UN's policy towards children born of SEA by *peacekeepers* fails to provide direct payment to the child, who has a legal right to it, and instead takes the form of community outreach and service. The willingness of the UN to be an active facilitator for child support judgments against staff members but not against peacekeeping 'personnel' is unjustified given that the UN has access to and control over the requisite funds. The UN already engages in a system of punitive withholding of payment in regards to SEA offenders where the amount withheld comes from peacekeepers' salaries which would have been repaid to the relevant contributing government by the UN. The differentiation is also highly problematic if the UN is concerned with the best interests of the child.

UN Support for SEA Child Support Claims - Systemic Issues

There are important systemic issues related to BAI clients' claims that the VRA should address, namely:

- The UN and the Special Representative must be able to receive SEA claims against MINUSTAH members (especially since SOFA requires the Special Representative to be notified of all civil proceedings instituted against MINUSTAH members).
- All information from UN investigations regarding SEA child support claims must be made available in writing to victims and their lawyers, and to the courts where the claims are filed, including confirmation that the Special Representative was notified and whether he/she certifies that the proceedings are related to the official duties of such member (pursuant to the SOFA).
- The UN should immediately contact respondents on behalf of SEA victims once the issue is brought to the UN's attention, based upon its duty to facilitate these types of claims and the fact that it is best placed to obtain this information.
- A local social worker should be assigned to claimants to ensure proper implementation of the UN's policy to support and assist victims of SEA, since this policy lacks specificity and needs may differ between country and child (e.g. specific medical needs).
- Children born of SEA should qualify under the UN's policy on Family and Child Support Obligations of Staff Members even if the father is a member of a peacekeeping mission. This will ensure that children born as a result of SEA whether by a UN staff member or personnel are given the same opportunity to obtain their legal right to support.