

14 January 2019

Dear Assistant Secretary-General Connors,

We write to you in your capacity as UN Victims' Rights Advocate (VRA) to express our concern at the UN's continuing failure to provide effective assistance and judicial cooperation to victims of sexual exploitation and abuse (SEA) represented by the *Bureau des Avocats Internationaux* (BAI), and at your office's lack of cooperation regarding our clients' cases.

As you know, lawyers from the BAI represent mothers of children abandoned by UN peacekeepers in Haitian court actions for child support. We were pleased to meet with you at the BAI office on April 18, 2018 to discuss the UN's obligations both to provide assistance and support to our clients and to cooperate in their judicial actions. As you will recall during this meeting, we presented you with a [briefing note](#) detailing our clients' needs and key requests, and requested a response in writing.

Since this meeting, we have received no substantive updates from you despite attempts to schedule a follow up meeting with your office in New York. Indirectly, we have also become aware of developments concerning the UN's engagement with our clients' cases that raise serious concerns.

The UN has underlined that victims of SEA have a right to pursue child support claims. It has assured victims of its obligation to facilitate these claims and to provide them, and their children, with assistance and support in line with their individual needs. Indeed, the UN is the sole actor with the information and resources to assist victims of SEA. As such, since August 2016, the BAI has advocated in and out of court for its clients to obtain this assistance and cooperation from the UN. Yet, for over two years, the UN has remained non-responsive, non-cooperative and opaque in its approach, failing to provide essential evidentiary documentation and adequate and transparent assistance to clients. Your organization is now circumventing the BAI's legal representation and failing to comply with court orders that would facilitate Haitian court processes. The UN's lack of follow-through with its commitment to victims has made it nearly impossible for our clients to obtain justice in reality.

### **Refusal to provide information to Haitian courts**

As you are aware, the UN acknowledges an obligation to facilitate paternity and child support claims, including by working in cooperation with the relevant national governments. This policy emanates from the General Assembly's adoption of the *UN Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel* in 2007 ("UN's Victim Assistance Policy") and the *Victim Assistance Guide* produced by the ECHA/ECPS UN and NGO Task Force on Protection from SEA in 2009. Your very

appointment as a system-wide VRA by the Secretary General is designed to ensure that the UN provides tangible and sustained assistance to the victims of SEA.

Since August 2016, we have sought the following four types of information from the UN, which is critical to our clients' ability to successfully pursue their child support claims in Haitian courts:

- A. Information related to the fathers, including their identification documents, and the names of their commanders;
- B. information about any investigation related to our clients' claims by the UN's Conduct and Discipline Unit, MINUSTAH, or any other relevant UN agency, and any decisions rendered;
- C. a declaration of whether the defendants' actions in entering into sexual relations with, impregnating, and abandoning our clients are part of their official duties as members of MINUSTAH (in order to verify the applicability of functional immunity in these cases); and
- D. the results of DNA tests conducted in many of our clients' cases.

It has now been over two years since our first requests were made, and the UN has, with very limited exceptions, failed to respond to these reasonable requests. To our knowledge, no information relating to the fathers (A) or to any investigations related to our client's claims (B) have been provided. Similarly, to our knowledge, the Special Representative has failed to certify to the court whether the proceeding was related to the official duties of the defendant (C) as required by the Status of Forces Agreement (SOFA), which the UN signed with the Haitian government in 2004. The UN is only now providing DNA results in some of our clients' cases, while in others DNA results remain outstanding (D). In this context, we insist in particular that the UN immediately provide written confirmation of the results of DNA tests done in the cases of [REDACTED] and [REDACTED], to both our clients and the BAI.

It is particularly concerning that the UN appears to be ignoring a direct order of a Haitian court, which violates Article 47 of the SOFA obliging MINUSTAH to cooperate with the Haitian judicial system. In May, Judge Frantz Elmorin of the Court of First Instance in Jacmel ordered the Special Representative of the UN Secretary-General for the United Nations Mission for Justice Support in Haiti (MINUJUSTH) to provide the court with all necessary and otherwise useful information pertaining to the case of our client [REDACTED], particularly that which relates to the identity of the defendant. The UN has yet to respond to this judgment, despite having at least some of this evidence in its possession. The UN must now clarify how it intends to respond to this decision.

The UN's failure to abide by the SOFA and its obligation to facilitate paternity and child support claims sends an alarming message of lack of respect for the Haitian judicial system and the rule of

law. It has also gravely affected our clients' ability to pursue child support claims in Haitian courts. In certain cases, written confirmation of DNA results was conveyed with such delay that it has undermined the evidentiary basis needed to move cases forward. The UN's attempt to circumvent the BAI's involvement, as outlined below, has further lengthened this delay. Similarly, the UN's failure to certify our clients' actions as required by Article 52 of the SOFA, that implicitly helps to insure against impunity when a civil proceeding is instituted against a member of MINUSTAH in Haitian court, has instead delayed our clients' cases proceeding through the court system. All of this flies in the face of the VRA's mandate to ensure that "every victim's rights are protected through access to appropriate and timely judicial processes".<sup>1</sup>

### **Circumventing victims' lawyers**

The UN's circumvention of the BAI's legal representation of our clients violates its obligation to ensure respect for local laws and has further impeded our clients' right to access justice. As you know, the BAI lawyers are the legal representatives of the mothers. The BAI made this clear when it delivered notifications on behalf of nine of these mothers in 2016 and, subsequently, in 2017 when we filed formal legal claims in Haitian court. This representation was also the context for our meeting with you in April 2018. It is therefore inappropriate that the UN has chosen to ignore our role as legal representatives in its dealings with our clients. After significant advocacy on the part of the BAI and IJDH, the UN recently provided some of our clients with written confirmation of their DNA results without informing us or providing us with copies. As a result, this has further delayed the presentation of critical DNA evidence to the Haitian courts seized of these matters, and in turn hampered our clients' ability to access remedies. It has also come to our attention that UN representatives offered to find legal representation for clients whom the UN knows to be represented by lawyers at the BAI.

The UN's interference with our clients' right to unimpeded access to counsel violates the rules of professional conduct that regulate the legal profession in Haiti. Article 6.6 of the Federation of Bar Associations' Code of Conduct for lawyers stipulates that when an opposing party has acquired legal representation, the lawyer must only correspond with opposing counsel.<sup>2</sup> The UN has itself emphasized the need for legal counsel to be able to provide proper assistance to victims and to perform all professional functions without hindrance or improper interference.<sup>3</sup> Similarly, there is a generally accepted principle in the legal profession, codified by several bars and law societies

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<sup>1</sup> UN Secretary-General Report, A/71/818, 28 February 2017, at para. 27.

<sup>2</sup> Fédération des Barreaux d'Haïti, FBH, Code de Déontologie de la Profession d'Avocate, Chapitre VI, Article 6.6 : « Lorsqu'un Avocat est constitué par la partie adverse, ou lors d'un litige à propos duquel l'Avocat adverse s'est manifesté, l'Avocat doit correspondre uniquement avec son confrère », disponible à <http://barreaudeportauprince.ht/documents/Code%20de%20deontologie%20correct%20ok.pdf>.

<sup>3</sup> Basic Principles on the Roles of Lawyers (adopted by the Eight UN Congress on the Prevention of Crime and Treatment of Offenders, 1990); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN General Assembly, 1985).

internationally,<sup>4</sup> that any attempt by a lawyer to take advantage of an opposing lawyer’s client by communicating to that client without his or her lawyer’s knowledge is prohibited. This principle helps lawyers to mitigate the vulnerabilities that arise when one party occupies a significantly advantaged position relative to the other, as is the case here where the UN is the key actor able to assist our clients.

The UN’s violation of this rule again demonstrates its disregard for the Haitian judicial system and the rule of law. This is all the more concerning given that the VRA has an obligation to work with legal and human rights organizations in ensuring that the “full extent of local laws, including remedies for victims, are brought to bear”, and that the UN’s Victim Assistance Policy, outlined below, explicitly recognizes legal services as a key form of assistance for victims.

### **Lack of victim assistance**

The UN’s Victim Assistance Policy promises to grant complainants, victims, and children born as result of SEA assistance in the form of “medical care, legal services, support to deal with the psychological and social effects of the experience and immediate material care, such as food, clothing, emergency and safe shelter, as necessary.”<sup>5</sup> The VRA must “work closely with...civil society and national legal and human rights organizations...to build networks of support [for victims]”.<sup>6</sup>

Yet, the UN has failed to build networks of support for our clients or provide them with tailored assistance in a comprehensible manner. The UN has provided temporary and inadequate assistance to some of our clients, while denying it to others. At the same time, it has failed to explain to us or our clients the reasoning behind these decisions as well as the process of differentiating between our clients’ needs. This is particularly concerning given that some of our clients who require urgent assistance have not received any assistance to meet their individual needs; for those who have received assistance, it is inadequate. One client in particular, who has received written confirmation of positive DNA results from the UN, has not received any assistance from the organization despite the fact that her child requires urgent medical attention.

In addition, the one-size-fits-all approach to victim assistance that appears to have recently surfaced from UN reports falls far short of the UN’s promises to victims. A program to fund school fees and lunch boxes for all children born as a result of SEA does not align with the UN’s policy to provide assistance and support “in accordance with their individual needs”. As you are aware from the 'clients' needs summary' we shared during our meeting in April, as well as undoubtedly from your personal meetings with each of our clients, each woman and child requires specialized

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<sup>4</sup> For example, by the Council of the Bars and Law Societies of the European Union, the International Bar Association, and the New York Rules of Professional Responsibility.

<sup>5</sup> UN General Assembly, A/RES/62/214.

<sup>6</sup> UN Secretary-General Report, A/71/818, 28 February 2017, at para. 29.

care. Many have been living in extremely precarious situations for quite some time; several of the children have severe health problems, while other families are homeless.

The lack of assistance and communication to date has caused much confusion, frustration, and disappointment among our clients, and the BAI has not been in a position to respond to their needs because key information has not been communicated to us. In order to allow us to monitor the timing, adequacy, consistency and follow through of the UN's assistance to our clients, the UN must be transparent in its progress to establishing a plan to meet their needs.

### **Next steps**

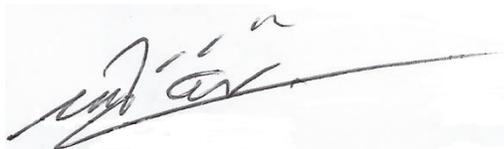
We reiterate our request for information as to how your office will cooperate with us to:

- facilitate these cases in terms of collection and communication of information and evidence;
- provide transparent and adequate assistance to our clients in line with their individual needs; and
- ensure UN cooperation in the event of a favorable judgment for our clients, including to ensure the recognition and execution of these judgments.

We also propose a meeting with our clients, with the BAI present, so that you may update them on the progress of their cases, as required by your mandate. This would allow you an opportunity to explain to our clients what cannot be done for them and why.

We look forward to your response within 30 days.

Please accept, Madam, our best regards,



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