

29 May 2020

Dear Assistant Secretary-General Connors,

Today, on the International Day of UN Peacekeepers, we, the *Bureau des Avocats Internationaux* (BAI) and the Institute for Justice & Democracy in Haiti (IJDH), write to express our concerns with the often overlooked human rights impacts of UN Peacekeeping missions, seen through the lived experience of people represented by BAI in Haiti. As lawyers representing the mothers of children fathered and abandoned by UN peacekeepers, in Haitian court proceedings for child support, we write to express our concerns that almost three years after these cases were filed, the UN's failure (a) to certify the non-applicability of functional immunity directly to Haitian courts pursuant to Article 52 of the Status of Forces Agreement (SOFA) and (b) to recognize that these cases involve legal rights, processes, and obligations, is impeding access to justice for our clients.

Ms. Connors, we reach out to you because, in your role as the UN Victims' Rights Advocate, you are responsible for strengthening the institutional responses to sexual violence and abuse by peacekeepers and other personnel. As detailed in this letter, we call on the UN to certify the application of functional immunity to child support claims against UN peacekeepers currently pending before Haitian courts, in order to honor victims' legal rights in Haiti.

The UN's pronounced [policy](#) with respect to paternity and child support claims is to work with Member States to facilitate the pursuit of such claims in the case of uniformed personnel. Moreover, the Secretary-General appointed a system-wide Victims' Rights Advocate (VRA) to ensure that the UN system provides tangible and sustained assistance to the victims of sexual exploitation. The VRA's [mandate](#) is to assist in ensuring that the "full effect of local laws, including remedies for victims, are brought to bear".

Since 2016, in its role as victims' legal representative, BAI has repeatedly sought information and cooperation from the UN to enable these claims to proceed. Crucially, it has been requested that the UN certify to relevant Haitian courts, in accordance with Article 52 of the Status of Forces Agreement (SOFA) between the UN and the Government of Haiti, that functional immunity does not apply in the cases.¹ We reiterate these requests, submitted to the UN in August 2016 and December 2017 in formal legal notifications, and again [in writing](#) and orally in the context of [meetings with the VRA in April 2018](#); in a [follow up letter in January 2019](#); and subsequently in an in-person meeting

¹ Article 52 requires that "[i]f any civil proceeding is instituted against a member of MINUSTAH before any court of Haiti, the Special Representative shall be notified immediately, and he or she *shall certify to the court* whether or not the proceeding is related to the official duties of such member." (emphasis added)

with your team in May 2019. As legal representative, it was brought to our attention that Judge Frantz Elmorin, one of the judges seized of the cases, also formally requested that the UN provide this information in May 2018.

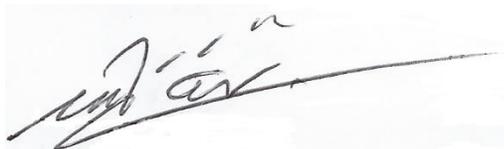
We are compelled to write again today because, to BAI's knowledge as the formal representative on these active child support cases in Haitian courts, this immunity certification has still not been made, effectively blocking access to justice for our clients.

The notable absence of response to the repeated request of victims' legal representatives regarding matters essential to our clients' legal claims gives cause for concern of the UN's broader willingness to recognize that these cases involve legal rights, processes, and obligations, including obligations on the part of the UN, rather than matters of discretionary UN practice. Instead, we learned recently that the UN, sent a *note verbale* to the Haitian Ministry of Foreign Affairs (MOFA) in February 2018 that purportedly certifies that the cases BAI filed in Haitian courts are not subject to functional immunity. As such, the issue remains unresolved within the Haitian judicial system.

We underscore that ignoring the reasonable requests of Haitian lawyers and judges working to uphold the rights of victims undermines the Haitian judicial system. Further, it is inconsistent with the UN's stated commitments to rule of law, due process, and human rights as well as with the VRA's mandate to ensure access to remedies for victims of sexual exploitation and abuse.

The human rights impact of UN Peacekeeping missions is often overlooked. To date, the UN's response to our clients' child support claims has directly disadvantaged Haitian women and children affected by sexual exploitation and abuse. We, therefore, call on the VRA in its mandate to secure access to remedies for victims of sexual exploitation and abuse to ensure that, in accordance with Article 52 of the SOFA, UN certification regarding functional immunity is shared appropriately with Haitian courts and BAI as the mothers' legal representative. It is high time for the UN to ensure justice and accountability for victims.

Please accept, Madam, our best regards,



Mario Joseph, Av.
Managing Attorney
Bureau des Avocats Internationaux



Sandra C. Wisner
Senior Staff Attorney
Institute for Justice & Democracy in Haiti