

Ruhr University Bochum

European Master's Programme in Human Rights and Democratisation

A.Y. 2019/2020

**Sexual exploitation and abuse by MINUSTAH peacekeepers: A critical assessment of the impact of socio-cultural norms in peacekeeping**

Author: Fernanda Cavalcante de Barros

Supervisor: Prof. Dr. Hans-Joachim Heintze

## ABSTRACT

Several cases of sexual exploitation and abuse (SEA) involving peacekeepers have been reported during MINUSTAH. Throughout the years, the United Nations has elaborated an extensive framework concerning sexual exploitation and peacekeeping abuse. However, this issue is still re-occurrent in field missions.

MINUSTAH serves as an illustrative case study in this regard. In Haiti, the number of alleged victims is much higher than what has been officially reported. Victims often do not report to the respective authorities for a variety of reasons. The influence of social-cultural norms in the deployment of a peacekeeping mission shall be analyzed, aiming at understanding the root causes of the SEA issue.

## ACKNOWLEDGMENTS

*Completing this thesis would not be possible without the support and understanding I received during this process. First of all, I would like to thank my supervisor, Prof. Hans Heintze, for his guiding and experience.*

*I extend my gratitude to the E.M.A team, which has always been supportive, especially Prof. Wiebke Lamer, for her counseling and caring throughout the year.*

*To my Venice friends: Ana, Lidi, Leo, and Manon for making me feel at home during the first semester. A special thank you to my chosen brother William who has always been by my side.*

*My eternal gratitude to my family. My mom for always listening, guiding, and supporting. My little brother, which brings me calm and makes every struggle seems light. My grandfather, aunts, cousins accompanied me during this process.*

### TABLE OF ABBREVIATIONS

<b>CAAC</b>	Children Affected by Armed Conflict
<b>CARICOM</b>	Caribbean Community
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>DDR</b>	Disarmament, Demobilization, and Reintegration
<b>DPKO</b>	Department of Peacekeeping Operations
<b>ECOSOC</b>	United Nations Economic and Social Council
<b>HR</b>	Human Rights
<b>ICCPR</b>	International Convention on Civil and Political Rights
<b>ICESCR</b>	International Convention on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organization
<b>MINUSTAH</b>	United Nations Stabilization Mission in Haiti
<b>MOU</b>	Memorandum of Understanding
<b>OAS</b>	Organization of American States
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>SC</b>	United Nations Security Council
<b>SG</b>	United Nations Secretary-General
<b>TCC</b>	Troop Contributing Countries
<b>UN</b>	United Nations
<b>UNICEF</b>	United Nations Children's Fund

## TABLE OF CONTENT

<b>ABSTRACT .....</b>	<b>2</b>
<b>ACKNOWLEDGMENTS .....</b>	<b>3</b>
<b>TABLE OF ABBREVIATIONS .....</b>	<b>4</b>
<b>INTRODUCTION .....</b>	<b>7</b>
<b>1. THEORETICAL FRAMEWORK: WHAT CONSTITUTES SEXUAL EXPLOITATION AND ABUSE? .....</b>	<b>11</b>
<b>2. MISSION DEPLOYMENT .....</b>	<b>15</b>
<b>2.1. Pre-Deployment .....</b>	<b>15</b>
<b>2.2. Security Council’s Mandate .....</b>	<b>18</b>
<b>2.3. UN Standards of Conduct .....</b>	<b>20</b>
<b>2.3.1. Uniformed Personnel .....</b>	<b>20</b>
<b>2.3.2. All UN Personnel .....</b>	<b>25</b>
<b>3. HUMAN RIGHTS LAW FRAMEWORK .....</b>	<b>28</b>
<b>3.1. International Conventions.....</b>	<b>28</b>
<b>3.1.1. UN Charter .....</b>	<b>29</b>
<b>3.1.2. CEDAW .....</b>	<b>30</b>
<b>3.1.3. CRC .....</b>	<b>33</b>
<b>3.1.4. ICCPR and ICESCR .....</b>	<b>35</b>
<b>3.2. OAS and CARICOM .....</b>	<b>36</b>
<b>3.3. Haitian Law.....</b>	<b>42</b>
<b>3.3.1. Access to information and education .....</b>	<b>42</b>
<b>3.3.2. Violence against girls and women .....</b>	<b>44</b>
<b>4. HAITIAN SOCIO-CULTURAL NORMS AND MINUSTAH .....</b>	<b>47</b>
<b>4.1. Traditional gender roles in Haiti.....</b>	<b>48</b>
<b>4.1.1. Restavéks .....</b>	<b>51</b>



<b>4.2. Race as a social norm .....</b>	<b>53</b>
<b>4.3 ‘Impunity Culture.’ .....</b>	<b>58</b>
<b>4.3.1. Zenglodos: rape as a political weapon</b>	<b>60</b>
<b>4.3.2. Impunity and MINUSTAH</b>	<b>63</b>
<b>CONCLUSION .....</b>	<b>73</b>
<b>BIBLIOGRAPHY.....</b>	<b>76</b>

## INTRODUCTION

Peacekeeping operations have evolved to multi-dimension enterprises aiming at sustaining long-lasting peace and security. Since the end of the Cold War, peacekeepers are responsible for various tasks in the field, for instance: civilian protection, conflict prevention, the rule of law and security institutions storage, human rights protection, and women empowerment<sup>1</sup>. United Nations peacekeeping missions are deployed in post-conflict environments, usually characterized by corruption, failed economy, lack of the rule of law, non-respect for human rights, weak institutions, ineffective law enforcement, and framing of distinguished power between peacekeepers and the local community<sup>2</sup>. Under these conditions, the local population is vulnerable, mostly women and children, to sexual exploitation and abuse situations by the ones considered to be in an authority position — peacekeepers.

The Conduct in the UN Field Mission department has reported 1.081 cases<sup>3</sup> of sexual exploitation and abuse involving peacekeepers serving in several missions from 2007-2020<sup>4</sup>. Nonetheless, studies conducted by different organizations state that most SEA victims did report the crimes they have suffered to the competent authorities, meaning that the number of alleged SEA cases in peacekeeping missions is probably much higher. Although the UN has only started to group perpetrators by nationality from 2015 onwards<sup>5</sup>, it has been proven that this issue does not involve only a particular group

---

<sup>1</sup> 'United Nations Peacekeeping' (*United Nations Peacekeeping*) <<https://peacekeeping.un.org/en/what-we-do>> accessed 12 October 2020.

<sup>2</sup> Muna Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers During Peacekeeping Missions' (2009) 27 *Cornell Law Faculty Publications* <<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1058&context=facpub>> accessed 9 October 2020.

<sup>3</sup> United Nations, 'Sexual Exploitation and Abuse' (*Conduct in UN Field Missions*, 23 January 2017) <<https://conduct.unmissions.org/sea-overview>> accessed 12 November 2020.

<sup>4</sup> At the UN website, information on the number of allegations, allegations by category of personnel and by mission is available from 2007 onwards.

<sup>5</sup> United Nations, 'Sexual Exploitation and Abuse' (n 3).

of Member States. Allegations have been reported occurring in different parts of the world, involving peacekeepers from several nationalities.

General deployment conditions are applied to most post-conflict regions, but each territory has unique societal norms, historical and cultural heritage. Peacekeeping operations follow several standards that shall be applied in every mission. Also, a field assessment is provided in order to obtain necessary structural information about the conditions of the territory that the mission will be deployed. Nevertheless, not enough attention is given to the specificity of each host state's culture and practices. In this regard, the United Nations Stabilization Mission in Haiti (MINUSTAH) is an illustrative case study on how local customs and culture can impact the development of the mission and especially in its effectiveness.

Haiti has a unique history being the first independent state to be established after a slave revolt. Located in the Caribbean, old Saint Domingue was one of the wealthiest colonies of the New World. First 'discovered' by the Spanish and later colonized by the French, the West part of Hispaniola rapidly became a plantation field stage. Once the native population was almost extinct, African slaves started to be brought to be the working force for the exploitation of natural resources in the colony.

Due to the continuity of the slave trade during the colonization period, the population on Island became mostly black or 'brown.' The number of mixed-race children being born in this period is enormous, which is the confirmation of sexual relations — consensual or not, between colonizers and African women<sup>6</sup>. In this context, while slave men worked in sugar plantations, African women often served as sex slaves for the landlords. Once, in 1804, Haitians gained its independence after years of bloody war<sup>7</sup>, the social structures coming from the colonization period remained.

---

<sup>6</sup> Benedetta Faedi, 'The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti' (2008) 44 *Stanford Journal of International Law* 147–204.

<sup>7</sup> Annabelle Torgman, 'Haiti: A Failed State? Democratic Process and OAS Intervention on JSTOR' (2012) 44 *University of Miami Inter-American Law Review* <<https://www.jstor.org/stable/23645503?seq=1>> accessed 13 October 2020.



Several remarkable events mark the 20th century for Haitians. Starting from the early 1990's civil war, followed by Nord Alexis' dictatorial regime, the United States' 19-year invasion, Duvalier regimes, and a military coup at the end of the century<sup>8</sup>. This period was constituted by massacres, impunity, non-respect for Human Rights and the rule of law, economic crisis, extreme poverty, and weak democratic institutions. In 1994, when a democratically President was elected — Jean Bertrand Aristide, he encountered an environment with substantial remnants from that oppressive period. Five years later, Aristide was re-elected, facing enormous challenges to re-establish democratic institutions in the country. Student organizations started to protest, along with an armed rebellion against his rule, leading to his resignation and exile in 2004<sup>9</sup>.

An interim government presided by President Boniface Alexandre was settled, asking for immediate international support. In the same year, the United Nations Security Council called for the deployment of the United Nations Stabilization Mission in Haiti (2004), for an initial six-month period<sup>10</sup>. The mission brought to Haiti peacekeepers from several nationalities to restore the democratic institutions, the rule of law, and respect for human rights in the country. This research aims to provide insight into the impact of Haitian socio-cultural norms on the mission's development and effectiveness.

### *Methodology and Research Question*

In this regard, aiming to answer, “How social factors have influenced law effectiveness regarding sexual exploitation and abuse by peacekeepers during MINUSTAH?”, this study will be conducted with an interdisciplinary methodology based on a socio-legal approach. It will consist of legal framework examination, in-depth literature analysis, and interpretation of field research conducted by experts.

---

<sup>8</sup> See Jean-Philippe Belleau, ‘Massacres Perpetrated in the 20th Century in Haiti’ *SciencePo Mass Violence and Resistance - Research Network* (25 January 2016) <massacres-perpetrated-20th-century-haiti.html> accessed 13 October 2020.

<sup>9</sup> *ibid.*

<sup>10</sup> Security Council Resolution 1542, 2004 (S/RES/1452).

This research is divided into five main sections, as follows. The first chapter will discuss what constitutes ‘sexual exploitation and abuse’ and how it diverges from other kinds of attitudes of sexual nature. The aim here is to provide a theoretical basis that will be necessary to understand the following sections.

The second section’s objective is to provide an overview of MINUSTAH deployment and the rules governing. For this matter, it will be introduced the political and legal background of troops’ deployment, followed by an analysis and interpretation of the mandate governing MINUSTAH. It will also be analyzed actors’ responsibilities and accountabilities — the UN, Member States, and individuals.

The next step is a discussion of the troop activities’ framework, providing the international, regional, and local legal framework applicable to them. This chapter is mainly based on primary sources such as Conventions, Treaties, Regulations, and ‘soft law’ reports and guidelines. It aims at analyzing the rules that are already in place and how they have been implemented so far.

The fourth section is divided into three interconnected sub-sections: gender traditional roles, race discrimination, and ‘impunity culture.’ Here it will be examined how these cultural and social heritages have influenced contemporary Haiti’s society and the impacts that these features have in relation to human rights promotion and protection during the mission.

The last chapter is composed of conclusions aiming at providing an answer to the research question, followed by future recommendations.

This study aims at contributing to reinforce that SEA involving peacekeepers is re-occurrent. Therefore, more attention should be given to the local socio-cultural norms in peacekeeping missions.

## 1. THEORETICAL FRAMEWORK: WHAT CONSTITUTES SEXUAL EXPLOITATION AND ABUSE?

The concern about sexual exploitation and abuse in peacekeeping missions first emerged in Cambodia during the UN Transitional Authority in Cambodia (UNTAC) in 1993<sup>11</sup>. After this mission, claims in this regard started to emerge in several field missions, becoming a serious concern for the international community. For this reason, in 2003, Kofi Annan — the Secretary-General at the time, formulated a ‘zero-tolerance policy’ towards sexual exploitation and abuse, expressed in SG’s Bulletin “Special Measures for protection from sexual exploitation and abuse.”

The policy fractionates the term into two fragments: ‘sexual exploitation’ and ‘sexual abuse.’ The first one is defined as: “*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 from the sexual exploitation of another.*”<sup>12</sup> And sexual abuse relates to the “*actual or threatened physical intrusion of a sexual nature, whether by force or under unequal coercive conditions.*”<sup>13</sup>

The aim was to define what constitutes SEA, the scope of application, and affirm the prohibition of this behavior. Nevertheless, it is possible to see that the definition is quite vague. It encompasses different kinds of sexual relations, varying from consensual relations between locals and UN personnel to rape — which constitutes a criminal act. In this regard, it can be considered problematic to place every kind of relation involving peacekeepers and members of the host country within one term. The issue arises from the confusion of what exactly constitutes sexual exploitation and abuse.

---

<sup>11</sup> Jasmine-Kim Westendorf and Louise Searle, ‘Sexual Exploitation and Abuse in Peace Operations: Trends, Policy Responses and Future Directions’ (2017) 93 *International Affairs* 365, 365–387 <<https://academic.oup.com/ia/article/93/2/365/2982811>> accessed 13 November 2020.

<sup>12</sup> Secretary-General’s Bulletin “Special Measures for protection from sexual exploitation and abuse.” (ST/SGB/2003/13).

<sup>13</sup> SG Bulletin “Special Measures for protection from sexual exploitation and abuse.”

There is concordance regarding some well-known variations of SEA. For instance, there is no much debate if rape —sexual abuse involving non-consensual penetration constitutes sexual exploitation. The same applies to sexual assault, which is also a sexual activity with no consent, but it does necessarily involve penetration<sup>14</sup>. However, there are some other sexual activities that are opened for interpretation—if it falls into the SEA or not. For instance, exploitative relationship: ‘Any abuse of a position of vulnerability’ might encompass every single relationship between a peacekeeper and a local person, or it can refer to circumstances in which one of the parties is in an authority position and uses this in his favor to engage in a sexual relationship with another.

Different organizations and UN Agencies have tried to define what falls into the SEA’s scope. However, there is no consensus in this regard. Research conducted by Save the Children UK enumerates in detail kinds of child SEA, such as sex trade for non-monetary items, forced sex, verbal sexual abuse, child prostitution and pornography, sexual slavery, and sexual assault<sup>15</sup>. It is reasonable to encompass under SEA any kind of sexual attitude in a situation where a child is involved, but the gravity of such actions is variable. Although both verbal sexual assault towards children and forced sex constitute a crime under International Law, the consequences of these two behaviors in the life of a child are different. Also, the criminal charges for perpetrators committing one of these crimes are not the same.

A study conducted by Westendorf and Searle provides an insight into the necessity to group SEA occurrences according to the context and purpose of the violation. Opportunistic sexual abuse refers to situations in which the perpetrator did not pre-plan the abuse — diverging from planned, sadistic violations. The aim is solely to achieve his

---

<sup>14</sup> United Nations, ‘Glossary on Sexual Exploitation and Abuse - Second Edition’ <[https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20%202017%5D%20-%20English\\_0.pdf](https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20%202017%5D%20-%20English_0.pdf)> accessed 13 October 2020.

<sup>15</sup> See Corinna Csáky, ‘The Under-Reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers’ [2008] Save the Children UK 37 <<https://www.savethechildren.org.uk/content/dam/global/reports/education-and-child-protection/no-one-to-turn-to.pdf>> accessed 13 October 2020.

private purposes<sup>16</sup>. Nonetheless, the most re-occurrent SEA cases in peacekeeping missions are related to what it has called ‘Transactional sex.’ Referring to the trade of sexual relations for money or other assets. Sometimes, this kind of SEA is wrongly named as ‘prostitution.’ However, considering the deplorable situation in which these local women are subject to in post-conflict zones, most often, the only way that they have to get away from hunger is by selling their bodies to UN field personnel.

In this regard, the measures are taken by the UN, such as the ‘zero-tolerance policy’ aiming at protecting victims from SEA, will not be effective until the root problems of this issue are targeted, such as the feminization of poverty and the absence of alternatives for women living in this context<sup>17</sup>. There are several policies and resolutions re-affirming SEA prohibition, but few specifically target the solutions to prevent this from happening. Shifting the focus from the perpetrator to the victim would give a broader view of why this situation keeps happening in all regions of the world.

Additionally, the broadness of the term ‘sexual exploitation and abuse’ leads to different perceptions of what constitutes this act, especially for peacekeeping host countries’ populations, making it challenging to obtain precise data in this regard<sup>18</sup>. Gathering trustable data about this phenomenon is essential to reinforce prevention. However, this is only possible when all parties involved — the UN, its field personnel, Member States, and local individuals, are explicitly aware of what exactly constitutes sexual exploitation and abuse.

Peacekeepers are subject to pre-deployment training, where they are well informed of the actions forbidden in the field. Host communities do not take part in such

---

<sup>16</sup> Westendorf and Searle (n 11) 365–387.

<sup>17</sup> Diane Otto, ‘Making Sense of Zero Tolerance Policies in Peacekeeping Sexual Economies’, *Sexuality and the law: Feminist engagements* (Oxon & New York: Routledge-Cavendish 2007) 259–282 <<https://www.taylorfrancis.com/books/e/9780203945094/chapters/10.4324/9780203945094-17>> accessed 13 November 2020.

<sup>18</sup> Olivera Simic, ‘Rethinking “Sexual Exploitation” in UN Peacekeeping Operations’ (2009) 32 *Women’s Studies International Forum* 288, 294 <<http://www.sciencedirect.com/science/article/pii/S0277539509000545>> accessed 13 October 2020.

training, but they are directly involved with the SEA issue in peacekeeping missions. A behavior that is considered to be prohibited for peacekeepers might be considered usual in the territory where the mission is deployed. For this reason, in order for the ‘zero-tolerance policy’ to be more effective, it is necessary to target all parties involved.

In sum, there is no full consensus of what exactly constitutes SEA. However, for the purpose of this research, the term ‘sexual exploitation and abuse (SEA)’ will refer to specific occasions, as it follows: when military and police personnel have intentionally used their authority to exploit Haitians sexually; when the behavior constitutes a criminal act under International or Local Law; any sexual activity involving persons under 18 years of age.

## 2. MISSION DEPLOYMENT

In order to provide a better understanding of the deployment and evolvement of the mission, it is essential to provide an overview of the mission deployment process and the rules that govern a peacekeeping mission.

In this regard, the DPKO has elaborated on a document known as the “Capstone Doctrine”, which becomes the principal guideline that every UN personnel deployed in a field mission shall respect. It contains specific provisions affirming that all UN work should strictly follow the rules imposed by the UN Charter, International Human Rights Law, and International Humanitarian Law<sup>19</sup>. The UN Charter — which was created with the primary purpose of maintaining peace and security worldwide, gives the Security Council the responsibility for achieving this goal<sup>20</sup>. Although peacekeeping *per se* is not mentioned in the Charter, it is implied that the deployment of those missions falls into the Security Council’s obligations since it is directed connected with the Charter’s primary objective<sup>21</sup>.

### 2.1. Pre-Deployment

The pre-deployment process consists of many phases. Firstly, there are initial consultations with the host government, UN relevant actors, the Member States that might contribute with military and police officers and regional organizations, which will be the basis for the strategic assessment provided by the Secretary-General to the Security Council<sup>22</sup>. Usually, this assessment is accompanied by a technical field assessment coordinated by the Secretariat envisaging to analyze the security, political, and humanitarian situation in the territory. When the Security Council has gathered all

---

<sup>19</sup> [https://peacekeeping.un.org/sites/default/files/peacekeeping/en/capstone\\_eng.pdf](https://peacekeeping.un.org/sites/default/files/peacekeeping/en/capstone_eng.pdf)

<sup>20</sup> UN Charter

<sup>21</sup> [https://peacekeeping.un.org/sites/default/files/peacekeeping/en/capstone\\_eng.pdf](https://peacekeeping.un.org/sites/default/files/peacekeeping/en/capstone_eng.pdf)

<sup>22</sup> United Nations Peacekeeping, ‘Forming a New Operation’ (*United Nations Peacekeeping*) <<https://peacekeeping.un.org/en/forming-new-operation>> accessed 10 November 2020.

necessary information for mission deployment, it issues a mandate for the settlement of the peacekeeping mission.

In this context, once the Security Council acknowledged the claim made by the new President in Haiti, Boniface Alexandre, asking for urgent international support, it determined that the situation in Haiti was a threat to international peace and security, especially for the Caribbean region<sup>23</sup>. In this regard, the Security Council, acting under Chapter VII of the UN Charter, required member states to support the succession of government in Haiti and establishing a Multinational Interim Force under Resolution 1529<sup>24</sup>. This Interim Force required immediate deployment in order to facilitate the access of humanitarian workers in the field, provide conditions for international and regional organizations to assist the population in need, and, primarily, prevent the further deterioration of the humanitarian situation in Haiti<sup>25</sup>. Also, the Secretary-General was asked to elaborate a plan of action for the United Nations to enhance the country's political, social, economic, and security conditions, bearing in mind the full respect for Human Rights and the Rule of Law<sup>26</sup>.

In compliance with SC demands, the Secretary-General elaborated a multidisciplinary report regarding the situation in Haiti. This report aimed to emphasize the needs and the scope of the political, economic, security, and humanitarian issues in the country to obtain enough information to deploy a peacekeeping mission in the Caribbean country. Acquiring information about the Haitian environment was necessary in order to decide whether or not a peacekeeping mission would be the best plan for the Security Council to follow, since, for the decision to settle a peacekeeping mission to be made, it is needed to take into consideration:

---

<sup>23</sup> Security Council's Resolution 1529, 2004 (S/RES/1529).

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*



- *Whether a situation exists the continuation of which is likely to endanger or constitute a threat to international peace and security;*
- *Whether regional or sub-regional organizations and arrangements exist and are ready and able to assist in resolving the situation;*
- *Whether a ceasefire exists and whether the parties have committed themselves to a peace process intended to reach a political settlement;*
- *Whether a clear political goal exists and whether it can be reflected in the mandate;*
- *Whether a precise mandate for a United Nations operation can be formulated;*
- *Whether the safety and security of United Nations personnel can be reasonably ensured, including in particular whether appropriate guarantees can be obtained from the principal parties or factions regarding the safety and security of United Nations personnel<sup>27</sup>.*

The Secretary-General aims to provide this data and has settled a multidisciplinary assessment mission in the country comprising personnel from the Secretariat Department and different UN Agencies<sup>28</sup>. Consultations were made with the interim President, the Prime Minister, the Haitian National Police, civil society representatives, political groups, OAS Special Mission, and other relevant stakeholders<sup>29</sup> to obtain information with the most accuracy possible.

The assessment showed that Haiti's root were weak institutions, lack of the rule of law, corruption, and especially widespread impunity<sup>30</sup>. Thus, leading to a massive disrespect for human rights and the rule of law, especially exposing the most vulnerable

---

<sup>27</sup> United Nations, 'United Nations Peacekeeping Operations Principles and Guidelines' <[https://peacekeeping.un.org/sites/default/files/peacekeeping/en/capstone\\_eng.pdf](https://peacekeeping.un.org/sites/default/files/peacekeeping/en/capstone_eng.pdf)> accessed 10 November 2020.

<sup>28</sup> Report of the Secretary-General on Haiti, 2004 (S/2004/300).

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

– women and children to a deplorable living standard<sup>31</sup>. In this regard, the Secretary-General concluded the urgent need to establish a multidimensional stabilization operation, consisting of 6.700 troops, 1.622 civilian police, and the required international and civilian staff<sup>32</sup>.

## **2.2. Security Council's Mandate**

Recalling Secretary General's recommendations, the Security Council has adopted Resolution 1542, in April 2004, establishing the United Nations Stabilization Mission in Haiti (MINUSTAH). In this context, it reaffirms resolutions 1325 on women peace and security, 1460 and 1539 on children in armed conflicts, and resolutions 1265 and 1296 on civilians' protection in armed conflict<sup>33</sup>. It also establishes the main priorities constituting the mission: putting an end to impunity, ensuring the promotion and protection of Human Rights, restoring the rule of law and an independent judiciary<sup>34</sup>. To this end, it imposes a mandate to implement a multi-dimensional peacekeeping operation, consisting of three main pillars: Secure and Stable Environment, Political Process, and Human Rights<sup>1</sup>.

The SC urges support for the Transitional Government to promote a secure and stable environment by reforming the Haitian National Police, applying a sustainable Disarmament, Demobilization and Reintegration (DDR) program, and assisting in the restoration of the rule of law and public order and protecting civilians from violence<sup>35</sup>. A stable environment is the first pillar in the accomplishment of the other features contained in the mandate. Since, in order to restore democratic institutions and impose the rule of law in the country, the Haitian National Police must be able to exercise its functions, providing the international community a minimum level of security to be able to circulate

---

<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.*

<sup>33</sup> Security Council's Resolution 1542.

<sup>34</sup> *ibid.*

<sup>35</sup> *ibid.*

in the territory and protection to civilians that are regularly victims of human rights abuses.

In conflict zones, the most vulnerable such as women and children, are usually the ones that suffer human rights abuses the most. In Haiti, the situation does not differ from that. In this context, the fact that the SC mandate for establishing MINUSTAH recalls resolutions explicitly targeting women and children is of extreme relevance.

Resolution 1325 on Women Peace and Security affirms the urgent need for gender mainstreaming in peacekeeping operations, suggesting specialized training for field personnel to promote the protection of women and girls in an armed conflict and understand their needs<sup>36</sup>. It is important to note that the Security Council affirms that the parties to the conflict should respect the International Conventions that the state has ratified under this resolution. Although it does not directly emphasize the need for field personnel to respect international conventions and national constitutions, it is implied since pre-deployment training to field personnel includes their International Human Rights Law obligations.

Resolution 1612 refers to children in armed conflict. It recalls the State parties the duty to prosecute perpetrators that committed crimes against children<sup>37</sup>. Also, it highlights the responsibility of peacekeeping personnel, together with UN Agencies, to provide an adequate response to Children Affected by Armed Conflict (CAAC) needs. It urges the States of troop-contributing countries to take appropriate preventive measures such as training before deployment and awareness about the zero-tolerance policy on sexual exploitation and abuse proposed by the Secretary-General, and in case of any violations, it affirms the responsibility of the State to make perpetrators accountable for their actions<sup>38</sup>. The Resolution emphasizes that both UN personnel, TCC, and state parties

---

<sup>36</sup> Security Council Resolution 1325 2000 (S/RES/1325).

<sup>37</sup> Security Council Resolution 1612 2005 (S/RES/1612).

<sup>38</sup> *ibid.*

should respect international human rights law and humanitarian law, affirming that the UN should provide resources directed to CAAC's needs. Nevertheless, the power to make violators accountable relies on TCC's States.

### **2.3. UN Standards of Conduct**

Any peacekeeping personnel that is deployed in the field must follow the UN Standards of Conduct. While some basic principles must be followed by every personnel — *Highest standards of efficiency, competence, and integrity; Zero-tolerance policy on sexual exploitation and abuse; accountability of those in command and leadership who fail to enforce the standards of conduct*<sup>39</sup>, some standards are applied only to specific groups of personnel.

#### **2.3.1. Uniformed Personnel**

Uniformed personnel is composed of military and police from the contributing member states. This sector of the UN peacekeeping staff is subject to several rules and guidelines that should be strictly followed by each one of the members that compose this group:

- *Memorandum of Understanding between the UN and Troop Contributing Countries (MOU);*
- *Secretary-General's Bulletin on Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission*
- *Secretary-General's Bulletin on Observance by United Nations forces of international humanitarian law*
- *Directives for Disciplinary Matters involving Civilian Police Officers and Military Observers*

---

<sup>39</sup> United Nations, 'Conduct in UN Field Missions Overview' (*Conduct in UN Field Missions*, 29 November 2016) <<https://conduct.unmissions.org/standards-overview>> accessed 7 November 2020.

- *Ten Rules/Code of Personal Conduct for Blue Helmets*<sup>40</sup>

For this research, each of these documents will be analyzed to provide insight into how this legal framework of which military and police peacekeepers are bonded is supposed to be applied in the field, especially regarding sexual exploitation and abuse. Firstly, the Ten Rules for Blue Helmets enumerates the main principles that they should follow upon arrival. A particular emphasis shall be given to the first, the second, third, and fourth rules, which follows respectively: *Not abuse or misuse their authority; Respect the law (...), their local culture, traditions, customs, and practices; shall treat the inhabitants of the host country with respect, courtesy and consideration; Not indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population*<sup>41</sup>.

More detailed, apart from establishing the administrative and logistical conditions of the TCC deployment, the Memorandum of Understanding settles the UN Standards of conduct that the personnel sent by the government must strictly follow<sup>42</sup>. These standards are found in a compilation of different resolutions, policies, and reports. Sexual exploitation and abuse have been extensively targeted in those documents emphasizing that any acts committed constituting SEA are strictly prohibited, especially towards women and children, who are the ones that must be protected the most by United Nations forces<sup>43</sup>. In this regard, women and girls deserve superior protection against rape, enforced prostitution, and any other form of gender-based violence<sup>44</sup>.

---

<sup>40</sup> United Nations, ‘Conduct in UN Field Missions Documents’ (*Conduct in UN Field Missions*, 29 November 2016) <<https://conduct.unmissions.org/documents-standards>> accessed 9 November 2020.

<sup>41</sup> United Nations, ‘Ten Rules Code of Personal Conduct for Blue Helmets’.

<sup>42</sup> Report of the Special Committee on Peacekeeping Operations and its Working Group on the 2007 resumed session (A/61/19 (Part III)).

<sup>43</sup> Secretary-General’s Bulletin “Special Measures for protection from sexual exploitation and abuse.”

<sup>44</sup> Observance by United Nations forces of international humanitarian law 1999 (ST/SGB/1999/13).

In MINSTAH's case, there were 19 contributing countries<sup>45</sup>, meaning all of them have signed the MOU and are bonded by it. The UN guides the standards of conduct but, the obligation of assuring that the person complies with International Human Rights Law and International Humanitarian Law relies on each Member State. For this matter, the States must provide practical pre-deployment training<sup>46</sup>. Guidelines about SEA are an obligatory part of the pre-deployment training; TCC must provide information about what constitutes SEA, emphasize the prohibition of such acts, and inform the steps taken in case of any misconduct in an alleged SEA case. Also, they are informed that even when the local law does not prohibit such acts, their position as UN representatives makes them bonded by International Law where SEA constitutes a crime.

Added to this, the Governments should ensure that the commander of its national troops is responsible for assuring the excellent behavior of its nationals, meaning that the commanders of each contributing country have the responsibility to provide order and guidance to guarantee that their subordinates are aware and in compliance with not only UN general standards of conduct, but also with mission-specific rules and national laws<sup>47</sup>. Likewise, the head commander, along with its government, has the primary responsibility of reporting and investigating cases of serious misconduct by its troops since members of the military and police contingent are under the exclusive jurisdiction of their nation-state<sup>48</sup>.

The SG's Bulletin on Observance by International Humanitarian Law forces reinforces that any alleged violations committed by military personnel in a field mission will be prosecuted under their national judicial system<sup>49</sup>. Although the UN affirms the

---

<sup>45</sup> *Argentina, Bangladesh, Bhutan, Brazil, Canada, Chile, Ecuador, United States of America, Guatemala, Honduras, Jordan, Mexico, Nepal, Paraguay, Philippines, Salvador, Sri Lanka and Uruguay*

<sup>46</sup> Report of the Special Committee on Peacekeeping Operations and its Working Group on the 2007 resumed session.

<sup>47</sup> *ibid.*

<sup>48</sup> *ibid.*

<sup>49</sup> Observance by United Nations forces of international humanitarian law.

obligation of each Government to report any acts of misconduct to the concerned UN Department, by respecting each state's sovereignty and putting a member of the armed forces under the exclusive jurisdiction of its national judicial bodies, it restrains the actions that the UN could take in order to move forward to make justice for the victims. The UN influence is limited to report to the respective Government and impose administrative and disciplinary action, any alleged crime and pressure their prosecutors to take the cases to court, but the actual power of making perpetrators accountable is always in the hands of the contributing state.

In cases of serious misconduct involving uniformed personnel, the Directives for Disciplinary Matters is applied. Added to the pre-deployment training, once peacekeepers arrive in the country of destiny, they must receive specific directives about what consists of misconduct and the disciplinary process that shall be taken in any alleged misconduct situation. Also, they are made aware of the local culture and laws, emphasizing the obligation to respect the norms of the territory they are serving<sup>50</sup>.

In Haiti, as in any other country, the local customs shape the local population's behavior. The need for awareness in this regard might not seem of extreme relevance at first. However, in order to promote peace, security, the establishment of the rule of law, and especially respect for human rights, it is necessary to understand the functioning of that specific society. Upon arrival, peacekeepers are supposed to be aware of the standards of conduct, but only when they get in touch with the local community will they know with more certainty how their knowledge and training can be shaped and applied to that specific territory. Since those peacekeepers come from different backgrounds, some cultural aspects that might seem evident to troops coming from neighboring countries, to others, explaining basic features such as aspects of the local religion can be a way to clarify individual local attitudes that might seem to be strange on their eyes.

---

<sup>50</sup> Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers (DPKO/CPD/DDCPO/2003/001).

On the other hand, once peacekeepers are aware of the local community's customs and legislation, they might instrumentalize this awareness in their favor, specifically by reproducing 'customs' that are considered severe misconduct under International Law. When this occurs, members of the police and military must report it to the Head of Mission. If he or she finds it suitable, shall report to the headquarters where a Board of Inquiry will be called to establish the facts of the misconduct that has been committed<sup>51</sup>. With the results obtained from the inquiry, the head of mission or the commander can decide to impose disciplinary action against the perpetrator, which might include:

*Removal from position of command; Redeployment to another position/area after retraining, if necessary; Removal of benefits and concessions provided to United Nations personnel; Suspension of leave/compensatory time off; Full or partial recovery from Mission Subsistence Allowance, in cases of financial loss to the Organization; Recommendation to repatriate; Written censure or reprimand, including a possible recommendation for non-eligibility for future assignment with the United Nations*<sup>52</sup>.

Depending on the gravity of the incident, the Head of Mission might decide to repatriate the peacekeeper. The Secretary-General shall waive the immunity applicable, so he or she will be subject to its state's applicable national law<sup>53</sup>. Once the perpetrator is repatriated, unfortunately, the UN has limited influence on how the proceedings will take place, especially considering that each nation-state has its Criminal Code, which might not prohibit the acts of misconduct that were considered forbidden under the UN representation.

When deployed in a field mission, experts and officials have the responsibility and obligation to comply with the highest standards of efficiency, competence, and

---

<sup>51</sup> *ibid.*

<sup>52</sup> *ibid.*

<sup>53</sup> *ibid.*



integrity<sup>54</sup>. Article 105 of the UN Charter establishes the privileges and immunities enjoyed by UN representatives when serving the Organization's interests to enable them to do their job, which must not be an excuse for their failure to comply with their obligations neither in work nor in the private sphere<sup>55</sup>. By occupying leadership positions, they are responsible for their actions and the actions of the ones working under their supervision. In this context, they shall guarantee that their troops are working according to the UN standards. Otherwise, they will be accountable for the attitudes of the ones working under their guidance.

### **2.3.2. All UN Personnel**

Along with the UN Charter, the Policy on Accountability for Conduct and Discipline in Field Missions applies to every UN personnel deployed in the field. It provides the framework for the responsibilities and accountability for all the actors involved in a peacekeeping mission: the UN, its staff, and the Member States<sup>56</sup>. Aiming at addressing misconduct, the UN has elaborated a *three-pronged strategy* composed of prevention, enforcement, and remedial action<sup>57</sup>. The extensive work that the UN and its agencies in providing practical pre-deployment training and guidance are because improving the prevention pillar can lead to the minimum misconduct cases possible and, consequently, a lower number of such acts.

Nevertheless, peacekeepers are in the field as UN representatives, but they also have personal characteristics that might lead to non-compliance with their obligations and even criminal acts. In such cases, where the member states, along with the UN, cannot prevent these persons from becoming perpetrators, enforcement becomes the next step to

---

<sup>54</sup> Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission 2002 (ST/SGB/2002/9).

<sup>55</sup> *ibid.*

<sup>56</sup> United Nations, 'Policy on Accountability for Conduct and Discipline in Field Missions'.

<sup>57</sup> *ibid.*

be taken. Enforcement encompasses the efforts aimed at providing an adequate response for the alleged peacekeeper misconduct, including activities from reporting to an investigative inquiry<sup>58</sup>. This information-gathering phase is of extreme importance to find the facts of the case with accuracy to provide support and justice for the victims. Also, it provides data that can be used later to target the root causes of the problem and prevent the situation from happening again.

The United Nations has elaborated a Comprehensive Strategy on Assistance and Support to SEA victims by UN staff and related personnel — enumerated in SG's Resolution 62/214, explicitly targeting the third pillar for addressing misconduct in field missions: remedial action. This strategy aims to provide victims of SEA by UN personnel and representatives with any support they need in this regard, including assistance for the children born out of this assault<sup>59</sup>.

The best-case scenario would be not to get the point of remedial action. However, since situations involving sexual abuse by peacekeepers are still frequently happening, remedial action plays a relevant role in at least diminishing the damage caused by those crimes that have been committed in field missions. The support provided by the UN in those cases ranges from general support applied to all the victims, such as judicial and health assistance, to actions that specifically target each victim's specific needs<sup>60</sup>. A well-done enforcement procedure reflects directly on the support that will be later provided in the remedial action stage since it contains specific information regarding the crime that these people have been subject to.

When peacekeepers are deployed in the field, the accountability for their actions relies on them as individuals and their commanders, the contributing state, and the United Nations. As it has been stated before, peacekeepers since the pre-deployment phase are

---

<sup>58</sup> *ibid.*

<sup>59</sup> United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel (A/RES/62/214).

<sup>60</sup> *ibid.*

made aware that they shall respect the UN Standards of conduct both on-duty and off-duty and if they are aware that a partner is violating these rules, it must report it to the respective authority<sup>61</sup> — the Force Commander, Police Commander or the Head of Mission. In cases of SEA involving uniformed personnel, which constitutes serious misconduct, the person will be held accountable administratively by the UN and judicially by its own country. The penalty might vary according to each State's criminal code. However, since most of the contributing countries have ratified the most relevant international conventions, they are bonded because sexual exploitation is prohibited under International Human Rights Law.

In sum, each individual deployed in the field is accountable for their actions. Nevertheless, when occupying an authority position such as managers and commanding officers, these persons are also accountable for their subordinates' actions because part of their job is to assure that their troops are acting in good behavior<sup>62</sup> and make every effort to prevent serious misconduct from happening. This is not to say that if somebody commits a crime under their supervision, the fault entirely relies on them. However, it is their duty to report the situation immediately, and if the misconduct proves to be consistent, they should take action to make perpetrators accountable.

Regarding state responsibilities, they shall inform and assure their personnel of their duties and expected conduct and report to the UN about cases of SEA involving their nationals and ensure efficient investigations are taken place in no more than six months<sup>63</sup>. In this research, it has been exhaustively emphasized that the states have exclusive jurisdiction over their military and police personnel, making them the most important actor in the accountability process. The issue relies on the fact that without their

---

<sup>61</sup> United Nations, 'Policy on Accountability for Conduct and Discipline in Field Missions' (n 56).

<sup>62</sup> *ibid.*

<sup>63</sup> *ibid.*

willingness to investigate and prosecute gender-based violence and sexual assault crimes, abusers will not be criminally accountable for their actions.

State sovereignty limits the scope of action that the UN could take in cases involving SEA. The UN's responsibility is first to provide a mechanism to avoid misconduct from happening, and secondly, when it does happen, report to the respective contributing country about the situation<sup>64</sup>. Also, the UN can exercise pressure on its Member States—which the Organization is accountable to provide an investigation and future prosecution. However, in the end, the decision to do so relies on each government.

### **3. HUMAN RIGHTS LAW FRAMEWORK**

#### **3.1. International Conventions**

Social factors have a direct impact on law effectiveness. In this context, it is necessary to enumerate the legal framework in which Haiti is bounded. Regarding international obligations, added to the UN Charter and its bodies, the Haitian state has ratified several International Agreements, such as the International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC) and the International Convention on Economic, Social and Cultural Rights (ICESCR).

Aiming at providing a clear overview of the UN Human Rights protection system, this section will be divided into two parts: UN Charter and its based bodies' core documents; and International Conventions, Covenants, Agreements, and its treaty-based bodies reports. While charter-based bodies include the Human Rights Council—which has replaced the Commission on Human Rights and its Special Procedures, treaty-based bodies' were created under international treaties and consist of independent experts that

---

<sup>64</sup> *ibid.*

have the responsibility to supervise nation state's compliance with their obligations<sup>65</sup>, being both kind of bodies under the supervision of the Office of the High Commissioner of Human Rights (OHCHR), the main difference between them is that on the one hand, charter-based bodies are binding to every nation recognized by the UN and on the other, treaty-based ones only apply to states that have ratified that specific treaty.

### 3.1.1. UN Charter

Established right after the end of World War II, the UN Charter was created in order to be the legal basis for the accomplishment of UN's primary purposes — the maintenance of international peace and security, development of relations among nations, human rights promotion, and the establishment of the organization as a harmonizing center for every nation<sup>66</sup>. In furthering its goals, the Charter sets up six principal UN organs — General Assembly, Economic and Social Council, Trusteeship Council, International Court of Justice, Secretariat, and the Security Council (SC)<sup>67</sup>, with different responsibilities.

In general terms, the Charter's contribution as the legal basis for a peacekeeping mission evolve during the entire procedure — from developing a mandate to the mission settlement and its evolution. There is not explicit referencing in the Charter about the placement of peacekeeping missions, but it does enumerate the rules that must be followed in any work done by the United Nations<sup>68</sup> and the responsible institutions for the enforcement of those laws. As it is enumerated under Article 101.3, as follows: “The

---

<sup>65</sup> OHCHR, ‘Human Rights Bodies’  
<<https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>> accessed 7 November 2020.

<sup>66</sup> United Nations Security Council, ‘What Is the Security Council?’  
<<https://www.un.org/securitycouncil/content/what-security-council>> accessed 5 October 2020.

<sup>67</sup> United Nations, ‘Main Organs’ (18 November 2014) <<https://www.un.org/en/sections/about-un/main-organs/>> accessed 5 September 2020.

<sup>68</sup> Department of Peacekeeping Operations and Department of Field Support, ‘United Nations Peacekeeping Operations Principles and Guidelines’ 10  
<[https://peacekeeping.un.org/sites/default/files/capstone\\_eng\\_0.pdf](https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf)> accessed 5 October 2020.

paramount consideration in the employment of the staff and the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity.”<sup>69</sup>

### 3.1.2. CEDAW

Haiti signed the Convention on the Elimination of All Forms of Discrimination against Women on July 18<sup>th</sup>, 1980, and ratified it on April 7<sup>th</sup>, 1981<sup>70</sup>. Considering that under the Haitian Constitution, International Conventions, when ratified, become a part of the national legislation automatically, once CEDAW was ratified, the rules contained in the agreement became immediately binding to the Haitian government, invalidating any pre-existing conflicting national laws<sup>71</sup>. This does not mean that Haiti has implemented CEDAW regulations in its territory. Although there were some improvements in this regard in the past few years, Haiti is far from accomplishing its international obligations concerning women’s rights.

The Convention is based on three main pillars: human reproduction, civil rights, and women’s legal status, and the impact of cultural factors in gender relations<sup>72</sup>. For this research, the last two factors — which are interrelated, are the most relevant ones.

Article I defines the term ‘discrimination against women’ as “any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing

---

<sup>69</sup> Charter of the United Nations 1945 n Art. 101.3.

<sup>70</sup> Committee on the Elimination of Discrimination against Women, ‘Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (Haiti)’ <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgGIUyogsos8GkK8DnmVpyyQvcuE7yl%2bk2qnAxQw%2fjlrCs4GEr0SjJIDMTSYVhNVJhxJXAFrxK3PaZ71uBAops3QVJg2OPB4EertxkUsCAgq>> accessed 9 September 2020.

<sup>71</sup> Bureau des Avocats Internationaux and others, ‘Review of Haiti’s Report under the Convention on the Elimination of All Forms of Discrimination against Women’ 3 <<http://www.ijdh.org/wp-content/uploads/2009/12/CEDAW-Haiti-report-on-gender-violence-22.1.16.pdf>> accessed 9 November 2020.

<sup>72</sup> Convention on the Elimination of All Forms of Discrimination against Women 1979.

or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, based on equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>73</sup> As stipulated by its title, this Convention intends to eliminate all forms of discrimination, but in the Haitian case, this goal's achievement faces enormous socio-cultural barriers. Haiti is built on a patriarchal society in which discrimination against women has been occurring since the slave era. Women have been frequently discriminated against in every sphere of their lives: at home, in the work environment, in government, and consequently, within the judicial system<sup>74</sup>.

In this context, the way Haitian women see themselves reflects how the whole population behaves towards them. Due to the social norms that have been established in the country — especially in terms of religious traditions and lack of education access, they sometimes do not even recognize that they are frequently discriminated against, and that is how ignorance is perpetuating a vicious cycle of women seeing themselves as inferior when compared to a man. In these circumstances, the fact that CEDAW applies to the Haitian state and can be directly invoked in Haitian courts is not of knowledge among the majority of victims of gender discrimination, which is a consequence of the widespread ignorance about international binding instruments<sup>75</sup> making it rare for women to fight for justice of their rights.

Although in the past few years some improvements were made regarding girl's access to education, they still tend to follow the path of older generations by choosing fields that are traditionally linked with their gender, that is usually not seen as ‘valuable’ for the labor market and putting them once more in working positions that are considered inferior

---

<sup>73</sup> *ibid.*

<sup>74</sup> Bureau des Avocats Internationaux, ‘CEDAW Violations by Article, Article 2 (Policy Measures), Article 3 (Guarantee of Basic Human Rights and Fundamental Freedoms) and Article 5 (Sex Role Stereotyping and Prejudice)’ (12 June 2015) <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/HTI/INT\\_CEDAW\\_NGO\\_HTI\\_20862\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/HTI/INT_CEDAW_NGO_HTI_20862_E.pdf)> accessed 9 October 2020.

<sup>75</sup> *ibid.*

as the one's occupied by men<sup>76</sup>. This situation illustrates the impact of social norms even when laws are being implemented in that territory. CEDAW's Article 10 emphasizes the state's obligation to provide equal access to men and women in the field of education<sup>77</sup>, which have been implemented by the Haitian State, but this does not mean that this legal framework has been influential in the sense of providing women better opportunities. Along with job opportunities that are not being fulfilled by women due to the choices they are socially pressured to make, they are also placed in an ignorance cycle that impacts their behavior towards men.

In this regard, Article 5 states that “State Parties shall take all appropriate measures (...) to modify the social and cultural patterns of conduct of men and women to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or stereotyped roles for men and women”<sup>78</sup>. Efforts have been made by the Haitian government, aiming at diminishing the stereotypical images of women. For instance, the Haitian Ministry for the Status of Women and Women's Rights, since 1994, has established a means to combat the practices and customs that reinforce discrimination against women<sup>79</sup>. Nevertheless, the advances made to eliminate discrimination and violence against girls and women were not enough to meet its obligations under CEDAW<sup>80</sup>.

Attempts have been made to stop this cycle of discrimination against women by governmental institutions and by several international actors — from non-governmental organizations to international and regional organizations. Several strategies and mechanisms were built in this regard, but their implementation and efficiency did not

---

<sup>76</sup> Committee on the Elimination of Discrimination against Women, ‘Summary Record of the 1394th Meeting’ <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/040/82/PDF/G1604082.pdf?OpenElement>> accessed 3 November 2020.

<sup>77</sup> CEDAW Art. 10.

<sup>78</sup> *ibid* Art. 5.

<sup>79</sup> Committee on the Elimination of Discrimination against Women (n 76).

<sup>80</sup> Bureau des Avocats Internationaux and others (n 71).



occur the way was expected. In 2004, when MINUSTAH was established, hope has risen again concerning CEDAW's implementation and, consequently, the protection of women's rights in Haiti. However, the actors involved in this mission did not pay enough attention to the cultural roots that reinforce discrimination and violence against women. As a result, not only were women kept being discriminated against and abused by their compatriots, but they became easy targets for UN military and police personnel.

The sexual stereotypes present in Haiti before TCC arrival added to the impunity environment in which Haitians function were instrumentalized by foreign military personnel in the sense of committing sexual exploitation and abuse against local women, crimes that they were there to prevent from happening. In short, those who were there to help implement international conventions and respect for human rights were the same ones using the lack of law effectiveness in their favor. These actions go against the rules that peacekeeping personnel should follow, such as human rights, respect, and protection. Within their obligations is the respect for human rights in their dealings, both with their co-workers and the local population, in their private and public lives<sup>81</sup>. Committing sexual exploitation and abuse by local women goes totally against the rules and principles of peacekeeping operations, especially regarding CEDAW's implementation in the country.

### 3.1.3. CRC

The Convention on the Rights of the Child was ratified by the Haitian State in 1995, defining a child as “every human being below the age of eighteen years unless under applicable to the child, the majority is attained earlier”<sup>82</sup>. In this regard, the Committee on the Rights of the Child, in its concluding observations from 2003 — a year before MINUSTAH settlement, has expressed serious concerns about the Convention's implementation in the country, since Haitian domestic legislation is not in compliance

---

<sup>81</sup> Department of Peacekeeping Operations and Department of Field Support (n 68).

<sup>82</sup> Consideration of Reports submitted by State Parties under Article 44 of the Convention - Concluding Observations: Haiti 2003 (CRC/C/15/Add202).

with the principles present in the Convention<sup>83</sup>. The reflection of Haiti's non-compliance with CRC is an environment in which children were not enjoying the respect of their rights. Nobody is being held accountable for this lack of child protection, which is a consequence of the impunity environment present in this territory.

During this period, some of the Committee's main concerns were the high incidence of violence and abuse against children within the family environment and outside of it, the number of children working long hours and consequently reflecting on their school attendance, and the high number of children that were growing up separated from their parents<sup>84</sup>. This means that before MINUSTAH was established in the country, the discussions about children's living conditions in Haiti were already on the table. Security Resolution 1542 — which has established the mission for an initial six-month period, re-affirmed the need to support the Transitional Government in human rights protection, especially for the most vulnerable such as women and children, to make perpetrators accountable for human rights violations<sup>85</sup>.

In this Concluding Observations, when referring to perpetrators, they were meaning locals committing crimes against children. Nevertheless, after the mission was settled, the concerns about children's rights and protections were extended to the foreign military and police officers representing the UN in this stabilization mission. This concern is explicit in the 2016 Concluding Observations on Haiti's second and third reports, where they cite the high incidence of 'transactional sex' between local girls and women and United Nations peacekeepers<sup>86</sup>. Although peacekeepers were trained to understand UN values and rules, these features were ignored, and crimes were committed, clearly violating the obligations contained in the Convention on the Rights of the Child. The relation between a peacekeeper and a local woman is *per se* forbidden due to the authority

---

<sup>83</sup> *ibid.*

<sup>84</sup> *ibid.*

<sup>85</sup> *ibid.*

<sup>86</sup> Concluding observations on the combined second and third reports of Haiti (CRC/C/HTI/CO/2-3).

position in which these military occupy; the situation is aggravated when an underage girl or boy is sexually and emotionally exploited by a man that occupies a more privileged position in the society.

Before 2004, the Haitian ‘government’ has not implemented essential rules in the CRC, such as the duty to protect a child from any kind of sexual exploitation and abuse<sup>87</sup>. Corruption and impunity can be considered the main features of the law ineffectiveness in the country. Once peacekeepers have arrived on the Island, instead of providing support for law implementation regarding child protection, they turned in their favor the social norms that were already present in the country by feeding the cycle of aggression against children, especially regarding sexual exploitation and abuse against girls that were in a vulnerable position.

### **3.1.4. ICCPR and ICESCR**

While the Haitian government ratified the Convention on Civil and Political Rights in 1991, the Convention on Economic, Social and Cultural Rights has only been ratified after the earthquake in 2013. The late ratification of ICESCR is a reflex of Haiti, and many other states see Economic, Social, and Cultural Rights as less critical than Civil and Political Rights, ignoring the fact these two ‘groups’ of human rights are interconnected in many aspects. The ‘right of everyone to education’ illustrates this connection: “education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace”<sup>88</sup>.

Access to education for all is one of the main pillars for the well-functioning of a democratic society. One can only know their civil and political rights (and duties) once they are educated in this regard. Education does not mean solely formal education within

---

<sup>87</sup> Convention on the Rights of the Child 1989, Art. 34.

<sup>88</sup> International Covenant on Economic, Social and Cultural Rights 1966, Art. 13.

school doors, but informal education as well. To promote a better understanding of civil and political rights, children should be in touch with fundamental human rights and their duties within their society since early childhood. The youth is the upcoming generation that can transform old social norms and patterns and replace them with new social standards that promote equal enjoyment of human rights by men and women.

Article 3 from both ICCPR and ICESCR affirms States' obligations to ensure equal rights of men and women in the enjoyment of their human rights. In Haiti, most of the laws are not explicitly discriminatory. However, the culture and the social patterns reinforce discrimination against women: some cultural manifestations such as songs are often disrespectful to women and, consequently, impact gender stereotypes<sup>89</sup>. In this context, Haitian women do not have the privilege to enjoy their rights on equal foot as a man. This feature led to a discriminatory society in which women mostly do not even know their rights. When they do, they are afraid to fight for them since men have been occupying most authority positions. Added to this, women are also afraid of retaliation from their violators.

### **3.2. OAS and CARICOM**

The role played by regional actors is of extreme relevance in the deployment and development of the stabilization mission in Haiti. The Organization of American States, along with Caribbean Community, have made efforts to promote democracy, the rule of law, and respect for Human Rights in Haiti prior — and during — the mission established in the country. In this regard, Res. 1542, from June 2004, has established MINUSTAH, Security Council, which has emphasized the need to cooperate with OAS and

---

<sup>89</sup> Committee on the Elimination of Discrimination against Women (n 76) 8.

CARICOM<sup>90</sup> that have already been developing mechanisms to improve Haitians lives conditions.

A memorandum of understanding between the UN and OAS has settled which functions and activities rely on each organization regarding electoral assistance to promote free and fair elections and support for the Haitian National Police<sup>91</sup>. Article 23 and 24 of the Inter-American Democratic Charter, respectively, emphasizes that “Member States (...) may request that the Organization of American States provide advisory services (...) for strengthening and developing their electoral institutions” and “the electoral observation missions shall be carried out following the principles and norms of the OAS”<sup>92</sup>. In this regard, OAS General Assembly Resolution 2058 from 2004 affirms that the OAS is committed to assisting the Haitian Provisional Electoral Council in organizing elections and with the proclamation of results in collaboration with MINUSTAH<sup>93</sup>.

This agreement's primary purpose between regional actors and the UN is to strengthen democratic institutions, the rule of law, and respect for human rights in Haiti. The importance of the role played by regional actors comes from the fact that each regional organization is built according to the values and the culture of that specific region. In this context, the OAS was built upon an environment of which most (if not every) member states have been European colonies and, consequently, have historical remnants from that period that still impact their societies. For instance, one of the main features that compose the OAS Charter is the principle of self-determination, in which state sovereignty is above any foreign interference. Nevertheless, the Haitian ‘government’ was not capable of promoting stability in the country anymore, leading to

---

<sup>90</sup> United Nations, ‘Memorandum of Understanding between the United Nations and the General Secretariat of the Organization of American States Concerning Electoral Assistance to Haiti’ <[http://www.oas.org/OASpage/Haiti\\_situation/cpinf5104\\_04eng.pdf](http://www.oas.org/OASpage/Haiti_situation/cpinf5104_04eng.pdf)> accessed 9 November 2020.

<sup>91</sup> Report of the Secretary-General on Haiti.

<sup>92</sup> ‘Inter-American Democratic Charter’ (2001), Art. 23 and 24 <[https://www.oas.org/charter/docs/resolution1\\_en\\_p4.htm](https://www.oas.org/charter/docs/resolution1_en_p4.htm)> accessed 7 November 2020.

<sup>93</sup> Situation in Haiti: Strengthening of Democracy, 2004 (AG/RES/2058).

establishing several UN and OAS missions throughout the years, being MINUSTAH the most long-lasting one.

Added to the field operation that OAS has established in Haiti to promote democratic values in the electoral process, the Organization has elaborated on different conventions and agreements that are binding for the members' states that have ratified it.

The Inter-American System of Human Rights is one of the most relevant regional Human Rights protection systems. It is composed of several mechanisms, instruments (American Declaration on the Rights and Duties of Man and the American Convention on Human Rights) and institutions (Inter-American Commission and the Inter-American Court)<sup>94</sup>. This human rights protection system has been created throughout the years by the Organization of the American States since the ratification of its Charter in 1951<sup>95</sup>.

The Inter-American Commission of Human Rights has the function to “promote the observance and protection of human rights”<sup>96</sup>, making it the main organ responsible for the observance of States’ compliance to the Inter-American Convention of Human Rights. In this regard, the Commission has emphasized in several reports its concern about Haiti's human rights situation. Added to the concerns regarding security, democracy, and the rule of law is the situation that Haitian women encountered themselves.

The Inter-American Convention on the Granting of Civil Rights to Women had entered into force long before the Inter-American Convention of Human Rights was established. The Convention, that only consists of two articles, has been signed but not yet been ratified by the Haitian government. The Convention stipulates that member

---

<sup>94</sup> Felipe Gómez and Koen de Feyter, ‘The Organisation of American States and Human Rights’, *International Human Rights Law in a Global Context* (Thematic Network on Humanitarian Development Studies 2009) 803–805.

<sup>95</sup> OAS, ‘OAS - Organization of American States: Democracy for Peace, Security, and Development’ (1 August 2009) <[http://www.oas.org/en/about/who\\_we\\_are.asp](http://www.oas.org/en/about/who_we_are.asp)> accessed 5 November 2020.

<sup>96</sup> Charter of the Organization of American States 2009 Art. 106.

states should grant that women can enjoy the same civil rights as men<sup>97</sup>. Several states have ratified it decades after it was created. However, the Haitian government is still reluctant to enjoy civil rights for women in the same proportion as men.

On the other side of the spectrum, the Inter-American Convention on the Prevention, punishment, and Eradication of Violence against Women — known as “Belém do Pará Convention” has provided a new form of granting women’s rights. By focusing on prevention, it has become the first agreement to specifically target violence against women, establishing women’s right to have a life free from violence<sup>98</sup>. The importance of this new kind of agreement comes from the fact that Latin American and Caribbean countries have a persistent historical background of the high incidence of violence against women, mainly due to the patriarchal societal roles present in this region.

Its first article stipulates that “violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women”<sup>99</sup>. The direct emphasis on ‘violence based on gender’ reflects the importance of State Parties in adapting their domestic legal framework to include specific laws for abuses committed against women mainly because of their gender. There is a clear need to target categorically gender-based violence in Haiti since women and girls are victims of deep discriminatory norms and practices leading to crimes being committed against them simply because they are considered to be ‘inferior’<sup>100</sup>.

In this context, the connection between discrimination against women and gender-based violence explains the Convention’s focus not only on punishment and eradication

---

<sup>97</sup> Inter-American Convention on the Granting of Civil Rights to Women 1948 Art. 1.

<sup>98</sup> Organization of American States, ‘Second Hemispheric Report on the Implementation of the Belém Do Pará Convention: Follow-up Mechanism to the Belém Do Pará Convention (MESECVI)’ 15 <<https://oig.cepal.org/sites/default/files/mesecvi-segundoinformehemisferico-en.pdf>> accessed 13 October 2020.

<sup>99</sup> Inter-American Convention on the Prevention, Punishment and eradication of violence against women ‘Convention of Belem do Para’ 1994 n Art. 1.

<sup>100</sup> Organization of American States, ‘Observations of the Inter-American Commission on Human Rights upon Conclusion of Its April 2007 Visit to Haiti.’ <<http://cidh.org/pdf%20files/April%202007%20Haiti%20Observations%20ENG.pdf>>.

of abuses committed against women but also on prevention<sup>101</sup>. Discrimination and violence are interconnected in a way that one leads to the other, not necessarily respectively. On the one hand, Haitian women have been suffering discrimination on the exercise of their fundamental rights, which impacts how they are seen in society, being considered ‘weak’ mostly, becoming easy targets for perpetrators. On the other hand, once they have suffered a criminal act, they cannot enjoy their rights as victims because they are subject to discrimination by private and state actors.

Once the Haitian government ratified this Convention in 1997, it has become obligated not only to punish those who have committed gender-based violence but also to prevent this situation from happening<sup>102</sup>. In this case, prevention means eradicating discrimination against girls and women within its territory. When analyzing the root causes of gender-based violence in Haiti, it is possible to conclude that the social norms present in the country lead to an impunity environment in which criminal acts against girls and women are committed by private and state agents, both in the public and private sphere.

Haiti has ratified the most relevant regional human rights agreements regarding women’s rights — American Convention on Human Rights and the ‘Belém do Pará’ Convention. Once ratified, according to Haitian law, the rules contained in those conventions automatically become part of the national legislation, but this does not mean that they have been implemented effectively. In this context, once MINUSTAH troop-contributing countries have arrived in the country, they faced a chaotic impunity environment. Their role as UN representatives was to assist the Haitian community in providing law enforcement assistance in different aspects, including protecting the most vulnerable such as women and children.

---

<sup>101</sup> Inter-American Commission on Human Rights, ‘The Right of Women in Haiti to Be Free from Violence and Discrimination’ <<https://cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.toc.htm>> accessed 13 November 2020.

<sup>102</sup> *ibid.*



Nevertheless, several organizations have reported sexual exploitation and abuse committed by peacekeepers against local girls and women throughout the mission. By being present in Haitian territory, they are bound by Haitian law, which includes the Articles that compose the regional instruments that the Haitian government has ratified. Their actions in these regards constitute a clear violation of core Articles present in the American Convention.

Article 4 of the American Convention affirms that “everyone has the right to have their life respected” also, the following Article states that everyone should have their physical and mental integrity respected, and nobody should be subject to inhuman or degrading treatment<sup>103</sup>. By raping, sexually abusing or mistreating girls and women, peacekeepers are violating the right to one's have their life respected, because there are consequences in the quality of life that those victims would have after the suffered assault, for instance, psychological trauma that could lead to suicidal thoughts or sexually transmitted diseases that could cause death<sup>104</sup>.

In this regard, the Inter-American Commission of Human Rights has affirmed that rape can, in some cases, be considered torture or inhuman and degrading treatment, considering that these actions might have the purpose of humiliating the victim and her family<sup>105</sup>. Considering the practice of *zenglendos*, it is possible to conclude that on many occasions, the rape committed against women aims to target her husband, confirming that her purpose was solely to humiliate.

---

<sup>103</sup> American Convention on Human Rights 1969 Art. 4 and Art. 5.

<sup>104</sup> Lisa Davis, Erica J Richards, Annie Gell, and others, ‘REQUEST BY THE INTERNATIONAL WOMEN’S HUMAN RIGHTS CLINIC AT THE CITY UNIVERSITY OF NEW YORK SCHOOL OF LAW, MADRE, THE INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, BUREAU DES AVOCATS INTERNATIONAUX, MORRISON & FOERSTER LLP, THE CENTER FOR CONSTITUTIONAL RIGHTS, AND WOMEN’S LINK WORLDWIDE FOR PRECAUTIONARY MEASURES UNDER ARTICLE 25 OF THE COMMISSION’S RULES OF PROCEDURE’ 11–17.

<sup>105</sup> *ibid.*

The Haitian community most often blame women when they are raped. Once peacekeepers sexually abuse and exploit them, the outcome is long-lasting. Their feeling of shame and guilt leads to a high number of unreported cases.

### **3.3. Haitian Law**

According to the Haitian Constitution, “*once international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them*”<sup>106</sup>. This means that added to the rules that compose the national legislation and international ratified conventions are also binding for the Haitian state and its citizens or legal residents. Consequently, since Haiti has ratified most of the human rights agreements, their constitution might have some gaps, especially regarding women’s rights protection, is not an excuse for any negligence in this regard.

The Haitian Constitution from 1987 was reviewed in 2012, adding some new features that put the Haitian legislation in closer accordance with International Human Rights Law standards. Its preamble already affirms the State obligation to guarantee the right to have a decent life — in line with the Universal Declaration of the Rights of the Man; It also emphasizes the necessity of gender equality to promote a democratic government based on human rights’ protection and respect<sup>107</sup>.

#### **3.3.1. Access to information and education**

The importance of universal access to information is expressed through the state obligation to publicize every law and decrees both in French and Creole<sup>108</sup>. This feature could have had an enormous impact on Haitian women’s lives since their ignorance regarding their rights as citizens is one of the main problems concerning the amount of

---

<sup>106</sup> La Constitution de la République D’Haïti 1987 Art. 276(2).

<sup>107</sup> *ibid* Preamble.

<sup>108</sup> *ibid* Art.40.

non-reported abuse cases in the country. Unfortunately, even being formally regulated that information should be provided for all, this is not the case in Haiti. Although it would be possible to affirm that might have improved this situation after the constitution amendment, the majority of female Haitians are not fully aware of their human rights — which is confirmed by the still low number of reported gender-based violence cases.

When analyzing the patriarchal Haitian historical background, it is possible to connect sexism and access to information. Women's ignorance is essential for maintaining a patriarchal society. Considering that men occupy the most critical governmental seats, there is no particular interest in providing women easy access to their rights. In this manner, men can continue to occupy privileged positions in society and exploit women in many aspects. In the end, this is a vicious cycle in which girls and women are deprived of their rights due to lack of information access, which leads them to be occupying less privileged positions and not having enough influence to fight for their rights.

Connected with this situation is the State's provisions in the education field. The government's responsibility to provide education to the masses without gender discrimination<sup>109</sup> is not fully implemented in the country. In this context, the consequences of non-access to information also falls in the same situation as non-equal access to education. Considering that there is an incentive for school privatization<sup>110</sup> and a high number of families do not have conditions to provide school access to all their children, most of the time, parents choose to pay education fees only for their male children. In this context, added to the social norms that reiterate the preference to invest in boys other than girls, the Haitian government is also accountable for girls being less schooled than boys.

---

<sup>109</sup> *ibid* Art.32.

<sup>110</sup> *ibid* Art. 32.

The inurement of child marriage directly impacts girls' education, especially the ones coming from poor rural families<sup>111</sup>. The Haitian Civil Code gives space for this social feature to continue to happen since its article 171 establishes that a girl can marry as young as 15 legally<sup>112</sup>. Although there was an improvement in girls attending school in the past few years, it is not enough to provide them enough capacity to change the social norms that have been long-lasting in the country. On the other side of the spectrum, girls from urban areas are more aware of their rights and ambitions. When peacekeepers arrived in the country, these girls saw an opportunity to grant their school attendance by exchanging sexual favors for their school fees payment<sup>113</sup>. It is a fact that those peacekeepers are accountable for their actions. However, the Haitian government is also accountable since it should be the main responsible for providing school access to those girls.

### 3.3.2. Violence against girls and women

The year 2005 marks a significant improvement in the Haitian Penal Code: rape has been recognized as a crime against the person, distinguishing it from a crime against the moral and punishing perpetrators with penalties that can vary from 10 to 15 years' imprisonment<sup>114</sup>. This new feature has come from the influence made by the Ministry of Women's Affairs and Women's Rights in strengthening the protection of women to be free from violence. Rape criminalization shows the efforts made by Haitian institutions to promote Human Rights protection under International Law<sup>115</sup>.

---

<sup>111</sup> OECD Development Centre, 'Gender Index Haiti' (2019) <<https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/HT.pdf>> accessed 7 November 2020.

<sup>112</sup> Code civil d'Haïti 1826 Art. 171.

<sup>113</sup> Athena Kolbe, "'It's Not a Gift When It Comes with Price': A Qualitative Study of Transactional Sex between UN Peacekeepers and Haitian Citizens' (2015) 4 *Stability: International Journal of Security and Development* <<http://www.stabilityjournal.org/articles/10.5334/sta.gf/>> accessed 7 November 2020.

<sup>114</sup> Gérard Latortue, 'Ministère à la condition féminine et aux Droits des Femmes', *Livre blanc du gouvernement de transition* (2009) 297–342.

<sup>115</sup> *ibid.*

Although rape has been considered a crime for more than a decade in Haiti, women that are victims of such acts are still stigmatized within Haitian society. This stigmatization reflects that most of them do not seek justice because they are afraid of how the community will look at them afterward. The problem goes further than being discriminated against by private actors; it has been reported that state agents have been acting with negligence towards raped women<sup>116</sup>. Added to the fear of retaliation from perpetrators, it is only possible to make a rape complaint if there is a medical statement proving so<sup>117</sup>, making it harder for them to go forward with the case.

There is no definition of rape in the Haitian Criminal Code, making it opened for the judge's and prosecutor's interpretation<sup>118</sup>, which is a transparent barrier for those women seeking justice. Firstly, most of these law-enforcement people are males. Considering that most rape victims are female, girls and women are already at a disadvantage because men living in an extremely patriarchal society might not fully comprehend sexual abuse or gender based-violence. Secondly, the 'room for interpretation' gives prosecutors space not to take most of the cases to court, and even when it does, rarely the outcome is a perpetrator's conviction<sup>119</sup>.

Rape inside marriage not being considered rape by Haitian authorities<sup>120</sup> exacerbates the idea that once a woman is married, she must accept every situation inside

---

<sup>116</sup> OHCHR, 'La Réponse Policière et Judiciaire Aux Cas de Viol En Haïti' <[https://www.ohchr.org/Documents/Countries/HT/HRS\\_SGBVReport.2013.08.pdf](https://www.ohchr.org/Documents/Countries/HT/HRS_SGBVReport.2013.08.pdf)> accessed 13 November 2020.

<sup>117</sup> *ibid.*

<sup>118</sup> OHCHR, 'A Profile of Police and Judicial Response to Rape in Port-Au-Prince' <[http://adq631j7v3x1shge52cot6m1-wpengine.netdna-ssl.com/wp-content/uploads/2014/05/RapportSGBV\\_en.pdf](http://adq631j7v3x1shge52cot6m1-wpengine.netdna-ssl.com/wp-content/uploads/2014/05/RapportSGBV_en.pdf)> accessed 11 July 2020.

<sup>119</sup> Lisa Armstrong, 'The Rapist and the Girl Next Door: The Paradox of Prosecuting Rape Cases in Haiti' *Juvenile Justice Information Exchange* (7 May 2014) <<https://jjie.org/2014/05/07/the-rapist-and-the-girl-next-door-the-paradox-of-prosecuting-rape-cases-in-haiti/>> accessed 10 November 2020.

<sup>120</sup> U.S. Department of State, '2016 Country Reports on Human Rights Practices: Haiti' <<https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/haiti/>> accessed 10 November 2020.

family doors. Although sexual exploitation and abuse also occur in the public sphere, domestic violence is still an enormous challenge that Haitian females face in their everyday lives. Rape criminalization excluding abuses committed between couples illustrates the impact that social norms have on legislation elaboration and implementation.

Sexual assault is defined as “*sexual activity with another person who does not consent. It is a violation of bodily integrity and sexual autonomy and is broader than narrower conceptions of “rape”, mostly because it may be committed by other means than force or violence, and it does not necessarily entail penetration*”<sup>121</sup>. In this regard, the main difference between rape and sexual assault is that the first one necessarily entails penetration, which does

not mean that the victim was not forced to have sexual relations with the abuser. According to Haitian law, sexual assault is not prohibited<sup>122</sup>. This means that only in the case of the victim having their genital organ penetrated — and have a medical certificate proving that they cannot seek justice.

It is possible to claim that Haitian legislation has improved in the past years to align with International Human Rights Standards. Nevertheless, the civil and criminal codes are built upon the societal norms present in the territory. For instance, rape criminalization seems to be an enormous achievement in providing women a life free from violence. However, the writing and the scale that compose this law are not enough to protect the majority of sexually abused victims. Furthermore, even the rape cases that fall inside the legislation and must be prosecuted are subject to prosecutors and judge’s interpretation, which most of the time do not take the cases to Court. When it does not, the majority of perpetrators are being charged to pay for their actions.

---

<sup>121</sup> United Nations, ‘Glossary on Sexual Exploitation and Abuse - Second Edition’ (n 14).

<sup>122</sup> U.S. Department of State (n 120).

#### 4. HAITIAN SOCIO-CULTURAL NORMS AND MINUSTAH

*All the worlds a stage,*

*And all the men and women merely players:*

*They have their exits and their entrances;*

*And one man in his time plays many parts.*

(William Shakespeare)

Social norms represent what people play as part of a social group: each role adopted comes with a behavioral change to fit that role's expectations<sup>123</sup>. Each part of society behaves according to the societal norms that have been imposed since early childhood. Individuals are continually acting to meet the expectations of the society in which they live.

Aiming to provide insight into the relation between Haitian societal norms and law effectiveness regarding sexual exploitation and abuse (SEA) committed by peacekeepers, this chapter will consist of an analysis of quantitative-qualitative kinds of research analyses been done in Haiti and in-depth literature analysis. Each one of them covers a different scope in which gender imbalances are expressed among Haitians. Firstly, to provide an overview of the historical features that shaped the current gender roles present in Haiti, some country background information will be analyzed. Considering that political, economic, and social factors have influenced the current relationships between men and women, these features will be examined in this chapter. In

---

<sup>123</sup> Saul McLeod, 'Social Roles and Social Norms' *Simply Psychology* (2008)  
<<https://www.simplypsychology.org/social-roles.html>> accessed 10 November 2020.

this context, the practice of *Restavek* plays an essential role in providing information regarding socio-cultural habits that have been influencing the lives of Haitian women and girls.

#### **4.1. Traditional gender roles in Haiti**

Socio-cultural norms, political aims, and economic issues directly influence how a society is built upon, and gender norms are an essential pillar to understand the broader context of sexual violence in the country. Traditional gender roles refer to framed segregation based on gender. Females and males occupy different spaces in society, and expectations are built where traditionally, men and women are supposed to be situated. Usually, men occupy privileged positions while women are subject to ‘less valuable’ tasks, such as home and childcare. Gender roles are relevant determinants in how society is built. The image of inferiority associated with females situates them in a more vulnerable position. Haiti has clear segregation based on gender, as most Latin American countries, due to their historical context.

Field research carried out by Benedetta Faedi in Haiti in 2006 seeks to clarify the root causes for the continuity of SEA in the country by analyzing the connections between historical heritage, material scarcity, political failure, and sexual exploitation in Haiti<sup>124</sup>. Through semi-structured interviews, she collected information from 38 individuals representing different institutions in Haiti — from Child Professional Officers of UNICEF Haiti to representatives of the Catholic Church<sup>125</sup>. In this section, Faedi’s findings will be enumerated, analyzed, and linked with the recent issue of sexual abuse by peacekeepers between 2004-2017.

As in other patriarchal societies, in Haiti, the household is the primary source of male power and authority. It is where gender imbalances and the relationships between

---

<sup>124</sup> Faedi (n 6).

<sup>125</sup> *ibid.*



men and women are generated<sup>126</sup>. These hierarchies that are present inside of the family are reflected in the gender roles that are imposed in the public sphere. Sexual abuse of girls and women is a recurrent feature in Haitian society; it is the product of females' customs being seen as 'inferior' by their fathers or partners<sup>127</sup>. Haiti is the poorest country on the American Continent. A few years before MINUSTAH was settled, 70% of the population was living in extreme poverty, food insecurity affects 40% of the households, and more than 50% of the population lacks access to safe drinking water<sup>128</sup>, women and girls are forced to choose a partner that will be able to provide primary living assets for her and their future children<sup>129</sup>.

The sociocultural norms present in Haiti have created strongly gendered norms and beliefs regarding which roles men and women should play in the private and public sphere<sup>130</sup>. This feature has influenced Haitian women not having access to maintain positions of power in the country. At the same time, men usually hold positions considered to be more prestigious in a society, such as politicians, school leaders, and spiritual leaders<sup>131</sup>. Being positioned below men, they must take care of the household and usually work with unpaid activities — e.g., childcare and firewood collection<sup>132</sup>. Since most Haitian women cannot financially provide for their family due to the rigid social-cultural norms present in society, they are stuck into a cycle in which they always depend on men, during childhood on their fathers, and later, on their partners.

---

<sup>126</sup> *ibid.*

<sup>127</sup> *ibid.*

<sup>128</sup> Anastasia J Gage and Paul L Hutchinson, 'Power, Control, and Intimate Partner Sexual Violence in Haiti' (2006) 35 *Archives of Sexual Behavior* 11 <<https://doi.org/10.1007/s10508-006-8991-0>> accessed 3 November 2020.

<sup>129</sup> Faedi (n 6).

<sup>130</sup> USAID- Haiti, 'Gender Assessment' (2016) 1 25 <<https://banyanglobal.com/wp-content/uploads/2017/07/USAID-Haiti-Gender-Assessment.pdf>> accessed 10 November 2020.

<sup>131</sup> *ibid.*

<sup>132</sup> *ibid.*

Although in modern Western societies, partners are mostly chosen based on love, not every woman can have the luxury to choose their partner without taking into account security and income for the household. In Haiti's case, the driving force for women's partner choice is based on the income that the male will be able to provide, and it is justly this financial concern that becomes the basis for men's authority and legitimacy inside of the house<sup>133</sup>.

Cultural context is essential when examining power dynamics in intimate relationships<sup>134</sup> since the social norms that are in place in the country have a direct effect on girls' and women's position in society. For Haitians, many forms of sexual exploitation and abuse might be acceptable for a married couple<sup>135</sup> since these women, in the eyes of society, should take care of the home and serve her husband sexually. In this regard, the consent of being sexually exploited is given just by being present in the relationship<sup>136</sup>.

In the interview conducted by Faedi, representatives of the Ministry of the Status of Women affirmed that "even poverty in Haiti is gendered": girls grow up in an environment in which females are neglected, they are given less schooling, unequal access to medical care and consequently exposed to sexual violence and abuse both in the private and public sphere<sup>137</sup>. The fact that sexual exploitation in Haiti, mainly when it occurs inside the family door, is not considered a crime because man sees "women" as part of their property. It leads to an extensive number of unreported cases. A good reputation is the most crucial asset that Haitian girls can have in order to marry<sup>138</sup>. This

---

<sup>133</sup> Faedi (n 6).

<sup>134</sup> Gage and Hutchinson (n 128).

<sup>135</sup> Kolbe (n 113).

<sup>136</sup> *ibid.*

<sup>137</sup> Faedi (n 6) 167.

<sup>138</sup> *ibid.*

is one of the main reasons they will not report to the authorities the crimes they were exposed to.

Haitian women grow up in an environment in which they are considered ‘less’ than men, and the only bargain power they have is their own body. Although many of the cases, women are forced to have sexual relationships, sometimes the abuse takes place in a different scenario: they consent to have sex to obtain basic needs that they cannot afford by themselves. Since the colonization period, women were using their bodies to have access to food and water. In the 21st century, not much has changed in this regard. By choosing their future husbands based on income, it is clear that although the context is different from the 16<sup>th</sup> century, the social norms regarding gender roles remain similar.

#### **4.1.1. Restavéks**

The Haitian culture has embedded roots from the colonization period. Men were pointed out as the working force while women took care of the households and were often seen as ‘inferior’ to men. As in other patriarchal countries, gender imbalances are still present on the Island. Practices from the past, such as using young slaves as prostitutes, are still part of Haitian’s daily lives. Traditional gender roles usually involve women been seen as part of a male’s property; in Haiti, this misconception developed into the practice of ‘*restavèk*’.

“The term (...) comes from the French and Creole meaning “to stay with.” Restavèk is generally children of poor rural families sent to stay with and work as unpaid domestic servants for less poor, urban families. Parents send a child away with the hope that in return for the child’s labor, the host family will provide the child with food and shelter and send the child to school”<sup>139</sup>.

---

<sup>139</sup> Human Rights Council, ‘National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 - Haiti’ 2 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/188/69/PDF/G1618869.pdf?OpenElement>> accessed 10 November 2020.

The system started many years ago, with more impoverished families sending their children to the wealthier families to give them access to education<sup>140</sup>. Nevertheless, it has become a practice in which around one out of ten girls from ten to seventeen years old<sup>141</sup> are trafficked by *koutchyés* — how the middlemen recruiters are known in creole<sup>142</sup>, to serve as domestic slaves. Sometimes the promise of having access to education and shelter is materialized. However, it comes with a price: they are forced to work several hours without being fed enough, often beaten, and sexually exploited. They lack access to primary assets that are essential for the well-being and future development. In sum, *restavèks* are deprived of their right to be a child.

During Faedi's field research, representatives of the Catholic Church of Martissant declared that *restavèks* are perceived as the 'property of the household', often raped and sexually abused by their employers<sup>143</sup>. In this context, UNICEF participants emphasized that female *restavèks* own a 'secondary status of citizenship,'<sup>144</sup> which makes them even more vulnerable to any kind of exploitation.

The treatment that these children receive recalls what girls and women slaves have received during French colonialism<sup>145</sup>. Child labor is forbidden both in national and international law. Even if these girls and boys were being paid and living in better conditions, it would still violate the Rights of the Child under Art. 32 of the CRC, Art. 2

---

<sup>140</sup> *ibid* 3.

<sup>141</sup> Faedi (n 6) 168.

<sup>142</sup> Human Rights Council (n 139) 3.

<sup>143</sup> Faedi (n 6) 169.

<sup>144</sup> *ibid* 170.

<sup>145</sup> *ibid*.

of the ILO Convention and Art. 335 of the Haitian Labor Code, which forbids children under 15 years old to work<sup>146</sup>.

The substantial problem relies on the fact that although the laws are in place to prevent this kind of exploration, the local population usually does not comply with those norms. As it was stated by the former Haitian President Jean Aristide, the culture of *restavèk* is ‘so ingrained in Haiti that too many people do not even know they are breaking the law’<sup>147</sup>. Non-compliance with the laws is a feature that has roots in the socio-cultural norms that have been in place in the country. Two main aspects shall be considered: Firstly, due to the Haitian fragile political- judicial system, the population might not even have access to the laws, consequently to their obligations within the society. Secondly, law enforcement in Haiti is heavily affected by corruption and lack of resources making perpetrators not accountable for their actions. In this context, even when people are aware that they are committing a crime, they are also aware that they will not be subject to punishment.

Turning to the victim’s point of view, sometimes they do not even know that what they have been subject to is considered a crime, especially when it involves young girls. Since abuses inside family doors are recurrent in the country, girls and women might see it as ‘normal’, which feeds a vicious cycle of child exploration. When they do know that they are being exploited, and are aware that this should be reported to the authorities, most of the time, they do not. The fear of retaliation from their perpetrators — mostly men and only by this fact, is more powerful in the community. It generates the amount of not reported abuse cases.

#### **4.2. Race as a social norm**

Discrimination based on race has been present within Haitian society since African slaves were being brought to French Saint Domingue to be the working force in plantation fields. During this period, slaves were being segregated according to skin color,

---

<sup>146</sup> Human Rights Council (n 139) 3.

<sup>147</sup> Human Rights Council (n 139).

being the lighter skin-colored Africans occupying more privileged positions<sup>148</sup>. Although it has been a few centuries that the European colonizers left the Island, remnants from the past have been serving as social norms among Haitians. When analyzing the social structure that is present in Haiti, we must take into account the psycho-social effects that the colonization racial segregation has in modern Haitian society<sup>149</sup>. If in that period, the skin color delimited the position which each person should occupy — white skin colored persons being the power owners and black skin colored the working force, nowadays, the circumstances are different, but the ‘imaginary’ white supremacy is still present.

Cultural heritage is essential to understand the functioning of modern society. The native Haitian population was extinct not very long after the Spanish and French colonizers arrived on the Island. This means that the contemporary Haitian population has its roots both in African and European cultures—these mixed cultural influences shaped how the social norms developed in society. Therefore, the fact that the European population was almost white in that period and who had control over the territory contributed to building a society in which having a white skin color carries privilege and status.

The slave revolt that led Haiti to be an independent state gave freedom to the population, but at the same time, the pre-existing social structures were maintained. The Haitian elite remained the same: military chiefs and its family, free man from the old regime, and some “mulattos” descending from the white aristocrats<sup>150</sup>. On the Island, the societal division, according to skin color, was not merely between black and white: the closest the appearance was to the European skin color, the more privilege the person would have. The link between color, race, status, and wealth distribution inherited from

---

<sup>148</sup> Tekla Ali Johnson, ‘The Enduring Function of Caste: Colonial and Modern Haiti, Jamaica, and Brazil The Economy of Race, the Social Organization of Caste, and the Formulation of Racial Societies’ (2004) 2 *Comparative American Studies An International Journal* 61, 61–73  
<<https://doi.org/10.1177/1477570004041288>> accessed 10 November 2020.

<sup>149</sup> *ibid.*

<sup>150</sup> George Eaton Simpson, ‘Haiti’s Social Structure’ (1941) 6 *American Sociological Review* 640  
<<https://www.jstor.org/stable/2085502>> accessed 10 November 2020.

the colonization period was perpetuated in independent Haiti, where mulattos were distancing themselves from their African origins to maintain their social status<sup>151</sup>.

The perpetuation of slavery features, such as the work division based on race, being the lighter-skinned persons the one's occupying 'less heavy' work positions created a culture that envisioned the whiter skin as desirable. This situation has led to a system in which, consciously or not, many black people started to seek to improve their children's lives by choosing a lighter-skinned partner to move them away from the African heritage<sup>152</sup>. In this context, black women started to look forward to having lighter-skinned partners — who consequently had a desirable life standard, aiming at giving birth to mixed-race children. They were aware that in that society, the only way to give their children better life opportunities as if they had features that distanced them from their mother's race.

The effects of the circumstances created during slavery are still present within the Haitian society. During the colonization period and later with the United States invasion in the country, white officials represented power and ownership. In recent years, privileges are not directly linked with skin color, but the idealization of whiteness is still entrenched among Haitians. In the past decades, United Nations agencies have been continuously present in the country to provide assistance regarding political, economic, and social issues. Once more, the lighter-skinned man was representing power and stabilization for the population.

From 2004-2017, UN peacekeepers from a variety of countries were settled on Haitian soil. It was the most prolonged period that a mission was established in Haiti. Peacekeepers were present in almost all regions of the country, being responsible for different stabilization sectors. Considering that Haitians throughout its history have been subject to foreign interference, UN personnel's arrival reinforced the idea of white persons

---

<sup>151</sup> Max Paul, 'Racial Ideology and Political Development: The Cases of Haiti and Bermuda' (1982) 32 *Sociologus* 64, 64–80 <<https://www.jstor.org/stable/43644946>> accessed 10 November 2020.

<sup>152</sup> Johnson (n 148) 61–73.

as power and income carriers. If before foreigners were there to explore the country, in 2004, the goal was to bring economic and political stabilization, the rule of law, and respect for human rights. Although the purpose of interference has changed, the idea of the white man as “saviors” has not drastically changed. Since the beginning of the mission, reports showed that sexual relations between local women and peacekeepers were recurrent. Among the factors that influenced these relationships is the idealization of “whiteness”.

Research made by Sabine Lee and Susan Bartels through 265 narratives from community members in Haiti seeks to analyze the causes and consequences of children fathered by peacekeepers<sup>153</sup> during MINUSTAH. Several features were analyzed during the research, being one of the highlighted themes the fact that ‘intimate relations with fair-skinned peacekeepers and having fair-skinned children are sometimes perceived as desirable’<sup>154</sup>. The desire to engage in relations with a lighter-skinned man recalls the ‘white superiority’ from the slavery period. In Haiti, white skin color is seen as ‘beautiful’ among the population, but this feature is not purely connected with physical appearance; it recalls an image of wealth and social status.

The relations between local women and UN peacekeepers were a continuous occurrence during the mission years. The local population was not only aware of this fact but during the interviews, highlighted the skin color feature when describing their narratives: ‘We will notice it in a few years when we realize that the country is turning white. We will find little ones with split eyes. We will see silky hair’, a married male in Cap Haitien emphasized<sup>155</sup>. In this regard, the reinforcement of racial segregation is often present when exposing the transactional relations between peacekeepers and Haitian women.

---

<sup>153</sup> Sabine Lee and Susan Bartels, “‘They Put a Few Coins in Your Hand to Drop a Baby in You’: A Study of Peacekeeper-Fathered Children in Haiti” (2020) 27 *International Peacekeeping* 177, 177–209 <<https://doi.org/10.1080/13533312.2019.1698297>> accessed 10 November 2020.

<sup>154</sup> Lee and Bartels (n 153).

<sup>155</sup> *ibid.*



In another study regarding transactional sex with peacekeepers in Haiti, participants emphasized that a mixed-race child born out of these relations was a desirable outcome since these men are employed<sup>156</sup> and have the conditions to give the child a better future: providing access to education and financial support. A 20-year-old woman affirmed that in their culture, white skin is considered beautiful, in this context, her mother has influenced her to get pregnant of a peacekeeper in order to have a ‘half-white baby’<sup>157</sup>. Although the discourse might be directly targeting the physical appearance, the weight that a white skin color carries in Haiti goes above that. The mindset of beautiful lighter skin is longstanding in the Island since white skin color man that have been present in the country for the past centuries were always people that had income-generating activities and were part of a higher social status than most Haitians. In this regard, the immediate thought might be the features that can be seen through the eyes. Nevertheless, when analyzing in-depth, it is recognized that the actual desirable outcome is improving their lives conditions.

With regards to non-consensual sexual relations with peacekeepers, the problem not only concerns the idealization of “whiteness” — and what lighter-skinned man could provide in terms of material benefits. It illustrates a connection between the sexual exploitation that Haitian girls and women have been subject to since French Saint Domingue and the abuses committed by peacekeepers in contemporary Haiti. Added to the machismo culture that is entrenched in patriarchal societies such as the Haitian, the figure of the white male as a perpetrator of violence against women recalls slavery times. Until 1804, female African slaves were treated by colonizers as sexual objects. In those times, they had no way out of this exploitation because they were brutally forced to have sexual relations with those males. As an independent state, Haitian society continued to follow a patriarchal society model in which women are considered to be ‘less’ than men.

---

<sup>156</sup> Kolbe (n 113).

<sup>157</sup> *ibid.*

In this sense, until nowadays, Haitian girls are often raised to please their male partners for their survival.

Gender imbalances are present inside and outside family doors in the country. If local Haitian women are often subject to sexual abuses by their compatriots — sometimes not even recognizing that they are being exploited, because they grow up in an environment in which females are supposed to accept some kinds of SEA, once faired-skinned peacekeepers arrived in the country, they represented both male and white ‘superiority’. In this context, the fear of refusing to obey a white man's desire has a double weight in the eyes of Haitian girls and women. In this sense, accountability procedures are also affected since most of those victims do not report their cases of sexual exploitation because of the fear of retaliation.

#### **4.3 ‘Impunity Culture.’**

To understand how Haiti became a fragile state, it is necessary to look at the historical heritage and the development of social structures and norms in the country. The roots of this ‘culture of impunity’ come from slavery, where colonizers were often exploiting both the native population and Africans without any kind of retaliation. Colonizers had resources that allowed them to have control over the lives of their slaves. Once Haiti claimed its independence, social structures remained: there was a clear division between the ‘elite’ and the rest of the population. In this sense, a massive part of the community kept being oppressed without having their voice heard, especially the most vulnerable ones, such as girls and women.

Haiti, along with many other Latin American countries, has been subject to military dominance since before its independence. Even their independence was

conquered through military operations<sup>158</sup>. In this regard, military operations in the country were characterized by torture, sexual exploitation, death, and, consequently, impunity. Added to the traumas and injustices suffered by Haitians during slavery, they were victims of long-lasting dictatorships that had left unforgettable remnants for the community. The 20<sup>th</sup> century was marked firstly by U.S military invasion followed by the repressive dictatorships (1957-86) of ‘Papa Doc’ and of his soon—known as ‘Baby Doc’, also by the military junta led by Raoul Cédras with a short period of democratic rule<sup>159</sup>.

Most often, especially concerning Haiti, military presence and government control have meant human rights abuses, lack of the rule of law, and almost no accountability for perpetrators. In this context, the most vulnerable groups were girls and women, which were often subject to sexual exploitation and abuse by government officials as a form of political weapon. Due to the oppression that they have suffered for various generations, the majority of these women did not report the violence even after the dictatorship was overdue to the fear of retaliation.

In an attempt to bring justice to victims of the military rule, a truth commission — in creole: *Commission Nationale de Verite et de Justice du Haiti*, was established in Haiti in 1995<sup>160</sup>. The main concern regarding the settlement of this commission was the fact that it would only investigate and bring the truth of the military junta rule (1991-1994)<sup>161</sup>, ignoring ultimately what has happened during the Duvaliers regimes.

---

<sup>158</sup> Helen M Fenwick, ‘Civilian Oversight of Policing: Governance, Democracy and Human Rights,’ Edited by A. Goldsmith and C. Lewis’ (2002) 13 King’s Law Journal 131, 131–138 <<https://doi.org/10.1080/09615768.2002.11427558>> accessed 10 November 2020.

<sup>159</sup> Jermaine O McCalpin, ‘Truth and Freedom in Haiti: An Examination of the Haitian Truth Commission’ (2012) 6 The Global South 138, 138–155 <<https://www.jstor.org/stable/10.2979/globalouth.6.1.138>> accessed 10 November 2020.

<sup>160</sup> McCalpin (n 159).

<sup>161</sup> Audrey R Chapman and Patrick Ball, ‘The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala’ (2001) 23 Human Rights Quarterly 1, 1–43 <<https://www.jstor.org/stable/4489322>> accessed 10 November 2020.

The Truth and Justice Commission reported 140 cases of political rape between 1991-1994 but, due to the high rate of non-reported cases, the actual incidence of those crimes is estimated to be more than 12 times higher<sup>162</sup>. Although some of these women were recognized as victims and perpetrators were made accountable, they still suffer from the consequences of these attacks. Five years after Cedra's fall, a Report made by the Special Rapporteur of Violence against women in 2000 shows that these women were still suffering from the trauma; some of them are living with severe medical conditions, mainly due to sexually transmitted diseases, such as HIV/AIDS, their children are traumatized, in the cases where the husband was killed, they were left with no income for the household, and, the most significant trauma that they suffer is that most of those men were never brought to justice and are still practicing this kind of attacks with impunity<sup>163</sup>.

This paradox of bringing only partially justice to Haitian victims of human rights abuses illustrates the 'impunity culture' that has been surrounding the country. Lack of accountability is not a new feature in Haiti. The population was built upon an impunity environment in which the power owners have space to exploit the population without any kind of reprisal, being the truth commission an exception for the community. The consequences of the abuses committed since the 16<sup>th</sup> century still affect Haitians, especially girls and women.

#### **4.3.1. *Zenglendos*: rape as a political weapon**

Haitian fragile political context since the early 20<sup>th</sup> century has led the country into a cycle of political violence. Firstly, during Duvalier's regime, and later, between 1991-1994, when Cedra was occupying the Presidency post after a coup d'état, the Haitian population lived in a too oppressive environment. In the years of the military regime, the phenomenon of *zenglendos* —consisting of males burning into houses,

---

<sup>162</sup> Economic and Social Council, 'Elaboration and Implementation of the Long-Term Programme of Support for Haiti' 17 <<https://undocs.org/pdf?symbol=en/E/2000/63>> accessed 10 November 2020.

<sup>163</sup> *ibid.*

beating and raping girls and women at any time — started to spread out across the country as a method of political pressure for opponents of the dictatorship<sup>164</sup>. In most of the cases, the pattern of violence was the same: the attacks happened in the evening at the victim's houses, perpetrators were wearing masks and usually armed in groups of three to twelve-man, they raped, sometimes killed these girls and women and left the family house<sup>165</sup>.

The testimony of Immacula, a 43-year-old woman that has been subject to a *zenglendos* attack, illustrates how the crimes were being committed:

*On the night of 16 October 1991, Immacula was at home with her husband and six children when a number of masked men with heavy weapons broke through the fence and invaded her home. The men put Immacula on the floor, handcuffed her husband, and then three of them raped her, hit her in the face, and brutalized her in front of her husband and children. The youngest child, who is six years old now, still repeats the story of what happened that night. Because her husband supported Aristide, they were put into prison for six months, after which they had to live in hiding. Once, when Immacula and her family were temporarily staying with her sister-in-law, her persecutors followed her into the house, raped her again, and also raped her sister-in-law. Her sister-in-law died as a result of injuries sustained from the brutal rape, and Immacula has since had to take care of her sister-in-law's children, as well as of her own. She has not received any assistance or compensation for the violence suffered.<sup>166</sup>*

This practice of targeting girls and women was a form of attacking their male family members, which were pro-democracy. The machismo culture is deeply rooted

---

<sup>164</sup> Faedi (n 6).

<sup>165</sup> Economic and Social Council (n 162).

<sup>166</sup> *ibid* 15.

within Haitian society<sup>167</sup>. Not only women are considered to be ‘less’ than men, but men also that they are seen as a male’s property. Raping a married woman was not about offending her by itself, but a method of humiliating their partners. In this regard, Haitian women do not even have the right to treated as a victim; they were seen merely as a mean to achieve a particular goal — to offend and pressure their male family members.

When the dictatorship period was over, some ‘habits’ still remained: violence against the ‘inferior’ is the most substantial one<sup>168</sup>. Nevertheless, the motivation for the *zenglendos* shifted from a concrete political aim to become a common practice of criminal gangs aiming at spreading terror among the Haitian population<sup>169</sup>. In this context, where gang members do not have a precise political aim, and their goal is mainly to spread terror. Sexual violence against girls and women still remains the means to achieve their more significant aim, which nowadays is to impose an environment of insecurity within the society and to emphasize the power of these criminal gangs. These features show that the objectification of women’s bodies is the central pillar for the actions of *zenglendos*.

The thought that sexual exploitation and abuse would be over, or at least diminished once the dictator left power is illusory. From 2000 to 2006, GHESKIO, a national NGO that provides medical assistance, reported that there were still many girls and women being targets of SEA. The report shows that 3% were girls under ten years of age, 73% between ten and eighteen, 49% were attacked by more than one person, and 35% affirmed that they were raped by several aggressors<sup>170</sup>. Often targeting girls and women, but not only sexual exploitation in Haiti, is a serious humanitarian concern. The abuses that women suffer throughout their lives, it is related to the fact that they grow up in an environment in which it is always highlighted their ‘inferiority’ when in comparison with man.

---

<sup>167</sup> *ibid* 5.

<sup>168</sup> *ibid* 4.

<sup>169</sup> *ibid* 12.

<sup>170</sup> Faedi (n 6) 168.

### 4.3.2. Impunity and MINUSTAH

The deep-rooted Haitian social norms which influenced the constitution of an impunity environment is what UN personnel encountered upon arrival in the country. As has been stated previously, peacekeepers are made aware of the culture and local costumes once they arrive in their territory. Their job shall be shaped accordingly to the social norms that are present, but while is their obligation to respect unarmful social practices, they also have the duty to elaborate strategies along with the respective UN Agencies and relevant Organizations to prevent the continuation of costumes that are not in accordance with International Law.

Peacekeepers come from different parts of the world, consequently having different backgrounds and costumes. Although it is impossible to expect them to distance themselves entirely from their culture, once they are representing the United Nations, their behavior must be in accordance with the UN Standards of Conduct with full respect to Human Rights. Nevertheless, it has been reported that several peacekeepers have not fulfilled their responsibilities as agents for peace and security promotion. Indeed, they have done the opposite by spreading fear and violence among the local population. In this context, some circumstances of SEA committed by peacekeepers during MINUSTAH will be enumerated and analyzed.

Considering that the United Nations has only started to bracket perpetrators by nationality since 2015, the information concerning member states involved in this situation is limited. Nevertheless, with the data that has been released by the UN and interviews conducted by several organizations, it is possible to affirm that abusers came from Bangladesh, Brazil, Jordan, Nigeria, Pakistan, Sri Lanka, and Uruguay<sup>171</sup>. The

---

<sup>171</sup> Dodds, 'UN Peacekeepers in Haiti Implicated in Child Sex Ring' *Independent UK* (15 April 2017) <<https://www.independent.co.uk/news/world/americas/un-haiti-peacekeepers-child-sex-ring-sri-lankan-underage-girls-boys-teenage-a7681966.html>> accessed 10 November 2020.

crimes committed vary in scope and gravity, but all of them involve some kind of sexual exploitation and abuse. In general, these peacekeepers have made use of their authority as UN representatives and instrumentalized the impunity environment that surrounds Haitians to get in sexual relations with local women and girls, an attitude that is strictly prohibited according to the documents that they are bounded by once deployed in the field.

### *Sri Lanka*

The first SEA scandal during MINUSTAH involved Sri Lankan peacekeepers. An investigation conducted by the Associated Press obtained a UN report that claims that peacekeepers from Sri Lanka abused and exploited Haitian children in what was called a ‘sex ring’<sup>172</sup>. In the same context, Marie-Ange Haitis has affirmed during an interview that she had sex with a Sri Lankan commander in January 2006, in her own words, “*It was not rape, but it was not exactly consensual, either. I felt like I did not have a choice*”<sup>173</sup>. A fact that clearly illustrates that his position as the commander has coerced her into having sexual relations. He might not have used violence to force the relation, but solely her feeling of not having a choice already constitutes abuse.

Most often, the sexual relations were taking place in exchange for something, money, food, or school payment, which shows that peacekeepers were aware of the conditions that Haitians were living in and used in their favor their desperation for different assets. Once the UN was made aware of the situation, it requested OIOS to start a fact-finding investigation, which confirmed that at least 134 Sri Lankans have sexually exploited nine Haitian children<sup>174</sup>. Victims have been heard by the UN inquiry team, showing photographs, phone numbers, text messages, and giving a detailed testimony of

---

<sup>172</sup> *ibid.*

<sup>173</sup> *ibid.*

<sup>174</sup> REDRESS, ‘Litigating Peacekeeper Child Sexual Abuse Report’ 33–37 <<https://redress.org/wp-content/uploads/2020/01/LitigatingPeacekeeperChildSexualAbuseReport.pdf>> accessed 10 November 2020.



what they have suffered, which lead to the identification of who were the alleged criminals, where and when the abuse was happening<sup>175</sup>.

After the inquiry, the first action taken by the UN was to repatriate 114 out of the 134 perpetrators<sup>176</sup>, providing all necessary information to the TCC, conduct its own investigation and, in case of confirmation of the alleged crimes, start a prosecution procedure against them under their national courts. In 2007, when the troops were sent back home, the Sri Lankan President affirmed that he would make anything in his power to make the perpetrators accountable for their actions<sup>177</sup>. He gave the world hope that justice would be made for these victims, but as time passed by, it was possible to see that his promises were far from being true.

Firstly, Sri Lanka stated that a military court of inquiry was investigating the SEA allegations against 134 members of one contingent that has been sent to Haiti, dealing with allegations from 2006 and 2007, but the leaked report emphasized that abuses were committed for three years and by more than five Sri Lankan contingents<sup>178</sup>. It is clear that there is a discrepancy between the information contained in different reports, and no official document from the Sri Lankan government has been released, proving that perpetrators have been convicted.

This lack of information about the outcome of the peacekeepers' situation led a Sri Lankan journalist to a Right to Information (RTI) request to the Information Commission in 2017, aiming at being informed about the accountability process regarding those soldiers<sup>179</sup>. The Sri Lankan Army claimed that it is '*related to internal*

---

<sup>175</sup> 'Sri Lanka's UN Peacekeepers Let the Punishment Fit the Crime' 5  
<<https://itjpsl.com/assets/press/haiti-FINAL.pdf>> accessed 10 November 2020.

<sup>176</sup> United Nations, 'Haiti: Over 100 Sri Lankan Blue Helmets Repatriated on Disciplinary Grounds' *UN News* (2 November 2007) <<https://news.un.org/en/story/2007/11/238162-haiti-over-100-sri-lankan-blue-helmets-repatriated-disciplinary-grounds-un>> accessed 10 November 2020.

<sup>177</sup> 'Sri Lanka's UN Peacekeepers Let the Punishment Fit the Crime' (n 175) 7.

<sup>178</sup> 'Sri Lanka's UN Peacekeepers Let the Punishment Fit the Crime' (n 175).

<sup>179</sup> REDRESS (n 174).

*disciplinary measures*, ‘only 3 peacekeepers have been involved (...) the number of those who were recalled did not necessarily correspond to those who had allegations against them’ and ‘all the allegations were dully investigated’<sup>180</sup>. Several appeals took place in order to obtain more information about the criminal procedures that the perpetrators had to face, but in the end, the RTI Commission did not make any decisions since 2018<sup>181</sup> and had left the public without acknowledgment about the proceedings against the peacekeepers' outcome. Until now, there is no proof that any of those 134 peacekeepers ‘— which have sexually exploited and abuse children as young as 12 years old have been convicted or imprisoned.

### *Brazil*

Brazil had the highest number of military components during the MINUSTAH. Also, the military commandant was Brazilian, known as General Augusto Heleno. This fact puts Brazil in even more responsibility in complying with the UN Standards of conduct since a Brazilian national was occupying an authority position in the field. General Heleno, the force commander, was responsible for assuring that all their subordinates were in accordance with international rules and standards, and if one fails to do that, he shall directly report to the head of mission, especially in cases of serious misconduct such as sexual exploitation and abuse.

Ademir Sobrinho, a member of the Brazilian armed forces, has made a conference stated that there were no cases of sexual exploitation and abuse involving the Brazilian troops<sup>182</sup>. Nonetheless, it has been reported that several girls and women have been assaulted by Brazilian peacekeepers during the thirteen years that the mission took place. For instance, Janila Jean, a 16-year-old girl, states that she was a virgin when a Brazilian

---

<sup>180</sup> *ibid.*

<sup>181</sup> *ibid.*

<sup>182</sup> Dodds (n 171).

peacekeeper attracted her with a peanut butter bread and then raped her, leaving her pregnant<sup>183</sup>, contradicting Mr. Sobrinho's affirmation.

With a total of 37.449 Brazilian peacekeepers deployed in the field, only 52 investigations arrived at the Brazilian military judiciary: 50 police inquiries and two prison mandates for flagrant violations<sup>184</sup>. In this regard, there are two possible explanation for these numbers: they show that the Brazilian peacekeeping troops were fulfilling their obligations and responsibilities and acting according to the UN Standards of conduct; or, it proves that cases of serious misconduct were not being reported to the Brazilian authorities, and if so, inquiries were not being opened to investigate the alleged misconduct cases.

Out of these inquiries, 90% were archived: 76% shelved because the responsibility for the misconduct was not found, and 24% refer to investigations that, once concluded, did not constitute crimes<sup>185</sup>. In this context, almost 40 cases constituted crimes against the person, referring to body injuries, aggression, or death, but none of them were registered as cases of sexual exploitation and abuse<sup>186</sup>. This data shows that until 2018 there was not a single investigation in the Brazilian military judiciary for alleged perpetrators of SEA, going against the testimony of victims and studies conducted by several organizations in the field.

Art. 213 and 214 of the Brazilian Common Code affirms that rape or any kind of sexual exploitation and abuse that does not permit the manifestation of will from the victim's part constitutes a crime, and the penalty varies from six to ten years' imprisonment, with the possibility of being risen in one third if the victim is under 18

---

<sup>183</sup> *ibid.*

<sup>184</sup> Instituto Igarapé, 'A Participação Do Brasil Na MINUSTAH (2004-2017): Percepções, Lições e Práticas Relevantes Para Futuras Missões' <<https://igarape.org.br/wp-content/uploads/2018/03/2018-03-06-AE-MINUSTAH-PT.pdf>> accessed 10 November 2020.

<sup>185</sup> *ibid.*

<sup>186</sup> *ibid.*

years old<sup>187</sup>. Also, the military penal code states that sexual exploitation and abuse constitutes a criminal offense<sup>188</sup>. Brazilian civil and military criminal code details what constitutes rape, sexual abuse, and sexual assault and imposes severe penalties for these cases. Taking this into account, any peacekeeper that have committed violations in this regard would be subject to criminal procedures and possible detention. Nevertheless, there is no public knowledge that any member of the Brazilian troops has been dully investigated and prosecuted in this regard.

Apparently, the authority position that the Brazilian military was occupying in the field has facilitated them to hide severe misconduct behaviors of their own nationals. Brazilians repeatedly emphasize their role for MINUSTAH's success, pretending not to be aware of the SEA cases — sometimes resulting in pregnancy, that happened during the mission.

For instance, a fourteen-year-old victim affirms that as soon as she met a Brazilian blue helmet named Miguel, they have started a relationship, she got pregnant, and not long after, he came back to Brazil<sup>189</sup>. The testimony of this girl contradicts once more the information provided by the Brazilian military that there were no such cases of sexual abuse. However, until 2019, she did not receive any support coming from the father, the Brazilian Government, or the United Nations<sup>190</sup>. It is clear that the Brazilian Government has been hiding information regarding SEA committed by its troops in order to maintain a 'good image' within the international scenario.

### *Uruguay*

---

<sup>187</sup> Brazilian Civil Code 1940, Art. 213 and Art. 214.

<sup>188</sup> United Nations, 'Brazil Fact Sheet - Rules/General Laws' <[https://peacekeeping.un.org/sites/default/files/brazil\\_fact\\_sheet.pdf](https://peacekeeping.un.org/sites/default/files/brazil_fact_sheet.pdf)> accessed 10 November 2020.

<sup>189</sup> Sabine Lee e Susan Bartels, 'Os filhos abandonados da ONU no Haiti' *EL PAÍS* (27 December 2019) <<https://brasil.elpais.com/internacional/2019-12-27/os-filhos-abandonados-da-onu-no-haiti.html>> accessed 14 November 2020.

<sup>190</sup> *ibid.*

In 2011, there was Uruguayan 1.200 military personnel deployed in Haiti, along with the Brazilians, it was the first time a peacekeeping mission was mainly constituted by Latin American forces<sup>191</sup>. This feature is relevant if considering that coming from the same continent as Haitians and with a similar colonial background, the cultural proximity could facilitate their work, especially by understanding the local population's costumes and needs.

Uruguayan cultural proximity with Haitians was not enough to prevent them from misconduct in the field. A mobile phone video was leaked showing peacekeepers from Uruguayan marines sexually assaulting Johnny Jean, that was a child in the period<sup>192</sup>. The video shows men in uniform laughing and holding down the boy on a bed at a UN base in a southern Haitian region<sup>193</sup>. Although most of the reported SEA cases during missions were involving girls and women, this case demonstrates that local boys have also been targeted by peacekeepers.

Shortly after the assault occurred, Johnny and his mother went to local radio stations and provided evidence to the local authorities about the abuse that he had suffered<sup>194</sup>. The courage that this teenage boy had to seek justice is not seen in most SEA cases. His actions shall serve as an example for any other person that is sexually exploited by peacekeepers. Nevertheless, the fact that he is a male works in his favor. As it has been said before, girls are afraid of retaliation or negligence after reporting situations like this.

Due to Johnny's effort and courage, it was of public knowledge the severe misconduct committed by Uruguayan marines. For this reason, the five soldiers involved in the abuse were repatriated to their country since the Uruguayan state has the exclusive

---

<sup>191</sup> 'Uruguayan Peacekeepers in Haiti Accused of Abuse' *BBC News* (5 September 2011) <<https://www.bbc.com/news/world-latin-america-14783538>> accessed 14 November 2020.

<sup>192</sup> REDRESS (n 174).

<sup>193</sup> 'Uruguayan Peacekeepers in Haiti Accused of Abuse' (n 191).

<sup>194</sup> Malena Castaldi, 'Uruguay Apologizes over Alleged Rape by U.N. Peacekeepers | Reuters' *Reuters* (6 September 2011) <<https://www.reuters.com/article/us-haiti-uruguay-un-idUSTRE78603I20110907>> accessed 10 November 2020.

jurisdiction over their troops when concerning criminal acts, being immune from criminal prosecution from the Haitian State<sup>195</sup>. The Model Status of Force Agreements (SOFA) gives the contributing states exclusive jurisdiction. As has been seen before, being immune from the host state's prosecution can lead to a lack of accountability in the peacekeeper's home country. Nonetheless, the Uruguayan President has affirmed that actions would be taken to made alleged perpetrators accountable and that he "vigorously condemned" this behavior<sup>196</sup>.

Uruguayan law stipulates that military personnel shall be subject to both militaries, criminal and civil proceedings<sup>197</sup>. Firstly, in September of the same year, the military court has charged them for 'crimes of disobedience and omission in services,' and peacekeepers stayed in detention during pre-trial investigations<sup>198</sup>. Nevertheless, not long after, they have been released from jail, and there is no further information if they have faced any other consequences within military courts<sup>199</sup>.

The public awareness about Johnny Jean's case provided him with judicial and financial support to go to Uruguay and give his testimony in front of the Uruguayan authorities. After stating in detail how the assault has occurred in Haiti, the judge asked for medical examination, followed by the boy recognition of the five abusers in a group of men with similar physical characteristics<sup>200</sup>. With all information necessary gathered, in August 2012, the judge has charged four peacekeepers with 'private violence' since

---

<sup>195</sup> REDRESS (n 174).

<sup>196</sup> Castaldi (n 194).

<sup>197</sup> REDRESS (n 174).

<sup>198</sup> 'Johny Jean ratificó ante el juez denuncia de violación contra cinco marinos uruguayos en Haití' *LARED21* (11 May 2012) <[www.lr21.com.uy/comunidad/1037238-johny-jean-ratifico-ante-el-juez-denuncia-de-violacion-contramarinos-uruguayos](http://www.lr21.com.uy/comunidad/1037238-johny-jean-ratifico-ante-el-juez-denuncia-de-violacion-contramarinos-uruguayos)> accessed 10 November 2020.

<sup>199</sup> REDRESS (n 174).

<sup>200</sup> La diaria, 'El debido proceso' *la diaria* (11 May 2012) <<http://ladiaria.com.uy/politica/articulo/2012/5/el-debido-proceso/>> accessed 10 November 2020.

*‘the evidence on record does not support proceedings of sexual assault’*<sup>201</sup>. It is a fact that private violence has a much lesser charge than sexual assault. Once convicted, the perpetrators were sentenced to two years in prison, nevertheless, the sentence was suspended, and the abusers did not serve any time in detention<sup>202</sup>.

It is relevant to emphasize that Johnny Jean was accompanied by reputed lawyers, having all the financial and judicial support. Also, the case got the media attention, which was continually pressuring the Uruguayan authorities to make the perpetrators accountable. Jean’s situation is unique since most of the SEA victims involving peacekeepers do not have adequate assistance in seeking justice. Even with all this support and effort, the outcome of the proceedings was not a desirable one.

### *Pakistan*

A few months after the Uruguayans situation in Haiti, three Pakistani peacekeepers serving in Haiti, were found to have sexually abused a mentally disabled 14-year-old boy in the city of Gonaives<sup>203</sup>. The OIOS received the information on the alleged crime and settled a joint investigation with the Police Division and the DPKO<sup>204</sup>, concluding that the exploitation has happened.

In this context, the Haitian authorities started an investigation and wanted perpetrators to answer to the charges in Haiti. However, according to the UN’s Convention on Privileges and Immunities, the Secretary-General is the only one capable of lifting the immunity so military or police components could respond to criminal

---

<sup>201</sup> REDRESS (n 174).

<sup>202</sup> *ibid.*

<sup>203</sup> United Nations, ‘Haiti: Three UN Peacekeepers Repatriated for Sexual Abuse’ *UN News* (13 March 2012) <<https://news.un.org/en/story/2012/03/406312-haiti-three-un-peacekeepers-repatriated-sexual-abuse>> accessed 10 November 2020.

<sup>204</sup> Office of Internal Oversight Services, ‘Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations’.

charges in host countries' courts<sup>205</sup>. Also, the Pakistani government did not accept their nationals to face trials in Haiti; instead, it affirmed the decision of initiating court-martial proceedings against the alleged perpetrators, which was accepted by UN headquarters<sup>206</sup>.

Pakistani judges traveled to the Caribbean to conduct the trial that led to the conviction and repatriation of two peacekeepers for being accused of having raped a Haitian boy<sup>207</sup>. A UN spokeswoman has stated that the verdict was told by Pakistani authorities since MINUSTAH had no involvement in the judicial process<sup>208</sup>. This was the first SEA case involving MINUSTAH peacekeepers that the trial took place in the host state. Nevertheless, the Pakistani authorities prohibited any UN representative from being present at the trial, and all the information concerning the verdict and the charges that those peacekeepers had to face have been informed by Pakistanis. In this context, it is possible to affirm there are no trustable sources informing that these men have served any detention period or any other consequences in this regard.

The impunity around MINUSTAH is two-folded. Firstly, the societal norms that are present in Haiti have facilitated peacekeepers to commit abuses. Secondly, the accountability system — giving exclusive criminal jurisdiction to the TCC, seems not to be effective. These cases illustrate that peacekeepers have instrumentalized the Haitian 'impunity culture', to exploit members of the local community sexually. Furthermore, it shows us that even when those cases have been reported and got the media attention, the measures taken to make perpetrators accountable are much 'softer' than they should be.

---

<sup>205</sup> Amy Bracken, 'The UN Let off Peacekeepers Involved in a Haitian Boy's Rape' *The World* (2 October 2014) <<https://www.pri.org/stories/2014-10-02/un-let-peacekeepers-involved-haitian-boys-rape>> accessed 10 November 2020.

<sup>206</sup> Office of Internal Oversight Services (n 204) 17–18.

<sup>207</sup> Castaldi (n 194).

<sup>208</sup> *ibid.*



## CONCLUSION

Social and cultural norms are of extreme importance in understanding the functioning of a society. Haiti, like any other country, has unique societal features that shape the behavior of its community. Haitian cultural heritage comes from the colonization period where racial discrimination, gender traditional roles, and an ‘impunity culture’ were governing the society. Likewise, before acquiring its independence, Haitians were already ruled by a ‘white male supremacy’. The remnants from these characteristics still have an impact on the lives of their contemporary society.

For instance, Haitian women suffer from the roles that have been imposed on them since the slave era. Until recent days, females are subject to extreme machismo, gender-based violence, and an inferiority feeling when compared to men. Educational opportunities are unequal between girls and boys. Taking into account that most Haitians are not able to afford schooling for all their children, they mostly choose the boys to be educated. This circumstance has an impact on their adult lives: they will mostly depend on the husband’s income. This dependency puts them in a vulnerable position to accept men’s choices and behaviors for their survival. Girls grow up seeing their mothers and grandmothers subject to male oppression, which leads to the thought that these attitudes are acceptable.

Haiti’s population is mostly black. Nevertheless, the foreign ‘white’ presence in the country has an impact on the framing of Haitian mindsets towards race. Firstly, locals encountered themselves with Spanish and French colonizers, then Americans during the U.S invasion, followed by the arrival of several international actors, such as international organizations and NGOs. All of these foreigners were mostly white, and their image represented some kind of power and authority. In this context, there is a simple connection between white-skin color and power in Haitians’ point of view. For this reason, people with ‘lighter-skin’ are seen as more beautiful. However, this ‘beauty’ is not only related to physical appearance, but to what it represents.

Colonization, civil wars, dictatorships, and invasions, causing massacres, non-respect for human rights, and weak democratic institutions are the root causes of the

‘impunity culture’ that surrounds Haiti. On these occasions, the ones occupying authority positions were violating the rights of the local population without being held accountable. This long-lasting lack of law-enforcement allows crimes to be committed and perpetrators leaving unpunished. Criminal gangs, for instance, are present all over the country and have been acting for several years without being prosecuted for these crimes.

These Haitian socio-cultural norms have been influenced directly in law enforcement during MINUSTAH. As it has been described throughout this research, there is an extensive compilation of laws applied to the actors involved in a peacekeeping mission. International, Regional and Local laws are binding for Member States — host country and TCC, the United Nations, and individuals that are deployed in the field. In the last decade, the UN has made efforts to improve the laws governing peace operations, especially in relation to the issue of ‘sexual exploitation and abuse.’ The term is quite broad, basically encompassing any sexual relationship between a peacekeeper and a local person.

The ‘zero tolerance’ policy affirms the prohibition of peacekeepers to engage in any kind of SEA. This policy, along with several UN rules and guidelines, state the prohibition and the accountability procedure when these situations occur. In general terms, the accountability rests on the peacekeepers as individuals, the military and police commanders, the Head of Mission, the UN, and the TCC. However, as we have seen, the ultimate responsibility for making perpetrators accountable is on the Member States, which has been proven not to be effective.

During this research, it has been proven that several peacekeepers have violated the UN Standards of conduct and got involved in SEA during MINUSTAH. In this regard, it is possible to conclude that there are two main reasons for the non-effectiveness of the laws governing peacekeeping missions. The first one is related to the fact that the rules concerning SEA were elaborated towards the perpetrator. It is relevant to look at the root causes of the problem, which ultimately concern the victims. ‘Transactional sex,’ which is the most common SEA form in field missions, involves sexual relations in exchange for monetary or non-monetary assets. The victims of such actions see no other alternative

for their survival except selling their bodies. If the victims were the focus of this ‘zero-tolerance’ policy, the main feature would be expanding activities to improve these persons’ living standards instead of solely prohibiting such acts.

The second reason is that not enough attention is given to the socio-cultural norms of the host country, in this case, Haiti. The behaviors of the local community are shaped by their social and cultural heritage. The mission deployment is based on issues concerning security, democracy, human rights, and the rule of law. However, in the pre-deployment phase, there was not more in-depth research regarding Haitians local customs and practices. It is clear that some features that characterize Haiti had an enormous impact on mission deployment. Norms such as traditional gender roles, racial discrimination, and impunity have influenced the re-occurrent SEA cases during MINUSTAH, mainly when it constitutes ‘transactional sex.’

On the peacekeepers' side, they saw those norms as an opportunity to abuse local women, girls, and boys sexually. On the local community side, girls and women are already living in a society ruled by men in which they have to accept harmful behaviors; they see ‘white-skin’ color as something desirable; and are aware of the fact that nothing will happen to them if they engage in such actions. If more attention was given to the local practices, UN Agencies could have explicitly targeted these issues from the beginning of the mission. Awareness, income-generating activities, and other kinds of support should have been provided in order to prevent this situation from happening. Furthermore, prohibition per se did not seem to be effective so far. For this reason, if, since pre-deployment training, peacekeepers were made aware of the local practices, and consequently, the reasons why engaging in sexual relations with local women is not desirable, they would probably re-think before having this attitude.

## BIBLIOGRAPHY

Armstrong L, 'The Rapist and the Girl Next Door: The Paradox of Prosecuting Rape Cases in Haiti' *Juvenile Justice Information Exchange* (7 May 2014) <<https://jjie.org/2014/05/07/the-rapist-and-the-girl-next-door-the-paradox-of-prosecuting-rape-cases-in-haiti/>> accessed 10 November 2020

Bartels SL e S, 'Os filhos abandonados da ONU no Haiti' *EL PAÍS* (27 December 2019) <<https://brasil.elpais.com/internacional/2019-12-27/os-filhos-abandonados-da-onu-no-haiti.html>> accessed 14 November 2020

Belleau J-P, 'Massacres Perpetrated in the 20th Century in Haiti' *SciencePo Mass Violence and Resistance - Research Network* (25 January 2016) <[massacres-perpetrated-20th-century-haiti.html](https://www.sciencepo.fr/mass-violence-and-resistance-research-network/massacres-perpetrated-20th-century-haiti.html)> accessed 13 October 2020

Bracken A, 'The UN Let off Peacekeepers Involved in a Haitian Boy's Rape' *The World* (2 October 2014) <<https://www.pri.org/stories/2014-10-02/un-let-peacekeepers-involved-haitian-boys-rape>> accessed 10 November 2020

Bureau des Avocats Internationaux, 'CEDAW Violations by Article, Article 2 (Policy Measures), Article 3 (Guarantee of Basic Human Rights and Fundamental Freedoms) and Article 5 (Sex Role Stereotyping and Prejudice)' (12 June 2015) <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/HTI/INT\\_CEDAW\\_NGO\\_HTI\\_20862\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/HTI/INT_CEDAW_NGO_HTI_20862_E.pdf)> accessed 9 October 2020

'Review of Haiti's Report under the Convention on the Elimination of All Forms of Discrimination against Women' <<http://www.ijdh.org/wp-content/uploads/2009/12/CEDAW-Haiti-report-on-gender-violence-22.1.16.pdf>> accessed 9 November 2020

Castaldi M, 'Uruguay Apologizes over Alleged Rape by U.N. Peacekeepers | Reuters' *Reuters* (6 September 2011) <<https://www.reuters.com/article/us-haiti-uruguay-un-idUSTRE78603I20110907>> accessed 10 November 2020

Chapman AR and Ball P, 'The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala' (2001) 23 *Human Rights Quarterly* 1 <<https://www.jstor.org/stable/4489322>> accessed 10 November 2020

Committee on the Elimination of Discrimination against Women, 'Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (Haiti)' <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsG1Uyogsos8GkK8DnmVpvyQvcuE7yl%2bk2qnAxQw%2fjlrCs4GEr0SjJIDMTSYVhNVJhxJXAFrxK3PaZ71uBAops3QVJg2OPB4EertxkUsCAgq>> accessed 9 September 2020

'Summary Record of the 1394th Meeting' <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/040/82/PDF/G1604082.pdf?OpenElement>> accessed 3 November 2020

Csáky C, 'The Under-Reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers' [2008] *Sabe the Children* UK 37

<<https://www.savethechildren.org.uk/content/dam/global/reports/education-and-child-protection/no-one-to-turn-to.pdf>> accessed 13 October 2020

Davis L and others, 'REQUEST BY THE INTERNATIONAL WOMEN'S HUMAN RIGHTS CLINIC AT THE CITY UNIVERSITY OF NEW YORK SCHOOL OF LAW, MADRE, THE INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, BUREAU DES AVOCATS INTERNATIONAUX, MORRISON & FOERSTER LLP, THE CENTER FOR CONSTITUTIONAL RIGHTS, AND WOMEN'S LINK WORLDWIDE FOR PRECAUTIONARY MEASURES UNDER ARTICLE 25 OF THE COMMISSION'S RULES OF PROCEDURE'

Department of Peacekeeping Operations and Department of Field Support, 'United Nations Peacekeeping Operations Principles and Guidelines' <[https://peacekeeping.un.org/sites/default/files/capstone\\_eng\\_0.pdf](https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf)> accessed 5 October 2020

diaria la, 'El debido proceso' la diaria (11 May 2012) <<https://ladiaria.com.uy/politica/articulo/2012/5/el-debido-proceso/>> accessed 10 November 2020

Dodds, 'UN Peacekeepers in Haiti Implicated in Child Sex Ring' *Independent UK* (15 April 2017) <<https://www.independent.co.uk/news/world/americas/un-haiti-peacekeepers-child-sex-ring-sri-lankan-underage-girls-boys-teenage-a7681966.html>> accessed 10 November 2020

Economic and Social Council, 'Elaboration and Implementation of the Long-Term Programme of Support for Haiti' <<https://undocs.org/pdf?symbol=en/E/2000/63>> accessed 10 November 2020

Faedi B, 'The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti' (2008) 44 *Stanford Journal of International Law*

Fenwick HM, 'Civilian Oversight of Policing: Governance, Democracy and Human Rights, Edited by A. Goldsmith and C. Lewis' (2002) 13 *King's Law Journal* 131 <<https://doi.org/10.1080/09615768.2002.11427558>> accessed 10 November 2020

Gage AJ and Hutchinson PL, 'Power, Control, and Intimate Partner Sexual Violence in Haiti' (2006) 35 *Archives of Sexual Behavior* 11 <<https://doi.org/10.1007/s10508-006-8991-0>> accessed 3 November 2020

*HAITI: DOIS SECULOS DE HISTORIA - 1ª ED. (2019) - Everaldo de Oliveira Andrade - Livro* <<https://www.travessa.com.br/haiti-dois-seculos-de-historia-1-ed-2019/artigo/ca2299ea-6244-4618-9d8c-9b4ea058cd68>> accessed 14 November 2020

Human Rights Council, 'National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 - Haiti' <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/188/69/PDF/G1618869.pdf?OpenElement>> accessed 10 November 2020

Instituto Igarapé, 'A Participação Do Brasil Na MINUSTAH (2004-2017): Percepções, Lições e Práticas Relevantes Para Futuras Missões' <<https://igarape.org.br/wp-content/uploads/2018/03/2018-03-06-AE-MINUSTAH-PT.pdf>> accessed 10 November 2020

Inter-American Commission on Human Rights, 'The Right of Women in Haiti to Be Free from Violence and Discrimination' <<https://cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.toc.htm>> accessed 13 November 2020

'Inter-American Democratic Charter' (2001) <[https://www.oas.org/charter/docs/resolution1\\_en\\_p4.htm](https://www.oas.org/charter/docs/resolution1_en_p4.htm)> accessed 7 November 2020

Johnson TA, 'The Enduring Function of Caste: Colonial and Modern Haiti, Jamaica, and Brazil The Economy of Race, the Social Organization of Caste, and the Formulation of Racial Societies' (2004) 2 Comparative American Studies An International Journal 61 <<https://doi.org/10.1177/1477570004041288>> accessed 10 November 2020

'Johnny Jean ratificó ante el juez denuncia de violación contra cinco marinos uruguayos en Haití' *LARED21* (11 May 2012) <<http://www.lr21.com.uy/comunidad/1037238-johnny-jean-ratifico-ante-el-juez-denuncia-de-violacion-contra-marinos-uruguayos>> accessed 10 November 2020

Kolbe A, "'It's Not a Gift When It Comes with Price": A Qualitative Study of Transactional Sex between UN Peacekeepers and Haitian Citizens' (2015) 4 Stability: International Journal of Security and Development <<http://www.stabilityjournal.org/articles/10.5334/sta.gf/>> accessed 7 November 2020

Latortue G, 'Ministère à la condition feminine et aux Droit des Femmes', *Livre blanc du gouvernement de transition* (2009)

Lee S and Bartels S, "'They Put a Few Coins in Your Hand to Drop a Baby in You": A Study of Peacekeeper-Fathered Children in Haiti' (2020) 27 International Peacekeeping 177 <<https://doi.org/10.1080/13533312.2019.1698297>> accessed 10 November 2020

McCalpin JO, 'Truth and Freedom in Haiti: An Examination of the Haitian Truth Commission' (2012) 6 The Global South 138 <<https://www.jstor.org/stable/10.2979/globalsouth.6.1.138>> accessed 10 November 2020

McLeod S, 'Social Roles and Social Norms' *Simply Psychology* (2008) <<https://www.simplypsychology.org/social-roles.html>> accessed 10 November 2020

Ndulo M, 'The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers During Peacekeeping Missions' (2009) 27 Cornell Law Faculty Publications <<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1058&context=facpub>> accessed 9 October 2020

OAS, 'OAS - Organization of American States: Democracy for Peace, Security, and Development' (1 August 2009) <[http://www.oas.org/en/about/who\\_we\\_are.asp](http://www.oas.org/en/about/who_we_are.asp)> accessed 5 November 2020

OECD Development Centre, 'Gender Index Haiti' (2019) <<https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/HT.pdf>> accessed 7 November 2020

Office of Internal Oversight Services, 'Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations'

OHCHR, 'A Profile of Police and Judicial Response to Rape in Port-Au-Prince' <[http://adq631j7v3x1shge52cot6m1-wpengine.netdna-ssl.com/wp-content/uploads/2014/05/RapportSGBV\\_en.pdf](http://adq631j7v3x1shge52cot6m1-wpengine.netdna-ssl.com/wp-content/uploads/2014/05/RapportSGBV_en.pdf)> accessed 11 July 2020

'La Réponse Policière et Judiciaire Aux Cas de Viol En Haïti' <[https://www.ohchr.org/Documents/Countries/HT/HRS\\_SGBVReport.2013.08.pdf](https://www.ohchr.org/Documents/Countries/HT/HRS_SGBVReport.2013.08.pdf)> accessed 13 November 2020

'Human Rights Bodies' <<https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>> accessed 7 November 2020

Organization of American States, 'Observations of the Inter-American Commission on Human Rights upon Conclusion of Its April 2007 Visit to Haiti.' <<http://cidh.org/pdf%20files/April%202007%20Haiti%20Observations%20ENG.pdf>>

'Second Hemispheric Report on the Implementation of the Belém Do Pará Convention: Follow-up Mechanism to the Belém Do Pará Convention (MESECVI)' <<https://oig.cepal.org/sites/default/files/mesecvi-segundoinformehemisferico-en.pdf>> accessed 13 October 2020

Otto D, 'Making Sense of Zero Tolerance Policies in Peacekeeping Sexual Economies', *Sexuality and the law: Feminist engagements* (Oxon & New York:Routledge-Cavendish 2007) <<https://www.taylorfrancis.com/books/e/9780203945094/chapters/10.4324/9780203945094-17>> accessed 13 November 2020

Paul M, 'Racial Ideology and Political Development: The Cases of Haiti and Bermuda' (1982) 32 *Sociologus* 64 <<https://www.jstor.org/stable/43644946>> accessed 10 November 2020

REDRESS, 'Litigating Peacekeeper Child Sexual Abuse Report' <<https://redress.org/wp-content/uploads/2020/01/LitigatingPeacekeeperChildSexualAbuseReport.pdf>> accessed 10 November 2020

Simic O, 'Rethinking "Sexual Exploitation" in UN Peacekeeping Operations' (2009) 32 *Women's Studies International Forum* 288 <<http://www.sciencedirect.com/science/article/pii/S0277539509000545>> accessed 13 October 2020

Simpson GE, 'Haiti's Social Structure' (1941) 6 *American Sociological Review* 640 <<https://www.jstor.org/stable/2085502>> accessed 10 November 2020

'Sri Lanka's UN Peacekeepers Let the Punishment Fit the Crime' <<https://itjpsl.com/assets/press/haiti-FINAL.pdf>> accessed 10 November 2020

Torgman A, 'Haiti: A Failed State? Democratic Process and OAS Intervention on JSTOR' (2012) 44 University of Miami Inter-American Law Review <<https://www.jstor.org/stable/23645503?seq=1>> accessed 13 October 2020

United Nations, 'Memorandum of Understanding between the United Nations and the General Secretariat of the Organization of American States Concerning Electoral Assistance to Haiti' <[http://www.oas.org/OASpage/Haiti\\_situation/cpinf5104\\_04eng.pdf](http://www.oas.org/OASpage/Haiti_situation/cpinf5104_04eng.pdf)> accessed 9 November 2020

'Haiti: Over 100 Sri Lankan Blue Helmets Repatriated on Disciplinary Grounds' *UN News* (2 November 2007) <<https://news.un.org/en/story/2007/11/238162-haiti-over-100-sri-lankan-blue-helmets-repatriated-disciplinary-grounds-un>> accessed 10 November 2020

'United Nations Peacekeeping Operations Principles and Guidelines' <[https://peacekeeping.un.org/sites/default/files/peacekeeping/en/capstone\\_eng.pdf](https://peacekeeping.un.org/sites/default/files/peacekeeping/en/capstone_eng.pdf)> accessed 10 November 2020

'Haiti: Three UN Peacekeepers Repatriated for Sexual Abuse' *UN News* (13 March 2012) <<https://news.un.org/en/story/2012/03/406312-haiti-three-un-peacekeepers-repatriated-sexual-abuse>> accessed 10 November 2020

'Main Organs' (18 November 2014) <<https://www.un.org/en/sections/about-un/main-organs/>> accessed 5 September 2020

'Policy on Accountability for Conduct and Discipline in Field Missions'

'Policy Accountability for Conduct and Discipline in Field Missions' <<https://conduct.unmissions.org/documents-standards>> accessed 6 September 2020

'Conduct in UN Field Missions Documents' (*Conduct in UN Field Missions*, 29 November 2016) <<https://conduct.unmissions.org/documents-standards>> accessed 9 November 2020

'Conduct in UN Field Missions Overview' (*Conduct in UN Field Missions*, 29 November 2016) <<https://conduct.unmissions.org/standards-overview>> accessed 7 November 2020

'Brazil Fact Sheet - Rules/General Laws' <[https://peacekeeping.un.org/sites/default/files/brazil\\_fact\\_sheet.pdf](https://peacekeeping.un.org/sites/default/files/brazil_fact_sheet.pdf)> accessed 10 November 2020

'Glossary on Sexual Exploitation and Abuse - Second Edition' <[https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English\\_0.pdf](https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf)> accessed 13 October 2020

'Sexual Exploitation and Abuse' (*Conduct in UN Field Missions*, 23 January 2017) <<https://conduct.unmissions.org/sea-overview>> accessed 12 November 2020

'Ten Rules Code of Personal Conduct for Blue Helmets'

'United Nations Peacekeeping' (*United Nations Peacekeeping*) <<https://peacekeeping.un.org/en/what-we-do>> accessed 12 October 2020



'Forming a New Operation' (*United Nations Peacekeeping*)  
<<https://peacekeeping.un.org/en/forming-new-operation>> accessed 10 November 2020

United Nations Security Council, 'What Is the Security Council?'  
<<https://www.un.org/securitycouncil/content/what-security-council>> accessed 5 October 2020

'Uruguayan Peacekeepers in Haiti Accused of Abuse' *BBC News* (5 September 2011)  
<<https://www.bbc.com/news/world-latin-america-14783538>> accessed 14 November 2020

U.S. Department of State, '2016 Country Reports on Human Rights Practices: Haiti'  
<<https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/haiti/>>  
accessed 10 November 2020

USAID- Haiti, 'Gender Assessment' (2016) 1 <<https://banyanglobal.com/wp-content/uploads/2017/07/USAID-Haiti-Gender-Assessment.pdf>> accessed 10 November 2020

Westendorf J-K and Searle L, 'Sexual Exploitation and Abuse in Peace Operations: Trends, Policy Responses and Future Directions' (2017) 93 *International Affairs*  
<<https://academic.oup.com/ia/article/93/2/365/2982811>> accessed 13 November 2020

American Convention on Human Rights 1969

Charter of the Organization of American States 2009

Charter of the United Nations 1945

Code civil d'Haïti 1826

Código Civil do Brasil 1940

Concluding observations on the combined second and third reports of Haiti (CRC/C/HTI/CO/2-3)

Consideration of Reports submitted by State Parties under Article 44 of the Convention - Concluding Observations: Haiti 2003 (CRC/C/15/Add202)

Convention on the Elimination of All Forms of Discrimination against Women 1979

Convention on the Rights of the Child 1989

Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers (DPKO/CPD/DDCPO/2003/001)

Inter-American Convention on the Granting of Civil Rights to Women 1948

Inter-American Convention on the Prevention, Punishment and eradication of violence against women 'Convention of Belem do Para' 1994

International Covenant on Economic, Social and Cultural Rights 1966

La Constitution de la République D'Haïti 1987

Observance by United Nations forces of international humanitarian law 1999 (ST/SGB/1999/13)

Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission 2002 (ST/SGB/2002/9)

Report of the Secretary-General on Haiti 2004 (S/2004/300)

Report of the Special Committee on Peacekeeping Operations and its Working Group on the 2007 resumed session 2007 (A/61/19 (Part III))

Secretary-General's Bulletin "Special Measures for protection from sexual exploitation and abuse." (ST/SGB/2003/13)

Security Council Resolution 1325 2000 (S/RES/1325)

Security Council Resolution 1612 2005 (S/RES/1612)

Security Council's Resolution 1529 2004 (S/RES/1529)

Security Council's Resolution 1542 2004 (S/RES/1452)

Situation in Haiti: Strengthening of Democracy (AG/RES2058)

United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel (A/RES/62/214)





