

# **VIOLATIONS OF THE RIGHT TO EFFECTIVE REMEDY: THE UN'S RESPONSIBILITY FOR CHOLERA IN HAITI**

**Joint Submission to the UN Special Rapporteur on the promotion of truth, justice,  
reparation and guarantees of non-recurrence**

Cc:

Special Rapporteur on extreme poverty and human rights

Special Rapporteur on the human rights to safe drinking water and sanitation

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Special Rapporteur on extrajudicial, summary or arbitrary executions

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Working Group of Experts on People of African Descent

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## 1. EXECUTIVE SUMMARY

In December 2016, the United Nations (UN) Secretary-General delivered a landmark public apology for the organization's role in causing the world's deadliest cholera epidemic in Haiti. Acknowledging both the suffering in Haiti and the resulting damage to the UN's reputation, he launched a "New Approach to Cholera in Haiti." This \$400 million plan was intended to end cholera in Haiti, provide assistance to those most affected, and turn the page on a shameful chapter in UN history.

The UN's responsibility for the cholera outbreak is no longer in dispute. The UN Stabilization Mission in Haiti (MINUSTAH) improperly disposed of contaminated fecal waste into a tributary of the Artibonite River in 2010, introducing cholera to the country.<sup>1</sup> The epidemic, now in its tenth year, has killed at least 9,789 people and sickened 819,000.<sup>2</sup> Cholera has caused ongoing harm to survivors and affected communities across Haiti, resulting in violations of the rights to life, health, water and sanitation, and an adequate standard of living. Survivors report weakened physical health and ongoing trauma. Children have lost parents and breadwinners, resulting in severe instability and lost schooling. Families continue to struggle to pay off debt for medical care and burial expenses, and such debt has often plunged them deeper into poverty.

For six years following the introduction of cholera, the UN denied incontrovertible evidence of its own responsibility and refused victims access to any forum to hear claims for remedies. This response eroded the UN's moral authority, damaged its relationship with the Haitian people, and further violated the rights and dignity of victims. It took an extraordinary mobilization of cholera-affected communities and allies in Haiti and abroad, including civil society, the media, public officers, and UN special procedures to persuade the UN to shift course. In 2014, UN special procedures filed a joint allegation letter raising concern that the UN was violating human rights, including the right to effective remedy.<sup>3</sup> The continued engagement of special procedures between 2014-2016 played a key role in prompting the UN to admit its role.

Despite serious limitations to the plan, the UN's launch of the New Approach presented a critical opportunity to repair victims' injuries and restore trust in the UN. In the words of the Secretary-General, it became "an important test" of the UN's commitment to its own principles.<sup>4</sup>

Three years since its launch, however, it has become clear that the New Approach is a fundamentally inadequate response to the harms caused by the UN. This submission documents violations of the right to an effective remedy caused by the grave deficiencies in the UN's

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<sup>1</sup> See e.g., U.N. Secretary-General, *A new approach to cholera in Haiti*, ¶ 21-22, U.N. Doc. A/71/620 (Nov. 25, 2016), <https://undocs.org/A/71/620>; Philip Alston (Special Rapporteur on extreme poverty and human rights), *Extreme Poverty and Human Rights*, ¶ 13-18, U.N. Doc. A/71/367 (Aug. 26, 2016).

<sup>2</sup> OCHA, *Haiti Cholera Figures* (Jan. 30, 2019), [https://reliefweb.int/sites/reliefweb.int/files/resources/ocha-hti-cholera-figures-20190131\\_en.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/ocha-hti-cholera-figures-20190131_en.pdf).

<sup>3</sup> Letter from Leilani Farha Special Rapporteur on adequate housing as a component of the right to an adequate standard of living et al. to the UN Secretary-General Ban Ki-moon, HTI 3/2014 (Sep. 25, 2014), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18990> [hereinafter "2014 Joint Allegation Letter"].

<sup>4</sup> U.N. Secretary-General, *Secretary-General's remarks to the General Assembly on a New Approach to Address Cholera in Haiti* (New York, Dec. 1, 2016), <https://www.un.org/sg/en/content/sg/statement/2016-12-01/secretary-generals-remarks-general-assembly-new-approach-address>.

response since 2016. It is grounded in the experiences and testimony of victims as captured in focus groups and interviews conducted by the submitting organizations and other human rights groups, social scientists, medical professionals, and independent journalists. It explains the need for urgent intervention to address the harms caused by cholera and to protect the rights of cholera victims.

**Key findings:**

- ***The UN’s reliance on charitable contributions hindered the plan’s success from the outset and has resulted in vastly inadequate funding.*** At the time of this submission, the UN has raised only 5% of the \$400 million necessary to implement the New Approach. The Secretary-General has declined to fund the plan through assessed contributions, resulting in a high likelihood that the UN will never be able to deliver on its commitments under the New Approach. The dearth in funding—rather than victims’ rights or the UN’s duties—has determined the content and scope of the New Approach.
- ***Victims continue to be denied compensation.*** The UN’s elaboration and implementation of the New Approach indicate that the organization has made a unilateral decision to foreclose compensation in favor of community projects. The only material assistance offered by the UN to date is five \$150,000 infrastructure projects around Mirebalais, with another 20 projects commencing in four communes around Cap-Haïtien in the North of the country.<sup>5</sup> The UN has never established a standing claims commission through which victims can claim compensation, as required under its Status of Forces Agreement (SOFA) with Haiti, or established any alternative independent mechanism to determine appropriate remedies for victims.
- ***Victims are being denied the right to participate in the design of remedies, undermining effectiveness and legitimacy.*** Despite commitments to “place victims at the center,” the UN has not treated victims as rights-holders with a seat at the decision-making table. Before launching the New Approach, the UN failed to analyze the harms victims had suffered, or to assess their perspectives and needs when crafting the plan. Critical decisions about the direction and content of the New Approach are now being made without input from victims, resulting in an effort that lacks legitimacy and is unresponsive to victims’ priorities. UNDP excluded those victims who were most prepared to participate in consultations and labeled them a ‘risk’ to the success of the endeavor.<sup>6</sup>

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<sup>5</sup> See Community Assistance to Mirebalais: New UN Approach to Cholera in Haiti Proposal, United Nations Haiti Cholera Response Multi-Partner Trust Fund, at 5-11, Apr. 8, 2019, available at <http://mptf.undp.org/document/download/18291>. The UN has allocated \$5,579,934 to community projects in total. See Project Fact Sheet, Phase 2 Community Assistance, <http://mptf.undp.org/factsheet/project/00115476>.

<sup>6</sup> Numerous UN progress updates list mobilization and commemorative activities by organized victims’ groups working with the BAI in Mirebalais as a risk. See e.g., October 2018 Project Monthly Progress Report, Community Assistance to Mirebalais: New UN Approach to Cholera in Haiti, United Nations Multi-Partner Trust Fund, <http://mptf.undp.org/document/download/20606>; November 2018 Project Monthly Progress Report, Community Assistance to Mirebalais: New UN Approach to Cholera in Haiti, United Nations Multi-Partner Trust Fund, <http://mptf.undp.org/document/download/20909>; December 2018 Project Monthly Progress Report, Community

- ***The UN continues its unsafe sanitation management across peacekeeping bases globally, posing a grave threat to health of other peacekeeping host communities.*** UN audits reveal that the UN continues to employ reckless sanitation practices across numerous peacekeeping missions, creating an ongoing risk of recurrence in vulnerable countries where the UN operates.<sup>7</sup> Moreover, the same system that operated to deny cholera victims access to remedies remains in place across the UN's operations today. The UN has not undertaken any review of its claims system to ensure victims of future harms have an accessible, transparent, and impartial mechanism through which to seek remedies.

The UN's ongoing failure to provide effective remedies to victims of cholera has prolonged suffering in Haiti, and sends a harmful message to states that remedying violations of human rights is optional. The UN's effectiveness in the promotion of human rights globally depends on its ability to exercise moral authority to persuade actors to respect, protect, and fulfill human rights. The erosion of that moral authority undermines the UN human rights system, and merits the urgent attention of special procedures.

## 2. RECOMMENDATIONS

The special procedures' timely intervention is needed to guide the UN to align its approach with human rights standards. We respectfully ask you to raise this matter with the UN Secretariat and recommend that the UN uphold the rights, dignity, and equality of Haitians and comply with the organization's obligations under international human rights law and its own legal frameworks by:

- Funding remedies for cholera victims through assessed contributions, in accordance with international law and UN frameworks;

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Assistance to Mirebalais: New UN Approach to Cholera in Haiti, United Nations Multi-Partner Trust Fund, <http://mptf.undp.org/document/download/21391>. See also discussion on pp. 27-28, *infra*.

<sup>7</sup> See e.g., Office of Internal Oversight Services [OIOS], *Audit of waste management in the United Nations Interim Force in Lebanon*, Rep. No. 2015/181, Dec. 17, 2015, <https://oios.un.org/file/5957/download?token=Kvlo9gC1> (finding failures to maintain septic tanks and remove sludge, unacceptable mixing of hazardous and organic waste); OIOS, *Audit of waste management and selected environmental activities in the United Nations Mission in Liberia*, Rep. No. 2016/028, Mar. 21, 2016, [https://oios.un.org/file/6068/download?token=2H7woX\\_n](https://oios.un.org/file/6068/download?token=2H7woX_n) (finding untreated sewage in rainwater drains, inadequate plumbing, cracked septic tanks and inadequate contained gray water); OIOS, *Audit of Waste Management in the United Nations Operation in Cote d'Ivoire*, Rep. No. 2016/107, Sep. 29, 2015, <https://oios.un.org/file/5747/download?token=JVJ2fnXJ>; OIOS, *Audit of Waste Management in the United Nations Organization Stabilization Mission in the Democratic Republic of Congo*, Rep. No. 2015/116, Oct. 2, 2015, <https://oios.un.org/file/5771/download?token=--8P7aDF> (finding insufficient septic tanks and soak pits); OIOS, *Audit of Waste Management in the African Union-United Nations Hybrid Operation in Darfur*, Rep. No. 2015/065, June 26, 2015, <https://oios.un.org/file/5627/download?token=6rXK025k> (finding dumping of kitchen organic waste into open pits; Interoffice Memorandum from Milan Trajanovic, Director of Mission Support, to Braima Jamanca, Chief Service Delivery, re: MINUSCA Waste Management Status Update and Risks, Ref. no. CSD/025/16, Oct. 3, 2016, <http://innercitypress.com/UNgarbageCARleak2icp.pdf> (finding misuses of dumpsite to present a health hazard to the local population, and noting that the Mission should correct this due to litigation fears following Haiti); see also Rick Gladstone, *Poor Sanitation Persisted at U.N. Missions Long After Haiti Cholera Outbreak*, N.Y. Times, Aug. 19, 2016, <https://www.nytimes.com/2016/08/20/world/americas/haiti-cholera-sanitation-un-peacekeepers.html> (reporting on the results of the audits).

- Involving victims in the co-design of remedies and prioritizing reparations that respond to the needs, rights, and priorities of those most affected, including financial compensation;
- Establishing a standing claims commission through which cholera victims can claim compensation for their injuries in accordance with the obligations set forth in the UN-Haiti Status of Forces Agreement;<sup>8</sup>
- Eliminating cholera in Haiti by investing in the necessary water, sanitation, and health infrastructure;
- Ensuring non-recurrence by taking immediate action to correct sanitation management across UN bases worldwide;
- Reviewing its liability framework to ensure that civilian victims of UN harms have access to a mechanism that can hear and decide claims for remedies in a fair, transparent, and impartial manner;
- Undertaking a transparent and participatory review of lessons learned from cholera in Haiti to ensure that victims' rights and dignity are prioritized in future responses to UN-created harms.

### 3. SUBMITTING ORGANIZATIONS

**International Human Rights Clinic, Harvard Law School:** The International Human Rights Clinic at Harvard Law School seeks to protect and promote human rights and international humanitarian law through documentation; legal, factual, and strategic analysis; litigation before national, regional, and international bodies; treaty negotiations; and policy and advocacy initiatives. Our practice spans a wide range of issues, including arms and armed conflict; business and human rights; human rights and the environment; transitional justice; and the UN system. Our clinicians have expertise in numerous regions, including the Americas, the Middle East, Southeast Asia, and Southern Africa. We have particular experience in certain countries, including Bolivia, Burma/Myanmar, Haiti, South Africa, and the United States.

**Bureau des Avocats Internationaux (BAI):** The *Bureau des Avocats Internationaux* is a Haitian human rights law firm that advances the Haitian people's struggle for justice and democracy. Since 1995, BAI has helped victims prosecute human rights cases, trained Haitian lawyers and spoken out on justice issues.

**Institute for Justice & Democracy in Haiti (IJDH):** The Institute for Justice & Democracy in Haiti (IJDH) is a US-based human rights non-profit organization. Since 2004, IJDH has worked to advance recognition of and accountability for human rights in Haiti. In partnership with its Haiti-based sister organization *Bureau des Avocats Internationaux* (BAI), IJDH advocates, litigates, builds constituencies, and nurtures networks to create systemic pathways to justice for marginalized communities.

Since 2011, BAI and IJDH have worked alongside cholera victims to seek justice and reparations from the UN in line with the organization's legal obligations, including representing 5,000 victims through the UN's claims process and acting as counsel for victims in litigation in the

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<sup>8</sup> Agreement between the United Nations and the Government of Haiti concerning the status of the United Nations Operation in Haiti, U.N.-Haiti, Jul. 9, 2004, ¶ 54-5, 2271 U.N.T.S 235 [hereinafter SOFA].

United States. BAI and IJDH continue to work alongside cholera victims, particularly in the rural Artibonite and Center departments of Haiti, in community organizing, civic education, popular mobilization, submissions to UN human rights procedures, and global public advocacy.

#### 4. ALLEGED PERPETRATORS

**United Nations:** The UN is an international organization that was founded in 1945. According to the UN Charter, the functions of the organization include “maintain[ing] international peace and security” and “promoting and encouraging respect for human rights.” The UN deployed the UN Stabilization Mission in Haiti (MINUSTAH) in 2004 and is responsible for MINUSTAH’s actions in Haiti.<sup>9</sup> In 2010, the UN breached its human rights obligations by failing to exercise due diligence to prevent the reckless introduction of cholera to Haiti, resulting, *inter alia*, in violations of the rights to water, sanitation, health, and life. At all times relevant to this submission, the UN was responsible for delivering a prompt, adequate, and effective remedy for rights violations caused by its introduction of cholera to Haiti.

**United Nations Development Programme (UNDP):** UNDP is the UN’s development network and is responsible for “strengthen[ing] international cooperation over developmental and economic issues.” In 2016, UNDP was named the implementing agency of Track 2 of the New Approach, intended to provide material assistance to victims of cholera.

#### 5. ALLEGED VICTIMS

This submission concerns rights violations endured by: 1) families of the approximately 10,000 individuals who died of cholera in Haiti, and 2) the 800,000 survivors of cholera in Haiti. In focus groups, affected communities identify families that have lost loved ones to cholera—and especially children and young adults who lost parents—as the most affected, and those who contracted and survived cholera as the second most affected.<sup>10</sup> These are also the groups that the UN sought to target with its New Approach. The submitting organizations recognize that the cholera epidemic has produced widespread, complex, and diffuse harms for individuals throughout Haiti, and that under international human rights law, such victims are also entitled to effective remedies.

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<sup>9</sup> See, e.g., Report of the Secretary-General, Administrative and Budgetary Aspects of the Financing of United Nations Peacekeeping Operations, U.N. Doc. A/51/389, Sep. 20, 1996 (“In recognition of its international responsibility for the activities of its forces, the United Nations has, since the inception of peacekeeping operations, assumed its liability for damage caused by members of its forces....”)

<sup>10</sup> AVOCATS SANS FRONTIERS-CANADA, COMMENT REpondre AUX BESOINS DES VICTIMES DE CHOLERA EN HAÏTI ? FAISABILITE D’UNE APPROCHE INDIVIDUELLE D’ASSISTANCE POUR LES PERSONNES LES PLUS AFFECTEES PAR LA MALADIE 41 (2019) [hereinafter ASFC], [https://www.asfcanda.ca/site/assets/files/7636/version\\_finale\\_web\\_vf.pdf](https://www.asfcanda.ca/site/assets/files/7636/version_finale_web_vf.pdf).

## 6. FACTUAL BACKGROUND

### a. UN Responsibility for the Introduction of Cholera

#### i. *The Initial Outbreak*

In 2010, the UN caused the world's deadliest cholera outbreak in Haiti.<sup>11</sup>

The UN Stabilization Mission in Haiti (MINUSTAH) was deployed in 2004, and rotated peacekeepers in and out of Haiti every six months.<sup>12</sup> On October 8, 2010, a new battalion of peacekeepers from Nepal arrived as a part of this rotation.<sup>13</sup> Despite the fact that the battalion left Nepal during a known cholera outbreak in the Kathmandu Valley, and Haiti was in a particularly vulnerable state following a devastating earthquake nine months earlier, the UN did not require the peacekeepers to be screened or treated for cholera before their deployment.<sup>14</sup> A study later found that prevention of transmission through prescreening and prophylaxis at the pre-deployment stage would have cost the UN a total of \$2,000.<sup>15</sup>

A contingent of these peacekeepers were sent to NEPBATT 1, a rural base outside the town of Mirebalais.<sup>16</sup> The base was perched directly above the Meille tributary of the Artibonite River,<sup>17</sup> which provides 1.5 million Haitians with water for cooking, bathing, washing, and drinking.<sup>18</sup> Many who depend on the river lack the means to treat the water before consumption: half of rural households in Haiti rely on unimproved water sources for drinking water.<sup>19</sup>

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<sup>11</sup> By comparison, the world's second deadliest cholera outbreak in Yemen has caused 3877 deaths. World Health Org. Regional Office for the Eastern Mediterranean, *Outbreak Update - Cholera in Yemen* (Nov. 19, 2019), <http://www.emro.who.int/pandemic-epidemic-diseases/cholera/outbreak-update-cholera-in-yemen-10-november-2019.html>; World Health Org. Regional Office for the Eastern Mediterranean, *Cholera in Yemen Monthly Situation Update, December 2017* (Dec. 2017), [http://applications.emro.who.int/docs/EMROPub\\_2017\\_EN\\_16770.pdf](http://applications.emro.who.int/docs/EMROPub_2017_EN_16770.pdf).

<sup>12</sup> ALEJANDRO CRAVIOTO ET AL., *FINAL REPORT OF THE INDEPENDENT PANEL OF EXPERTS ON THE CHOLERA OUTBREAK IN HAITI* (2011), at 12 [hereinafter INDEPENDENT PANEL].

<sup>13</sup> *Id.*

<sup>14</sup> See Alston, *supra* note 1, ¶18 (citing *Nepal: cholera outbreak in Kathmandu*, (Sep. 23, 2010 5:20 PM), <http://crofsblogs.typepad.com/h5n1/2010/09/nepal-cholera-outbreak-in-kathmandu.html>); R.R. Frerichs et al., *Nepalese origin of cholera epidemic in Haiti*, 18 *CLINICAL MICROBIOLOGY & INFECTION* E158, E162 (2012) (“The soldiers were not tested for cholera, either before they left Nepal or when arriving in Haiti.”)

<sup>15</sup> Joseph A. Lewnard et al., *Strategies to Prevent Cholera Introduction During International Personnel Deployments: A Computational Modeling Analysis Based on the 2010 Haiti Outbreak*, *PLoS*, Jan. 26, 2016, <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001947>; see also Ed Pilkington & Joe Sandler Clarke, *UN Could Have Prevented Haiti Cholera Epidemic with \$2000 health kit—Study*, *THE GUARDIAN* (Apr. 5, 2016), <https://www.theguardian.com/world/2016/apr/14/haiti-cholera-epidemic-un-prevention>.

<sup>16</sup> INDEPENDENT PANEL, *supra* note 13, at 12.

<sup>17</sup> Frerichs et al, *supra* note 14, Fig. 1 (showing a map of the camp's location).

<sup>18</sup> JONATHAN KATZ, *THE BIG TRUCK THAT WENT BY: HOW THE WORLD CAME TO SAVE HAITI AND LEFT BEHIND A DISASTER*, 229 (2013).

<sup>19</sup> WHO/UNICEF Joint Monitoring Programme, *Haiti Country Data 2012*, <https://washdata.org/data/country/HTI/household/download> (last visited Dec. 12, 2019).

Rather than take basic measures to safely dispose of waste through on-site treatment or transport to a treatment facility, the UN base disposed of its toilet sewage directly into open-air pits dug on a hill in the surrounding community.<sup>20</sup> Around the time of the outbreak, residents of Meille reported nauseating liquid pouring from the base's waste disposal pipes, and complained of the disposal pits overflowing in heavy rain.<sup>21</sup>

On October 12, 2010, four days after the Nepalese battalions' arrival, the first documented victim of cholera exhibited acute symptoms and died within 24 hours.<sup>22</sup>

In the first week of the outbreak, 135 Haitians died of cholera.<sup>23</sup> The following week, journalists documented broken pipes running from the Meille base that "leaked a foul-smelling black liquid" towards the tributary, as well as unfenced, uncovered "shining pools of feces, filling pits dug directly into the ground" around the base.<sup>24</sup>

From the Artibonite River, the disease spread like wildfire, inducing fear and panic. One victim recalled:

*I would barely return from taking someone to [a health center] that I'd have to go again. You take this person and when you come back, it's either an aunt, a cousin, or someone else. My kid or someone else. I have to go back. Even I, while I was in the fields...it hit me.*<sup>25</sup>

In late October 2010, the Pan-American Health Organization (PAHO) recommended against using available vaccines to attempt to stem the spread of the epidemic, citing logistical difficulties, costs, and competing priorities.<sup>26</sup> These rationales were challenged by other public health experts as illegitimate and "morally questionable, if not to say revolting."<sup>27</sup> It was not until 2012 that cholera vaccines began to be used in Haiti.<sup>28</sup>

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<sup>20</sup> INDEPENDENT PANEL, *supra* note 13, at 22; KATZ, *supra* note 18, at 228-29.

<sup>21</sup> KATZ, *supra* note 18, at 229.

<sup>22</sup> Louise Ivers & David Watson, *The "First" Case of Cholera in Haiti: Lessons for Global Health*, 86(1) AM. J. TROP. MED. HYG. 36 (2012).

<sup>23</sup> *135 Dead and 1,000 sick in Haiti Cholera Outbreak*, REUTERS, Oct. 22, 2010, <http://www.rfi.fr/en/americas/20101022-135-dead-and-1500-sick-haiti-cholera-outbreak>.

<sup>24</sup> See KATZ, *supra* note 18, at 228; *UN Investigates Haiti Outbreak*, Al Jazeera English, Oct. 28, 2010, <https://www.aljazeera.com/news/africa/2010/10/2010102841412141967.html>.

<sup>25</sup> Yodeline Guillaume et al., *'It was a ravage!': Lived experiences of epidemic cholera in rural Haiti*, BMJ GLOB. HEALTH 3 (2019), [https://reliefweb.int/sites/reliefweb.int/files/resources/e001834\\_full\\_.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/e001834_full_.pdf).

<sup>26</sup> See Date et al. *Considerations for Oral Cholera Vaccine Use during Outbreak after Earthquake in Haiti*, 2 EMERGING INFECTIOUS DISEASES 2105-2112 (Nov. 2011) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3310586/#!po=63.3333>; *Cholera Vaccine Isn't The Answer For Haiti*, NPR (Oct. 28, 2010), <https://www.npr.org/sections/health-shots/2010/10/28/130884642/why-the-cholera-vaccine-isn-t-the-answer-for-haiti>.

<sup>27</sup> See e.g., L. von Seidlen & J. L. Deen. *Considerations for Oral Cholera Vaccine Use during Outbreak after Earthquake in Haiti*, 2010-2011, 18:7 EMERGING INFECTIOUS DISEASES 1211-14 (Nov. 2012), <https://www.ncbi.nlm.nih.gov/pubmed/22709425>.

<sup>28</sup> Ivers et al., *Use of Oral Cholera Vaccine in Haiti: A Rural Demonstration Project*, Am J Trop Med Hyg. (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3795090/>.

By mid-November 2010, cholera had spread throughout the entire country and killed 2000 people.<sup>29</sup> For a second time in a year, Haitians were burying their dead in mass graves.

At the time of this submission, Haiti's Ministry of Health and Population (MSPP) has recorded 9,789 deaths from cholera and 819,00 cases of illness nationwide.<sup>30</sup> A quarter of the deaths occurred in the first three months of the outbreak.<sup>31</sup> Community-based surveys by Médecins Sans Frontières suggest that the actual death toll from the first six months of the epidemic may be three to 10 times higher than official records suggest.<sup>32</sup> In the 2017 national census, one in six Haitian households reported that at least one family member had contracted cholera.<sup>33</sup>

ii. *Official Investigations and UN Responses*

In November 2010, the Haitian Government enlisted a team of Haitian and international epidemiologists to investigate the source of the cholera. The team concluded that “the remoteness of Meille in central Haiti and the absence of report of other incomers make it unlikely that a cholera strain might have been brought there another way [than by the Nepalese peacekeeping contingent].”<sup>34</sup>

In January 2011, the Secretary-General appointed an independent panel of experts that echoed the epidemiologists' finding:

The evidence overwhelmingly supports the conclusion that the source of the Haiti cholera outbreak was due to contamination of the Meye [Meille] Tributary of the Artibonite River with a pathogenic strain of current South Asian type V. Cholerae as a result of human activity.<sup>35</sup>

Genetic testing showed the strain of cholera in Haiti to be a “perfect match” to that in Nepal.<sup>36</sup>

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<sup>29</sup> Ezra J. Barzilay, et al., *Cholera surveillance during the Haiti epidemic--the first 2 years*, 368 NEW ENG. J. MED. 599–609 (2013).

<sup>30</sup> OCHA, *Haiti Cholera Figures*, *supra* note 2.

<sup>31</sup> Daniela Ceccarelli et al., *Origin of Vibrio cholerae in Haiti*, 11 THE LANCET 262 (2011), available at [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(11\)70078-0/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(11)70078-0/fulltext).

<sup>32</sup> Luguero et al., *Mortality Rates during the Cholera Epidemic, Haiti, 2010-2011*, 22:3 EMERGING INFECTIOUS DISEASES 410 (2016), [https://wwwnc.cdc.gov/eid/article/22/3/14-1970\\_article](https://wwwnc.cdc.gov/eid/article/22/3/14-1970_article) (Documenting reported deaths from Oct. 2010 to April 2011, when the vast majority of deaths took place. Rick Gladstone, *Cholera Deaths in Haiti Could Far Exceed Official Count*, N.Y. TIMES, Mar. 18, 2016, <https://www.nytimes.com/2016/03/19/world/americas/cholera-deaths-in-haiti-could-far-exceed-official-count.html>)

<sup>33</sup> Ministère de la Santé Publique et de la Population, *Enquête Mortalité, Morbidité et Utilisation des Services, 2016-2017*, 11, [hereinafter EMMUS-VI], available at <https://dhsprogram.com/pubs/pdf/FR326/FR326.pdf>.

<sup>34</sup> Renaud Piarroux et al., *Understanding the cholera epidemic, Haiti*. 17 EMERGING INFECTIOUS DISEASES 1161–68 (2011).

<sup>35</sup> INDEPENDENT PANEL, *supra* note 13, at 29.

<sup>36</sup> Frerichs et al, *supra* note 14, at E162.

The UN also commissioned an internal assessment of MINUSTAH's sanitation practices in November 2010.<sup>37</sup> Although it was not made public until 2016,<sup>38</sup> that review found that dire sanitation conditions persisted on multiple UN bases across Haiti a full month after the initial outbreak, even as Haitians were dying *en masse* as a result of the faulty practices in Mirebalais. The assessment found that:

- Over 10% of the bases surveyed were disposing toilet sewage directly into the local environment;
- 70% of bases surveyed were disposing kitchen and shower waste into the local environment;
- Due to “competing priorities,” MINUSTAH failed to take corrective action despite the fact that it “owned five self-contained waste-water treatment plants that were on site in Haiti and could have been used to make sure the peacekeepers’ camps were sanitary and safe.”<sup>39</sup>

An audit conducted by the UN's Office of Internal Oversight (OIOS) five years later found that MINUSTAH *still* had not corrected its sanitation management as of 2015.<sup>40</sup>

While the UN was in full possession of these findings one month into the epidemic, senior officials in Haiti and New York persistently denied any UN role in the outbreak and dismissed the importance of the truth about cholera's origins in Haiti. The UN spokesperson in Haiti shut down media inquiries, noting that “from our point of view, [the origin] really doesn't matter.”<sup>41</sup> Another official rebuked efforts to identify the source:

[I]t's simply rumors....There is no agent, no entity, no person, no structure that is responsible for the introduction of cholera in Haiti....There is nothing more to say on this and all attempts at stigmatization, pointing fingers, identifying [the source] are erroneous.<sup>42</sup>

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<sup>37</sup> Melva Crouch et al., *MINUSTAH Environmental Health Assessment Report* (on file with submitters).

<sup>38</sup> Joe Sandler Clarke & Ed Pilkington, *Leaked UN report faults sanitation at Haiti bases at time of cholera outbreak*, THE GUARDIAN, Apr. 5, 2016, [https://www.theguardian.com/world/2016/apr/05/leaked-un-report-sanitation-haiti-bases-cholera-outbreak?CMP=share\\_btn\\_link](https://www.theguardian.com/world/2016/apr/05/leaked-un-report-sanitation-haiti-bases-cholera-outbreak?CMP=share_btn_link) (describing findings of the assessment).

<sup>39</sup> Sandler Clarke & Pilkington, *supra* note 37.

<sup>40</sup> OIOS, *Audit of waste management in the United Nations Stabilization Mission in Haiti*, Report 2015/068, June 30, 2015, <https://oios.un.org/file/5633/download?token=FBWLeHQb>; see also George Russell, *Amid Haiti cholera epidemic, UN peacekeepers spill sewage and ignore water treatment, says internal report*, FOX NEWS, Aug. 11, 2016, <https://www.foxnews.com/world/amid-haiti-cholera-epidemic-un-peacekeepers-spill-sewage-and-ignore-water-treatment-says-internal-report>.

<sup>41</sup> Donald McNeil, Jr., *Cholera's Second Fever: An Urge to Blame*, N.Y. TIMES, Nov. 20, 2010, <https://www.nytimes.com/2010/11/21/weekinreview/21mcneil.html> (citing Imogen Wall); see also Video: Al Jazeera English, *Fault Lines: Haiti in a time of cholera*, at 00:18:00, AL JAZEERA (Aug., 29, 2013), <https://www.aljazeera.com/programmes/faultlines/2013/08/2013828102630903134.html> (interview with Eduardo del Buey, Deputy spokesperson for the Secretary-General).

<sup>42</sup> Statement by Michel Thieren, MINUSTAH Press Conference, Oct. 28, 2010 (“[C]’est simplement des rumeurs.... Il n’y a pas d’agent, d’entité, de personne, de structure responsable de l’entrée du cholera en Haïti.... Il n’y a pas d’autre chose à dire sur ça et toute tentative de stigmatisation, de pointage de doigt, d’identification est erronée et certainement prématurée.”).

In November 2010, Edmond Mulet, the head of MINUSTAH, responded to Haitians demonstrations demanding accountability by stating that “it’s really unfair to accuse the UN for bringing cholera into Haiti,”<sup>43</sup> and accusing the protesters of “wasting time and costing lives.”<sup>44</sup>

## b. Injuries Sustained

Cholera is a disease of inequity.<sup>45</sup> It is generally preventable and treatable with access to clean water, adequate sanitation, and basic medical care.<sup>46</sup> But in Haiti, where many people lack these basic rights, the disease “ravaged” the population and diverted scarce resources.<sup>47</sup> Cholera has disproportionately impacted Haiti’s most vulnerable and marginalized populations: those who live in extreme poverty, reside in remote rural areas or crowded urban low-income ‘popular zones’, and women and children.<sup>48</sup>

### i. Physical Harm

Cholera causes severe diarrhea, vomiting, dehydration, and muscle cramping. It induces such rapid dehydration that a person can lose up to 20 liters of fluid daily.<sup>49</sup> One cholera survivor described the experience as being “*devoured from the inside*.”<sup>50</sup> In severe cases, the loss of fluids from the body can be so acute that it causes death within hours.<sup>51</sup>

Survivors of cholera frequently report ongoing health problems from the disease, though formal studies tracking chronic health problems from cholera are lacking.<sup>52</sup> In focus groups conducted

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<sup>43</sup> Jessica Desvarieux, *Haiti’s Cholera Riots: Anger at the U.N. Over Outbreak*, TIME, Nov. 22, 2010, <http://content.time.com/time/world/article/0,8599,2032437,00.html>.

<sup>44</sup> *Haiti cholera outbreak response ‘inadequate’, says MSF*, BBC NEWS (Nov. 20, 2010), <https://www.bbc.com/news/world-latin-america-11802488>.

<sup>45</sup> GLOBAL TASK FORCE ON CHOLERA CONTROL, ENDING CHOLERA: A GLOBAL ROADMAP TO 2030 6 (2017).

<sup>46</sup> *Id.* at 7.

<sup>47</sup> Guillaume et al., *supra* note 25.

<sup>48</sup> Alston, *supra* note 1, ¶5 (“It has had its greatest impact on those living in poverty who are poorly placed to cope with the consequences of the disease or to take the precautions necessary to reduce the risks involved.”); Guillaume et al., *supra* note 25 (“Survival from cholera was considered dependent on one’s access to ‘means’ and ‘opportunities’ (e.g., family resources, social assistance) that could mediate the exacerbating effects of structural deficiencies.”); EMMUS-VI, *supra* note 33, Tableau 2.12 (Finding that cholera impacted at least one person in 20% of the poorest households, compared to just 6% among the wealthiest quintile); *Id.* (finding that 17% of households in rural areas reported at least one case of cholera, as opposed to 13% in urban areas.); Athena R. Kolbe, *The Crushing Economic Costs of Cholera: A Longitudinal Survey of Urban Haitian Households*, 5 (finding that residents of popular zones were 6.66 times more likely to die from cholera than residents of other urban areas); ASFC, *supra* note 10; Athena Kolbe et al., *Haitian Women’s Experiences of Recovery from Hurricane Matthew*, Strategic Note 26, 17 (Jun. 26, 2017), [https://igarape.org.br/wp-content/uploads/2017/06/NE-26\\_Haitian-Hurricane-05-06.pdf](https://igarape.org.br/wp-content/uploads/2017/06/NE-26_Haitian-Hurricane-05-06.pdf) (noting that women are more susceptible to illnesses like cholera).

<sup>49</sup> David A. Sack et al., *Cholera*, 363 THE LANCET 223-233 (Jan. 17, 2004), available at <https://www.sciencedirect.com/science/article/pii/S0140673603153287?via%3Dihub>.

<sup>50</sup> ASFC, *supra* note 10, at 39 (citing INURED interview with cholera survivors.)

<sup>51</sup> Sack, *supra* note 49.

<sup>52</sup> ASFC *supra* note 10, at 39 (“S’il n’existe pas d’études scientifiques attestant des effets résiduels à long terme du choléra sur l’organisme une quantité importante des personnes consultées affirme que le choléra a compromis de manière importante la santé générale des personnes infectées et a subséquemment entraîné plusieurs autres maladies,

by the Interuniversity Institute for Research and Development (INURED), a significant number of respondents recounted lingering digestive issues, headaches, vision problems, anemia, and difficulty concentrating.<sup>53</sup> These accounts correspond with victims' experiences documented by BAI and IJDH, including in letters written by victims to the UN in 2015.<sup>54</sup> A woman separately interviewed by the Mennonite Central Committee (MCC), whose daughters fell ill from cholera in 2011, observed significant changes in them and other cholera survivors:

*They go to school and put their heads on their desks, saying their heads hurt. They used to be such excellent students. Everyone that suffered from cholera, they are like the walking dead now.*<sup>55</sup>

## ii. Psychological Harms

Cholera has caused lasting psychological harm in Haiti. The disease's rapid and massive spread led to widespread fear and disrupted everyday life. People watched their loved ones collapse and were often unable to obtain medical care to save them. Many fled from their homes not knowing how to prevent cholera's further spread. Communities experienced feelings of helplessness and abandonment.<sup>56</sup> One community representative in rural Haiti noted:

*[By the time assistance arrived] people were not [dying] anymore. Everyone who were dying had already died.*<sup>57</sup>

The sudden death of family members and neighbors has resulted in deep pain and lasting trauma. One woman who lost her child to cholera recounted:

*I haven't been right in my mind since then. My good health is gone. My thoughts are consumed by the memory of my baby... Sometimes I think it would have been better if I died instead. I had to return to the hospital for 5 months to try to recover from my shock and my grief.*<sup>58</sup>

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la plupart des survivantes ne retrouvant jamais leur état de santé préalable.”) (citations omitted); Jacqueline Charles, *Haiti's Cholera Victims Want UN Payment*, MIAMI HERALD, Jul. 27, 2017,

<https://www.miamiherald.com/news/nation-world/world/americas/haiti/article163840063.html> (quoting cholera expert Renaud Piarroux calling for more research on chronic medical issues resulting from cholera. “This does not mean that patient complaints are unfounded. Simply put, no one has thought this problem was worth considering.”).

<sup>53</sup> ASFC *supra* note 10; fn. 81.

<sup>54</sup> See e.g., Letter from Yolène Gracia to the President and Members of the United Nations Security Council, Nov. 23, 2015, <http://www.ijdh.org/wp-content/uploads/2015/12/Letter-0002.pdf> (“Since this illness I have been suffering from dizziness and my legs constantly shake.”); Letter from Viengeméne Ulisse to President and Members of the Security Council of the United Nations RE: Demand Justice and Reparations, Nov. 21, 2015, [http://www.ijdh.org/wp-content/uploads/2015/12/E0224\\_JM.pdf](http://www.ijdh.org/wp-content/uploads/2015/12/E0224_JM.pdf) (“Ever since that day, I haven't felt the same. [Cholera] left a fever in my body and a headache and I am still recuperating.”); Letter from Antoine Andremise to President and Members of the Security Council, Nov. 26, 2015, <http://www.ijdh.org/wp-content/uploads/2015/12/Letter-0003.pdf> (“This illness left her with a headache, fever and a deformity in her legs.”).

<sup>55</sup> Mennonite Central Committee Interview with Olivia Jean Pierre (Oct. 2015) (on file with submitters).

<sup>56</sup> Guillaume et al., *supra* note 25.

<sup>57</sup> *Id.* (interview with male community representative).

<sup>58</sup> Mennonite Central Committee Interview with Renette Viérgélan (Saint Marc, Oct. 2015).

Survivors of cholera also continue to suffer from psychological harms, including post-traumatic stress disorder.<sup>59</sup> MCC interviewed a cholera survivor who spoke of shock one year after contracting cholera:

*I am a strong man in body and spirit, but after a day in this condition, I lost control of my body. ...I was sure I was going to die. After another week my baby and I were released, but the shock of it stays with me.*<sup>60</sup>

### iii. Economic Harm

Cholera has imposed a heavy and lasting economic burden on already impoverished households.<sup>61</sup> Fears of contamination led to surges in pricing for burials, transportation, and in some cases medical care.<sup>62</sup> With 60% of Haitians surviving on less than \$2 per day, families often paid for these services through borrowing.<sup>63</sup> Loans for cholera-related expenses often had exorbitant interest rates; a longitudinal study of urban households conducted by researcher Athena Kolbe between 2011-2016 found an average interest rate of 83.9%.<sup>64</sup> One man interviewed in the study whose wife died of cholera recounted:

*I borrowed to pay for her to go to the clinic, for her medication, and for her funeral. I've sold all I have and I have nothing left to sell. They might as well have tied a stone around my neck and thrown me in the ocean.*<sup>65</sup>

Beyond the direct costs, the massive loss of breadwinners and caregivers has had reverberating impacts on surviving family members, especially children.<sup>66</sup> Thousands of children are estimated to have been orphaned by cholera, leaving them in the care of relatives who have taken on an unplanned responsibility and struggle to raise and support them.<sup>67</sup> Other children have been left to survive on the streets, or have been forced into indentured servitude known as *restavek*.<sup>68</sup> The loss of caregivers often results in instability, lasting emotional trauma and a disruption of schooling that is potentially condemning a generation of Haitian children to continued poverty.<sup>69</sup>

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<sup>59</sup> Guillaume et al., *supra* note 25; ASFC, *supra* note 10, at 40; Kolbe, *supra* note 48, at 9 (finding that individuals from cholera-impacted households were more likely to report lingering physical and mental health problems, including depression and family dysfunction).

<sup>60</sup> Mennonite Central Committee Interview with Cadet Gary (Carrefour, Oct. 2015)(on file with submitters).

<sup>61</sup> See Kolbe, *supra* note 48.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* (finding that 100% of the households surveyed who had a funeral took out loans to pay the costs).

<sup>64</sup> *Id.* (finding this to be the mean interest rate of loans taken both formally and informally).

<sup>65</sup> *Id.* at 7 (quoting household survey respondent).

<sup>66</sup> ASFC, *supra* note 10, at 42 (documenting particularly severe impacts on children whose parents died of cholera). According to the national census, approximately 27% of those who died were adults between ages 20 and 64. See EMMUS-VI, *supra* note 33, Tableau 2.13.

<sup>67</sup> ASFC, *supra* note 10, at 42; Jovenel Moise, President, Haiti, Address to the General Assembly, General Debate, Sept. 21, 2017, available at [https://gadebate.un.org/sites/default/files/gastatements/72/ht\\_fr.pdf](https://gadebate.un.org/sites/default/files/gastatements/72/ht_fr.pdf) (“les orphelins du cholera se comptent par dizaines de milliers.”).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*; see also *Haiti in a time of cholera*, *supra* note 41 (cholera victim Lisette Paul discussing having to pull niece out of school after death of brother and father to cholera).

iv. *Dignitary Harm*

The cholera outbreak and the UN's response have resulted in an affront to dignity at both the individual and collective levels. On the individual level, cholera victims frequently face discrimination and stigma. In victim focus groups conducted by INURED, respondents reported that cholera victims were sometimes rejected by relatives and isolated from their communities.<sup>70</sup>

At the collective level, the UN's disparaging dismissals of Haitians' calls for truth and accountability created an acute sense that the UN does not respect Haitians' human rights and dignity, and views their lives as less valuable.<sup>71</sup> In 2015, a community health worker expressed this sentiment in an interview:

*If the United Nations considered us human beings, there would have been an apology.*<sup>72</sup>

Victims have expressed similar sentiments about the UN's refusal to offer compensation:

*...if it was them who were victims, I believe that they would already compensate [] themselves. And if they were not looking [at] Haitians [like] dogs, they would also compensate them. [It] is because they do not give us any value, they left us in such a state, without doing nothing serious for us?*<sup>73</sup>

Both Haitian activists and UN experts expressed concern that the UN's failure to accept responsibility and its inadequate response to victims' claims resulted from discrimination. The UN Special Rapporteur on extreme poverty has speculated that racism played an instrumental role in determining the UN's response.<sup>74</sup> A former UN official who worked in the Office of Legal Affairs at the time Haitians' claims for compensation were being considered similarly posited that racism had a role in the dismissal of the claims, noting that in an analogous case where "the victim was white," the UN was quick to compensate.<sup>75</sup>

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<sup>70</sup> ASFC, *supra* note 10, at 40.

<sup>71</sup> CARLA FERSTMAN, REDRESS, RESPONDING TO THE INTRODUCTION OF CHOLERA TO HAITI: POLICY OPTIONS (2016), <https://redress.org/wp-content/uploads/2017/12/Responding-to-the-Introduction-of-Cholera-to-Haiti.pdf>, ("The failure of the UN to acknowledge its responsibility and apologise and at the same time its unwillingness to allow the matter to be adjudicated or mediated, appears to have led to a perception amongst affected communities that the UN does not value their lives.").

<sup>72</sup> Agence France Presse, *Haitian cholera victims call for UN accountability*, YAHOO NEWS (Oct. 15, 2015), <https://www.yahoo.com/news/haitian-cholera-victims-call-un-accountability-203337550.html> (quoting Jean Emmanuel Larose, a Community Health Worker).

<sup>73</sup> Excerpt from testimony collected by Susan Bartels and Sabine Lee on women's experiences living in peacekeeping host communities in Haiti (transcribed results on file with submitters). For methodology, see Susan Bartels & Sabine Lee, *'They put a few coins in your hand and a baby in you' – 265 stories of Haitian children abandoned by UN fathers*, INT'L PEACEKEEPING (Dec. 11, 2019), <https://www.tandfonline.com/doi/pdf/10.1080/13533312.2019.1698297?needAccess=true> (describing study methodology and findings relating to children fathered by peacekeepers).

<sup>74</sup> Video: Experts Workshop on UN Accountability and International Law, Seton Hall Law School, Oct. 19, 2019, <https://www.youtube.com/watch?v=pDNxTBKM0bw&feature=youtu.be> (Statement by Philip Alston, 00:18:15).

<sup>75</sup> *Id.* (Statement by Mona Khalil, 00:55:40).

These physical, psychological, economic, and dignitary injuries are the result of the UN's actions, and must be remedied.

### c. National and International Efforts to Obtain Remedies

For the better part of a decade, victims have tirelessly pursued legal action and public advocacy in and outside of Haiti to obtain remedies from the UN.

Legal avenues for victims of UN harms to seek remedies are drastically curtailed by the UN's sweeping immunity from suit under the Convention on the Privileges and Immunities of the UN (Convention).<sup>76</sup> The Convention also sets out a reciprocal obligation to settle claims of a private law nature out of court.<sup>77</sup> The SOFA signed between the UN and Haiti further specifies that "third-party claims for personal injury, illness, or death arising from or directly attributed to MINUSTAH" that cannot be resolved directly shall be settled by an independent standing claims commission.<sup>78</sup> These requirements are vital to ensuring that the UN's immunity regime is compatible with the human right to access an effective remedy.<sup>79</sup>

On November 3, 2011, 5000 cholera victims represented by BAI and IJDH attempted to obtain remedies through the UN's internal claims process in accordance with the Convention.<sup>80</sup> After 15 months of silence, the UN rejected the claims as "not receivable" with the sole justification that the victims' claims "would necessarily include a review of political and policy matters."<sup>81</sup> The UN refused victims' subsequent request for a meeting, mediation, and/or the establishment of the standing claims commission required by the SOFA, taking the position that there is no obligation to do so for claims that are not receivable.<sup>82</sup>

Following the rejection of the claims, lawyers filed multiple lawsuits in federal courts in the United States, where the UN is headquartered, challenging the viability of immunity in view of the UN's breached obligation to settle claims and refer them to the claims commission.<sup>83</sup> The UN asserted immunity and prevailed in each of the suits.<sup>84</sup> Following several unsuccessful appeals,

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<sup>76</sup> Convention on the Privileges and Immunities of the United Nations, art. 2, § 2, Feb. 13, 1946, 1 U.N.T.S. 15.

<sup>77</sup> *Id.*, § 29 ("The United Nations shall make provisions for appropriate modes of settlement of: (a) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party").

<sup>78</sup> SOFA, *supra* note 8.

<sup>79</sup> See e.g., August Reinish, *Introduction to the Convention on Privileges and Immunities*, United Nations (2009), <https://legal.un.org/avl/ha/cpiun-cpisa/cpiun-cpisa.html> (The "obligation to provide for alternative dispute settlement in case of the Organization's immunity from legal process can be regarded as an acknowledgment of the right of access to court as contained in all major human rights instruments.").

<sup>80</sup> Petition for Relief, filed Nov. 3, 2011, available at <http://ijdh.org/wordpress/wp-content/uploads/2011/11/englishpetitionREDACTED.pdf>.

<sup>81</sup> Letter from Patricia O'Brien, UN Under Secretary-General for Legal Affairs, to Brian Concannon, Director of IJDH (Feb. 21, 2013).

<sup>82</sup> Letter from Patricia O'Brien, UN Under Secretary-General for Legal Affairs, to Brian Concannon, Director of IJDH (Jul. 5, 2013).

<sup>83</sup> *Georges v. United Nations*, 84 F. Supp. 3d 246 (S.D.N.Y. 2015), *aff'd* 834 F.3d 88 (2nd Cir. 2016); *Laventure v. United Nations*, 279 F. Supp. 3d 394 (E.D.N.Y. 2017), *aff'd* 746 F.App'x 80 (2d Cir. 2018), *cert. denied*, 140 S. Ct. 108 (2019); *Jean-Robert v. United Nations*, No. 14 CV 1545, 2014 WL 883601 (S.D.N.Y. 2014).

<sup>84</sup> *Id.*

in October 2019, the US Supreme Court declined to review an appellate court's dismissal, closing the door on the last pending US lawsuit.<sup>85</sup>

In addition to efforts to secure remedies through legal avenues, BAI and IJDH mobilized a global coalition to push for remedies out-of-court. In Haiti, affected communities and grassroots groups mobilized consistently for their rights through peaceful protest, media outreach, and community organizing.<sup>86</sup> Beyond Haiti, international media, hundreds of Haitian-American groups, members of the US Congress, non-governmental organizations, legal scholars, and human rights organizations repeatedly called on the UN to respect victims' rights to a remedy, as well as its own principles and obligations.<sup>87</sup>

The complete denial of access to justice also raised alarm among UN human rights experts. In 2013, the High Commissioner for Human Rights publicly declared that she “stand[s] by the call that victims of...cholera be provided with compensation.”<sup>88</sup> In 2014, the Independent Expert on the situation of human rights in Haiti urged that “diplomatic difficulties surrounding this issue must be overcome in order to assure... that full reparation for damages will be provided.”<sup>89</sup> On September 25, 2014, the Special Rapporteurs on water and sanitation, health, and housing, along with the Independent Expert on Haiti, sent a joint allegation letter to the UN Secretary-General, deploring the “inability of victims of cholera to vindicate their rights and to obtain access to

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<sup>85</sup> *Laventure v. United Nations*, *supra* note 83.

<sup>86</sup> See e.g., See e.g., Mario Joseph, *The Fight Against UN Impunity and Immunity in Haiti: The Cholera Scandal*, CIVICUS, <https://www.civicus.org/images/The%20fight%20against%20UN%20impunity%20and%20immunity%20in%20Haiti.pdf> (describing civil society efforts to organize on cholera); Haitian cholera victims tell UN to ‘Face Justice’, Mennonite Central Committee, Oct. 15, 2015, <https://mcc.org/stories/haitian-cholera-victims-tell-un-face-justice> (describing campaign by cholera victims and activists to erect portraits of survivors at the UN in Port-au-Prince, New York and Geneva); Press Release, Inst. for Justice & Democracy in Haiti, Haitian Cholera Victims Send 2,000 Letters to UN Security Council, Dec. 10, 2015, available at <http://www.ijdh.org/2015/12/topics/health/thousands-of-cholera-victims-write-letters-to-the-un/> (describing efforts by victims to send 2,000 handwritten letters to the UN Security Council).

<sup>87</sup> See, e.g., Editorial Board, *United Nations Must Admit its Role in Haiti's Cholera Outbreak*, WASH. POST (Aug. 16, 2013), [https://www.washingtonpost.com/opinions/united-nations-must-admit-its-role-in-haitis-cholera-outbreak/2013/08/16/e8411912-05d9-11e3-a07f-49ddc7417125\\_story.html](https://www.washingtonpost.com/opinions/united-nations-must-admit-its-role-in-haitis-cholera-outbreak/2013/08/16/e8411912-05d9-11e3-a07f-49ddc7417125_story.html); Open Letter from the Haitian-American Community to UN Secretary-General Ban and U.S. Secretary of State John Kerry on Cholera in Haiti (July 8, 2015), <http://www.ijdh.org/wp-content/uploads/2015/07/Letter-from-Haitian-Diaspora-Cholera-8-July-2015-final.pdf>; Letter from Rep. John Conyers, Jr., et al. to U.S. Sec. of State John Kerry (Jun. 29, 2016), [http://www.ijdh.org/wp-content/uploads/2016/06/06\\_29\\_16-Kerry-Haiti-Cholera-Letter-Final.pdf](http://www.ijdh.org/wp-content/uploads/2016/06/06_29_16-Kerry-Haiti-Cholera-Letter-Final.pdf) (bipartisan letter by 158 members of U.S. Congress expressing exasperation with UN failure to “comply with its legal and moral obligations to provide cholera victims with access to an effective remedy.”); Amnesty International, *Haiti: Five years on, no justice for the victims of the cholera epidemic* (Oct. 14, 2015), <https://www.amnesty.org/download/Documents/AMR3626522015ENGLISH.pdf>; UN Accountability Pledge, <http://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5798c674e4fcb59f61afddfc/1469630069787/UN+Accountability+Pledge.pdf> (endorsed by 30 civil society organizations); Jeremy Waldron, Keynote Address at New York University Law School: The UN Charter and the Rule of Law (Nov. 1, 2015), <https://www.youtube.com/watch?v=N6Lv3LorWJM>.

<sup>88</sup> Louis Charbonneau, *U.N. sued in U.S. court over Haiti's cholera epidemic*, REUTERS (Oct. 9, 2013), <https://www.reuters.com/article/us-haiti-cholera-un-idUSBRE99805N20131009> (quoting Navanethem Pillay).

<sup>89</sup> Gustavo Gallón (Independent Expert on the situation of human rights in Haiti), U.N. Doc. A/HRC/25/71, ¶ 77, (Feb. 7, 2014) (mandate discontinued in 2017).

redress for the harms suffered to which human rights law entitles them.”<sup>90</sup> Subsequent communications along these lines, joined by the Special Rapporteur on extreme poverty, continued through mid-2016.<sup>91</sup>

In August 2016, the Special Rapporteur on extreme poverty delivered a report to the General Assembly calling the UN’s approach “morally unconscionable, legally indefensible and politically self-defeating.”<sup>92</sup>

#### **d. Launch of a New UN Approach to Cholera in Haiti**

In August 2016, following the leak of the Special Rapporteur’s report in the media, the UN finally shifted course. After six years of denial and obfuscation, the UN acknowledged its involvement in the outbreak.<sup>93</sup> A few months later, Secretary-General Ban Ki-moon convened the General Assembly to deliver a landmark public apology:

On behalf of the United Nations, I want to say very clearly: we apologise to the Haitian people. We simply did not do enough with regard to the cholera outbreak and its spread in Haiti. We are profoundly sorry for our role.<sup>94</sup>

Acknowledging a “moral responsibility to act,” the Secretary-General also launched a \$400 million package of assistance for Haiti.<sup>95</sup>

The New Approach takes two tracks: Track 1 aims to address short- and longer-term issues of water, sanitation, and health systems and to significantly improve access to care and treatment.<sup>96</sup> Track 2 intends to deliver “a concrete expression of the [UN’s] regret” through the development of a package of material assistance to those Haitians most directly affected by cholera.<sup>97</sup> The UN specified that material assistance could take an individual approach of direct payments for deaths, a community approach focused on projects, or a combination thereof.<sup>98</sup> The Secretary-

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<sup>90</sup> Letter from Leilani Farha Special Rapporteur on adequate housing as a component of the right to an adequate standard of living et al. to the UN Secretary-General Ban Ki-moon, HTI 3/2014 (Sep. 25, 2014), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18990> [hereinafter “2014 Joint Allegation Letter”].

<sup>91</sup> See Philip Alston, *Extracting Accountability: Special Rapporteurs and the United Nations’ Responsibility for Cholera in Haiti*, N.Y.U. School of Law, Public Law Research Paper No. 18-10, at 4, Feb. 20, 2018, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3125084](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3125084).

<sup>92</sup> Alston, *supra* note 1, at ¶ 3.

<sup>93</sup> Jonathan Katz, *U.N. Admits Role in Haiti Cholera Outbreak*, Aug. 17, 2016, N.Y. TIMES, <https://www.nytimes.com/2016/08/18/world/americas/united-nations-haiti-cholera.html> (quoting Secretary-General’s spokesperson).

<sup>94</sup> U.N. Secretary-General, *Secretary-General’s remarks to the General Assembly*, *supra* note 4

<sup>95</sup> *Id.*

<sup>96</sup> New Approach, *supra* note 1, ¶ 5.

<sup>97</sup> *Id.*, ¶ 6.

<sup>98</sup> *Id.*, ¶¶ 42-57; see also Michelle Nichols, *UN Wants \$200 million to Pay Haiti’s Cholera Victims, Communities*, REUTERS, Oct. 24, 2016, <https://www.reuters.com/article/us-haiti-cholera-un/u-n-wants-200-million-to-pay-haitis-cholera-victims-communities-idUSKCN12O2OB> (quoting UN Special Adviser David Nabarro that “half could be spent on communities with with remaining \$100 million paid to families of victims...allow[ing] for payments of some \$10,000 per family.”).

General promised that the UN would “put victims at the centre of the work and be responsive to their needs and concerns” in developing the precise content of the assistance package.<sup>99</sup> The General Assembly unanimously adopted the New Approach in 2016.<sup>100</sup>

Compared to prior persistent denials of accountability, the New Approach marked a momentous shift and a tenuous opening for the UN to reset its relationship with the Haitian people and meet its obligations. Victims broadly welcomed the apology while emphasizing their expectation that the UN would treat them as rights-holders and provide remedies that would respond to their rights, needs, and priorities.<sup>101</sup>

However, the New Approach was inherently limited from the start. By failing to accept its own legal responsibility, the UN set up the New Approach to function as “an act of charity” rather than the fulfillment of a legal duty.<sup>102</sup> Victims did not participate in the design of the New Approach, and were not recognized as rights-holders. The UN never established any process or mechanism to allow an independent assessment of remedies due, and never put in place any safeguards to ensure follow-through on its commitments. As a result, power remained solely in the hands of the UN, with the fulfillment of remedies left to the vagaries of international politics. As the Special Rapporteur on extreme poverty warned at the time the plan was being finalized, these decisions undermined the prospect of reparations that would meet human rights standards and comply with the UN’s responsibility to compensate for civilian harms.<sup>103</sup>

## 7. INTERNATIONAL HUMAN RIGHTS STANDARDS

### a. The UN’s Introduction of Cholera Violated Victims’ Human Rights

The UN is obligated to respect human rights throughout its operations.<sup>104</sup> The UN Charter identifies the promotion of human rights as one of the organization’s core functions.<sup>105</sup> As Special Rapporteurs previously reminded the UN in their 2014 joint allegation letter, “[i]t would go against the very object and purpose of the Charter if the United Nations itself were not

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<sup>99</sup> *Id.*, ¶ 26.

<sup>100</sup> G.A. Res. 71/161, *The new United Nations approach to cholera in Haiti*, U.N. Doc. A/71/L.42 (Dec. 12, 2016), [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/71/L.42](https://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.42).

<sup>101</sup> See Inst. for Justice & Democracy in Haiti, *Haitian Cholera Victims React to UN Apology* (Dec. 1, 2016), <http://www.ijdh.org/2016/12/topics/health/haitian-cholera-victims-react-to-un-apology/>; Adrian Walker, *Cholera activists force an apology the UN didn’t want to issue*, BOSTON GLOBE (Dec. 4, 2016), <https://www.bostonglobe.com/metro/2016/12/04/cholera-activists-force-apology-united-nations-didn-want-issue/4qxVC6KSjob1fKQn5HQISP/story.html>.

<sup>102</sup> Letter from Philip Alston, Special Rapporteur on extreme poverty and human rights, to Jan Eliasson, Deputy Secretary-General, Oct. 5, 2016, at 2, <https://www.bostonglobe.com/metro/2016/12/04/cholera-activists-force-apology-united-nations-didn-want-issue/4qxVC6KSjob1fKQn5HQISP/story.html>.

<sup>103</sup> *Id.*

<sup>104</sup> Joint Allegation Letter, *supra* note 3, at 8.

<sup>105</sup> U.N. Charter art. 1, para. 3 (“The Purposes of the United Nations are: . . . (3) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”).

required to respect the human rights law it promotes.”<sup>106</sup> In response, then Assistant Secretary-General Pedro Medrano Rojas affirmed the organization’s obligation to “respect, promote and encourage respect for human rights.”<sup>107</sup>

The UN’s introduction of cholera through reckless sanitation management violated numerous human rights, including:

- The **right to life**, which entails a positive duty to “ensure access to conditions that may guarantee life.”<sup>108</sup> This duty attaches where “at the moment of the occurrence of the events, the authorities knew or should have known about the existence of a situation posing an immediate and certain risk to life” and “the necessary measures were not adopted within the scope of their authority which could be reasonably expected to prevent or avoid such risk.”<sup>109</sup> The positive obligation is especially well-established in the context of dangerous activities that undermine a healthy environment.<sup>110</sup> In Haiti, the UN knew or should have known that its routine disposal of fecal waste directly into the local environs of a residential community posed a risk to life, yet failed to take corrective action fully within its authority to address the risk. The fact that Haiti was in a particularly vulnerable state due to underlying infrastructure weaknesses is not an excuse—duties to protect life are “determined according to the particular needs of protection of the legal persons, whether due to their personal condition, or because of the specific situation they have to face, such as extreme poverty [or] exclusion.”<sup>111</sup>
- The **right to health**, which protects enjoyment of the highest attainable standard of physical and mental health.<sup>112</sup> The right includes both access to “timely and appropriate

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<sup>106</sup> Joint Allegation Letter, *supra* note 3, at 8.

<sup>107</sup> Letter from Pedro Medrano Rojas to Special Rapporteurs concerning Cholera in Haiti, ¶ 56 (Nov. 25, 2014), <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=32377>.

<sup>108</sup> *N.M. and Others v. UNMIK*, U.N. Human Rights Advisory Panel, Case No. 26/08, ¶ 200 (2016), <http://www.unmikonline.org/hrap/Eng/Cases%20Eng/26-08%20NM%20etal%20Opinion%20FINAL%2026feb16.pdf> (citing *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (Mar. 29, 2006), at ¶¶ 153-4, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_146\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf)).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at ¶ 219; *see also* Baskat Tuncak (Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, ¶ 8, U.N. DOC. A/73/567, <https://undocs.org/A/73/567> (“Protection from exposure to hazardous substances is fundamentally about the rights to life, non-discrimination and bodily integrity....”).

<sup>111</sup> *Sawhoyamaxa v. Paraguay*, *supra* note 108, at ¶¶ 153-4; *see also* *N.M. v. UNMIK*, *supra* note 108, at ¶ 222 (“in fulfilment of its mandate, UNMIK should have afforded special protection to the right to life and physical integrity of complainants as vulnerable persons”); *Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (Aug. 24, 2010), [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_214\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_ing.pdf).

<sup>112</sup> International Covenant on Economic, Social and Cultural Rights. Art. 12.1, Dec. 16, 1966, 993 U.N.T.S. 3; Joint allegation letter, *supra* note 3, at 7 (applying the right to health in the context of cholera).

health care”<sup>113</sup> and to “underlying determinants of health” such as access to safe and potable water, adequate sanitation and a healthy environment.<sup>114</sup>

- The **right to water**, which guarantees “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”<sup>115</sup> Access to safe water includes ensuring that water does “not represent any significant risk to health over a lifetime of consumption....”<sup>116</sup>
- The **right to sanitation**, which requires the proper treatment and safe disposal or re-use of feces, urine, and associated wastewater.<sup>117</sup> The General Assembly has specifically recognized the role of international organizations in securing access to safe water and sanitation.<sup>118</sup>
- The **right to an adequate standard of living**, which includes the right to adequate housing.<sup>119</sup> The right to housing is not narrowly limited to putting a “roof over one’s head”—it is holistic and covers everyone’s right “to live somewhere in security, peace and dignity.”<sup>120</sup> The right to an adequate standard of living is also “impossible to realize without sanitation, since sanitation, ill-health, poverty, and insecurity are tightly interrelated.”<sup>121</sup>
- The **right to be free from degrading treatment**, which prohibits treatment that “humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance....”<sup>122</sup> In an analogous case, a UN-established Human Rights Advisory Panel (HRAP) found the UN responsible for

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<sup>113</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14 on the right to the highest attainable standard of health*, § 8, U.N. Doc. E/C.12/2000/4, 60 (Aug. 11, 2000)[hereinafter ESCR Committee],.

<sup>114</sup> *Id.* § 4, 11; see also Joint Allegation Letter, *supra* note 3.

<sup>115</sup> ESCR Committee, *General Comment No. 15: The Right to Water*, §2, U.N. Doc. E/C.12/2002/11 (2002).

<sup>116</sup> WORLD HEALTH ORG., GUIDELINES FOR DRINKING-WATER QUALITY, (4th ed. 2017),

[https://www.who.int/water\\_sanitation\\_health/publications/drinking-water-quality-guidelines-4-including-1st-addendum/en/](https://www.who.int/water_sanitation_health/publications/drinking-water-quality-guidelines-4-including-1st-addendum/en/).

<sup>117</sup> Joint Allegation Letter, *supra* note 3, at 7 (“This understanding is warranted as sanitation not only concerns one’s own right to use a latrine or toilet, but also the rights of other people, in particular their right to health, which can be negatively impacted when faeces are not adequately confined.”).

<sup>118</sup> G.A. Res. A/RES/64/292, The Human Right to Water and Sanitation, ¶ 2 (Jul. 28, 2010),

[https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/64/292](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/292); see also Leo Heller (Special Rapporteur on the right to water and sanitation), U.N. Doc. A/73/162 (Jul. 16, 2018), <https://undocs.org/A/73/162> (recognizing the particular role and accountability considerations related to international organizations and other non-state actors engaged in development cooperation).

<sup>119</sup> See, e.g., ESCR Committee, *General Comment No. 4, The Right to Adequate Housing* (1991); ESCR Committee, *General Comment No. 7, The Right to Adequate Housing: Evictions* (1997); ESCR Committee, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, U.N. Doc. E/C.12/GC/20 (2009); G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(iii), Mar. 7, 1966. 660 U.N.T.S. 195; Convention on the Elimination of All Forms of Discrimination against Women, art. 14.2(h) Dec. 18, 1979, 1249 U.N.T.S. 13; see also Joint allegation letter, *supra* note 3.

<sup>120</sup> N.M. v. UNMIK, *supra* note 108, at ¶ 264; ESCR Committee, General Comment No. 4 on the right to adequate housing, U.N. Doc. E/1992/23 (1991), <https://www.refworld.org/pdfid/47a7079a1.pdf>.

<sup>121</sup> Inga Winkler, *The Human Right to Sanitation*, 37 U. PA. J. INT’L LAW 1331, 1332 (2016).

<sup>122</sup> N.M. v. UNMIK, *supra* note 108 (citing EctHR [GC], *Z. and others v. United Kingdom*, case no. 29392/95, judgment of May 10, 2001).

degrading treatment in exposing displaced communities in Kosovo to lead contamination over an extended period.<sup>123</sup> Here, the fact that the UN did not correct its sanitation management on bases in Haiti for five years while thousands of people were dying from cholera demonstrates a disregard for Haitian lives.<sup>124</sup> Moreover, the UN's indifference towards victims over six years showed a lack of respect for their dignity and triggered feelings of inferiority on the international plane. The UN's actions raise serious questions, also articulated by officials familiar with internal UN deliberations and decision-making on cholera, about the role of racial discrimination in facilitating the degrading treatment. Existence of such discrimination would also constitute a separate violation of human rights.<sup>125</sup>

### **b. Victims Have a Right to an Effective Remedy**

Victims of human rights violations have a right to an effective, adequate, and prompt remedy. This right is enshrined in all major human rights instruments, and serves various functions, including restoring the victim as much as possible to their state before the violation occurred, promoting truth and justice, and deterring future violations.<sup>126</sup> Without access to remedies, rights are meaningless—as the Special Rapporteur on housing has stressed, “to be a rights holder...one must be able to claim rights, to give voice and context to the deprivation of dignity and rights experienced.”<sup>127</sup>

The right to effective remedy includes both procedural and substantive aspects. Procedurally, human rights law requires access to independent bodies that can afford a fair hearing to claimants who assert an arguable claim that their rights have been infringed.<sup>128</sup> Substantively, victims are entitled to redress for the consequences of human rights violations, and their participation is essential to determining appropriate remedies in a given situation. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles) reaffirm five forms of reparations that are central to effective remedies: 1) restitution, which, to the extent possible, returns the victims to the original situation before the violations occurred; 2) compensation for any economically assessable damage; 3) rehabilitation, including medical, psychological, legal, and social services to victims; 4) satisfaction that recognizes the harm done, including through a full and public disclosure of the facts and the truth of the violation; and 5) guarantees of non-repetition focused on preventing future harms through concrete measures.<sup>129</sup> As the Independent Expert on Haiti has stressed in

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<sup>123</sup> N.M. v. UNMIK, *supra* note 108, ¶¶ 232-246.

<sup>124</sup> *Id.* (considering the fact that the situation complained of lasted more than ten years to be a factor in finding violations of freedom from degrading treatment).

<sup>125</sup> See e.g., N.M. v. UNMIK, *supra* note 108 (finding that racial discrimination played a role in the UN's treatment of displaced Roma communities, in violation of the right to be free from racial discrimination).

<sup>126</sup> DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 14 (2d ed. 2005).

<sup>127</sup> Leilani Farha (Special Rapporteur on the right to housing), *Access to for the right to housing*, ¶ 1, U.N. DOC. A/HRC/40/61 (Jan. 15, 2019), [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/61](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/61).

<sup>128</sup> SHELTON, *supra* note 126, at 18-19.

<sup>129</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law arts. I(2)(c), II(3)(b),

relation to the cholera outbreak, “the United Nations should be the first to honour these principles.”<sup>130</sup>

## 8. VIOLATIONS OF THE RIGHT TO EFFECTIVE REMEDY SINCE 2016

The Special Rapporteur on truth, justice and reparation has warned that “unless a public apology is accompanied by appropriate follow through, it risks being dismissed as ‘gestural politics’ or ‘empty rhetoric’....”<sup>131</sup> Three years since the launch of the New Approach, victims of cholera in Haiti are still being denied their right to an effective remedy. This section documents specific violations of the right to effective remedy, focusing on: 1) the severe lack of funding that has denied victims a prompt and effective remedy; 2) the denial of compensation which is an indispensable part of an effective remedy; 3) the procedural shortcomings that have deprived victims of their right to participate; and 4) the failure of the UN to undertake institutional measures to prevent the underlying violations from recurring.

### a. The UN’s Rejection of Its Duty to Fund Reparations Violates the Right to Prompt Remedy

Under international human rights law, victims have a right to a remedy that is prompt.<sup>132</sup> This includes promptly ceasing continuing violations, providing full and public disclosure of the truth, accepting responsibility, and delivering reparations.<sup>133</sup> Promptness is key to effectiveness: “the adequate nature of a remedy can be undermined by its excessive duration.”<sup>134</sup>

For six years, Haitians called for accountability through peaceful demonstration, direct appeals, letter writing campaigns, petitions, and legal action without any acknowledgment from the UN.<sup>135</sup> Rather than acting promptly to offer a remedy, the UN failed to disclose the truth, accept

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IX(15), G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Mar. 21, 2006). [hereinafter Basic Principles]; *see also* FERSTMAN, *supra* note 71 (analyzing the right to effective remedy for cholera).

<sup>130</sup> Gustavo Gallón (Independent Expert on the situation of human rights in Haiti), *Report of the independent expert on the situation of human rights in Haiti*, ¶ 77, U.N. Doc. A/HRC/25/71 (Feb. 7, 2014), [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_hrc\\_25\\_71.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_25_71.pdf).

<sup>131</sup> Fabian Salvioli (Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence), *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, ¶ 40, U.N. Doc. A/74/147 (Jul. 12, 2019), <https://undocs.org/en/A/74/147>.

<sup>132</sup> Basic Principles, *supra* note 129.

<sup>133</sup> *Id.*; *see also* COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC & HARVARD LAW SCHOOL INTERNATIONAL HUMAN RIGHTS CLINIC, RIGHTING WRONGS? BARRICK GOLD’S REMEDY MECHANISM FOR SEXUAL VIOLENCE IN PAPUA NEW GUINEA 35 (2015), <https://hrp.law.harvard.edu/wp-content/uploads/2015/11/FINALBARRICK.pdf>.

<sup>134</sup> *De Souza Ribeiro v. France*, 22689/07 Eur. Ct. H.R. 66.

<sup>135</sup> *See e.g.*, Mario Joseph, *The Fight Against UN Impunity and Immunity in Haiti: The Cholera Scandal*, CIVICUS, <https://www.civicus.org/images/The%20fight%20against%20UN%20impunity%20and%20immunity%20in%20Haiti.pdf> (describing civil society efforts to organize on cholera); Haitian cholera victims tell UN to ‘Face Justice’, Mennonite Central Committee, Oct. 15, 2015, <https://mcc.org/stories/haitian-cholera-victims-tell-un-face-justice> (describing campaign by cholera victims and activists to erect portraits of survivors at the UN in Port-au-Prince, New York and Geneva); Press Release, Inst. For Justice & Democracy in Haiti, Haitian Cholera Victims Send 2,000 Letters to UN Security Council, Dec. 10., 2015, *available at* <http://www.ijdh.org/2015/12/topics/health/thousands->

responsibility, or provide reparations, and cholera continued to ravage the country. When the UN finally issued its public apology and acknowledged its role, victims emphasized the need to act urgently to end cholera and deliver reparations:

*What is important is that the UN moves fast because our situation is so bad. Lots of girls cannot go to school because we had to sell land and livestock and get into debt to pay for cholera. We can't earn properly since then.*<sup>136</sup>

*There are still a lot of health problems...It needs to happen quickly. The UN should act quickly.*<sup>137</sup>

Despite the urgency, the UN opted to treat the New Approach as a charitable endeavor and rely on voluntary contributions to a multi-partner trust fund. Over three years, the UN has raised only \$20.5 million, or 5%, of the \$400 million needed for implementation of the plan.<sup>138</sup>

As the Special Rapporteur on truth, justice and reparation has found, funding challenges for remedies rarely result solely from scarce resources, and are more often attributable to a lack of political will.<sup>139</sup> Here, the UN has secured \$4 billion—10 times the planned cost of the New Approach—for MINUSTAH's operations from 2010-2016, despite the fact that there was no threat to international peace to justify that mission.<sup>140</sup>

The UN and its membership have declined to utilize other funding mechanisms available to meet obligations to cholera victims. The New Approach contemplates funding the plan through assessed contributions to the UN budget if voluntary contributions prove insufficient.<sup>141</sup> But Secretary-General António Guterres reportedly caved to pressure from powerful member states

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[of-cholera-victims-write-letters-to-the-un/](#) (describing efforts by victims to send 2,000 handwritten letters to the UN Security Council); Petition, End Haiti's Killer Cholera Epidemic – UN Action Now!, Avaaz.org, [https://secure.avaaz.org/en/community\\_petitions/End\\_Haitis\\_Cholera\\_Epidemic\\_with\\_UN\\_Action\\_Now\\_1/](https://secure.avaaz.org/en/community_petitions/End_Haitis_Cholera_Epidemic_with_UN_Action_Now_1/) (petition with over 27,000 signatures demanding action to eliminate cholera).

<sup>136</sup> ROSA FREEDMAN & NICOLAS LEMAY-HEBERT, HAITI: CHOLERA REPORT 8 (2017), *available at* <https://lacc.fiu.edu/news-1/2017/lacc-visiting-scholar-nicolas-lemay-hbert-proposes-unhaiti-cholera-solution-as-result-of-researc/haiti-cholera-report.pdf>.

<sup>137</sup> *Id.*

<sup>138</sup> UN Haiti Cholera Response Multi-Partner Trust Fund, <http://mptf.undp.org/factsheet/fund/CLH00> (last visited Dec. 12, 2019).

<sup>139</sup> Pablo de Greiff (Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of non-recurrence), *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of non-recurrence*, ¶ 53-4, U.N. DOC. A/69/518 (Oct. 14, 2014).

<sup>140</sup> Adolfo Perez Esquivel et al, opinion, *The U.N. owes Haiti relief from cholera epidemic it introduced*, MIAMI HERALD, June 21, 2017, <https://www.miamiherald.com/opinion/op-ed/article157499959.html> (Nobel peace laureates noting that UN has spent \$4 billion on MINUSTAH and calling for remedies for cholera victims); *see also* Advisory Committee on Administrative and Budgetary Questions, MINUSTAH financing resolutions, <https://www.un.org/ga/acabq/documents/all/571?order=title&sort=asc>. The Security Council closed down MINUSTAH in 2017, and replaced it with another two-year \$121.5 million dollar mission. The UN has now transitioned its presence to a political mission, BINUH.

<sup>141</sup> New Approach, *supra* note 1, at ¶ 63.

and declined to put the New Approach before the General Assembly budget committee for discussion, precluding assessed contributions as a solution.<sup>142</sup>

Funding remedies to cholera victims through assessed contributions would be consistent with international law and the UN's legal framework, which require the General Assembly to meet UN liabilities through assessed contributions.<sup>143</sup> It would also correspond with international best practice—the weight of international experience shows that effective financing for remedies requires incorporating it as a line in a mandatorily funded budget.<sup>144</sup> The UN's refusal to do so despite its dismal record on voluntary contributions raises serious concern that the organization will never come close to fully funding the New Approach.

The failure to finance the New Approach has in turn resulted in continuing harm rather than the cessation of ongoing rights violations, and in a material assistance package that fails to deliver meaningful reparations.

Nine years into the epidemic, there is still a critical need for consistent, sustained, and sufficient investment that bolsters the capacity of Haiti's public system to control and eliminate cholera. Data suggests that there has been progress on cholera control, with PAHO citing zero confirmed cases in Haiti since January 2019 and national surveillance data showing a significant drop in suspected cases in 2019.<sup>145</sup> According to the World Health Organization, cholera is considered eliminated when a country does not confirm any locally-transmitted cases for at least three

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<sup>142</sup> Gladstone, *supra* note 140. This despite calls to do so from some member states. *See e.g.*, Gabrielle Duchaine, *Haiti: Ottawa versera 6 millions pour lutter contre le cholera*, LA PRESSE (Jan. 10, 2017), <https://www.lapresse.ca/actualites/politique/politique-canadienne/201701/09/01-5058039-haiti-ottawa-versera-6-millions-pour-lutter-contre-le-cholera.php> (“Canada believes that if voluntary contributions are insufficient, the United Nations cholera plan should be financed through assessed contributions from Member States”).

<sup>143</sup> UN Legal Counsel, Selected legal opinions of the secretariats of the United Nations and related intergovernmental organizations (Payment of settlement claims—Liabilities of a private law nature—Procedures for settlement—Budget considerations), U.N. JURID. Y.B., Feb. 23, 2001, U.N. Doc. ST/LEG/SER.C/39 (the General Assembly has “no alternative but to honour obligations incurred by the Organization,”); *Effects of Awards of Compensation made by the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954*, p. 47; *Certain Expenses of the United Nations, Advisory Opinion, I.C.J. Reports 1962*, p. 151.

<sup>144</sup> Office of the High Comm’r on Human Rights, Rule of Law Tools for Post-Conflict States, U.N. Doc. HR/PUB/08/1, U.N. Sales No. E.08.XIV.3 (2008) (citing A Segovia, ‘Financing Reparations Programmes: Reflections from International Experience’ in P de Greiff (ed.)). *See also* REDRESS, *Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations: Submission to the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, Jul. 2014 (“International experience has shown that the most effective model for financing has been direct financing from the State budget (as happened in Argentina, Brazil and Chile), rather than the creation of special funds. Where such special funds were established in El Salvador, South Africa, Guatemala, Malawi and Haiti in each case insufficient resources were provided”).

<sup>145</sup> PAHO, *Haiti Reaches One Year Cholera Free*, Jan. 23, 2019, [https://www.paho.org/hq/index.php?option=com\\_content&view=article&id=15684:haiti-reaches-one-year-free-of-cholera&Itemid=1926&lang=en](https://www.paho.org/hq/index.php?option=com_content&view=article&id=15684:haiti-reaches-one-year-free-of-cholera&Itemid=1926&lang=en); MSPP, *Rapport du Réseau National de Surveillance, Choléra, 46eme semaine épidémiologique 2019*, <http://mspp.gouv.ht/site/downloads/Profil%20statistique%20Cholera%2046SE%202019%20derniere%20version.pdf> (showing a drop in suspected cases and no positive results from laboratory tests from epidemiological week 5 through 46 (week of Nov. 10, 2019). Note that national surveillance data does not clearly isolate data regarding confirmed cholera cases and that data after November 2019 is not publicly available.

consecutive years.<sup>146</sup> The UN currently lacks adequate funding to achieve elimination by 2022, having identified a \$20 million funding gap to keep cases at zero.<sup>147</sup> Moreover, Haiti still lacks the functioning water, sanitation, and health systems that the UN has identified as the best long-term defense against cholera.<sup>148</sup> In the meantime, violations of the rights to life, health, water, and sanitation are ongoing as communities remain vulnerable to a possible resurgence of cholera cases.

The stark funding gap in the New Approach has also resulted in a failure to deliver meaningful reparations. Rather than ground its response in the rights and needs of victims, the UN has allowed funding deficiencies to dictate the scope and content of the material assistance package offered. This is further discussed below.

### **b. The UN’s Approach to Material Assistance Denies Victims’ Right to Compensation**

Compensation is a central component of an effective remedy. Where it is not possible to restore the victim to the situation they occupied prior to the violation, compensation serves the essential function of quantifying the harms and seeking to make up for them through payments.<sup>149</sup> It is especially appropriate in death cases, as the decedent cannot be brought back.<sup>150</sup> The UN Basic Principles assert that “compensation should be provided for any economically assessable damage, as proportional to the gravity of the violation and the circumstances of each case... including (a) physical or mental harm; (b) lost opportunities, including employment, education, and social benefits; (c) material damages and loss of earnings...(d) moral damage; and (e) costs required for legal or expert assistance, medicine, and medical services, and psychological and social services.”<sup>151</sup>

Compensation has been a key focus of victims’ advocacy since the outbreak of cholera. In focus groups and interviews, affected communities often identify compensation as a top priority, especially for families that suffered deaths.<sup>152</sup> INURED conducted in-depth independent focus

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<sup>146</sup> Global Task Force on Cholera Control, *Ending Cholera: A Global Roadmap to 2030* available at <https://www.who.int/cholera/publications/global-roadmap.pdf> p.30.

<sup>147</sup> Josette Sheeran, *A Haiti free of cholera is almost within reach. But the battle is not over.*, MIAMI HERALD (Nov. 13, 2019), <https://www.miamiherald.com/opinion/op-ed/article237160659.html>.

<sup>148</sup> New Approach, *supra* note 1, ¶ 35; Didier Bompangue et al., *Elimination of cholera transmission*, 379 THE LANCET 46-47 (Mar. 31, 2012), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(12\)60515-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(12)60515-7/fulltext); see also U.N. Secretary-General, *New United Nations approach to cholera in Haiti*, ¶ 35, U.N. Doc. A/72/856 (Sep. 14, 2018), <https://undocs.org/A/72/856> (“The longer-term track 1B also requires significant additional funding...”) [hereinafter “New Approach 2018 report”]; Pan American Health Organization, *Cholera in Haiti: Gone but not forgotten* (Dec. 20, 2019) available at <https://reliefweb.int/report/haiti/cholera-haiti-gone-not-forgotten>.

<sup>149</sup> PABLO DE GREIFF, HANDBOOK OF REPARATIONS 452 (2006).

<sup>150</sup> See FERSTMAN, *supra* note 129 (discussing the relevance of compensation in the context of cholera).

<sup>151</sup> Basic Principles, *supra* note 129, art. (IX)20.

<sup>152</sup> See e.g., Charles, *supra* note 52 (reporting unanimous preference for individual payments in a cholera victims association in Cite Soleil, and similar views among members of ASOVIK’K, the victims association in Carrefour); Ricardo Lambert, *Les victimes du cholera se preparent a recevoir l’indemnisation promise part les Nations unies*, LE NOUVELLISTE, Feb. 22, 2017, <https://lenouvelliste.com/article/168687/les-victimes-du-cholera-se-preparent-a->

groups in 2018 in response to the New Approach and found that victims view compensation as necessary to “take into account the specific and personal suffering of those who have been and continue to be disproportionately affected by the cholera epidemic, the economic impact as a central element of their suffering and the existing disparities between the different categories of victims.”<sup>153</sup> The views of victims must carry significant weight: according to the UN Basic Principles, remedial programs should be victim-centered, and to be effective must respond to the priorities identified by victims themselves.<sup>154</sup>

In violation of the right to effective remedy and of the UN’s obligations under its own legal framework for settling personal injury and death claims, the UN has foreclosed compensation through its internal claims settlement process, through an independent claims commission and through independent courts. The elaboration and implementation of the New Approach now indicates that the UN is also foreclosing compensation through this plan.<sup>155</sup>

In place of compensation, the UN is rolling out a piece-meal smattering of infrastructure projects. The material assistance provided in the three years since the New Approach was launched consists of five small-scale infrastructure projects of a maximum budget of \$150,000 each, including the renovation of a market place and the installation of water pumps.<sup>156</sup> Twenty similar projects have recently commenced in four communes in the Cap-Haitien area, in the north of the country.<sup>157</sup> If additional funding is secured, the UN plans to carry out further projects in 134 of what it deems the most affected communal sections around Haiti.<sup>158</sup>

Human rights experts have expressed deep concern that this approach does not comport with the right to effective remedy.<sup>159</sup> Although valuable endeavors, “development programmes are not reparation programmes, for they do not target victims specifically and their aim is to satisfy basic and urgent needs to which beneficiaries have a right as citizens, not necessarily as victims.”<sup>160</sup> The community projects deployed by the UN do not address the specific, quantifiable household-level harms that victims identify as the most severe impact of cholera. As one victim lamented:

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recevoir-lindemnisation-promise-par-les-nations-unies (reporting on community meetings with BAI); ASFC, supra note 10.

<sup>153</sup> ASFC, *supra* note 10, at 13.

<sup>154</sup> Basic Principles, *supra* note 129, arts. VI(10), VII(11), VIII(12); de Greiff, *supra* note 172; *see also* UN Office of the High Comm’r for Human Rights, Guiding Principles on Business and Human Rights, ¶ 31, U.N. Doc. HR/PUB/11/04 (2011) (setting out the importance of stakeholder engagement in the design of corporate remedial packages in order to ensure that there is shared interest in ensuring success.); COLUMBIA LAW SCHOOL, *supra* note 133 (ensuring that survivors’ interests and rights are reflected in remedies is key to legitimacy).

<sup>155</sup> *See* fn. 182, *infra*.

<sup>156</sup> Community Assistance to Mirebalais, *supra* note 5.

<sup>157</sup> The UN has allocated \$5,579,934 to community projects in total, and has spent \$258,885 of this to date. *See* Project Fact Sheet, Phase 2 Community Assistance, <http://mptf.undp.org/factsheet/project/00115476>.

<sup>158</sup> New Approach 2018 report, *supra* note 148.

<sup>159</sup> *See, e.g.*, Letter from 60 human rights organizations to the Secretary-General, July 16, 2018, <http://www.ijdh.org/2018/07/resources/human-rights-organizations-call-on-un-secretary-general-to-engage-victims-as-partners-in-the-new-approach-plan/>.

<sup>160</sup> Pablo de Greiff, *Promotion of truth, justice, reparation and guarantees of non-recurrence*, U.N. Doc. A/69/518 (Oct. 14, 2014), [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/69/518](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/69/518).

*What about the people where the father of the house died and the family is in a really bad situation? It isn't that new projects are bad – they are good. But these families had a shock. New projects will leave people where they are vis-à-vis other people. They need individual remedies to get them back on the path.*<sup>161</sup>

Community projects are over-inclusive by providing generalized benefits to the broader community. They are also under-inclusive, as they are unlikely to reach the most isolated and vulnerable victims. One cholera victim said, “[f]or people in far-away rural zones, they will not have access to services or to projects if collective ones are provided.”<sup>162</sup> Material assistance must be distinct from other forms of development assistance and humanitarian aid in the country, if it is to serve as meaningful recognition of the UN’s responsibility for the epidemic and contribute to rebuilding relations between the UN and the population.<sup>163</sup>

Compensation can also be critical to rehabilitation by facilitating access to medical and psychological care.<sup>164</sup> Given the strong anecdotal evidence of chronic problems stemming from cholera, rehabilitative needs must be addressed through remedies designed to respond to individualized harms.<sup>165</sup> While collective reparations can serve rehabilitative needs, the New Approach’s community projects are strictly infrastructural in nature, as opposed to offering social, medical, or psychological assistance. Rehabilitation also does not figure into any other part of the New Approach—while the UN has supported critical efforts to treat patients with active cholera symptoms, the UN does not support access to treatment for ongoing medical issues or psychological trauma.<sup>166</sup> In this context, compensation is especially important to meet rehabilitative needs.

Despite the strong rationales and legal obligations to provide compensation, the UN has justified deprioritizing compensation on the grounds that it is unfeasible.<sup>167</sup> When the New Approach was first launched, the Secretary-General committed to assessing the feasibility, costs, and risk of including an individual approach and reporting on it to the General Assembly.<sup>168</sup> Three years later, the Secretary-General has not produced such an assessment to the General Assembly or elaborated on the concerns of affected communities in Haiti. In the absence of a UN-led feasibility assessment, Avocats Sans Frontières Canada (ASFC), in collaboration with INURED, undertook a robust feasibility study based on victim focus groups and interviews, a review of comparative experiences of compensating for mass harms in transitional justice and humanitarian contexts, interviews with Haitian experts and community leaders, and discussions with international experts.<sup>169</sup> Based on this review, ASFC concluded that monetary payments are feasible in cases of deaths, and set forth a process that could be implemented to deliver on this

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<sup>161</sup> FREEDMAN & LEMAY-HEBERT, *supra* note 136, at 5.

<sup>162</sup> *Id.*

<sup>163</sup> Pham, *supra* note 172.

<sup>164</sup> Basic Principles, *supra* note 129, at art. IX(21); FERSTMAN, *supra* note 129, at 15.).

<sup>165</sup> FERSTMAN, *supra* note 58, at 15-16.

<sup>166</sup> Haiti Cholera Medical Response, *Generic Final Programme Narrative Report from 06.2017 to 03.2018*, MPTF (2018), <http://mptf.undp.org/document/download/21389>; New Approach, *supra* note 1.

<sup>167</sup> New Approach, *supra* note 1, at ¶ 56-59.

<sup>168</sup> *Id.*, at ¶ 64.

<sup>169</sup> ASFC, *supra* note 10.

key remedy.<sup>170</sup> The results of the study were publicly released and shared with the UN in June 2019. It does not appear that the UN has revisited the provision of individual payments following this study.

Given the serious and quantifiable economic impact of cholera on victims and their families, full and effective remedies must include compensation.

### **c. Victims Are Being Denied a Right to Participate in Designing Remedies**

The marginalization of victims in the planning and execution of the New Approach has resulted in a failure to align material assistance with victims' rights and needs. Victims of human rights violations have a right to participate in the creation and implementation of remedies.<sup>171</sup> The Special Rapporteur on truth, justice and reparation has found that such participation is vital for two principal reasons: First, it is necessary to ensure the remedy's effectiveness, by increasing "the likelihood that...measures will capture [victims'] sense of justice" and to "ensure a close fit between the measures and the needs of victims."<sup>172</sup> Second, it provides "recognition to, and empowerment of, victims."<sup>173</sup> As such, it can be reparative in itself.

In 2016, advocates and experts emphasized the need for the UN to prioritize hearing from affected communities and seeking out their perspectives on remedies as a foundation for the New Approach, after years of sidelining cholera victims.<sup>174</sup> Participation is crucial to honoring victims' rights, shifting power imbalances, and rebuilding relationships between the UN and affected communities.<sup>175</sup>

However, rather than supporting and facilitating victim participation, the UN failed to engage them in the design and content of the New Approach, to analyze the harms victims have suffered, or to assess their perspectives and needs before launching the plan. Instead, a seemingly factually-unsupported budget of \$400 million was allocated to the plan, with \$200 million allocated across both Tracks.<sup>176</sup> By launching a plan intended to "express the organization's regret" and "alleviate the suffering" of victims—without engaging the victims themselves—the UN hindered the plan's success from the outset.

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<sup>170</sup> *Id.* at 31-34.

<sup>171</sup> *See e.g.*, Basic Principles, *supra* note 129, art. 31.

<sup>172</sup> Pablo de Greiff (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence), *Promotion of truth, justice, reparation and guarantees of non-recurrence*, U.N. Doc. A/34/62 (Dec. 27, 2016), <https://undocs.org/A/HRC/34/62>. As noted by consultation experts with the Harvard Humanitarian Initiative, while there are important differences between a public health outbreak and a situation of mass violence... the process of consulting communities should [not] change, beyond being adapted to the local context." Phuong Pham, Niamh Gibbons, and Patrick Vinck, *The United Nations Material Assistance to Survivors of Cholera in Haiti: Consulting Survivors and Rebuilding Trust*, 9 PLOS CURRENTS (2007), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5693334/>.

<sup>173</sup> de Greiff, *supra* note 139.

<sup>174</sup> *See e.g.*, Pham et al., *supra* note 172; Letter from Human Rights Experts to the Secretary-General, Oct. 2016.

<sup>175</sup> Pham et al., *supra* note 172, at 8; *see also* COLUMBIA LAW SCHOOL, *supra* note 133, at 6-7 (identifying rebalancing of power as a critical measure of success of any remedy mechanism).

<sup>176</sup> New Approach, *supra* note 1.

The inherent limitations in the New Approach—including resource constraints and the absence of a guiding legal framework—made participation in its post-launch elaboration and implementation all the more crucial. Cholera victims are no strangers to having to make difficult decisions in the face of limited resources. They have unique experiences and insight into how remedies can be structured to respond to the harms they suffered, and how various interests and needs could be balanced to translate into justice in Haiti.

When the New Approach was announced, victim representatives noted that participation was a priority:

*I ask [the UN] to come and sit with us and not decide for us because we aren't asking for charity.*<sup>177</sup>

*What we want is for foreigners to come and sit down with us so that we can tell them what we need. We have suffered so much, people who died and people who still have cholera in their blood and are still suffering.*<sup>178</sup>

*They should come to talk to us even if they cannot give us everything we ask for. We will listen, we will respond, we will have proposals for them.*<sup>179</sup>

Initially, the UN appeared similarly committed, stating that it would now “place victims at the centre” and “involve affected individuals and communities in the development of the [assistance] package.”<sup>180</sup> In particular, the UN promised that consultations would be held on forms of material assistance, including whether individual compensation would be feasible and desirable.<sup>181</sup> The UN put the UN Development Programme (UNDP) in Haiti in charge of developing and implementing Track 2, including leading the consultation process that was to start in Mirebalais.

In preparation for the consultations to begin, BAI worked with thousands of victims—many of whom had long organized on the issue—to disseminate information about the New Approach in Haitian Creole, provide training on the right to effective remedy, and share comparative experiences on the relative risks and benefits of community and individual approaches. In the absence of direct UN outreach to victims, these efforts were designed to empower victim with the information necessary to meaningfully participate in consultations. The victims elected committees to represent them and facilitate broad and informed participation in the forthcoming consultation process.

No community engagement took place for six months. Before hearing from victims, the UN instead unilaterally dropped the individual approach and decided to move forward with

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<sup>177</sup> Inst. for Justice & Democracy in Haiti, *Haitian Cholera Victims React to UN Apology* (Dec. 1, 2016), <http://www.ijdh.org/2016/12/topics/health/haitian-cholera-victims-react-to-un-apology/>

<sup>178</sup> *Id.*

<sup>179</sup> FREEDMAN & LEMAY-HEBERT, *supra* note 136, at 3.

<sup>180</sup> New Approach, *supra* note 1, at ¶ 26.

<sup>181</sup> *Id.*

community projects in select communities.<sup>182</sup> In the summer of 2017, UNDP piloted its community engagement process in Mirebalais, focused on implementation of community projects. The details of the process remain opaque, and BAI and IJDH’s repeated requests for methodology documents have gone unmet. But public documents describing the process suggest that victim input was limited to project selection within parameters already established by the UN.<sup>183</sup> Rather than include the victim committees catalyzed by BAI’s outreach efforts in the consultation as key stakeholders, the UN proceeded without their knowledge or participation.<sup>184</sup> Far from treating victims as rights-holders, the UNDP repeatedly characterized victims’ organizing efforts on cholera—including a commemorative mass and candle lighting ceremony held on the eighth anniversary of the outbreak—as a “risk” to UNDP’s work in their publicly posted progress documents.<sup>185</sup> In one document, UNDP reported allocating resources towards “mitigation measures to counter the interventions of BAI.”<sup>186</sup>

As a result, victim committees around Mirebalais have rejected the process as undemocratic and not in victims’ interests.<sup>187</sup> They called on the UN to “rethink [and] rejoin us so we can sit head-to-head.”<sup>188</sup> Yet similar processes focused on community projects are now being rolled out in 20 communal sections in Northern Haiti.<sup>189</sup> This approach denies victims their right to participate in the design and implementation of remedies, negates their status as rights-holders, and undermines the legitimacy and effectiveness of the New Approach.

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<sup>182</sup> In May 2017, the Secretary-General informed the General Assembly of his view that consultations on material assistance could not begin until additional funding had been secured and announced that the UN would proceed with symbolic projects in Mirebalais in the interim. U.N. Secretary-General, *New Approach to Cholera in Haiti*, ¶ 43, U.N. Doc. A/71.895, May 3, 2017, <https://reliefweb.int/sites/reliefweb.int/files/resources/N1712356.pdf> [hereinafter 2017 New approach report]; see also Remarks by the Deputy Secretary-General to the General Assembly on Haiti, June 14, 2017, <https://www.un.org/sg/en/content/dsg/statement/2017-06-14/deputy-secretary-generals-remarks-general-assembly-haiti-prepared> (“We propose to take a community approach and establish priorities for projects in consultation with victims and their families and communities”). When asked to clarify whether this signaled a retreat from individual payments, he insisted that the New Approach was “not devised for individuals, but for communities.” Video: António Guterres (UN Secretary-General) - Press Conference (20 June 2017), <http://webtv.un.org/watch/ant%C3%B3nio-guterres-un-secretary-general-press-conference-20-june-2017-/5477713087001> (at 43:25). Subsequent UN documents refer to material assistance as a community approach. See e.g., Community Assistance to Mirebalais, *supra* note 5, at 5-11 (describing a consultation process geared towards identifying projects, and noting that “it has been agreed...that each administrative section will be allowed to select a community project up to an amount of 150 US\$.”)

<sup>183</sup> See e.g., 2017 New Approach Report, *supra* note 182, ¶¶ 43-44 (noting that consultations would focus on the well-being of communities and project selection and prioritization, and setting out criteria for project selection); Community Assistance to Mirebalais, *supra* note 5.

<sup>184</sup> Video testimony of elected representatives of cholera victims in Kret Brile, Mirebalais, <http://www.ijdh.org/2019/04/projects/testimony-of-cholera-victims-in-kret-brile/>.

<sup>185</sup> See fn. 5, *supra*.

<sup>186</sup> 2017 Project Narrative Report, Community Assistance to Mirebalais: New UN Approach to Cholera in Haiti, United Nations Multi-Partner Trust Fund (Mar. 31, 2018), <http://mptf.undp.org/document/download/20568>.

<sup>187</sup> Video testimony of elected representatives, *supra* note 184.

<sup>188</sup> *Id.*

<sup>189</sup> UN Haiti Cholera Response MPTF, *Project Quarterly [sic] Progress Report* (Sep. 30, 2019), <http://mptf.undp.org/document/download/22689>.

#### **d. The UN Has Failed to Undertake Institutional Reforms that Guarantee Non-Repetition**

To be effective and comprehensive, remedies for human rights violations must also include measures that seek to guarantee that the violation will not recur.<sup>190</sup> The UN Basic Principles outline examples of preventative measures, such as the promotion of the observance of codes of conduct for civil servants, as well as monitoring mechanisms that will protect against future violations.<sup>191</sup> The UN has not taken adequate action to prevent repetition of a similar health crisis or ensure a more rights-respecting response should such harm occur.

##### *i. Investigating Individual Responsibility*

Based on publicly available information, the UN has not undertaken any investigation into individual responsibility for sanitation mismanagement in Haiti or the UN's subsequent problematic response. To the contrary, the official with direct oversight responsibility for MINUSTAH at the time of the outbreak, Edmond Mulet, was promoted to Chef de Cabinet of the UN following his return from Haiti.<sup>192</sup> As Head of MINUSTAH, Mulet bore ultimate responsibility for the Mission's hazardous sanitation practices, and would have been well aware of the problems documented in the internal health assessment sent to MINUSTAH in November 2010. Yet for years, Mulet lead the charge on publicly insisting that there was no evidence tying cholera to MINUSTAH,<sup>193</sup> and delegitimizing Haitian's demands for accountability.<sup>194</sup> By promoting Mulet following his service in Haiti, the UN implied that such conduct merits reward, not sanction. The lack of any examination of individual responsibility fails to deter future mismanagement and is inconsistent with the element of satisfaction, which requires recognizing the harm done and pursuing judicial and administrative sanctions against those responsible for the violations.<sup>195</sup>

##### *ii. Preventing Recurrence of Cholera and Other Negative Health Impacts of Peacekeeping*

Despite the massive loss of life caused by inadequate sanitation management, the UN has not undertaken reforms to prevent the repetition of such harms in other parts of the world. The Independent Panel appointed by the Secretary-General to investigate the source of cholera issued numerous recommendations to prevent a future recurrence, including: 1) onsite treatment of fecal waste across UN installations worldwide; 2) pre-deployment administration of prophylactic

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<sup>190</sup> Basic Principles, *supra* note 129, art. IX(18), (23).

<sup>191</sup> *Id.*

<sup>192</sup> Press Release, Secretary-General, Mr. Edmond Mulet of Guatemala - Head of the independent panel to lead the OPCW-UN Joint Investigative Mechanism (JIM) on the use of chemicals as weapons in the Syrian Arab Republic, Apr. 27, 2017, <https://www.un.org/sg/en/content/sg/personnel-appointments/2017-04-27/mr-edmond-mulet-guatemala-head-independent-panel-lead>.

<sup>193</sup> As late as 2014, Mr. Mulet publicly denied the existence of evidence linking cholera to MINUSTAH, and pointed to Haiti's weak sanitation infrastructure as the sole reason for Haitians' suffering. *See* France24, *Haiti: Injustice in a time of Cholera* (Oct. 14, 2014), <https://www.france24.com/en/20141010-reporters-cholera-haiti-earthquake-cholera-united-nations-nepal>.

<sup>194</sup> *Id.* fn. 35-36.

<sup>195</sup> Basic Principles, *supra* note 129, art. IX, para. 22(f).

antibiotics, and immunization against cholera; and/or 3) appropriate screening for asymptomatic cholera for all UN personnel and emergency responders.<sup>196</sup> The UN's implementation of these recommendations is inconsistent at best.

Audits by OIOS reveal widespread and systematic waste mismanagement across numerous UN bases internationally. Beyond Haiti, OIOS and other internal UN investigations have documented problems with sanitation management and waste disposal in Lebanon, Liberia, Darfur, Côte d'Ivoire, the Democratic Republic of the Congo, and the Central African Republic for years following the cholera outbreak in Haiti.<sup>197</sup> As recently as August 27, 2019, OIOS found that untreated wastewater from the UN peacekeeping mission in South Sudan was being spilled onto the ground and “into the surrounding environment.”<sup>198</sup>

High-risk sanitation practices are particularly problematic given that the UN has not taken adequate action to prevent the transmission of cholera from peacekeepers to local populations. In May 2011, the Secretary-General convened a “senior-level integrated task force” to examine the recommendations and ensure “prompt and appropriate follow-up.”<sup>199</sup> No information is publicly available as to the task force's membership, terms of reference, or procedures. In 2014, the task force announced, without citing any evidentiary basis for doing so, that it had rejected the recommendations regarding prophylaxis and screening.<sup>200</sup> A study by the Global Health & Justice Partnership at Yale University has shown that prophylaxis antibiotics and screening have a 90% efficacy rate, whereas vaccinations are only 60% likely to be effective in preventing cholera transmission.<sup>201</sup> The UN revised its medical support manual, which sets out the pre-deployment medical policies for peacekeepers, a year later. While the manual recognizes the “danger inherent in the introduction of diseases into the host country's environment,” it adopts mandatory vaccinations—the preventative measure shown to be the least effective—as the only preventative measure.<sup>202</sup> The UN's policy changes thus do not effectively guarantee non-repetition of similar harms by UN peacekeepers.

iii. *Ensuring that Victims of Future Harms Have Access to Remedies*

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<sup>196</sup> INDEPENDENT PANEL, *supra* note 13.

<sup>197</sup> *See* fn. 7, *supra*.

<sup>198</sup> OIOS, *Audit of implementation of the environmental action plan in the United Nations Mission in the Republic of South Sudan*, Aug. 27, 2019, U.N. Doc. Assignment No. AP2018/633/10. Another recent OIOS audit of peacekeepers serving in the Democratic Republic of Congo found that military contingents “dumped unsegregated waste on the ground instead of in garbage bins. OIOS, *Audit of implementation of the environmental action plan in the United Nations Stabilization Mission in the Democratic Republic of the Congo*, Aug. 22, 2019, U.N. Docs Assignment No. AP2018/620/07.AP2018/633/10.

<sup>199</sup> Press Release, Secretary-General, *Secretary-General, Upon Receiving Experts' Report on Source of Haiti Cholera Outbreak, Announces Intention to Name Follow-up Task Force*, U.N. Doc. SG/SM/13543 (May 4, 2011).

<sup>200</sup> *See* Lewnard et al, *supra* note 15; Amber Kunkel et al., *Antimicrobial Resistance Risks of Cholera Prophylaxis for United Nations Peacekeepers*, 61:8 *ANTIMICROBIAL AGENTS & CHEMOTHERAPY* (Jul. 25, 2017).

<sup>201</sup> Lewnard et al, *supra* note 15.

<sup>202</sup> United Nations, *Medical Support Manual for United Nations Peacekeeping Operations*, 93 (3d ed.), <http://repository.un.org/bitstream/handle/11176/387299/2015.12%20Medical%20Support%20Manual%20for%20UN%20Field%20Missions.pdf?sequence=4&isAllowed=y>.

Finally, the UN does not appear to have undertaken any review of its claims procedures to ensure that civilian victims of future UN harms do not have to endure the same arbitrary denial of remedies as cholera victims in Haiti. The difficulties faced by cholera victims to access remedies are representative of broader problems with the UN's claim system. A 2013 study by Yale Law School *et al.* found that the UN has never established a standing claims commission in any peacekeeping setting despite over 30 SOFAs requiring it.<sup>203</sup>

In the 1990s, the UN undertook a study of the claims commission provision, reviewing whether to eliminate this provision in light of its non-implementation. That study concluded that “a procedure that involves a neutral third party should be retained in the text of the [SOFA] as an option for potential claimants” so as not to make the UN “a judge in its own case.”<sup>204</sup>

Today, two decades later, the UN has yet to implement the provision and establish a standing claims commission, leaving victims without access to an independent hearing or means to seek effective remedies. Moreover, the UN's internal processes for providing occasional *ex gratia* “goodwill” payments are discretionary, opaque, and lack independence. In the context of expansive UN immunity, the UN must find ways to ensure that victims have access to alternative mechanisms to seek redress.

## 9. CONCLUSION

The need for effective remedies for victims of cholera is as urgent today as it was immediately after the outbreak. As victims' physical, psychological, and economic injuries remain unaddressed years after the launch of the New Approach, victims question why the UN does not accord them equal rights and dignity.<sup>205</sup> One bereaved father pointedly asked the Secretary-General in a 2017 video message:

*I lost two children in my family to cholera . . . I'm asking you: are only your children children? Are our children not children?*<sup>206</sup>

The Secretary-General has acknowledged that the damage to the UN's reputation and global mission “will persist unless we do what is right for those affected.”<sup>207</sup> We respectfully ask you to take up this matter in a joint allegation letter and urge the UN to respect the right to effective remedy for cholera victims in Haiti. In the words of the Secretary-General, the UN must deliver “for the sake of the Haitian people, but also for the sake of the United Nations itself.”<sup>208</sup>

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<sup>203</sup> TRANSNATIONAL DEVELOPMENT CLINIC, YALE LAW SCHOOL ET AL., PEACEKEEPING WITHOUT ACCOUNTABILITY 27 (2013), [https://law.yale.edu/sites/default/files/documents/pdf/Clinics/Haiti\\_TDC\\_Final\\_Report.pdf](https://law.yale.edu/sites/default/files/documents/pdf/Clinics/Haiti_TDC_Final_Report.pdf).

<sup>204</sup> U.N. Secretary-General, *Administrative and budgetary aspects fo the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations*, para. 10, U.N. Doc. A/51/903, May 21, 1997.

<sup>205</sup> See “Dignitary Harms,” *supra* § 5.

<sup>206</sup> Video: IJDH, Survivors addressing the United Nations Secretariat [version anglaise], at 04:53-05:07, available at <https://www.commondreams.org/news/2018/07/16/60-human-rights-groups-implore-un-deliver-more-just-empty-words-victims-haitis>.

<sup>207</sup> U.N. Secretary-General, *Remarks at the General Assembly*, *supra* note 4.

<sup>208</sup> *Id.*