



## **DEVELOPMENT COOPERATION AND THE RIGHTS TO WATER AND SANITATION IN HAITI**

### **Submission to the Special Rapporteur on the Human Rights to Water and Sanitation**

Haiti is one of the most water insecure countries in the world, and relies heavily on development cooperation to realize the human rights to water and sanitation. The introduction of cholera to Haiti by United Nations (UN) peacekeepers represents one of the most acute global examples of the need to ensure that human rights are respected in development cooperation. It carries relevant lessons for measures that must be adopted in order to prevent and remedy violations of the rights to water and sanitation that occur during the course of development cooperation. Specifically, this case study provides information concerning:

- *What measures can be taken to ensure that development cooperation does not risk violating human rights? What safeguards can be put in place?*
- *What accountability mechanisms can be put in place so that people affected by development cooperation programmes or projects can effectively have complaints addressed?*

#### **I. CONTEXT: THE ROLE OF DEVELOPMENT COOPERATION IN HAITI**

##### **A. Chronic Violations of the Rights to Water and Sanitation**

Lack of access to clean water and sanitation constitute major human rights challenges in Haiti. In 2015, half of the Haitian population lacked regularized access to an improved water source protected from outside contamination such as contamination with fecal matter.<sup>1</sup> Alarming, between 1990 and 2015, the percentage of the population relying on improved water sources has decreased from 54% to 48%. While a number of factors may have contributed to this downwards trend, including political instability and mismanagement, development cooperation has also failed to bring about more positive results despite significant investment. The devastating earthquake in 2010 and the introduction of cholera later the same year have both impeded progress and made the needs more acute.

The lack of access to improved sanitation is also astounding. While the percentage of the population practicing open defecation has decreased significantly between 1990 and 2015 from 48% to 19%, only 20% of the population currently has access to improved sanitation that hygienically separates human excreta from human

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<sup>1</sup> WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, Estimates on the Use of Water Supply and Sanitation Facilities (2015), available at [http://www.wssinfo.org/fileadmin/user\\_upload/resources/Haiti.xls](http://www.wssinfo.org/fileadmin/user_upload/resources/Haiti.xls).

contact.<sup>2</sup> Access to treatment and safe disposal systems is also extremely limited. There is no centralized sewage system to collect toilet waste; instead, waste collection is carried out by *bayakou*--manual laborers who dive into cesspools without gear or protection, and scoop up the waste in buckets.<sup>3</sup> There is only one sewage treatment plant in the whole country. As a result, water borne diseases spread quickly and constitute a major threat to health and life.

## **B. The Role of International Actors and Development Cooperation**

Although the Haitian government bears the primary responsibility to ensure access to clean water and sanitation for its people, its capacity is severely hampered by limited resources, substantial foreign debt,<sup>4</sup> and lack of technical expertise. In 2015-2016, the Haitian government's budget was just over \$2 billion for all government services – less than the amount the UN estimates it would take to install a national water and sanitation system.<sup>5</sup>

Bilateral and multilateral donors play an immense role in setting priorities, designing projects, and overseeing implementation of policies in Haiti. In 2014, 27% of the national budget came from official development assistance. In addition to donors, the wide range of international actors that carry out projects and programs are also relevant to an assessment of the relationship between development cooperation and human rights. Following the 2010 earthquake, donors pledged \$6.04 billion in aid, but the vast majority of this aid bypassed the government -- 99% of relief aid and 90% of reconstruction aid went to projects and programs ran by multilateral agencies, foreign non-governmental organizations (NGOs) and private contractors.<sup>6</sup> These institutions act as primary service providers and perform what are often considered traditional government functions. They command enormous resources that often exceed the resources available to the government ministries whose tasks they take on.<sup>7</sup> While these service deliverers often adopt human rights based approaches on paper, implementation has in practice been spotty at best.<sup>8</sup>

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<sup>2</sup> World Health Organization, *Progress on Sanitation and Drinking Water: Fast Facts* (2013), [http://www.who.int/water\\_sanitation\\_health/publications/2013/jmp\\_fast\\_facts.pdf?ua=1](http://www.who.int/water_sanitation_health/publications/2013/jmp_fast_facts.pdf?ua=1); *Wòch nan Soley*, *supra* note 11, at 15, 24.

<sup>3</sup> Jonathan M. Katz, *Haiti's Shadow Sanitation System*, NEW YORKER, Mar. 12, 2014, <http://www.newyorker.com/tech/elements/haitis-shadow-sanitation-system>

<sup>4</sup> As of 2009, Haiti spent nearly \$50 million dollars annually attempting to service its debt. Dennis Coday, *Forgiving Haiti's Debt Called Key to Recovery*, National Catholic Reporter (Feb. 15, 2010), <http://ncronline.org/news/global/forgiving-haitis-debt-called-key-recovery>.

<sup>5</sup> National Plan for the Elimination of Cholera in Haiti, 2013-2022, [http://www.lessonsfromhaiti.org/download/Report\\_Center/nat-plan-cholera-en.pdf](http://www.lessonsfromhaiti.org/download/Report_Center/nat-plan-cholera-en.pdf)

<sup>6</sup> Office of the Special Envoy, *Can More Aid Stay In Haiti and Other Fragile Settings?* 13 (2012), *available at* [http://www.lessonsfromhaiti.org/download/Report\\_Center/osereport2012.pdf](http://www.lessonsfromhaiti.org/download/Report_Center/osereport2012.pdf)

<sup>7</sup> See Margaret L. Satterthwaite, *Indicators in Crisis: Rights-Based Humanitarian Indicators in Post-earthquake Haiti*, 43 N.Y.U. J. INT'L L. & POL. 880-82 (2011).

<sup>8</sup> See Concannon & Lindstrom, *Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti*, 25 Emory J. Int'l Law 1145 (2013), *available at* <http://hrbaportal.org/wp-content/files/SSRN-id2545593.pdf>.

## **C. The UN's Introduction of Cholera to Haiti**

Development cooperation can have a wide range of impacts on human rights. In the most extreme cases, it may result in the direct violation of human rights, as is the case with cholera in Haiti. In October 2010, cholera appeared in Haiti for the first time in recorded history.<sup>9</sup> Genetic and epidemiological studies have established that cholera was introduced to Haiti by a contingent of UN peacekeepers from Nepal, where cholera is endemic.<sup>10</sup> The soldiers were stationed at a UN Stabilization Mission in Haiti (MINUSTAH) base where improper sanitation practices led to untreated sewage entering the Meye Tributary. Specifically, a UN appointed panel of experts found that the pipes on the MINUSTAH base were “haphazard, with significant potential for cross-contamination” and that the base routinely disposed of untreated fecal waste in unprotected, open air pits dug directly into the ground that created a serious risk of overflow.<sup>11</sup> The experts concluded that the “evidence overwhelmingly supports” that “the outbreak was caused by bacteria introduced into Haiti as a result of human activity; more specifically by the contamination of the Meye Tributary System” with a South Asian strain of cholera.<sup>12</sup> This tributary flows into Haiti’s principal river system, upon which tens of thousands of Haitians rely as a primary source of water for drinking, washing and farming.<sup>13</sup> Through November 2015, the epidemic has killed more than 9,000 people in Haiti and infected more than 754,000, making it the worst cholera epidemic in recent history.<sup>14</sup>

## **II. LESSONS FROM CHOLERA IN HAITI: PREVENTING AND REMEDYING RIGHTS VIOLATIONS IN DEVELOPMENT COOPERATION**

### **A. Ensuring that development cooperation programs do not violate human rights**

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<sup>9</sup> Deborah Jensen et al., *Cholera in Haiti & Other Caribbean Regions, 19th Century*, 17 EMERGING INFECTIOUS DISEASES J. 2130, 2130- 2135 (Nov. 2011).

<sup>10</sup> See, e.g., ALEJANDRO CRAVIOTO ET AL., FINAL REPORT OF THE INDEPENDENT PANEL OF EXPERTS ON THE CHOLERA OUTBREAK IN HAITI 12 (2011) [hereinafter UN INDEPENDENT PANEL OF EXPERTS REPORT]; see also TRANSNATIONAL DEVELOPMENT CLINIC, YALE LAW SCHOOL, GLOBAL HEALTH JUSTICE PARTNERSHIP OF THE YALE LAW SCHOOL AND THE YALE SCHOOL OF PUBLIC HEALTH & ASSOCIATION HAÏTIENNE DE DROIT DE L'ENVIRONNEMENT, PEACEKEEPING WITHOUT ACCOUNTABILITY: THE UNITED NATIONS' RESPONSIBILITY FOR THE HAITIAN CHOLERA EPIDEMIC 23-25 (2013), available at [http://www.law.yale.edu/documents/pdf/Clinics/Haiti\\_TDC\\_Final\\_Report.pdf](http://www.law.yale.edu/documents/pdf/Clinics/Haiti_TDC_Final_Report.pdf) [hereinafter YALE REPORT] (reviewing genetic studies of the Haitian cholera strain and finding that “molecular and genetic studies demonstrate that the Haitian cholera strain is genetically almost identical to the Nepalese strain”).

<sup>11</sup> UN INDEPENDENT PANEL OF EXPERTS REPORT, *supra* note 10, at 22-23.

<sup>12</sup> *Id.* at 29.

<sup>13</sup> *Id.* at 21.

<sup>14</sup> Ministère de la Santé Publique et de la Population (MSPP), Rapport de Cas (2015), available at [http://mspp.gouv.ht/site/downloads/Rapport%20Web%2012.11.2015\\_Avec\\_Courbes\\_departementales.pdf](http://mspp.gouv.ht/site/downloads/Rapport%20Web%2012.11.2015_Avec_Courbes_departementales.pdf); see also Charles Cholera in Haiti: One Year Later, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 25, 2011), [http://www.cdc.gov/haiticholera/haiti\\_cholera.htm](http://www.cdc.gov/haiticholera/haiti_cholera.htm) (“this marks the worst cholera outbreak in recent history...”).

The introduction of cholera to Haiti constitutes a gross violation of the right to clean water, and provides a critical example of the consequence of failing to ensure that development cooperation programs respect and uphold human rights. While MINUSTAH's mandate includes promoting and protecting Haitian human rights,<sup>15</sup> it did not have adequate mechanisms and safeguards in place to ensure that MINUSTAH itself did not violate those rights, including the right to clean water.

The UN does not conduct human rights or environmental impact assessments in its field operations, but it has an Environmental Policy for UN Field Missions that sets out minimum standards in water and waste management and prohibits discharge of untreated wastewater directly into water bodies.<sup>16</sup> At the time of the cholera outbreak, however, the UN did not have a functional compliance mechanism to monitor adherence to the policy. As documented by the UN Independent Panel, discharge of untreated waste directly into the Meille Tributary was ongoing on the MINUSTAH Meille base. Moreover, an assessment conducted in November 2010, shortly after the outbreak of cholera, documented that 70% of the UN bases in Haiti were discharging wastewater directly into the local environs.<sup>17</sup> This suggests that implementation and enforcement of the policy was effectively non-existent at the time of the cholera outbreak.

As noted by the UN Environmental Program, the cholera crisis “[i]llustrates the importance for UN peacekeeping missions to continue paying particular attention to environmental considerations when planning and managing their operations.”<sup>18</sup> In its response to the Letter of Allegation sent by the Special Rapporteur on the Right to Water and Sanitation and others concerning the cholera crisis, the UN indicated it has established an Environmental Compliance Unit to monitor waste management.<sup>19</sup> Moreover, the Department of Field Support has reportedly “issued additional directives to all missions to reinforce existing policies and provide additional guidance on the management of waste water.”<sup>20</sup> Yet when MINUSTAH's waste management system was independently audited by the Office of Internal Oversight in 2015, it was *still* found to be unsatisfactory.<sup>21</sup> Details about the assessment are not publicly available, but the result itself indicates that the lack of compliance continues.

The cholera crisis demonstrates the need for robust risk assessments, clear guidelines to prevent human rights violations by international actors, and mechanisms to ensure compliance with such guidelines. In 2015, a High Level Independent Panel appointed to review UN peace operations recommended that environmental impact assessments be carried out “as part of the assessment and planning of new missions and

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<sup>15</sup> S.C. Res. 1542, ¶ 7, U.N. Doc. S/RES/1542 (Apr. 30, 2004).

<sup>16</sup> UN Environmental Program, *Greening the Blue Helmets: Environment, Natural Resources and Peacekeeping Operations 33* (2012), *available at* [http://www.un.org/en/peacekeeping/publications/UNEP\\_greening\\_blue\\_helmets.pdf](http://www.un.org/en/peacekeeping/publications/UNEP_greening_blue_helmets.pdf)

<sup>17</sup> MINUSTAH Environmental Health Assessment Report (2011).

<sup>18</sup> UNEP, *supra* note 16, at 33.

<sup>19</sup> Letter from Pedro Medrano Rojas to Special Rapporteurs Concerning Cholera in Haiti, ¶29 (Nov. 25, 2014).

<sup>20</sup> *Id.*, ¶26.

<sup>21</sup> <https://oios.un.org/page?slug=report>

undertaken regularly during the lifetime of the mission.”<sup>22</sup> The Secretary-General has welcomed this recommendation.<sup>23</sup> Environmental impact assessments may indeed be effective in preventing violations of the rights to water and sanitation, but conducting impact assessments through a human rights frame would allow for a more holistic, human-centered risk assessment. Human rights impact assessments may also inform different strategies and alternatives that empower rights-holders. Such assessments should be conducted in a transparent and participatory process, and should consider impacts on both primary rights, such as the right to water, and secondary rights, such as the right to an effective remedy. Once risks have been assessed, such assessments must be accompanied by concrete policies that address prevention and compliance, but also clarify the processes for remedying any rights violations that may occur. Accountability is important both to satisfy the right to a remedy, and to act as a deterrent for risky conduct.

**Thus, with respect to preventing development cooperation from violating human rights to water and sanitation, international actors should:**

- **Conduct human rights impact assessments that involve transparent consultations with rights-holders in both the design and implementation phases of any development operations;**
- **Ensure regular monitoring and compliance with policies put in place to prevent rights violations;**
- **Establish procedures and mechanisms for how to respond when there are violations. Such accountability frameworks must be fair, transparent and impartial and have the capacity to remedy victims when warranted.**

#### **B. Ensuring that Accountability Mechanisms Are Rights-Based**

Victims of human rights violations must have access to procedures through which they can submit complaints when international development actors infringe on their rights, and must be assured of the fair, transparent and impartial adjudication of their claims. The need for effective grievance mechanisms is especially acute in the development cooperation context, where jurisdictional limitations, immunities, and fraught legal systems in the rights-holders home country often foreclose remedies through the judicial system.

The cholera case study is a crucial example of the importance of establishing accountability mechanisms for the effective evaluation and resolution of rights-holders’ complaints. Following the Independent Panel’s report documenting UN contamination of the Meille Tributary, 5,000 victims of cholera filed claims seeking remedies in the form of 1) investments in water and sanitation infrastructure to combat the epidemic; 2)

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<sup>22</sup> Report of the High-Level Panel on Peace Operations, p. 89, U.N. Doc. A/70/95 (Jun. 17, 2015), *available at* [http://www.un.org/sg/pdf/HIPPO\\_Report\\_1\\_June\\_2015.pdf](http://www.un.org/sg/pdf/HIPPO_Report_1_June_2015.pdf)

<sup>23</sup> The Future of United Nations Peace Operations: Implementation of the Recommendations of the High-Level Independent Panel on Peace Operations, U.N. Doc. A/70/357, ¶129, *available at* [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2015/682](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/682).

just compensation; and 3) a public admission of responsibility.<sup>24</sup> They filed the claims with MINUSTAH’s claims unit, with copies sent to the Office of the Secretary-General, and petitioned for the establishment of a standing claims commission to hear the claims in a fair, impartial, and transparent matter.

Fifteen months later, in February 2013, the UN responded with a letter stating that the claims were “not receivable” because “consideration of these claims would necessarily include a review of political and policy matters.”<sup>25</sup> The claimants again wrote to the UN, explaining that this dismissal appeared to have no valid basis in law and that it conflicted with the UN’s obligations to provide an alternative settlement mechanism.<sup>26</sup> The claimants requested written clarification of the grounds for dismissal and a meeting to discuss the matter. Alternatively, they requested that the claims be referred to an independent mediator. Two months later, the UN refused both requests, and declined to furnish any further information.<sup>27</sup> The response reveals serious inadequacies and gaps in the implementation of the UN’s claims resolution framework, and highlights the broader need for the establishment of accountability mechanisms to protect the human right to clean water and sanitation in development cooperation.

The UN’s civil complaint process for “private law claims” includes claims for personal injury, illness or death attributable to it or its peace operations.<sup>28</sup> To address claims arising in the field, the UN has established local claims units within each peacekeeping mission,<sup>29</sup> but the existence of these units is largely unknown to the public in recipient countries. Moreover, victims largely lack information about how to contact the claims unit, what procedures to follow, the evidentiary burden that must be met, or how decisions on claims are made. The scant information that is made public is often not available in the local languages of the recipient countries. As such, individuals wishing to file claims face a void of information and must be able to dedicate a substantial amount of time and resources to navigating UN bureaucracy to even identify this mechanism. For individuals who are illiterate, lack legal representation, or otherwise face resource limitations—as is frequently the case for civilians in peacekeeping recipient countries—access to the claims process is, as a practical matter, largely unavailable.

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<sup>24</sup> Petition for Relief, Nov. 3, 2011, *available at* <http://ijdh.org/wordpress/wp-content/uploads/2011/11/englishpetitionREDACTED.pdf>

<sup>25</sup> Letter from Patricia O’Brien, U.N. Under-Secretary-General for Legal Affairs, to Brian Concannon, Director, Institute for Justice & Democracy in Haiti (Feb. 21, 2013), *available at* <http://www.ijdh.org/wp-content/uploads/2011/11/UN-Dismissal-2013-02-21.pdf>.

<sup>26</sup> Letter from Mario Joseph, et al., to Patricia O’Brien, U.N. Under-Secretary-General for Legal Affairs (May 7, 2014), *available at* <http://www.ijdh.org/wp-content/uploads/2013/05/Cholera-Victims-Response-to-UN-Final.pdf>.

<sup>27</sup> Letter from Patricia O’Brien, U.N. Under-Secretary-General for Legal Affairs, to Brian Concannon, Director, Institute for Justice & Democracy in Haiti (May 7, 2013), *available at* <http://www.ijdh.org/wp-content/uploads/2013/07/20130705164515.pdf>.

<sup>28</sup> U.N. Secretary-General, *Report of the Secretary-General, Administrative and Budgetary Aspects of Financing of United Nations Peacekeeping Operations*, ¶ 7 fn.2, U.N. Doc. A/51/389 (Sept. 20, 1996) [“the United Nations has, since the inception of peacekeeping operations, assumed its liability for damage caused by members of its forces in the performance of their duties.”].

<sup>29</sup> *Id.*, ¶¶ 20-25.

Even when individuals are able to file claims with the review boards, the claims process is plagued by a lack of impartiality and transparency—individuals can only access information about the status of their claims at the UN’s discretion, final decisions are generally not made public, and the claimants are not entitled to a full explanation of the UN’s decision on their claims.<sup>30</sup> As the Secretary-General has noted, “the investigation, processing and final adjudication of the claims [is placed] entirely in the hands of the Organization.”<sup>31</sup>

Where claims are not resolved within this internal system, they are supposed to be referred to a standing claims commission in accordance with SOFA provisions. However, the UN has never established such a commission in Haiti, or indeed in any country that has hosted a peacekeeping operation, despite signing 32 SOFAs promising to do so.<sup>32</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 the local claims units are inadequate on their own, and 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>33</sup> Today, two decades later, the UN has yet to implement the provision and establish a standing claims commission, leaving victims without access to a fair hearing and the UN subject to criticism that it operates above the law. Furthermore, the UN’s broad protection from national courts means that claimants literally have nowhere to turn to challenge an unsatisfactory UN decision or receive an independent adjudication of their claims. In essence, victims are at the mercy of the UN’s discretion when it comes to whether their human right to a remedy is respected, and are left without recourse when it is not.

The UN’s failure to implement a fair process for the evaluation and resolution of victims’ claims, not only in Haiti but around the world, only emphasizes the importance of accountability mechanisms. In addition to having measures in place to ensure that development cooperation programs respect human rights, including the human right to clean water and sanitation, these programs should also establish procedures through which affected individuals can directly submit complaints when their human rights have been violated. Information regarding the availability of such mechanisms and how to engage them should be made freely available to the public in all local languages, and all claims should be handled through a neutral third party with the ability to guarantee remedies.

**In order to ensure that people affected by development cooperation programmes or projects can effectively have complaints addressed, accountability mechanisms must be accessible, impartial, fair and transparent. In particular, they should:**

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<sup>30</sup> *Id.*

<sup>31</sup> Report of the Secretary-General, Administrative and Budgetary Aspects of the Financing of the United Nations Peacekeeping Operations: Financing of the United Nations Peacekeeping Operations, ¶ 20, U.N. Doc. A/51/903 (May 21, 1997) [hereinafter Financing Peacekeeping Report]

<sup>32</sup> YALE REPORT, *supra* note 10, at 27.

<sup>33</sup> Financing Peacekeeping Report, *supra* note 31.

- **Make publicly available, in the local languages of the recipient country, information about the existence and scope of the accountability mechanism, the rules and procedures governing it the burden of proof that must be met, and the standards of review complaints will receive;**
- **Have an office or ombudsman in the recipient country that can receive complaints directly if the accountability mechanism is located abroad, and/or take other measures to ensure accessibility, including making publicly available, in the local languages of the recipient country, the means of filing a complaint;**
- **Consist of adjudicators who are independent from the development actor against whom the complaints are addressed;**
- **Allow complainants to receive updates as to the status of their claim and any projected timelines for resolving the complaints;**
- **Have the power to order remedies in the event that a rights violation is found.**