

**JOINT SUBMISSION TO CATERINA DE ALBURQUERQUE,
U.N. SPECIAL RAPPORTEUR ON THE HUMAN RIGHT TO SAFE DRINKING
WATER AND SANITATION**

CHOLERA AS A GRAVE VIOLATION OF THE RIGHT TO WATER IN HAITI

Submitted February 28, 2014

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The John Marshall Law School International Human Rights Clinic

The John Marshall Law School International Human Rights Clinic (IHRC) is a nonprofit, nonpartisan law school legal clinic dedicated to promoting and protecting human rights in the United States and around the world. The IHRC offers students a background in human rights advocacy through the practical experience of working in international human rights cases and projects.

Institute for Justice & Democracy in Haiti

The Institute for Justice & Democracy in Haiti (IJDH) is a non-profit organization dedicated to advancing human rights in Haiti. IJDH works in close collaboration with the *Bureau des Avocats Internationaux*, Haiti's leading public interest law firm, and jointly represents victims of Haiti's ongoing cholera epidemic in their efforts to seek accountability and remedies from the United Nations (U.N.). IJDH regularly consults and provides stakeholder submissions to U.N. special procedures, treaty committees and the Universal Periodic Review concerning human rights in Haiti.

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SUBMISSION TO THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS TO WATER & SANITATION: CHOLERA AS A GRAVE VIOLATION OF THE RIGHT TO WATER IN HAITI

I. Introduction

This report on cholera in Haiti provides a case study of strategies used and difficulties faced by victims seeking accountability and remedies for right to water violations perpetrated by non-State actors. It demonstrates that barriers to obtaining adequate remedies for such violations are amplified by underlying structural causes and power relations that limit access to judicial accountability mechanisms and complicate non-judicial accountability relationships.

Cholera broke out in Haiti in October 2010 for the first time in the country's recorded history, and has since become the largest single country epidemic in the world.

¹ It presents a significant barrier to Haitians' access to fundamental human rights, including the rights to life,² health,³ clean water and sanitation,⁴ and a healthy environment.⁵ Cholera has poisoned rivers, wells and other water sources, and constitutes one of the gravest violations of the human right to water in Haiti. The epidemic has killed over 8,500 people and infected over 700,000 since 2010. The United Nations (U.N.) warns that another 2,000 people may die of cholera in 2014.

Extensive evidence shows that the U.N. introduced the deadly strain of *Vibrio cholerae* as a result of reckless sanitation management on a peacekeeping base where untreated human waste from soldiers deployed from a cholera-endemic country leaked into Haiti's principal river system. Genetic testing of the strain in Haiti determined it to be a "perfect match" to the strain active in the troop-contributing country from which the peacekeepers were deployed.⁶ In 2012, U.N. Special Envoy to Haiti and former U.S. president Bill Clinton confirmed that U.N. peacekeepers were the "proximate cause" of the cholera outbreak,⁷ and the U.N.'s own panel of experts appointed to investigate the cause of the outbreak publicly concluded that the U.N. base was the "most likely source."⁸

Yet the U.N., which has the legal and moral responsibility to remedy the situation, has consistently denied responsibility, refused compensation to victims, and failed to invest adequate resources to combat the epidemic. This response stands in stark contrast with the human rights principles espoused by the Organization, and with a growing number of U.N. human rights representatives who are calling on the U.N. to take responsibility. In October 2013, the U.N. High Commissioner for Human Rights publicly expressed her support for compensation for the victims.⁹ In February 2014, the U.N. Independent Expert on the Situation of Human Rights in Haiti wrote in his report to the Human Rights Council that "diplomatic difficulties must be overcome to secure an end to the epidemic in the shortest possible time and provide full compensation for the damage suffered."¹⁰

II. Violations of the Rights to Water and Sanitation in Haiti

A. Underlying Violations of the Right to Water and Sanitation

Chronic and systemic violations of the right to water in Haiti have made the country vulnerable to water-borne disease outbreaks, and multiplied the impact of such outbreaks

on enjoyment of human rights. Haiti is one of the most water-insecure nations in the world, and violations of the rights to clean water and sanitation present one of the greatest threats to life and health.¹¹ The lack of access to clean water and sanitation in Haiti is astounding. The World Health Organization (WHO)-U.N. Children's Fund Joint Monitoring Program identified that in 2010, only 69 percent of the Haitian population had regularized access to an improved water source that "by nature of its construction or through active intervention, is protected from outside contamination, in particular from contamination with fecal matter."¹² World Bank reports concluded that "access to water supplies in urban areas is intermittent."¹³ Haiti's rural communities suffer to an even greater extent, as access to water of any quality is extremely constrained, especially during the dry seasons.¹⁴ Prior to 2009, the country's water and sanitation sectors were ineffective and fragmented, lacking sufficient operational funds and a single regulatory authority.¹⁵ The multiple governmental institutions that did oversee these sectors could not ensure quality services to the Haitian population.¹⁶ Even after reforms were implemented in 2009, the water and sanitation sectors still lacked critical funding.¹⁷

Access to sanitation is another major concern for the people of Haiti. Poor sanitary conditions exacerbate the spread of disease and illness in the country. Only 17 percent of the population has access to improved sanitation that "hygienically separates human excreta from human contact."¹⁸ Less than 30 percent of the population has access to basic sewage infrastructure. In the metropolitan area of Port-au-Prince, just over half of the waste-water is collected.¹⁹ These sanitation issues contribute to the contamination of water supplies and the spread of illness throughout Haiti.

Another key factor in Haiti's vulnerability to disease is the lack of an effective public health sector in Haiti. The health system in Haiti is coordinated and supervised by a single authority, the Haitian Ministry of Health (Ministère de la Santé Publique et de la Population, MSPP).²⁰ Because of financial constraints and lack of local capacity to coordinate effective health services, the MSPP falls woefully short of guaranteeing that all Haitians will receive effective medical assistance for the treatment of cholera.²¹

While the Haitian government is not fulfilling its duties to respect, protect, and fulfill the rights to water and sanitation, its inability to meet water and sanitation needs is not the Haitian government's failure alone. Other nations and international financial institutions have compounded the financial constraints on Haitian government agencies. Substantial foreign debt service cripples the government's ability to improve and expand the subpar water infrastructure. As of 2009, Haiti spent nearly \$50 million dollars annually attempting to service its debt.²² For many years, as a direct consequence of its debt, Haiti was unable to secure loans or receive funds for infrastructure reform projects from international financial institutions such as the International Monetary Fund and the Inter-American Development Bank. Nor did Haiti qualify for the World Bank's Heavily Indebted Poor Countries (HIPC) debt relief initiative. As a result, the Haitian government has been forced to spend nearly 13 percent of its GDP on debt payments.²³

The January 12, 2010 earthquake, which caused over 200,000 deaths and displaced over a million and a half people,²⁴ further weakened government infrastructure and left poor Haitians even more vulnerable to water and sanitation violations. People were forced to live in overcrowded camps or makeshift settlements, or were simply left without any shelter at all. At the time of submission, over 146,000 people remained in formal camps

four years after the earthquake, and many more continue to live in informal camps or settlements lacking adequate water and sanitation access.²⁵ The earthquake also critically damaged the water, sanitation, and health infrastructure, increasing the country's vulnerability to waterborne disease.²⁶ Much of what rudimentary underground piping that existed was damaged or destroyed by the earthquake.²⁷

B. Introduction of Cholera as a Violation of the Right to Water

1. Cholera and its Relation to Water Supply

The U.N.'s introduction of cholera represents one of the gravest violations of the right to water in Haiti. By the end of 2013, cholera had killed over 8,500 people and sickened over 699,000 others (about 7% of the population).²⁸ The U.N. warns that the death toll in 2014 could be as high as 2000.²⁹ The epidemic has now spread to the Dominican Republic, Cuba and Mexico, with reported cases also in the United States.³⁰

Cholera is a bacterial infection that causes acute watery diarrhea, which quickly leads to dehydration.³¹ If left untreated, it can cause death within a matter of hours.³² Cholera is transmitted by the *Vibrio cholera* bacteria, and its transmission is closely linked to inadequate environmental management.³³ The most common cause of infection is the ingestion of water contaminated with feces containing the bacteria.³⁴ The WHO warns that areas at the greatest risk of cholera infections are those located in urban slums, refugee camps, and disaster-affected areas where clean water and basic sanitation are inadequate.³⁵ While Haiti's underlying violations of the right to water facilitated the spread of cholera and multiplied its impact, this vulnerability was well-known to the U.N. and heightened its duty to exercise care to prevent the introduction of water-borne disease into that fragile environment.

2. MINUSTAH's Faulty Sanitation and Waste Disposal Contaminated Haiti's Water Sources

In April 2004, the U.N. Security Council passed a resolution to establish the U.N. Stabilization Mission in Haiti (MINUSTAH), which was charged with promoting stability, rule of law and human rights.³⁶ MINUSTAH has a number of bases in Haiti. In particular, the Mirebalais MINUSTAH base in Meille, located immediately adjacent to a tributary that flows into the Artibonite River,³⁷ maintained highly inadequate sanitation and waste disposal systems. As documented by the U.N.'s own panel of experts, independent epidemiologists and other investigations, the base maintained cracked sewage piping that risked cross-contamination, and several pipes within the base discharged directly into the river.³⁸ The septic facilities overflowed during rainfall.³⁹ The base's septic tanks were emptied into disposal trucks and driven to an open, unprotected disposal pit, located uphill about 100 feet from the southwest branch of the Meille Tributary System.⁴⁰ The area of the disposal site was also susceptible to flooding and overflow during rainfall.⁴¹ In fact, local residents frequently reported putrid odors near the base and observed that during heavy rain, waste overflowed from the base toward their homes. It is estimated that water from the disposal pit could flow into the Artibonite River in as little as two hours.⁴² The conditions on the base and at the disposal site

created highly foreseeable risks of contamination of the Artibonite River.

3. Arrival of MINUSTAH Soldiers and First Reported Cases of Cholera

Several contingents of Nepalese soldiers were deployed to Haiti in October 2010 and were stationed on the Mirebalais MINUSTAH base.⁴³ Cholera is endemic in Nepal, and the country experienced a surge in cases in the months preceding the soldiers' deployment. Despite the U.N.'s knowledge that the soldiers had spent time in areas of Nepal most affected by the surge, the soldiers were dispatched to Haiti without being tested or screened for the presence of the cholera bacterium.⁴⁴

On October 18, two days after the last group of Nepalese soldiers arrived in Haiti, the first cases of acute watery diarrhea were reported in and near Meille, the location of the MINUSTAH base.⁴⁵ In the first week of the outbreak, MSPP recorded over 1,000 cases of cholera-like illness and 135 associated deaths. On October 21, the U.S. Centers for Disease Control and Prevention (CDC) confirmed that the acute watery diarrhea ravaging the Haitian countryside was caused by cholera.⁴⁶ Prior to these events, there had not been a single recorded case of cholera in Haiti in the country's history.⁴⁷ An epidemiological study of the Mirebalais hospital ward found that many patients were drawing water from the Artibonite river.⁴⁸ Tests of the river system found the presence of the cholera bacterium. Within one month of the outbreak, cholera cases were reported in all ten of Haiti's geographical departments, including Port-au-Prince and the surrounding area.⁴⁹

4. Additional Evidence of U.N. Violation

The CDC, Harvard University, the International Vaccine Institute, the Emerging Pathogens Institute at the University of Florida, the Translational Genomics Research Institute in Arizona, and several other scientific groups have studied the strain of cholera found in Haiti in an effort to determine its origin. Examinations of the bacteriological characteristics and genetic structure of the Haiti strain, using some of the most advanced genetic mapping currently available, have determined that the Haitian strain is near identical to the strain active in Nepal.⁵⁰ In light of this research, the UN-appointed panel of experts tasked with studying the source of the cholera concluded that "the preponderance of the evidence and the weight of the circumstantial evidence does lead to the conclusion that personnel associated with the Mirebalais MINUSTAH facility were the most likely source of introduction of cholera into Haiti."⁵¹

III. Structural Causes of the Violation and Related Power Relationships

A. Structural Vulnerability

The weak capacity of the Haitian government to fulfill human rights of Haitians in general has created a structural vulnerability that exposes Haitians to further rights violations by external actors. The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from contamination of water supplies.⁵² The primary duty to realize the rights to water and sanitation rests with the Haitian state,⁵³ and includes the duty to prevent violations by

third parties. For example, where third parties operate the water systems in certain countries, the U.N. General Comment requires governments to ensure that third parties distribute safe and accessible drinking water without discrimination.⁵⁴ Yet the Haitian government's lack of resources and personnel severely limits its ability to oversee the activities of non-state actors and to prevent and remedy violations. The natural disasters Haiti has experienced over the last decade, including severe floods, hurricanes and the January 12, 2010 earthquake, have further diminished this capacity.

The chronic and systematic violations of the right to water and sanitation that predated the U.N.'s introduction of cholera also limit the ability of individuals to enforce their rights and protect themselves from further rights violations. Like other violations of the right to water, cholera disproportionately impacts the most vulnerable segments of society, including Haiti's poor majority, women, children, rural communities that lack access to water infrastructure, and communities displaced following the earthquake. Haiti's poor and those living in rural communities, who do not have access to improved water sources, have long relied on raw water from rivers and streams for drinking, bathing and irrigation, and are therefore the hardest hit by cholera.⁵⁵ In the most recent national census, 64 percent of the Haitian population reported relying on raw, untreated water as their primary water source, and 32 percent depended specifically on river water as their primary source.⁵⁶ Cholera initially contaminated the Artibonite River, which is the primary source of water for tens of thousands who rely on it for drinking, bathing, washing clothes, and irrigation.⁵⁷ Haitians now must risk being infected and even killed by new deadly bacteria. Cholera also impacts the ability of Haiti's poor to access other human rights, including the rights to health, education and an adequate standard of living.⁵⁸ For example, the death of breadwinners severely impacts the ability of families to send their children to school, in many cases condemning them to generational poverty.⁵⁹

B. Power Relationships

The ability to protect against violations by external parties and non-state actors is further compromised by the relative power differentials between the U.N. and other international actors in Haiti and the Haitian Government. The international community, including the U.N. and MINUSTAH, wields significant power in Haiti. At the time of the cholera outbreak in 2010 MINUSTAH's budget was \$853,827,400,⁶⁰ equivalent to approximately one-third of the Haitian government's total annual budget for all government services for the entire country.⁶¹ The Haitian government is also heavily dependent on foreign aid, much of which is channeled through the U.N. In 2010, international aid comprised 66 percent of the Haitian budget,⁶² which in turn represented only one percent of the total aid distributed in Haiti by foreign governments and non-state actors bypassing the government. Haiti's dependence on foreign aid has contributed to the government's reluctance to assert the rights of its people vis-à-vis the U.N.

MINUSTAH and other non-state actors also lack a direct accountability relationship with the Haitian people, which complicates individuals' ability to secure non-judicial accountability. The people lack agency in setting the terms of MINUSTAH's presence and operations in Haiti, and have no formal means to secure accountability, such as by voting against its continued presence. This is contributing to increasing perceptions of the Mission as an occupying force.⁶³ As discussed in more detail below, MINUSTAH's role

as a non-state international actor also drastically reduces judicial options for obtaining remedies, due to widespread lack of jurisdiction in domestic and international fora, including those that exist to hear and remedy human rights violations.

IV. Lack of Meaningful Accountability Mechanisms

A. All Persons Have the Right to an Effective Remedy

Compounding the cholera crisis is the fact that victims of the outbreak have had no means for redress. The right to an effective remedy has been widely recognized as fundamental to the enjoyment of human rights, including the right to water. The Universal Declaration of Human Rights (UDHR), recognizes that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.”⁶⁴ The Covenant on Economic, Social, and Cultural Rights (CESCR) General Comment No. 9 also provides that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁶⁵ According to CESCR General Comment No. 15, any persons or groups denied their basic right to water should have access to legal or other appropriate remedies.⁶⁶

The Basic Principles and Guidelines on the Right to a Remedy explain that victims of gross violations of international human rights law should “be provided with full and effective reparation...which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”⁶⁷ As U.N. Independent Expert on Human Rights in Haiti, Gustavo Gallón wrote in his recent report, “the U.N. should be the first to honor these Principles” in the cholera context.⁶⁸

B. Duties of International and Non-State Actors to Respect the Right to Water

The right to a remedy extends beyond situations where the state is the perpetrator. The international community has played an active role in Haiti, and with that role comes an obligation to respect human rights and prevent human rights violations.⁶⁹ As noted by the Special Rapporteur, “[d]evelopment cooperation and assistance must be designed and implemented in line with human rights standards and principles, including the rights to water and sanitation..., ensuring that there are adequate and effective measures in place to identify and address any negative impacts on human rights.”⁷⁰

The duty to respect the right to water extends to the member states that make up the U.N., and the U.N. and MINUSTAH as non-state actors with unique juridical personality. As the CESCR General Comment No. 15 makes clear, states have to “respect the enjoyment of the right [to water] in other countries,” including when acting as members of international organizations.⁷¹ It is imperative that “[i]nternational assistance should be provided in a manner that is consistent with the Covenant and other human rights standards.”⁷²

Moreover, as an international organization, the UN has an international legal personality and distinct duties to respect human rights in all its operations.⁷³ The International Court

of Justice (ICJ) has recognized that “[i]nternational organizations are subjects of international law, and as such are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.”⁷⁴ The U.N. Charter is the U.N.’s constituent document: Article 1 identifies one of the purposes of the U.N. to be the promotion of human rights for all; Article 55 states that “the United Nations shall promote... (c) universal respect for, and observance of, human rights and fundamental freedoms for all.”⁷⁵ Such promotion of human rights as one of its core functions “entails a duty on the part of the U.N. and its agents to respect the international human rights law that it promotes.”⁷⁶

The Draft Articles on the Responsibility of International Organizations further provide that international organizations are responsible for the internationally wrongful acts they commit.⁷⁷ A wrongful act can be committed through action or omission if it is attributable to the international organization and it constitutes a breach of the organization’s international obligation.⁷⁸ The U.N. has recognized that having an international legal personality renders it liable for the acts of its agents, and it is well established that acts of U.N. peacekeepers are attributable to the U.N.⁷⁹ The United Nations Legal Counsel reaffirmed the nature of peacekeepers as agents of the U.N. and their actions as attributable to the U.N., by stating that “an act of a peacekeeping force is, in principle, imputable to the Organization, and if committed in violation of an international obligation entails the international responsibility of the Organization and its liability in compensation.”⁸⁰

MINUSTAH also has clear obligations to respect human rights. S.C. Resolution 1542 established MINUSTAH’s three mission goals: to ensure a secure and stable environment, to support the conditions for democratic government and institutional development, and to support the promotion and development of human rights.⁸¹ Following the 2010 earthquake, the Security Council passed resolutions 1908 and 1927, reaffirming the necessity of promoting and protecting Haitians’ human rights. The U.N. Secretary-General recognizes that human rights violations are a serious concern for MINUSTAH in Haiti.⁸² Under Article III of Resolution 1542, MINUSTAH is obliged to support Haitian human rights institutions and groups in their efforts to promote and protect human rights, in order to ensure individual accountability for human rights abuses and redress for victims.⁸³ Furthermore, MINUSTAH is to assist in the investigation of human rights violations and violations of international humanitarian law, in collaboration with the United Nations Commissioner for Human Rights, to put an end to impunity.⁸⁴

C. The U.N.’s Mechanisms for Obtaining Remedies are Inadequate

In accordance with the organizations’ duties to respect human rights, the U.N. has well-established commitments documented in international treaties, U.N. General Assembly resolutions, official UN statements, and elsewhere to provide justice to people harmed by negligence in the course of its operations. The Convention on the Privileges and Immunities of the United Nations (CPIUN), which has been ratified by the majority of U.N. member states, mandates that the U.N. “shall provide for appropriate modes of settlement” of private law claims against it.⁸⁵ The U.N.’s legal office has affirmed that,

“[a]s a matter of international law, it is clear that the Organization can incur liabilities of a private law nature and is obligated to pay in regard to such liabilities.”⁸⁶

Moreover, the U.N. recognizes its responsibility to “assum[e] its liability for damage caused by members of its forces in its performances of their duties” by creating accountability mechanisms to address such wrongs.⁸⁷ In an effort to improve accountability⁸⁸ in U.N. peacekeeping missions, the Secretary General drafted a standard status of forces agreement (SOFA),⁸⁹ which among other things establishes a legal framework for victims to seek redress from harms committed in the course of peacekeeping.⁹⁰ The U.N. has entered into 32 SOFAs since 1990, all of which require the establishment of a standing claims commission.⁹¹

The SOFA signed by the U.N. and the Haitian government provides that harms arising out of MINUSTAH’s operations in Haiti, which cannot be resolved informally, are to be heard and settled through a standing claims commission.⁹²

[A]ny dispute or claim of a private law character to which the United Nations peace-keeping operation or any member thereof is a party and over which the courts of the [host country/territory] do not have jurisdiction shall be settled by a standing claims commission to be established for that purpose.⁹³

In practice, however, the U.N. has failed to honor this obligation. It has never established a standing claims commission or other claims settlement mechanism in Haiti. In fact, the U.N. has never established a standing claims commission in any country that has hosted a peacekeeping operation, despite signing 32 agreements promising to do so.⁹⁴

The creation of a standing claims commission is essential to the proper and accountable conduct of a U.N. peacekeeping mission, as it provides a balance to the broad grant of immunity enjoyed by U.N. personnel. It creates a forum for civilians and opens up the possibility of redress for harms stemming from U.N. operations. The U.N.’s failure to comply with this affirmative duty “violates the very principles of accountability and respect for law that it promotes worldwide.”⁹⁵

V. Victims’ Efforts to Enforce the Right to Water and Obtain Remedies

A. Victims’ Efforts to Seek Remedies Through the U.N.’s Internal Mechanisms

Rights-holders in Haiti have employed a range of judicial and non-judicial strategies to enforce their rights and obtain remedies. In the late summer of 2011, as the first anniversary of the outbreak approached without an appropriate response from the U.N., the *Bureau des Avocats Internationaux* (BAI), Haiti’s largest public interest law firm, began working with victims of cholera in rural Haiti. The BAI connected with victims who had been sickened by cholera or lost a loved one to the disease through community grassroots leaders, and worked with them to prepare and file formal legal claims in accordance with the U.N.’s obligations to provide appropriate modes of settlement under the CPIUN.

In November 2011, the BAI and the Institute for Justice & Democracy in Haiti (IJDH) submitted 5,000 claims to MINUSTAH in Haiti and the U.N. headquarters in New York. The victims petitioned for remedies in the form of: 1) clean water and sanitation infrastructure; 2) fair compensation for their losses; and 3) a public acceptance of

responsibility for the cholera outbreak. Additionally, they requested that the UN establish a standing claims commission as required by the SOFA. After more than a year of silence, the U.N. rejected the victims' petition in a terse letter that stated the claims "would necessarily include a review of political and policy matters [and were a]ccordingly . . . not receivable."⁹⁶ The victims wrote to the U.N. again, explaining that the dismissal appeared to have no valid basis in law and that it conflicted with the obligations described above. They simultaneously requested further clarification of the dismissal as well as mediation or an in-person meeting with U.N. officials. The U.N. denied those requests, repeating the assertion from its previous letter that the claims were not receivable.

International law experts have widely criticized the U.N.'s dismissal of the claims, finding that it violated the U.N.'s legal obligations. In August 2013, Yale Law School and School of Public Health, in partnership with *L'Association Haitienne de Droit de l'Environnement*, a nonprofit environmental law group in Haiti, released a definitive report on the U.N.'s role in the cholera outbreak. They found that "the UN's ongoing unwillingness to hold itself accountable to victims violates its legal obligations under international law."⁹⁷ Media outlets around the world followed suit, condemning the UN in front-page stories and editorials. The *Washington Post* Editorial Board stressed that "by refusing to acknowledge responsibility, the United Nations jeopardizes its standing and moral authority in Haiti and in other countries where its personnel are deployed,"⁹⁸ and *The New York Times* Editorial Board urged the Organization to "acknowledge responsibility, apologize to Haitians and give the victims the means to file claims against it for the harm they say has been done them."⁹⁹

The U.N.'s failure to adhere to its obligations and provide remedies highlights the deeply problematic nature of a system that relies on U.N. personnel as the sole arbitrators of disputes where the U.N. is also the alleged perpetrator. Claimants cannot be guaranteed a fair adjudication process where one of the parties to the dispute is the decision-maker.¹⁰⁰ This is compounded by the fact that decisions are not made public, which results in "very little information available about the kind of claims they deliberate."¹⁰¹

B. Victim's Efforts to Litigate Violations of the Right to Water in Court

Having made every effort to resolve the cholera victims' claims outside of court, in October 2013, BAI and IJDH filed a groundbreaking class action lawsuit against the U.N. and MINUSTAH in federal court in the United States.¹⁰² The suit was also filed against UN Secretary-General Ban Ki-moon and Edmond Mulet, who served as Head of MINUSTAH at the time of the outbreak. The lawsuit alleges gross negligence and wrongful death in connection with the defendants' contamination of the Meille tributary with the cholera bacteria, obstruction of preliminary investigations into the source of the outbreak, and failure to provide the necessary resources to combat the resulting epidemic. The lawsuit aims to secure the remedies the victims requested in their November 2011 petition to the UN claims office. The UN's failure to provide those remedies on its own volition and its subsequent refusal to receive the victims' claims are direct violations of the right to a remedy for those who have been harmed in the course of its operations.

At the time of submission, the lawsuit was actively pending, though the Defendants have refused to appear by court deadlines.

C. Non-Judicial Efforts to Seek Accountability

In addition to the judicial efforts, an informal network of stakeholders in Haiti and other countries, including cholera victims, lawyers, grassroots activists, filmmakers, journalists, academics, scientists and healthcare professionals, is mounting a growing international advocacy campaign to raise public awareness, build solidarity, and influence decision-makers to respond adequately to the ongoing cholera crisis.

MINUSTAH's introduction of cholera to Haiti occurred at a time of growing popular discontent with the Mission for its perceived lack of accountability to the population and immunity from legal prosecution for acts of sexual violence, excessive use of force, and other misconduct. Groups that had been active in organizing for MINUSTAH accountability understood that making noise (*fè bri* in Haitian Creole) would be critical to persuading the UN to respond justly to the cholera epidemic. These groups initially took the lead in organizing peaceful demonstrations on cholera and also mobilized community education campaigns on cholera prevention. Victims, victims' advocates, and civil society groups have continued to put pressure on both the Haitian government and the U.N. by staging demonstrations, educating the media, and lobbying government officials.

Haitian civil society has also partnered with solidarity groups abroad to build an international movement for justice. Early efforts to organize on cholera were centralized in Haiti, but the Haitian diaspora has also mobilized on the issue in influential ways, including staging a demonstration outside U.N. headquarters in New York. The diaspora also plays an important role in advocacy with the Haitian and U.S. governments, by lobbying district officials and cabinet ministers in Haiti to ensure that victims have access to healthcare and preparing sign-on letters to urge United States leadership on the issue.

Moreover, Haiti solidarity groups and human rights organizations globally have employed creative social media strategies, petitions, letter writing campaigns, and engagement with influential decision-makers such as key U.N. member states and members of the U.S. Congress to secure an advocate for a response. In November 2012, 48 human rights groups signed a letter asking the U.N. Secretary-General to respond to victims' claims, and 30,000 have people signed an Avaaz.org petition that calls on the U.N. to eliminate cholera in Haiti. Four hundred thousand people viewed and shared *Baseball in the Time of Cholera*, a documentary short about the human impacts of cholera on one family in Haiti. The groundswell of public outrage has reached the halls of the United States' Congress, where over 100 representatives have signed on to letters highlighting the U.N.'s responsibility and its obligation to respond more justly.

D. Progress Towards Securing Remedies

The judicial and non-judicial efforts to secure remedies are slowly but steadily pushing the UN toward a more just response. In December 2012, the UN recognized its obligation to eliminate cholera in Haiti by announcing its support for the *Initiative for the Elimination of Cholera in the Island of Hispaniola*. Funding for the Initiative has been

slow, however, with the UN pledging only \$23.5 million – a mere 1% of the total needed – and other donors have so far failed to mobilize the remaining funds.¹⁰³ In October 2013, the UN announced the establishment of a joint commission to address the problem more holistically, though the commission's mandate and potential impact remain unclear. Still, these are signs that momentum for a just outcome is moving in the right direction. If fully implemented, the Initiative to eliminate cholera through improved access to water and sanitation would revolutionize the enjoyment of these basic human rights, and save an estimated 4,000 lives per year that are currently lost to waterborne diseases including cholera. It would also signal tremendous progress towards fulfilling the right to a remedy and enabling Haitians to enforce their rights to water and sanitation. In the long-term, this would reduce the structural inequality that results in Haiti's outsized vulnerability to grave violations of the right to water by non-state actors.

VI. Conclusion

As evidenced by this report and its supporting documentation, Haiti's ongoing cholera epidemic presents a tremendous barrier to Haitians' access and enjoyment of their fundamental human rights to life, health, clean water and sanitation, and a healthy environment. Since the introduction of cholera to Haiti in 2010, victims and other stakeholders have worked tirelessly to seek accountability and remedies by employing a combination of judicial and non-judicial strategies. As the Haiti cholera case demonstrates, however, structural inequalities and imbalanced power relationships contribute to both the underlying vulnerability to violations by non-state actors, and to the difficulties faced by states and individuals seeking accountability. The hurdles faced by Haitian cholera victims in their efforts to enforce their rights and obtain remedies highlight a serious gap in the availability of accountability mechanisms when non-state actors are the perpetrators of rights violations. Improving accountability frameworks for non-state actors is thus essential to strengthening protections of the right to water and sanitation and ensuring that victims are able to secure remedies for such violations.

¹ Deborah Jenson, Victoria Szabo & the Duke FHI Haiti Humanities Laboratory Student Research Team, *Cholera in Haiti and Other Caribbean Regions, 19th Century*, 17 *Emerging Infectious Disease* 2030 (2011) (finding that cholera was on the rise in Haiti and other Caribbean regions in 2010).

² *International Covenant on Economic, Social, and Cultural Rights* art. 12, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force 3 January 1976).

³ H.R.C. Res. 15/L14, Human rights and access to safe drinking water and sanitation, U.N. Doc A/HRC/15/L.14 (Sept. 30, 2010) (recognizing that the right is legally binding).

⁴ U.N. GAOR, 68th plen. mtg. at ¶ 1, ("...all individuals are entitled to live in an environment adequate for their health and well-being"), ¶ 4 ("...appropriate organs of the United Nations, within their respective competences, should pursue active efforts in seeking to promote a better and healthier environment"), U.N. Doc. A/RES/45/94 (Dec. 14, 1990).

⁵ Daniele Lantagne, G. Balakrish Nair, Claudio F. Lanata & Alejandro Cravioto, *The Cholera Epidemic in Haiti: Where and How Did It Begin?* *Current Topics in Microbiology and Immunology* (2013), at § 2.2 [hereinafter *Where and How Did It Begin?*].

⁶ Clinton: *U.N. Soldier Brought Cholera to Haiti*, USA TODAY, Mar. 7, 2011, <http://www.usatoday.com/news/world/story/2012-03-07/haiti-cholera/53402748/1>.

⁷ Mark Doyle, *Haiti Cholera Epidemic 'Most Likely' Started at UN Camp – Top Scientist*, BBC NEWS, Oct. 22, 2012, <http://www.bbc.co.uk/news/world-latin-america-20024400>.

⁸ Sophie Brown, *Rights Group Suing U.N. for Haiti's Cholera Epidemic*, TIME Mag. (Oct. 9, 2013),

<http://world.time.com/2013/10/09/rights-group-suing-u-n-for-haitis-cholera-epidemic/>.

¹⁰ U.N. Expert on Human Rights, *Rapport de l'Expert indépendant sur la situation des droits de l'homme en Haïti*, ¶ 77 U.N. Doc. A/HRC/25/71 (Feb. 7, 2014) (“les difficultés diplomatiques qui entourent cette question doivent être surmontées pour assurer à la population haïtienne l’arrêt de l’épidémie dans les plus brefs délais ainsi que la pleine réparation des dommages subis.”) (unofficial translation) [hereinafter *Rapport de l'Expert*].

¹¹ Center for Human Rights and Global Justice at NYU School of Law, Partners In Health, Zanmi Lasante, Robert F. Kennedy Memorial Center for Human Rights, *Wòch nan Soley: The Denial of the Right to Water in Haiti*, Health and Human Rights, Vol. 10 No. 2 (2008) [hereinafter *Wòch nan Soley*].

¹² WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, *A Snapshot of Drinking Water and Sanitation in Africa 1* (2008).

¹³ World Bank, *Project Appraisal Document on a Proposed Grant In the Amount of SDR 3.4 Million (US\$5 Million Equivalent) to the Republic of Haiti for a Rural Water and Sanitation Project* 28 (Dec. 21, 2006), available at http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rendered/PDF/38080.pdf

¹⁴ *Id.*

¹⁵ Yale Law School Transnational Development Clinic, Global Health Justice Partnership of the Yale Law School and the Yale School of Public Health & L’Association Haïtienne de Droit de l’Environnement, *Peacekeeping without Accountability: The United Nations’ Responsibility for the Haitian Cholera Epidemic 12-3* (2013) [hereinafter *Peacekeeping without Accountability*].

¹⁶ *Id.* at 13.

¹⁷ *Id.* at 13.

¹⁸ 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; *Wòch nan Soley*, *supra* note 11, at 15, 24.

¹⁹ Universal Periodic Review: Report on Right to Food, Water and Sanitation, Republic of Haiti, 12th Session of the Working Group on the UPR, Human Rights Council, Oct. 3-11, 2011, at 6 [hereinafter *UPR*].

²⁰ *Id.* at 13.

²¹ *Id.* at 13.

²² See 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>.

²³ See Dan Beeton, *What the World Bank and IDB Owe Haiti*, Global Policy Forum (July 25, 2006), <http://www.globalpolicy.org/component/content/article/97/32135.html>.

²⁴ Disasters Emergency Committee, *Haiti Earthquake Facts and Figures*, <http://www.dec.org.uk/haiti-earthquake-facts-and-figures> (last visited Feb. 27, 2014).

²⁵ Amnesty International, *Thousands More at Risk of Forced Eviction* (Feb. 4, 2014), <http://www.amnesty.org/en/library/asset/AMR36/005/2014/en/95859795-c2e2-4e27-8e84-609ea035c9d1/amr360052014en.pdf>.

²⁶ World Health Organization, *Cholera* (Feb. 2014), <http://www.who.int/mediacentre/factsheets/fs107/en/> [hereinafter *WHO Cholera*].

²⁷ Richard Knox, *Water in the Time of Cholera; Haiti’s Most Urgent Health Problem*, NPR (Apr. 12, 2012), <http://www.npr.org/blogs/health/2012/04/13/150302830/water-in-the-time-of-cholera-haitis-most-urgent-health-problem>.

²⁸ MSPP, *Rapport journalier de 09 février, 2014*, available at http://mspp.gouv.ht/site/downloads/Rapport%20Web_09.02_Avec_Courbes_Departementales.pdf

²⁹ UN Warns of Surge in Haiti Cholera Deaths, ZeeNews (Jan. 22, 2014, 12:08 PM), http://zeenews.india.com/news/world/un-warns-of-surge-in-haiti-cholera-deaths_905908.html#.Ut_IBcL_SAR.twitter.

³⁰ Joshua Keating, *Cholera Continues to Spread In & Outside of Haiti*, Slate (Dec. 9, 2013), http://www.slate.com/blogs/the_world_/2013/12/09/haiti_s_u_n_imported_cholera_has_infected_thousand_s_of_people_in_at_least.html.

³¹ WHO Cholera, *supra* note 26.

³² *Id.*

³³ *Id.*

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- ³⁴ *Id.*
- ³⁵ *Id.*
- ³⁶ *Peacekeeping without Accountability*, *supra* note 15, at 8.
- ³⁷ Renaud Piarroux, Robert Barraïs, Benoît Faucher, Rachel Haus, Martine Piarraux, Jean Gaudart, Roc Magloire & Didier Raoult, *Understanding the Cholera Epidemic, Haiti*, 17 *Emerging Infectious Diseases* Vol. 17, No. 7, pg. 1162 (2011), <http://wwwnc.cdc.gov/eid/article/17/7/pdfs/11-0059.pdf> [hereinafter *Understanding the Cholera Epidemic*].
- ³⁸ *Id.*
- ³⁹ *Id.*
- ⁴⁰ *Where and How Did It Begin?*, *supra* note 6, at § 2.2.
- ⁴¹ *Id.*
- ⁴² *Id.*
- ⁴³ *Understanding the Cholera Epidemic*, *supra* note 38, at 1162.
- ⁴⁴ *Id.* at 1165.
- ⁴⁵ *Id.* at 1162.
- ⁴⁶ Centers for Disease Control and Prevention, *Cholera Confirmed in Haiti, October 21, 2010*, <http://www.cdc.gov/haiticholera/situation/> (last visited Feb. 28, 2014).
- ⁴⁷ *Where and How Did It Begin?*, *supra* note 6, at § 1.3.
- ⁴⁸ *Id.*
- ⁴⁹ *Id.*
- ⁵⁰ *Id.* at § 4.
- ⁵¹ *Id.* at § 5.
- ⁵² General Comment No. 15 (2002): The Right to Water (arts 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 29th sess., Agenda Item 3, UN Doc E/C.12/2002/11 (Jan. 20, 2003) ¶10 [hereinafter *General Comment No. 15*].
- ⁵³ See e.g., Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Human Right Obligations Related to Access to Safe Drinking Water and Sanitation*, ¶ 19, U.N. Doc. A/65/254 (Aug. 6, 2010) (“While States have the primary legal obligation for the realization of human rights domestically, all States have responsibilities to create an enabling environment for human rights realization.”) [hereinafter *Special Rapporteur on the Human Right to Safe Drinking Water*].
- ⁵⁴ *Id.*
- ⁵⁵ See S. Guy, *Haiti: The Struggle for Water* (2004).
<http://www.pbs.org/frontlineworld/fellows/haiti/indexa.html>
- ⁵⁶ Ministry of Public Health and Population, National Directorate for Water Supply and Sanitation, *National Plan for the Elimination of Cholera in Haiti, 2013-2022*, (updated 2013).
- ⁵⁷ Independent Panel Report, at 29.
- ⁵⁸ Universal Periodic Review: Report on Right to Food, Water and Sanitation, Republic of Haiti, 12th Session of the Working Group on the UPR, Human Rights Council, Oct. 3-11, 2011, at 6.
- ⁵⁹ *Georges v. United Nations et al.*, Compl., ¶204, 1:13-cv-07146.
- ⁶⁰ MINUSTAH Budget 2010-2011, UN doc A/65/586, ¶ 13, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/651/47/PDF/N1065147.pdf?OpenElement>
- ⁶¹ http://www.mefhaiti.gouv.ht/Documents/PDF/exercice_2010-201110-january-2013_02-48-56.pdf
- ⁶² Beatrice Lindstrom, *Countries at the Crossroads 2012: Haiti*, *Countries at the Crossroads*, (2012) at 15, available at <http://www.freedomhouse.org/sites/default/files/Haiti%20-%20FINAL.pdf>.
- ⁶³ *Id.*
- ⁶⁴ The Universal Declaration of Human Rights, art. 8, G.A. Res. 217, U.N. GAOR 3d Sess., U.N. Doc. A/810 (1948).
- ⁶⁵ General Comment No. 9(A)(3): The Domestic Application of the Covenant, 19th sess., Agenda item 3, UN Doc E/C.12/1998/24 (Dec. 3, 1998) ¶ 15; *see also* American Convention on Human Rights, Nov. 21, 1969, 1144 U.N.T.S. 143, art. 25 (providing that all persons have the right to an effective recourse in a competent court or tribunal).
- ⁶⁶ General Comment No. 15, *supra* at note 52, at ¶ 15.
- ⁶⁷ G.A. Res. 60/147, preamble, A/Res/60/147 (Mar. 21, 2006).
- ⁶⁸ U.N. Expert on Human Rights, *Rapport de l'Expert indépendant sur la situation des droits de l'homme en Haïti*, ¶ 77 U.N. Doc. A/HRC/25/71 (Feb. 7, 2014) “L’ONU devrait être la première à honorer ces

principles” (unofficial translation).

⁶⁹ *Id.*

⁷⁰ Special Rapporteur on the Human Right to Safe Drinking Water, *supra* note 53, at ¶ 63.

⁷¹ General Comment No. 15, *supra* note 52, at ¶ 31, 36.

⁷² *Id.*

⁷³ Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 149 I.C.J. 174, 176 (Apr. 11) [hereinafter *I.C.J. Reparations Case*]; Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 1 U.N.T.S. 15, art.1, § 1 (“The United Nations shall possess juridical personality”) [hereinafter *Privileges and Immunities*].

⁷⁴ Interpretation of the Agreement of 25 March 1951 between WHO and Egypt, Advisory Opinion, 1951 I.C.J. 73, 88-89 (Dec. 20); I.J.C. Reparations Case, *supra* note 73, at 179 (The rights and duties stemming from its international legal personality depend on the purposes and functions of its constituent documents and practice.).

⁷⁵ UN Charter, arts. 1, 55.

⁷⁶ *Peacekeeping without Accountability*, *supra* note 15, at 35.

⁷⁷ Rep. of the Int’l Law Comm’n, 63rd Sess., Apr. 26 - June 3, July 4 - Aug. 12, 2011, U.N. Doc. A/66/10; GAOR, 66th Sess., Supp. No. 10, Art. 1 (2011) [hereinafter *Draft Articles*].

⁷⁸ *Id.*

⁷⁹ See e.g., U.N. Secretary General, *Administrative and Budgetary Aspects of the Financing of the United Nations Peacekeeping Operations: Financing of the United Nations Peacekeeping Operations: Rep. of the Secretary General*, ¶ 6, U.N. Doc. A/51/389 (Sept. 20, 1996) (recognizing that the U.N. has international responsibility for its peacekeeping forces and the acts of its forces were attributable to it by virtue of its international legal personality and “capacity to bear international rights and obligations.”) [hereinafter *Financing of the U.N. Protection Force*].

⁸⁰ Draft Articles, *supra* note 77, at 88.

⁸¹ S.C. Res. 1542, para. 7, U.N. Doc. S/RES 1542 (Apr. 30, 2004) [hereinafter *S.C. Res. 1542*].

⁸² U.N. Secretary-General, *Rep. of the Secretary General on Haiti*, ¶ 41, U.N. Doc. S/2004/300 (Apr. 16, 2004).

⁸³ S.C. Res. 1542, *supra* note 81, at ¶ 7.

⁸⁴ *Id.*

⁸⁵ Privileges and Immunities, *supra* note 73, at § 29.

⁸⁶ Memorandum from the Office of Legal Affairs to the Controller on the Payment of Settlement of Claims, 2001 U.N. Jurid. Y.B. 381, U.N. Sales No. E.04.V.12 (emphasis added) [hereinafter *Memorandum to the Controller*].

⁸⁷ Financing the United Nations Protection Force, *supra* note 79, at ¶ 8.

⁸⁸ United Nations Peacekeeping Law Reform Project, UN Peacekeeping and the Model Status of Forces Agreement ¶ 58 (2010) [hereinafter *UN Peacekeeping*].

⁸⁹ See U.N. Secretary-General, *Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects: Model Status-of-Forces Agreement for Peacekeeping Operations*, ¶ 1, U.N. Doc. A/45/594 (Oct. 9, 1990).

⁹⁰ *UN Peacekeeping*, *supra* note 88, at ¶ 60-1.

⁹¹ *Peacekeeping without Accountability*, *supra* note 15, at 29.

⁹² Agreement between the United Nations and the Government of Haiti Concerning the Status of the United Nations Operations in Haiti, U.N.-Haiti, ¶¶ 54-55, July 9, 2004, 2271 U.N.T.S. 235 (“Third-party claims for ... personal injury, illness or death arising from or directly attributed to MINUSTAH, ... which cannot be settled through the internal procedures of the United Nations shall be settled ... by a standing claims commission to be established for that purpose.”).

⁹³ *Id.*

⁹⁴ *Peacekeeping without Accountability*, *supra* note 15, at 3.

⁹⁵ *Id.* at 27.

⁹⁶ Letter from Patricia O’Brien, U.N. Under-Secretary-General for Legal Affairs, to Brian Concannon, Attorney for Haitian Cholera Victims (Dec. 21, 2011).

⁹⁷ *Id.*

⁹⁸ Editorial Board, *United Nations Must Admit its Role in Haiti’s Cholera Outbreak*, THE WASHINGTON POST, Aug. 16, 2013, http://articles.washingtonpost.com/2013-08-16/opinions/41417425_1_cholera-

outbreak-united-nations-haiti-and-haitians.

⁹⁹ Editorial Board, *Haiti's Imported Disaster*, N.Y. TIMES, Oct. 12, 2013, http://www.nytimes.com/2013/10/13/opinion/sunday/haitis-imported-disaster.html?_r=0.

¹⁰⁰ Tom Dannenbaum, *Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should Be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers*, 51 Harv. Int'l. L. J. 113, 126 (2010).

¹⁰¹ *Id.*

¹⁰² Rapport de l'Expert, *supra* note 10, at ¶76.

¹⁰³ *Cholera in Haiti: The UN Strain*, The Economist, July 15, 2013, <http://www.economist.com/blogs/americasview/2013/07/cholera-haiti>.