

# UNstoppable: How Advocates Persevered in the Fight for Justice for Haitian Cholera Victims

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In 2016, December 1st—already an occasion to highlight the importance of health and human rights as World AIDS Day—took on new significance as a landmark in one of the highest-profile health and human rights cases of the twenty-first century. This was the day that United Nations (UN) Secretary-General Ban Ki-moon finally issued an apology on behalf of the organization for its role in causing the Haitian cholera epidemic that has claimed close to 10,000 lives and made another 800,000 fall ill.<sup>1</sup> This simple apology is something that victims of the epidemic have been waiting to hear for years, ever since cholera-infected feces from a United Nations Stabilization Mission in Haiti (MINUSTAH) peacekeeping base were allowed to enter the river system relied on by tens of thousands of Haitians back in October 2010. That the apology took this long to receive highlights the struggles that advocates continue to face in getting the UN to make things right for victims of the epidemic.

Haitians devastated by cholera—through their own illness or the deaths of breadwinners and loved ones—first petitioned the UN for remedies in November 2011, a year after the epidemic began. The obligation to provide remedies for “personal injury, illness or death arising from or directly attributed to MINUSTAH” is explicitly contemplated in the Status of Forces Agreement between the UN and the government of Haiti, itself rooted in the Convention on Privileges and Immunities of the United Nations (CPIUN), which makes the mandatory settlement of claims a reciprocal duty in exchange for broad immunity from suit in court.<sup>2</sup> Nonetheless, the UN did not dignify the request with a response until 15 months had gone by, at which point the request was tersely dismissed on the grounds that it was “not receivable” since “consideration of these claims would necessarily include a review of political and policy matters.”<sup>3</sup> No explanation was given as to how negligent sanitation was a political or policy matter, or how the injuries suffered by Haitians differed from others the UN has compensated as a matter of course in the past.

The victims of the epidemic did not back down, however; instead, they took further steps to assert their fundamental rights, from the right to health to the right to due legal process. At the heart of the advocacy movement was a pair of organizations, the Haiti-based Bureau des Avocats Internationaux (BAI) and its American-based partner, the Institute for Justice and Democracy in Haiti (IJDH). Tiny organizations with limited resources, they faced Herculean odds taking on the world’s largest intergovernmental organization. Nevertheless, seeking justice for their clients, BAI and IJDH launched a lawsuit against the UN in the fall

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of 2013. The suit was filed in the Southern District of New York, home to UN headquarters. It was the last resort for the cholera victims.

It was novel, certainly. Nobody had ever successfully sued the UN in this way. Behind the boldness of the case, however, was sound legal reasoning: the suit argued that the UN was in breach of its legal obligations within the Status of Forces Agreement and the CPIUN, as a result of which immunity did not apply. At the core of the lawsuit was the idea that immunity was never intended as impunity. Such limits date back to the UN's Charter, which establishes that the organization has privileges and immunities "as are necessary for the fulfillment of its purposes," and to the drafting history of the CPIUN.<sup>4</sup> By the time of the lawsuit, there was already a body of legal scholarship establishing UN accountability for the epidemic.<sup>5</sup> Moreover, as the legal merits of the case became apparent, experts in international law from all over the world weighed in, many donating their time to further strengthen the solid legal grounding of a just cause.

It was not only legal experts who responded favorably to the message about the importance of the case. A crucial part of advocacy was getting the same message across to the world at large. To the casual observer, a cholera epidemic in the most impoverished nation in the Western hemisphere, occurring in the wake of a massively destructive earthquake, would hardly seem surprising. Therefore, it was vital to spread the knowledge that Haiti had never recorded a single case of cholera before October 2010 and that it was UN peacekeepers who had lit the spark igniting this raging inferno of disease. It was also crucial to highlight that the UN was continuing to fail the victims of the epidemic by not holding itself to the same standards of human rights and rule of law it was simultaneously proselytizing in their country.

The importance of this task was underscored by initial resistance in many quarters to the quest for justice, even from parties better placed to understand what had unfolded. An editorial in *The Lancet Infectious Diseases*, for instance, suggested that identifying the origins of the epidemic would be counterproductive or, at best, something that

"may be a matter of scientific curiosity for the future."<sup>6</sup> Competing theories about the origins of the epidemic—absolving the UN—stuck around until long after the source had been proven. And the UN, holding onto the position that taking responsibility for the epidemic could potentially cripple its ability to intervene in future crises, failed to recognize that its refusal to accept responsibility was already harming its credibility as the foremost promoter of human rights and the rule of law. These attitudes seemed to stem from the identity of the perpetrator rather than the events that transpired; it is difficult to imagine similar views prevailing had Haiti's waterways been contaminated by a multinational corporation instead.

Under these circumstances, the dissemination of accurate information—whether through academic journals, the media, or meeting after meeting with stakeholders—was a crucial complement to the lawsuit itself. While the Associated Press and Al Jazeera had broken the story of the UN's involvement in causing the epidemic as it first unfolded, the lawsuit helped keep the story in the headlines. By 2016, other major outlets like *The Guardian*, *The New York Times*, and even Fox News were breaking new investigative reports, including scandalous revelations about the state of sanitation at UN facilities in Haiti both at the time the epidemic began and years afterward.<sup>7</sup>

Publication and dissemination of a conclusive, and growing, body of scientific evidence by advocates and through the media helped sway minds, as demonstrated by subsequent *Lancet* editorials supporting UN accountability.<sup>8</sup> Such evidence had begun with the epidemiological work of Renaud Piarroux and others in the earliest days of the epidemic, but gathered steam as genetic analyses of the responsible strain confirmed its origins. Together, this evidence showed that cholera had arrived in Haiti via a contingent of Nepalese peacekeepers. Although Nepal had been in the midst of its own cholera outbreak at the time, no steps had been taken to ensure that the troops being deployed did not import cholera into a country highly vulnerable to waterborne disease. As a result, contaminated feces entered Haiti's waterways from the MINUSTAH

base at Mirebalais shortly after the troops arrived. Indeed, an independent panel appointed by the UN itself had reached similar conclusions about the origins of the epidemic in May 2011, well before the initial claims by BAI and IJDH, only for the UN to seize on language in the report diluting responsibility; the authors of the report subsequently published a follow-up piece reaffirming their conclusions with additional evidence, underscoring UN recalcitrance.<sup>9</sup>

Political support followed a similar trickle-to-flood pattern, with Saint Vincent and the Grenadines the first to take a stand in favor of the victims.<sup>10</sup> Other states followed; in a rare bipartisan moment, so did politicians in the United States, who called for justice while questioning their government's role in obstructing access to remedies.<sup>11</sup> Within the UN system too, private criticisms became public and the chorus of voices expressing concern grew louder, particularly after High Commissioner for Human Rights Navi Pillay called for compensation.<sup>12</sup> High-profile calls for justice came via letters from serving UN Special Rapporteurs and human rights experts, as well as via the ongoing vocal support of former UN officials such as onetime Special Envoy for HIV/AIDS in Africa Stephen Lewis.<sup>13</sup> Most recently, Special Rapporteur on Extreme Poverty and Human Rights Philip Alston completed a thorough and scathing report on the UN's response to the epidemic, concluding that the organization's "existing approach is morally unconscionable, legally indefensible, and politically self-defeating"; a draft leaked in August 2016 finally helped tip the balance toward the UN's apology.<sup>14</sup> An issue the UN might once have hoped would fizzle out became a cornerstone of Ban's legacy as Secretary-General and a key topic in the race for his successor.

Despite its crucial role in asserting the rights of the victims, the lawsuit was rejected on jurisdictional grounds, in a decision released mere hours after the UN first reacted to Alston's report and at last acknowledged its role in the epidemic, prefacing Ban's subsequent apology.<sup>15</sup> Although the lawsuit was unsuccessful in a court of law, the final verdict in the court of public opinion—which is the only

court where victims' human rights, not procedural matters, took center stage—was overwhelmingly in favor of the Haitian claimants. Looking back at the lawsuit, it is doubtful the UN would have taken effective action to provide redress without it. While the lawsuit was in its own right a credible legal case, it also ensured that the epidemic and the issue of accountability remained in the public eye long after they would otherwise have been forgotten by the international community.

The apology now marks a crucial moment in finding resolution for the victims of cholera. Accompanying the apology is a commitment of at least US\$200 million for cholera control that could save hundreds, if not thousands, of lives, along with a similar amount as material support for victims that "represents a concrete and sincere expression of the Organization's regret."<sup>16</sup> There is still much work for advocates to do, however.

First, the UN's continued refusal to accept legal responsibility remains a concern, not merely in relation to what happened in Haiti but for the future. Most immediately, the absence of legal responsibility means the absence of a legal obligation to pay; thus, fulfilling this commitment remains dependent on voluntary contributions by member states. Only a small proportion has been raised to date.<sup>17</sup> More broadly, what is at stake is not simply the end result of a lack of accountability but the ongoing lack of transparency that underpins it. Few people within the UN apparatus, let alone outside it, have seen the legal opinion relied on so obstinately by the UN. This in and of itself is a serious failing of adherence to the rule of law on the part of the UN. The UN's legal position should be made publicly available for all member states and their citizens to see, and the boundary between necessary immunities and vulgar impunity should be made clear. Victims of future tragedies should not face a similar void of due process and coherent legal arguments when seeking to assert their rights.

Second, the UN must act to prevent similar tragedies in future. The UN has—quietly—modified its medical manual for field missions to acknowledge that peacekeepers may pose a risk of introducing public health concerns into vulnera-

ble populations they are meant to protect, and to incorporate some of the measures recommended by the independent panel in 2011.<sup>18</sup> Nonetheless, the ongoing sanitation saga underscores that having such measures on paper is insufficient, while decision making on what should be apolitical and purely scientific issues (such as cholera prophylaxis) has also suffered from a lack of transparency, particularly as new evidence emerges around effective interventions.<sup>19</sup> Furthermore, reforms have focused on cholera rather than broader changes in peacekeeping procedure, despite the fact that peacekeeping has come to light as presenting unique public health challenges.<sup>20</sup>

Finally, and most crucially, it is vital to ensure that the apology is only the first step, not the last, in responding to the victims. While invaluable, the apology does not undo the harms that have been done. Cholera, previously unknown in Haiti, is now an endemic threat there. Plans to address it have come and gone; a UN-endorsed US\$2.2-billion plan to eradicate cholera failed to receive even a quarter of the funding required.<sup>21</sup> The money promised alongside the apology must be made available by the UN and its member states, and the victims must be at the center of the conversation on how best to use it. In turn, BAI, IJDH, and their allies in Haiti and internationally will stay the course to make sure the UN follows through on doing the right thing both morally and legally, something it has tragically shown it is incapable of doing on its own.

## References

1. "UN's Ban apologizes to people of Haiti, outlines new plan to fight cholera epidemic and help communities," *UN News Centre* (December 1, 2016). Available at <http://www.un.org/apps/news/story.asp?NewsID=55694#.WHIZcBSOrbA>.
2. Agreement between the United Nations and the Government of Haiti Concerning the Status of the United Nations Operations in Haiti, U.N.-Haiti (2004).
3. Letter from the UN Under-Secretary-General for Legal Affairs to Brian Concannon (February 21, 2013). Available at <http://www.ijdh.org/wp-content/uploads/2011/11/UN-Dismissal-2013-02-21.pdf>.
4. Charter of the United Nations (1945).
5. For example, Transnational Development Clinic at Yale Law School, Global Health Justice Partnership of the Yale Law School and the Yale School of Public Health, and Association Haïtienne de droit de l'Environnement, *Peacekeeping without accountability: The United Nations' responsibility for the Haitian cholera epidemic* (2013).
6. The Lancet Infectious Diseases Editors, "As cholera returns to Haiti, blame is unhelpful," *Lancet Infectious Diseases* 10/12 (2010), pp. 813.
7. J. Sandler Clarke and E. Pilkington, "Leaked UN report faults sanitation at Haiti bases at time of cholera outbreak," *Guardian* (April 5, 2016). Available at <https://www.theguardian.com/world/2016/apr/05/leaked-un-report-sanitation-haiti-bases-cholera-outbreak>; G. Russell, "Amid Haiti cholera epidemic, UN peacekeepers spill sewage and ignore water treatment, says internal report," Fox News (August 11, 2016). Available at <http://www.foxnews.com/world/2016/08/11/amid-haiti-cholera-epidemic-un-peacekeepers-spill-sewage-and-ignore-water-treatment-says-internal-report.html>.
8. The Lancet Editors, "Dear Mr Ban Ki-moon," *Lancet* 387/10036 (2016), pp. 2352; The Lancet Global Health Editors, "The UN in Haiti: An adulterated version of accountability," *Lancet Global Health* 4/12 (2016), e872.
9. A. Cravioto, C. Lanata, D. Lantagne, and G. Nair, *Final report of the independent panel of experts on the cholera outbreak in Haiti* (2011); D. Lantagne, G. Nair, C. Lanata, and A. Cravioto, "The cholera outbreak in Haiti: Where and how did it begin?" *Current Topics in Microbiology and Immunology* 379 (2014), pp. 145-164.
10. "St Vincent's Gonsalves urges UN to apologize for bringing cholera to Haiti," *Caribbean Journal* (September 29, 2013). Available at <http://www.caribjournal.com/2013/09/29/st-vincent-gonsalves-urges-un-to-apologize-for-bringing-cholera-to-haiti>.
11. Letter from 77 US congresspersons to Ban Ki-moon (December 18, 2014). Available at <http://www.ijdh.org/wp-content/uploads/2014/12/Letter-UN-Haiti-Cholera-Victims-12.19.14.pdf>.
12. E. Lederer, "UN official pushes compensation for Haiti victims," *New Zealand Herald* (October 9, 2013). Available at [http://www.nzherald.co.nz/world/news/article.cfm?c\\_id=2&objectid=11137337](http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=11137337).
13. L. Farha, G. Gallón, D. Püras, and C. de Albuquerque, Letter to UN Secretary-General Ban Ki-moon, ALHTI 3/2014 (September 25, 2014). Available at <https://www.scribd.com/document/261396799/SR-Allegation-Letter-2014>; S. Lewis, "The 2014 Raoul Wallenberg Lecture in Human Rights" (presentation at the Faculty of Law, McGill University, Montreal, Canada, November 12, 2014). Available at <http://www.ijdh.org/wp-content/uploads/2014/11/2014-11-12-Raoul-Wallenberg-lecture-final-1.pdf>.
14. P. Alston, Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/71/367 (2016).

15. J. Katz, "U.S. court upholds United Nations' immunity in cholera suit," *New York Times* (August 18, 2016). Available at <https://www.nytimes.com/2016/08/19/world/americas/united-nations-cholera-haiti.html>.

16. UN Secretary-General, A new approach to cholera in Haiti: Report by the Secretary-General, UN Doc. A/71/620 (2016).

17. UN Haiti Cholera Response Multi-Partner Trust Fund, *Trust fund fact sheet*. Available at [http://mptf.undp.org/factsheet/fund/CLHoo?fund\\_status\\_month\\_to=&fund\\_status\\_year\\_to=2017](http://mptf.undp.org/factsheet/fund/CLHoo?fund_status_month_to=&fund_status_year_to=2017).

18. UN Department for Field Support, *Medical support manual for United Nations field missions*, 3rd ed. (New York: DPKO/DFS, 2015).

19. J. A. Lewnard, M. Antillón, G. Gonsalves, et al., "Strategies to prevent cholera introduction during international personnel deployments: A computational modeling analysis based on the 2010 Haiti outbreak," *PLOS Medicine* 13/1 (2016), e1001947.

20. A. Houston, "Peace and pestilence: Lessons on peacekeeping and public health from the Haitian cholera epidemic," *Foreign Affairs* (June 21, 2015). Available at <https://www.foreignaffairs.com/articles/haiti/2015-06-21/peace-and-pestilence>.

21. United Nations, *United Nations response to cholera in Haiti* (September 2016). Available at [http://www.un.org/News/dh/infocus/haiti/factsheet\\_Haiti\\_Cholera\\_Sep2016.pdf](http://www.un.org/News/dh/infocus/haiti/factsheet_Haiti_Cholera_Sep2016.pdf).

