



**Cholera victims demand  
Consultations and Reparations from the United Nations**  
It is not for the perpetrators to decide What is  
**JUSTICE** for the victims!

# CHOLERA

## 9 years on...

### A “New Approach”?

The ongoing violation of victims’ rights in the UN’s response to cholera in Haiti

**June 2020**



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# INTRODUCTION

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In October 2010, the United Nations (UN) introduced cholera to Haiti, sparking one of the world's worst modern cholera epidemics. The epidemic resulted in more than 2,500 deaths within the first three months;<sup>1</sup> and to date has killed over 9,700 people and infected more than 819,000.<sup>2</sup>

For six years, the UN denied responsibility for the outbreak in the face of overwhelming evidence. Investigations consistently pointed to the UN base in Meye, that was staffed by a contingent deployed from Nepal – a country with an active cholera outbreak – whose sewage had contaminated Haiti's main river way.<sup>3</sup> Following significant legal and advocacy efforts by the Institute for Justice & Democracy in Haiti (IJDH) together with its Haiti-based partner the Bureau des Avocats Internationaux (BAI), extraordinary mobilization by victims, and global public outcry, former UN Secretary-General Ban Ki-moon finally bowed to public pressure and apologized to the Haitian people in 2016. The UN launched a US\$400 million plan (the "New Approach to Cholera in Haiti") to address what it termed its "moral responsibility" to the people of Haiti.

Three years after the UN's apology, its response to cholera in Haiti remains deeply inadequate and continues to violate the rights of victims. The lack of progress towards a just response lays bare fundamental shortcomings in the New Approach plan: the UN failed to ground its response in an acceptance of legal responsibility or victims' right to remedies, victims were not consulted in the plan's design, no safeguards were put in place to ensure adequate funding or follow-through, and no mechanism was established to allow an independent assessment of victims' claims. As a result, those directly affected by the epidemic are no closer to obtaining justice. Moreover, Haiti remains extremely vulnerable to cholera as the UN has failed to make systemic improvements to water and sanitation systems. As of 2017, 42% of Haitians still lacked adequate access to safe water.<sup>4</sup>

Since 2011, IJDH and BAI have worked alongside cholera victims to seek justice, accountability and remedies from the UN, in line with the organization's<sup>5</sup> own legal obligations. More than nine years after the beginning of the epidemic, victims remain mobilized and the work continues.

# How we got here »

## October

- On October 9th, UN peacekeepers from Nepal arrive in Haiti to staff UN Stabilization Mission in Haiti (MINUSTAH) base near the rural town of Mirebalais. Despite an active cholera outbreak in Nepal, peacekeepers are not screened for cholera before arrival.<sup>6</sup>
- On October 14th, the first documented victim of cholera, from Mirebalais, shows symptoms and dies within 24 hours.<sup>7</sup> 135 Haitians die of cholera within the first week of the outbreak.<sup>8</sup>
- In late October, despite early calls for a vaccination campaign to attempt to stem the spread of the epidemic, the Pan-American Health Organization recommends against using globally available vaccines due to logistical difficulties, costs, and competing priorities.<sup>9</sup> Other public health experts later categorize this decision as “morally questionable, if not to say revolting.”<sup>10</sup>

## November

- Within one month of arriving in Haiti, cholera kills approximately 2,000 people.<sup>11</sup> Beyond Port-au-Prince, the Artibonite and Centre regions are among the hardest hit.<sup>12</sup>
- From November 7 to 27, the Haitian government commissions a team of epidemiologists to investigate the source of the outbreak. They conclude that the Nepali peacekeeping contingent is the most likely source.<sup>13</sup>
- The UN commissions an internal assessment of MINUSTAH’s sanitation practices, which concludes that same month that there are gravely inadequate sanitation practices at peacekeeping bases across Haiti. The UN does not disclose this assessment; it was not reported to the media until 2016.<sup>14</sup>
- The Chief of MINUSTAH states that “it’s really unfair to accuse the UN of bringing cholera into Haiti”.<sup>15</sup> Despite increasingly overwhelming evidence, the UN continues to deny its responsibility for the outbreak until 2016.

## May

A panel of experts appointed by the Secretary-General confirms that “the evidence overwhelmingly supports” that “the outbreak was caused by bacteria introduced into Haiti as a result of human activity; more specifically the contamination of the Meye Tributary System” with a South Asian strain of cholera.<sup>16</sup>

## November

With the support of BAI and IJDH, 5,000 victims file claims through the UN’s internal claims process, seeking remedies in line with the organization’s legal obligations.

2010

2011

## April

After significant advocacy and collaboration with the Ministry of Public Health and Population (MSPP), initial distribution of the oral cholera vaccine begins in Bocozel, Haiti, one of the hardest hit communities; with more than 90% of the community fully vaccinated.<sup>17</sup>

## February

The UN rejects victims' claims as "not receivable" because they touch on a "political and policy matter."<sup>18</sup> The UN's position generates significant international outcry.

## October

IJDH files a lawsuit on behalf of cholera victims in U.S. Federal Court in New York. The UN asserts immunity from suit, and the U.S. Government steps in to defend the UN's position.<sup>19</sup>

## June

Audits by the UN Office of Internal Oversight Services (OIOS) reveal that the UN continued to put local populations at risk through improper waste management at peacekeeping bases in Haiti until 2015 – a full five years into the epidemic.<sup>20</sup>

## August

- U.S. Federal Court holds that the UN's immunity means it cannot hear victims' lawsuit.<sup>21</sup>
- In the face of growing public pressure, the UN for the first time admits its role in the outbreak.<sup>22</sup>

2012

2013

2016



# Movement for justice »

The UN's public admission of its role in the cholera outbreak was the product of six years of sustained litigation and advocacy efforts by cholera victims, IJDH, BAI, and allies globally.

In November 2011, 5,000 victims filed claims with the UN with the support of BAI and IJDH, in line with the Organization's legal obligations under the Convention on Privileges and Immunities of the United Nations (CPIUN). They requested remedies in the form of:

1. a public apology and admission of responsibility;
2. just compensation; and
3. investment in water, sanitation, and health infrastructure to eliminate cholera from Haiti.

They also requested the establishment of the standing claims commission mandated by the Status of Forces Agreement between the UN and Haiti.

In February 2013, the UN rejected victims' claims as "not receivable"<sup>23</sup> because they "would necessarily include a review of political and policy matters."<sup>24</sup> The UN refused subsequent requests for clarification or reconsideration of its decision and for a meeting or mediation with victims.

In 2013, IJDH filed a class action lawsuit on behalf of cholera victims against the UN in U.S. Federal Court in New York. IJDH's argument centered on the UN's obligation to provide an out-of-court mechanism for the settlement of private law claims. On the question of immunity, IJDH presented two main arguments for why the UN was not entitled to immunity in the cholera case (further details can be found in *Georges v. UN*<sup>25</sup>):

- a. The text of the CPIUN and its drafting history support the argument that immunity is conditioned upon the UN providing access to an out-of-court settlement mechanism. Thus, when the UN does not provide that out of court settlement mechanism, its immunity under the same treaty may no longer be enforced;
- b. This condition is also integral to the object and purpose of the CPIUN as a whole, meaning that when the UN fails to uphold that obligation, it violates the entire treaty and is no longer entitled to the immunity protections provided by it.

The UN did not respond formally but asked the U.S. Government to seek dismissal on its behalf, citing the U.S.' obligation as the UN's host nation. In March 2014, the U.S. Attorney stepped in to assert the UN's absolute immunity from suit in U.S. court.

On January 9, 2015, the U.S. District Court, Southern District of New York held that the UN's immunity prevented it from hearing the case.<sup>26</sup> On February 12, 2015, IJDH appealed to the Second Circuit Court of Appeal. In August 2015, the U.S. Government filed a brief opposing IJDH's appeal.<sup>27</sup> On August 18, 2016, the Second Circuit Court of Appeals upheld the lower court's decision and dismissed the case.<sup>28</sup> The UN's legal position on immunity was widely criticized in Haiti and internationally, including by legal scholars, former UN officials, Haitian American community leaders, and human rights organizations, who stepped in to file nine legal briefs in the court case, supporting IJDH's position in its litigation on behalf of victims.<sup>29</sup>

Alongside our litigation efforts, between 2011 and 2016, IJDH and BAI helped build a global movement for cholera justice outside of court. In Haiti, affected communities consistently mobilized by awareness-building and peaceful demonstrations.<sup>30</sup> On Human Rights Day in 2015, victims delivered over 2,000 handwritten letters to the UN's peacekeeping headquarters in Port-au-Prince.<sup>31</sup> Internationally, hundreds of Haitian-American groups,<sup>32</sup> non-governmental organizations,<sup>33</sup> and other human rights organizations,<sup>34</sup> as well as legal scholars,<sup>35</sup> U.S. Congressional members,<sup>36</sup> and media<sup>37</sup> consistently urged the UN to respect victims' rights.

● November 2011

**5,000**

victims file claims with the UN.

● February 2013

The UN rejects victims' claims as "not receivable".

● October 2013

IJDH files a class action lawsuit on behalf of cholera victims against the UN.

● February 2015

IJDH appeals to the Second Circuit Court of Appeals.

● January 2015

U.S. District Court holds that the UN's immunity prevents it from hearing the case.

● March 2014

U.S. Attorney asserts the UN's absolute immunity from suit in U.S. court.

● August 2016

Second Circuit Court of Appeals upholds the lower court's decision and dismisses the case.

● August 2016

UN acknowledges role in cholera epidemic in Haiti.

● December 2016

UN issues apology for its role in the epidemic and announces the launch of the New Approach.

# THE UN'S LEGAL OBLIGATIONS

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**S**ection 29 of the Convention on Privileges & Immunities of the United Nations (CPIUN) requires the UN to provide an appropriate mode of settlement for “disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party” (such as personal injury or breach-of-contract claims).<sup>38</sup> This obligation exists to ensure that civilian victims have access to damages for harms the UN causes, even in the face of the UN’s immunity from national court lawsuits during peacekeeping operations.<sup>39</sup>

The Status of Forces Agreement (SOFA) between the UN and Haiti, which regulates the presence of peacekeeper troops in Haiti, further specifies that a ‘standing claims commission’ must be established to provide an independent hearing on claims for “personal injury, illness, or death attributable to MINUSTAH.”

Despite these obligations, the UN dismissed all victim claims and failed to establish the required standing claims commission in Haiti. While MINUSTAH is no longer in Haiti, the UN has maintained a presence in Haiti through the United Nations Mission for Justice Support in Haiti (MINUJUSTH), which replaced MINUSTAH from October 2017 to October 2019, and subsequently through the United Nations Integrated Office in Haiti (BINUH), which is currently operational.<sup>40</sup>

The UN’s dismissal of victims’ claims has been widely condemned by international legal experts as a breach of its legal obligations.<sup>41</sup>

The UN’s response in Haiti reflects a systemic failure of accountability in the UN system. The UN has never established a standing claims commission in any country where it has had a peacekeeping mission,<sup>42</sup> despite signing agreements - like the SOFA - that provide for commissions in the event of a dispute. It additionally has not successfully established any accountability mechanism based upon its legal liability to remedy victims adversely affected by its missions.<sup>43</sup>



71st session of the United Nations General Assembly in New York, Conference Room (Drop of Light/Shutterstock)

# The Status of Forces Agreement (SOFA) and the role of Haiti's government »

At the international level, states remain the primary actors empowered to protect the rights and interests of their populations. In the peacekeeping context, the Status of Forces Agreement (SOFA) regulates a UN peacekeeping presence in a host government country. Under the SOFA, both the UN and a host country can take steps to establish a standing claims commission (SCC) to provide an independent hearing on claims for "personal injury, illness, or death" attributable to UN peacekeepers. Three Commissioners are to be appointed: one by the UN, one by the host government, and the chair jointly chosen.<sup>44</sup> If the host country appoints one Commissioner, and the UN does not cooperate in appointing the chair, the host government could apply to the International Court of Justice to make the appointment.<sup>45</sup>

In Haiti, no standing claims commission was established during the UN's peacekeeping presence in Haiti over 15 years, a period marked by significant abuses and scandals. The failure to establish an SCC is not unique to Haiti, however. Rather, the UN has never established an SCC in any country where it has deployed a peacekeeping mission,<sup>46</sup> despite signing agreements - like the SOFA - that provide for commissions in the event of a dispute.<sup>46</sup> In 1996, following the Rwandan Genocide, the government of Rwanda made a concerted attempt to prompt the establishment of a mandated SCC. In response, the UN declined to create an SCC on the basis that the claims being asserted were not private law claims.<sup>47</sup>

While the Government of Haiti has made periodic statements calling for further UN action to eliminate cholera and supporting victim compensation - including a September 2019 Statement before the Inter-American Commission for Human Rights<sup>48</sup>, and statements at the 2016 and 2017 UN General Assemblies<sup>49</sup> - there is no public record of the Government of Haiti (GOH) taking action to establish a SCC. Additionally, to date GOH has neither sought legal action against the UN, put forward any public proposal for an out of court settlement, nor sought to assess or quantify the harm the UN's introduction of cholera has had on victims and Haitian society at large.

In peacekeeping contexts, structurally unequal power relationships with the international community can create obstacles to accountability.<sup>50</sup>

In the case of Haiti, these include:

- Significant dependency by the Haitian government on foreign assistance, with approximately 20% of the national budget being financed through foreign aid;<sup>51</sup>
- A credible record of problematic international intervention in Haitian elections;<sup>52</sup>
- The presence of an ongoing UN Chapter VII peacekeeping presence in the country until October 2019, with a significant mandate to maintain security and support the Haitian police.

In a 2017 address, the UN Special Rapporteur on Extreme Poverty, Philip Alston noted that **member states "should be key actors in terms of exacting external accountability when the UN has screwed up and is not prepared to admit such."** However, with few exceptions, many member states have not stood in support for Haiti to hold the UN to its legal obligations; a response that Alston notes **reflects a structural marginalization of Haiti in the inter-state system**, and a perspective he characterizes as "who cares about a small, irrelevant, black population in the middle of nowhere?"<sup>53</sup>

# THE UN'S NEW APPROACH

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“ Words are powerful – yes. Words are necessary – yes. But words cannot replace action and material support. ”

Ban Ki-moon, December 2016

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In 2016, in the face of significant international criticism, the UN finally admitted its role in introducing cholera in Haiti. In September 2016, then-Secretary-General Ban Ki-moon stood before the General Assembly and named the cholera epidemic in Haiti as one of the central regrets of his time in office. The epidemic had “tarnished the Organization’s reputation,” he said, “and still worse, traumatized the numerous populations we serve.”<sup>54</sup>

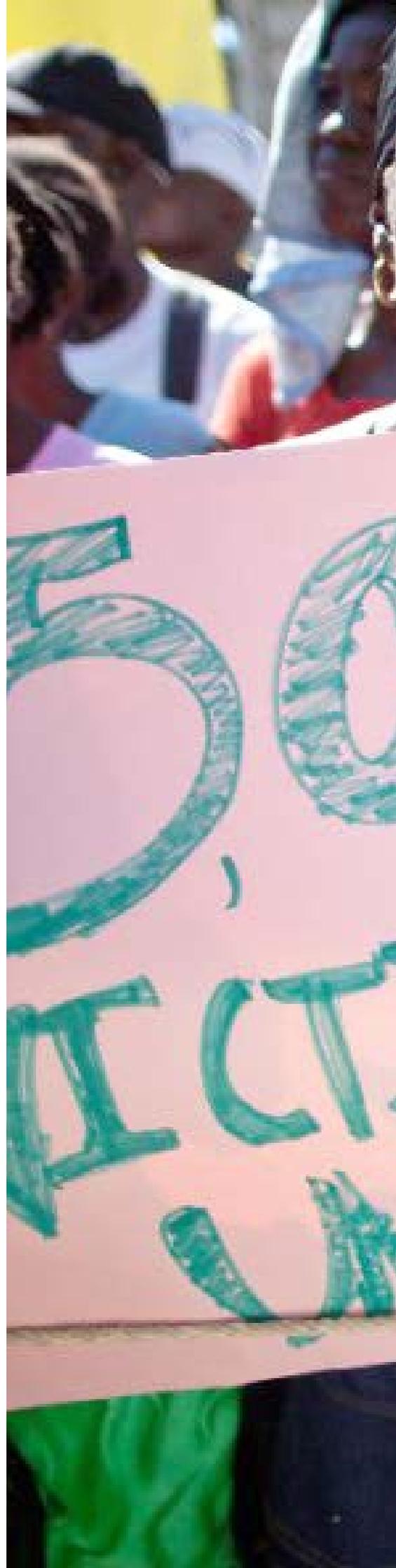
Shortly afterwards, the UN issued a public apology and launched its “New Approach to Cholera in Haiti”.

The New Approach is, in the UN’s words, a “genuine effort to concretely demonstrate deep regret”, eliminate cholera from Haiti and “liv[e] up to our moral duty to those who have been most directly affected”. It is a US\$400 million two-track plan to eradicate the disease and provide material assistance to the most affected victims.

While incomplete, if fully and effectively implemented, the New Approach presented an opportunity to reduce the harm of the cholera epidemic, help rebuild the lives of tens of thousands of cholera victims, and begin repairing the damage to the UN’s standing and the credibility of UN peacekeeping.

From the outset, however, there were structural flaws in the plan. The UN continued to deny any legal responsibility for cholera’s introduction, recognize victims’ right to remedies, or establish a mechanism through which victims’ claims could be assessed. The commitments in the New Approach were unenforceable and the UN did not identify a reliable source of funding, leaving implementation of the plan vulnerable to the whims and pressures of political decision making. Victims were marginalized from the design of the plan, with the UN failing to consult with or assess their perspectives before launching the New Approach.

Three years later, there has been minimal progress under the New Approach, laying bare these fundamental shortcomings. Haiti’s population remains extremely vulnerable to cholera, communities most affected by the epidemic are still unable to access safe water and sanitation, and direct victims are no closer to obtaining meaningful redress.





## 2016: The launch of a “New Approach” for cholera »

US\$400 million in funding, split equally across the two tracks described below.

### Track 1

US\$200 million to support intensified efforts to reduce the incidence of cholera and advance eradication:

- Track 1A: to intensify the immediate efforts to decrease the transmission of cholera and improve access to care and treatment, including support for rapid response teams, epidemiological surveillance, vaccinations, and emergency medical care.
- Track 1B: to address the longer-term issues of access to clean water, sanitation and health-care systems. Track 1B was expected to last for 10 to 15 years and required further investments beyond the promised \$200 million.<sup>55</sup>

### Track 2

US\$200 million to support the development and delivery of a “package of material assistance and support to those Haitians most directly affected by cholera, centered on the victims and their families and communities,” along with a UN commitment to “consult with victims and their families and communities in developing... [the material assistance] package” and put “victims at the centre of the work.”<sup>56</sup>

Two approaches envisaged:

- Community Approach: funding development projects in the most affected communities.
- Individual Approach: making direct payments to the families of those who died from cholera.

## Breach of duty to fund reparations

The UN's legal obligation would have required mandatory contributions to fund the New Approach. The Organization instead established a voluntary Multi Partner Trust Fund (MPTF) to fund the plan, which has compromised all aspects of the New Approach, particularly victim assistance. To date, the voluntary approach has been insufficient in ensuring an adequate response under the New Approach: only US\$20.5 million (5%) of the promised US\$400 million has been raised, and of the \$20.5 million, the UN has only earmarked \$6.7 million for victim assistance to date.<sup>57</sup>

### **Abandonment of assessed contributions:**

The voluntary nature of funding for the New Approach has undermined its effectiveness as an accountable response. When launching the New Approach plan, the UN proposed funding the initiative through assessed contributions in the case that a voluntary approach would be insufficient. Under an assessed contribution model, designated funding by Member States would have been mandatorily applied to the UN budget, consistent with the UN's legal obligations had it accepted its legal liability to cholera victims. Canada supported drawing from assessed contributions.<sup>58</sup> However, following opposition from influential member states, including the U.S., the U.K. and France, the UN has not taken any steps towards implementing this assessed contribution proposal.<sup>59</sup>

“ Mr. Guterres has not stated publicly whether he intends to push for a mandatory assessment in the budget negotiations now underway at the United Nations. Privately, however, diplomats and United Nations officials said he had shelved the idea, partly because of strong resistance by some powerful members, including the United States. ”

The New York Times, March 2017

“ Funds allocated to MINUSTAH between the cholera outbreak and the end of mission (2010-2017): ~ \$4.2 billion.<sup>60</sup> ”

### **Even excess peacekeeping funds were withheld:**

After the UN ended its UN Stabilization Mission in Haiti (MINUSTAH) in October 2017, Secretary-General Guterres asked member states to allow him to redirect the US\$40.5 million left over in the mission's budget to the cholera fund, but the U.S and France reportedly opposed an automatic transfer of those funds.<sup>61</sup> The U.S. Administration claimed it had no role in the outbreak of cholera and already provided enough aid to Haiti through other channels.<sup>62</sup> Faced with such opposition, the Secretary-General abandoned the proposal and member states were instead allowed to voluntarily waive their shares of the leftover funds. Collectively, member states only waived US\$3.3 million into the fund through this process.<sup>63</sup>

By contrast, in 2018, the UN allocated US\$121.5 million for its new UN peacekeeping mission, the United Nations Mission for Justice Support in Haiti (MINUJUSTH), adding to billions spent on peacekeeping in Haiti.<sup>64</sup> This underscores that underfunding of the New Approach is not the result of net lack of finances, but of political will; the UN system prioritizes the presence of international security forces in Haiti over addressing the harm those forces cause and protecting Haitians' fundamental rights to health, water, and remedies.

## Breach of victims' right to compensation

The UN precluded victim compensation through its own internal legal claims process, through an independent standing claims commission, and through the court system. Now, under Secretary-General Guterres' tenure, the UN has backed further and further away from its pledge to consider making direct payments to the families of people who died of cholera<sup>65</sup> as part of its victim material assistance package (Track 2) under the New Approach. The victim assistance package was intended to "concretely express the Organization's regret" and alleviate victims' ongoing suffering.<sup>66</sup>

**Failure to assess feasibility:** When launching the New Approach, the Secretary-General explained that the feasibility of providing direct payments to cholera victims required further assessment and committed to conducting a feasibility analysis and reporting to the General Assembly on the issue.<sup>67</sup> To date, no feasibility analysis has been provided to the General Assembly. Meanwhile, in June 2019 Avocats Sans Frontiers-Canada (ASFC), in partnership with the Interuniversity Institute for Research and Development (INURED) and with support from the Jacob Blaustein Institute and contributions from IIDH, published an extensive independent feasibility assessment that demonstrates that payments for families who have lost loved ones is both possible and necessary to address victims' needs.<sup>68</sup>

**No progress on individual approach:** In the spring of 2019, the UN took its first concrete steps toward implementing Track 2 by completing five modest community projects in the Mirebalais community, the area closest to where peacekeepers initially introduced cholera. Budgeted at approximately US\$1.2 million overall, the projects include a renovated marketplace, installation of a drinking water supply system, and rehabilitation of existing water systems.<sup>69</sup> However, they failed to address the ongoing individualized harms suffered by the most affected victims, including the lasting financial losses of losing breadwinners and incurring debts from burial costs and other expenses, as well as the personal trauma of losing loved ones.<sup>70</sup>

**The UN's plans for Track 2 show no current plan nor funding beyond an additional US\$5.5 million million for 20 projects in Haiti's north<sup>71</sup>:** The UN has not piloted an individual approach, and UN documents, including the latest annual reports on the New Approach (2017, 2018) and the MPTF's latest annual report, no longer mention direct payments.<sup>72</sup>

The UN has neither made a definitive statement explaining the lack of progress on direct payments to victims, nor outlined the plan to fulfill its commitment to material assistance under Track 2, but instead refers to resource constraints and realities on the ground in justifying its modest community project approach.<sup>73</sup> The UN seemingly relies on its own failure to secure funding as a justification for abandoning its promises to victims.<sup>74</sup>



“ My family needed to take out a loan while I was recovering from cholera. I couldn't work for three months. Five years later, these loan repayments are still burying us. ”

Georges Benira

# Why victim compensation matters »

Cholera victims have been calling for their rights to be respected by the UN for over 9 years

Cholera has caused severe and individualized losses and disproportionately impacted Haiti's most vulnerable and marginalized populations.<sup>75</sup> Following the outbreak, costs for burials, transportation, and in some cases medical care increased.<sup>76</sup> Victims have reported incurring crushing debts to pay for funerals of loved ones, medical treatment, and basic household expenses during the weeks or months when they were too sick to work. A longitudinal study of urban households conducted by researcher Athena Kolbe between 2011-2016 found that interest rates for cholera-related loans were on average 83.9%.<sup>77</sup>

Cholera has had particularly devastating consequences on children and young people who lost caregivers.<sup>78</sup> Victims consistently identify children as having suffered particular harms: the economic shock of cholera deaths often resulted in children being pulled out of school, undermining the long-term future of thousands of Haiti's youth.

Compensation is a fundamental element of the human right to effective remedy.<sup>79</sup> There is wide agreement among human rights scholars and practitioners that, while community projects can play an important part of a response to large-scale harms, they are not of themselves an adequate response to serious violations of human rights.

The UN's own legal framework also mandates compensation as the appropriate remedy for civilians harmed by peacekeeper action.<sup>80</sup>

Direct payments are good policy: cash transfers are recognized as a best practice intervention to support recovery from infectious diseases and are shown to reduce poverty and improve livelihoods in the long term.<sup>81</sup>





## Feasibility of victim compensation »

Avocats Sans Frontières Canada (ASFC)'s independent feasibility study was developed through focus groups with 96 victims, extensive desk research, and expert interviews.<sup>82</sup>

### Key findings include:

Victims consider direct assistance to the most severely affected families an integral part of a just response.<sup>83</sup> The study found that victims viewed compensation as necessary to "take into account the specific and personal suffering of those who have been and continue to be disproportionately affected by the cholera epidemic, the economic impact as a central element of their suffering and the existing disparities between the different categories of victims."<sup>84</sup>

Victims nearly unanimously prioritized families who had lost a breadwinner to cholera, with an emphasis on minors and young adults who lost parents, as needing direct economic assistance.<sup>85</sup>

Direct monetary payments are feasible in cases of deaths, through an identification and claims system drawing on both existing data and community-based mechanisms.<sup>86</sup>

## Exclusion of victims

The people directly affected by cholera are not just victims of this terrible epidemic, but ultimately the actors of change on the ground. Victims' tenacious mobilization over years played a central role in pushing the UN to finally shift position and accept its role in the outbreak in 2016.<sup>87</sup> The New Approach correctly identified that cholera victims deserve a consultative process that puts them at the "center of the work".<sup>88</sup> As victims themselves note, **"it is not for the wrongdoer to decide what is justice for the victim"**. Under human rights law, victims have the right to participate in the creation and implementation of remedies, in order to ensure the remedy's effectiveness and to provide "recognition to, and empowerment of, victims."<sup>89</sup>

Yet, prior to the launch of its New Approach, the UN failed to engage victims in its overall design or meaningfully assess the harms they had suffered and their priorities. As a result, a budget was allocated to the New Approach absent substantive engagement of those most affected, and without analysis of whether the New Approach aligned with the particular needs of victims, thus hamstringing an effective response from the outset.

Moreover, in implementing the New Approach, the UN failed to fulfill its commitments to carry out a consultation process that engaged victims in determining the contours and content of the Track 2 material assistance package, including the appropriate combination of the individual and community approaches. Instead, in the context of its pilot Track 2 efforts in Mirebalais, the UN pre-determined that it would implement assistance through small community development projects only.<sup>90</sup>

Even in its community engagement around the planning and implementing of these projects, the UN has acted in an opaque and exclusionary way:

- **Available public documents indicate the UN primarily engaged with local government leaders in Mirebalais, not victims themselves.**<sup>91</sup>

- **The UN has not published its consultation methodology:** Additional guidance on the methodology used for community engagement in the Mirebalais projects has been repeatedly requested by BAI and IJDH, but the UN has still not published or disclosed the details.
- **The UN excluded the victims in and around Mirebalais who were most prepared to participate:** After the New Approach was launched, BAI worked with thousands of affected community members around Mirebalais to prepare them to meaningfully participate in the UN's promised consultations. Instead of welcoming the perspective of these representatives, the United Nations Development Programme (UNDP), which has led implementation of Track 2 pilot projects on the ground, excluded them and publicly declared that measures had been put in place to "mitigate" the BAI's interventions in communities.<sup>92</sup>

The UN's failure to implement a genuine victim consultation process under the New Approach and instead forge ahead with only community projects to date is particularly concerning because existing information, including the findings of ASFC's feasibility study outlined above, suggests that victims prioritize a mixed individual and community approach.<sup>93</sup>

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“ The UN failed to fulfill its commitments to carry out a consultation process that engaged victims. ”



## BAI's civic education in Mirebalais »

After the New Approach was launched, BAI worked with thousands of affected community members in rural Haiti who had been mobilizing for cholera justice, to provide them with the information needed to meaningfully participate in the UN's promised consultations and weigh the options proposed by the UN under the New Approach.

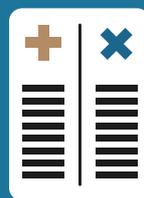
Community trainings were held to discuss:



The contents of the New Approach, including screening of the Secretary-General's apology



The legal right to effective remedy



The pros and cons of a community versus individual approach

At each community training, participants elected representative committees to participate in consultations with the UN and facilitate broader engagement between communities and the UN.

## The risk remains

The UN's MPTF states that the first sixteen weeks of 2019 saw 308 suspected cholera cases versus 1,257 in the same period for 2018, a nearly 75% reduction,<sup>94</sup> and the MSPP has seen zero confirmed cases of cholera since the fourth week of 2019.<sup>95</sup>

While there has undoubtedly been important progress towards cholera control, Haiti remains vulnerable to the disease. Effective cholera control and elimination relies on sustained diagnostic and surveillance capacity through the national system, and a strong water, sanitation, and hygiene (WASH) infrastructure. The UN's introduction of cholera has been especially damaging because of deficiencies in WASH systems, deficiencies of which the UN was aware when it overlooked basic sanitation practices in its peacekeeping camps and failed to screen troops deployed from a country known to be in the midst of a cholera outbreak. The New Approach itself recognizes WASH investment as "the best long-term defence against cholera."

However, surveillance and WASH investments planned under the New Approach are significantly underfunded and progress has been stagnant. In 2017, the latest data from the *Direction Nationale de l'Eau Potable et de l'Assainissement* (DINEPA) showed that 72% of the Haitian population did not have access to adequate sanitation and 42% did not yet have adequate access to safe water.<sup>96</sup> In this context of ongoing extreme vulnerability, the risk of a new cholera outbreak remains real.



A tributary of the Artibonite River, the longest river in Haiti

# WHAT DOES THE UN'S BREACH OF LEGAL OBLIGATIONS MEAN FOR HAITI NOW?

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The UN's introduction of cholera to Haiti violated numerous human rights, including the right to life, health, water, sanitation, an adequate standard of living, and to be free from degrading treatment.<sup>97</sup> Victims of such human rights violations have a right to effective remedy, as enshrined in all major human rights instruments. Yet, the UN's response to date continues to violate victims' right to a remedy and its own legal obligations. In turn, this perpetuates the harms to victims' rights caused by the UN's negligent actions.

The voluntary nature of funding the New Approach, which fails to equate to an accountable response or to comply with the UN's legal obligations, creates ongoing risks from the continuation of the epidemic. While critical progress has been made towards eliminating cholera, in the context of funding shortfalls and the absence of transformative investments in water and sanitation infrastructure, a renewed cholera outbreak remains a real risk.

The UN has failed to undertake sufficient reforms to ensure similar harms do not re-occur in the future; widespread waste mismanagement continues throughout numerous UN bases internationally.<sup>98</sup>

Thousands of Haitian families continue to suffer from the devastating impacts of the epidemic, including serious economic and social harms, while the continued risk of cholera leaves marginalized communities vulnerable to further harm.

Results of victim focus groups suggest that women, children, and families who lost their primary breadwinner have been particularly hard hit.<sup>99</sup> With youth under 15 representing 35% of Haiti's population, and considering the known impact of acute watery diarrheal infections on children's health, access to education, and household well-being, cholera further increases vulnerability of millions of young people.<sup>100</sup>

The UN's exclusion of victims has further compounded the dignitary harm the UN has caused. In Mirebalais, victims who had organized with BAI in anticipation of consultations and learned of the UN's pilot community projects after the fact rejected the UN's process, characterizing it as undemocratic and not in the interest of victims.<sup>101</sup>

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“ I ask them to come and sit with us and not decide for us because we aren't asking for charity.”<sup>102</sup>

Local victim who lost his mother to cholera, 2016

# THE ONGOING MOVEMENT FOR JUSTICE

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**A**dvancing cholera justice has always faced immense odds, yet victims, supported by a global network of community leaders, activists, legal and public health experts, scientists, journalists, human rights advocates, and others have made incremental but important changes over the past 9 years including:

- Obtaining the UN's historic apology for its role in the outbreak;
- Changing the UN's practices for screening peacekeepers for cholera, with the UN's introduction of new rules in 2015 that identify cholera as a medical condition precluding participation in peacekeeping operations and that require a cholera vaccination for all peacekeepers before deployment.<sup>103</sup> More work remains needed, however: a study by the Global Health & Justice Partnership at Yale University found that prophylaxis antibiotics and screening are 90% effective, whereas vaccinations are only 60% likely to be effective in halting transmission;<sup>104</sup>
- Spurring the development of an environmental mandate within peacekeeping operations: the UN's "Environment Strategy," launched in November 2016, seeks to address some of the problems that led to the cholera outbreak in Haiti, for example "reduc[ing] the level of risk to personnel local communities, and ecosystems from wastewater management practices within peacekeeping."<sup>105</sup> However, the UN's efforts in this field remain worryingly incomplete. Even as of August 27, 2019, UN audits found that untreated wastewater from the UN peacekeeping mission in South Sudan was overflowing "into the surrounding environment";<sup>106</sup>
- Propelling the development of a global cholera vaccine stockpile.

Ultimately, three years after the UN's apology, its response to cholera remains fundamentally inadequate and continues to violate the rights of victims.

As the cholera epidemic enters its 10th year in Haiti and we mark the 75th anniversary of the UN and the conclusion of 15 years of UN peace operations in Haiti, IJDH and BAI continue to organize with people in Haiti and globally, to urge the UN to fully respond to the harms it has caused, and address the rights violations of victims.

“ If the UN truly stands for the rule of law, then it must hold itself to the same standards of accountability, transparency and respect for human rights that it demands of others.<sup>107</sup> ”

William O'Neill, ASFC Feasibility Study

Over the past months, we submitted a formal complaint to the UN Special Procedures of the Human Rights Council asking them to investigate the UN's continuing violation of victims' right to effective remedy,<sup>108</sup> and contributed to international conferences on cholera justice<sup>109</sup> and MINUSTAH's legacy in Haiti.<sup>110</sup> Our complaint prompted 14 UN human rights experts to call on the Organization to respect cholera survivors' rights.<sup>111</sup> The experts called the UN's efforts in funding "disappointing" and heralded their promises to cholera victims as "illusory." Meanwhile, Haitian<sup>112</sup> and international media continue to draw attention to the UN's violations and unfulfilled promises in Haiti,<sup>113</sup> while in Haiti victims continue to courageously mobilize for their rights.<sup>114</sup>

The UN's failure to ground its response in an acceptance of legal responsibility or victims' right to remedies has meant that those directly affected by the epidemic are no closer to obtaining justice. It also perpetuates the false notion that the UN's remedying of human rights violations is discretionary.<sup>115</sup>

**The UN must re-envision its response to victims and assure that it successfully models the acceptance of accountability and respect for the rule of law that it promotes throughout the world.**



**Victims demand  
reparations from the United Nations  
to decide What is  
for the victims!**

Seven years after the cholera outbreak, survivors lead a protest urging the United Nations to consult them in their cholera response

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