

HAITI CHOLERA CASE RAISES QUESTIONS ABOUT U.N. ACCOUNTABILITY

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Haiti Cholera Case Raises Questions About U.N. Accountability

By Amy Lieberman

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A recently filed legal petition claiming that the United Nations acted negligently and recklessly in Haiti is raising difficult questions about U.N. accountability -- and its legal immunity.

[The petition](#) (.pdf), submitted Nov. 3, is already raising the possibility that a legally mandated, but rarely implemented, judicial procedure for civilians living in countries with U.N. peacekeeping missions will be enforced.

As a result, the petition's implications go far beyond the particulars of the Haiti case, in which more than 5,000 Haitians argue that the U.N. has so far failed to provide them with a means of remedy after cholera was introduced to Haiti for the first time in 50 years by Nepalese peacekeepers.

Dianna Post, an international human rights attorney representing a group of displaced Roma people in a pending lawsuit against the U.N., believes the cases might establish a precedent of institutional accountability for knowledgeable wrongdoing. "I think this will lead to the U.N. having to make this a reality, as opposed to a sham, and right now, it is a sham," said Post. "The pressure is coming from several of these suits, and I think it will lead to a true system where they can be held accountable," she added.

[Since the cholera epidemic broke out](#) in Haiti in October 2010, more than 6,400 people are known to have died from the treatable, waterborne disease, and at least 457,582 people have become infected, according to the Boston-based Institute for Justice and Democracy in Haiti, which is working closely with the petitioners.

U.N. Secretary-General Ban Ki-moon assembled an independent panel to investigate the source of the cholera outbreak in January 2011. The panel [released its findings in May](#) (.pdf), showing that "evidence overwhelmingly supports the conclusion" that the pathogen strain of the cholera detected in Haiti matches the same strain currently present in South Asia and that the outbreak was caused by a result of "human activity."

Reaching the same conclusion made by several other independent reports, the panel also found that the sanitary conditions at the peacekeepers' camp were not sufficient to prevent contamination of a nearby river that collected waste from the camp's drain system.

But when some affected Haitians tried to file claims for damages with the U.N. through the proper channel -- the Haiti mission's standing claims commission -- they were at a loss, says Ira Kurzban, one of the four lawyers jointly representing the petitioners: The standing claims commission does not exist.

That is hardly exceptional, according to Larry Johnson, a law professor at Columbia University Law School and the former assistant secretary-general for legal affairs at U.N. Headquarters from 2006 through 2008.

Johnson says he is not aware of any standing claims commission [ever being established under a Status of Forces Agreement](#). These agreements, brokered between the U.N. and a host country, typically call for the creation of a standing claims commission to enable civilians to file and process their legal grievances against a U.N. mission or U.N. personnel.

Facing this roadblock, the Haitians regrouped under the guidance of local human rights lawyers and filed a legal petition with the U.N. Stabilization Mission in Haiti, known as Minustah, requesting that the U.N. establish a standing claims commission and pay compensation to the petitioners.

Kurzban says the petitioners received a response from Minustah that it is considering the claims. If a commission is not soon established, he says, they will then file a lawsuit in the U.S., on the grounds that the U.N. gave the Haitian petitioners no other options for legal redress.

“I don’t think there’s any issue about causality,” Kurzban said. “[The U.N.] did everything wrong, and we’re doing it, quite frankly, the right way,” he maintains.

Filing a lawsuit in a U.S. court would be a last resort, which would not be without its own challenges. [The 1946 Convention on the Privileges and Immunities of the United Nations](#) (.pdf) grants U.N. personnel immunity from legal processes in countries where they are working.

“By treaty, the U.N. is immune from lawsuits and so are its offices,” explained Tai-Heng Cheng, the co-director of the Institute for Global Law, Justice and Policy at New York Law School. “But the U.N. secretary-general can, and has in the past, waive immunity [for individuals] in certain cases.”

Over the past few years, Ban has been “increasingly ready to waive the immunity of U.N. personnel accused of being involved in criminal activity,” according to Cecile Aptel, an associate professor of international law at Tufts University.

But the Haitian case differs from other lawsuits against individuals working for the U.N., in that the Haitian petitioners would be filing suit against Minustah -- and the U.N. -- as entities, not targeting individual personnel.

That has added a complicating and so far insurmountable factor for Post, the lawyer who first began representing 143 displaced Roma people in Kosovo in 2005, when the U.N. Mission in Kosovo failed to relocate them from U.N.-administered land that was known to contain poisonous lead. Her case, *Mehmeti et al. v. the U.N.*, has been tossed out of two European courts, even though in 2009 the Kosovo Human Rights Advisory Commission determined admissibility to the complainants’ legal petition, which also charges gross negligence.

Aptel, who has worked with the U.N.’s international tribunals for Rwanda and the former Yugoslavia, says that focusing on establishing a standing claims commission is a “reasonable” request that “may offer an option for the U.N. to settle these issues.”

Cheng agreed that an out-of-court solution would be ideal.

“Even if [a lawsuit] could result in something positive, that would take months, and possibly years. In the meantime, there are sick people that need to be cured and an epidemic that needs to be stopped,” he said.

However, an out-of-court solution could also be a lengthy process. At a press conference Tuesday at U.N. headquarters, Nigel Fisher, the secretary-general’s special representative for Minustah, refused to discuss the legal petition beyond reaffirming that he knows of no timeframe in which Minustah plans to respond to it. □

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Photo: Haitians receiving cholera treatment, L'Estere, Haiti, Oct. 26, 2010 (U.N. photo by Sophia Paris).