



Photo: Ansel Herz



Supporters of Haiti's *Kolera Kolektif* assemble for a march on the streets of Port-au-Prince to press their demand for compensation for all victims of the cholera epidemic. The UN has refused to apologise, dismissed a legal claim for compensation and is now closing cholera treatment centres.

UN Special Envoy on Cholera: "Silence is the Worst Response"

Immune. Immoral. Illegal?

It took more than 15 months to write, and ultimately amounted to two sentences in one short paragraph – the penultimate – as if an afterthought in the two-page letter signed by Patricia O'Brien, the UN's Under Secretary General for Legal Affairs.

The claim for compensation made by IJDH, the Boston-based Institute for Justice and Democracy in Haiti, and its sister organisation, the Bureau des Avocats Internationaux (BAI) in Port-au-Prince, on behalf of 5,000 of those killed and sickened by the cholera no one now doubts was brought to Haiti by UN peacekeeping troops (see *Haiti Briefing* No. 70), was, as of February 21, emphatically rejected, as "not receivable." In the words of one lawyer: "That's UN legalese for not worth considering."

First, an update on the toll: the

5,000 Haitians on whose behalf the claim was filed are just a fraction of the 8,292 killed and 670,500 sickened to date. That in itself is widely considered an underestimate. These are just the individuals the Haitian government has managed to count in what is still, 32 months on, the world's most potent epidemic.

After one and a half pages detailing its efforts fighting cholera in Haiti, the key paragraph of the UN letter says that the victims' claims are "not receivable pursuant to Section 29 of the Convention on the Privileges and Immunities of the United Nations." The CPIUN, as it's known, is aptly named. It includes the immunity from prosecution the UN voted itself in one of its first acts in February 1946.

The only justification for such claims coming within the purview

of CPIUN comes in one further sentence in the UN letter: "Consideration of these claims would necessarily include a review of political and policy matters." That assertion spawned mockery.

"Under this definition, any harm that the UN does anybody would be a matter of policy," complains Brian Concannon, Jr of IJDH, co-counsel on the case. "Is the UN saying that dumping faeces in rivers is UN policy?" asks Jonathan Katz, the former AP reporter who did so much to expose the UN as the cause of the epidemic.

The UN letter makes no mention of alternative forms of redress, most notably the establishment of the Standing Claims Commission (SCC) whose institution, in the case of a private claim, is written into the UN peacekeeping Status of Forces Agreement (SOFA) with the Haitian government.

Indeed, it was the failure of the UN to make any private offer of compensation and the belief that the SCC was a façade – in 55 years of UN peacekeeping no SCC has ever been established – that led BAI/IJDH to bring the claim.

"It's ludicrous for the UN to simultaneously claim immunity from Haitian courts, fail to follow through on its commitment to set up an SCC and also refuse to address the claims internally," says Mario Joseph, BAI's lead lawyer in the case. "That amounts to a complete denial of justice."

"An organization dedicated to the rule of law is itself immune from legal accountability," concluded Armin Rosen in *The Atlantic*. "The UN has a troubling history of behaving as if it is above the law, perhaps because it is."

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UN Refusal to Protect Public M

More than two years after the UN Secretary General Ban Ki-Moon publicly promised to ensure "prompt and appropriate follow-up" on the seven recommendations made by a panel of experts he appointed to investigate the causes of the cholera epidemic in Haiti, the UN Task Force appointed to do so has effectively declined to implement the first three. All three were crucial changes to UN medical protocols and sanitation procedures designed to prevent another cholera epidemic being spread by UN troops.

"This just confirms the depth of the denial at the UN," a furious Dr Rishi Rattan, Chair of Advocacy of the leading NGO, Physicians for

Haiti (P4H), told *Haiti Briefing*. "What happened in Haiti could happen again because the UN has refused to make basic, science-based protocol changes. Put simply, the UN is refusing to ensure the protection of the public they serve."

The news leaked out of the UN's headquarters in New York within hours of the publication of *Protecting Peacekeepers and their Public*, a Report Card by P4H, designed to highlight the lack of progress in implementing the UN Experts' recommendations. Even in the face of a UN press blackout on the issue, P4H's update turned out to be depressingly accurate.

It now seems clear that sometime earlier this

year, the UN's failure to act was formalised. It also seems clear that the central remit of the UN Task Force was not how to enact the recommendations but whether to do so at all.

"When we drafted the Report Card we knew they were not acting on the best advice of some of the world's leading cholera experts – experts who had gone to Haiti to investigate the cause and context of this devastating epidemic. The Report Card was designed to draw attention to the absence of any of the action the Secretary General promised in his statement about 'prompt and appropriate follow-up' two years ago," says Dr Rattan.

"Now our sources have revealed that the UN has no intention of acting and the anonymous members of this Task Force, whose credentials are entirely unknown beyond their UN affiliation, have finalized their decisions in an unpublished report. Giving us no insight into the reasoning or rationale for these decisions is, frankly, despicable."

In their first recommendation, the UN Experts advocated that all UN personnel travelling from cholera endemic areas should "either receive a prophylactic dose of appropriate antibiotics before departure or be screened with a sensitive method to confirm the absence of asymptomatic carriage of *vibrio cholerae* or both."

The UN Experts' specific, stated aim was to avoid what happened in Haiti: "To prevent introduction of cholera into non-endemic countries." The UN Task Force has, in the words of our source, "chosen not to endorse the recommendation."

The second UN Experts' recommendation, that all UN personnel should receive "prophylactic antibiotics, be immunized against cholera with currently available oral vaccines, or both," has been partly endorsed by the UN Task Force but in a meaningless manner.

Oral vaccination of personnel is now "a recommendation" to troop-contributing nations, but not "a requirement." This means that it will

Photo: AP/Emilio Morenatti



Another victim is taken by wheelbarrow to the gates of St. Catherine's Hospital in Cité Soleil. Frontline medical staff insist that the big increase in deaths this year is a direct result of cuts in resources to fight what is still the world's most virulent epidemic. "The disease is re-establishing itself. These deaths are avoidable," says one doctor.

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A Straight Immorality Issue Now

IJDH/BAI's response to the UN's letter could not be more of a contrast. Published and dispatched on May 8, it is a closely argued and extensively footnoted eight-page rebuttal with Section 29 of the CPI-UN at its heart.

"Under relevant international law, and consistent with long-standing UN practice and UN General Assembly resolutions, petitioners' claims are "claims of a private nature" for which Section 29 requires the UN to "make appropriate modes of settlement," the letter reads.

The letter goes on to cite a 1996 statement by the UN Secretary General making it clear that

the UN had always "assumed its liability for damage caused by members of its forces." It also quotes Patricia O'Brien's predecessor, who once ruled that: "As a matter of international law, it is clear that the Organization can incur liabilities of a private law nature and is obliged to pay in regard to such liabilities."

Offering the UN a "last opportunity to accept its legal responsibility" the IJDH/BAI lawyers state that the UN's rejection of the claim has opened the door to national courts, an option they say they will pursue if they do not receive "an appropriate response" within 60 days.

Preventing any court from hearing the case would seem to be the UN's only hope. "The case itself is

easy, their liability is so obvious if we can get it into a courtroom," says Brian Concannon. Finding such a court, most probably in Europe, where the UN has already been warned that immunity does not mean impunity, is the next challenge.

In some ways the UN's now clearly stated position, that their immunity is a much greater priority than the poor Haitians they failed to protect and now refuse to compensate, may make that easier. In saying less than the minimum, trying to close every avenue of redress, and avoiding any denial of liability or culpability, they may just tempt a court somewhere to allow the victims' lawyers in.

UN lawyers know that within any normal parameters of access to

justice, due process and consideration of the evidence, this is a case they could not hope to defend. Any other institution would by now have felt forced to minimise the damage to its reputation by paying out-of-court, no-liability compensation, even if the immorality of leaving thousands of some of the poorest people on earth bereaved and bereft counted for nothing to them.

The UN's stance does, at least, crystallise the hypocrisy. The world agency charged with enforcing the most basic international human rights and justice provisions, spreading the concept and practice of the rule of law and even protecting the poor and most vulnerable from disease and sickness, is denying all that to thousands in a

Means it Could All Happen Again

have no effective force because the UN's Medical Support Manual (MSM) will not be updated to enforce any change. This conforms to a pattern in the MSM.

"Everything is viewed through the prism of protection of UN personnel, nothing through the necessity of protecting the populations they serve among," says one health expert. "As such, this mirrors the UN's rejection of the Haitian victims' compensation claim. "We" and "our" rights are first and final for the UN; "others" are not even considered."

Finally, recommendation three: "That United Nations installations worldwide should treat faecal waste using on-site systems that inactivate pathogens before disposal." Although there is limited evidence of action on this, particularly in Haiti, it appears to be piecemeal, partial and particular.

Once again, on-site treatment has not been made a requirement or rule, with no changes in the written Environmental Policy for UN Field Missions that would make it meaningful, mandatory and above all global – crucial in an organisation that operates worldwide and only runs on written regulations.

All three recommendations highlighted here would cost almost nothing in the context of the UN Department of Peacekeeping's \$7.33bn annual budget. As the P4H Report Card points out, adding a little more than half a litre of household bleach – costing just pennies or cents – would be sufficient to neutralise all pathogens, including any *vibrio cholerae*, in the UN's 2500-litre black water waste tanks. Public health advocates in Haiti have offered supplies of bleach to UN bases, only to have them refused.

In recent weeks, HSG has been part of delegations to the UN to raise awareness of the urgent need for these basic precautions. In March, we were part of a group that lobbied eight members of the UN Security Council in New York. In April, HSG posed specific questions to UN

Under Secretary General, Ameerah Haq, head of the Department of Field Support (DFS) when she gave a talk in Washington DC about reforms in DFS, without even mentioning the UN Experts' recommendations.

Ms Haq did not seem to understand the complete inadequacy of UN medical protocols that only require pre-deployment screening and treatment for cholera if an individual shows signs of the disease when up to 75% of cholera carriers can be asymptomatic. She stated that she would "have to ask her medical colleagues" if there would be any changes in UN protocols in response to the Experts' recommendations.

Well now we know – and so does she. There have not been any changes, nor will there be. That perhaps explains Ms Haq's failure to respond to a follow-up letter from HSG. And if that leaves you as worried as leading public health experts about the possibility of another UN-spawned cholera epidemic, you should be.

In March, it was announced that UN peacekeepers from 23 nations were being trained in Nepal, the source of Haiti's cholera. Asked what measures had been taken to prevent them becoming unwitting carriers of cholera to their deployments worldwide, the UN's Department of Peacekeeping refused to say. Take it from us: that means none. ■



Suffer little children. No one knows how many of the 8,292 killed or 670,500 sickened by cholera to date were children. One thing is clear: the young have been hit disproportionately and include many more than the official figures have managed to count.

Photo: AP/Ramón Espinoza

country which its troops occupy. "What moral right does the UN now have to speak about human rights or democracy in Haiti or anywhere else?" asked the *Kolektif Mobilizasyon Pou Dedomaje Viktim Kolera Yo*, [The Collective to Mobilise for Reparations for Cholera Victims], the leading local advocacy group.

"Even with a claim pending, this was always a moral as well as a legal issue. Having refused to pay compensation without a legal claim, and now having emphatically rejected that legal claim in such dismissive tones, it's become a straight immorality issue," says one Haitian pastor. "On those grounds, given these facts, I like our chances of making the world sit up and take notice." BAI's Mario

Joseph agrees: "The UN can't have both humanity and impunity simultaneously."

Rumour has it that there are some in the UN who agree but none has spoken out publicly nor resigned in order to be able to do so. Indeed those who have spoken privately to us on the issue seem terrified of the consequences of doing so.

There is, or may be, one exception. Michel Forst, the UN Special Envoy on Human Rights in Haiti, in once again lambasting the Haitian government on human rights and rule of law issues, took a valedictory sideswipe at his own bosses for failing to "throw light on the causes of the cholera epidemic" in February.

With the force of a man who un-

derstands the psychological importance of the truth for individuals trying to come to terms with needless death, Forst said that cholera victims' families were entitled to the truth and that "silence was the worst response." He promptly resigned.

'A Bit like Haiti under Duvalier'

None of these ironies were lost on Haitians. Having witnessed firsthand so much of the disdain shown by UN peacekeepers – not least the gross neglect that caused the cholera epidemic – most Haitians have long given up on the idea that the UN might do the right thing.

As a result, they focused on their own government's role in all this, particularly when the Haitian press reported that the Secretary

General had telephoned President Martelly to "inform" him of the UN decision which had been "accepted". The *Kolera Kolektif* accused the Martelly government of being in collusion with the UN by actually asking it to "disregard the complaints of those defending the cholera victims."

At the very least, the Haitian government is in deep and perhaps deliberate denial. Addressing an audience at Columbia University, New York, in April, Prime Minister Laurent Lamothe insisted cholera was "disappearing". He claimed only three cases a day were being reported when his own Health Ministry was actually recording an average of 150 cases a day.

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For the Martelly government, it seems, standing up for victims cannot be disassociated from those who brought the case. BAI, the country's leading civil rights law firm, has been at the forefront of efforts to challenge the naked disregard for the rule of law, human rights and constitutional provision that has become such a hallmark of the current administration (see *Haiti Briefing* No. 73).

Indeed, BAI/IJDH's most celebrated case, the crimes against humanity charges levelled at former dictator Jean-Claude Duvalier, was playing out in a Haitian courtroom just as the UN delivered copies of its letter rejecting the cholera victims' claim as "non receivable".

When Duvalier failed to appear in court on February 21, the very date of the UN letter, the UN issued a sharp rebuke to the Haitian state, insisting the judicial authorities "act on their responsibilities" to bring him to book. "Such systematic violations of rights must not remain unaddressed," insisted UN High Commissioner for Human Rights, Navi Pillay.

Even *The Economist*, hardly the most progressive of publications, felt compelled to headline the hypocrisy: "Justice in Haiti, Double Standards – The UN Condemns Baby Doc, but Exonerates itself." The editorial detailed the charge sheet against the UN: its claimed immunity, its failure to establish its Standing Claims Commission (SCC), and the absurdity of the assertion that the claim would "necessarily involve a review of political and policy matters."

The piece ended with the summary of one of the claimants' lawyers: "We make the rules, we interpret them, we enforce them and therefore, whatever we say is right." As *The Economist* concluded, "That sounds a bit like Haiti under Mr Duvalier."

Another group of activists have decided to challenge the UN's version of Duvalierist impunity domestically. On March 13, three Haitian lawyers wrote an open letter to President Martelly on behalf of victims of the cholera epidemic proposing several candidates for the SCC.

As the letter detailed, under Paragraph 55 of Section VIII of the SOFA, the Haitian government is obliged to nominate one member of the three-person SCC when "a dispute or claim of a private-law character" is made. Amongst others, the lawyers nominated the former Prime Minister, Michèle Pierre-Louis and the writer, Frankétienne. As of early June, the lawyers had yet to receive a reply.

A Cunning Plan: A Shell Game

The UN's letter ends with an outline of what it terms the UN Secretary General's Initiative for the Elimination of Cholera in Haiti, launched by Ban Ki-Moon himself in New York on December 11.

The \$2.2bn, ten-year, three-stage Plan represents an ambitious, laudable and integrated effort to address everything from the disastrous impact to the root causes of cholera in Haiti, most obviously some of the worst access to clean water and sanitation (WASH) in the world. We, and others, including WASH experts with extensive experience in Haiti, have two main reservations. First, will the Plan ever be funded, in whole or in part? Two, the means and method of implementation: who will be the primary beneficiaries?

Will the plan simply reinforce private vested interests that operate profitable monopolies or duopolies in the Haitian WASH sector at the moment, particularly in Port-au-Prince? Will the Plan genuinely and determinedly expand access to, and availability and affordability of water and sanitation to those who need it most, the poorest and most excluded – the principal victims of the cholera epidemic to date?

The early signs are not good. The first two of 18 planned new sewage treatment plants in Haiti are today, just months after their inauguration, effectively non-functional. Haiti's private sanitation companies see no reason to pay the \$4 a cubic metre dumping charge, payment of which is the basis of the new plants' economic operating model, when they can continue to fly-tip their sewage for free.

Once again, we learn that even the most minimal reform for the public good in Haiti is irrelevant if there is no political will or resources to enforce change. To date there is neither. Result: no change.

A close examination of the \$215m in bi-lateral donations credited to the Cholera Elimination Plan, less than 10% of its overall cost, shows that none of this is actually new money. It was all funding pledged in the wake of the earthquake and which had yet to be delivered, let alone disbursed.

Meanwhile, the UN's own contribution to the Plan, some \$23.5m, about one per cent of the total, hardly blazes a trail for others let alone comes close to making amends, given the UN's responsibility. Indeed, UN spending on cholera treatment, mitigation and education, the basis of Phase One of the Plan, is now actually falling sharply, while, recorded cholera cases were soaring even before the current rainy season began.

This divergence between needs and resources was actually recognised by the UN in its most recent six-month review of its operations in Haiti. That reported that the number of cholera treatment centres in Haiti had fallen by more than 50% to just 159 by December 2012, while the death toll in the first seven weeks of this year surged more than sevenfold to 115.

Those on the frontline believe the two things are related. Cholera is re-establishing itself in Haiti just as the UN is "consolidating," meaning cutting back, under the guise of integrating its cholera treatment efforts into the inadequate, if not non-existent, Haitian primary healthcare system. People are dying unnecessarily.

The reality on the ground has led to boiling frustration, with Yann Libessart, the Communications Officer of Médecins Sans Frontières saying those cholera treatment centres that remain open were "degenerating into contamination zones" for lack of resources.

Asked who should fund the Cholera Elimination Plan on the day in late February that the Haitian government assumed responsibility for what is now yet another unfunded project, Libessart was acid and emphatic: "The people who are responsible for the introduction of the disease to this country."

In yet another searing piece of analysis in *Foreign Policy* under the title, "The UN's Haitian Shell Game," Jonathan Katz demonstrated how the UN has always deflected attention from its role in causing the epidemic by celebrating its leading role in combatting it.

Present not past, future not fault finding, UN spokespersons insist. That, Katz pointed out, has now been allied with the oldest game in the aid world – shifting around the same undispensed phantom funds to satisfy different promises to differing priorities.

As it becomes clear that even Phase One, let alone the much more expensive major infrastructure developments of Stages Two and Three of the Plan are stalled, the UN's line and the donors' bluff will no longer hold.

One key reason even the UN Secretary General's personal efforts to raise funds for the Plan – for which he deserves some credit – have been so unsuccessful is that on cholera in Haiti, the UN has almost as little credibility among donors as it does amongst Haitians.

And the main reason for that lack of credibility is the same for donors as it is for Haitians: the UN's failure to confess, compensate, and change. Until that changes, nothing else will. ■

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