JUSTICE FOR HAITI CHOLERA VICTIMS: THE LAWSUIT AGAINST
THE UNITED NATIONS
Frequently Asked Questions

BACKGROUND

1. When did the Haitian cholera epidemic begin?
Cholera appeared in Haiti in October 2010 for the first time in recorded history. While cholera is endemic in some developing countries, Haiti had never before had a case of this waterborne disease. As of October 28, 2014, the Haitian government reports that 8,647 people have died and over 711,500 have been infected with the disease. Geneticists and epidemiologists have verified that the outbreak originated at a United Nations (UN) peacekeeping base in Mirebalais, Haiti.

2. What is cholera?
Cholera is a waterborne bacterial illness that causes acute, profuse diarrhea and vomiting. If left untreated, it can kill in a matter of hours. It is spread primarily through consuming food or water that has been contaminated with the feces of an infected person. Cholera disproportionately impacts the poor and vulnerable, who lack access to adequate sanitation and clean water. Similarly, while it is generally easily treatable with oral rehydration solutions, the communities most vulnerable to cholera are also least likely to have access to effective healthcare.

3. Did UN actions really cause the cholera outbreak in Haiti?
Extensive evidence from numerous genetic and epidemiological studies demonstrates that cholera was introduced to Haiti by a peacekeeping contingent from Nepal—where cholera is endemic, and which was experiencing a surge in cases—that was deployed to the UN Stabilization Mission in Haiti (MINUSTAH) days before the first case appeared in Haiti. The Nepalese troops were stationed on a base that discharged untreated fecal waste into Haiti’s principal river system, upon which tens of thousands of Haitians rely as their primary source of water for drinking, washing, and farming. The UN’s own panel of experts appointed to investigate the source of the cholera outbreak concluded that “the preponderance of the evidence and the weight of the circumstantial evidence does lead to the conclusion that personnel associated with the Mirebalais MINUSTAH facility were the most likely source of introduction of cholera into Haiti.” Genetic testing has shown the strains of cholera in Haiti and Nepal to be virtually identical. In July 2014, UN Secretary-General Ban Ki-moon acknowledged that the UN has a “moral responsibility” to end the epidemic.

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1 Daniele Lantagne et al., The Cholera Epidemic in Haiti: Where and How Did It Begin?, CURRENT TOPICS IN MICROBIOLOGY & IMMUNOLOGY, 2013, at § 5.
2 See e.g., R.R. Frerichs et al., Nepalese Origin of Cholera Epidemic in Haiti, 18 CLINICAL MICROBIOLOGY & INFECTION E158 (2012); Rene S. Hendriksen et al., Population Genetics of Vibrio Cholerae from Nepal in 2010: Evidence on the Origin of the Haitian Outbreak, 2 MBIO 1 (2011). While some studies have shown that certain strains of the cholera bacterium, Vibrio Cholerae, can exist in natural flora and not cause cholera symptoms, there
4. Isn’t Haiti’s weak water and sanitation to blame for the epidemic?

The UN has sought to evade responsibility on the argument that a “confluence of factors,” including Haiti’s weak sanitation and health infrastructure, are the real reasons for the epidemic. This is a legally invalid defense, akin to starting a fire in a dry field and blaming the wind when the fire spreads. Before the outbreak, Haiti was widely known as one of the most water insecure countries in the world, and after the devastating earthquake of January 2010, experts warned that outbreaks of waterborne diseases, especially cholera, would have disastrous effects. They also noted that the only ingredient missing from the recipe for a cholera epidemic was the cholera bacterium itself. Haiti’s fragile conditions created a heightened responsibility for the UN to exercise care in its operations in Haiti. Yet the UN failed to take basic measures to prevent the introduction of cholera, including testing or treating its soldiers known to have come from a cholera-endemic region, and properly managing and disposing of its waste.

5. How has the UN responded to the epidemic?

Secretary-General Ban Ki-moon acknowledged that the UN has a “moral responsibility” to respond to the epidemic, but this statement has not been accompanied with adequate action. The UN has rejected victims’ claims for compensation, has not made the investments in water and sanitation infrastructure necessary to stop the epidemic, and has refused to acknowledge its role in introducing cholera to Haiti.

In October 2013, the UN and the Government of Haiti announced the creation of a High Level Committee for the Elimination of Cholera, but to date there is no publicly available information on the work of that committee. Two years ago, the UN also announced its support for the Haitian government’s official cholera elimination plan, yet the UN has pledged only 1% of the estimated $2.2 billion needed and has failed to mobilize enough funds from other donors to start work on the plan. As of October 2014, total funding for the plan amounted to only 12%.

LEGAL EFFORTS TO HOLD THE UN ACCOUNTABLE

6. How are claims against the UN supposed to be resolved?

The UN has well-established legal obligations—documented in international treaties, UN General Assembly resolutions, official UN statements, and elsewhere—to provide access to justice to people harmed by negligence in the course of its operations.

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has been no established link between this genetic strain of cholera and the origin of the cholera epidemic in Haiti.

See Guy R. Knudsen, A Questionable “New Wrinkle” in Haiti’s Cholera Epidemic, NW. NAT. RESOURCE ADVOC. BLOG (June 29, 2012), http://www.gknudsenlaw.com/a-questionable-new-wrinkle-in-haitis-cholera-epidemic/ (“It is certainly plausible that non-O1/O139 (i.e., non-cholera) strains have been present in the Haitian environment and/or human population, and perhaps have become more prevalent due to climatic change, but there is no evidence linking them to the cholera epidemic.”); see also ALEJANDRO CRAVITO ET AL., FINAL REPORT OF THE INDEPENDENT PANEL OF EXPERTS ON THE CHOLERA OUTBREAK IN HAITI (2011)(rejecting alternative theories of the origins of cholera).


The Convention on the Privileges and Immunities of the United Nations (CPIUN) mandates that the UN “shall provide for appropriate modes of settlement” of private law claims against it in § 29.5 The UN has cited claims by individuals and entities not party to the CPIUN for personal injury or death arising out of peacekeeping operations as classic examples of private law claims that the UN must settle.5 The claims of the cholera victims fall squarely within the realm of private law claims.

The UN-Haiti Status of Forces Agreement (SOFA) provides that third-party claims for personal injury, illness or death that arise out of MINUSTAH’s operations in Haiti, which cannot be resolved informally, are to be heard and settled through a standing claims commission.7 Despite this requirement, no commission has been established during the seven years MINUSTAH has operated in Haiti. In fact, although the establishment of a standing claims commission is a standard feature in each of the 32 SOFAs that have governed UN peacekeeping missions since 1990, no such commission has ever been established.8

7. Did the cholera victims attempt to resolve their claims with the UN before filing a lawsuit?

Yes. In November 2011, the Institute for Justice & Democracy in Haiti (IJDH) and its Haitian sister-organization, the Bureau des Avocats Internationaux (BAI), worked with 5,000 cholera victims to file claims directly with the UN in accordance with the CPIUN and SOFA. They petitioned for the establishment of a standing claims commission and remedies in the form of: 1) investments in water and sanitation infrastructure to combat the epidemic; 2) just compensation; and 3) a public acceptance of responsibility.

In February 2013, the UN responded that the claims were “not receivable pursuant to Section 29 [of the CPIUN]” because “consideration of these claims would necessarily include a review of political and policy matters.”9 The victims again wrote to the UN, explaining that the dismissal appeared to have no valid basis in law and that it conflicted with its obligations to provide an alternative settlement mechanism. They requested clarification of the grounds for dismissal, and

7 Agreement between the United Nations and the Government of Haiti Concerning the Status of the United Nations Operations in Haiti, U.N.-Haiti, ¶¶ 54-55, July 9, 2004, 2271 U.N.T.S. 235 (“Third-party claims for … personal injury, illness or death arising from or directly attributed to MINUSTAH, …which cannot be settled through the internal procedures of the United Nations shall be settled … by a standing claims commission to be established for that purpose.”).
mediation or a meeting to discuss out-of-court resolution of the claims. The UN refused those requests. It was only in the wake of this dismissal that Georges v. United Nations was filed in October 2013 in the United States District Court for the Southern District of New York, against the UN, MINUSTAH, UN Secretary-General Ban Ki-moon, and former head of MINUSTAH Edmond Mulet.

The UN’s response has been heavily criticized, including by international law experts and the UN’s own former lawyers, as non-compliant with the UN’s legal obligations. An extensive study undertaken by Yale Law School found that “the UN’s ongoing unwillingness to hold itself accountable to victims violates its legal obligations under international law.”

8. Why was the lawsuit filed in the United States instead of Haiti?

We believe that the United States is the most appropriate forum for the case because the UN is headquartered in New York, where important decisions that contributed to the introduction of cholera were made. Two individual defendants are in the United States, U.S. citizens and residents (especially members of the Haitian-American diaspora) have fallen ill and lost family members to cholera. Additionally, because there is no class action mechanism in the Haitian court system, Haitian courts may lack the capacity to provide a fair hearing given the scale of the claims. There are also serious concerns regarding the independence of the Haitian judiciary, especially in the political context of this case.

9. How has the UN responded to the lawsuit?

The UN has not formally responded to the lawsuit. Instead, it asked the U.S. Government to seek dismissal on its behalf, citing the United States’ obligation as the UN’s host nation. In March 2014, the U.S. Attorney submitted a Statement of Interest in the case, asserting that the Defendants have absolute immunity from suit in U.S. courts regardless of the UN’s failure to comply with obligations to provide alternate dispute resolution. Judge J. Paul Oetken, the federal judge assigned to the case, ordered a hearing on the issue of UN immunity that took place Thursday, October 23, 2014, and a decision on immunity is still pending.

10. What is the Haitian Government’s position on the lawsuit?

The Haitian Government has not taken a formal position on the lawsuit itself. The opposition-controlled Senate has passed numerous resolutions calling on MINUSTAH to provide reparations to victims of cholera, but the President — who wields the most foreign relations power to put pressure on the UN — remains woefully silent on UN responsibility. In October 2013, the Haitian Prime Minister told the UN General Assembly “that the United Nations has a moral responsibility in this epidemic,” marking the first time the Haitian government has publicly acknowledged the UN’s responsibility in such stark terms. Still, the Haitian government is far from taking adequate action to protect the rights of its people and push the UN to provide a just response.

YALE LAW SCHOOL, ET AL., supra note 8, at 4.

11. Why is the U.S. Government opposing the lawsuit?

The U.S. Government asserts that it is obligated to protect UN immunity as the UN’s host nation and a state party to the CPIUN. By taking this position and ignoring the UN’s violation of its obligations to settle claims out of court, the U.S. is seeking selective enforcement of the CPIUN that is not justified by the law. Several groups have objected to this position. For example, the New York City Bar Association has urged the U.S. Government to call upon the UN to perform its obligations under the CPIUN.12 Similarly, the National Haitian-American Elected Officials Network (NHAEON) has called on Secretary of State John Kerry to “stand for justice and international law by refusing to intervene and letting the cholera victims take their case to court.”13

12. Does the UN have immunity from this lawsuit?

The CPIUN grants the UN protection from national courts in § 2, but that immunity has always been a two-way street. In exchange for immunity, § 29 of the CPIUN requires the UN to provide an out-of-court mechanism for the settlement of private law claims (those based in contract or tort, such as those brought by the cholera victims). These are two sides of the same coin, such that when the UN does not provide such a mechanism, it can no longer benefit from immunity under the treaty.

More specifically, plaintiffs present two main arguments for why the UN is not entitled to immunity in the cholera case:

• First, the availability of immunity is conditional on the UN upholding its obligation to provide an out-of-court settlement mechanism. The text of the CPIUN links the two clauses, and the travaux preparatoires, or drafting history of the CPIUN, confirms that the drafters of the treaty envisioned the provision of out-of-court settlement to be a necessary precondition to enjoyment of immunity. Thus, when the UN does not provide that mechanism as required by the treaty, its immunity under the same treaty may no longer be enforced.

• Second, the obligation to provide access to an out-of-court procedure is integral to the object and purpose of the CPIUN as a whole, meaning that when the UN fails to uphold that obligation, it has violated the entire treaty and is no longer entitled to immunity.

IMPACT OF THE LITIGATION

13. What are the plaintiffs seeking?

The Georges plaintiffs are seeking just compensation for their injuries and remediation costs to help install clean water and sanitation infrastructure that will eliminate cholera from Haiti.

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Should plaintiffs win this case, the amount awarded to them would be determined according to the law.

Although we anticipate that each victim would be awarded a modest amount, even relatively small compensation could have a profound effect on the families affected by cholera, many of whom have lost breadwinners. Compensation would alleviate the financial burdens of paying for medical care and funeral costs, and would permit families to redirect limited resources to paying for essential needs like tuition expenses, allowing children to return to school and obtain an education.

14. What would be the broader policy impacts of a victory for the plaintiffs?

A judgment in favor of plaintiffs would vitally transform the water and sanitation infrastructure in Haiti, which would free families of the burden of chronic illness, and reduce the burden—primarily borne by women and girls—of spending hours each day fetching water from distant, questionable sources. In turn, this would allow Haitians to enjoy their fundamental right to water and sanitation and save thousands of lives every year.

A successful outcome would also result in improved accountability for the UN, which we believe will ultimately strengthen the UN’s ability to do good around the world. The UN’s response to cholera victims has subjected it to severe criticisms from around the world that it operates with double standards, and has eroded its moral credibility to urge world leaders to comply with the rule of law. As noted by Former Deputy Director of UNICEF, Stephen Lewis, “it would do the UN a lot of good to be seen as principled in the face of having caused such devastation [in Haiti].”

A just response to victims of cholera would help reinforce the human right to a remedy. A number of UN human rights experts have voiced their objections to the UN’s formal response and stressed the importance of this human right in the context of calling for the UN to adequately respond to the cholera epidemic. Former UN High Commissioner for Human Rights Navanethem Pillay publicly stated that she “stand[s] by the call that victims of cholera … be provided with compensation.” Similarly, the UN Independent Expert on the Situation of Human Rights in Haiti, Gustavo Gallón, stated in an official report that “full reparation for damages” should be assured to the Haitian people, and the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation emphasized “the obligation … to ensure the alleged [cholera] victims’ right to a remedy, including compensation, if warranted.”

15. If the judge rules that the UN does not have immunity in this case, wouldn’t that open the floodgates to a torrent of future litigation against the UN?

A victory for the cholera plaintiffs would not impose any additional obligations on the UN, since the organization already recognizes that it has an obligation to provide compensation for victims of personal injury and usually complies with that obligation. It would not “open up the floodgates” to litigation for two reasons: First, the ruling would only be relevant for private law claims against the UN, such as those based in contract or tort. These types of claims are entirely separate and distinct from claims related to the UN carrying out its mandate, for which the UN would retain its immunity. Subjecting the UN to accountability for private law violations would align UN immunity with that enjoyed by many national governments, which may be sued when they commit torts, but enjoy immunity for their sovereign actions. Second, a lack of immunity in this case would be premised on the UN's complete refusal to comply with its legal obligations to provide access to a remedy. To keep its immunity intact and avoid being subject to the jurisdiction of national courts in the future, the UN would need only to uphold its legal obligations to provide a mechanism for out-of-court settlement of claims.

The Georges plaintiffs seek a narrow, fact-specific ruling that immunity may not be enforced under the circumstances where the UN has refused to comply with its corresponding obligation to provide a way for third parties to resolve claims against it outside of court. As such, the case is challenging UN impunity, not UN immunity. The plaintiffs are in not challenging the validity of the CPIUN or the legitimacy of UN immunity generally, but are only seeking implementation of the UN’s existing obligations.

16. What can I do to support efforts to hold the UN accountable?

Learn more:

- Visit the IJDH Cholera Accountability page: www.ijdh.org/cholera-litigation;
- Sign up to receive updates on the case and ways to help: https://app.etapery.com/hosted/InstituteforJusticeandDemo/OnlineDonation.html?p=c;
- Like us on Facebook: www.facebook.com/IJDH1; and
- Follow us on Twitter: https://twitter.com/ijdh.

Support justice:

- Donate to support our efforts to obtain accountability and investments in clean water and sanitation in Haiti: https://app.etapery.com/hosted/InstituteforJusticeandDemo/OnlineDonation.html?p=d;
- Host a viewing of Baseball in the Time of Cholera, a Tribeca Film Festival award-winning documentary that shows how our case is impacting the life of a Haitian Little League pitcher;
- Host a viewing of Fault Lines: Haiti in a Time of Cholera, a Peabody and Emmy award-winning short documentary film by Al Jazeera America on UN responsibility for cholera in Haiti;
- Volunteer your time to support the fight for human rights in Haiti: http://www.ijdh.org/take-action/volunteer/.