

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

BACKGROUND

1. 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.

2. When did the Haitian cholera epidemic begin?

Cholera appeared in Haiti in October 2010 for the first time in recorded history. Within the first 30 days, Haitian authorities recorded almost 2,000 deaths from cholera. The cases were concentrated in the Artibonite region, home to Haiti's central river system, but quickly spread to other areas. By May 2018, at least 10,000 Haitians had have died, and a further 800,000 have been sickened by cholera. The total number of Haitians killed by cholera to date is comparable to the death toll from the 2014-2015 West African Ebola outbreak. While cholera is endemic in some developing countries, Haiti has not had a cholera epidemic in recorded history.

3. Did the UN really bring cholera to 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.”¹ Genetic testing has shown the strains of cholera in Haiti and Nepal to be virtually identical.² In July 2014, UN

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

Secretary-General Ban Ki-moon acknowledged that the UN has a “moral responsibility” to end the epidemic.³

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?

The UN's persistent denial and obfuscation in spite of the evidence and its undisputed responsibility to compensate for third-party harms attributable to peacekeeping operations has brought widespread criticism from human rights advocates, the international media, and many within the UN system who believed that the UN response was inconsistent with the Organization's commitments to promoting human rights and the rule of law. These critiques were articulated in a 2016 report to the General Assembly by the Special Rapporteur on Extreme Poverty & Human Rights, who described the response as “legally indefensible, morally unjustifiable and politically self-defeating.”

On December 1, 2016, the Secretary-General issued a public apology for the UN's role in the outbreak and launched a New UN Approach to Cholera in Haiti. The [New Approach](#) adopts a two-track strategy: Track 1 focuses on intensified efforts to treat, control and eradicate cholera, and Track 2 promises to deliver “a package of material assistance and support to those Haitians most directly affected by cholera, centered on the victims and their families and communities.” The two tracks operate complementarily to remedy the damage and end the suffering wrought by the cholera epidemic. Together, they are intended to signify a “concrete and sincere expression of the

of the cholera bacterium, *Vibrio Cholerae*, can exist in natural flora and not cause cholera symptoms, there 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) (“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 CRAVIOTO 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).

³ Jacqueline Charles, United Nations Top Official Goes to Haiti to Promote Cholera Elimination, Elections, MIAMI HERALD, July 13, 2014, available at <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article1975427.html>.

Organization’s regret.”

The Haitian Government has declared full support for the proposed plan, noting that it is “what all the stakeholders were hoping for and what they have been expecting all along, especially the victims and their loved ones.” The General Assembly also welcomed the New Approach in a [resolution](#) passed on December 16, 2016, and called on “all Member States, relevant United Nations bodies and other international governmental and non-governmental partners to provide their full support to the new approach....”

The UN has stated it is seeking \$200 million for Track 1 and \$200 million for Track 2 and has established a Multi Partner Trust Fund (MPTF) to channel funds for the New Approach. As of May 2018, however, only 4% of the total amount needed has been funded through voluntary contributions. This severe underfunding has hampered the ability to finalize and implement the New Approach. In May 2017, the Secretary-General warned that if more funding is not secured immediately, “the gains of the intensified cholera response to date will be reversed, and it is very likely that the outbreak will intensify and potentially spread to other parts of the country, causing further suffering among the population and a significant setback in the elimination plans.”

Recently the Secretary General appealed to member states to allow him to redirect \$40.5 million left over in MINUSTAH’s budget to the cholera fund as a stopgap measure to deal with the most urgent funding needs, but large donor states reportedly opposed an automatic transfer of these funds. Instead the General Assembly passed a resolution supporting the idea in principle but leaving it to individual Member States to waive their shares of the \$40.5 million on a voluntary basis. Thirty-one countries committed their share of the MINUSTAH underspend to the cholera fund.

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.

- 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 § 29.⁴ 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.

⁴ Convention on the Privileges and Immunities of the United Nations § 29, Feb. 13, 1946, 21 U.S.T. 1418, 1 *U.N.T.S.* 15.

⁵ See, e.g., Memorandum to the Controller; U.N. Secretary-General, *Review of the Efficiency of the Administrative and Financial Functioning of the United Nations: Procedures in Place for Implementation of Article VIII, Section 29, of the Convention on the Privileges and Immunities of the United Nations*, ¶ 15, U.N. Doc. A/C.5/49/65 (Apr. 24, 1995).

- 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**.⁶ 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.⁷

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.”⁸ 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 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.”⁹

⁶ 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.”).

⁷ TRANSNATIONAL DEVELOPMENT CLINIC, YALE LAW SCHOOL, GLOBAL HEALTH JUSTICE PARTNERSHIP OF THE YALE LAW SCHOOL AND THE YALE SCHOOL OF PUBLIC HEALTH & ASSOCIATION HAÏTIENNE DE DROIT DE L'ENVIRONNEMENT, PEACEKEEPING WITHOUT ACCOUNTABILITY: THE UNITED NATIONS' RESPONSIBILITY FOR THE HAITIAN CHOLERA EPIDEMIC 27 (2013), available at http://www.law.yale.edu/documents/pdf/Clinics/Haiti_TDC_Final_Report.pdf [hereinafter YALE LAW SCHOOL, ET AL.].

⁸ Letter from Patricia O'Brien, U.N. Under-Secretary-General for Legal Affairs, to Brian Concannon, Director, Institute for Justice & Democracy in Haiti (Feb. 21, 2013) (on file with author).

⁹ YALE LAW SCHOOL, ET AL., *supra* note 8, at 4.

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

We believe that the United States was 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 did the UN respond to the lawsuit?

The UN did not formally respond 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. On January 9, 2015, the judge dismissed our case. On February 12, 2015, we filed a notice of appeal to begin the appeals process. On May 27, 2015, we filed the Plaintiffs' Principal Appellate Brief. On August 26, 2015, the United States filed an Amicus Curiae Brief in support of affirmance. On September 25, 2015, we filed the Appellants Reply Brief. On March 1, 2016, the Second Circuit Court of Appeals heard oral arguments. On August 18, 2016, the Court upheld the UN's immunity from claims. We did not appeal to the Supreme Court.

10. What was the Haitian Government's position on the lawsuit?

The Haitian Government did not take a formal position on the lawsuit itself. The opposition-controlled Senate 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 — remained 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,”¹⁰ marking the first time the Haitian government publicly acknowledged the UN's responsibility in such stark terms. To date, the Haitian government is far from taking adequate action to protect the rights of its people and from pushing the UN to provide a just response.

11. Why did the U.S. Government oppose the lawsuit?

The U.S. Government asserted 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. sought selective enforcement of the CPIUN that is not justified by the law. Several groups have objected to this position. For example, the New

¹⁰ *At UN, Haitian leader urges 'second look' at island nation, where real progress is taking hold*, UN NEWS CENTRE, Sep. 23, 2013.

York City Bar Association urged the U.S. Government to call upon the UN to perform its obligations under the CPIUN.¹¹ Similarly, the National Haitian-American Elected Officials Network (NHAEON) called on former 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.”¹²

12. Does the UN have immunity from the 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 presented 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 préparatoires*, 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 were the plaintiffs seeking?

The *Georges* plaintiffs were seeking just compensation for their injuries and remediation costs to help install clean water and sanitation infrastructure that will eliminate cholera from Haiti. Had plaintiffs won this case, the amount awarded to them would have been determined according to the law. Even relatively small compensation could have had a profound effect on the families affected by cholera, many of whom have lost breadwinners. Compensation would have alleviated the financial burdens of paying for medical care and funeral costs, and would have permitted 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 have been the broader policy impacts of a victory for the plaintiffs?

¹¹ Letter from Carey Dunne to Hon. Secretary of State John Kerry, Apr. 11, 2014, *available at* <https://www2.nycbar.org/pdf/report/uploads/20072699-UNResponsibilityreHaitisCholeraEpidemic.pdf>.

¹² Letter from Massachusetts Senator Linda Dorcea Forny to Hon. Secretary of State John Kerry, March 5, 2014, *available at* <http://www.ijdh.org/2014/03/topics/health/haitian-american-elected-officials-urge-u-s-to-protectcholera-victims-rights/>.

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

A successful outcome would have also resulted in improved accountability for the UN, which we believe would have ultimately strengthened the UN’s ability to do good around the world. The UN’s response to cholera victims subjected it to severe criticisms from around the world: that it operates with double standards and 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].”¹³

A just response to victims of cholera would have helped reinforce the human right to a remedy. A number of UN human rights experts 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.”¹⁴ Similarly, the UN Independent Expert on the Situation of Human Rights in Haiti at the time, Gustavo Gallón, stated in an official report that “full reparation for damages” should be assured to the Haitian people,¹⁵ and the former 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.”¹⁶

15. If the judge had ruled that the UN did not have immunity in the case, wouldn’t that have opened the floodgates to a torrent of future litigation against the UN?

A victory for the cholera plaintiffs would not have imposed 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 was only 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

¹³ *The World at Six*, Interview by Laura Lynch with Stephen Lewis (CBC Radio One broadcast Nov. 13, 2013), available at <https://soundcloud.com/cbc-radio-one/the-world-at-six-laura-lynch>.

¹⁴ Trenton Daniel, UN Official Pushes Compensation for Haiti Victims, AP, Oct. 8, 2013, <http://www.sandiegouniontribune.com/sdut-un-official-pushes-compensation-for-haiti-victims-2013oct08-story.html>.

¹⁵ Independent Expert on the Situation of Human Rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, ¶ 77, Human Rights Council, U.N. Doc. A/HRC/25/71 (Feb. 7, 2014) (by Gustavo Gallón).

¹⁶ Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation: Common Violations of the Human Rights to Water and Sanitation*, ¶ 34, Human Rights Council, U.N. Doc. A/HRC/27/55 (June 30, 2014) (by Catarina de Albuquerque).

have been 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 have needed only to uphold its legal obligations to provide a mechanism for out-of-court settlement of claims.

The *Georges* plaintiffs sought 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 was challenging UN impunity, not UN immunity. The plaintiffs were not challenging the validity of the CPIUN or the legitimacy of UN immunity generally but were 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.etapestry.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.etapestry.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/>.