



June 17, 2020

H.E. Mr. António Guterres
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Open Letter Re: UN Obligations to Haitian Victims of UN-Caused Cholera Epidemic

Mr. Secretary-General:

This October will mark ten years since United Nations (UN) Peacekeepers introduced cholera to Haiti, sparking an epidemic that is estimated to have killed over 9,700 and sickened more than 819,000.¹ The real numbers are likely far higher. As documented in a briefing paper recently published by the Institute for Justice & Democracy in Haiti (IJDH) and *Bureau des Avocats Internationaux* (BAI) (“**Briefing Paper**”),² that decade has seen the UN compound its original negligence with repeated failures to take full responsibility for its conduct; to offer meaningful remedies for the loss of human life, illness, and corresponding material outlays; and to adopt effective measures for ensuring that similar harms do not happen again.

On April 30, fourteen human rights experts entrusted with UN mandates announced, in a statement that articulates this very point,³ that they had sent you a letter in response to a formal complaint (the “**Complaint**”) filed by IJDH, BAI, and the International Human Rights Clinic at Harvard Law School (“**IHRC**”).⁴ In their press release, the experts called the UN’s response to date “illusory,” “pitiful,” and “little more than a spate of symbolic development projects.” This is a serious indictment of the UN’s record.

Mr. Secretary-General: in ten days, your experts’ letter is due to become public, along with – we hope – your response. We write to urge you to make that response meaningful by recognizing the

¹ OCHA, Haiti Cholera Figures (Jan. 30, 2019), https://reliefweb.int/sites/reliefweb.int/files/resources/ocha-hti-cholera-figures-20190131_en.pdf; Francisco J. Luquero et al., *Mortality Rates During Cholera Epidemic, Haiti, 2010-2011*, 22 *Emerging Infectious Diseases* 410 (2016); see also Rick Gladstone, *Cholera Deaths in Haiti Could Far Exceed Official Count*, *The New York Times* (Mar. 18, 2016), <https://www.nytimes.com/2016/03/19/world/americas/cholera-deaths-in-haiti-could-far-exceed-official-count.html>.

² Institute for Justice & Democracy in Haiti, *Bureau des Avocats Internationaux, Cholera 9 Years On . . . A “New Approach”?* *The Ongoing Violation of Victims’ Rights in the UN’s Response to Cholera in Haiti* (Jun. 2020), <http://www.ijdh.org/2020/06/projects/cholera-9-years-on-a-new-approach/>.

³ OHCHR, *UN Inaction Denies Justice for Haiti Cholera Victims, Say UN Experts* (Apr. 30, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25851&LangID=E>

⁴ Harvard Law School International Human Rights Clinic, Institute for Justice & Democracy in Haiti, and Bureau des Avocats Internationaux, *Violations of the Right to Effective Remedy: The UN’s Responsibility for Cholera in Haiti* (2020), <http://www.ijdh.org/wp-content/uploads/2020/02/FINAL-HLS-IHRC-IJDH-BAI-Submission-to-Special-Procedures-Cholera-2-6-2020.pdf>.

“past failures and ongoing violations” identified by the UN’s own experts and correcting the UN’s course of conduct.

First, the UN must accept legal responsibility for its wrongdoing. The UN has already tarnished its reputation by spending six years denying that it was responsible for the cholera epidemic and failing to undertake adequate remedial action – all conduct that is incompatible with the duties of accountability, transparency, and respect for human rights that the UN demands of others. The “New Approach,” accompanying the UN’s 2016 recognition of its “role” in and formal apology for the epidemic, promised concrete action to eliminate cholera in Haiti and to provide material assistance to those most affected. Another three years later, it is clear that the UN’s New Approach has failed. The UN’s own experts publicly commented that “[m]any of the [New Approach] shortcomings result from the UN’s admission of its ‘moral responsibility’ but not its legal one.” As IJDH and BAI pointed out in their Briefing Paper and Complaint (with IHRC), the UN’s refusal to accept its legal obligation to remediate means that it has relied on voluntary contributions to fund its New Approach programs. The resulting funding has been vastly inadequate – a predictable failure when legal duty is reframed as optional charity. But the UN’s obligation to make whole the victims of UN-introduced cholera in Haiti is neither optional nor charity. Instead, it is the UN’s legal obligation, arising from its culpability for the deadly disease in the first place.

Second, as part of accepting legal responsibility for its wrongdoing, the UN must uphold the right to effective remedies for victims of the cholera epidemic, which includes individual compensation for those most harmed. As the UN’s own experts emphasize, “[c]ompensation is ordinarily a central component of the right to an effective remedy, and development projects are simply not a replacement for reparations.” In spite of this, the UN never established a standing claims commission, as mandated by the UN’s Status of Forces Agreement with the government of Haiti, or an equivalent independent mechanism through which victims of its negligence could claim compensation. Instead, the UN has relegated direct compensation to a subcomponent of its New Approach. Worse still, the UN now appears to be using its (self-caused) lack of funding as a justification not to implement that subcomponent at all, even though individual compensation for the most affected victims is perceived as a necessary element of a just response by many of the victims of cholera themselves.⁵ Further, the harms arising from the UN’s failure on this point have become all the more salient with the arrival of COVID-19 in Haiti: families devastated by cholera are more vulnerable to a new healthcare crisis if they were never made whole.⁶

Third, the UN must adequately involve victims in any responses it puts forward. Although the UN publicly committed to “place victims at the center” of its response to the harms of the

⁵ As described in the Briefing Paper and Complaint, although the UN never performed a feasibility study on direct reparations, in spite of committing to do so, Lawyers without Borders Canada and partners completed an independent feasibility assessment in 2019, concluding that direct compensation of those most affected is feasible. See Lawyers without Borders Canada, *Meeting the Needs of Victims of Cholera in Haiti: Feasibility of an Individual Assistance Approach for People Most Affected by the Disease* (2019) https://www.asfcanada.ca/site/assets/files/7636/etude_de_faisabilite_summary_web_vf.pdf.

⁶ See Sandra Wisner and Beatrice Lindstrom, *COVID-19 Brings Renewed Urgency to Remedies for Cholera in Haiti*, Al Jazeera (May 22, 2020), <https://www.aljazeera.com/indepth/opinion/covid-19-brings-renewed-urgency-remedies-cholera-haiti-200521082808222.html>. The UN’s experts likewise noted the potential for a “double blow to victims of the cholera outbreak and their families.”

epidemic, it has largely excluded victims from the design of proposed remedies and related decision-making. The UN's own experts have questioned "how those most affected by cholera are being prioritized in" the UN's consultative process for its response. As one of the victims of UN negligence observed, "it is not for the wrongdoer to decide what is justice for the victim." By proceeding without listening to victims' voices the UN betrays its values. It also fundamentally violates its obligations as the party responsible for this deadly epidemic.

Finally, the UN must make a meaningful change to its practices for preventing negligent transmission of communicable diseases. As described in the Complaint and Briefing Paper, the UN has continued unsafe management practices in its peacekeeping missions, recreating the risk that led to a catastrophic human tragedy in Haiti. Further, the failure to provide adequate remedies undermines local trust in the UN's peacekeeping missions, especially during a new pandemic;⁷ puts at risk the organization's credibility in the eyes of the communities it serves; and thereby endangers the UN's core purpose of supporting international peace and security. Failure to prevent risky practices is also irresponsible and reckless.

Mr. Secretary-General, as the UN rightly celebrates the accomplishments of its 75 years of promoting human security and development, it must equally reckon with and accept responsibility for the stains on that history. Acknowledging and addressing past failures will only bolster the UN's values and mission. Failing to do so is already undermining the very core of its purpose. Fourteen of your human rights experts, alongside thousands of Haiti's cholera victims, are calling on you to take action by providing concrete remedies. We urge you, Mr. Secretary-General, to hear and honor these voices. The UN must accept responsibility for and offer restitution to the victims of cholera, who have already suffered and lost too much.

Respectfully,



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⁷ See, e.g., Obi Anyadike, *Briefing: What's Behind South Sudan's COVID-19 Inspired UN-Backlash*, *The New Humanitarian* (Apr. 10, 2020), <https://www.thenewhumanitarian.org/news/2020/04/10/south-sudan-UN-coronavirus-backlash>.