

**Republic of Haiti**

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**Violations of human rights related to the ongoing cholera epidemic**

**Submitted by:**

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## **I. EXECUTIVE SUMMARY**

1. This report, submitted on behalf of the Institute for the Justice & Democracy in Haiti (IJDH), AIDS-Free World, the Environmental Justice Initiative for Haiti (EJIH), the Haitian-American Leadership Council (HALEC) and the Haitian Diaspora for Democracy and Development (HD3), discusses violations of human rights in Haiti related to the ongoing cholera epidemic. It specifically addresses the ways in which the cholera epidemic has resulted in grave violations of the right to an effective remedy, the right to life, the rights to water and sanitation and the right to health guaranteed by the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic and Social Rights (ICESCR).

2. Cholera was introduced into Haiti in 2010 as a result of reckless waste management by United Nations (UN) peacekeepers deployed with the United Nations Stabilization Mission in Haiti (MINUSTAH). The disease has since killed more than 9,200 Haitians and infected nearly 770,000.<sup>1</sup>

3. Pursuant to the right to an effective remedy, Haitian cholera victims must be allowed to seek restitution and reparation for the human rights violations they have suffered. To date however, the UN has refused to take responsibility for its role in the cholera epidemic and has denied victims any access to a remedy. The Government of Haiti has likewise failed to take any steps to protect and uphold victims' right to a remedy.

4. As a result of the failure to provide effective remedies or adequately address the crisis, cholera also continued to cause major violations of the rights to water, sanitation, health and life throughout the reporting period. At the time of submission, an average of thirty-seven Haitians are dying each month as a result of cholera.<sup>2</sup> The Haitian government and the international community have failed to make the necessary investments in basic water and sanitation infrastructure and healthcare to effectively combat cholera and uphold Haitians' rights to life, water and sanitation and health.

5. We urge the Haitian government to use all available means to pursue access to legal remedies for cholera victims. Its failure to do so constitutes a grave violation of victims' right to an effective remedy. The Haitian government should also take all possible measures to address cholera in Haiti and press the UN and international community to provide adequate funding for cholera elimination, in order to remedy ongoing violations of the right to life the right to health and the rights to water and sanitation.

## **II. NORMATIVE AND INSTITUTIONAL FRAMEWORK**

### **A. International and Domestic Principles to Protect the Rights to a Remedy, Water and Sanitation, Health and Life**

## 1. Sources of Haiti's Obligations

6. Haiti ratified the ICCPR on February 6, 1991, and the ICESCR on October 8, 2013. Haiti's Constitution provides that international treaties or agreements that have been approved and ratified are self-executing and automatically become part of the law of the country.<sup>3</sup> Furthermore, the Haitian Constitution explicitly recognizes the obligations contained in the Universal Declaration of Human Rights (UDHR), establishing that the "State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Rights of Man".<sup>4</sup> The Constitution also recognizes the right to a remedy, explicitly protecting the rights of injured parties to appeal to competent courts regardless of the rank or body of the perpetrator,<sup>5</sup> and the right to health, establishing the State's obligation to "ensure for all citizens in all territorial divisions appropriate means to ensure protection, maintenance and restoration of their health".<sup>6</sup> The rights to clean water and adequate sanitation are implicitly protected by the Haitian Constitution's guarantees of the rights to health, decent housing, education, food, social security and work.<sup>7</sup>

## 2. Content of the rights

7. The right to an effective remedy is widely recognized as fundamental to the enjoyment of human rights.<sup>8</sup> Victims of rights violations have the right to a remedy regardless of the status of the actor who has committed the violation, and the Government of Haiti has a duty to ensure that the right to an effective remedy is upheld.<sup>9</sup> General Comment No. 31 of the Human Rights Committee on the ICCPR establishes that the Haitian Government must "establish appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law."<sup>10</sup> General Comment No. 31 also stresses that the right to an effective remedy includes a right to reparation.<sup>11</sup>

8. Furthermore, failure to provide access to an effective remedy constitutes an additional and distinct violation of victims' substantive rights to life, health and water and sanitation. The Government has an obligation to *protect* human rights by regulating third parties and investigating, punishing and ensuring redress is provided to individuals whose rights are violated. Failure to do so can constitute a violation of the rights in question.<sup>12</sup> The Human Rights Committee has found violations of the right to life stemming from a State's failure to investigate and redress violations by third parties.<sup>13</sup> Likewise, as set out by the Committee on Economic Social and Cultural Rights (CESCR), the right to health requires that any person or group whose right to health has been violated must have access to "effective judicial or other appropriate remedies at both national and international levels."<sup>14</sup> Victims of violations of the rights to water and sanitation are also entitled to access "effective judicial and other appropriate remedies and both national and international levels" including "adequate reparation."<sup>15</sup>

9. Additionally, Haiti has international human rights obligations to take effective measures to control and eliminate cholera. The right to life, which has been recognized by the Human Rights Committee as the "supreme" right, requires States to adopt positive measures to eliminate epidemics, among other responsibilities.<sup>16</sup> Haiti's obligations to respect, protect, and fulfill the rights to health,

water and sanitation also require that the State take adequate measures to prevent, treat and eliminate the cholera epidemic.

10. The right to health is guaranteed by the UDHR<sup>17</sup> and the ICESCR.<sup>18</sup> Haiti's duty to respect, protect and fulfill the right to health requires Haiti to take whatever steps are necessary to ensure that everyone has access to health facilities, goods and services",<sup>19</sup> and to take measures to prevent, treat, and control endemic, epidemic, and other diseases.<sup>20</sup> The CESCR's General Comment No. 14 on ICESCR further explains the right to health includes not only access to appropriate health care but to underlying determinants of health, including access to safe, potable water and adequate sanitation.<sup>21</sup>

11. The rights to water and sanitation entitle individuals to water that is sufficient in quantity, safe in quality, acceptable in taste and odor, physically accessible, available and affordable,<sup>22</sup> and to sanitation that is accessible, safe, hygienic, secure, and socially and culturally acceptable.<sup>23</sup> The rights to water and sanitation are recognized as "indispensable for leading a life in human dignity" and as "a prerequisite for the realization of other human rights."<sup>24</sup> They are an implicit component of other human rights, including the right to an adequate standard of living,<sup>25</sup> the right to health,<sup>26</sup> and the right to life.<sup>27</sup> The General Assembly has recognized both the right to water and the right to sanitation as distinct rights that are essential for the full enjoyment of life and all human rights,<sup>28</sup> and the UN Human Rights Council has affirmed the legally binding nature of these rights.<sup>29</sup> The Independent Expert on the Right to Water and Sanitation has also emphasized that "[s]anitation and water must be prioritized by according greater political priority to these sectors, which should be reflected in allocations in State budgets and donor commitments."<sup>30</sup>

## **B. International Cooperation and the United Nations' Responsibility to Respect Human Rights**

12. The primary duty to realize the rights to life, health, water and sanitation and an effective remedy rests with the Haitian state. However, the State's lack of resources and personnel, and the terms mandated by the UN in relation to its presence in Haiti, notably the requirement that the UN be immune from legal process, severely limit the government's ability to ensure access to these rights. The significant role played by the UN and other States in Haiti comes with an obligation to support the Haitian Government towards realizing human rights.<sup>31</sup> Further, as non-state actors with unique juridical personality, the UN and MINUSTAH have an obligation to respect and promote the realization of human rights in Haiti. Pursuant to Article 55(c) of the UN Charter, the organization has an obligation to promote "universal respect for, and observance of, human rights and fundamental freedoms for all."<sup>32</sup> As noted by Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, "[i]t would go against the very object and purpose of the Charter if the United Nations itself were not required to respect the human rights law it promotes."<sup>33</sup> As noted by the Independent Expert for Human Rights in Haiti, Gustavo Gallon, who has consistently called for a reparations commission for cholera victims, the United Nations should be the "first to honour" victims' right to a remedy.<sup>34</sup>

13. The obligations on the UN and international community to enable the realization of human rights in Haiti is also made clear in General Comment 14 to the ICESCR which in relation to the right to health notes that State parties must “respect the enjoyment of the right to health in other countries” and “prevent third parties from violating the right in other countries.”<sup>35</sup> Likewise CESCR General Comment No. 15 makes clear that states have to “respect the enjoyment of the right [to water] in other countries” and to “refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries” including when acting as members of international organizations.<sup>36</sup> Further, as noted by Caterina de Albuquerque, “[d]evelopment cooperation and assistance must be designed and implemented in line with human rights standards and principles, including the rights to water and sanitation..., ensuring that there are adequate and effective measures in place to identify and address any negative impacts on human rights.”<sup>37</sup> The UN and its member states therefore have a responsibility to ensure that the organization adequately address and remedy the violations of human rights caused by its negligent introduction of cholera to Haiti.

### **III. HUMAN RIGHTS IN HAITI IN THE CONTEXT OF THE CHOLERA EPIDEMIC**

#### **A. Impact of the Cholera Epidemic**

14. Cholera appeared in Haiti for the first time in October 2010. Extensive genetic and epidemiological studies have since established that cholera was introduced to Haiti by a contingent of UN peacekeepers from Nepal, where cholera is endemic.<sup>38</sup> The soldiers were stationed at a UN Stabilization Mission in Haiti (MINUSTAH) base where improper sanitation practices led to untreated sewage entering the Meye Tributary. Specifically, a UN appointed panel of experts found that the pipes on the MINUSTAH base were “haphazard, with significant potential for cross-contamination” and that the base routinely disposed of untreated fecal waste in unprotected, open air pits dug directly into the ground that created a serious risk of overflow.<sup>39</sup> The experts concluded that the “evidence overwhelmingly supports” that “the outbreak was caused by bacteria introduced into Haiti as a result of human activity; more specifically by the contamination of the Meye Tributary System” with a South Asian strain of cholera.<sup>40</sup> This tributary flows into Haiti’s principal river system, upon which tens of thousands of Haitians rely as a primary source of water for drinking, washing and farming.<sup>41</sup>

15. The outbreak has since developed into “one of the largest cholera epidemics in modern history” according to the Pan-American Health Organization.<sup>42</sup> Cholera continued to constitute a grave threat to Haitians’ fundamental human rights throughout the reporting period. At the time of submission, the *Ministère de la Santé Publique et de la Population* (MSPP) reported that the epidemic has killed more than 9,200 people in Haiti and infected more than 770,000. Nine percent of those who have died are children under the age of five.<sup>43</sup> Moreover, a recent study by *Médecins Sans Frontières* in collaboration with MSPP suggests that the nationwide statistics may be drastically undercounting the true toll of cholera. In the 4.4% of the population surveyed, the mortality rate was found to be 2.9 times higher than the official reports suggest.<sup>44</sup> Thus, cholera may actually have killed tens of thousands in the past five years.

16. Far from being under control, cases of cholera appear to be spiking recently. In the first two months of 2016 alone, there were 8,500 new reported cholera cases and 100 deaths, compared to 36,000 new reported cases and 322 deaths in all of 2015.<sup>45</sup> Cholera particularly harms the most vulnerable and marginalized. For example, it is a major concern in makeshift camps along the border where individuals expelled from the Dominican Republic struggle to survive – in camps in Anse-à-Pitres, 17 people died and 40 were infected between October and November 2015.<sup>46</sup> Ten people died between November 11 and 16, 2015 alone.<sup>47</sup> Furthermore, as noted by the UN itself at the end of the 2015, “for a significant part of the Haitian population, the risk of cholera remains the same as in 2010, since the underlying vulnerability and risk factors remain acute.”<sup>48</sup>

## **B. Lack of accountability and denial of justice for cholera victims**

17. Despite ample and overwhelming evidence of its responsibility for the cholera epidemic and clear legal obligations, the UN has never formally acknowledged responsibility for its role in the cholera epidemic and has consistently denied victims access to any form of effective remedy. The Haitian government has taken no steps to pursue access to justice or reparations for cholera victims.

### **1. UN refusal to provide access to a remedy**

18. The UN has well-established obligations, documented in international treaties, UN General Assembly resolutions, official UN statements, and elsewhere, to provide access to justice to individuals harmed by negligence in the course of its operations. The UN’s legal office has affirmed that, “[a]s a matter of international law, it is clear that the Organization can incur liabilities of a private law nature and is obligated to pay in regard to such liabilities.”<sup>49</sup> Moreover, the UN recognizes its responsibility to “assum[e] its liability for damage caused by members of its forces in its performances of their duties” by creating accountability mechanisms to address such wrongs.<sup>50</sup>

19. Although the UN claims immunity from domestic courts, under both the Convention on the Privileges and Immunities of the United Nations (CPIUN) and the Status of Forces Agreement (SOFA) signed by the UN and the Government of Haiti, the UN has a legal obligation to provide an alternative settlement mechanism to victims of harm caused by UN operations.<sup>51</sup> The SOFA signed by the UN and the Haitian government establishes a legal framework for victims to seek redress from harms committed in the course of peacekeeping. According to article 55 of the SOFA, a standing claims commission (SCC) must be established to hear private law claims arising out of MINUSTAH’s operations in Haiti, which cannot be resolved informally.<sup>52</sup>

20. Despite these clear obligations, the UN has failed to establish the SCC mandated by the SOFA. It has never established any claims settlement mechanism in Haiti, nor established any other avenue for cholera victims to access remedies.<sup>53</sup>

21. In November 2011, 5,000 Haitian cholera victims filed claims directly with the UN. They sought a fair and impartial hearing of their claims in accordance with the SOFA, investment in the water and sanitation infrastructure in Haiti, compensation, and a public acceptance of responsibility



from the UN. In February 2013, the UN dismissed the claims on the basis that they would “necessarily include a review of political and policy matters” and were “not receivable”. The claimants responded, seeking clarification of the grounds for dismissal and the engagement of a mediator. The UN issued a final dismissal in May 2013, refusing to provide any clarification of its position and refusing to engage a mediator. Victims have subsequently filed several lawsuits against the UN in United States Federal Court. The UN has claimed it has absolute immunity from all legal process and has failed to enter an appearance in any of the cases. An appeal is currently pending in one of the cases, but as noted by five UN Special Procedures in a letter to the Secretary General, “the result of the claim [to immunity] so far successfully made by the United Nations is to leave the victims without an effective remedy, while there does not seem to be any prospect for a proper accountability.”<sup>54</sup>

## **2. The Haitian Government’s failure to protect the right to an effective remedy**

22. The UN’s denial of justice to cholera victims constitutes a grave violation of the right to an effective remedy, and makes it critical that the Government of Haiti use all available means to pursue access to legal remedies on their behalf. As stressed by the Special Procedures, “it is essential that the victims of cholera have access to a transparent, independent and impartial mechanism that can review their claims and decide on the merits of those claims in order to ensure adequate reparation, including restitution, compensation, satisfaction and guarantees of non-repetition.”<sup>55</sup> To date, there is no evidence indicating that the Government of Haiti has taken any steps to meet its obligation to protect victims’ right to a remedy by pursuing remedies on their behalf or pressing the UN to respond justly to victims’ claims.

23. The Haitian Government has taken no steps towards establishing the standing claims commission required by the SOFA, despite the SOFA specifying that both the Government of Haiti and the UN are to play a role in establishing the SCC, which is to be comprised of three members - one appointed by the UN Secretary-General, one appointed by the Haitian government, and a chairman jointly appointed by both parties.

24. Nor has the Haitian Government taken any alternative steps, either diplomatic or legal, to ensure that cholera victims are afforded a legal remedy. In remarks to the UN General Assembly in September 2013, Haitian Prime Minister Laurent Lamothe alluded to questions regarding UN culpability, mentioned that the UN is supporting government efforts to combat cholera, and, at the same time, indicated that these efforts remain insufficient.<sup>56</sup> He emphasized the necessity of the establishment of a joint high-level committee by the Government of Haiti and the UN.<sup>57</sup> The High-Level Committee for the Elimination of Cholera in Haiti met for the first time in Port-au-Prince on May 27, 2014, and discussed strategies for fighting the disease. However, the committee has operated without transparency and has not publicly released its mandate or announced any concrete initiatives since its establishment.

25. Additionally, the Haitian Government has agreed to MINUSTAH’s mandate in Haiti every year since 2004. There is no evidence that the Government of Haiti has taken any action to press the

UN to provide victims of cholera with a remedy as a condition of, or in relation to, renewal of MINUSTAH's mandate.

26. The Haitian Government has also refused to provide cholera victims with medical records from public hospitals, thereby exacerbating the violation of the right to a legal remedy. Many cholera victims sought treatment at public hospitals in Haiti, but interviews with victims indicate that despite receiving treatment, these hospitals refused to provide medical records certifying that they had been infected by the disease. Based on private conversations with victims, lawyers and public health officials in Haiti, it appears that this refusal was the result of orders from the Haitian government. The medical records are critical evidence in victims' claims for a legal remedy, as well as providing an important evidence base for public health efforts to respond to the epidemic. The Government of Haiti should take steps to facilitate their access.

27. The failure to take any steps to support or protect victims' access to justice not only violates victims' right to an effective remedy but also gives rise to distinct violations of the rights to life, health and water and sanitation, which, as outlined in Part II(A) above, also require that violations thereof be remedied. The Government's inaction and the consequent denial of access to justice to a significant group of Haitian victims also runs directly counter to the recommendation made to Haiti during its last review in 2011 to "make greater efforts to improve confidence in and access to justice within the country".<sup>58</sup>

### **C. Violations of the rights to life, health, water and sanitation stemming from the failure to adequately respond to the cholera epidemic**

28. The UN's introduction of cholera to Haiti violated the rights to water, sanitation, health and life. The Haitian Government and international community's ongoing failure to commit adequate resources to controlling and eliminating the epidemic has resulted in continued violations of these rights. The Haitian Government also bears responsibility for addressing the underlying chronic and systematic violations of the rights to health, water and sanitation that predate the cholera outbreak, and which have multiplied the impact of the epidemic on the Haitians' human rights.

29. Cholera is a disease that affects the poorest and most marginalized. It can be easily prevented through clean water and adequate sanitation and is effectively treated through prompt medical treatment. However, Haiti is one of the most water-insecure countries in the world, causing cholera to persist.<sup>59</sup> In 2015, only 58% of the Haitian population had access to improved drinking water sources.<sup>60</sup> Alarmingly, the World Health Organization/UNICEF Joint Monitoring Program reports that regularized access to improved water sources has consistently *decreased* since 1990, and this trend continued during the reporting period.<sup>61</sup> The percentage of the population in urban areas with access to improved water sources dropped from 70% in 2010 to 65% in 2015, and remained stagnant at 48% among the rural population.<sup>62</sup>

30. The lack of access to improved sanitation is also astounding. While the percentage of the population practicing open defecation has decreased significantly between 1990 and 2015 from 48%

to 19%, only 20% of the population currently has access to improved sanitation that hygienically separates human excreta from human contact.<sup>63</sup> Access to treatment and safe disposal systems is also extremely limited. There is no centralized sewage system to collect toilet waste; instead, waste collection is carried out by *bayakou*—manual laborers who dive into cesspools without gear or protection, and scoop up the waste in buckets.<sup>64</sup> There is only one sewage treatment plant in the whole country.

31. The Government of Haiti established the *Direction Nationale de l'Eau Potable et de l'Assainissement* (DINEPA) on March 25, 2009,<sup>65</sup> to implement government policies related to water and sanitation, and to improve the efficiency, efficacy and equity of provision of these services.<sup>66</sup> Prior to DINEPA, no agency was responsible for sanitation, and the strength of the water sector suffered from lack of political will and financial means.<sup>67</sup> While the establishment of DINEPA is a positive step, it has not remedied the problem. A 2014 World Bank assessment noted that the “current weak supervision of the Water and Sanitation sector risks poor coordination and service delivery across the national territory, leaving certain population groups vulnerable to water-borne disease”.<sup>68</sup>

32. Haiti also suffers from poor access to and quality of healthcare. According to the World Health Organization, the Government of Haiti spends \$6 annually per person on health.<sup>69</sup> There is a significant shortage of qualified health care professionals,<sup>70</sup> and sixty percent of Haiti’s population lacks access to basic healthcare.<sup>71</sup> Of existing healthcare centers, thirty percent lack access to safe water.<sup>72</sup> Eighty percent of healthcare centers have pit latrines, and only fifty percent of those are sanitary.<sup>73</sup> These conditions can also contribute to the transmission of water-borne diseases, including cholera.

33. While the Haitian Government recently reported having taken important steps towards combatting cholera in 2014-2015, its reported interventions are fragmented and appear to focus on crisis response, for example the establishment of emergency response units in communities experiencing a spike in infections, rather than any systematic effort to improve the health system or water and sanitation infrastructure in order control or eradicate the epidemic.<sup>74</sup> As is clear from currently spiking rates of cholera infection, these interventions have been inadequate. Furthermore, although the Government agreed to provide cholera medicines free-of-charge, pharmacists have reported shortages of needed supplies due to funding shortfalls.<sup>75</sup>

34. In 2012, the *Ministere de la Sante Publique et de la Population* (MSPP) released a ten year strategic health plan (*Plan directeur de sante 2012-2022*) that resolved to correct structural deficits in the health sector and put public health at the center of national development.<sup>76</sup> However, in 2013 only 6% of the national budget was allocated to healthcare, and of that money, 23% went to administration costs in the public health system.<sup>77</sup> Haiti’s health care system is also deeply fragmented, as healthcare providers include public and private facilities, NGOs, and private donors, many of whom are not acting in a coordinated effort.<sup>78</sup> As noted by the MSPP itself in its *Plan directeur de sante 2012-2022*, the Haitian health system has multiple governance issues resulting from the multiplicity of actors, lack of standard protocols or appropriate regulations, weak government oversight capacity, and an organizational structure within the MSPP that “prevents it from fulfilling its essential functions.”<sup>79</sup> There is no evidence that the Haitian Government is effectively addressing these issues.<sup>80</sup>

35. As a result of the Government's failure to provide access to clean water, sanitation and health care in a systematic manner, of a population of ten million, 1.35 million people are in need of humanitarian assistance related to cholera, health, and clean water and sanitation. These circumstances are leading cholera to become endemic in Haiti, and constitute a grave and ongoing violation of the rights to health, water and sanitation.

36. The Haitian Government has an obligation to provide adequate funding and improved governance for the health, water and sanitation sectors. The responsibility to address these issues does not rest with the Haitian Government alone, however. As the actor responsible for introducing cholera to Haiti, the UN must provide adequate funding for its elimination. The Haitian government's capacity to fulfill the rights to water, sanitation and health in the context of cholera is severely hampered by limited resources, substantial foreign debt,<sup>81</sup> and lack of technical expertise. In 2015-2016, the Haitian government's budget was just over \$2 billion for all government services – less than the amount the UN estimates it would take to install a national water and sanitation system.<sup>82</sup> International actors in Haiti have also undermined the Government's capacity to fulfill these rights.<sup>83</sup> Substantial foreign debt service has crippled the Government's ability to improve and expand the subpar water infrastructure.<sup>84</sup> Additionally, following the earthquake on January 12, 2010, many foreign governments and non-governmental organizations providing aid failed to take a rights-based approach to provide access to health services, water, and other needs. Instead they provided top-down assistance that bypassed the government, along with a prioritization of distributions over investments in long-term infrastructure.<sup>85</sup>

37. Pursuant to Haiti's obligation to take positive measures to fulfill and guarantee the rights to life, health, water and sanitation, the Government must exercise leadership in pressing the international community for the funding and assistance Haiti needs to realize these rights. In February 2013, the Haitian Government launched a plan to eliminate cholera from Haiti through investment in water and sanitation. If fully implemented, the plan would result in significant improvements in the realization of these rights. The UN has officially pledged its support for the plan, but to date, the organization has committed only 1% of the funding needed and has failed to mobilize sufficient funds from member states and other donors in support of the plan. As of December 2015, total funding for the elimination plan amounted to only 13.8%.<sup>86</sup> Furthermore, the Secretary-General's March 2016 report on MINUSTAH notes that funding for cholera elimination and response is declining, hampering elimination efforts.<sup>87</sup> The office of the UN Senior Coordinator for Cholera Response, which was responsible for coordinating fundraising for the implementation plan was closed without explanation in June 2015. Given the UN's responsibility for introducing cholera, this inaction by the organization is indefensible and falls far short of its obligations to respond to the epidemic. Further, as outlined in Part II(B) above, other States have a responsibility to support the Haitian government to realize the rights to health, water and sanitation, and to remedy violations of human rights associated with the international community's involvement in Haiti. To date however, there is no evidence that the Government of Haiti has taken any steps to press the UN, or UN member states, to meet their obligations by providing the financial support needed to fund and implement the plan to eliminate cholera and thereby address the grave and ongoing violations of rights associated with the epidemic.

#### IV. RECOMMENDATIONS

##### **The Government of Haiti should:**

- a) Take all possible measures to ensure that the UN establishes a standing claims commission, or some equivalent body, that will ensure access to fair, impartial, and transparent adjudication of cholera victims' claims;
- b) Call on the UN to provide just compensation to victims of cholera, and ensure transparency and participation of victims at all stages of the compensation process;
- c) Raise objections before the UN to the renewal of MINUSHAH's mandate until a standing claims commission or some equivalent body is established to provide access to justice for all Haitian citizens, including cholera victims;
- d) Ensure that public hospitals provide medical certificates to cholera victims certifying that they were treated for cholera;
- e) Ensure regular meetings and improved transparency in the operations of the High-Level Committee for the Elimination of Cholera in Haiti
- f) Strengthen the water and sanitation sectors through the allocation of increased technical and financial resources and increased access to information;
- g) Take appropriate measures to strengthen governance and coordination in the health care, water and sanitation sectors; and
- h) Call on the UN and international donors to fully fund the National plan for the elimination of cholera in Haiti.

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<sup>1</sup> Ministère de la Santé Publique et de la Population, *Rapport de Cas* (Jan. 31, 2016), available at <http://mspp.gouv.ht/site/downloads/Rapport%20cholera%2031%20janvier%202016.pdf>.

<sup>2</sup> David McFadden, *Cholera Quietly Still Kills Dozens A Month in Haiti*, Associate Press (Mar. 3, 2016), available at [http://hosted.ap.org/dynamic/stories/C/CB\\_HAITI\\_CHOLERA\\_OUTBREAK?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT](http://hosted.ap.org/dynamic/stories/C/CB_HAITI_CHOLERA_OUTBREAK?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT)

<sup>3</sup> *La Constitution De La Republique d'Haiti*, art. 276-2 (1987) ('Haiti Constitution')

<sup>4</sup> *Id.* art. 19.

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<sup>5</sup> *Id.* art 27.

<sup>6</sup> *Id.* art. 23.

<sup>7</sup> *Id.* art. 22; Center for Human Rights & Global Justice et al., *Woch Nan Soley: The Denial of the Right to Water in Haiti* (2009) available at [http://parthealth.3cdn.net/0badc680352663967e\\_v6m6b1ayx.pdf](http://parthealth.3cdn.net/0badc680352663967e_v6m6b1ayx.pdf)

<sup>8</sup> See, inter alia, Universal Declaration on Human Rights (UDHR) art. 8 (“[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law”), International Covenant on Civil and Political Rights (ICCPR) art. 2.3 (“[e]ach State party ... undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”); UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 9: The domestic application of the Covenant* (December 3, 1998), E/C.12/1998/24 at paras [2],[3] “[c]ovenant norms must be recognized in appropriate ways within the domestic legal order...remedies must be available to any aggrieved individual or group”

<sup>9</sup> ICCPR, art. 2.3.

<sup>10</sup> UN Human Rights Committee (HRC), *General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant* (26 May 2004), CCPR/C/21/Rev.1/Add.13 at para [15] (‘HRC, General Comment No. 31’).

<sup>11</sup> *Id.* at para [16].

<sup>12</sup> *Id.* at para [8].

<sup>13</sup> HRC, *Kedar Chaulagain v. Nepal, Communication No. 2018/2010* (October 2014), CCPR/C/112/D/2018/2010 at paras [11.3], [11.5], [12], [13].

<sup>14</sup> Committee on Economic, Social, and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (August 11, 2000), UN. Doc. E/C.12/2000/4 at para [59] (‘CESCR, General Comment No. 14’)

<sup>15</sup> Committee on Economic, Social, and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)* (January 20, 2003), UN. Doc. E/C.12/2002/11 at para [55] (‘CESCR, General Comment No. 15’).

<sup>16</sup> Human Rights Committee, *General Comment No. 6: Article 6 (Right to life)* (April 30 1982) at para [5] compiled in *International Human Rights Instruments*, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), (May 27, 2008) (‘HRC, General Comment No. 6’).

<sup>17</sup> UDHR, art. 25(1).

<sup>18</sup> ICESCR, art. 12.

<sup>19</sup> CESCR, General Comment No. 14 at para [53]

<sup>20</sup> *Id.* at paras [16], [44]; ICESCR, art. 12.

<sup>21</sup> CESCR, General Comment No. 14 at para [4].

<sup>22</sup> CESCR, General Comment No. 15 at para [12] ; *see also* World Health Organization, *Health and Hum. Rts. Pub. Series No. 3, The Right to Water*, 12 (2003), available at [http://www.who.int/water\\_sanitation\\_health/rtwrev.pdf](http://www.who.int/water_sanitation_health/rtwrev.pdf).

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<sup>23</sup> G.A. Res. 70/169, UNGAOR, 70th sess, 3<sup>rd</sup> committee, agenda item 72(b), UN. Doc. A/C.3/70/L.55/Rev.1 (November 18, 2015) (*The human rights to safe drinking water and sanitation*)

<sup>24</sup> CESCR, General Comment No. 15 at paras [1], [3].

<sup>25</sup> ICESCR, art. 11.

<sup>26</sup> ICESCR, art 12.

<sup>27</sup> ICCPR, art 6.

<sup>28</sup> G.A. Res.64/292, UNGAOR, 64<sup>th</sup> sess, agenda item 48, UN. Doc. A/RES/64/292 (August 3, 2010); G.A. Res. 70/169, UNGAOR, 70th sess, 3<sup>rd</sup> committee, agenda item 72(b), UN. Doc. A/C.3/70/L.55/Rev.1 (November 18, 2015).

<sup>29</sup> H.R.C. Res. 15/L14, HRC, 15<sup>th</sup> sess, agenda item 3, U.N. Doc [A/HRC/15/L.14](#) (Sept. 24, 2010) (*Human rights and access to safe drinking water and sanitation*)

<sup>30</sup> *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque*, UNGAOR, 65<sup>th</sup> sess, provisional agenda item 69(b), U.N. Doc. A/65/254 (August 6, 2010) available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/477/84/PDF/N1047784.pdf?OpenElement> at para [63]

<sup>31</sup> *See Id.* at para [19] (“While States have the primary legal obligation for the realization of human rights domestically, all States have responsibilities to create an enabling environment for human rights realization.”).

<sup>32</sup> Charter of the United Nations, art. 55(c) (‘UN Charter’)

<sup>33</sup> *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque: Common violations of the human rights to water and sanitation*, HRC, 27<sup>th</sup> sess, agenda item 3, U.N. Doc. A/HRC/27/55 (June 30, 2014), available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Pages/ListReports.aspx> at para [33]

<sup>34</sup> *Report of the independent expert on the situation of human rights in Haiti, Gustavo Gallón*, HRC, 25<sup>th</sup> sess, agenda item 10, UN Doc. A/HRC/25/71 (February 7, 2014) available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx> at para [77]; see also *Report of the independent expert on the situation of human rights in Haiti, Gustavo Gallón*, HRC, 31<sup>st</sup> sess, agenda item 10, U.N. Doc. A/HRC/31/77 (February 12, 2016) at [102].

<sup>35</sup> CESCR, General Comment No. 14, at para [39].

<sup>36</sup> CESCR, General Comment No 15, at paras [31], [36].

<sup>37</sup> *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque*, UNGAOR, 65<sup>th</sup> sess, provisional agenda item 69(b), U.N. Doc. A/65/254 (August 6, 2010) available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/477/84/PDF/N1047784.pdf?OpenElement> at para [63].

<sup>38</sup> *See, e.g.,* Alejandro Cravioto et al., *Final Report of the Independent Panel of Experts on the Cholera Outbreak in Haiti* (2011) (herein ‘UN Independent Panel of Experts Report’); *see also* 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’*

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*Responsibility for the Haitian Cholera Epidemic* (2013), available at [http://www.law.yale.edu/documents/pdf/Clinics/Haiti\\_TDC\\_Final\\_Report.pdf](http://www.law.yale.edu/documents/pdf/Clinics/Haiti_TDC_Final_Report.pdf) page 23-25 (herein ‘Yale Report’) (reviewing genetic studies of the Haitian cholera strain and finding that “molecular and genetic studies demonstrate that the Haitian cholera strain is genetically almost identical to the Nepalese strain”).

<sup>39</sup> UN Independent Panel of Experts Report, at 22-23.

<sup>40</sup> *Id.* at 29.

<sup>41</sup> *Id.* at 21.

<sup>42</sup> *Haiti cholera death toll nears 7,000: expert*, Medicalxpress.com <http://medicalxpress.com/news/2012-01-haiti-cholera-death-toll-nears.html> (Jan. 6, 2012) (quoting Jon Andrus, PAHO).

<sup>43</sup> Ministère de la Santé Publique et de la Population, *Rapport de Cas* (Jan. 31, 2016), available at <http://mspp.gouv.ht/site/downloads/Rapport%20Cholera%2031%20janvier%202016.pdf>.

<sup>44</sup> Luquero et al., *Mortality Rates during Cholera Epidemic, Haiti, 2010–2011*, *Infectious Diseases* vol. 22 no. 3 (March 2016).

<sup>45</sup> Ministère de la Santé Publique et de la Population (MSPP), *Rapport de Cas*, Feb. 29, 2016, <http://mspp.gouv.ht/site/downloads/Rapport%20Web%2029%2002%202016%20Avec%20Courbes%20departementales.pdf>; UN, *United Nations Cholera Response Factsheet 2015*, available at [http://www.un.org/News/dh/infocus/haiti/Cholera\\_UN\\_Factsheet\\_Jan\\_Dec\\_2015.pdf](http://www.un.org/News/dh/infocus/haiti/Cholera_UN_Factsheet_Jan_Dec_2015.pdf)

<sup>46</sup> *Report of the independent expert on the situation of human rights in Haiti*, Gustavo Gallón, HRC, 31<sup>st</sup> sess., agenda item 10, U.N. Doc. A/HRC/31/77 (February 12, 2016) at para [101]

<sup>47</sup> Groupe d'Appui aux Rapatriés & Réfugiés, *Recrudescence des cas de victimes de l'épidémie du Choléra à Anse-à-Pitres*, (Nov. 17, 2015), available at <http://reliefweb.int/report/haiti/recrudescence-des-cas-de-victimes-de-l-pid-mie-du-chol-ra-anse-pitres>

<sup>48</sup> UN, *United Nations Cholera Response Factsheet 2015*, available at [http://www.un.org/News/dh/infocus/haiti/Cholera\\_UN\\_Factsheet\\_Jan\\_Dec\\_2015.pdf](http://www.un.org/News/dh/infocus/haiti/Cholera_UN_Factsheet_Jan_Dec_2015.pdf)

<sup>49</sup> *Memorandum from the Office of Legal Affairs to the Controller on the Payment of Settlement of Claims*, 2001 U.N. Jurid. Y.B. 381, U.N. Sales No. E.04.V.12.

<sup>50</sup> U.N. Secretary General, *Administrative and Budgetary Aspects of the Financing of the United Nations Peacekeeping Operations: Financing of the United Nations Peacekeeping Operations: Rep. of the Secretary General*, U.N. Doc. A/51/389 (Sept. 20, 1996) at 8.

<sup>51</sup> *Convention on the Privileges and Immunities of the United Nations*, Section 29, Feb. 13, 1946, 1 U.N.T.S. 15.

<sup>52</sup> *Agreement between the United Nations and the Government of Haiti Concerning the Status of the United Nations Operations in Haiti, U.N.-Haiti*, July 9, 2004, 2271 U.N.T.S. 235 arts. 54-55 (“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.”).

<sup>53</sup> Yale Report, at 3.

<sup>54</sup> Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on extreme poverty and human



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rights; the Independent Expert on the situation of human rights in Haiti; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the human right to safe drinking water and sanitation, *Letter to the Secretary-General*, Doc No. OTH 7/2015 (October 23, 2015) available at <https://www.documentcloud.org/documents/2745778-Haiti-2nd-Rapporteur-Letter-Oct-2015.html>

<sup>55</sup> *Id.*

<sup>56</sup> H.E. Mr. Laurent Salvador Lamothe, Address at the 68<sup>th</sup> Session of the General Assembly of the UN, at 8 (Sept. 26, 2013), available at <http://gadebate.un.org/countries/haiti>. (« Si nous persistons à croire que les Nations-Unies ont une responsabilité morale dans l'irruption de l'épidémie, il n'en reste pas moins vrai que l'organisation appuie déjà certains efforts du gouvernement pour combattre cette maladie. Toutefois, c'est loin d'être suffisant. Aussi, proposons-nous la mise en place d'une commission mixte comprenant des membres du gouvernement haïtien et des Nations-Unies, pour étudier ensemble les voies et moyens pour solutionner définitivement cette question. »)

<sup>57</sup> *Id.*

<sup>58</sup> *Report of the Working Group on the Universal Periodic Review: Haiti*, HRC, 19<sup>th</sup> sess, agenda item 6, UN. Doc. A/HRC/19/19 (December 8, 2011) recommendation 88.103 (Barbados).

<sup>59</sup> Center for Human Rights & Global Justice et al., *Woch Nan Soley: The Denial of the Right to Water in Haiti* (2009) available at [http://parthealth.3cdn.net/0badc680352663967e\\_v6m6b1ayx.pdf](http://parthealth.3cdn.net/0badc680352663967e_v6m6b1ayx.pdf)

<sup>60</sup> WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, *Estimates on the Use of Water Supply and Sanitation Facilities* (2015), available at [http://www.wssinfo.org/fileadmin/user\\_upload/resources/Haiti.xls](http://www.wssinfo.org/fileadmin/user_upload/resources/Haiti.xls).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> World Health Organization, *Progress on Sanitation and Drinking Water: Fast Facts* (2013), [http://www.who.int/water\\_sanitation\\_health/publications/2013/jmp\\_fast\\_facts.pdf?ua=1](http://www.who.int/water_sanitation_health/publications/2013/jmp_fast_facts.pdf?ua=1); Center for Human Rights & Global Justice et al., *Woch Nan Soley: The Denial of the Right to Water in Haiti* (2009) available at [http://parthealth.3cdn.net/0badc680352663967e\\_v6m6b1ayx.pdf](http://parthealth.3cdn.net/0badc680352663967e_v6m6b1ayx.pdf) at 15, 24.

<sup>64</sup> Jonathan M. Katz, *Haiti's Shadow Sanitation System*, *New Yorker* (March 12, 2014) <http://www.newyorker.com/tech/elements/haitis-shadow-sanitation-system>

<sup>65</sup> Loi Cadre de portant sur l'Organisation du secteur de l'Eau Potable et de l'Assainissement, *Le Moniteur No. 29*, March 25, 2009. DINEPA consolidated and replaced the former *Service National d'Eau Potable* (SNEP), which was responsible for water services outside of the capital, and the *Centrale Autonome Métropolitaine d'Eau Potable* (CAMEP), in charge of water supply for Port-au-Prince.

<sup>66</sup> *Id.* at art. 1.

<sup>67</sup> World Bank, *Project Appraisal Document on a Proposed Grant In the Amount of SDR 3.4 Million (US\$5 Million Equivalent) to the Republic of Haiti for a Rural Water and Sanitation Project*, World Bank Report No: 38080, 28 available at [http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953\\_20070105093521/Rendered/PDF/38080.pdf](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rendered/PDF/38080.pdf); Office of the Special Envoy for Haiti, Water and Sanitation, <http://www.haitispecialenvoy.org/about-haiti/water-sanitation/> (noting that water and sanitation is chronically underfunded).

<sup>68</sup> World Bank, *Project Information Document: Strengthening Governance in Education, Water and Sanitation*, World Bank Report No: AB7527 (June 5, 2014) available at

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<http://documents.worldbank.org/curated/en/2014/07/19775609/haiti-hrf-grant-strengthening-governance-education-water-sectors>

<sup>69</sup> World Health Organization; *Health Expenditure per Capita* (2013), available at <http://apps.who.int/gho/data/node.main.78?lang=en>; World Health Organization, *Health Expenditure Ratios* (2013), available at <http://apps.who.int/gho/data/node.main.75?lang=en>.

<sup>70</sup> Pan-American Health Organization, *Health in the Americas: Haiti* (April 11, 2013), available at [http://www.paho.org/saludenlasamericas/index.php?option=com\\_content&view=article&id=38&Itemid=36&lang=en](http://www.paho.org/saludenlasamericas/index.php?option=com_content&view=article&id=38&Itemid=36&lang=en).

<sup>71</sup> Government of Haiti, World Bank, and the United Nations, *Clean Water, Improved Sanitation, Better Health* (Oct. 9, 2014), available at [http://www.lessonsfromhaiti.org/download/Report\\_Center/haiticonference.pdf](http://www.lessonsfromhaiti.org/download/Report_Center/haiticonference.pdf) at , p. 10.

<sup>72</sup> Pan-American Health Organization, *Health in the Americas: Haiti* (April 11, 2013), available at [http://www.paho.org/saludenlasamericas/index.php?option=com\\_content&view=article&id=38&Itemid=36&lang=en](http://www.paho.org/saludenlasamericas/index.php?option=com_content&view=article&id=38&Itemid=36&lang=en).

<sup>73</sup> *Id.*

<sup>74</sup> see MSPP, *Grande Realisation MSPP 2014-2015 (Tome 1)*, (December 2015) available at <http://mspp.gouv.ht/site/downloads/Grandes%20Realisations%20MSPP%202014-2015%20Tome%201.pdf> p. 15.

<sup>75</sup> United Nations in Haiti, *United Nations Support Plan for the Elimination of the Transmission of Cholera in Haiti, 2014-2015*, (January 2014), available at [http://www.un.org/News/dh/infocus/haiti/UN\\_Support\\_Strategy\\_Elimination\\_Cholera%20\\_FEB\\_2014.pdf](http://www.un.org/News/dh/infocus/haiti/UN_Support_Strategy_Elimination_Cholera%20_FEB_2014.pdf) p. 10

<sup>76</sup> MSPP, *Plan directeur de sante 2012-2022*, (October 2013) available at <http://www.mspp.gouv.ht/site/downloads/Plan%20Directeur%20de%20Sant%C3%A9%202012%202022%20version%20web.pdf> page xiii

<sup>77</sup> Le Nouvelliste, *L'État contribue à 10%, la ministre de la Santé plaide pour une plus grosse part du budget* (September 21, 2015) <http://lenouvelliste.com/lenouvelliste/article/150053/LEtatcontribuea10laministredelaSanteplaidepourunepiusgrossepardubudget>

<sup>78</sup> Pan-American Health Organization, *Health in the Americas: Haiti*, (April 11, 2013), available at [http://www.paho.org/saludenlasamericas/index.php?option=com\\_content&view=article&id=38&Itemid=36&lang=en](http://www.paho.org/saludenlasamericas/index.php?option=com_content&view=article&id=38&Itemid=36&lang=en).

<sup>79</sup> MSPP, *Plan directeur de sante 2012-2022*, (October 2013) available at <http://www.mspp.gouv.ht/site/downloads/Plan%20Directeur%20de%20Sant%C3%A9%202012%202022%20version%20web.pdf> page 16.

<sup>80</sup> see eg MSPP, *Grande Realisation MSPP 2014-2015 (Tome 1)*, (December 2015) available at <http://mspp.gouv.ht/site/downloads/Grandes%20Realisations%20MSPP%202014-2015%20Tome%201.pdf> p 15 (discussing governance failing to mention measures to address the above identified issues)

<sup>81</sup> As of 2009, Haiti spent nearly \$50 million dollars annually attempting to service its debt. Dennis Coday, *Forgiving Haiti's Debt Called Key to Recovery*, National Catholic Reporter (Feb. 15, 2010), <http://ncronline.org/news/global/forgiving-haitis-debt-called-key-recovery>.

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<sup>82</sup> *National Plan for the Elimination of Cholera in Haiti, 2013-2022*, available at [http://www.lessonsfromhaiti.org/download/Report\\_Center/nat-plan-cholera-en.pdf](http://www.lessonsfromhaiti.org/download/Report_Center/nat-plan-cholera-en.pdf)

<sup>83</sup> See Brian Concannon & Beatrice Lindstrom, *Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti*, 25 Emory Int'l L.Rev. 1146 (2012).

<sup>84</sup> See Dennis Coday, *Forgiving Haiti's Debt Called Key to Recovery*, National Catholic Reporter, (Feb. 15, 2010) <http://ncronline.org/news/global/forgiving-haitis-debt-called-key-recovery>.

<sup>85</sup> Abhijit Bhattacharjee & Roberta Lossio, *Evaluation of OCHA Response to Haiti Earthquake* (2010) p. 32. This was demonstrated in the OCHA evaluation, where one staff member admitted that “[w]e do not interact with local NGOs or government, forget about interacting with communities.”

<sup>86</sup> UN, *United Nations Cholera Response Factsheet 2015*, available at [http://www.un.org/News/dh/infocus/haiti/Cholera\\_UN\\_Factsheet\\_Jan\\_Dec\\_2015.pdf](http://www.un.org/News/dh/infocus/haiti/Cholera_UN_Factsheet_Jan_Dec_2015.pdf)

<sup>87</sup> *UN Report of the Secretary-General on the United Nations Stabilization Mission in Haiti*, UN Doc. S/2016/225 (March 8 2016) at paras [42], [64].