



May 7, 2018

H.E. Ms. Amina Mohammed
Deputy Secretary-General
United Nations
New York, N.Y. 10017

Re: New Approach to Cholera in Haiti

Excellency,

We write to you on behalf of the *Bureau des Avocats Internationaux* (BAI) and the Institute for Justice & Democracy in Haiti (IJDH) to outline our concerns regarding the development of the UN's New Approach to Cholera in Haiti ('New Approach'). We appreciate your visit to our office in November 2017, your direct meeting with cholera victims, and your commitments to a more consultative approach from the UN. However, we are concerned that despite these commitments, and the promises made in the Secretary-General's report presenting the New Approach in December 2016, the UN is abandoning its commitment to a plan that respects the dignity of cholera victims and provides them with meaningful redress.

As you know, for the past seven years, BAI and IJDH have been the lead organizations advocating for victims of the cholera epidemic, through formal judicial processes, global public advocacy and engagement with UN procedures. We continue to engage in extensive advocacy with the UN and to work with some of the most affected communities in Haiti to organize action toward the realization of victims' rights and the provision of effective remedies.

We welcomed the Secretary-General's apology to the Haitian people for the UN's role in the epidemic in December 2016, and the UN's commitment to place victims at the center of the New Approach. We applauded the commitments to both fight the cholera epidemic ('Track 1') and provide a remedial package to victims ('Track 2'), and to develop the contours of Track 2 in consultation with victims and their communities. Given that compensation has been a key demand of victims for the past seven years, we particularly welcomed the New Approach's commitment to considering not only a community-based approach but also an "individual approach" centered on direct payments to the most affected households, and to consulting with victims on this question. Each of these commitments is essential to meeting the stated goals of the New Approach of providing "a concrete and sincere expression of the Organization's regret" and "meaningful response to the impact of cholera on individuals, families and communities", and in meeting the UN's legal obligations.

In the almost seventeen months since the launch of the New Approach, we have become increasingly concerned that the UN's elaboration of Track 2 does not conform to the Organization's promises to the victims. We are especially concerned that there has been no meaningful consultation with victims about how to develop the promised material assistance package, and that there is no apparent plan to even explore moving forward with the individual

payment approach. We have repeatedly raised our concerns with UN interlocutors, both in Haiti and New York, and have offered suggestions to support the UN's engagement in a genuinely victim-centered process. Our suggestions have, as far as we can tell, been ignored.

We are particularly disappointed that the UN Development Program (UNDP) is eschewing the opportunity to pilot a successful, victim-centered, rights-based process in its "symbolic" project in Mirebalais ('the Mirebalais project'). Instead of focusing on cholera victims, the Mirebalais project counts them as only one of many stakeholders in a community development initiative. The project does not, to our knowledge, engage any of the cholera victims who have previously played leadership roles in cholera justice advocacy or participated in the BAI trainings to prepare victims for consultations. It has not provided the kind of information to the cholera victims, their lawyers, or the general public that a minimally transparent project would provide.

Your November 2017 visit to the BAI, and the Secretary-General's *Miami Herald* Op-Ed promising a "new spirit of partnership" with the Haitian people and "meaningful community and individual consultations with victims of cholera" were important symbolic steps towards an improved UN approach. However, these symbolic steps have not been followed by meaningful action. A promised meeting with UNDP to discuss the Mirebalais project was postponed multiple times. When the meeting finally occurred in late January 2018, it consisted of a presentation by UNDP of its work in Mirebalais, with no serious discussion of improving victim participation. This is far short of the "dialogues [that] will inform our response and future work in providing support to those affected by the tragedy" promised by the Secretary-General.

In light of this context, and considering the UN's intention of replicating the Mirebalais project in other communities in Haiti, as well as the UN's current preparation of the Secretary-General's follow-up report on the New Approach, we take this opportunity to explain the steps required, at a minimum, to elaborate and implement Track 2 in a credible and effective manner, consistently with the commitments presented in the Secretary General's report on the New Approach. Such an approach can assist in ensuring that the UN meets its stated goals of expressing the Organization's regret for the harms victims have suffered and providing concrete redress to victims.

Consultations Process

As you are aware, the promised robust victim consultations are a key priority for IJDH, BAI and cholera-affected communities in Haiti. Victim consultations are necessary to ensure that Track 2 responds to victims' needs and priorities, to make the initiative credible in Haiti, and as a response to the dignitary harms engendered by the UN's refusal to engage with victims' legitimate claims over the past eight years. As many of the victims we work with often state "it is not for the wrongdoer to decide what is justice for the victim." A legitimate consultation process requires the following elements:

Outreach: The UN must ensure that a broad cross-section of cholera victims are consulted, by reaching out through victim groups and formal and informal community leaders. In the cholera-affected communities where the BAI is most active, the UN can and should consult the **victim committee structures** that victims working with the BAI have established. The committees, which are made up of both victims and local community leaders, can assist in connecting the UN with other victims and collaborate in the logistics and format of consultations in their area. They can

also be consulted directly about their perspectives. BAI and IJDH are more than happy to collaborate with the UN to connect them with these victim committees.

Transparency about the goals and context of the consultation: In order for victims to engage meaningfully in a consultation process, they must understand the context and goals of that consultation, in particular key aspects of the New Approach. They should be informed that:

- the New Approach exists and that the goal of the consultations is to inform the UN's development of a material assistance package for affected individuals, families and communities within this plan;
- the material assistance package is an attempt by the UN to concretely express regret and provide meaningful redress for its role in the cholera epidemic, as distinct from the attainment of developmental goals;
- there is a distinction between the UN's commitments under Track 1 and 2; that the UN has committed to providing a material assistance package distinct from its commitment to invest \$200 million in cholera treatment and elimination.

The UN should make this information available to victims ahead of the consultation in clear and accessible written and oral form. Methods can include simple pamphlets or booklets in Kreyol, capacity building workshops or town hall meetings, and oral and visual communication.

Consultation on the individual approach: If victims are to be meaningfully involved in the overall elaboration of Track 2, the UN needs to inform victims of the possible formulations of a material assistance package, encompassing the individual approach and/or community projects. Concluding that victims support, or have a preference for community-based projects without even asking them about the individual approach is disingenuous, and unlikely to result in a credible process. This is all the more so since the victims have for years invoked their right to individual compensation from the UN.

Privileging victim perspectives: The consultations methodology proposed by UNDP envisages engaging with numerous stakeholders, including local government authorities, community groups, formal and informal leaders, victims, and "other vulnerable groups". Broad consultation is desirable. However, the promised Track 2 response is a specific response to the suffering caused by cholera and, as such, must treat the victims as the key stakeholders.

Transparency about challenges: We are aware that the UN's limited success raising funds for the New Approach has led to concerns that consultations may unreasonably raise victims' expectations. But these expectations, which are based on the rule of law principles the UN is designed to promote, already exist. We believe that the most effective manner to address this concern is not the past opacity that UN Special Rapporteur Phillip Alston called "*morally unconscionable, legally indefensible and politically self-defeating*", but frank, transparent discussions with the victims about the challenges. Comparative experience is instructive: in the Peruvian reparations process transparency about challenges both sensitized victims to the difficult choices the Commission faced and sensitized the Commission to the priorities and needs of victims.

Individual Approach

The UN must give proper consideration to individual compensation, in line with commitments in the Secretary-General's report outlining the New Approach. Individual payments can repair economic injuries in a way that community projects do not. Cholera disproportionately impacts Haiti's poorest and has had devastating economic impacts on victims' households, including crushing burial costs, accrual of debts, loss of livelihoods and death of breadwinners. Children who are orphaned or lose family breadwinners are especially vulnerable to long-term impacts, with many forced to leave school and into precarious living situations. Community projects do not pay school fees, pay off household debts or allow families to rebuild livelihoods. Unsurprisingly then, cholera victims have long advocated for compensation as a key remedy. Communities working with the BAI repeatedly underscore their need for direct household payments, and their skepticism of community projects, particularly in a context of waste and poor management of projects by the government, the UN and NGOs in their communities. The provision of compensation for deaths and injuries is also prescribed by human rights law, the UN's own legal framework governing third-party claims, and Haitian law. While we acknowledge that there are practical challenges to household payments, challenges also exist to community projects. The UN has never adequately studied the feasibility and effectiveness of an individual approach, nor provided any public information about attempts to elaborate such an approach.

The New Approach provides an opportunity for the UN to set a powerful example of a culture of accountability, resolve one of the most damaging episodes in the Organization's history and rebuild the lives of thousands of Haiti's most marginalized people. Ultimately however, the New Approach will only be effective if the UN listens to victims, respects their perspectives and allows them to influence the development of policy. We urge you to exercise personal leadership on these critical points to ensure that the potential of the New Approach is not squandered, and that the Secretary-General's promises to the Haitian people are kept.

Please accept, Excellency, the assurances of our highest consideration,



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