

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 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

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Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on extreme poverty and human rights; Independent Expert on the situation of human rights in Haiti; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the human right to safe drinking water and sanitation pursuant to Human Rights Council resolutions 25/17, 26/3, 24/6, 24/18, and PRST/28/3. We would like to take this opportunity to respond to the letter dated 25 November 2014 addressed by Mr. Pedro Medrano, Assistant Secretary-General Pedro, Senior Coordinator for the Cholera Response in Haiti, in reply to the joint communication dated 25 September 2014. We are writing to you now on the fifth anniversary of the outbreak of cholera.

We welcome the clarification provided in the letter, in particular the details of the measures the United Nations has taken in response to the cholera outbreak in Haiti, and the reaffirmation of the United Nations' commitment to help overcome the cholera epidemic. We especially appreciate the acknowledgement in para. 57 of the letter of the commitment to ensure that United Nations "peacekeeping operations and their personnel operate within the normative framework of international human rights law and are held accountable for alleged violations."

We note, however, that the cholera crisis continues in Haiti, that there has been a leap in new cases reported in 2015, and that the response to date in terms of efforts to fully eradicate cholera, to ensure safe water and adequate sanitation provision, and to mobilize sufficient funding for these purposes, appears to be clearly insufficient.

Our particular concern relates to the inability of the victims of the cholera outbreak to vindicate their rights and to obtain access to a remedy for the harms suffered

to which human rights law entitles them. In cases brought in courts in the United States the United Nations has invoked immunity from suit and the cases seem unlikely to result in the provision of an effective remedy. Without wishing to take a position on the merits of the invocation of immunity in these contexts, we would only note that the result of the claim 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.

As Special Rapporteurs appointed by the United Nations Human Rights Council we cannot fail to observe that the United Nations has a particular responsibility to ensure that a very large number of victims are not left without any effective remedy for human rights violations that result from actions of forces operating under the authority of the United Nations. The question then becomes what measures might be taken to avoid violating the right to a remedy. We are aware that the Office of Legal Affairs has deemed the claims that victims brought forward to be “not receivable pursuant to Section 29 of the Convention on the Privileges and Immunities of the United Nations.”

That Section of the Convention requires the United Nations to “make provisions for appropriate modes of settlement of [...] disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party”. The argument of the Office of Legal Affairs is that these claims would necessarily involve a review of political and policy matters and cannot therefore be considered to be a dispute of a private law matter. The conclusion drawn is that they can thus not be entertained. This wide-ranging and problematic assertion of non-receivability appears to be a very recent innovation. As a result, Section 29, which various commentators have characterized as being intended to ensure due process of law and to protect fundamental human rights, is instead being used to shut down efforts to achieve those outcomes. The result of this approach is that five years after the outbreak of the disease in 2010, victims have effectively been denied access to a body that is competent to hear their case and decide on its merits.

The effective denial of the fundamental right of the victims of cholera to justice and to an effective remedy is difficult to reconcile with the United Nations’ commitment to ‘promote and encourage respect for human rights’. We thus believe that the non-receivability approach undermines the reputation of the United Nations, calls into question the ethical framework within which its peace-keeping forces operate, and challenges the credibility of the Organization as an entity that respects human rights.

We are aware that various commentators have suggested that the position of the United Nations is informed not only by legal considerations but also by the perceived risk of opening the floodgates to claims against the United Nations in other situations and the related concerns about the impact that this might have on the budget of the Organization and on its peacekeeping role. Although we would not wish to under-estimate the significance of these concerns, we think there are good reasons to put them in proper perspective. In a variety of situations the United Nations has managed to devise innovative solutions that have sought to achieve just outcomes that accord with its human

rights commitments and these have not, despite fears expressed at the time, led to an unmanageable opening of the floodgates that are so often invoked to prevent new approaches being shaped.

In brief, we believe 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. We would like to think that there are ways in which this outcome might be facilitated through further discussions within the Organization, rather than bringing our concerns to the attention of the Human Rights Council at this stage.

We would welcome the opportunity to engage further on this matter and would like to explore the possibility of meeting with representatives of the United Nations to discuss it further. As you may know, the four signatory Special Procedures will present their annual reports to the General Assembly in New York during the last week of October, which would provide for an opportunity to set up an initial meeting.

Your response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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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

Philip Alston

Special Rapporteur on extreme poverty and human rights

Gustavo Gallón

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Léo Heller

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cc

Mr. Jan Eliasson, Deputy Secretary-General of the United Nations

Ms. Susana Malcorra, United Nations Chef de Cabinet to the Executive Office

Mr. Atul Khare, United Nations Under-Secretary-General for Field Support

Ms. Sandra Honoré, Special Representative of the Secretary-General and Head of the United Nations Stabilization Mission in Haiti

Mr. Hervé Ladsous, United Nations Under-Secretary-General for Peacekeeping Operations

Mr. Miguel De Serpa Soares, United Nations Under-Secretary-General for Legal Affairs

Mr. Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights