



**CITIZENS  
DEMANDING  
ACCOUNTABILITY  
IN THE  
INTERNATIONAL  
ARENA**

**THE FIGHT AGAINST UN IMPUNITY AND IMMUNITY IN HAITI:  
THE CHOLERA SCANDAL**

– INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI

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# THE FIGHT AGAINST UN IMPUNITY AND IMMUNITY IN HAITI: THE CHOLERA SCANDAL

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## INTRODUCTION

In October 2010, an epidemic of cholera broke out in Meille, Haiti for the first time in the country's recorded history. It soon became the worst single-country cholera epidemic in modern times. By the end of 2013, the disease had killed 8,500 people and sickened another 700,000.<sup>1</sup> Almost immediately after the first victims fell ill, residents of Meille identified a UN peacekeeping base as the source of the outbreak.<sup>2</sup> The base, located on the banks of a tributary to Haiti's principal river system, provided housing for peacekeepers serving in the UN Stabilisation Mission in Haiti (MINUSTAH). The Meille residents had long endured noxious odours emanating from the base and waste overflowing from its disposal pits toward their homes when it rained.<sup>3</sup> International journalists who conducted follow-up investigations at the base documented sewage pipes emptying into the Meille tributary.<sup>4</sup> Shortly thereafter, epidemiologists con-

firmed that the contaminated tributary was the source of the outbreak.

Despite ample, unrefuted evidence pointing to the UN, the organisation has not responded justly to demands that it accept responsibility, compensate victims and take action to strengthen Haiti's water and sanitation system in order to eliminate cholera. The cholera outbreak received renewed attention last October when the Bureau des Avocats Internationaux (BAI), a Haitian public interest law firm, and its sister organisation in the United States (US), the Institute for Justice & Democracy in Haiti (IJDH), filed an unprecedented class action suit against the UN. Although the lawsuit marks a crucial step, the fight for justice is largely being waged outside the courtroom. While the UN continues to deny responsibility, an informal network of victims, victims' advocates, journalists, lawyers, doctors, scientists and other concerned citizens is successfully mobilising to challenge the global accountability framework and secure justice for the cholera victims.

## EXPOSING THE INJUSTICE

### Organising in Haiti

MINUSTAH's introduction of cholera to Haiti occurred at a time of mounting popular discontent with the Mission for its perceived lack of accountability to the population and

immunity from legal prosecution for acts of sexual violence, excessive use of force and other misconduct. Groups that had been active in organising against MINUSTAH impunity understood that making noise (*fè bri* in Haitian Creole) would be critical to persuading the UN to respond justly to the cholera epidemic. These groups initially took the lead in organising peaceful demonstrations on cholera and also mobilised community education campaigns on cholera prevention.

The early demonstrations quickly grew into an informal and decentralised movement of victims' groups and community organisations across Haiti, staging demonstrations from Cap Haïtien in the north to St. Marc in the west and Les Cayes in the south. In the capital of Port-au-Prince, fourteen grassroots groups established the *Kolektif pou dedomaje viktim kolera an Ayiti*, a collective that organised demonstrations, held press conferences and engaged with local and international media to raise the profile of the issue and shed light on the injustice. Groups such as Association Haïtienne de Droit de l'Environnement (AHDEN), a non-profit environmental law group, sought to engage the UN directly by writing to the UN Secretary-General and demanding a more just response. Demonstrations on cholera continue to date and have on several occasions attracted thousands of people demanding that MINUSTAH accept responsibility and provide compensation for the victims.

### Building international awareness

In the weeks and months immediately following the outbreak, Haitian and international news agencies reported heavily on cholera. The Associated Press and Al Jazeera English played a remarkable role in investigating the source and exposing UN responsibility for cholera before any official investigations were underway. Haitian news outlets persistently pressed the UN for answers at press conferences and spread public awareness through extensive radio coverage and newspaper articles. Many international news agencies were at first reluctant to report on the UN's culpability, however, serving instead as an echo chamber for the UN to object to the allegations. Activists worked hard to educate the international press about the evidence and latest developments in the early investigations and genetic testing, which over time allowed for continuous coverage of the story and put pressure on the UN to conduct a formal investigation.



### Pushing for investigations into the source

Despite these efforts, the UN rebuffed the growing circumstantial evidence, denying the very possibility of a causal link and refusing a formal investigation. Civil society calls for

transparency and accountability were publicly dismissed as “attempts at stigmatization,”<sup>5</sup> a counter-productive “blame game” and a “political” diversion from the humanitarian response,<sup>6</sup> despite strong consensus among public health professionals that understanding the origins of an epidemic is critical to an effective response.<sup>7</sup> Over time, however, the persistent organising – combined with investigations and follow-up from journalists and the release of scientific reports establishing a genetic link – pushed the UN to conduct a thorough investigation into the source of the epidemic. In January 2011, the UN Secretary-General relented to pressure and announced the appointment of a panel of independent experts to study the origins of cholera in Haiti.

The international research team commissioned by the UN released its findings in May 2011. The panel's report included genetic and epidemiological evidence tying the source of the outbreak to the MINUSTAH base, finding that “[t]he evidence overwhelmingly supports the conclusion that the source of the Haiti cholera outbreak was due to contamination of the Meye Tributary of the Artibonite River with a pathogenic strain of current South

Asian type *Vibrio cholerae* as a result of human activity.”<sup>8</sup> The findings came as no surprise to the Haitian public or to others who had been monitoring the crisis, but added significant credence to the movement and spurred an additional wave of media coverage pressuring the UN to acknowledge responsibility, including hard-hitting reports by the BBC and *The New York Times*, among others.

## LEGAL EFFORTS TO SEEK JUSTICE

Seeking to brush aside the mounting evidence, the UN continued to skirt responsibility by citing the panel's findings as inconclusive. Faced with the UN's unrelenting position, victims and grassroots groups in Haiti began to seek legal avenues for securing a just response. In the late summer of 2011 – as the one-year anniversary of the outbreak approached without an appropriate response from the UN – BAI began to organise victims in the Central Plateau, the region hit hardest by the outbreak. BAI worked with community leaders, who in turn mobilised victims to come forward and helped prepare over 5,000 legal claims on their behalf.

In accordance with the UN's international law obligations to hear claims from individuals harmed by its negligence and provide redress, BAI and IJDH submitted the claims to MINUSTAH in Port-au-Prince and UN head-

quarters in New York in November 2011.<sup>9</sup> The victims petitioned for remedies in the form of a) clean water and sanitation infrastructure to control the epidemic, b) fair compensation for their losses, and c) a public acceptance of responsibility. Additionally, they requested that the UN establish a standing claims commission to hear the claims, as required by the Status of Forces Agreement (SOFA) that governs MINUSTAH's operations in Haiti. These efforts were accompanied by a strong media campaign that drew the attention of prominent international media outlets, including daily newspapers in the global South.

After more than a year of silence, the UN rejected the victims' claims as "not receivable," without providing valid legal justification. BAI and IJDH then requested mediation or an in-person meeting. Those requests were also denied. The dismissal of the claims was widely scrutinised by international law experts who found that it violated the UN's legal obligations. In August 2013, Yale Law School and the Yale School of Public Health, in partnership with AHDEN, released a definitive report on the UN's role in the cholera outbreak.<sup>10</sup> In "Peacekeeping without

Accountability," the authors explain how the UN has a legal obligation to hear claims from Haitian cholera victims. Media outlets around the world condemned the UN's dismissal in front-page stories and editorials. The editorial board of *The Washington Post* newspaper stressed that "by refusing to acknowledge responsibility, the United Nations jeopardises its standing and moral authority in Haiti and in other countries where its personnel are deployed,"<sup>11</sup> and *The New York Times* newspaper's editorial board urged the organisation to "acknowledge responsibility, apologise to Haitians and give the victims the means to file claims against it for the harm they say has been done them."<sup>12</sup>

In October 2013, BAI and IJDH, working in collaboration with public interest lawyers in the United States, filed a ground-breaking class action lawsuit against the UN in a US federal court. The lawsuit challenges the UN's immunity on the basis that the organisation has violated its international law obligations to provide remedies to victims of its harms. The lawsuit has spurred influential discussions on the deficiencies in the current framework for accountability of international organisations. The UN's legal

responsibility for cholera has since become the topic of numerous academic conferences, panels and legal scholarship. The involvement of influential legal scholars is an invaluable component in the movement for justice, as their efforts lay the groundwork for systemic improvements to the international accountability framework.

## PUBLIC ADVOCACY FOR A JUST RESPONSE

### Continued organising in Haiti

Throughout the crisis, the government of Haiti has been notably silent in calling for UN accountability, in part due to the heavily interdependent relationship between the government and the UN. The absence of government leadership has demanded greater activism on the part of civil society. In Haiti, advocates have continued to pressure both the Haitian government and the UN by lobbying officials and continuing targeted demonstrations. For example, in 2012, advocates mobilised to make cholera a central issue of a UN Security Council visit to Haiti. A few days before the visit, cholera was not even on the Council's agenda. BAI and IJDH provided briefing packets to Council members and issued a press release urging them to address cholera. Major news outlets carried the press release, which helped raise awareness of the issue as the delegates travelled to Haiti. Upon their arrival, the delegates were confronted by two

***"The absence of government leadership has demanded greater activism on the part of civil society."***

demonstrations that the BAI and its grassroots collaborators had organised. In meetings with members of the Haitian parliament, the delegates faced tough questions from legislators who had been briefed on the cholera crisis by BAI. Haitian journalists followed up with probing questions of their own during the delegates' press conference. In formal remarks to the Council after they returned to New York, three of the delegates publicly urged a more just response to the epidemic. BAI and IJDH issued a press release about their statements, which a journalist in Haiti used as a basis for questioning former US President Bill Clinton, UN Special Envoy for Haiti, about UN responsibility. In response to the journalist's question, Clinton admitted that UN peacekeepers were the "proximate cause" of the epidemic, resulting in the first public admission of responsibility by a UN official.<sup>13</sup>



Other advocates in Haiti have taken legal action to force the government into action, including lawyers Newton Saint Juste and Andre Michel, and the *Defenseurs des Opprimés* (DOP), a grassroots legal organisation. DOP has also organised a series of public events and demonstrations in partner-

ship with the *Kolektif*. Moreover, cholera victims and grassroots activists have continued to connect with journalists and filmmakers to make their voices heard. Their participation in numerous interviews and documentaries has created compelling narratives about the impacts of cholera and has humanised the fight for justice.

The cholera victims and their supporters are advancing the movement amid growing hostility toward human rights advocates. The lawyers leading the cholera accountability efforts in Haiti are increasingly coming under pressure for their work. Threats and harassment against Mario Joseph, Managing Attorney at the BAI, escalated in 2012. Joseph has been the subject of illegal searches, unjustified court summons and numerous death threats. In September 2012, the chief prosecutor in Port-au-Prince resigned from his post after being pressured to issue an unlawful arrest warrant for Joseph and other attorneys doing politically sensitive work. The situation has only deteriorated over time. In 2013, DOP Executive Director Patrice Florvilus was the target of death threats and unjustified criminal charges. Later in the year,

Andre Michel was illegally arrested and held by authorities. The targeting of human rights defenders has outraged Haitian civil society as well as the international community. In response, the Inter-American Commission on Human Rights (IACHR) granted two precautionary measures directing the government of Haiti to ensure human rights workers' physical safety and their ability to work free from intimidation. The strong showing of solidarity in Haiti and abroad has resulted in a temporary reprieve for particular individuals. Nevertheless, the overall political climate in Haiti remains precarious for civil society leaders.

### Haitian diaspora

Early efforts to organise on cholera were centralised in Haiti, but the Haitian diaspora has also mobilised on the issue in influential ways. Several diaspora groups have joined forces in *Le Collectif Solidarité avec les victimes du choléra* that staged a demonstration outside UN headquarters in New York to coincide with the Haitian prime minister's address to the UN General Assembly in September 2013. The demonstration brought activists into the streets, where they sang songs and held up signs demanding action. Diaspora leaders have formed new initiatives around cholera, such as the Cholera Justice Project, which is organising community meetings across the United States to educate and mobilise the diaspora on the issue. In an important effort to make English-language

information more accessible to Haitians, diaspora leaders in Canada have published a website that compiles key reports on UN responsibility in French.<sup>14</sup> Others are raising awareness by speaking out on television and talk radio shows. The diaspora is also playing an important role in advocacy with the Haitian and US governments. In Haiti, members of the diaspora are lobbying district officials and cabinet ministers to ensure that victims have access to health care. Most recently in the United States, the National Haitian American Elected Officials Network (NHAEON) sent a letter to the State Department urging the US to take a position in the lawsuit that does not prevent the cholera victims from having their day in court. While the US government did not heed this recommendation, choosing instead to support UN immunity, the organising continues on this issue.

### International solidarity

Haitian civil society has partnered with solidarity groups abroad to build an international movement for justice. Members of the US-based Haiti Advocacy Working Group (HAWG), a coalition of civil society organisations working in Haiti, have played a leading role in advocating for a more just UN response. HAWG members are engaging influential decision-makers such as key UN member states and members of the US Congress. Using creative social media strategies, advocacy groups have led a number of campaigns on the issue. In November 2012,

48 human rights groups signed a letter asking the UN Secretary-General to respond to victims' claims and 30,000 people have signed an Avaaz.org petition that calls on the UN to eliminate cholera in Haiti. Three hundred thousand people have viewed and shared *Baseball in the Time of Cholera*, a documentary short about the human impacts of cholera on one family in Haiti.

### Impact

In Haiti, grassroots advocacy has turned cholera into a key political issue and has created dissent within the Haitian government regarding how to address UN responsibility. While the president – who wields the most foreign relations powers to put pressure on the UN – remains woefully silent on the issue, the opposition-controlled Senate has passed numerous resolutions calling on MINUSTAH to provide reparations to victims of cholera. Notably, the day of the diaspora protest in New York, Haitian Prime Minister Laurent Lamothe told the General Assembly that he believes “that the United Nations has a moral responsibility in this epidemic,”<sup>15</sup> marking the first time the Haitian government has publicly acknowledged the UN’s responsibility in such stark terms. Still, the Haitian government is

far from taking adequate action to protect the rights of its people and push the UN to provide a just response.

Advocates have also targeted the US government, because of the United States’ status as a permanent member of the UN Security Council and the largest donor to the UN and MINUSTAH, and because it is home to UN headquarters as well as a large Haitian-American diaspora. The

groundswell of public outrage has reached the halls of the US Congress, where over 100 representatives have signed letters highlighting the UN’s responsibility and its obligation to respond more justly. In January 2014, Congressman John Conyers, Jr. and 64 other members of the House of Representatives sent a letter calling on US Ambassador to the

UN Samantha Power to assure that the US Mission to the UN “intensif[ies] efforts to find a just solution” to the outbreak. By using its voice to promote a just resolution to the cholera crisis, the US government can strengthen accountability within the UN system and contribute to a constructive resolution.

The movement for justice is slowly but steadily pushing the UN toward a more just response.



In December 2012, the UN recognised its obligation to eliminate cholera in Haiti by announcing its support for the official cholera elimination plan drafted by the governments of Haiti and the Dominican Republic, known as the Initiative for the Elimination of Cholera in the Island of Hispaniola. Funding for the initiative has been slow, however, with the UN pledging only \$23.5 million – a mere one percent of the total needed – and other donors have so far failed to mobilise the remaining funds.<sup>16</sup> In October 2013, the UN announced the establishment of a joint commission to address the problem more holistically, though the commission's mandate and potential impact remain unclear. Still, these are signs that momentum for a just outcome is building. A growing number of current and former UN officials have publicly declared their support for the movement. Speaking at the Martin Ennals Award for Human Rights Defenders ceremony in October 2013, where lead attorney Mario Joseph of the BAI was being honoured, Navi Pillay, the UN High Commissioner for Human Rights, said she “stand[s] by the call that...those who suffered as a result of that cholera be

provided with compensation.”<sup>17</sup> Former UN Special Envoy for HIV/AIDS in Africa Stephen Lewis echoed the Commissioner's words one month later, saying in a radio interview, “I don't think [liability] would compromise the UN. In fact, I think it would do the UN a lot of good to be seen as principled in the face of having caused so much devastation.”<sup>18</sup> Their voices are spurring important conversations inside the UN and tipping the scales in favour of a just response.

## CONCLUSION

Reverend Martin Luther King, Jr. once wrote, “Like a boil that can never be cured so long as it is covered up but must be opened with all

***“...it would do the UN a lot of good to be seen as principled in the face of having caused so much devastation.”***

its ugliness to the natural medicines of air and light, injustice must be exposed, with all the tension its exposure creates, to the light of human conscience and the air of national opinion before it can be cured.”<sup>19</sup> Through their grassroots organising, cholera activists have exposed a tragic injustice. They have been met with fierce resistance every step of the way by one of the most powerful actors in the world. The

leaders of the movement – including Mario Joseph of the BAI and Patrice Florvilus of DOP – have received threats and face continuous harassment. Yet despite knowledge that their lives could be in danger, the activists press on. It is the resilience and courage of the Haitian people that inspire others around the globe to join the movement. Laboratory scientists, university professors and political leaders outside of Haiti – many of whom are separated by a time zone or language barrier – are using the tools of their professions to send a message to the UN that it cannot hide behind immunity. They do this in the hope that one day soon, the light of human conscience and the air of international opinion will give rise to justice for the cholera victims.

<sup>1</sup>Epidemiological Update, Pan-American Health Organization, 23 December 2013, available at: [http://www.paho.org/hq/index.php?option=com\\_docman&task=doc\\_view&gid=23900+&Itemid=999999&lang=en](http://www.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=23900+&Itemid=999999&lang=en).

<sup>2</sup>J Katz, UN worries its troops caused cholera in Haiti, Associated Press, 20 November 2010, available at: <http://www.nbcnews.com/id/40280944/ns/health/t/un-worries-its-troops-caused-cholera-haiti/#.UupkP7SPOSo>.

<sup>3</sup>Ibid.

<sup>4</sup>Above fn 2.

<sup>5</sup>M Terrien, Transcript of 28 October 2010 press conference, Pan-American Health Organization.

<sup>6</sup>Above fn 2.

<sup>7</sup>P Farmer, Haiti after the Earthquake, (New York: Public Affairs, 2011.)

<sup>8</sup>D Lantagne et al., Final Report of the Independent Panel of Experts on the Cholera Outbreak in Haiti, May 2011, available at: <http://www.un.org/News/dh/infocus/haiti/UN-cholera-report-final.pdf>.

<sup>9</sup>The UN shall provide for appropriate modes of settlement of private law claims. Section 29 Convention on Privileges and Immunities of the United Nations, Adopted by the General Assembly of the United Nations on 13 February 1946, <https://www.un.org/en/ethics/pdf/convention.pdf>; The UN shall establish a standing claims commission to hear claims from third parties suffering injury, illness, or death attributable to the UN. Section 54-55, Status of Forces Agreement (SOFA), Agreement Between the United Nations and the Government of Haiti Concerning the Status of the United Nations Operation in Haiti, available at: <http://www.ijdh.org/2004/07/archive/agreement-between-the-united-nations-and-the-government-of-haiti-concerning-the-status-of-the-united-nations-operation-in-haiti/#.U1OIlfmSyuk>.

<sup>10</sup>Peacekeeping without Accountability, Transnational Development Clinic, Yale Law School, 6 August 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).

<sup>11</sup>Editorial board, United Nations must admit its role in Haiti's cholera outbreak, The Washington Post, 16 August 2013, available at: [http://articles.washingtonpost.com/2013-08-16/opinions/41417425\\_1\\_cholera-outbreak-united-nations-haiti-and-haitians](http://articles.washingtonpost.com/2013-08-16/opinions/41417425_1_cholera-outbreak-united-nations-haiti-and-haitians).

<sup>12</sup>Editorial board, Haiti's Imported Disaster, The New York

Times, 12 October 2013, available at: [http://www.nytimes.com/2013/10/13/opinion/sunday/haitis-imported-disaster.html?\\_r=0](http://www.nytimes.com/2013/10/13/opinion/sunday/haitis-imported-disaster.html?_r=0).

<sup>13</sup>M Mosk, Bill Clinton, UN Envoy, Admits Peacekeepers as Source of Haiti Cholera, ABC News, 9 March 2012, available at: <http://abc-news.go.com/Blotter/bill-clinton-admits-united-nations-source-haiti-cholera/story?id=15885580>.

<sup>14</sup>For more information, please see: <http://www.dossierhaiticholera.com>

<sup>15</sup>At UN, Haitian leader urges 'second look' at island nation, where real progress is taking hold, UN News Centre, 26 September 2013, available at: <http://www.un.org/apps/news/story.asp?NewsID=46067&Cr=general+debate&Cr1#.Us7ukrSQOSp>.

<sup>16</sup>Cholera in Haiti: The UN Strain, The Economist, 15 July 2013, available at: <http://www.economist.com/blogs/americas-view/2013/07/cholera-haiti>.

<sup>17</sup>T Daniel, UN Official Makes Rare Case For Compensation For Haiti Cholera Victims, Huffington Post, 8 October 2013, available at: <http://www.huffingtonpost.com/2013/10/08/un-haiti-compensation-4066697.html?ncid=edlinkusaolp00000003>.

<sup>18</sup>R Annis, CBC News examines implications of Haiti cholera lawsuit for UN operations worldwide, including in the Philippines, Vancouver Observer, 14 November 2013, available at: <http://www.vancouverobserver.com/politics/commentary/cbc-news-examines-implications-haiti-cholera-lawsuit-un-operations-worldwide>.

<sup>19</sup>M King, Letter from a Birmingham Jail, 16 April 1963, available at: [http://mlk-kpp01.stanford.edu/index.php/encyclopedia/documentsentry/annotated\\_letter\\_from\\_birmingham/](http://mlk-kpp01.stanford.edu/index.php/encyclopedia/documentsentry/annotated_letter_from_birmingham/).