

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 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

REFERENCE: AL
HTI 3/2014:

25 September 2014

Excellency,

We have the honour to address you in our capacity 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; 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, PRST 19/2, 24/6, and 24/18.

In this connection, we would like to bring to your attention information we have received concerning **the cholera outbreak in Haiti since 2010**.

According to the information received:

In October 2010, the first instances of cholera in Haiti were reported. It is alleged that the Meille river (also known as “Meye”) tributary of the Artibonite River was contaminated with pathogenic strains of vibrio cholerae due to human waste disposal directly into it because of lack of adequate sanitation system in place. The contaminated water continued to flow into the Artibonite River, Haiti’s longest and most important river and a critical source of water for tens of thousands of Haitians who rely on it for drinking, bathing, washing clothes, and irrigation. This resulted in outbreaks of cholera along the river and eventually throughout the entire country and to this date, around 8,500 deaths and an estimated 703,000 suspected cholera cases as reported by the Haiti Ministry of Health.

It is also alleged that peacekeepers deployed under the MINUSTAH operation were responsible for the introduction of this strain of cholera to Haiti through insufficient and inadequate sanitation management and lack of reasonable precautions and measures to prevent, control and mitigate the introduction of

cholera. This allegation is based on several factors: genetic examinations revealed that the vibrio cholera strain in Haiti is a perfect match to the strain in Nepal. It is further alleged that prior to the deployment to Haiti on or about 9, 12, and 16 October 2010, some peacekeepers had spent three months for training in Panchkhal, Nepal a cholera-affected area just outside the Kathmandu Valley as recorded by the Nepalese authorities. Before October 2010, there were no reported cases of cholera in Haiti for over a century.

Furthermore, it is alleged that waste from the three MINUSTAH bases in the Central Plateau was collected and disposed of at the MINUSTAH base in Meille, a small village approximately 1.6 kilometers south of Mirebalais (“Meille base” or Mirebalais base”). The Meille MINUSTAH base was reported to have inadequate sanitation and waste management systems insufficient to prevent faeces and discharges – as a carrier of cholera – to overflow and leak into water sources. It is also reported that the human faecal waste contained in tanks in Meille base were emptied on demand by a contracting company approved by MINUSTAH headquarters in Port-au-Prince. The area where this waste was transported and deposited was reported to have no fence around the site and children were observed playing and animals roaming in this open septic disposal pit. The first reported hospitalized cholera case in Mirebalais, in the upstream region of the Artibonite River was on 17 October 2010.

The 2011 Final Report of the Independent Panel of Experts on the Cholera Outbreak in Haiti appointed by the United Nations Secretary General concluded that “the 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.” The Panel explained that the explosive spread was due to several factors including the fact that people use river water for drinking and other purposes, the lack of immunity to cholera, poor water and sanitation conditions in the country, and the conditions in medical facilities. The Panel also concluded that construction of piping from the toilets and showers was “haphazard, with significant potential for cross-contamination through leakage of broken pipes and poor pipe connections.” The Panel noted a particularly high risk of cross contamination from pipes that run over an open drainage ditch extending throughout the camp that flows directly into the Meille Tributary System. In a paper published in 2013, the same panel of experts clarified that “the preponderance of the evidence and the weight of the circumstantial evidence does lead to the conclusion that personnel associated with the Mirebalais MINUSTAH facility were the most likely source of introduction of cholera into Haiti.”

For many years, the United Nations and international community have expended efforts and resources in providing humanitarian aid and other development assistance and cooperation improving Haiti’s water, sanitation and health facilities. This support was strengthened after the 2010 earthquake and considerable efforts and resources were deployed after the cholera outbreak. At

the same time, there are allegations that implementation of some plans for elimination of cholera remains underfunded with some of the promised financial aid allegedly not released to date. Despite the reduction of overall incidence by 50%, and the first months of 2014 registering the lowest number of cases and cholera related deaths since the beginning of the epidemic, the figures remain of deep concern: from October 2010 to July 2014, around 703,000 suspected cholera cases and estimated 8,500 deaths were reported by the Haitian Ministry of Health.

Despite ongoing efforts, lack of access to safe water, adequate sanitation and health systems in Haiti are causing cholera to persist. Over the past four years, cholera has infected about one in twenty Haitian men, women and children. It has disproportionately impacted the poor and the vulnerable. Victims include farmers, teachers, and caretakers whose illness or deaths have left families without means to meet their basic needs.

To date, the United Nations has not formally accepted responsibility for allegedly causing the outbreak nor has it provided compensation to the victims and the survivors of the outbreak. The information received alleges that individuals affected by the cholera outbreak have been denied access to justice. They submitted petitions to MINUSTAH in November 2011 and to the United Nations Office of Legal Affairs in May 2013, both of which have been denied. The United Nations Office of Legal Affairs, in its letter dated 21 February 2013, explained that “consideration of these claims would necessarily include a review of political and policy matters. Accordingly, these claims are not receivable pursuant to Section 29 of the Convention on the Privileges and Immunities of the United Nations.” The United Nations Office of Legal Affairs further stated, in its letter dated 5 July 2013, that “pursuant to paragraphs 54 and 55 of the MINUSTAH status-of-forces agreement, there is no legal basis for the United Nations to establish [a standing claims commission] in respect of claims that are not receivable.”

Section 2 of the Convention on the Privileges and Immunities of the United Nations stipulates that the United Nations shall enjoy immunity. At the same time, Section 29 requires that the United Nations shall make provisions for appropriate modes of settlements of disputes that may arise, which can be seen as a counterbalance to the immunity granted. In this regard, Article 55 of the Agreement between the United Nations and the Government of Haiti concerning the Status of Forces of the United Nations Operation in Haiti (SOFA Agreement) requires the establishment of a standing claims commissions for the settlement of disputes or claims of a private-law character. According to Article 54 of the SOFA Agreement this relates to claims for personal injury, illness or death arising from or directly attributed to MINUSTAH, except for those arising from operational necessity.

The lack of adequate sanitation and wastewater management and resulting leakage of faeces into water sources were not due to operational necessity. Moreover, both

the Convention on the Privileges and Immunities of the United Nations and the SOFA Agreement do not include any provisions that allow excluding claims requiring a review of political and policy matters. In any case, addressing the lack of sanitation and wastewater management would not imply the review of political or policy matters but concerns the practicalities of setting up facilities at a peacekeeping base. Otherwise, this would imply that the inadequate management of faeces and wastewater produced by its peacekeepers reflects the policy of the United Nations.

It is reported that the claims commission foreseen in the SOFA Agreement has never been established in spite of the petitions to MINUSTAH and the United Nations Office of Legal Affairs. In addition, the claims have not been received by a local claims review board as has been the practice for claims received during many other United Nations Peacekeeping Missions. As a result, alleged victims of human rights violations do not have any mechanism to bring their claims forward and to establish accountability, all of which has resulted in a lack of access to justice.

After failure to achieve access to justice and obtain remedy through the United Nation's system, three lawsuits have been filed in New York courts seeking compensation and an apology from the United Nations for its alleged negligence in Haiti.

In this connection, we express serious concern that, allegedly, the United Nations failed to take reasonable precautions and act with due diligence to prevent the introduction and the outbreak of cholera in Haiti since 2010. We further express serious concern that to this date, allegedly, individuals affected by the cholera outbreak have been denied access to legal remedies and have not received compensation. Finally, we express concern that to date efforts to combat cholera and to improve the water and sanitation facilities in Haiti have been inadequate. A more comprehensive response is needed to properly address the situation with particular emphasis on ensuring adequate funding of the envisaged measures.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the summarized facts accurate?
2. Bearing in mind that the United Nations should be bound by international human rights law, what measures are being taken by the United Nations to ensure

access to justice including provision of compensation to the individuals affected by the cholera outbreak in Haiti?

3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the contention by the United Nations Office of Legal Affairs that the claims by the individuals affected by the cholera outbreak are “not receivable”. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. What measures are being taken by the United Nations in response to the alleged violations of human rights to water, sanitation and health directly associated with the presence and operation of MINUSTAH in Haiti? If no measures have been taken, or if they have been inconclusive, please explain why.

5. What measures are being taken by the United Nations, in particular at the structural level, to ensure due diligence in the deployment of its peacekeeping operations, and to prevent similar impact on the human rights to water, sanitation and health by the United Nations peacekeeping operations?

6. What measures are being taken to ensure accountability and access to remedies for alleged human rights violations in ongoing and future peacekeeping operations?

We would be most grateful to receive a response by 24 October 2014. We undertake to ensure that the information received will be reflected in the report we submit to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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

Leilani Farha
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

Gustavo Gallón
Independent Expert on the situation of human rights in Haiti

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Catarina de Albuquerque
Special Rapporteur on the human right to safe drinking water and sanitation

Cc: Mr. Zeid Ra'ad Al Hussein
High Commissioner for Human Rights
Office of the United Nations High Commissioner for Human Rights
Geneva

Mr. Miguel de Serpa Soares
Under-Secretary-General for Legal Affairs
and the United Nations Legal Counsel
United Nations Headquarters
New York

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

Mr. Pedro Medrano Rojas
United Nations Assistant Secretary-General
and Senior Coordinator for the Cholera Responses in Haiti
New York

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the applicable international human rights norms and standards.

The human right to safe drinking water and sanitation was explicitly recognised by the United Nations General Assembly and the United Nations Human Rights Council in 2010. The most recent General Assembly in October 2013 stresses that the right to water and sanitation is derived from the right to an adequate standard of living, *inter alia* guaranteed in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Hence, the human right to safe drinking water and sanitation has a firm legal basis in international human rights law.

The Special Rapporteur on the human right to water and sanitation in her 2009 report has defined sanitation from a human rights perspective as a “system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity” (para. 63). The Committee on Economic, Social and Cultural Rights, at its forty-fifth session in 2010, has endorsed this definition in its statement on the right to sanitation. Human rights bodies thus understand sanitation broadly. Sanitation does not stop simply with the use of latrines or toilets, but includes the treatment and safe disposal or re-use of faeces, urine, and associated wastewater. This understanding is warranted as sanitation not only concerns one’s own right to use a latrine or toilet, but also the rights of other people, in particular their right to health, which can be negatively impacted when faeces are not adequately confined.

According to the General Comment No. 15 of the Committee on Economic, Social and Cultural Rights, the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. With regard to water safety, the World Health Organization Guidelines for Drinking Water Quality specify that safe water must “not represent any significant risk to health over a lifetime of consumption, including different sensitivities that may occur between life stages”.

We would also like to recall article 11.1 of the International Covenant on Economic, Social and Cultural Rights, recognizing the right of everyone to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions. The Committee on Economic, Social and Cultural Rights in its General Comment No. 4 has stressed that the right to adequate housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one’s head; rather, it should be seen as the right to live somewhere in security, peace and dignity. This General Comment outlines the following aspects of the right to housing: (a) legal security of tenure; (b) availability of services, materials, facilities and

infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. Specifically, when discussing availability of services, materials, facilities and infrastructure, the Committee has said that “All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services”;

We would further like to draw your attention article 12 of ICESCR, which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. We also wish to refer you to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which states the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. (General Comment 14, para.4)

Where human rights violations occur, individuals have the right to a remedy. The right to a remedy is explicitly guaranteed in international human rights treaties including article 2 of the International Covenant on Civil and Political Rights (ICCPR), which states that “any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” While the ICESCR itself contains no provision on the right to a remedy, the Committee on Economic Social and Cultural Rights has consistently recognised the right to an effective remedy for economic, social and cultural rights. General Comment No. 15 of the Committee notes that any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels (para. 55) and that all victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition (para. 56). Based on these elements the United Nations General Assembly in its resolution 60/147 of 16 December 2005 adopted the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law”.

The United Nations is bound by international human rights law. Article 55(c) of the United Nations Charter stipulates that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all.” It would go against the very object and purpose of the Charter of the United Nations if the United Nations itself were not required to respect the human rights law it promotes (2011 Report of the Special Rapporteur on the human right to water and sanitation, para. 33).