

October 12, 2021

His Excellency
António Guterres
Secretary-General of the United Nations

Object: Statements Regarding the Cholera Victims in Haiti - Ban Ki-Moon's Memoirs

Your Excellency:

First and foremost, we would like to acknowledge your commitment to reform the UN's system to "reverse the pushbacks we have seen over the last couple of years, with attention to full breadth of rights [...], their universality and indivisibility, ensuring accountability and addressing the plight of victims".¹ We strongly believe that these efforts are of the utmost importance to strengthen universal peace, protect the most vulnerable populations as well as maintain the organization's position as a pioneer in the human rights' field.

We are honoured to address you in your capacity as Secretary-General of the United Nations (UNSG) regarding recent statements made by former UNSG, his Excellency Ban Ki-Moon, on **victims of the cholera outbreak in Haiti**.

Brought to the country in 2010 by a contingent serving with the United Nations Stabilization Mission in Haiti (MINUSTAH),² cholera has since infected over 820,000,³ and killed between 10,000⁴ and 30,000⁵ Haitians. Despite cholera victims and their representatives' tireless fight of over 10 years, the UN has systematically denied its legal responsibility, rejected all claims for compensation, and refused to establish the procedure provided for in the Status of Force Agreement (SOFA) to allow victims to exercise their rights, including that to effective remedies.⁶ In 2016, this led the Special Rapporteur on extreme poverty and human rights, Mr. Philip Alston, to describe the UN's approach as "morally unconscionable, legally indefensible, and politically self-defeating",⁷ while undermining both "the UN's overall credibility and the integrity of the Office of the Secretary-General".⁸

Since 2016, the UN has taken several steps towards responding to the suffering and losses of victims. As such, we salute the former UNSG's apology to Haitians regarding the UN's role in the epidemic,⁹ as well as the development of the *New Approach to cholera in Haiti* and creation of the voluntary multi-partner trust fund (MPTF) to support its financial implementation. While incomplete

¹ Guterres, A. *Vision Statement for the Selection and appointment of the Secretary-General of the United Nations* (March 23rd, 2020), Online: un.org < <https://www.un.org/pga/75/wp-content/uploads/sites/100/2021/03/Letter-PGA-VS.pdf> >.

² Alston, P. *Report of the Special Rapporteur on extreme poverty and human rights*, Off Doc UN GA, 71st session, Doc NU A/71/40823 (2016), p. 1-2.

³ MSPP, *Rapport du Réseau National de Surveillance du Choléra* (January 2019), Online: mspp.gouv.ht < <https://mspp.gouv.ht/site/downloads/Profil%20statistique%20Cholera%201ere%20SE%202019.pdf> >.

⁴ *Ibid.*

⁵ UNGA, *A new approach to cholera in Haiti: Report by the Secretary-General*, Off Doc UN GA, 71st sess, Doc NU A/71/620 (2016), p. 14.

⁶ Alston, P. *Report of the Special Rapporteur on extreme poverty and human rights*, Off Doc UN GA, 71st session, Doc NU A/71/40823 (2016), p. 1-2

⁷ *Ibid.*

⁸ *Ibid.*

⁹ UN News, « Haïti : Ban Ki-Moon présente les excuses de l'ONU et propose un nouveau plan de lutte contre le choléra » (December 1st, 2016), Online : UN.org < <http://www.un.org/french/newscentre/> >.

if fully and effectively implemented, those initiatives “presented an opportunity to reduce the harm of the cholera epidemic, help rebuild the lives [...] of cholera victims, and begin repairing the damage to the UN’s standing and the credibility of UN peacekeeping”.¹⁰

However, as demonstrated by a feasibility study carried out by Lawyers without Borders Canada (LWBC) and the Interuniversity Institute for Research and Development (INURED), despite those efforts, cholera victims, particularly the most vulnerable of them, are still struggling to recover from the extensive suffering caused by the epidemic, notably regarding the enjoyment of rights to life, dignity, water, sanitation, health, education, effective remedies, and reparation.¹¹ Moreover, the disease has disproportionately impacted and contributed to the further marginalization of women, children, and families living in precarious financial situations. In fact, in 2019, those categories had been identified as the hardest hit by the victims themselves.¹² Aside from the loss of thousands of human lives, the country and cholera victims are still mourning their loved ones and struggling to recover from the extensive suffering caused by the epidemic. Indeed, “[t]hese tragedies are those of the children whose future opportunities have been severely curtailed by the loss of a parent, the women who have become single parents following the death of their spouse, the individuals who continue to suffer from physical or psychological distress and those whose access to health care is limited”.¹³

This is particularly true in the context of COVID-19, which further stresses the importance and urgency of adequate relief, as the pandemic is dealing a “double blow” on cholera victims and their families.¹⁴ Without adequate relief for the most severely affected victims, those tragedies are being perpetuated overtime, further revictimizing them¹⁵. As such, in a context of growing insecurity, rapid spread of more severe COVID-19 variants, as well as the increased frequency of natural disasters—such as the August 14th earthquake—, cholera victims remain disproportionately exposed to security, public health and climate challenges. As the former UNSG stated, “[t]he cholera epidemic continues to poison the Haitian people’s relationship with the United Nations”, remaining “a blemish on UN peacekeeping and on the organization worldwide”.¹⁶

Surprisingly, it has come to our attention that, in his memoirs entitled *Resolved: Uniting Nations in a Divided World* and published on June 15, 2021, former UNSG Ban Ki-Moon, addressed the cholera victims’ fight as such:

“I was incredulous—no, shocked—when, in November 2011, five hundred Haiti victims and their families brought a class-action lawsuit against the United Nations and me as its secretary-general [...]. I thought this lawsuit was fraudulent from the beginning, and I was incensed every time I thought about this attempt to extort money from the United Nations. The effort required a substantial amount of financial backing and a knowledge of the U.S. legal system, and it was

¹⁰ IJDH, *Cholera 9 years on: A New Approach?* (June 2020), Online: ijdh.org < <http://www.ijdh.org/wp-content/uploads/2020/06/A4-IDJH-report-EN.pdf> >, p. 12.

¹¹ LWBC, *Meeting the Needs of Victims of Cholera in Haiti : Feasibility of an Individual Assistance Approach for People Most Affected by the Disease*, (2019) Online : asfcanada.ca < https://www.asfcanada.ca/site/assets/files/7187/lwbc_feasibilitystudy_cholera.pdf >, p. 11.

¹² *Ibid.*, p. 19.

¹³ LWBC, *Meeting the Needs of Victims of Cholera in Haiti : Feasibility of an Individual Assistance Approach for People Most Affected by the Disease*, (2019) Online : asfcanada.ca < https://www.asfcanada.ca/site/assets/files/7187/lwbc_feasibilitystudy_cholera.pdf >, p. 12.

¹⁴ UN News, “UN Committed to a brighter future for Haiti, as independent rights experts call for more action on behalf of cholera victims” (April 30, 2020), Online: news.un.org < <https://news.un.org/en/story/2020/04/1062962> >.

¹⁵ LWBC, *Meeting the Needs of Victims of Cholera in Haiti : Feasibility of an Individual Assistance Approach for People Most Affected by the Disease*, (2019) Online : asfcanada.ca < https://www.asfcanada.ca/site/assets/files/7187/lwbc_feasibilitystudy_cholera.pdf >, p. 12.

¹⁶ Ki-Moon, B. *Resolved: Uniting Nations in a Divided World*. Columbia, Columbia University Press, 2021, p. 226.

difficult to believe that the Haitian people would divert their resources from helping their own people to obtain either.”¹⁷

The above statements include strong accusations towards cholera victims and their representatives, including of fraud, attempts of money extortion, and improper resource diversion. It disregards their tireless fight of over 10 years for the acknowledgment of their suffering, losses, and enjoyment of their human rights, as well as their active participation in decision-making processes and a more transparent dialogue with the UN regarding their needs as direct victims of the epidemic.

The former UNSG, in his memoirs, questions and attacks cholera victims’ right to exercise their rights—notably to effective remedies and reparation—, and delegitimize the work of human rights lawyers who represented them diligently over the years. As such, it is non-compliant with international human rights standards developed by the UN on treatment of victims¹⁸, and challenges the very validity and credibility of the official apology issued by the former UNSG in 2016. Indeed, effective and adequate apologies are part of a holistic and multidimensional response to the victims and their suffering, and aimed at promoting the search for truth and justice by focusing on accountability and reconciliation.¹⁹ Given the UNSG’s role, described as the “symbol of United Nations ideals and a spokesperson for the interests of the world’s peoples, in particular the poor and vulnerable among them”²⁰, the above statements appear conflicting coming from a former UN official of such stature.

As such, the statements by former UNSG Ban Ki-Moon exacerbate the accountability and credibility concerns highlighted by the former Special Rapporteur, Mr. Alston, in 2016 regarding the UN’s approach to cholera in Haiti, notably: the central role that preserving legitimacy, credibility, and responsiveness plays in the success of UN peacekeeping missions²¹; the importance for the UN to lead by example to avoid undermining the rule of law, diminishing the UN’s credibility as an advocate for its respect, and replicating “the very behaviour it seeks to modify elsewhere”;²² the need to avoid double standards by addressing human rights violations in accordance with the pillars of the Organization’s work—namely peace and security, development, and human rights—;²³ as well as the importance of upholding the integrity of the Office of the UNSG.²⁴ Moreover, it further reinforces the belief that “the U.N. has written off its accountability for the epidemic and relegated human rights to charitable endeavours”,²⁵ as the current Special Rapporteur Olivier de Schutter pointed out.

While several misrepresentations made by the former UNSG regarding the aforementioned legal efforts will be corrected by the publisher in the next edition, these changes will not affect what was

¹⁷ Ki-Moon, B. *Resolved: Uniting Nations in a Divided World*. Columbia, Columbia University Press, 2021, p. 224.

¹⁸ See notably: UNGA. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Off Doc UN GA, 60th sess, DOC NU A/RES/60/147 (2006), art. 10.

¹⁹ LWBC, *Meeting the Needs of Victims of Cholera in Haiti : Feasibility of an Individual Assistance Approach for People Most Affected by the Disease*, (2019) Online : asfcanada.ca < https://www.asfcanada.ca/site/assets/files/7187/lwbc_feasibilitystudy_cholera.pdf >, p. 36.

²⁰ UNSG, “The role of the Secretary-General”, Online : UN.org < <https://www.un.org/sg/en/content/the-role-of-the-secretary-general#:~:text=Equal%20parts%20diplomat%20and%20advocate,poor%20and%20vulnerable%20among%20them.> >.

²¹ Alston, P. *Report of the Special Rapporteur on extreme poverty and human rights*, Off Doc UN GA, 71st session, Doc NU A/71/40823 (2016), p. 17.

²² *Ibid.*, 18.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ De Schutter, O. “UN Peacekeepers Brought Cholera Epidemic to Haiti Decade Ago”, Online: miamiherald.com < <https://www.miamiherald.com/opinion/op-ed/article246730886.html> >.

revealed as his position on UN accountability regarding the epidemic and the cholera victims' efforts to exercise their rights, including to effective remedy.

As the current UNSG and established spokesman who is committed to his aspiration towards a world where all strive to overcome their differences and are ready to compromise to reach pragmatic solutions, we are hoping that you can drive positive change on this matter. While we are fully aware of the implementation and liability challenges at stake, victims need to be consulted and actively included in decision-making processes to ensure that their needs are adequately taken into consideration. Given the seriousness of Ban Ki-Moon's statements, an official statement condemning these wrongful characterizations and reiterating the UN's apology and support in favour of cholera victims through concrete actions would send a powerful message of solidarity and compassion to cholera victims and the Haitian population in general, as well as set a positive example for the future of the UN and international cooperation more broadly.

Should you be interested in discussing this matter with us, we would be delighted to further exchange with you. Moreover, please note that this communication and any response received will be made public via the LWBC's website within 14 days. Thank you for your kind consideration on this important matter and we look forward to hearing from your office.

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

Sincerely,

Benjamin Vilner, Coordinator of Carrefour's Association of Cholera Victims (Asosyasyon viktim kolera Kafou - ASOVIKK)

Borgelin Vilner, Coordinator of Cholera Victims' Mouvement (Mouvman moun viktim kolera - MOMVIKK)

Berthony Clermont, Coordinator of Organization of Cholera Victims in Haiti (Organisation des victimes du choléra en Haïti - OVICH)

Patrice Florvilus, Founder and Executive Director of the Specialized Law Firm in Strategic Litigation of Human Rights (CALSDH)

Pascal Paradis, Executive Director of Lawyers without Borders Canada (LWBC)

Gaël Pétillon, Country Director of Lawyers without Borders Canada (LWBC)

Léo Heller, former UN Special Rapporteur on the human rights to safe drinking water and sanitation (2014-2020)

William G. O'Neill, former Chief Legal Officer of the UN International Civilian Mission in Haiti (1993-1995)

CC: Amina Mohammed, Deputy Secretary-General of the United Nations ; Ramsey Ben-Achour, Representative of the Special Envoy for Haiti