



**Death but no dignity.** Karl Michel LaFrance, just 10 years old, was dead within nine hours of falling ill with cholera. His body was collected in the street by sanitation workers, disinfected, shrouded and thrown into a mass grave at Titanyen outside Port-au-Prince - one of 7,040 victims counted to date. Many more die uncounted in what is now the most potent cholera epidemic on earth. Photo credit: Ben Depp, [www.bendepp.com](http://www.bendepp.com)

## *UN Cholera Response: Disdainful, Disingenuous and Deceitful* **Truth Out, Dying Season In**

**H**as the UN's intestinal worm turned? On an inspection of the solar energy capacity of the new teaching hospital in Mirebalais on March 7, Bill Clinton, UN Special Envoy to Haiti, stated as fact what everyone except the United Nations itself has accepted for more than a year. UN troops – specifically a Nepalese Battalion based just a couple of miles away – were responsible for introducing cholera to Haiti in October 2010, causing what is now the world's most potent current epidemic.

The admission came in reply to a challenge from one of Haiti's most active investigative journalists, Ansel Hertz. Just days before, in reporting an unprecedented trip to Haiti by the UN Security Council, Washington's Ambassador to the

UN, Susan Rice, had referred to both the cholera epidemic and sexual abuse by UN troops in Haiti in the same sentence.

Rice called on the United Nations to “redouble its efforts to prevent any further incidents of this kind and to ensure that those responsible are held accountable.” The listing of the two charges on the same rap sheet implied the UN was responsible for cholera – without actually stating it. It was an ambiguity that might have been intentional given the growing frustration with the UN in Haiti.

Hertz asked Clinton if he agreed that those who introduced cholera to Haiti should be held responsible, citing the “multiple scientific studies” that pointed to the UN. Clinton's answer was actually “no”, but in saying so, he stated what Rice

had not, whilst making all the classic excuses about intention (none) and context (Haiti's terrible water and sanitation provision).

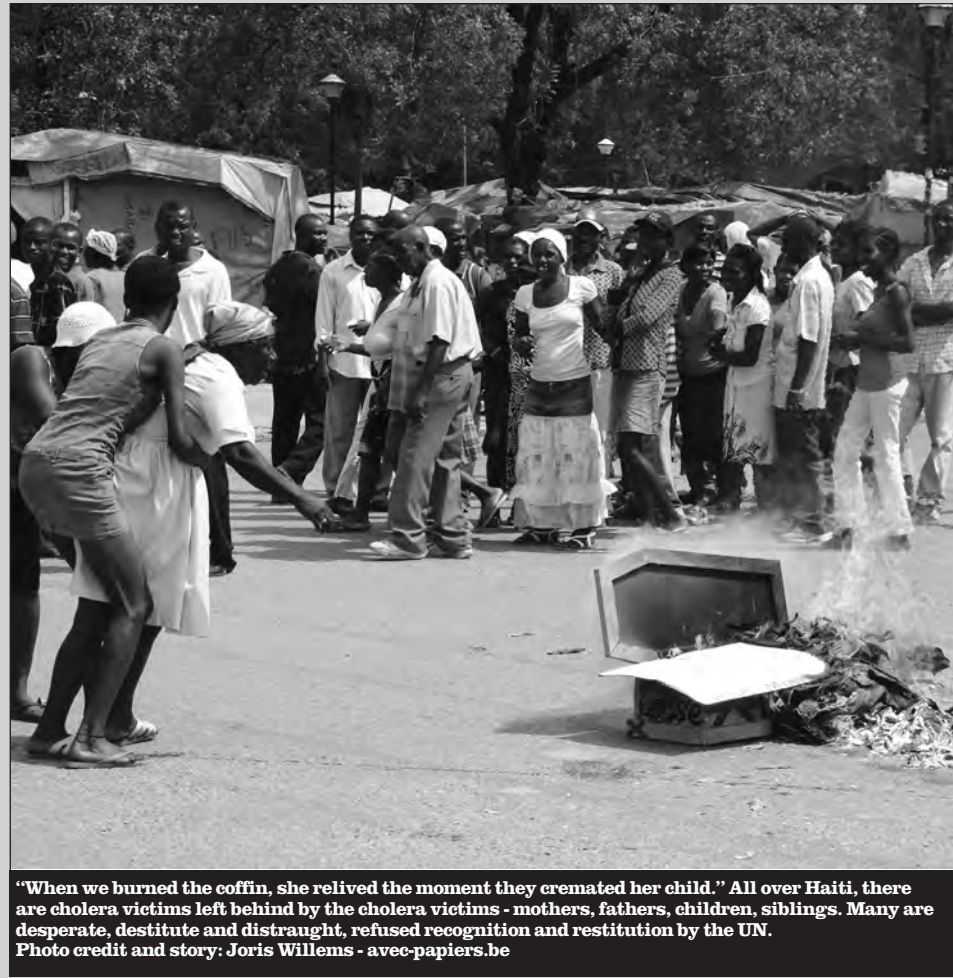
“I don't know that the person who introduced cholera into Haiti from the UN peacekeeping forces...was actually aware that he was carrying the virus...it came from his waste stream into the waterways of Haiti and into the bodies of Haitians. But what really caused it was that you don't have a comprehensive sanitation system.”

Clinton went on. “I can't recall ever until this cholera outbreak hit people even asking: ‘Did these people come from a place where they have a lot of cholera, malaria or you name it and...therefore, almost by accident, we could start an epidemic?’ It's one question that I think

will always be asked from now on. I feel terrible about what happened here...but I don't think this was a deliberate callous disregard for the lives of the people of Haiti.”

It was the ultimate Clintonesque parry and a reaffirmation of the norm in Haiti for everyone and everything from the government to the international community. In short, the UN should not be held accountable, even though it was responsible, because no one whose job it was to consider the risk of causing an epidemic in the UN's Departments of Field Support, Medical Services, or Environmental Engineering, had bothered to do so. As Jonathan Katz, the prize-winning reporter who did so much to uncover the UN's responsibility, summa-

# Lawsuits, Liabilities and Lies: UN Impunity Challenged



"When we burned the coffin, she relived the moment they cremated her child." All over Haiti, there are cholera victims left behind by the cholera victims - mothers, fathers, children, siblings. Many are desperate, destitute and distraught, refused recognition and restitution by the UN. Photo credit and story: Joris Willems - avec-papiers.be

As the flames consumed the child-size mock coffin, it all became too much for one woman. Pleading and pointing at the fire, she moved amongst the crowd who had set it alight in protest at the death and destitution cholera has brought to so many in Haiti. Then she started to walk towards the fire, moving her head and hands in a sort of distraught dance, before being restrained by others, afraid she would throw herself into the flames.

"Her child died of cholera. When we burnt the coffin, she relived the moment her child's body was cremated," explained one protestor. "MINUSTAH has brought nothing but repression, rape and cholera to Haiti. They call it the United Nations. We call it the United Mafia."

All over Haiti, from tiny villages to Port-au-Prince, there are individuals like that woman. They remain distraught, destitute and despairing at what the cholera epidemic has done to their families - viciously eliminating the hope and promise of a child, the skill and support of a breadwinner, the love and life of a mother. "The way to make people angry is to lie to them - and the UN certainly has," says Brian Concannon, the Director of the Institute for Justice and Democracy in Haiti (IJDH).

It is for such victims, the 7,040 dead and the 530,953 sickened so far, that both IJDH in Boston and its sister organization, the *Bureau des Avocats Internationaux* (BAI) in Port-au-Prince, have each filed a *Petition for Relief* with the UN. The petition demands compensation for individuals, restitution in the form of substantial water and sanitation infrastructure investment in Haiti and a public apology.

The demand that the UN pay for the infrastructure is a masterstroke, turning the spotlight on what the UN itself claims, in seeking to deflect blame, is the real cause of the epidemic: lack of access to clean water and the most basic sanitation. "There were 5,000 complainants when the suit was filed and we have another 10,000 signed up but the whole nation would benefit from the water investment," says Mario Joseph, BAI's lead lawyer.

A layman would call this a crime against humanity. The culpability for what by any standards appears to be a case of criminal negligence of enormous proportions seems established beyond reasonable doubt. However, it remains a suit that will test the most astute of legal strategists, circumscribed as it is by an all-embracing UN legal impunity in both domestic and international courts. That immunity is the main reason the UN has not been forced to pay even minimal compensation to Haitian families or to do the decent thing: provide Haitians with clean water.

Both Article 105 of the United Nations Charter and MINUSTAH's Status of Forces Agreement (SOFA) under which it operates in Haiti, afford UN personnel broad immunity in domestic courts. Both are reinforced by Article II, section 2 of the Convention on the Privileges and Immunities of the United Nations, whose title speaks for itself, but in legal terms requires the UN to expressly waive the immunity of the organisation or its employees before a court can establish any right to hear a case.

Domestic and international courts have repeatedly upheld the UN's immunity, on the

supremely ironic grounds that the UN must be protected from legal proceedings that prevent it from executing its "protection duties." In other words, for the UN and its employees to be protected, Haitians must die and be damaged without legal redress.

The IJDH/BAI lawsuit seeks to force the UN to take the first step when faced with a legal claim and establish the three-person Standing Claims Commission (SCC) called for under the terms of SOFA. Yet even this is an uphill task. Since November 3, 2011, when the petition was filed, there has been no response from the UN beyond acknowledgement of receipt of the claim. Indeed, in the eight years the UN has operated in Haiti and in the decades that similar agreements have applied elsewhere, no SCC has ever been set up.

Even if the SCC was established, some believe the UN would effectively be judge, jury and jurisdiction while being asked to adjudicate a claim which could cost it billions of dollars, not to mention further ridiculing its own image as the primary standard bearer for human rights and the advancement of "the rule of law."

Others are more optimistic. Just establishing the three-person SCC, with appointees mutually agreed on by the Haitian government and the UN, would set a precedent, should change everything and could create a system where the UN "can be held accountable," according to Dianne Post, an international human rights lawyer who tried to sue the UN Mission in Kosovo in 2005.

If the UN fails to respond or establish the SCC, one option is to try going to the Haitian courts. One coalition of Haitian civil society groups, the

*Collective to Mobilize for Reparations for Cholera Victims*, has already done just that through lawyer Patrice Florvilus. The Haitian judicial system "has a duty to press the UN on this issue," he asserts. "If the Haitian state does not want to co-operate, we will say it is complicit with MINUSTAH and sue the Haitian government."

Mario Joseph of BAI agrees on the principle, if not the legal strategy. "The Haitian state invited these organisations," he states. If a Haitian court did agree to hear the case, the Civil Code includes specific provisions on injury caused by the neglectful transmission of a contagious disease. But whether in a US or Haitian court, just trying to get the case heard should help publicize the scandalous facts. It would deny the UN its most potent weapon to date - the secrecy and obfuscation of the "no comment," "no definitive proof," defence (see main story).

To date, both cholera lawsuits by IJDH and BAI, have been model templates for linking internal and external forces in pursuit of justice in Haiti. Popular pressure on the streets, publicity in the press, scientific papers on the web, the facts exposed in the Petitions themselves, have all played a crucial role in getting the campaign for justice this far.

How much further it goes may depend crucially on much more of the same - publicity and pressure. And that means it depends on us. So on behalf of that distraught mother in the street, and the many thousands of others she represents, take action now and demand justice (read more, learn more, do more, go to: [www.ijdh.org/projects/cholera-litigation](http://www.ijdh.org/projects/cholera-litigation)). ■

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alized on his blog as to accountability: "Maybe next time." Meantime, in that old Clinton emotes ploy: He feels Haitians' pain.

## UN Denies, Haitians Die

If that's the gospel according to UN Special Envoy to Haiti Bill Clinton, you would expect some version of that to also become the UN's in due course. But don't hold your breath. The one theme running through the UN's disingenuous denials and deceit since cholera exploded with 129 deaths in 3,000 cases in just 48 hours during late October 2010, is that the evidence is, in their public relations team's words, "inconclusive".

In fact, the UN has done everything possible to ensure such evidence will never be available by failing to test the suspect troops, failing to use a proven technique to test the leaking sewage at their base, and thus, in such denial, failing to warn in a timely manner and causing scores of deaths. The UN has had one overriding *modus operandi* in this case from the beginning:

knowing the facts will be incriminating - it has refused to search them out.

No one else - epidemiologists, public health experts, microbiologists - has any doubts about the cause and the culpability. In the year since the UN's own expert panel published a report presenting evidence of UN fault, making compelling recommendations for change but declining to actually point the finger, the science has become conclusive. At the last count, nine separate independent research groups, using 12 different scientifically-validated methods, have all pointed in just one direction: Nepalese troops in a base known as NEPBATT 1 in Meille (*Meye*), near Mirebalais.

In particular, the most recent study compared full-genome sequencing of the *vibrio cholerae* found in Haiti with samples collected during a 2010 epidemic in the Kathmandu Valley. The samples bravely provided by the National Public Health Laboratory in Kathmandu in a commitment to transparency, truth and life-preservation

that puts the UN to shame. One cluster of samples demonstrated only a single DNA base pair difference (cholera has more than 4 million) between the two strains, a 99.9999% genetic similarity.

Despite what experts are now labelling 'molecular proof,' the UN has refused to take the Susan Rice or Bill Clinton hint - or kick - and come clean. In fact, quite the opposite, within 48 hours of Clinton's remarks, Mariano Fernandez, the head of the UN in Haiti kicked back, hard. "We took the decision to not say a single word on cholera because there's a legal claim. No single person from the UN should say anything about cholera."

The ironies here are profound. In making his admission, Bill Clinton used the legal phrase of the lawyers working for IJDH in Boston and BAI in Port-au-Prince in filing a claim against the organisation he represents (see inset article). Clinton stated: "It was the proximate cause of cholera, that is, he [the Nepalese soldier] was carrying the cholera strain." Yet now the UN is using the fact that it has failed to re-

spond in substance to the IJDH/BAI claim (presumably because it is unable to come up with any persuasive arguments to counter it) as an excuse to try and close the case down. The UN's silence, must now, it insists, be everyone else's.

Haitians and their advocates have refused to be silenced. There is no doubt that Clinton's admission and Rice's admonition owe as much to public as to political pressure. Every tool in the box has been applied, from mass demonstrations to lawsuits, from email deluges to conferences. Similarly, every possible agent has been recruited, from lawyers to epidemiologists, microbiologists to health promoters, diplomats to grassroots activists.

Put the facts under the microscope, and you see every virulent pathogen known to international agencies: gross negligence, in defiance of every health and human rights standard that the UN is charged with enforcing; denial, defiance and cover-up, which has demonstrably increased the death toll; and an arrogance and hubris

that are wrapped in a cocoon of legal immunity. In essence, the UN can do no wrong, whilst vigorously defending its right to get away with causing massive harm.

## The Numbers, the Negligence

First - the numbers. Up to March 1, 2012, 7,040 Haitians are dead, with 530,953 sickened by cholera. That toll will soar again with the onset of the rainy season in May. And no one believes these figures are accurate. Despite the best efforts of the Haitian Health Ministry and its partners, many Haitians are dying unrecorded, miles from cholera treatment centres, in hamlets where no one even knows what the disease is, let alone why they are dying from it.

Introduced into a 'cholera-naive' country with no immunity, into the perfect transmission mechanism, the headwaters of the country's largest river system, into a nation that ranked 147 out of 147 on the world's Water Poverty Index before the January 2010 earthquake and has endured the worst levels of sanitation in the world since, this par-

ticularly virulent strain of cholera has enjoyed near perfect conditions in which to spread.

In July 2011, the height of the rainy season, one Haitian succumbed to cholera every minute. With death rates that have been as high as 7% of those infected (the global benchmark is 1%), cholera is now endemic to Haiti, nearly one hundred years after the last known case. Compensation and restitution to the hundreds of thousands of Haitians killed or harmed to date, plus investment in water and sanitation systems to prevent a re-occurrence could run into the billions. The UN's liability here, if it can be established legally as well as morally, is astronomical.

Second - the negligence. No one is accusing the UN of deliberately infecting Haiti with cholera, as Bill Clinton insinuates. The question is not whether they foresaw this, but rather whether they should have. Did they take reasonable precautions on a reasonable assessment of the risk? What is at issue here is simple: was there negligence, or worse, gross criminal

negligence, recklessness and deliberate indifference? Did the UN do everything possible to prevent the introduction of cholera at a time when Haiti's vulnerability to such was widely understood, even by the UN? Having failed to keep cholera out, did the UN respond adequately, make full redress, in a timely manner?

Anything but, it turns out. Pre-deployment protocols published in the Medical Support Manual for UN Peacekeeping do not even require the testing of troops for cholera, let alone its treatment, if they show no signs of the illness or are, in medical terms, asymptomatic. As the UN's own report by its panel of experts indelicately puts it: "A medical examination was completed before they departed Kathmandu. The examination only included microbiological testing of stools when clinically indicated."

What the UN experts do not say in their report is how particularly inadequate all this was - for them such standards do not even seem to rise to the definition of a protocol

- for this disease, in this circumstance. Many cholera carriers, up to 75% in Nepal, show no symptoms. Just what that meant in this case was revealed by the Nepalese army's chief medical officer, Brigadier General Dr. Kishore Rana, who, in December 2010, confirmed that the UN "protocol" had been followed but that none of his troops required testing, despite a major cholera epidemic in the Kathmandu Valley in the summer of 2010.

## Blackwater Backflow: A Stink

But the negligence that followed once the Nepalese troops were deployed at NEPBATT 1 in Meille, was even worse. "Frankly the place was a sanitation clusterfuck," blogs Jonathan Katz, the reporter who got onto the base on October 27, 2010, the day after the UN had issued a press release denying its base could be the source. "The cholera could have come from anywhere there. It stank."

Katz highlighted three probable



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sources. The first was an overflowing septic tank with broken pipes spewing liquid black water waste (sewage) onto the ground “which dribbled down to the river where people were bathing.” The second was leaking pipes crossing a drainage ditch that ran down to the river. The UN claimed these pipes carried grey water waste (wash water), but even after supposed remedial action three months later the UN’s expert investigators concluded that the piping system was so haphazard there was “significant potential for cross-contamination.”

The third was a shovel-dug landfill site, an unlined, unfenced, uncovered dump-pit into which a contracted waste disposal company, Sanco Enterprises SA, deposited the contents of the bases’ septic tanks when called. This was just 820 feet – down a steep slope – from *Boukan Kanni*, the Meille River tributary of Haiti’s largest river, the Artibonite. Locals reported that both the on-base septic tank and the landfill site frequently overflowed into the stream, in which they had to bathe, drink and wash.

But it was the UN Military Police unit collecting samples of the waste stream trickling towards the river that provided the first instalment of the cover-up Jonathan Katz would now chronicle. Not only was the press release the UN had put out just hours before false – it claimed the base had sealed septic tanks that were emptied weekly and dumped in a landfill site a safe distance from the river – but they could not possibly know the base was not the source of the cholera until they had tested. The samples were only now being collected in blue-capped specimen jars by UN blue-caps who were, in Katz’s words, “clearly horrified”.

What happened next was classic spin. The UN said none of its Nepalese troops had shown signs of cholera. Yet again, even now, the troops were not tested. On October 30, under press interrogation, UN Spokesman, Vincenzo Pugliese confirmed that they had not been tested. It was not a message his boss Alain Le Roy, UN Under Secretary for Peacekeeping Opera-

tions, chose to hear or repeat in New York. Nearly seven weeks later he claimed to the press, “all the soldiers had tested negative for the strain.”

Some days later the results of UN ‘tests’ on the environmental samples were released. Predictably, they were negative; predictably, they had not gone to a recognized specialist lab; predictably, they were carried out by a medical facility under long-term, lucrative contract to the UN. Specialists immediately noted that the cholera bacterium is hard to isolate and that the UN did not appear to have large enough samples to do so effectively from environmental specimens. They also stated the obvious, whatever the inadequacy of the testing: a negative actually proves nothing.

**Impunity plus Impermeability**

Why are UN controls so lax, so lacking? Try immunity. Just as the UN enjoys legal immunity as a non-state actor (see inset article), so it claims exemptions from the surveillance and response obligations that the International Health Regulations (2005) of the World Health Organisation (WHO) impose on everyone else for the essential global control of infectious disease. No WHO standards, no effective standards at all, for the UN, it seems.

Added to that immunity, impermeability to the best lobbying efforts of some of the most qualified public health advocates for Haiti. Take Dr Rishi Rattan, chair of the Advocacy Subcommittee of Physicians for Haiti, an NGO with a long track record. He has allowed *Haiti Briefing* to quote from his notes on extended efforts to engage as recently as this March with the Department of Field Support in the Department of Peace Keeping Operations (DPKO) in New York. According to the UN itself, they are the only UN unit allowed to comment on cholera in Haiti.

“Despite multiple NGO and UN staff trying to contact multiple different people on our behalf, and our contacting them over two to three weeks by fax, email, phone and mail, we never received a response... so we tried to just show up but were denied access because we did not

have a meeting scheduled.” Welcome to the United Nations.

Like so many working on health in Haiti, Dr Rattan has only one priority – Haitians and their vulnerability to the spike in cholera infection and death that the approaching rainy season will bring. “Anyone in the UN who will talk off the record gives you the same spin: how hurt the UN is by these accusations, how the UN is in Haiti to help, how they are investigating,” he observes. In other words, it is still all about the UN and its staff, the culprits, not about Haiti or Haitians, the victims.

“MINUSTAH’s response to the disaster it caused demonstrates its inability to follow its own mandates to tie security to development, help build basic social services, coordinate with the government on humanitarian assistance and address the needs of disaster-affected people,” Dr Rattan concludes in his final brief. In other words, the cholera chronicle is just the clearest evidence to date that the UN’s MINUSTAH troops are the problem, not the solution (see *Haiti Briefing* No 68).

In response to the crazy suggestion that MINUSTAH should take charge of the large scale water and sanitation projects now being proposed for Haiti, Dr Rattan says that being unable to build or maintain the most basic sanitation facilities in its own bases is not the only way in which the UN has already manifestly failed. The number of Haitians with access to clean water demonstrably decreased in each of the first four years MINUSTAH was deployed in Haiti.

Worst of all, the UN’s failure to tighten its own medical standards and procedures – discussions continue on implementing the UN experts’ year-old recommendations – means that no one is safe from the UN, its infections and its impunity, even now. “Given the UN’s inaction in fixing their protocols, based on current scientific evidence, it’s not if, but when this sort of epidemic will happen again and not just in Haiti,” says Dr Rattan. “It could be any vulnerable nation in which the UN is deployed, or any water-borne infection, not just cholera. Frankly, it’s inexcusable and inhuman.” ■

**A DATE FOR YOUR DIARY! Saturday 30 June 2012 | 11am-1.00pm and 2.00-5.00pm**  
**Don't miss the Haiti Support Group's AGM and 20th anniversary celebration**  
**ALL MEMBERS WELCOME. THIS IS YOUR SOLIDARITY GROUP!**

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2.00-5.00pm | **HSG 20th anniversary event** in collaboration with the Institute for the Study of the Americas [all welcome but RSVP required]  
 Keynote speaker for our 20th anniversary event...  
 ● **Mark Snyder**, an independent human rights activist working with Haitian civil society groups and displaced persons is in the UK from Port-au-Prince with the latest news and views from the ground. Mark will take your questions, hear your views.  
 ● **Film screening: "Haiti: Where did the Money Go?"** by producer/director Michele Mitchell of Film at Eleven – followed by Q&A session

**Venue Address:**  
 Central London –  
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*The Haiti Support Group (HSG) seeks to support Haitians' struggle for participatory democracy and to amplify the voice of progressive civil society organisations in Haiti to politicians, the press and the public in Europe and North America.*