

<b>Institution:</b> University of Birmingham		
<b>Unit of Assessment:</b> UoA18 Law		
<b>Title of case study:</b> Working towards a resolution: Haiti, Cholera and the UN		
<b>Period when the underpinning research was undertaken:</b> 2011 – 2016		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Dr Rosa Freedman	Senior Lecturer in Law	2011 – August 2016
<b>Period when the claimed impact occurred:</b> 2013 – 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<b>1. Summary of the impact</b>  <p>The Haitian cholera epidemic was inadvertently triggered by UN peacemakers in October 2010, killing over 10,000 Haitians and infecting nearly 1 million. The UN refused to recognise responsibility. Working closely with the legal representatives of the victims, NGOs, diplomats, and key interlocutors, and drawing on their research into victim-centred reparations, Freedman and Lemay-Hébert <b>successfully reversed the UN's policy</b>.</p> <p>Evidence of their success is that they obtained (i) <b>a direct apology</b> to the Haitians from the UN Secretary-General, (ii) the creation of a trust fund to provide <b>financial assistance</b> for local communities, and (iii) a <b>commitment to eradicate cholera</b> supported by the introduction of additional prevention measures.</p>		
<b>2. Underpinning research</b>  <p>While tasked with peacekeeping operations in the aftermath of the January 2010 earthquake, the United Nations Stabilization Mission in Haiti (MINUSTAH) inadvertently introduced a cholera epidemic which resulted in widespread illness and further devastated the country. The nation's population was immunologically naïve, leading to the deaths of over 10,000 Haitians and nearly 1 million becoming sick. The victims and their families had appealed to the UN for reparations to no avail [R1, R2]. The UN's refusal to accept blame, and their later invocation of immunity, represented a near complete barrier to victims accessing a court or any form of reparation. Through doctrinal legal analysis and in-depth case study research including extensive fieldwork, Freedman and Lemay-Hébert have combined approaches from political science, international relations and international law, and involved relevant stakeholders in the co-production of research to establish UN responsibility and to devise an acceptable and viable resolution framework for both the UN and the victims.</p> <p><b>Key Findings:</b></p> <p><b>F1. The UN has a moral and legal responsibility for the cholera outbreak.</b>  Freedman and Lemay-Hébert documented the causal role played by the UN in bringing about the cholera outbreak and established the case for UN responsibility [R2, R3]. This centred on material proof that the lack of clean toilet facilities in UN peacekeeping camps led to infected faecal waste draining into the main tributary of the Artibonite River, used by over 1.5 million Haitians for cooking, cleaning, washing, and drinking [R2], and triggered the cholera outbreak. While the UN originally claimed it had no responsibility for the outbreak, insisting that it was caused by a 'perfect storm' of unfortunate circumstances that were out of its control, these facts demonstrated a basis for legitimate blame and established the UN's moral and legal responsibility for the cholera outbreak.</p>		

**F2. The cholera outbreak is a human rights issue and not a humanitarian one.**

Freedman and Lemay-Hébert argued that the cholera outbreak in Haiti should be considered as a human rights issue rather than a humanitarian one [R2]. The cholera outbreak and the subsequent handling of the epidemic by the UN constituted a violation of the human right to health of Haitians. Recasting the legal context of the outbreak in this manner provides the basis for questioning the accountability of the UN for those violations.

**F3. The UN's immunity from legal processes should be interpreted in the broader context of human rights law and should be overridden when it prevents citizens accessing a court and a remedy.**

With the UN initially labelling victim compensation claims as 'not receivable' and invoking their immunity under Section 2 of the Convention on the Privileges and Immunities of the United Nations, Freedman and Lemay-Hébert highlighted the barriers to victims exercising their right of access to court and how this might be challenged legally [R1]. As a human rights issue, they argued that there should be a distinction between the UN acting as an organisation (which can invoke immunity) and acting as a sovereign power within a state's territory (where immunity should be overridden). They contended that the UN had taken on 'functions of the state' at the time of the outbreak (through the Interim Haiti Recovery Commission, coupled with the fact that the Haitian government had temporarily disbanded) and that the UN should therefore be bound by obligations that arose from the violation of Haitians' right to health [R2]. Freedman and Lemay-Hébert contended that immunity should be overridden where it precludes individuals being able to access a remedy, especially as the UN had failed to provide alternative dispute resolution mechanisms for victims [R1, R3].

**F4. Reparations should be victim-centred and focus on the needs of survivors.**

From 2014 to 2016, Freedman and Lemay-Hébert conducted several pieces of participatory research to ascertain survivors' needs and design a resolution framework, including in preparation for the December 2015 summit at the University of Birmingham (see [R2], and also a subsequent piece, Freedman, R., Lemay-Hébert, N., Pierre, P., and Thelin, K. (2017) 'A Roadmap for the UN to Resolve the Haiti Cholera Dispute', *Georgetown Journal of International Affairs*, 13 April 2017). Through such research, they found that the most effective approach to reparations should be victim-centred, shaped by consultation with the people affected and with a preference for individual reparations over collective ones. Individual reparations would enable the two categories of victim affected by the cholera epidemic — survivors and family members of those who died — to regain material loss suffered.

**3. References to the research**

**R1.** Freedman, R. (2014) 'UN Immunity or Impunity?: A Human Rights Based Challenge', *European Journal of International Law*, 25(1): 239–254. DOI: [10.1093/ejil/cht082](https://doi.org/10.1093/ejil/cht082)

**R2.** Freedman, R., and Lemay-Hébert, N. (2015) "Jistis ak reparasyon pou tout viktim kolera MINUSTAH": The United Nations and the Right to Health in Haiti', *Leiden Journal of International Law*, 28(3): 507–527. DOI: [10.1017/S0922156515000278](https://doi.org/10.1017/S0922156515000278)

**R3.** Freedman, R., and Lemay-Hébert, N. (2015) '[Towards an Alternative Interpretation of UN Immunity: A Human Rights-Based Approach to the Haiti Cholera Case](#)', *Questions of International Law*, 8(19): 5–18.

**4. Details of the impact**

Freedman and Lemay-Hébert were **instrumental in changing the UN policy on accountability** that in effect barred victims of the cholera epidemic in Haiti from seeking redress. This was achieved through **coordinated policy engagement and legal challenge** with the legal representatives of the victims, NGOs, diplomats, and key interlocutors

### 1. Challenged in court UN policy on absolute immunity (in collaboration with the Institute for Justice and Democracy in Haiti).

This impact was achieved by working with the Institute for Justice and Democracy in Haiti to challenge in court UN policy on absolute immunity. This occurred due to the UN's refusal to acknowledge responsibility for the cholera epidemic (killing over 10,000 Haitians and infecting nearly 1 million) despite evidence to the contrary. Freedman made influential pro bono contributions to the lawsuit brought by IJDH in October 2013 (*Georges et al. v. United Nation*) [E1]. Lawyers, scholars, NGO practitioners, international agencies, and former UN mandate holders all used Freedman's research on the UN's claim to absolute immunity [R1] in an *amicus curiae* brief, submitted in May 2014, which she co-signed [E1]. This was resubmitted to the Court of Appeals in 23 February 2016.

The specific challenge failed in the US courts, but it helped to elicit a new willingness from the UN for a resolution outside of court. In a statement released by the Secretary-General on the 19 August 2016 (a day after the court decision), he describes both regret and a moral responsibility of the UN and international community to eliminate cholera, and he states that he is "actively working to develop a package that would provide material assistance and support to those Haitians most directly affected by cholera" [E10]. Such willingness represented a reversal of the UN's original standpoint in the aftermath of the legal challenge.

### 2. Transforming UN policy on responsibility for the cholera epidemic in Haiti.

Having demonstrated that a rights-based approach was needed to solve the Haiti cholera crisis [F2], Freedman and Lemay-Hébert **designed a resolution framework** that would be acceptable to the UN, Member States, and the Haitian victims. It was to serve both as a **campaign tool to engineer the policy change in the UN** and as a **guide to UN actions on reparations** in Haiti.

Freedman and Lemay-Hébert convened a Resolution Summit at the University of Birmingham in December 2015, which provided an opportunity for high-level officials (including of the UN) to engage with the research and discuss a resolution framework. The agreed framework called for three elements: an apology from the UN to the people of Haiti, preventive measures to avoid future deaths and suffering, and financial compensation for the victims [E2].

The three-part resolution framework was used to **trigger a change of the UN policy**. It was utilised by NGOs, Member States of the UN Security Council (UNSC), and the Special Rapporteur on extreme poverty, even though the UN's refusal of responsibility seemed entrenched. Freedman, Lemay-Hébert, and NGOs (such as IJDH and Partners in Health) lobbied Member States in the Security Council with the framework, thus **equipping representatives with a research-based human rights argument for reparative justice, and encouraging a coordinated approach** to raising the issue. Representatives considered the framework to be the first draft of a political resolution and were encouraged by the possibility of an alternative to legal measures that were underway at the time. The research-based framework was taken up by representatives to develop proposals in advance of a crucial review of MINUSTAH of 17 March 2016, where they compelled the UNSC to do more to eradicate cholera and to support the people affected [E6]. As the Deputy Chief Medical Officer of Partners in Health (a participant at the Birmingham Summit) has since corroborated, the "framework has been used by States, the UN, and independent experts as the basis of how to move forward" [E3]. As a result of the lobbying, 17 out of 21 representatives who spoke at the UNSC raised the issue of cholera in Haiti [E6]. Peru and Saint Vincent and the Grenadines spoke on behalf the Group of Friends of Haiti (11 states) and CARICOM (14 states) respectively, expressing unanimous support for a change in UN public policy concerning cholera in Haiti [E6].

Finally, the recommendations contained in their first joint research [F1–F4] as well as those from the Birmingham Summit [E2], were cited extensively in the report of 26 August 2016 by the Special Rapporteur on extreme poverty and human rights. The report was debated at the UN General Assembly and criticised the handling of the cholera epidemic, in particular "the refusal to address the human rights violations that have occurred [...] as a result of the cholera epidemic" [E4]. It also pushed for the Secretary-General to change his position on the issue using the

three-part framework as a recommendation for a new policy [E4]. The Rapporteur acknowledged the researchers' roles, stating that: "the framework that was produced at the Birmingham workshop has informed the approach taken in terms of the three aspects needed to resolve the disputes" [E5].

Through the combined approach of influencing the campaign of IJDH and equipping policy makers with critical research-based evidence for reparations, Freedman and Lemay-Hébert were successful in **stimulating high-level political debate about victim-centred reparative measures** for the people of Haiti. In doing so, the approach also carves out a **new mechanism for holding international organisations to account through a human rights matrix**. The longer-term ramifications of this for public policy and legal accountability are likely to be significant.

### **3. Reversing and shaping UN public policy on reparations in Haiti.**

In December 2016, after years of inaction, the **UN fundamentally changed its position on reparations in Haiti and implemented a new policy** as a result. The new approach is underpinned by recommendations stemming from Freedman and Lemay-Hébert's research and their three-part framework [F4-E2]:

#### ***(i) Issuing a public apology to the people of Haiti.***

On 1 December 2016, the Secretary-General apologised to the people of Haiti, accepting that the UN "simply did not do enough with regard to the cholera outbreak and its spread in Haiti" and expressed a "moral responsibility" to eliminate cholera and support those affected [E7]. The choice of terms here – 'moral responsibility' – can be seen as a direct reference to the terminology of the Birmingham Summit Report [E2].

This apology was given in English, French, and Haitian Creole which marked **the first time that the UN apologised in a language that was not an official UN working language**. The apology is part of a **package of reparative measures** [E8], designed to alleviate the suffering resulting from the outbreak and also **reflects the recommendations of the Birmingham Summit Report** [E2].

#### ***(ii) Reparations through the UN Haiti Cholera Response Multi-partner Trust Fund.***

The UN set up a **two-track policy response worth \$400 million to provide reparations**. These reparations are funded by UN Member States' donation (\$20 million have been received so far) and are administered by the UN Haiti Cholera Response Multi-Partner Trust Fund. Over \$8.7 million have already been distributed to organisations in Haiti [E9].

Part of this fund ('Track 2') is labelled 'a proposal to provide material assistance for those most affected by cholera' and will offer financial assistance to communities most directly impacted by the outbreak.

Phase 1 saw pilot projects and the consultation with communities most affected reflecting the call for an enhanced understanding of victims' needs in reparative processes as found in Freedman and Lemay-Hébert's research [F4]. For phase 2, \$6.7 million have been allocated to projects covering 134 local communities (those hardest hit by the epidemic) [E9].

The funding (so far) stops short of the direct compensation of affected individuals called for in Freedman and Lemay-Hébert's work [F4]. However, indirect assistance of this kind still provides material benefits to many thousands of Haitians affected by the epidemic [E9].

#### ***(iii) Commitment to the eradication of cholera.***

Alongside the assistance provided to affected communities (Track 2), the UN Haiti Cholera Response Multi-Partner Trust Fund has also allocated \$3 million to support projects 'intensifying support for cholera control and response' (Track 1). The policy aims to **respond, reduce, and eliminate cholera in Haiti by increasing provision and access to healthcare, sanitation, and high-quality water**. Again, there is a **clear mirroring of the framework scrutinised and**

**agreed at the Birmingham Summit**, and founded on Freedman and Lemay-Hébert's research [F1–F4]. Importantly, this policy seems to be effective: at the fifth meeting of the advisory committee of the Trust Fund on 20 May 2020, the Special Envoy for Haiti shared data indicating zero laboratory confirmed cases of cholera and zero deaths for 16 consecutive months. This is a **radical improvement in public health and patient outcomes**, and a significant milestone in the eradication of cholera in Haiti [E9].

#### 5. Sources to corroborate the impact

**E1.** *Amicus curiae* brief filed on 15 May 2014 (first instance) and on 23 February 2016 (appeal) in *Georges et al. v. United Nations*.

**E2.** Outcome Document for the Haiti Cholera Resolution Summit, the University of Birmingham, 7 December 2015.

**E3.** Testimony from NGO expert and participant in the Birmingham Summit (Deputy Chief Medical Officer, Partners in Health).

**E4.** UN General Assembly, *Report of the Special Rapporteur on extreme poverty and human rights* UN. Doc. A/71/40823, 26 August 2016.

**E5.** Testimony from Philip Alston, UN Human Rights Council Special Rapporteur on extreme poverty and participant in the Birmingham Summit (30 November 2016).

**E6.** 7651<sup>st</sup> meeting of the UN Security Council (71<sup>st</sup> year), 17 March 2016.

**E7.** [The Secretary-General's apologies to the people of Haiti published on the United Nations website.](#)

**E8.** Report by the Secretary-General 'A new approach to Cholera in Haiti'.

**E9.** [Minutes of the fifth meeting \(20 May 2020\) of the Advisory Committee of the UN Haiti Cholera Response Multi-Partner Trust Fund.](#)

**E10.** Statement released by Secretary-General Ban Ki Moon '[Noting Court Decision Upholding United Nations Immunity in Haiti Cholera Case, Secretary-General Urges Member States to Boost Support for Overcoming Epidemic](#)' (19 August 2016).