

## Impact case study (REF3)

<b>Institution:</b> University of Birmingham		
<b>Unit of Assessment:</b> UoA19, Politics and International Studies		
<b>Title of case study:</b> Providing justice for victims: Haiti, Cholera and the UN		
<b>Period when the underpinning research was undertaken:</b> 2014-2017		
<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>
Nicolas Lemay-Hébert	Senior Lecturer	2011-2018
<b>Period when the claimed impact occurred:</b> 2014-2020		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<p><b>1. Summary of the impact</b></p> <p>In October 2010, UN peacekeepers inadvertently introduced cholera to Haiti for the first time, causing the death of over 10,000 Haitians and infecting nearly 1 million. The UN initially refused to accept responsibility for the outbreak. Our research was influential in reversing this position, leading to the UN taking responsibility and giving an unprecedented apology to the Haitian people. Specifically, we:</p> <p>(1) Informed and influenced the UN's <b>policy on responsibility</b>, setting a precedent for future UN actions;</p> <p>(2) <b>Transformed UN policy on accountability</b>, through the adoption of the human rights-based <b>Resolution Summit Framework</b>;</p> <p>(3) <b>Improved the health and public outcomes</b> of the Haitian people through reparations in the form of a \$400 million trust fund.</p>		
<p><b>2. Underpinning research</b></p> <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 that resulted in widespread illness and further devastated the country. Cholera victims and their families had appealed to the UN for reparations, but without success [R1, R2]. The UN refused to accept moral or legal blame for the epidemic and invoked its right to immunity from prosecution, which prevented victims from accessing a court or any form of reparation.</p> <p>Through in-depth interdisciplinary case-study research, co-designed and co-produced with relevant stakeholders and including extensive fieldwork, Lemay-Hébert and Freedman (School of Law at the University of Birmingham), combined political science, international relations and international law approaches in their research to identify a resolution to the stalemate. The resulting policy framework enabled the UN to accept moral responsibility and, eventually, to identify and implement a feasible and viable response for the victims and their communities. This framework was underpinned by four key research findings:</p> <p><b>F1. The UN had a moral and legal responsibility for the cholera outbreak</b> and, therefore, was duty-bound to provide reparations to those affected by the cholera epidemic [R1, R2]. Lemay-Hébert and Freedman documented the causal role played by the UN in bringing about the cholera outbreak and established the moral and legal case for UN responsibility. 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 their control [R2, R3, R4]. However, independent proof that a lack of clean toilet facilities in peacekeeping camps led to infected faecal waste draining into the main tributary of the Artibonite River, on which over 1.5 million Haitians rely for cooking, cleaning, washing, and drinking, meant that the UN should be held accountable [R5].</p> <p><b>F2. The cholera outbreak should be considered a human rights issue rather than a securitised humanitarian one</b> [R3, R4]. Lemay-Hébert and Freedman argued that the cholera</p>		

outbreak and the subsequent handling of the epidemic by the UN constituted a violation of the human right to health of Haitians. This claim rested on the assertion 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). Because the UN had taken on functions of the state at the time of the outbreak (through the Interim Haiti Recovery Commission) and the Haitian government had temporarily disbanded for this period, the UN therefore must be bound to any obligations that arose from the threat to health posed by the epidemic [R2].

**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 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, Lemay-Hébert and Freedman highlighted the barriers to victims exercising their right of access to court and how these might be challenged legally [R1]. They found that, despite being responsible for the cholera outbreak through inadequate screening protocols and sanitation [R2, R3], the UN failed to provide alternative dispute resolution mechanisms for victims [R3].

**F4. The most effective form of reparations would be victim-centred and focus on the needs of survivors.** Because the UN failed to provide alternative dispute-resolution mechanisms for victims and had effectively securitised the situation [R4], it became paramount to increase global efforts seeking justice for the cholera victims.

The most effective approach to compensation would be individual reparations to recognise two categories of victim: survivors and family members of those who died. Individual reparations would be better received than collective ones, as it would enable those affected by the cholera epidemic to regain material loss suffered [R1].

### 3. References to the research

**R1.** Freedman, R., and Lemay-Hebert, N. (2017), *Haiti: Cholera Report*, Miami: Kimberly Green Latin American and Caribbean Center. Available on [Latin America and Caribbean Centre website](#)

**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

**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. ISSN: 2284-2969

**R4.** Lemay-Hébert, N. (2014) "Resistance in the Time of Cholera: The Limits of Stabilization through Securitization in Haiti", *International Peacekeeping*, 21(2): 198–213. DOI: 10.1080/13533312.2014.910399

**R5.** 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. Available on [Georgetown Journal of International Affairs website](#)

### 4. Details of the impact

The impacts of this case are threefold: (1) In a dramatic u-turn, the **UN reversed its policy** and took responsibility for the cholera outbreak in Haiti. This **sets a precedent and has ramifications for all subsequent UN actions**; (2) Through the adoption of the human rights-based **Resolution Summit Framework, UN policy has been transformed**; (3) Reparation has been made to the Haitian people through the creation of a \$400 million trust fund. This has led to **improved public health outcomes** in the communities most affected by the epidemic.

#### 1. Reversed UN policy on responsibility through a court challenge

In December 2016, the UN General Assembly **recognised "that the United Nations had a moral responsibility to the victims of the cholera epidemic in Haiti"** [F1, F2; C1]. Speaking in French and English, as well as, for the first time in such circumstances, in a non-official UN language, Haitian Creole, the UN Secretary-General **issued an apology** to the people of Haiti,

expressing that the organisation “simply did not do enough with regard to the cholera outbreak and its spread” [C2].

This was a **reversal of policy with regard to UN responsibility** to which the University of Birmingham’s work was pivotal [F3]. This was done in an *amicus curiae* brief, submitted in May 2014, in support of the lawsuit brought by the Institute for Justice and Democracy in Haiti (IJDH) in the US courts (*Georges et al. v. United Nation*) [C3]. The human rights-based approach, which deemed the UN accountable for the Haiti cholera crisis, and underpinned the brief was developed by Lemay-Hébert and Freedman [F2]. 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 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” [C2]. Such willingness represented a fundamental shift from the UN’s original position and reversed the position, eventually leading to the 2016 apology and acceptance of responsibility.

This amounts to unprecedented recognition “that the United Nations had a moral responsibility to the victims of the cholera epidemic in Haiti, as well as to support Haiti in overcoming the epidemic and building sound water, sanitation and health systems” [F1, F2; C1]. This is a **substantial reversal of policy, a rejection of UN immunity, and it has set a precedent for accountability, apology, and reparation.**

This reversal **sets a precedent and has long-term ramifications for public policy and legal accountability that are likely to be significant.**

## **2. Transformed UN policy through the adoption of the Resolution Summit Framework as a lobbying tool**

Lemay-Hébert and Freedman convened a *Resolution Summit* at the University of Birmingham in December 2015, attended by experts from the UN and NGOs, where they designed and agreed a framework (**the Resolution Summit Framework**). The framework was based on the human rights approach advocated by Lemay-Hébert and Freedman and intended to be acceptable to the UN, its Member States, and Haitian victims. The framework called for three actions [C4]:

- 1) an apology from the UN to the people of Haiti;
- 2) preventive measures to avoid future deaths and suffering;
- 3) financial compensation for the victims.

That Lemay-Hébert’s and Freedman’s work was crucial is confirmed by experts who attended the summit and attested that “the Birmingham project has been instrumental in helping to achieve a resolution acceptable to all parties” [C5a].

The framework subsequently **served as a campaign tool to engineer policy change, equipped representatives with a research-based human rights argument for reparative justice, and encouraged a coordinated approach to raising the issue.** The framework was adopted as the IJDH’s official recommendations to the UN to guide their actions on reparations in Haiti. Lemay-Hébert, Freedman, and NGOs, including the IJDH and Partners in Health, lobbied to have the framework adopted.

In March 2016, at the UN Security Council, the Security Council member states were asked to support the framework and to adopt a coordinated approach to review the UN peacekeeping mission in Haiti (MINUSTAH). That policy-makers recognised the importance of the issue is evidenced by the changes in policy discourse. For example, in the MINUSTAH review, which was the first discussion of cholera as a human rights issue in the Security Council, the UK representative specifically acknowledged that “more needs to be done to defend the vulnerable

people of Haiti against cholera and rid Haiti of that pervasive disease” [C6, p. 11]. In the same debate, Peru and Saint Vincent and the Grenadines, speaking on behalf the Group of Friends of Haiti (11 states) and CARICOM (14 states), respectively, also expressed unanimous support for a change in UN public policy concerning cholera in Haiti [C6, pp. 23, 29].

Recommendations contained in Lemay-Hébert’s and Freedman’s research [F1–F4] and outlined at the Resolution Summit [C4, C5a-c] were **cited extensively in the report by the UN Special Rapporteur on extreme poverty and human rights in August 2016**. The report criticised the UN’s 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” and pushed for the Secretary-General to change his position on the issue, **recommending the three-part Resolution Summit Framework as a new policy direction** [C7]. The Special Rapporteur explicitly acknowledged 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”** [C5c].

In September 2016, Lemay-Hébert and Freedman wrote to the UN Secretary General, to reiterate the recommendations made in the Resolution Summit Report. The letter was co-authored, with other key legal, health, and human rights experts, and it proposed that the UN’s Haiti cholera “response must include a public apology, compensation for victims, and full funding for cholera elimination” [F4; C8]. According to one of the participants at the workshop, the Deputy Chief Medical Officer for Partners in Health, this **lobbying effort ‘contributed to a changed approach to remedying the situation’** [C5b]. In December 2016, after years of silence, **the UN General Assembly adopted the three recommendations contained in the Resolution Summit Framework** developed in Birmingham.

### **3. Through the introduction of reparations, in the form of a trust fund, Haitian public health and patient outcomes have been improved**

In addition to the Secretary-General’s apology, the UN announced that **a trust fund worth \$400 million would be mobilised** to provide access to justice and reparations to those who had suffered as a result of the epidemic. Evidence that the UN had reversed its policy on accountability and the eradication of cholera is the establishment of the **UN Haiti Cholera Response Multi-partner Trust Fund**.

Supported by donations from UN member states, to date this has raised \$20.5 million, of which so far around \$14.2 million have been distributed to provide collective reparations to Haitian communities affected by cholera [C9a]. Following the recommendations of the **Resolution Summit** in Birmingham, the UN Haiti Cholera Response Multi-partner Trust Fund has two tracks:

- Track 1A: Intensifying immediate efforts to cut transmission of cholera and improve access to care and treatment;
- Track 1B: Addressing the longer-term issues of water, sanitation, and health systems;
- Track 2: Developing a proposal for a package of material assistance and support to Haitians most directly affected by cholera.

The UN Special Envoy for Haiti reported that “the Fund has allowed international partners to respond to some of the most immediate needs” of citizens affected by the outbreak [C9b].

Initially, the Fund supported the consultation of communities most affected, reflecting the call for an enhanced understanding of victims’ needs in reparative processes as found in Freedman’s and Lemay-Hébert’s research [F4]. Following the successful conclusion of pilot projects initiated on the basis of this consultation, \$6.7 million have been allocated to projects covering 134 local communities (those hardest hit by the epidemic) [C9a] and providing material benefits to many thousands of Haitians affected by the epidemic [C9b–d].

Alongside this direct assistance provided to affected communities (Track 2), the Multi-Partner Trust Fund has also allocated resources to “intensifying support for cholera control and response” (Track 1). Since 2018, more than \$3 million have been spent on projects focused on **ending the transmission of cholera, improving access to care and treatment, and addressing infrastructural issues in Haiti** by increasing provision and access to healthcare, sanitation, and high-quality water [F4].

The UN’s new commitment to intensify support for cholera control and response [F2, F4], and the disbursements from the Trust Fund, have **improved public health and patient outcomes within the country** [C9b–d]. For example, interventions from the Pan American Health Organization, who received funding from the Trust, led to a **drop from around 352,033 suspected cases in cholera at its peak in 2011 to less than 100 per week by 2018**. They also recorded an incidence rate for 2018 of 25.5 cases per 100,000 people “which is the **lowest recorded incidence since the beginning of the outbreak**” [C10]. Two years later, 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**.

##### 5. Sources to corroborate the impact

- C1.** Report by the Secretary-General ‘[A new approach to Cholera in Haiti](#)’ [Available as PDF]
- C2.** [UN Secretary-General Ban Ki-Moon’s apology to the people of Haiti](#) [Available as PDF]
- C3.** Memorandum of Law of Amici Curiae European Law Scholars and Practitioners in Support of Plaintiffs’ Opposition to the Government’s Statement of Interest, Civil Action No. 1:13-Cv-07146-Jpo, Document 32-1, filed 15 May 2014, United States District Court, Southern District of New York. [Available as PDF]
- C4.** Haiti Cholera Resolution (Birmingham) Summit Outcome Report, 7 December 2015, University of Birmingham. [Available as PDF]
- C5.** Testimonies from experts who attended Birmingham Summit:
- Former international judge [Available as PDF]
  - Deputy Chief Medical Officer, Partners in Health [Available as PDF]
  - UN Human Rights Council Special Rapporteur on extreme poverty (30<sup>th</sup> November 2016) [Available as PDF]
- C6.** [7651<sup>st</sup> meeting of the UN Security Council](#) (71<sup>st</sup> year), 17 March 2016 [Available as PDF]
- C7.** UN General Assembly, [Report of the Special Rapporteur on extreme poverty and human rights](#) UN. Doc. A/71/40823, 26 August 2016 [Available as PDF]
- C8.** [Letter to UN Secretary General](#), 19 September 2016 [Available as PDF]
- C9.** Trust fund data and UN-reported outcomes of funding:
- [Trust Fund donation data](#). (Accessed 19<sup>th</sup> December 2020) [Available as PDF]
  - [Minutes of the 3<sup>rd</sup> Meeting of the Advisory Committee of the UN Haiti Cholera Response Multi-Partner Trust Fund](#). 22 February 2019, 02:00-04:00p.m., New York. [Available as PDF]
  - [2019 Annual Report: UN Haiti Cholera Response](#). [Available as PDF]
  - [Minutes of the fifth \(20 May 2020\) of the Advisory Committee of the UN Haiti Cholera Response Multi-Partner Trust Fund](#). [Available as PDF]
- C10.** [Pan-American Health Organization/World Health Organization, Epidemiological Update Cholera](#). [Available as PDF]