

Seeking justice for the victims of cholera in Haiti: framing the reparations debate through transitional justice

Article

Accepted Version

Freedman, R. ORCID: <https://orcid.org/0000-0003-3037-9026>, Lemay-Hebert, N. and Monroy-Santander, L. (2021) Seeking justice for the victims of cholera in Haiti: framing the reparations debate through transitional justice. *Human Rights Quarterly*, 43 (3). pp. 567-585. ISSN 0275-0392 doi: 10.1353/hrq.2021.0040 Available at <https://centaur.reading.ac.uk/95355/>

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To link to this article DOI: <http://dx.doi.org/10.1353/hrq.2021.0040>

Publisher: John Hopkins University Press

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Seeking Justice for the Victims of Cholera in Haiti: Framing the Reparations Debate Through Transitional Justice

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Abstract: On the 1st of December 2016, the UN Secretary General Ban Ki-Moon apologized for the cholera epidemic in Haiti, an illness Nepalese peacekeepers brought with them upon arrival in Haiti. After years of silence and denial from the UN, the UN finally established a ‘New Approach to Cholera in Haiti’, promising material assistance and support to the victims through a ‘victim-centered approach’. Based on fieldwork conducted in March 2017 in the communities most affected by the cholera outbreak, this article brings forward the victims’ views on the specific form the material assistance package should take. This article links this discussion with the literature on socioeconomic dimension of reparation in transitional justice, discussing the collective and the individual approaches to reparation and the victims’ preference for the latter.

Keywords: compensation; United Nations; peacekeeping; peacebuilding; cash transfers

Acknowledgments: This project received funding from the ESRC Impact Accelerator Account at the University of Birmingham. The authors of this article would like to thank the lawyers of the *Bureau des Avocats Internationaux* in Haiti for letting us witness the community meetings, and the Institute of Justice and Democracy in Haiti staff for comments on previous versions of this article. The authors would like to particularly thank Sienna Merope-Synge and Beatrice Lindstrom for their support and active engagement with this research. The authors would also like to thank Niheer Dasandi and Claire McLoughlin for comments and suggestions on earlier drafts.

Introduction

If Haiti had to deal with numerous problems over the years – including a number of tropical storms and hurricanes, a massive earthquake in January 2010 that killed between 65,000 to 316,000 people, and other external shocks such as the worldwide food price inflation in 2008 – however one of the few issues that Haiti had not contended with in its recorded history was cholera. This situation changed in October 2010. Between 2004 and 2018, the UN has fielded a peacekeeping mission in Haiti, the United Nations Stabilization Mission for Haiti (MINUSTAH),¹ and some of those peacekeepers brought cholera with them.² The UN did not properly screen its peacekeepers for cholera,³ and poor sanitary practices at the UN base contributed to raw fecal waste carrying cholera flowed directly into a stream, the Meille River, that runs into a tributary that feeds Haiti's main river, the Artibonite. Given that vast numbers of the population rely on the Artibonite River for washing, cooking, cleaning and drinking, cholera quickly spread around many parts of the country. Over 820,000 people have been infected and 9,792 people died of the illness; however, the real death toll could be the triple of the official figures because of the underreporting in the initial outbreak.⁴ The illness completely upended the life of whole communities: children have lost parents and breadwinners, resulting in severe instability and lost schooling, and families continue to struggle to pay off debt for medical care and burial expenses, and such debt has often plunged them deeper into poverty.⁵ In January 2020, Haiti celebrated one full year

¹ For more on the history of the peacekeeping mission, see: Nicolas Lemay-Hébert, "Chapter 61: United Nations Stabilization Mission in Haiti (MINUSTAH)," in *Oxford Handbook of United Nations Peacekeeping Operations*, eds. Joachim A. Koops et al. (Oxford: Oxford University Press, 2015): 720-730.

² Whilst there has been a debate regarding the origin of the disease in the early days of the outbreak, 'scientific evidence now points overwhelmingly to the responsibility of the peacekeeping mission as the source of the outbreak' in the words of the UN Special Rapporteur on Extreme Poverty and Human Rights. United Nations, 'Report of the Special Rapporteur on extreme poverty and human rights,' UN Doc. A/71/367, 26 August 2016.

³ UN protocol requires that troops pass a basic health screening. Symptomatic individuals undergo laboratory tests for infectious diseases but individuals who do not exhibit active symptoms are not tested. However, many of those shedding viable cholera bacteria remain asymptomatic. Furthermore, the South Asian strain of cholera active in Haiti has been shown to cause a greater number of asymptomatic cases, to persist longer in the environment, and to exist in higher concentrations in faeces. Paul Farmer, *Haiti After the Earthquake* (New York: Publicaffairs, 2011): 195.

⁴ Rick Gladstone, 'Cholera Deaths in Haiti Could Far Exceed Official Count', *The New York Times*, 18 March 2016.

⁵ International Human Rights Clinic of the Harvard Law School, Bureau des Avocats Internationaux and Institute for Justice and Democracy in Haiti, 'Violations of the Right to Effective Remedy: The UN's Responsibility for Cholera in Haiti,' Joint Submission to the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, 2, available at: http://hrp.law.harvard.edu/wp-content/uploads/2020/02/HLS-IHRC-IJDH-BAI-Submission-to-Special-Procedures_Cholera.pdf

of being free of cholera, with no new case reported since the 24th of January 2019.⁶ However, if the illness has been stopped in its tracks, the issue of reparation to the cholera victims has not progressed, which has led a group of 14 UN mandate-holders to send an allegation letter to the UN Secretary-General and Haitian government critiquing the ongoing failure to deliver effective remedies for victims of cholera in Haiti. If the worldwide coronavirus crisis brings relief efforts back to the forefront of the international community efforts in Haiti, ‘this new threat cannot mask past failures and ongoing violations’ in the words of the UN mandate-holders.⁷

At first, the UN has relied on its absolute immunity from the jurisdiction of national courts to avoid accountability for introducing cholera into Haiti. The UN has also failed to set up alternative dispute resolution mechanisms in Haiti, leaving victims without any possible avenue to voice their complaints.⁸ This policy has been dubbed “morally unconscionable, legally indefensible, and politically self-defeating” by a UN Special Rapporteur.⁹ Furthermore, recent scholarship has contested the reliance on absolute immunity by organizations such as the UN,¹⁰ and practitioners on the ground, representing 5,000 victims of cholera, have challenged that immunity through the New York District Court. If the legal challenge by the *Bureau des Avocats Internationaux* and the Institute for Justice and Democracy

⁶ Pan American Health Organization and World Health Organization, ‘Haiti Reaches One-Year Free of Cholera,’ 23 January 2020, available at: https://www.paho.org/hq/index.php?option=com_content&view=article&id=15684:haiti-reaches-one-year-free-of-cholera&Itemid=1926&lang=en

⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘UN inaction denies justice for Haiti cholera victims, say UN experts,’ 30 April 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25851&LangID=E>

⁸ UN General Assembly Resolution 22 (1), *Convention on the Privileges and Immunities of the United Nations*, UN Doc. A/RES/22(1) (13 Feb. 1946), s. 29. For a treatment of this issue, see: Rosa Freedman, ‘UN Immunity or Impunity?: A Human Rights Based Challenge,’ *European Journal of International Law* 25 (1) (2014): 239-254.

⁹ United Nations, *supra* n 2.

¹⁰ See for instance: Rosa Freedman and Nicolas Lemay-Hébert, ‘Between a Rock and a Hard Place: Immunities of the United Nations and Human Rights’ in *Cambridge Handbook on Immunities and International Law*, eds. Tom Ruys, Nicolas Angelet and Luca Ferro (Cambridge: Cambridge University Press, 2019): 579-594; Rosa Freedman and Nicolas Lemay-Hébert, ‘Towards an Alternative Interpretations of UN Immunity: A Human Rights-Based Approach to the Haiti Cholera Case,’ *Questions of International Law* 8 (19) (2015): 5-18; Rosa Freedman and Nicolas Lemay-Hébert, ‘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) (2015): 507-527; Rosa Freedman, Nicolas Lemay-Hébert and Siobhan Wills, *The Law and Practice of International Peacekeeping: Foregrounding Human Rights* (Cambridge: Cambridge University Press, forthcoming).

in Haiti did not result into an effective re-assessment of the UN's absolute immunity, it certainly contributed to add considerable pressure on the organization to modify its stance on the issue.¹¹

On the 1st of December 2016, in a dramatic turn of events, the UN Secretary General Ban Ki-Moon finally apologized for the cholera epidemic in Haiti – in English, French and Haitian Creole. If the apology fell short of recognizing the UN's responsibility in the actual outbreak, emphasizing rather a 'moral responsibility to act' and a 'collective responsibility to deliver,' it actually led to a 'New Approach' by the UN, including a \$400 million plan as a 'concrete and sincere expression of the Organization's regret.'¹² The UN's launch of the New Approach presented a critical opportunity to repair victims' injuries and restore trust in the UN.¹³ In the words of the Secretary-General, it became 'an important test' of the UN's commitment to its own principles.¹⁴ The plan has two tracks: The first track focuses on intensified efforts to prevent and eradicate cholera, and the second track promises to deliver 'a package of material assistance and support to those Haitians most directly affected by cholera' to be developed in a victim-centered manner, including through consultations with victims. The plan is woefully underfunded – only 4 percent of the amount promised raised so far – with the UN opting for relying solely on charitable donations to fund the efforts.¹⁵ The result is that more than ten years after the initial cholera outbreak, and four years after the UN Secretary General apology, victims are still waiting for justice.

¹¹ The added pressure came from a wide array of sources, including excellent reporting on the issue by journalists, a high-profile report by the UN Special Rapporteur Philipp Alston, noting that 'the UN opted to abdicate its responsibility' and blaming the UN's Office of Legal Affairs (OLA) for coming up with a 'patently artificial and wholly unfounded legal pretence for insisting that the Organization must not take legal responsibility for what it has done,' as well as a diplomatic initiative by University of Birmingham scholars to raise the profile of the cholera issue in the UN Security Council debates. See: United Nations, *supra* n 1; Rosa Freedman and Nicolas Lemay-Hébert, 'The Security Council in Practice: Haiti, Cholera, and the Elected Members of the United Nations Security Council,' *Leiden Journal of International Law* 33 (1) (2020): 157-176.

¹² United Nations General Assembly, 'A new approach to cholera in Haiti: Report by the Secretary-General,' UN Doc A/71/620, 25 November 2016.

¹³ IHRC, BAI and IJDH, *supra* n 5.

¹⁴ United Nations Secretary General, 'Secretary-General's remarks to the General Assembly on a New Approach to Address Cholera in Haiti,' 1 December 2016, available at: <https://www.un.org/sg/en/content/sg/statement/2016-12-01/secretary-generals-remarks-general-assembly-new-approach-address>

¹⁵ See the constantly updated figures on: <http://www.time2deliver.org/>

There is a discussion in the literature on whether or not gross human rights violations occurring during natural disasters should be addressed through transitional justice processes, and in parallel, there is international legal momentum behind claims for reparations and compensation.¹⁶ The actual role of the United Nations in the Haitian tragedy, an actor whose mandate included bringing stability to the country, makes this discussion all the more relevant. If other instances of natural disasters are met with a relative sense of fatality by Haitians, the discussion took a different turn in Haiti once the clear source of the epidemic has been established as the United Nations Nepalese camp near Mirebalais. One could argue that all natural disasters include injustices and that massive violations of human rights should be properly dealt with, but the case of the cholera epidemic became an emblematic case for Haitians in terms of reparations and compensation.

This article engages directly with the literature on compensation and reparation in transitional justice, especially in its socioeconomic dimension, as well as the development literature on cash transfers, to inform the current debate on how the international community should compensate cholera victims in Haiti. This article makes the point that debates around transitional justice – understood as ‘efforts to redress the legacies of massive human rights abuses’¹⁷ – can inform the process of finding a right and just solution to this issue. This article is based on participative action research conducted by two of the authors in the most cholera affected communities in Haiti.¹⁸ We followed a team of local lawyers from the *Bureau des Avocats Internationaux* in March 2017 who were meeting local support groups for cholera victims and discussing possible compensation avenues with these communities. As such, this article aims to bring the voices of the victims to the forefront, connecting their message with debates on transitional justice. One of the main findings of our research is the unmitigated desire from local communities to access individual reparations instead of the standard collective reparation that is usually

¹⁶ Megan Bradley, ‘More Than Misfortune: Recognizing Natural Disasters as a Concern for Transitional Justice,’ *International Journal of Transitional Justice* 11 (3) (2017): 400-420; Pamina Firchow and Roger Mac Ginty, ‘Reparations and peacebuilding: issues and controversies,’ *Human Rights Review* 14 (3) (2013): 231.

¹⁷ Pablo De Greiff, ‘Theorizing Transitional Justice,’ in: *Transitional Justice*, eds Melissa Williams, Rosemary Nagy and Jon Elster (New York: New York University Press, 2012), 40; See also: Marita Eastmond, ‘Introduction: Reconciliation, Reconstruction and Everyday Life in War-torn Societies,’ *Focaal: Journal of Global and Historical Anthropology* 57 (2010): 3-16.

¹⁸ The research project has received ethical approval from the Humanities and Social Sciences Ethical Review Committee, University of Birmingham, in February 2017 (ERN_17-0206), where the lead author of this piece was based at the time of the research.

presented as the *de facto* solution for the compensation issue. The UN has outlined two potential approaches to material assistance, namely community projects in areas most affected by cholera (the community, or collective approach) and payments to the families of those who died (the individual approach). The UN has pledged to consult with victims in developing the material assistance package, but in practice the UN “has foreclosed that possibility [monetary payments] seemingly without carrying out consultations or producing a detailed feasibility assessment” according to the 14 UN-mandate holders.¹⁹ Hence, according to the same mandate-holders, “compensation is ordinarily a central component of the right to an effective remedy, and development projects are simply not a replacement for reparations.”²⁰

This article is divided into three sections. The first section locates the debate around reparations in the transitional justice literature, highlighting the growing call for a socio-economic turn in the field. We discuss our fieldwork findings in the second section. We focus at the community meetings in Mirebalais and how participants have discussed the importance of consultation, but also their positions on individual and collective reparations. The third section further links the discussion around individual reparations with the development literature on cash transfer, demonstrating that individual reparations are not a utopian ideal, but a discussion supported by the evidenced-based research on what works in the development field.

Locating reparations within the transitional justice literature: towards a socio-economic turn

As strategies dealing with human rights violations, reparations are aimed at addressing grievances in post-conflict societies. They are generally conceptualized as rights-based political projects seeking to give victims due recognition and enhancing civic trust amongst citizens and between citizens and institutions.²¹ As such, reparations are usually considered as a victim-centered transitional justice

¹⁹ OHCHR, *supra* n 7.

²⁰ *Ibid.*

²¹ Ruth Rubio-Marín and Pablo de Greiff, ‘Women and Reparations,’ *International Journal of Transitional Justice* 1 (3) (2007): 818-336.

mechanism responding directly to the victims' needs and priorities.²² For some, victims have forced their way to the front of the transitional justice scene precisely through the mechanism of reparations, prompting the field to look beyond traditional justice and truth-telling debates.²³ Debates around reparations have taken into account both the practical limitations regarding distribution, coverage and budgeting as well as philosophical complexities surrounding the rebalancing of power between victims, perpetrators and the state.²⁴ As such, understandings of reparations have shifted towards a comprehensive process for dealing with victims issues, 'with the aim of relieving the suffering of and affording justice to victims by removing or redressing the consequences of wrongful acts and by preventing and deterring violations.'²⁵ As reparations remain concerned with victims as primary beneficiaries, they have progressively been identified as channels for improving their socio-economic situation, prompting a 'socio-economic turn' in transitional justice debates.²⁶

The field of transitional justice has strong roots in the criminal justice field and has had a strong legalistic influence in its foundations. Some have criticized the mainstream literature for marginalizing economic, social and cultural rights as a space for engagement, as well as ignoring the socio-economic dimensions of past abuses both in theoretical literature and in practice.²⁷ In this regard, some argue for the expansion of transitional justice into the realm of redistributive justice, highlighting discrimination and marginalization at play through unequal access to socio-economic rights.²⁸ One could argue that ignoring the socioeconomic dimension of transitional justice limits debates on the possibilities and

²² Lars Waldorf, 'Anticipating the Past: Transitional Justice and Socio-Economic Wrongs,' *Social and Legal Studies* 21(2) (2012): 171-186; See also: Luke Moffett, 'Transitional Justice and reparations: remedying the past?' in *Research Handbook on Transitional Justice*, eds Cheryl Lawther, Luke Moffett and Dob Jacobs (Cheltenham: Edward Elgar, 2017), 377-400.

²³ Jemima García-Godos, 'Victims in Focus,' *International Journal of Transitional Justice* 10 (2) (2016): 350-358.

²⁴ Zinaida Miller, 'Effects of invisibility: in search of the "economic" in transitional justice,' *International Journal of Transitional Justice* 2 (2008): 266-291.

²⁵ Roman David and Susanne Choi Yuk-Ping, 'Victims on transitional justice: lessons from the reparation of human rights abuses in the Czech Republic,' *Human Rights Quarterly* 27 (2) (2005): 393.

²⁶ Jessie Hronešová, 'Might Makes Right: War Related Payments in BiH,' *Journal of Intervention and Statebuilding* 10 (3) (2016): 339-360.

²⁷ Evelyne Schmid and Aoife Nolan, 'Do no Harm? Exploring the scope of economic and social rights in transitional justice,' *International Journal of Transitional Justice* 8 (3) (2014): 362-382; Louise Arbour, 'Economic and social justice for societies in transition,' *NYU Journal of Law and Politics* 40 (1) (2007): 1-28; Waldorf, [supra n 22](#).

²⁸ Jemima García-Godos, 'Victims' Rights and Distributive Justice: in Search of Actors,' *Human Rights Review* 14 (3) (2013): 241-255; Miller, [supra n 24](#).

impact of reparations whilst damaging the prospects of transitional justice mechanisms to deliver effective justice and protection to victims. Transitional justice's bias towards civil and political rights is evident in the general claim that the realization of economic, social and cultural rights will come out of the fulfilment of civil and political rights.²⁹ Furthermore, post-conflict violations of economic and social rights exacerbate earlier structural violence configurations, leading to double-victimization and even reducing the possibility of successful prosecution as victims lack socioeconomic assistance.³⁰ The invisibilization of economic concerns in transitional justice leads to a focus on 'negative peace' rather than a 'positive peace' challenging the institutions of structural violence in a given society.³¹

The debate on reparations and transitional justice offers the opportunity to explore possibilities for broadening the field towards socioeconomic justice. Reparations may offer a meeting point between development and transitional justice that extends the field into socio-economic and reparative realms. Both transitional justice and development practitioners focus on giving victims a voice in decision making, converging in the concern with how programs and projects are carried out.³² As mentioned previously, in both cases, social exclusion is perceived as one of the central issues in the reproduction of structures of inequalities. Lars Waldorf analyses various proposals regarding the connection between transitional justice and development, recognizing that the former is centered on corrective justice and the latter on distributive justice.³³ His analysis points towards transitional justice measures that promote inclusive, participatory citizenship and social integration for victims and survivors, establishing programmatic links between transitional justice and development. The main question in this regard is whether extending transitional justice into socioeconomic considerations is enough to counter the effect of neoliberal policies in post-conflict societies, particularly its damaging competition and erosion of

²⁹ Arbour, *supra* n 27.

³⁰ Christine Chinkin, 'The Protection of Economic, Social and Cultural Rights Post-Conflict,' *Paper series for the Office of the United Nations High Commissioner for Human Rights*, 1 January 2007, available at: https://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf

³¹ Dustin Sharp, 'Addressing Economic Violence in Times of Transition: Towards a Positive Peace Paradigm for Transitional Justice,' *Fordham International Law Journal* 35 (3) (2012): 781-814.

³² Naomi Roht-Arriaza and Katharine Orlovsky, 'A Complementary Relationship: Reparations and Development,' Research Brief, International Center for Transitional Justice, July 2009, available at: <https://www.ictj.org/sites/default/files/ICTJ-Development-Reparations-ResearchBrief-2009-English.pdf>.

³³ Waldorf, *supra* n 22.

resources for welfare and development.³⁴ Equally problematic are situations where reparations activity is mandated or overseen by international actors, who tend to act in heavy-handed, securitized, top-down manner, which disconnects them from local aspirations of those living in post-conflict societies.³⁵ When reparations are viewed as imposed from an outside actor they are unlikely to contribute to peace consolidation. To avoid this, reparations require a negotiated process between victim and perpetrator, with local oversight so that reparations are deemed legitimate. This also means to take victims' preferences seriously, especially in regard to the choice between collective or individual reparations.

Both collective and individual reparation schemes have specific aims. For Naomi Roht-Arriaza and Katharine Orlovsky, individual reparations recognize specific harm to an individual and the fact that all individuals' lives are worthy and important as a rights bearing citizen, whilst collective reparations seek to intrinsically respond to collective harms.³⁶ Individual reparations are integral to regaining civic trust whilst collective reparations seek to reinforce social solidarity and to maximize the effectiveness of existing state resources. Beyond the obvious monetary compensations, individual reparations may include restitution of access and title to property taken or lost, access to employment, a pension, or can include medical psychiatric or occupational therapy aimed at rehabilitation.³⁷ In contrast, collective reparations can include *inter alia* the restitution of cultural or religious property, rebuilding destroyed or damaged infrastructure, development projects, as well as compensation in the form of services to the community.³⁸ For Sriram and García-Godos a way to avoid any limitations inherent to one of the reparation schemes is by combining individual and collective reparations, providing a variety of measures that can fulfil the needs and interests of victims and be also compatible with development orientated policies and programs.³⁹ However, as funding and commitment are notoriously shifty and

³⁴ Padraig McAuliffe, 'The Prospects for Transitional Justice in Catalyzing Socioeconomic Justice in Postconflict States: A Critical Assessment in Light of Somalia's Transition,' *Northeast African Studies* 14 (2) (2014): 77-110.

³⁵ Firchow and Mac Ginty, *supra* n 16.

³⁶ Roht-Arriaza and Orlovsky, *supra* n. 32.

³⁷ Naomi Roht-Arriaza, 'Reparations, Decisions and Dilemmas,' *Hastings International & Comparative Law Review* 27 (2) (2004): 157-219.

³⁸ *Ibid.*

³⁹ Chandra Sriram and Jemima García-Godos, 'Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants.' SOAS-University of London and the Norwegian Centre for Human Rights, 2012, Available at: <https://core.ac.uk/download/pdf/9427227.pdf>

unpredictable, this limits the ability of actors to provide effective reparations, turning the collective versus individual reparation debate into a choice.

If both collective and individual reparations have their respective merits, it is important to underscore the fact that individual measures are crucial, especially as human rights standards are generally expressed in individual terms, underscoring the value of each human being and their place as rights-holders. Individual compensation can ‘allow victims to have agency and choice by supplying the means for whatever part of the former life and projects remain possible and may allow for new ones.’⁴⁰ Individual reparations avoid considering all victims together which risks minimizing the particular harm done or making the meaning of reparations vague.⁴¹ Moffett adds to this concern, stating that collectivizing victims’ suffering runs the risk of reducing them to an amorphous set of passive, voiceless survivors.⁴² Individual reparations bring an opportunity to redefine as victims those whose living standards were depreciated in the day to day rights violations that took place.⁴³ Due to limited resources, most actors would steer the conversation towards collective reparation schemes, a tendency which is usually contested by human rights advocates insistent on individual reparations.⁴⁴ Rather than spending scarce resources on individual reparations, successor regimes often focus on future-orientated development as the field for engagement in reparations as it is perceived to benefit larger social groups.⁴⁵ In this regard, Roht-arriaza and Orlovsky argue that the connecting point between development and reparations is social exclusion.⁴⁶ In the case of reparations, exclusion can be redressed by reinforcing the consciousness of survivors as ‘rights holders.’ At the same time, they caution that the development-as-reparations approach, when focused on its collective iteration, can undermine this ability of reparations to function as an acknowledgment of wrongdoing.

⁴⁰ Moffett, *supra* n. 22.

⁴¹ Lisa Magarell, ‘Reparations in Theory and Practice,’ International Centre for Transitional Justice Reparative Justice Series, 2007, available at: <https://www.ictj.org/sites/default/files/ICTJ-Global-Reparations-Practice-2007-English.pdf>

⁴² Moffett, *supra* n. 22.

⁴³ Kora Andrieu, ‘Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm,’ *Security Dialogue* 41 (2010): 537- 558.

⁴⁴ Jemima García-Godos, ‘Victim reparations in transitional justice: what is at stake and why.’ *Nordisk Tidsskrift for Menneskerettigheter* 26(2) (2008): 111-130.

⁴⁵ Waldorf, *supra* n. 22.

⁴⁶ Roht-Arriaza and Orlovsky, *supra* n. 32.

Individual reparations come with its own share of issues as well and the aim of this article is not to completely obscure this aspect of the conversation. Individual reparations require a precise identification of the persons entitled to them as a form of delivering concrete benefits to the individual recipient.⁴⁷ This turns the determination of beneficiaries into an exercise beset with logistical, moral and political challenges.⁴⁸ For instance, acknowledging individuals deserving redress can give rise to competition between victims over the individual conditions of eligibility.⁴⁹ This has to do with how the definition of victim needs to be considered within a specific social context, as it is usually charged with contested historical, political and moral meanings.⁵⁰ Reparation schemes requiring definition of a determined number of potential beneficiaries can create hierarchies of victimhood where one victim is worth more than the other by being entitled to higher payments or benefits.⁵¹ Individual reparations can also lead to contestation: those compensated potentially objecting to reparations being incomplete, those not compensated may insist on how their suffering has been denied.⁵² Those asked to provide compensation can object to an excessively broad definition of beneficiaries, others will object that individual reparations will come at the expense of public projects that potentially improve collective welfare.⁵³ Having said that, issues also arise with collective reparations, especially when the developmental responsibilities of governments are displaced by actors ‘stepping in’ and providing collective reparations.⁵⁴

Furthermore, reparations also require connection with apologies, and a public acknowledgment of the perpetration of past violations. However, apologies also generate controversy when disconnected from concrete measures at individual and/or collective level.⁵⁵ In their symbolic dimension, reparations need

⁴⁷ Magarell, *supra* n. 41.

⁴⁸ Moffett, *supra* n. 22.

⁴⁹ Luke Moffett, ‘Reparations in Transitional Justice: Justice or Political Compromise?’ *Human Rights and International Legal Discourse* 17 (1) (2017): 1-16.

⁵⁰ Jemima García-Godos, ‘Victims in Focus’, *International Journal of Transitional Justice* 10 (2) (2016): 350-358.

⁵¹ Hronešová, *supra* n. 26.

⁵² David Gray, ‘A No Excuse Approach to Transitional Justice: Reparations as Tools of Extraordinary Justice,’ *Washington University Law Review* 87 (5) (2010): 1043-1103.

⁵³ *Ibid.*

⁵⁴ García-Godos, *supra* n. 44.

⁵⁵ Ruben Carranza, Cristian Correa and Elena Naughton, ‘More than Words: Apologies as a Form of Reparation,’ International Centre for Transitional Justice, December 2015, available at: <https://www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf>

to come directly from perpetrators and states, connected to apology and acknowledgment of victim harm. Symbolic reparations turn problematic when they are not accompanied by more tangible benefits, being interpreted as empty words without any serious commitment to victims.⁵⁶ In this regard, symbolic reparations not only require complementation with material compensation but also with other transitional mechanisms. Reparations in absence of truth-telling and recognition are likely to be interpreted by victims as an effort to buy their acquiescence, or in the worst of cases the payment of blood money.⁵⁷ Reparations without retributive justice or accountability often fail to change the living circumstances of victims and without vetting and lustration, it is impossible for reparations on their own to contribute to rebuilding trust.⁵⁸

Academic discussions regarding reparations point towards a key factor determining how reparation policies operate: the importance of context and socioeconomic needs that underpin the demands from victims of human rights violations. The socio-political context of each country in transition plays a determining role in shaping the conceptual framework upon which a reparations program is based, turning reparations into a social process where the past is subject to reinterpretation.⁵⁹ As reparations are the most tangible expression of the addressing of harms endured by victims, they give the victims socio-political agency.⁶⁰ This is evident in the fact that victim's reparative demands often focus on changing of state or other actor's behavior (in our case, the UN). Recognizing the influence of a country's context for establishing reparations turn them into sites for political, economic and legal contestation as to their commitment in dealing with the past and preventing future violence; reparations carry a fundamental message about which individuals and harm are deemed worthy of recognition and remedy.⁶¹ Seeing reparations as a contested social process implies identifying the social actors involved

⁵⁶ García-Godos, *supra* n. 44.

⁵⁷ Alexander Boraine, 'Transitional Justice: a Holistic Interpretation.' *Journal of International Affairs* 60 (1) (2006): 17-27; De Greiff, *supra* n 17.

⁵⁸ De Greiff, *supra* n. 17.

⁵⁹ García-Godos, *supra* n. 44.

⁶⁰ Boraine, *supra* n. 63.

⁶¹ Moffett, *supra* n. 49.

in contestation and negotiation of both the terms of engagement and the content or form of reparation programs.⁶²

What do the Haitians want?

The UN Development Programme (UNDP) has been tasked with undertaking consultations with victims owing to their expertise on community-based approaches. However, there is a fear that consultations might raise expectations, especially in terms of individual reparations which are deemed difficult to achieve.⁶³ There is also a recognition that projects undertaken under Track 1 and 2 may well be the same projects, the difference being that Track 2 has a ‘symbolic aspect’.⁶⁴ In order to know what victims thought about reparations and their preference for specific scheme, we followed Haitian lawyers from BAI on the field. The data was gathered between the 14th and the 16th of March 2017 in rural localities around Mirebalais in the Artibonite region, where cholera first broke out and where some of the most affected communities are located. We have done three separate trips to the Mirebalais region: one in La Chapelle (*Lachapèl*), one in Saut-d’Eau (or *Sodo*), and one in Boucan-Carré (*Boukan Karé*). Different neighboring communities were represented in each of these meetings.⁶⁵

The sessions took place in communal buildings such as a church or a school, and all victims and their families were invited to attend. Each session began with a video screening of Ban Ki-Moon’s apology to the cholera victims. It was the first time that most victims had seen the video or had heard the words spoken by the former UN Secretary-General. After being explained the meaning of this apology by the Haitian lawyers, victims were told that the most important and meaningful part of the apology was when Ban Ki-Moon acknowledged that ‘apologies do not cure diseases,’ which was a way to introduce the reparation issue by the Haitian lawyers. Large and small group discussions focused on what the different

⁶² Jemima García-Godos, ‘Victims Rights and Distributive Justice: in Search of Actors,’ *Human Rights Review* 14 (3) (2013): 241-255.

⁶³ Interview with Nadine Therer, Deputy Country Director (Haiti), UNDP, Port-au-Prince, Haiti, 13 March 2017.

⁶⁴ *Ibid.*

⁶⁵ For La Chapelle: Lépinard; Mathurin; La Croix; Joly; Ciprit; Ravine Canot; Haute au vent. For Seau-D’Eau: Carrefour Seau-D’Eau; Dubuisson; Lamarre; Filate; Gilo. For Boucan-Carré: Daman; Terre Blanche; Bois Cochon; Chapeauto; Cite Lila; Peligne.

communities want from the UN. Individuals explained why they wanted to be consulted, and the types of remedies they are seeking from the United Nations. As researchers, we have listened and followed discussions regarding the establishment of these groups of victims, without intervening in the process. We have opted to hold one focus group at the end of each day, to discuss the issues related to reparations without interfering too much with the work of the lawyers we were following. The focus groups were conducted in Creole (unless specific participants wanted to express opinions in French), and were translated in French or English by one lawyer from the Institute for Justice and Democracy in Haiti accompanying us on this trip. Our conclusions are drawn from these focus groups, and can be grouped around three distinct themes: the benefit of consultations; the issues with collective remedies; and the benefits of individual remedies.

The Benefit of Consultations

Most participants in the focus groups were absolutely adamant about the importance of the consultations with the United Nations. As one of the participants mentioned,

‘it is important that they hear about our suffering. When cholera broke out people would die on the roads, people were dying on the way to hospital. We didn’t have money for burials. Neighbours would chip in for funeral costs. We are left with the bill. We need to be paid back for that. What we want is a dialogue to get everyone reparations. They should come to talk to us even if they cannot give us everything we ask for. We will listen, we will respond, we will have proposals for them. They should talk to us and not to the state.’

The distrust of the state - a theme that has long tradition in Haiti⁶⁶ - was picked up by most participants, fearing that the state officials would not represent the interests of the victims. According to a participant: ‘we know whenever they [state officials] are involved in making decisions they don’t come to us and

⁶⁶ See: Nicolas Lemay-Hébert, ‘Resistance in the Time of Cholera: The Limits of Stabilization Through Securitization in Haiti,’ *International Peacekeeping* 21 (2) (2014): 198-213; Nicolas Lemay-Hébert, ‘Living in the Yellow Zone: The Political Geography of Intervention in Haiti,’ *Political Geography* 67 (2018): 88-99.

ask, they just do what is good for them. They are always looking after themselves; and the people who are victims will not get anything.’ For another participant, the message was quite clear: ‘don’t consult with the state. The state only wants to enrich itself. The state takes things for itself. We would prefer to be in direct conversation with the UN and not for them to go to the state.’ Finally, according to yet another participant, ‘the state abuses our rights – the UN shouldn’t go to the state. The state will give false information. They need to have a sense of the real situation down here, to really understand the victims’ point of view. They are too many corridors with the state. The truth will get lost.’ This is a quick poetic way to raise issue of (mis)representation of the population and victims by the state elite, but this underlines also the issue deemed crucial by participants, that is the need to hear victims directly, and the need for the United Nations to really understand the local priorities. According to a participant: ‘it is important to consult with us. We are the victims. We want to tell our priorities. Maybe we can go further together. In any case they can come and hear from us and use it as the basis for their analysis. Consulting local victims groups will enable the UN to have a better sense of priorities.’

The Issues with Collective Reparations

When asked what type of reparations – collective or individual – the different victim groups would privilege, every single one of them mentioned individual reparations, and two groups out of 18 wanted individual and collective reparations at the same time. Not a single group mentioned a preference for collective reparations over individual reparations. The main reason is rooted in the experience of most Haitians living in the countryside had with the state and with international aid. Haitian history is marked by constant social struggles between the political and economic elite and the *moun andeyo* (or outsiders), those who are not considered part of the nation and are excluded from its benefits and recognition.⁶⁷ As such, asking mainly self-subsistence farmers, living in the countryside, to trust the state or the ‘international community’ to deliver on promises (in this case, community projects) is

⁶⁷ Gérard Barthélémy, *L'Univers Rural Haïtien: Le Pays en Dehors* [*The Rural Haitian Universe: The Outside Country*] (Port-au-Prince: Henri Deschamps, 1989).

simply too much to ask for many. As one of the participants indicated: ‘we spent money to get to hospital. We don’t trust the state. It says it will give us free schools but we still have to pay for them. Hospitals are promised but not built. Roads are promised but not built. If collective remedies happen all we will get is big cars driving past and blowing more dust into our face’. The reality that the promised projects may never actually happen or be massively delayed also led another participant to say ‘by the time the health center is built, all of the cholera victims will have died.’

Some also pointed out that this will not help to lift people who have suffered from poverty. This led a participant to ask a simple question: ‘why should the state be given the money when they will keep it for themselves and we who suffered will never see any benefit from it?’ According to another participant to ask another question: ‘what about the people where the father of the house died and the family is in a really bad situation? It isn’t that new projects are bad – they are good. But these families had a shock. New projects will leave people where they are vis-à-vis other people. They need individual remedies to get them back on the path.’

The collective projects are also unlikely to reach to the remote communities and to help specifically the most destitute. Collective projects such as health clinics or schools will create jobs, but probably jobs needing specific training: ‘if the UN gives other forms of [collective] help it will help people who have a little bit of education. It will not help those who need to get back onto their feet’. For another participant, ‘for people in far-away rural zones, they will not have access to services or to projects if collective ones are provided’. For yet another participant, ‘community projects would be good but we need to think about the structure of how they will come. We need to think about the country we are in. Those who are connected will benefit but the little farmers most affected by cholera will not benefit from collective projects.’

Finally, participants also pointed out that the collective projects being discussed fall within the remit of the Haitian state, and the international community should not stand in for the state. For a participant, ‘yes, health centers are good, food is good, all these things are good. But the state has the obligation to give us these things. We lost our wives, our children, and now the state wants to let them [the UN] give

us things the state has obligations to give us. The state will keep the money but it is us who suffered and should have the money.’ For another participant, who was in favor of both collective and individual reparations:

‘In general collective projects are good. For example in a very rural zone where people had to go on a goat to find a car to get to hospital, a health centre would benefit them greatly especially if another sickness comes. Community projects are good. They are the state’s responsibility but in Haiti the state doesn’t do it, so if the UN has money for building health centres then they should do it. But that does not mean we should not get individual payments’.

The Benefits of Individual Reparations

For many participants, it all comes down to individual situations, with specific families being more impacted than others and needing financial support as soon as possible: ‘we did not suffer collectively. Each person suffered individually. We were personally sick in our own bodies’. From the participants’ perspective, the main benefit of individual reparations is that it is tailored to local needs, respecting local agency in choosing the best way to deal with the loss of income incurred by the illness. As one participant mentioned, ‘we want individual remedies. We want the money to come into our own hands so that if we get sick again we can look after ourselves.’ For another participant, ‘we just want to be put back on the path, to be given back the money we spent with our fingers.’ The personal situation can also differ. For one participant: ‘I just want to buy back my land so that I can have enough money to pay for my children to go to school’. For yet another, ‘when we were sick we were the ones who had to spend money. We had to sell livestock to go far away to hospital in Mirebalais. To get there we needed a car, and we don’t have cars so we had to pay for that and to pay for medicine’. For a participant, individual reparation can lead to economic growth: ‘assistance to do commercial activity would help them [people who lost family members] to recover’. Individual reparations can also help reach children: ‘the people who especially need compensation are children who lost their mother and can’t go to school

or to university. Many children lost family members and the UN should give them assistance to spend on activities or a garden or school or things to make their lives better’.

Are individual reparations realistic? Insights from the cash transfer literature

Despite the overwhelming preference for individual reparations as expressed by victims, the UN has made a unilateral decision to foreclose compensation in favor of community projects. The UN has established platforms to ‘support the project in the communities, serving as an interface between the project itself and the targeted areas’⁶⁸ in the Cap-Haitien area. Hence, the only material assistance offered by the UN to date is 20 projects in four communes around Cap-Haïtien, and five \$150,000 infrastructure projects around Mirebalais.⁶⁹ As previously mentioned, the UN Special rapporteurs pointed out that ‘some victims prefer monetary payments, an option that was once on the table, but the UN has foreclosed that possibility seemingly without carrying out consultations or producing a detailed feasibility assessment.’ Whilst, ‘compensation is ordinarily a central component of the right to an effective remedy, and development projects are simply not a replacement for reparations.’⁷⁰ When we interviewed MINUSTAH staff in 2017, we could sense that there was a lot of anxiety over opening up the option of compensations to victims, with reservations about the logistics, the potentially spiraling cost of such a program, as well as the actual efficiency of compensations in achieving development objectives on the ground. This section does not aim to answer all these questions – which could be subject to an additional article – but rather aims to bring into the conversation the growing literature on cash transfer programs in development studies, especially seeing how the UN has opted to go with ‘traditional’ development projects.

⁶⁸ UNDP, UN Haiti Cholera Response MPTF PROJECT QUARTERLY PROGRESS REPORT Period (Quarter-Year): 4th Q2019 as of 31 December 2019, available at: <http://mdtf.undp.org/document/download/23711>

⁶⁹ IHRC, BAI and IJDH, *supra* n. 4.

⁷⁰ OHCHR, *supra* n. 6.

Over the past twenty-five years a ‘quiet revolution’ has seen governments in the developing world invest in increasingly large-scale cash transfer programs.⁷¹ There are over 130 low- and middle-income countries that have at least one non-contributory unconditional cash transfer (UCT) programs in place, with even more conditional cash transfer programs operating in parallel.⁷² First and foremost, while cash transfers are not a panacea for development, it empowers individual recipients as decisionmakers, promoting a ‘rights-based approach to development.’⁷³ Cash transfers are particularly appropriate in situations where it is either physically difficult to reach the poorest and those in need (such as in the aftermath of disasters or conflicts), or because the state infrastructure is simply excluding the poorest from its reach, as this is certainly the case in Haiti. Cash transfers are ‘transformative,’ increasing individuals’ sense of self-worth, dignity, and assertiveness.⁷⁴ It was also noted that ‘unconditional cash transfers have significant impacts on economic outcomes and psychological well-being.’⁷⁵

Chris Blattman has demonstrated that ‘cash grants to the poor are as good as or better than many traditional forms of aid when it comes to reducing poverty. Study after study has shown that recipients of cash grants invest the money or spend it on such basic items as food and better shelter. Poor people don’t always make the best choices with their money, of course, but fears that they consistently waste it are simply not borne out in the available data.’⁷⁶ Actually, a systematic review of all the evidence on the effects of cash transfers on individuals and households over 15 years, from 2000 to 2015 (including

⁷¹ UK Department for International Development, *Cash Transfers: Literature Review*, Policy Division, April 2011, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/cash-transfers-literature-review.pdf>

⁷² Francesca Bastagli et al. ‘Cash transfers: what does the evidence say? A rigorous review of programme impact and the role of design and implementation features,’ London: Overseas Development Institute, July 2016, 13, available at: <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11316.pdf>. We will not discuss the specifics about the conditional versus unconditional cash transfer programs, as this has limited benefits to the current discussion. Rather, we will focus primarily on unconditional cash transfer schemes, as this would be potentially more suitable for any reparation scheme to the victims of cholera in Haiti.

⁷³ George Ingram and John MacArthur, ‘From one to many: Cash transfer debates in ending extreme poverty,’ *Brookings Institution*, 19 December 2018, available at: <https://www.brookings.edu/blog/future-development/2018/12/19/from-one-to-many-cash-transfer-debates-in-ending-extreme-poverty/>

⁷⁴ Maxine Molyneux, Nicola Jones and Fiona Samuels, ‘Can Cash Transfer Programmes Have “Transformative” Effects?’ *The Journal of Development Studies* 52 (8) (2016): 1095.

⁷⁵ Johannes Haushofer and Jeremy Shapiro, ‘The Short-Term Impact of Unconditional Cash Transfers to the Poor: Experimental Evidence from Kenya,’ *The Quarterly Journal of Economics* 131 (4) (2016): 1973-2042.

⁷⁶ Christopher Blattman and Paul Niehaus, ‘Show Them the Money: Why Giving Cash Helps Alleviate Poverty,’ *Foreign Affairs* 93 (3) (2014): 117-126.

201 studies) reflects ‘how powerful a policy instrument cash transfers can be, and highlights the range of potential benefits for beneficiaries.’⁷⁷

Amongst the main worries about cash transfer programs, some point that price effects are feared.⁷⁸ There is also traditional paternalistic arguments at play,⁷⁹ with some actors doubting that poor people can make reasonable and well-informed choices. The systemic review of the cash transfer literature demonstrates that the evidence does not support these concerns and that ‘for studies reporting statistically significant results, the vast majority are in the direction policy-makers intend to achieve.’⁸⁰ As previously mentioned, cash transfer programs are not necessarily a panacea, but any discussion of their limitations should happen in conjunction with a discussion of the limitations of ‘traditional’ development project as well.⁸¹

Conclusion

The New UN Plan for Haiti includes both a commitment to consult with victims, and a preference for collective reparations, even if in principle all options are open. In our meetings, the victims clearly expressed the willingness to meet with and talk to UN officials, but also expressed a strong preference for individual reparations. For many individuals, collective projects are not always followed through (by international NGOs or by the government), and these projects also tend to favour those who are already in position to benefit from them, including through the staffing of the projects once completed. Hence, the perception is that these projects will exclude those who are not in position to benefit from these projects, including the most vulnerable segment of the population and the population living in the

⁷⁷ Bastagli et al. [supra n 42](#).

⁷⁸ Jesse Cunha, Giacomo de Giorgi and Seema Jayachandran, ‘The Price Effects of Cash Versus In-Kind Transfers,’ *Review of Economic Studies* 86 (2019): 240-281; Deon Filmer et al., ‘Cash Transfers, Food Prices, and Nutrition Impacts on Nonbeneficiary Children,’ Policy Research Working Paper 8377, World Bank, March 2018.

⁷⁹ Janet Currie and Firouz Gahvari, ‘Transfers in Cash and In-Kind: Theory Meets the Data,’ *Journal of Economic Literature* 46 (2) (2008): 333-383.

⁸⁰ Bastagli et al., [supra n. 46](#), 12-13.

⁸¹ See the impact of traditional development aid on the labor market in Haiti: Nicolas Lemay-Hébert et al., ‘The internal brain drain: foreign aid, hiring practices, and international migration,’ *Disasters* (2019), online first.

countryside. Finally, collective projects do not target specifically those who have been affected by the illness, and who are currently struggling to make ends meet. Individual reparations, in contrast, enable to target specific individuals and families who have suffered and continue to suffer emotionally and economically from the consequences of the illness.

Most of the participants also emphasized the need to move quickly, a call which does not seem to be heeded by the UN and other international donors so far. For one participant, ‘what is important is that the UN moves fast because our situation is so bad. Lots of girls cannot go to school because we had to sell land and livestock and get into debt to pay for cholera. We can’t earn properly since then’. For another participant, ‘there are still a lot of health problems (...) it needs to happen quickly. The UN should act quickly’. The current instability, compounded by the impacts of the coronavirus pandemic, makes the situation of the poorest segments of the Haitian population all the more precarious. However, calls for urgent action seem to have fallen on deaf ears, as more than 4 years have passed since Ban Ki-Moon’s apology and only meagre resources have been mobilized to help the victims.

When trying to make sense of the UN discrepancy between words and actions, one has to take into consideration the fact that a Haitian life seems to be worth less than a life in most Western countries. For the UN Special Rapporteur Philip Alston, the only way to understand the UN’s ‘reprehensible conduct’ in Haiti is to accept that ‘an element of racism is involved here,’ with Haiti being considered a country ‘which has largely been written off.’⁸² If a previous report by Alston helped push the UN and its Secretary General at the time to change its stance on the issue, we hope the recent letter by the 14 UN mandate-holders might also push the UN to do what is right for the Haitian victims.

⁸² Ed Pilkington, “UN Response to Haiti Cholera Epidemic Lambasted by its own Rights Monitors”, *The Guardian*, 4 May 2020.