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Brief of Amici Curiae Human Rights Organizations in Support of Plaintiffs-Appellants, Georges v. United Nations, Docket No. 15-00455 (Second Circuit 2015)

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15-455-cv

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

DELAMA GEORGES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DESILUS GEORGES AND ALL OTHERS SIMILARLY SITUATED, ALIUS JOSEPH, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MARIE-CLAUDE LEFEUVE AND ALL OTHERS SIMILARLY SITUATED, LISETTE PAUL, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF FRITZNEL PAUL AND ALL OTHERS SIMILARLY SITUATED, FELICIA PAULE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, JEAN RONY SILFORT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiffs-Appellants,

v.

UNITED NATIONS, UNITED NATIONS STABILIZATION MISSION IN HAITI, EDMOND MULET, FORMER UNDER-SECRETARY-GENERAL OF THE UNITED NATIONS STABILIZATION MISSION IN HAITI, BAN KI-MOON, SECRETARY-GENERAL OF THE UNITED NATIONS, *Defendants-Appellees.*

**BRIEF OF *AMICI CURIAE* HUMAN RIGHTS ORGANIZATIONS
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

On Appeal from the U.S. District Court for the Southern District of New York

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amici Curiae* Human Rights and Civil Rights Organizations state that they are not publicly held corporations or other publicly held entities; that none of *Amici Curiae* have any parent corporations; and that no publicly held company owns any stock in any of *Amici Curiae*.

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STATEMENT OF INTEREST

*Amici Curiae*¹ consist of twenty-four human rights organizations from the United States and around the world that are committed to the rule of law and respect for fundamental rights, including the essential requirement of accountability for wrongdoing.² *Amici* are deeply concerned that thousands of innocent victims of the 2010 cholera outbreak in Haiti, which is widely acknowledged to have been caused by the United Nations and the United Nations Stabilization Mission in Haiti (“MINUSTAH”), have received no redress for their suffering and injuries. This cholera epidemic compounded the profound suffering

¹ The Plaintiffs-Appellants have consented to the participation of *Amici* in this case. Because the Defendants-Appellees have not appeared in this case, their consent could not be requested Pursuant to Fed. R. App. P. 29 and Local Rule 29.1, *Amici* represent that no party or party’s counsel authored this Brief in whole or in part. No party or party’s counsel contributed money that funded the preparation or submission of this Brief. No person other than *Amici* and their counsel contributed money that funded the preparation and submission of this Brief.

² *Amici* consist of 24 human rights organizations: American Association of Jurists; Castan Centre for Human Rights Law; Center for Constitutional Rights; Center for Gender & Refugee Studies; CenterLaw; Droit Solidarité; Foundation for Fundamental Rights; Haldane Society; Human Rights Law Network; Indian Lawyers Association; International Association of Democratic Lawyers; International Human Rights Clinic at The John Marshall Law School; International Human Rights Clinic at Western New England University School of Law; International Human Rights Program at Boston University School of Law; Italian Association of Democratic Lawyers; National Association of Democratic Lawyers; National Economic & Social Rights Initiative; National Lawyers’ Guild; Palestinian Center for Human Rights; Proyecto de Derechos Económicos, Sociales y Culturales, A.C; and the Socio-Economic Rights Institute of South Africa. A description of each *Amici* appears in the Addendum.

already experienced by the Haitian people as a result of the massive earthquake that destroyed much of the country on January 12, 2010.

Amici are equally concerned with the decision of the district court which effectively grants the United Nations impunity for its wrongful actions. Impunity is contrary to the entire architecture of international law, including human rights law, to which the United Nations is inextricably bound. As such, the district court's decision incorrectly interprets the governing treaty provisions in this case and inappropriately absolves the United Nations from its firm duty to prevent the arbitrary deprivation of life and provide remediation for its own wrongdoing. *Amici* write to provide the Court with an understanding of the governing international law principles that constrain the U.N.'s entitlement to immunity in this case.

SUMMARY OF ARGUMENT

Despite the substantial harm inflicted on the Haitian people by the cholera epidemic and the U.N.'s persistent failure to provide any remedies to the victims in any form, the district court held that the Defendants in this case were categorically immune from suit pursuant to the Convention on the Privileges and Immunities of the United Nations, art. II(2), Feb. 13, 1946, 1 U.N.T.S. 16 ("CPIUN" or "Convention"). In *Georges v. United Nations*, 2015 WL 129657 (S.D.N.Y. 2015), the district court failed to acknowledge the significant constraints that international

law places on claims of absolute immunity asserted by international organizations such as the United Nations and, thus, this Court's previous ruling in *Brzak v. United Nations*, 597 F.3d 107 (2d Cir. 2010), is not dispositive of the claims asserted by the Plaintiffs here.

The United Nations is a creature of, and bound by, international law. Two important implications follow from this basic recognition. First, the United Nations cannot seek to avoid the substantive obligations of international law, which reject the possibility of the broad impunity claimed by the United Nations here. Various international law instruments, state practice, and the United Nations itself recognize that harm to individuals from misconduct, such as the gross negligence exhibited by the United Nations in Haiti, mandates some form of redress.

Second, international law provides an important interpretive guide to the contested treaty provisions in this case. Because international law disapproves of the grant of complete impunity, Article II(2) of the Convention must be read as conditioned upon the precedent obligation under Article VIII(29) to provide some form of relief to the Plaintiffs. The district court's decision to disaggregate these interdependent provisions is contrary to proper treaty interpretation.

In addition, the grant of impunity to the United Nations for its serious wrongdoing runs afoul of two substantive requirements of international law: the duty to prevent the arbitrary deprivation of life, which was violated by the U.N.'s

negligent and reckless conduct in Haiti, and the duty to provide a remedy for an entity's wrongdoing, which is plainly violated by the U.N.'s failure to answer suit or provide any form of remediation pursuant to its obligation under the Convention.

ARGUMENT

I. INTERNATIONAL LAW FORECLOSES THE PROVISION OF IMMUNITY TO THE UNITED NATIONS IN THIS CASE.

The district court dismissed this suit after concluding that Article II(2) of the Convention conferred categorical immunity to the United Nations from any and all legal process. In so doing, the district court created a rule of impunity even though the law at most supports a grant of provisional immunity under Article II(2) subject to certain important conditions.

First, as a creature of international law, the United Nations cannot receive immunity so broad as to significantly clash with international human rights law – a body of law that rejects categorical impunity for wrongdoing. Second, the grant of immunity in Article II(2) is constrained by a separate provision of the Convention, Article VIII(29), which requires the United Nations to provide “appropriate modes of settlement” for its malfeasance. Such harmonized interpretation is itself mandated by the court's obligation under the Vienna Convention on the Law of Treaties, which requires that interpretation of treaty instruments, such as the CPUIN, be rendered consistent with international law.

Thus, to the extent there is an interpretive ambiguity about Article II(2), such ambiguity must be resolved consistent with international law obligations mandating remediation for the violations of rights.

A. The United Nations Is Obligated to Comply with the Substantive Requirements of International Law.

Established following the horrors of World War II, the United Nations is a creature of human rights law and has since served as the primary source for the development of human rights principles and obligations. The U.N.'s stated mission and purpose is to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person," and "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." U.N. Charter, pmb. Indeed, human rights is at the core of the United Nations. The protection of human rights is "entrenched in the U.N. Charter, in international human rights instruments, in UN policy as well as in UN reform efforts – thereby serving as a basis of accountability" Inter-Agency Standing Committee, *The Protection of Human Rights in Humanitarian Crises: A Joint Background Paper by OHCHR and UNHCR IASC Principals* (May 8, 2013), <http://www.refworld.org/docid/537f08744.html>.

In carrying out its mission, the United Nations has been responsible for the development of every major human rights instrument since 1945, many of which have been adopted by the U.N. General Assembly. The foundational Universal

Declaration of Human Rights was adopted by the U.N. General Assembly in 1948. Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR 3d Sess., U.N. Doc. A/810 at 71 (1948) (“UDHR”). The International Covenant on Civil and Political Rights was adopted in 1966. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (“ICCPR”). And, more recently, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law were adopted by the U.N. General Assembly in 2005. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005) (“Basic Principles”).

The United Nations is a subject of international law. As the International Court of Justice (ICJ) explained in a seminal advisory opinion, the United Nations “is a subject of international law and capable of possessing international rights and duties” *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. Reports 174, 179 (Apr. 11). And, as a subject of international law, the United Nations has clear obligations to comply with the substantive requirements of international law. According to the ICJ, “[i]nternational organizations are subjects of international law and, as such, are bound by any obligations incumbent

upon them under general rules of international law. . . .” *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, 1980 I.C.J. Reports 73, 89-90 (Dec. 20).

The United Nations has adopted and endorsed numerous international instruments which mandate a right of redress for wrongdoing. This is consistent with the broader international law norm requiring remediation for rights violations. Accordingly, the United Nations should not be granted a form of immunity that fundamentally clashes with that international obligation.³ See Rosa Freedman, *UN Immunity or Impunity? A Human Rights Based Challenge*, 25 *European Journal of International Law* 239, 251-52 (2015) (“Where there is a failure to provide reasonable access to alternative mechanisms for resolving disputes, it seems clear that UN absolute immunity will violate its obligations under international human rights law and those set out in Article 55(c) of the Charter.”). See also Jordan J. Paust, *The U.N. Is Bound by Human Rights: Understanding the Full Reach of*

³ See also *Reparation for Injuries Suffered in the Service of the United Nations*, ICJ Reports, 1949 I.C.J. Reports at 180 (“Whereas a State possesses the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice.”). But see *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, 1999 I.C.J. Reports 62, 66 (Apr. 29). The facts underlying the 1999 ICJ advisory opinion are quite different from the facts of this case, which involves the violation of a peremptory norm of international law (i.e., the right to life, see *infra* Section II) as well as the refusal to provide redress to victims.

Human Rights, Remedies, and Nonimmunity, 51 Harvard International Law Journal Online 1 (2010), www.harvardilj.org/online.

B. The Convention Must Be Interpreted So It Does Not Conflict with International Law.

The district court improperly rejected Plaintiffs' argument that the immunity provision in Article II(2) of the Convention must be read as conditioned upon fulfilment of the U.N.'s mandatory obligations set forth in Article VIII(29) of the Convention. That provision states that:

The United Nations *shall* make provisions for appropriate modes of settlement of: (a) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party; (b) Disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.” (emphasis added).

The district court read Article II(2) as conferring categorical immunity independent of any duty to remediate contained in Article VIII(29).

To resolve this contested question, the Court should follow the applicable interpretive guide for reconciling this potential ambiguity in the interpretation of the Convention. Under the Vienna Convention on the Law of Treaties, states should consider “[a]ny relevant rules of international law applicable in the relation between the parties” when interpreting treaty obligations.”⁴ Vienna Convention on

⁴ Even the Vienna Convention acknowledges that universal respect for human rights is embodied in the United Nations Charter. Vienna Convention, *supra*, at preamble.

the Law of Treaties, art. 31(3)(c), May 23, 1969, 1155 U.N.T.S. 331 (“Vienna Convention”). U.S. courts consistently look to the Vienna Convention as “an authoritative guide to the customary international law of treaties” when interpreting international instruments and resolving ambiguities in treaty terms. *Chubb & Son, Inc. v. Asiana Airlines*, 214 F.3d 301, 308-10 (2d Cir. 2000). *See also Abbott v. Abbott*, 560 U.S. 1, 40 (2010) (relying on the Vienna Convention to aid in the interpretation of ambiguous treaty provisions); *Sale v. Haitian Ctrs. Council*, 205 U.S. 155, 191, 194-195 (1993) (relying on the Vienna Convention as evidence of “well-settled” rules of interpretation); *Weinberger v. Rossi*, 456 U.S. 25, 30 (1982) (citing the Vienna Convention in discussing the meaning of “treaty” under international law).

This interpretive principle ensures compliance with international law. Because, as detailed below, international human rights law rejects impunity and correspondingly demands that victims of wrongdoing receive some form of redress, interpreting Article II(2) in absolutist terms would create an untenable clash between the treaty and international law. In contrast, interpreting Article II(2)’s grant of immunity as provisional and conditioned on some remedial

settlement under Article VIII(29) is the best way to ensure the Convention does not contravene international law.⁵

This reading of Article II(2) and Article VIII(29) also avoids an untenable conflict between the Convention and the U.N. Charter, which requires the United Nations to act consistently with international law. *See, e.g.*, U.N. Charter, art. 1 (“The Purposes of the United Nations are: . . . [t]o achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all. . .”); art. 55 (same); Benedetto Conforti & Carlo Focarelli, *The Law and Practice of the United Nations* 354 (4th ed. 2010) (same). *See also Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* 1971 I.C.J. Reports 16, 57 (June 21) (“[The] denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter.”).

⁵ *See* August Reinisch, *The Immunity of International Organizations and the Jurisdiction of their Administrative Tribunals*, 7 *Chinese Journal of International Law* 285, 305 (2008) (“The notion that the jurisdictional immunity enjoyed by international organizations may depend upon the availability of ‘reasonable alternative means to protect effectively’ the rights of those affected by their activities . . . is increasingly accepted by a number of national courts, in particular, in Europe.”). *See also* Frederic Megret & Florian Hoffmann, *The UN as a Human Rights Violator? Some Reflections on the United Nations Changing Human Rights Responsibilities*, 25 *Human Rights Quarterly* 314 (2003).

II. THE CONDUCT OF THE UNITED NATIONS IN HAITI VIOLATED THE PLAINTIFFS' RIGHT TO LIFE AND THE PROHIBITION ON THE ARBITRARY DEPRIVATION OF LIFE.

When the United Nations deployed personnel from Nepal to Haiti in October 2010, it failed to comply with the most basic standards of humanitarian assistance.⁶ In particular, it failed to properly maintain the waste treatment facilities utilized by these troops. *Georges*, 2015 WL 129657, at *1. As a result, cholera was transmitted into the primary water source for the country. These actions led to a cholera outbreak that killed thousands and affected hundreds of thousands in Haiti.⁷ Before the U.N. deployment, cholera was non-existent in Haiti. It is now a regular part of Haitian life.

⁶ See generally HAP International, *The Guide to the HAP Standard: Humanitarian Accountability and Quality Management* (2008); Sphere Project, *Humanitarian Charter and Minimum Standards in Disaster Response* (2004); International Committee of the Red Cross, *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief* (1994).

⁷ In January 2011, the U.N. Secretary General appointed a panel of international health experts to investigate the cholera outbreak in Haiti. Based on this and other studies, it is evident the cholera epidemic was caused by human activity and is directly traceable to the MINUSTAH deployment in Haiti. See Alejandro Cravioto et al., *Final Report of the Independent Panel of Experts on the Cholera Outbreak in Haiti* (2011), <http://www.un.org/News/dh/infocus/haiti/UN-cholera-report-final.pdf>. See also Renaud Piarroux et al., *Understanding the Cholera Epidemic, Haiti*, 17 *Emerging Infectious Diseases* (July 2011), http://wwwnc.cdc.gov/eid/article/17/7/11-0059_article. See Transnational Development Clinic et al., *Peacekeeping without Accountability: The United Nations' Responsibility for the Haitian Cholera Epidemic* (2014), http://www.law.yale.edu/documents/pdf/Clinics/Haiti_TDC_Final_Report.pdf.

Such grossly negligent action violates the most fundamental norm of international law: the right to life and the prohibition against the arbitrary deprivation of life.⁸ *See* UDHR, *supra*, at art. 3 (“Everyone has the right to life, liberty and the security of person.”); ICCPR, *supra*, at art. 6(1) (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”). *See also* American Convention on Human Rights, art. 4(1), Nov. 22, 1969, 1155 U.N.T.S. 123 (“American Convention”) (“Every person has the right to have his life respected. This right shall be protected by law, and in general, from the moment of conception. No one

⁸ The acts of the United Nations in Haiti implicate other international obligations, including the right to health as well as the right to clean water. *See* International Covenant on Economic, Social, and Cultural Rights, art. 12(1), Dec. 19, 1966, 993 U.N.T.S. 3 (“ICESCR”) (states must recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”); Committee on Economic, Social, and Cultural Rights, General Comment No. 15, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) (stating that access to clean water and sanitation is a fundamental human right); General Assembly Res. 64/292, U.N. GAOR, 64th Sess., U.N. Doc. A/RES/64/292 (Aug. 3, 2010) (stating that access to clean water and sanitation is a human right). *See also* Human Rights Council, Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, ¶ 34, U.N. Doc. A/HRC/27/55 (June 30, 2014) (“The Special Rapporteur wishes to emphasize the obligation to investigate the allegations in order to establish responsibility for any violations and to ensure the alleged victims’ right to a remedy, including compensation, if warranted. She welcomes the commitment by the United Nations to eradicate the disease in Haiti and urges it to meet that commitment by providing adequate resources. She further calls on the United Nations to establish appropriate accountability mechanisms for ongoing and future missions as well as to review and reinforce measures for adequate sanitation and preventive measures.”).

shall be arbitrarily deprived of his life.”); European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2(1), Nov. 4, 1950, 213 U.N.T.S. 221 (“European Convention”) (“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”); African Charter on Human and Peoples’ Rights, art. 4, June 27, 1981, 1520 U.N.T.S. 217 (“African Charter”) (“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”).

The prohibition on the arbitrary deprivation of life is a peremptory (*jus cogens*) norm under international law. It allows for no derogation. *See, e.g.*, ICCPR, *supra*, at art. 4; American Convention, *supra*, at art. 27; European Convention, *supra*, at art. 15. According to the Vienna Convention, *supra*, at art. 53, “[a] *jus cogens* norm is “accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Indeed, the right to life norm has been characterized “as the supreme human right, since without effective guarantee of this right, all other rights of the human being would be devoid of meaning.” Manfred Nowak,

U.N. Covenant on Civil and Political Rights: ICCPR Commentary 121 (2d ed. 2005).

The Human Rights Committee, which was established by the ICCPR to monitor compliance, has indicated that the right to life norm cannot be interpreted in a restrictive manner. Human Rights Committee, General Comment No. 6, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994). It is not simply a negative norm prohibiting the arbitrary deprivation of life. It also requires the adoption of *affirmative measures* that protect the right to life. In fact, the Human Rights Committee has indicated that the right to life norm includes the obligation to prevent epidemics.⁹ *Id.*

Other international institutions have also established the connection between the right to life norm and the obligation to prevent the spread of disease. In November 2013, for example, the Inter-American Commission on Human Rights warned Peru that direct contact with indigenous groups in undeveloped regions of the country could lead to disease and the outbreak of epidemics, thereby implicating the right to life norm. Inter-American Commission on Human Rights, Annex to the Press Release Issued at the Close of the 149th Session, Nov. 8, 2013,

⁹ See also ICESCR, *supra*, at art. 12(2) (states must take the following steps to protect physical and mental health: improve all aspects of environmental and industrial hygiene; prevent, treat and control epidemics and other diseases; and create conditions that would assure medical service and medical attention in the event of sickness.).

http://www.oas.org/en/iachr/media_center/PReleases/2013/083A.asp. In March 2006, the Inter-American Court of Human Rights found Paraguay to have violated the right to life norm by failing to provide safe drinking water and proper sanitation conditions to an indigenous community. *Sawhoyamaxa Indigenous Community v. Paraguay* (Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 146 (Mar. 29, 2006).

By failing to comply with the most basic standards of humanitarian assistance in Haiti and thereby causing the death of thousands of civilians, the United Nations violated the right to life and the prohibition against the arbitrary deprivation of life.

III. CONSISTENT WITH THE CONVENTION AND INTERNATIONAL LAW, THE UNITED NATIONS MUST PROVIDE A REMEDY FOR ITS VIOLATIONS OF PLAINTIFFS' RIGHTS.

The principle of *ubi ius ibi remedium* – “where there is a right, there is a remedy” – is a well-established principle of international law. The right in this case is the non-derogable right to life, and the corresponding duty of international organizations is to prevent the arbitrary deprivation of life.

A. International Law Mandates that Victims of Rights Violations Be Afforded a Remedy.

The leading international formulation of the “no right without a remedy” principle comes from the 1928 decision of the Permanent Court of International

Justice (“PCIJ”) in *Chorzów Factory*. “[I]t is a principle of international law, and even a general conception of law, that *any breach of an engagement involves an obligation to make reparation.*” *Factory at Chorzów* (Ger. v. Pol.), 1928 P.C.I.J. (ser. A) No. 17, at 29 (Order of Sept. 13) (emphasis added) (“*Chorzów Factory*”). The remedial principles governing human rights law are heavily influenced by the *Chorzów Factory* case. See Dinah Shelton, *Remedies in International Human Rights Law* 99 (2d ed. 2005). Significantly, remedies must be effective to be consistent with international law. *Id.* at 9.

The Universal Declaration of Human Rights, adopted by the U.N. General Assembly in 1948, is one of the first international instruments to recognize the right to a remedy. Article 8 provides that “[e]veryone has the right to an effective remedy . . . for acts violating the fundamental rights granted him” This principle was formally codified in the International Covenant on Civil and Political Rights, which was adopted by the U.N. General Assembly in 1966. Article 2(3) requires States Parties to take the following action:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

- (c) To ensure that the competent authorities shall enforce such remedies when granted.

The Human Rights Committee has indicated that remedies must not just be available in theory. Rather, individuals must “have *accessible and effective remedies* to vindicate” their rights. Human Rights Committee, General Comment No. 31, ¶ 15, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) (emphasis added). The Human Rights Committee explained that the right to a remedy is an essential feature of international law.

16. Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without [this], the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. . . . The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.

17. In general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant.

Id. at ¶¶ 16-17.

The importance of the right to a remedy was further confirmed by the U.N. General Assembly in the 2005 Basic Principles. The Basic Principles indicate that the obligation to respect and implement international human rights law emanates from customary international law as well as treaties and the domestic law of states.

Basic Principles, *supra*, at ¶ 1. Victims of gross violations of international human rights law are entitled to equal and effective access to justice, adequate, effective and prompt reparation for harm suffered, and access to relevant information concerning violations and reparation mechanisms. *Id.* at ¶ 11. Victims must have “equal access to an effective judicial remedy as provided for under international law.” *Id.* at ¶ 12. Full and effective reparations include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. *Id.* at ¶ 18. Remedies are also crucial to provide “[v]erification of the facts and full and public disclosure of the truth.” *Id.* at ¶ 22.

Regional human rights institutions have also recognized the right to a remedy. The American Convention provides that “[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention” American Convention, *supra*, at art. 25(1). *See also* European Convention, *supra*, at art. 13 (“Everyone whose rights and freedoms set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”); Protocol to the African Charter on Human and Peoples’ Rights, art. 27(1), June 9, 1998, CAB/LEG/665 (“If the Court finds that there has been violation of a human

or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.”).

Jurisprudence regarding the right to a remedy is particularly well-developed in the Inter-American system. In *Velásquez-Rodríguez v. Honduras* (Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 7 (July 21, 1989), for example, the Inter-American Court of Human Rights made this seminal pronouncement: “[i]t is a principle of international law, which jurisprudence has considered “even a general concept of law” that every violation of an international obligation which results in harm creates a duty to make adequate reparation.” *Id.* at ¶ 25 (citations omitted). *See also* *Lysias Fleury et al. v. Haiti* (Merits and Reparations), Inter-Am. Ct. H.R. (ser. C) No. 236, at ¶ 115 (Nov. 23, 2011) (describing obligation to provide reparations as a “customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.”); *Yvon Neptune v. Haiti* (Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 180, at ¶152 (May 6, 2008) (“It is a principle of international law that any violation of an international obligation that results in damage establishes the obligation to repair it adequately.”). Numerous decisions by the Inter-American Court have affirmed the right to a remedy requirement and have done so in response to violations of the right to life norm. *See, e.g., Barrios Family v. Venezuela* (Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 237 (Nov. 24, 2011); *Yakye*

Axa Indigenous Community v. Paraguay (Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 125) (June 17, 2005).

B. The United Nations Is Bound by International Law to Provide a Remedy.

International organizations such as the United Nations are bound by the duty to provide a remedy. The Draft Articles on the Responsibility of International Organizations were adopted by the International Law Commission in 2011 and offer a detailed analysis regarding the rights and obligations of international organizations.¹⁰ At the outset, the Draft Articles provide that “[e]very internationally wrongful act of an international organization entails the international responsibility of that organization.” International Law Commission, Draft Articles on the Responsibility of International Organizations, with Commentaries, art. 3 (2011) (“ILC Draft Articles”). Once liability has been established, “[t]he responsible international organization is under an obligation to make full reparation for the injury caused by the internationally wrongful act.” *Id.* at art. 31(1). Such injuries include “any damage, whether material or moral,

¹⁰ The International Law Commission was established by the U.N. General Assembly to assist in the codification of international law. Its work has led to the adoption of numerous treaties. The Draft Articles on the Responsibility of International Organizations are patterned after the well-regarded Draft Articles on Responsibility of States for Internationally Wrongful Acts. *See generally* James Crawford, *The International Law Commission’s Articles on State Responsibility* (2002).

caused by the internationally wrongful act of an international organization.” *Id.* at art. 31(2). Reparations “shall take the form of restitution, compensation and satisfaction, either singly or in combination” *Id.* at art. 34.

The Draft Articles are particularly relevant in two respects. First, Article 32(1) of the Draft Articles indicates that “[t]he responsible international organization may not rely on its rules as justification for failure to comply with its obligations” According to the International Law Commission, an international organization cannot rely on its own rules to disregard “the consequences relating to breaches of obligations under peremptory norms as these breaches would affect the international community as a whole.” *Id.* at 58. Second, Article 42(2) of the Draft Articles provides that “[n]o State or international organization shall recognize as lawful a situation created by a serious breach” of an obligation arising out of a peremptory norm of international law “nor render aid or assistance in maintaining that situation.”¹¹

In other situations, the United Nations itself has acknowledged its responsibility for damages attributable to U.N. forces.

6. The international responsibility of the United Nations for the activities of United Nations forces is an attribute of its international

¹¹ The Draft Articles indicate that claims of consent, necessity, duress, *force majeure*, or self-defense may not be used to preclude the wrongfulness of an act that violates a peremptory norm of international law. ILC Draft Articles, *supra*, at art. 26.

legal personality and its capacity to bear international rights and obligations. It is also a reflection of the principle of State responsibility – widely accepted to be applicable to international organizations – that damage caused in breach of an international obligation and which is attributable to the State (or to the Organization), entails the international responsibility of the State (or of the Organization) and its liability in compensation.

U.N. General Assembly, Report of the Secretary-General, Administrative and Budgetary Aspects of the Financing of United Nations Peacekeeping Operations, ¶ 6, U.N. Doc. A/51/389 (Sept. 20, 1996). *See also* International Law Commission, Responsibility of International Organizations: Comments and Observations Received from International Organizations 28 U.N. Doc. A/CN.4/545 (June 25, 2004) (“As a subsidiary organ of the United Nations, an act of a peacekeeping force is, in principle, imputable to the Organization, and, if committed in violation of an international obligation, entails the international responsibility of the Organization and its liability in compensation.”).

* * *

In sum, the U.N.’s failure to provide a remedy for its violation of a peremptory norm of international law constitutes a substantive violation of these fundamental international law principles. In addition, because the governing U.N. Convention provisions must be interpreted in a manner that is consistent with international law, and because international law requires that remediation be provided by international organizations that commit wrongdoing, the Court should

interpret the Convention in a manner that conditions the grant of immunity (per Article II(2)) on the provision of some remedial relief (per Article VIII(29)) to victims of the U.N.'s misconduct. The United Nations cannot seek to avoid the international human rights law obligations to which it is inextricably bound. As a creature of international human rights law, the United Nations cannot escape its origins or its obligations.¹² It is not entitled to impunity in this case.

¹² See Human Rights Council, Report of the Independent Expert on the Situation of Human Rights in Haiti, ¶ 77, U.N. Doc. A/HRC/25/71 (Feb. 7, 2014) (“In the opinion of the independent expert, the diplomatic difficulties surrounding this issue must be overcome in order to assure the Haitian people that the epidemic will be halted as soon as possible and that full reparation for damages will be provided. Some clarifications as to what really happened need to be given and, if necessary, those responsible for the tragedy should be punished, in accordance with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law. . . . The United Nations should be the first to honour these principles.”).

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court reverse the district court's ruling.

June 3, 2015

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(B), the undersigned hereby certifies that this brief complies with the type-volume limitations.

1. Exclusive of the exempted portions, this brief contains 5,748 words.
2. The brief was prepared in a proportionally spaced typeface using Microsoft Word 2011 in 14 point Times New Roman font.

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on June 3, 2015, he caused to be served the foregoing Brief of *Amici Curiae* Human Rights Organizations by first class mail, on the following:

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ADDENDUM

LIST OF *AMICI CURIAE*

American Association of Jurists

The American Association of Jurists (AAJ) is a non-governmental organization with consultative status with United the Nations Economic and Social Council (ECOSOC). Throughout its existence, the AAJ has been committed to promoting human rights throughout the Western Hemisphere with a focus on Central and South America and the Caribbean. The AAJ is generally concerned with questions of impunity for violations of human rights and in this instance the AAJ is concerned about the impunity of the United Nations for causing cholera to be introduced into the water supply in Haiti. In this regard, the AAJ believes that the victims of cholera in Haiti should be compensated and the United Nations should take necessary steps to remediate the water infrastructure in Haiti.

Arab Organization for Human Rights

The Arab Organization for Human Rights is a non-governmental organization established to promote human rights culture in the world and to advocate human rights in general and the rights of the Arab citizens in particular. AOHR carries out field missions, offers legal assistance, and provides financial assistance to families of victims.

Castan Centre for Human Rights Law

The Castan Centre for Human Rights Law is a leading human rights organization in the Asia-Pacific Region, and is one of Australia's most respected human rights monitoring organizations. The Castan Centre plays an important role in human rights research, teaching, public education, policy, student programs, consultancy and training. Its function is to bring together the work of national and international human rights scholars, practitioners, and advocates in order to promote and protect human rights.

Center for Constitutional Rights

The Center for Constitutional Rights (CCR) is a nonprofit legal and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and international human rights law. Since its founding in 1966 out of the civil rights movement, CCR has brought numerous cases against states and non-state actors for violations of international human rights laws, including foundational case under the United States Alien Tort Statute, 28 U.S.C. § 1350, *see Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), *Doe v. Unocal*

Corp., 395 F.3d 932 (9th Cir. 2002). CCR has also been a leading advocate in seeking accountability for U.S. actors who engaged in torture and extraordinary rendition, *see Arar v. Aschroft*, 585 F.3d 559 (2d Cir. 2009) (en banc), seeking redress for torture and abuse in Abu Ghraib, *Al Shimari v. CACI Premier Tech., Inc.*, 758 F.3d 516 (4th Cir. 2014), access to habeas corpus for individuals detained in Guantanamo Bay, *see Rasul v. Bush*, 542 U.S. 466 (2004). CCR regularly engages with various international human rights institutions and mechanisms, including the United Nations treaty review process, the Inter-American Commission on Human Rights, and various nation-state's universal jurisdiction statutes to advance accountability for victims of international human rights violations.

Center for Gender & Refugee Studies

The Center for Gender & Refugee Studies (CGRS) protects the fundamental human rights of refugee women, children, LGBT individuals, and others who flee persecution in their home countries. Through its scholarship, extensive publications, expert consultations, and litigation, CGRS has played a central role in the development of asylum law and policy in line with international norms. CGRS often participates as co-counsel or amicus curiae in refugee and human rights cases. CGRS has published extensively on the topic of human rights and rule of law in Haiti and has provided expert consultation to attorneys representing asylum seekers from Haiti for nearly two decades.

CenterLaw

The Center for International Law (CenterLaw) works towards the recognition and application of international law norms in The Philippines through advocacy, training, and strategic litigation and institution-building initiatives. Centerlaw actively recruits young lawyers who exhibit passion in human rights, freedom of expression, anti-corruption, women and children's rights, and other socially relevant issues. Centerlaw's goal is to grow into an institution with regional reach, with a vision to promote compliance with human rights law in the Association of Southeast Asian Nations (ASEAN).

Droit Solidarité

Droit Solidarité is a French organization of lawyers and non-lawyer citizens, that acts to advance a democratic and progressive concept of law. It promotes law that can be used by citizens to advance popular sovereignty under national law in which democracy is based on a concept of rule by the citizens. It promotes International law based on the power of peoples, in accordance with the UN Charter.

Foundation for Fundamental Rights

The Foundation for Fundamental Rights (FFR) is an organization of attorneys and socially active individuals working toward the advancement, protection, and enforcement of fundamental human rights. FFR aims to protect rights of individuals in Pakistan under the auspices of the Constitution of Pakistan 1973, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights. FFR was established through the support of Reprieve UK, which continues to support FFR's work today.

Haldane Society

The Haldane Society is an organization which consists of individuals who are lawyers, academics, students and legal workers. The Society provides a forum for the discussion and analysis of law and legal systems both nationally and internationally from a socialist perspective.

Human Rights Law Network

The Human Rights Law Network (HRLN) is a collective of lawyers and social activists dedicated to the use of the legal system to advance human rights in India and the sub-continent. HRLN collaborates with human rights groups and social movements to enforce the rights of poor and marginalized people and to challenge oppression, exploitation, and discrimination against any group or individual on the grounds of caste, gender, disability, age, religion, language, ethnic group, sexual orientation, and health, economic or social status. HRLN provides pro bono legal services, conducts public interest litigation, engages in advocacy, conducts legal awareness programmes, investigates violations, publishes "know your rights" materials, and participates in advocacy campaigns.

Indian Lawyers Association

The Indian Association of Lawyers (IAL) is one of the important organizations of lawyers in India with a membership of over 100,000 spread in almost every State of India. Its membership is open to lawyers, judges, law teachers, researchers, and law students. It was founded in 1968 and has since been active in various fields in India. Mr. Justice V.R. Krishna Iyer, a retired judge of the Supreme Court of India and a very distinguished jurist, was the President for the last 30 years. IAL is affiliated with the International Association of Democratic Lawyers (IADL). In cooperation with IADL, IAL has organized eight international lawyers conferences in India on the issues of human rights, the fight against terrorism, peace, and development.

International Association of Democratic Lawyers

The International Association of Democratic Lawyers (IADL) is a non-governmental organization with consultative status to the United Nations Economic and Social Council (ECOSOC) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). IADL currently has members and member associations of lawyers and jurists in over 90 countries. Since IADL's founding in 1946 in Paris, IADL members have participated in the struggles that have made the violation of human rights of groups and individuals and threats to international peace and security, legal issues under international law. From its inception, IADL members throughout the globe have protested racism, colonialism, and economic and political injustice wherever they interfere with legal and human rights even if such action came at the expense of their personal safety. IADL and its members have advocated for a just resolution to the cholera crisis in Haiti, including raising the issue at the U.N. Human Rights Council and other U.N. venues.

International Human Rights Clinic at The John Marshall Law School

The International Human Rights Clinic (IHRC) at The John Marshall Law School promotes human rights domestically and around the world by providing direct legal representation to clients and organizations in international and domestic forums; documenting human rights violations in the United States and abroad; collaborating with other human rights organizations on cases and projects; and publishing and presenting reports, papers, and other materials related to human rights. The IHRC incorporates international human rights norms in its U.S. domestic work to expand the traditional domestic rights model and situates it within the broader international human rights movement.

International Human Rights Clinic at Western New England University School of Law

The International Human Rights Clinic at Western New England University School of Law works with law students to advance international human rights domestically and abroad. The clinic integrates the underlying theoretical backdrop of emerging human rights norms to contemporary cases. In addition, the clinic works with domestic and international non-governmental organizations, grass-roots organizations, solidarity networks, attorneys, stakeholders, and other institutions engaging in human rights work, to advance political, economic, social and cultural human rights across borders.

International Human Rights Program, Boston University School of Law

The International Human Rights (IHR) Clinic at Boston University School of Law exposes second and third year law students to legal practice in human rights litigation and advocacy at local, national and international levels. Clinical projects at the IHRC, include the representation of international NGO's in advocacy in the U.N. Human Rights Council, the treaty bodies, the regional human rights organs (in the American, African, and European human rights systems); filing briefs and amicus briefs on international human rights law issues in US domestic courts; and participating in universal jurisdiction claims in the US and other courts. IHR clinical professor Susan Akram and her students have previously worked on Haitian human rights issues, including developing training materials for advocating against child exploitation through the *restavek* system, and submitting an amicus curiae brief to the Inter-American Court of Human Rights in the *Dorzema vs. Dominican Republic (the "Guayubin Massacre" case)* in July, 2012.

Italian Association of Democratic Lawyers

The Italian Association of Democratic Lawyers (IADL) is composed of hundreds of barristers, judges, law professors, and students, with the purpose of advancing democracy, the rule of law, and human rights, domestically and internationally. The IADL finds that it is imperative that all subjects, including international organizations, are held fully accountable for their deeds and omissions.

National Association of Democratic Lawyers

The National Association of Democratic Lawyers (Nadel) is a voluntary organization of lawyers in South Africa which has as its primary goal a legal and judicial system that realizes access to justice for disadvantaged people and the rule of law. Nadel members are drawn from those in the legal profession who were historically disadvantaged. Nadel membership comprises all legal practitioners including attorneys, advocates, judges, paralegals, and law students. Most members are private practitioners who serve working class and poor communities. Through its activities, Nadel promotes and defends the constitutional order to ensure access to justice and the realization of civil, political, and socio-economic rights.

National Economic & Social Rights Initiative

The National Economic and Social Rights Initiative (NESRI) is an organization dedicated to the promotion of economic and social rights, including the right to health. NESRI is a US-based organization that works with a global vision. The

organization is informed by the idea that all individuals share a universal entitlement to the fulfillment and protection of their economic and social rights.

National Lawyers' Guild

The National Lawyers Guild (NLG) was formed in 1937 as the first racially integrated bar association in the United States. Since its inception, the Guild has been at the forefront of national and international efforts to develop and ensure respect for the rule of law and basic rights. Its mandate is to advocate for fundamental principles of social and economic fairness and for human and civil rights, including the protection of rights guaranteed under international law and the United States Constitution and laws. The NLG is the oldest and most extensive network of public interest and human rights lawyers and legal workers in the United States.

Other Worlds

Other Worlds is a women-driven education and movement-building collaborative. Other Worlds compiles and brings to light political, economic, social, and environmental alternatives that are flourishing throughout the world, and inspires and helps the public throughout the Americas open up new pathways to adapt and replicate them. When the devastating earthquake struck Haiti on January 12, 2010, Other Worlds was able to step up to support grassroots movements in their work for useful aid and a just and rights-based reconstruction.

Palestinian Center for Human Rights

The Palestinian Centre for Human Rights (PCHR) is an award-winning NGO and non-profit company based in Gaza City, dedicated to protecting human rights, promoting the rule of law, and upholding democratic principles in the Occupied Palestinian Territory (OPT). PCHR was established in 1995 by a group of Palestinian lawyers and human rights activists to protect human rights and promote the rule of law, create and develop democratic institutions and an active civil society and to support all efforts aimed at enabling the Palestinian people to exercise its inalienable rights in regard to self-determination under international law. PCHR conducts investigations of human rights violations. It provides legal aid, counseling, and prepares research articles on human rights and the rule of law.

Proyecto de Derechos Económicos, Sociales y Culturales, A.C

Proyecto de Derechos Económicos, Sociales y Culturales, A.C. (ProDESC) is one of Mexico's most respected human rights organizations. It was established in 2005 with the goal of providing comprehensive support to communities and workers through legal work, advocacy, and organizational assistance in order to harness collective organizing power. ProDESC has led numerous successful campaigns

that have promoted and defended communities' and workers' rights vis-à-vis transnational companies and the State. ProDESC has written wide-ranging reports exposing human rights violations in several industries throughout Mexico, and has fostered international collaboration to ensure protection for migrant workers in a global economy. In 2014, Alejandra Ancheita, Founder and Executive Director of ProDESC, was awarded the Martin Ennals 2014 Award for Human Rights Defenders.

Robert F. Kennedy Human Rights

Robert F. Kennedy Human Rights is a 501(c)(3) non-governmental organization and was founded as a living memorial to Robert F. Kennedy in 1968. Ever since, Robert F. Kennedy Human Rights has honored journalists, authors, and human rights activists who, often at great personal risk and sacrifice, are on the front lines of the international movement for human rights and social justice. Partnering with these courageous and innovative human rights defenders, RFK Partners for Human Rights is the litigation, advocacy, and capacity-building arm of the organization. Combining a rights-based approach and extended multi-year partnerships with the RFK Award Laureates and other human rights activists, RFK Partners for Human Rights leverages its legal expertise, resources, and prestige to advance social justice goals around the world. Robert F. Kennedy Human Rights has filed amicus curiae briefs in tribunals around the world on matters that relate to our work in furtherance of Robert F. Kennedy's legacy of social justice. In the present case, Robert F. Kennedy Human Rights has worked on matters of human rights in Haiti for over a decade, and remains deeply concerned that innocent victims of the 2010 cholera outbreak in Haiti have been offered no redress for their suffering and injuries.

Socio-Economic Rights Institute of South Africa

The Socio-Economic Rights Institute of South Africa (SERI) is a non-profit organization providing professional and dedicated socio-economic rights assistance to individuals, communities, and social movements in South Africa. SERI conducts applied research, engages with government, advocates for policy and legal reform, facilitates civil society coordination and mobilization, conducts popular education and training, and litigates in the public interest.