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TO THE HONORABLE MEMBERS OF THE INTER-AMERICAN  
COMMISSION ON HUMAN RIGHTS,  
ORGANIZATION OF AMERICAN STATES

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**REQUEST FOR PRECAUTIONARY MEASURES ON BEHALF OF  
PERSONS DETAINED UNFAIRLY AND AT RISK OF CHOLERA IN  
THE PRISON CIVILE DE PORT-AU-PRINCE (“THE NATIONAL  
PENITENTIARY”), HAITI**

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Submitted by advocates and attorneys pursuant to Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights:

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**Global Health Justice Partnership of the Yale Law School and Yale School of Public Health**

**Bureau des Droits Humains en Haïti**

**Réseau National de Défense des Droits de l'Homme**

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## I. SUMMARY

1. The Global Health Justice Partnership ('GHJP'), Bureau des Droits Humains en Haïti ('BDHH'), Réseau National de Défense des Droits de l'Homme ('RNDDH'), Institute for Justice & Democracy in Haiti ('IJDH'), Alternative Chance/Chans Alternativ, Haitian Bridge Alliance ('HBA'), and the Miami Law Human Rights Clinic, along with the above cited co-signing advocates and attorneys, respectfully submit this request for precautionary measures under Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights ('the Commission' or 'the IACHR'), seeking immediate protection for the community of the Prison Civile de Port-au-Prince ('the National Penitentiary'), including pretrial detainees, others incarcerated, and those working at, or visiting the prison (i.e. those at high risk of cholera because of the conditions of jails and prison as detailed below)
2. As the Commission has summarized, "Precautionary measure[s] are] a protection mechanism of the Inter-American Commission on Human Rights [...], through which it requests a State to protect one or more persons who are in a serious and urgent situation from suffering irreparable harm."<sup>1</sup> As a renewed cholera epidemic (found to have originated from the strain introduced to Haiti in 2010)<sup>2</sup> spreads through Haiti, critical overcrowding and the combined deadly pincer effects of the illegal overuse of pretrial detention and the spread of a potentially lethal disease, coupled with severely inadequate conditions pose an imminent and irreversible threat of grave illness and death to a majority of detainees in the National Penitentiary. While the National Penitentiary is the focus of this request, other detention centers (jails and prisons) manifest this deadly intersection of the abuse of pretrial detention and risk of cholera.
3. Furthermore, the public health system in prisons, jails, and throughout the nation has been weakened through years of under-investment from both national and international actors. Similarly, the de facto government of Haiti has further undermined the judicial system, already destabilized by previous *Pati Ayisyen Tèt Kale* (PHTK) governments. Together, these structural factors have created the currently imminent conditions for cholera spread within prisons and throughout the nation.
4. The vast majority of those incarcerated in the National Penitentiary are in pretrial detention, with a rate of 84% across the whole prison system.<sup>3</sup> The fact that some persons' lives are at risk while they are incarcerated in direct violation of the clear Inter-American standards regulating the deprivation of liberty makes their case an especially egregious and compound violation of fundamental rights—rights guaranteed by

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<sup>1</sup> Org. of Am. States, About Precautionary Measures.

<https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/decisions/mc/about-precautionary.asp>. See Org. of Am. States, Rules of Procedure of the Inter-American Commission on Human Rights, Tit. II, Ch. II, Art. 25(1), 147th Reg. Period Sess. (Mar. 2013), <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

<sup>2</sup> Rubin, D.H.F., Zingl, F.G., Leitner, D.R., Ternier, R., Compere, V., Marseille, S., et al. Reemergence of Cholera in Haiti (Letter to the Editor). *The New England Journal of Medicine*. Nov. 30, 2022. See also Carla N. Mavian, Massimiliano S. Tagliamonte, Meer T. Alam, S. Nazmus Sakib, Melanie N. Cash, Alberto Riva, V. Madsen Beau De Rochars, Vanessa Rouzier, Jean William Pape, J. Glenn Morris Jr., Marco Salemi, Afsar Ali. [Re-emergence of cholera in Haiti linked to environmental V. cholerae O1 Ogawa strains](#). November 27, 2022. Medrxiv [preprint].

<sup>3</sup> RNDDH Report, November 2022.

[<https://web.rnddh.org/wp-content/uploads/2022/11/12-Rap-Justice-Prisons-11Nov2022-FR.pdf>]

both the American Convention on Human Rights and Haiti's own Constitution.<sup>4</sup> At the same time, the fact that all persons incarcerated in other jails and prisons in Haiti—whether convicted of a crime or not—are similarly situated in terms of cholera risk must be noted in any on-going review of the rights and health of persons incarcerated in Haiti.

5. With respect to pretrial detention, this request is in accordance with the *Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas* which states the clear Inter-American limits on the conditions under which pretrial detention is allowed. As for the public health response to the cholera outbreak in the National Penitentiary and across Haiti's prison system, this request is in accordance with the principles, best practices and standards outlined in numerous OAS and UN provisions and guidance documents regarding states' obligations to prevent and treat contagious diseases in prisons and other closed settings.<sup>5</sup> Furthermore, this request addresses violations - including illegal imprisonment, arbitrary detention, inhumane treatment, and lack of judicial protection - all of which Haiti was found responsible for, in violation of the American Convention, in *Yvon Neptune v. Haiti*, the orders and reparations for which Haiti continues to fail to adopt in violation of its obligations as a State party.<sup>6</sup>
6. This request supports and builds on the precautionary measures already requested by the Bureau des Droits Humains en Haïti ('BDHH') in October 2022, on behalf of thirty-one people detained on remand for several years illegally in the National Penitentiary and the Prison Civile des Cayes.<sup>7</sup> We seek to expand on this prior request's comprehensive reporting on the dire situation for those detained in Haiti, drawing further attention to the serious and urgent threat posed by the outbreak of cholera, towards both all those detained and the wider community.
7. The request is grounded in an expectation of effective collaboration by state actors and local organizations, including the co-signers of this request, toward efforts to provide healthcare and information to both jails and prisons across Haiti and in the wider community, including to persons released from prison.<sup>8</sup>

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<sup>4</sup> See French language version of the Constitution of the Republic of Haiti and the 2009 Amendment; the Creole language version of the Constitution of the Republic of Haiti; and the [English language version](#) of the Constitution of the Republic of Haiti. Section B of the Constitution of the Republic of Haiti is devoted to protecting individual liberties.

<sup>5</sup> See *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, [IACHR-OAS, March 2008](#), Principle X - Health, reference to "implementation of programs for health education and promotion, immunization, prevention and treatment of infectious, endemic, and other diseases"; IACHR response to *Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners*, [UNODC/CCPCJ/EG.6/2014/INF/2](#), section on "Prevention and treatment of contagious diseases"; IACHR, *Pandemic and Human Rights in the Americas*, [Res. No. 1/2020](#) (April 10, 2020), in the context of the COVID-19 pandemic, the Commission calls for all states to "'Adapt the conditions of detention of people deprived of liberty, particularly concerning food, health, sanitation and quarantine measures to prevent COVID-19 contagion inside the prison, and in particular ensuring that all prison units have medical care available"; *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, Interim guidance, 15 March 2020, WHO [[PAHO translation](#)], which addresses the vital necessity for sufficient space, medical care, hygiene provisions, and access to water in the context of a rapid contagion spread.

<sup>6</sup> Case of *Yvon Neptune v. Haiti*, Merits, Reparations and Costs, I/A Court H.R. Series C No. 180 (Judgment of May 6, 2008).

<sup>7</sup> Request for precautionary Measures - IACHR - 0000072452, filed by BDHH (represented by Pauline Lecarpentier and Jacques Letang) on October 28, 2022.

<sup>8</sup> In addition to BDHH's request for precautionary measures, this request both supports and builds on the measures outlined in an official letter sent to H.E. Mr. Berto Dorcé, Minister for Justice and Public Safety in

8. This request further places this cholera outbreak and state obligations for health in prisons within the context of historical and ongoing policies and practices destructive to Haiti's democracy and national self-determination, crucial to both an accurate understanding of the issue and to the creation and maintenance of an effective response to a structurally created health disaster.
9. The broader, long-term goals of the request are (a) to encourage the conditions for sustainable legal and policy reforms focused on significantly reducing the number of those incarcerated in Haiti in general, and of pretrial detainees in particular; (b) to amplify the claims of those working toward a democratic, accountable, and autonomous Haitian government; and to (c) integrate any jail and prison-focused cholera support with efforts to promote prevention, treatment and care interventions in the wider community.
10. These goals are in alignment with the findings of the latest report by the Commission on the situation of human rights in Haiti, published in January 2023, which acknowledges the urgent need to restore constitutional order and democratic institutions by supporting civil society networks.<sup>9</sup> It should be noted, however, that the rights of those deprived of liberty were completely omitted from the report, despite the myriad of well-documented human rights violations towards those detained in Haiti.<sup>10</sup> Such an omission is all the more significant in the context of the recent cholera outbreak, as these rights violations endanger not just those detained, but the wider society as a whole.

## II. BENEFICIARIES

11. While understanding that the intense spread and scope of this epidemic is a manifestation of long-term policy at both national and international level, the immediate beneficiaries of this request for precautionary measures are those in pretrial detention at the National Penitentiary of Haiti located in the country's capital Port-au-Prince.<sup>11</sup>
12. In practice, this means attention to the following: (a) those detained in the National Penitentiary, all of whom require special protection under this request due to the serious, imminent threat of cholera spread. Those whose risk arises through their illegal pretrial detention are highlighted, although risk of disease does not track legal status and (b) those working at or visiting jails and prisons, who must also be considered to be at serious and urgent risk of contracting cholera.
13. It is important to note that, while we engage with analysis through a traditional, law-based rights lens, this request primarily encompasses a public health approach, and therefore attention must be paid to those put at risk by their proximity to the prison. As

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Haiti, in October 2022 by Health through Walls Inc, a US-based non-profit organization that works with local authorities in Haiti to provide food and healthcare to those incarcerated. See Annex 2.

<sup>9</sup> IACHR, *Situation of Human Rights in Haiti*, OEA/Ser.L/V/II. Doc.358/22, approved on 30 August 2022.

<sup>10</sup> In footnote 26, page 16, there is a passing reference to the fact that the Commission met with members of civil society organizations dedicated to defending the rights of several vulnerable groups, one of which was those deprived of liberty. However, no details of these meetings nor any meaningful engagement with the rights of those deprived of liberty were included in the body of the report.

<sup>11</sup> Note that this includes the sixteen people in pretrial detention already submitted as beneficiaries for BDHH's request for precautionary measures, filed in October 2022. See Request for precautionary Measures - IACHR - 0000072452, filed by BDHH (represented by Pauline Lecarpentier and Jacques Letang) on October 28, 2022.

such, we appreciate this is a novel – but critical – combination of legal and public health arguments under state obligations to preserve the right to dignity and life of the described beneficiaries. This request focuses on pretrial detainees because Haiti’s extensive use of pretrial detention is a direct violation of Inter-American standards.

14. This request for a broad class of beneficiaries is shaped by the nature of the disease and the resources at hand. Cholera is a highly communicable disease transmitted through ingesting food or water that contains the cholera bacteria. Once cholera is introduced into a community, its spread is exacerbated by poor access to treatment, sanitation and clean water. Thus, prisons regularly become sites of concentrated communicable disease, including cholera transmission. In Haiti, where prisons are subject to overcrowding in part because of the extensive detention of persons pretrial, poor administration and oversight, poor sanitation, under staffing, and lack of clean water and adequate food and medical care, this is especially true.
15. Given the intensely communicable nature of the disease, and the density of interactions within the prison as well as periodically across incarcerated and non-incarcerated populations, individually targeted precautions (e.g., recommendations around ‘handwashing’) are rarely effective and almost farcical. Individual treatment options such as rehydration interventions, which are highly successful when initiated early in the disease process, are likewise rendered next to impossible in current detention conditions.
16. The timing of this request and subsequent procedures must also be considered within the context of rapid disease spread across the wider prison system and general population. While people detained, working in, or visiting the National Penitentiary may be those at most urgent and serious risk at the time of this submission, given the current trend of this cholera outbreak, it is highly likely that other detention sites across the country will be environments of equal or even greater risk by the time the Commission and/or the state responds to the request. Though this request is focused on those detained under pretrial conditions in the National Penitentiary, considerations must be made in the future to include the wider class of people within this and other prison communities across the country. **Thus, mitigation and prevention actions for cholera must take place primarily at a structural and community level**, i.e. while individual cases must be attended when raised, understanding those detained under pretrial conditions in Haiti as a beneficiary class for the purposes of law-based remedies will be necessary. Life-saving treatments must be in turn made available in communities when formerly incarcerated people return.

### III. STATEMENT OF FACTS

#### **History of the misuse of detention/pretrial detention and inhumane prison conditions in Haiti**

17. Persons in prisons in Haiti, and particularly the National Penitentiary, are especially vulnerable to cholera outbreaks because of overcrowding, as noted by the OHCHR. The occupancy rate in Haiti’s four main prisons exceeds more than 400%.<sup>12</sup> The National Penitentiary itself was built to hold 800 people, but today holds nearly 4,000.<sup>13</sup> Persons

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<sup>12</sup> [Concerns grow as cholera spreads through Haiti’s prisons](#), October 11, 2022, AP News.

<sup>13</sup> [At the national penitentiary, the “Dubai” zone raises fears of an increase in cholera cases](#), October 13, 2022, AyiboPost.



incarcerated in the National Penitentiary have reported and shared videos of being “stacked on top of one another” to sleep at night.<sup>14</sup> This overcrowding is largely due to the fact that Haiti’s prisons are overwhelmingly holding people in pretrial detention. Across the prisons in the country, 84% of those incarcerated have not yet been tried, much less convicted of any criminal offense.<sup>15</sup> There is no meaningful segregation of pretrial, or other status, persons detained. Among those who have been incarcerated amidst this situation of overcrowding are a number of Haitian nationals deported from the U.S. who were illegally detained and imprisoned in Haiti immediately upon their arrival, and extorted for a series of bribes to be released.<sup>16</sup> While the situation at the National Penitentiary is the focus of this appeal, the situation faced by others detained, often also under illegal pretrial status, in the many similarly situated jails and prisons in Haiti where the spread of cholera combined with intolerable living conditions threaten their rights to life, health, and personal integrity, is also of grave concern.<sup>17</sup>

18. The appalling conditions of the National Penitentiary have already been documented for years by human rights organizations, UN agencies, and other actors. The Office of the High Commissioner for Human Rights has consistently detailed deficiencies in the country’s prison system, particularly with respect to the heightened risk of disease spread, since the previous cholera outbreak in 2011. After a visit made by UN staff to 12 detention facilities between January and March 2021, the Office of the High Commissioner for Human Rights noted the excessive use of pretrial detention in the prison combined with extreme overcrowding, lack of latrines, and the use of cruel and unusual punishment against those detained.<sup>18</sup> It found that the average area per person detained was significantly lower than international standards, in some cases documenting as little as 0.23 meters squared - less than a tenth of Haiti’s own national standard.<sup>19</sup> Crucially, this report also noted the severe lack of access to medicines and equipment, particularly in emergency situations.<sup>20</sup>
19. Inhumane conditions in prisons have also been confirmed by various non-governmental actors operating in Haiti. Four health and anti-poverty NGOs reported in December 2021 that approximately 11,000 persons incarcerated had “extremely limited access to food, water, and health services,” and they also confirmed that the malnutrition suffered in prisons makes persons “more susceptible to infectious disease, and once infected, more likely to have a poor outcome.”<sup>21</sup> Corresponding with these findings, the Associated Press has reported that between January and October 2022 alone 180 persons incarcerated have

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<sup>14</sup> [Letter to President Biden and Department of Homeland Security](#), January, 12, 2023, Miami Law Clinics, Alternative Chance (Chans Alternatif), Haitian Bridge Alliance, Robert F. Kennedy Human Rights, and the Gittis Transnational Legal Clinic (University of Pennsylvania Carey Law School).

<sup>15</sup> RNDDH Report, November 2022, *supra* note 2.

<sup>16</sup> [‘Being held for ransom’: Deported NJ man now jailed in notorious Haitian prison](#), July 20, 2022, NorthJersey.com.

<sup>17</sup> It should be noted that there remain outstanding orders brought by the Court against Haiti following the 2008 decision in *Yvon Neptune v. Haiti*, which addressed the rampant human rights violations within Haiti’s prison system, which continue to the present day, as outlined in this paragraph.

<sup>18</sup> [Haiti: Inhumane prison conditions demand urgent action – Bachelet](#), June 20, 2021, Office of the High Commissioner for Human Rights.

<sup>19</sup> [“N ap Mouri”: rapport sur les conditions de détention en Haiti](#), June 2021, Office of the High Commissioner for Human Rights/United Nations Integrated Office in Haiti (BINUH).

<sup>20</sup> [“N ap Mouri”: rapport sur les conditions de détention en Haiti](#), June 2021, Office of the High Commissioner for Human Rights/United Nations Integrated Office in Haiti (BINUH).

<sup>21</sup> [Food En Route to Hungry Haitian Pre-Trial Detainees & Inmates](#), December 5, 2021, Global News Wire.

died of severe malnutrition.<sup>22</sup> In Les Cayes, the prison ran out of food in March of this year, and those incarcerated were starving as a result.<sup>23</sup> It is precisely these unsustainable underlying conditions that have made the cholera epidemic's effects acutely felt in the National Penitentiary as well as other prisons throughout the country.

20. A recent study conducted by the departments of Health Services Research and Community Health and Family Medicine at the University of Florida - in collaboration with Health through Walls and the School of Medicine and Pharmacy at the Université d'État d'Haïti (UEH) - found that the average man incarcerated in Haïti is kept on a starvation-level diet, is underweight, and has severe nutritional deficiencies.<sup>24</sup> Of the sample male population drawn in 2022 from the National Penitentiary and another prison in Mirebelais, the study found that 85.8% only received one meal a day, 93.4% had a daily vitamin C intake insufficient to prevent scurvy, and 98.8% had a daily thiamine intake insufficient to prevent symptoms of beriberi.<sup>25</sup> While the percentage of those underweight improved between samples gathered in 2021 and 2022 respectively, the caloric and nutrient intake steeply declined, exacerbating an already extreme vulnerability to infectious diseases among those detained.
21. Incarcerated people in Haiti often rely on family members and NGOs to bring food and medicine from outside the prison. However, recent instability and violence has interrupted these networks of care, even as some interaction (e.g. guards and others entering and leaving) may continue.

### **Recent outbreak of cholera in Haiti**

22. On October 2, 2022, cholera was confirmed to have returned to Haiti<sup>26</sup> after nearly four years with no confirmed cases, which led many to believe it had been eradicated after it was introduced to the country by UN peacekeepers in 2010.<sup>27</sup> The highly virulent infectious disease has already spread rapidly throughout the country, with the Haitian Ministry of Health (Ministère de la Santé Publique et de la Population, MSPP per its French acronym) confirming a total of 14,258 suspected cases in just over two months.<sup>28</sup> Cases are confirmed in eight departments of the country and suspected in ten, and the case fatality rate among suspected cases is 2%.<sup>29</sup> As of December 9, 285 deaths from cholera had been registered in the country.<sup>30</sup>
23. This outbreak is exacerbated by a twin political and humanitarian crisis. A de facto government has lost legitimacy in many areas of the country, effectively allowing armed

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<sup>22</sup> [Concerns grow as cholera spreads through Haiti's prisons](#), October 11, 2022, AP News.

<sup>23</sup> [Starvation and Malnutrition in Haiti's prisons leading to Inmate deaths](#), June 30, 2022, Caribbean News.

<sup>24</sup> Mainous Arch G., Bernard Jean, Auguste Stephanie, Louis Jacques R., Dieufort Danove J., Duverger Karine, Beau de Rochars Madsen, May John. "[A cautionary tale for health education initiatives in vulnerable populations: Improving nutrition in Haiti prisons](#)". *Frontiers in Medicine*. Volume 9, 2022.

<sup>25</sup> Mainous Arch G., Bernard Jean, Auguste Stephanie, Louis Jacques R., Dieufort Danove J., Duverger Karine, Beau de Rochars Madsen, May John. "[A cautionary tale for health education initiatives in vulnerable populations: Improving nutrition in Haiti prisons](#)". *Frontiers in Medicine*. Volume 9, 2022. See [Table 1](#).

<sup>26</sup> [Cholera - Haiti](#), October 12, 2022, World Health Organization.

<sup>27</sup> [Haiti reaches one-year free of cholera](#), January 23, 2020, Pan American Health Organization.

<sup>28</sup> [Situation Épidémiologique Du Choléra.08 Décembre 2022.Haïti](#), December 9, 2022, Ministère De Lasanté Publique De La Population (MSPP).

<sup>29</sup> [Epidemiological Update - Cholera](#), December 6, 2022, Pan American Health Organization.

<sup>30</sup> [Situation Épidémiologique Du Choléra.08 Décembre 2022.Haïti](#), December 9, 2022, Ministère De Lasanté Publique De La Population (MSPP).

gangs to operate, particularly in the poorest urban neighborhoods, and making it nearly impossible for patients to access treatment facilities and doctors to provide care.<sup>31</sup> Gang blockades, which emerged in response to skyrocketing gas prices following the government's removal of fuel subsidies in September 2022, have crippled fuel supplies, making it impossible for humanitarian aid to be delivered to those in need and even forcing many hospitals to significantly reduce operations or close.<sup>32</sup> This has also made it nearly impossible for doctors to reach cholera patients for treatment.<sup>33</sup> The de facto government shows no sign of being able to regain control from the armed gangs; indeed, some gangs are connected to and even supported by political parties and actors.<sup>34</sup> Prime Minister Ariel Henry has no constitutional mandate, as noted in the Commission's latest report on the situation of human rights in Haiti,<sup>35</sup> and the country has no functioning Parliament, with only a barely functioning judiciary.<sup>36</sup> As of early January, there are no elected government officials remaining in Haiti.<sup>37</sup>

24. The lack of a functioning judiciary is connected to the incarceration of pretrial detainees: indeed, the courthouse holding relevant records for the persons incarcerated (pretrial and other status) in the NP burned in July 2022, eliminating the possibility of any review of the legal basis for holding many detainees.<sup>38</sup> This situation is critical to the outcome of the cholera epidemic, as the World Health Organization (WHO) has warned that the situation of insecurity and political instability has the potential to exacerbate the crisis.<sup>39</sup>
25. The country is also in the midst of a broader humanitarian crisis that compounds the effects of cholera due to a lack of food, clean water, medicine, proper hygiene, and other resources that were key to combating the previous outbreak in 2011.<sup>40</sup> 4.7 million Haitians are experiencing at least "crisis level" hunger; for the first time ever, 19,000 Haitians recently reached a "catastrophic level" for hunger, level 5 on the Integrated Food Security Phase Classification (IPC) index,<sup>41</sup> making Haitians even more indefensible against the disease.<sup>42</sup> In addition, at the beginning of 2022 approximately 3.3 million Haitians lacked access to safe drinking water.<sup>43</sup> The current outbreak is, as a result of these compounding factors, far from being contained.

### **National Penitentiary is experiencing dire rates of cholera infections for all those incarcerated**

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<sup>31</sup> [Gang Warfare Cripples Haiti's Fight Against Cholera](#), November 29, 2022, New York Times.

<sup>32</sup> [Gang blockade cripples Haiti fuel supplies, hospitals prepare to close](#), September 27, 2022, Reuters.

<sup>33</sup> [Choléra: sans le carburant on ne pourra rien faire, s'alarme le Dr Pape](#), October 24, 2022, Le Nouvelliste.

<sup>34</sup> [Sanctions, élections, consensus, appui à la PNH, l'ambassadeur du Canada à l'ONU, Bob Rae, fait le point](#), December 9, 2022, Le Nouvelliste.

<sup>35</sup> IACHR, *Situation of Human Rights in Haiti*, OEA/Ser.L/V/II. Doc.358/22, approved on 30 August 2022.

<sup>36</sup> [Haitians Being Returned to a Country in Chaos](#), March 24, 2022, Human Rights Watch.

<sup>37</sup> [Haiti left with no elected government officials as it spirals towards anarchy](#), January, 10, 2023, The Guardian.

<sup>38</sup> [Prosecutor accuses gang of setting Haiti courthouse on fire](#), July 26, 2022, AP News.

<sup>39</sup> [Cholera - Haiti](#), October 12, 2022, World Health Organization.

<sup>40</sup> [Resurgence of Cholera in Haiti amidst Humanitarian Crises](#), November 30, 2022, The New England Journal of Medicine.

<sup>41</sup> ['Catastrophic' hunger recorded in Haiti for first time. UN warns](#), October 14, 2022, UN News.

<sup>42</sup> [Resurgence of Cholera in Haiti amidst Humanitarian Crises](#), November 30, 2022, The New England Journal of Medicine.

<sup>43</sup> [Haiti enters 2022 struggling with cost of living increases, lack of drinking water](#), January 26, 2022, Peoples Dispatch.

26. Perhaps the most dire context in which the disease is spreading is within the prison system. Although local media reporting on cholera's spread throughout Haiti's prisons largely halted around October 18, and Haiti's Ministry of Health has not published data on cases in the National Penitentiary since November 5, testimonies from persons incarcerated have confirmed that the trends noted last month have worsened in the past few weeks.
27. As one of the world's most notoriously over-crowded and under-resourced prisons, the National Penitentiary in Port-au-Prince presents a particularly dangerous situation.<sup>44,45</sup> Due to prison conditions, the community of persons incarcerated and others involved in the prison system are most vulnerable to the disease, with those incarcerated having even less access to clean water, sanitation, food, and medicine than those outside.<sup>46</sup>
28. Inside the National Penitentiary, persons incarcerated have shared their experiences of watching others die around them while struggling to fight off the disease despite a lack of food and clean water. One man incarcerated in the prison who spoke with Peste Magazine explained how the conditions inside the prison cause them to be particularly vulnerable.<sup>47</sup> He said that those in the prison had gone five days without food or water, and with "only a bucket for a toilet to share with dozens others." This lack of proper latrines combined with the high contagiousness of the bacterial infection and the fact that it spreads through water contaminated with feces can accelerate the spread within the prison easily.<sup>48</sup> Another person detained in the penitentiary has reported that the only reservoir of water available to prisoners has two to four dead rats in it daily.<sup>49</sup>
29. Estimates are that, due to this scenario in the National Penitentiary, at least 21 people had died and 147 were hospitalized already as of October 11 2022.<sup>50</sup> Others who have given testimony from inside the prison estimated a total of at least 60 people who had died already by that time. The Réseau National de Défense des Droits Humains (RNDDH) placed the number of deaths at 24 by the end of October.
30. The cases of several Haitian nationals who were deported from the U.S. and placed immediately in detention in the National Penitentiary have received significant attention from the media and some grassroots organizations, illustrating some of the injustices faced by people in the prison. One of them, Roody Fogg, died after contracting cholera and receiving no access to medical treatment whatsoever.<sup>51</sup> According to his cell mates, "he suffered diarrhea and vomiting until he felt he could not stand anymore and 'saw black.'"<sup>52</sup> He never received medication nor even a consultation with a doctor.

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<sup>44</sup> [Haiti's Cholera Outbreak Reaches the National Penitentiary](#), October 9, 2022, Peste Magazine.

<sup>45</sup> [Au pénitencier national, l'espace "Dubai" fai craindre une multiplication des cas de choléra](#). October 8, 2022. AyiboPost.

<sup>46</sup> [Haiti's Cholera Outbreak Reaches the National Penitentiary](#), October 9, 2022, Peste Magazine.

<sup>47</sup> [Haiti's Cholera Outbreak Reaches the National Penitentiary](#), October 9, 2022, Peste Magazine.

<sup>48</sup> [Cholera - Vibrio cholerae infection](#), September 30, 2022, Centers for Disease Control and Prevention

<sup>49</sup> [Letter to President Biden and Department of Homeland Security](#), January, 12, 2023, Miami Law Clinics, Alternative Chance (Chans Alternativ), Haitian Bridge Alliance, Robert F. Kennedy Human Rights, and the Gittis Transnational Legal Clinic (University of Pennsylvania Carey Law School).

<sup>50</sup> [Concerns grow as cholera spreads through Haiti's prisons](#), October 11, 2022, AP News.

<sup>51</sup> ['They threw him in a corner': After cholera outbreak, one deportee is dead, two others ill in Haiti prison](#), October 15, 2022, NorthJersey.com.

<sup>52</sup> ['They threw him in a corner': After cholera outbreak, one deportee is dead, two others ill in Haiti prison](#), October 15, 2022, NorthJersey.com.

31. In other prisons in the country, as well, people have been dying from the disease, including three people over the course of just two days at the end of November in the Jacmel prison.<sup>53</sup> That said, it is notable that the MSPP has counted only six confirmed cases in total in Jacmel since the beginning of the crisis, as of its latest report on the situation,<sup>54</sup> which raises questions about how data on cholera in the prisons are being reported and included – or not – in overall case numbers.
32. Similar discrepancies can be seen in MSPP’s cholera data for the National Penitentiary. In the cholera sitreps published by MSPP between 14 October and 2 November 2022, the data for the National Penitentiary - included in a separate box entitled “special situation” [“situation particulière”] - registered no changes throughout this whole period. Without mitigation and prevention tactics, including mass release, oral rehydration, and instituting facilities for hygiene, one would expect that cholera would continue to spread at an advanced rate in a semi-closed environment such as the National Penitentiary. Thus, the stationary rate as reported in these Situation Reports (SITREPS) raises concern about cases that might have gone undetected and/or unreported.
33. On 3 and 5 November 2022, MSPP’s cholera data for the National Penitentiary - no longer included in a separate box, instead listed as a subcategory of Port-au-Prince - registered its first changes, with a significant increase in suspected cases:

<b>Alternative reporting of cholera data for the National Penitentiary</b> <i>[included in MSPP sitreps on 3 and 5 November 2022]</i>			
	<b>Suspected cases</b>	<b>Stool samples taken</b>	<b>Confirmed cases</b>
3-Nov-22	368	16	14
4-Nov-22	<i>no reporting</i>		
5-Nov-22	645	16	14

34. This data raises significant concerns:
- Given the data provided are cumulative, it must be assumed that only 16 stool samples were taken by 5 November, accounting for only 2% of cumulative suspected cases at the prison up to that date
  - Despite an over 75% increase in suspected cases between 3 and 5 November, no additional stool samples were taken. Furthermore, MSPP ceased reporting cholera data for the prison immediately after registering this significant increase in suspected cases [an increase of 277, all of whom, according to the MSPP definition for suspected cases, will have had "*profuse, watery, acute diarrhea, with or without vomiting, with or without dehydration*"]<sup>55</sup>

<sup>53</sup> [Les remous de l'actualité](#), December 2, 2022, Le Nouvelliste.

<sup>54</sup> [Situation Épidémiologique Du Choléra, 08 Décembre 2022, Haïti](#), December 9, 2022, Ministère De Lasanté Publique De La Population (MSPP).

<sup>55</sup> [Situation Épidémiologique Du Choléra, 04 Novembre 2022, Haïti](#), December 5, 2022, Ministère De Lasanté Publique De La Population (MSPP).

- The MSPP stopped reporting on death counts in this new format, raising the questions of whether and why they stopped counting deaths in the National Penitentiary

35. After November 5 2022, the MSPP stopped reporting on cases in the National Penitentiary altogether. This lack of data, following a period of questionable reporting and testing practices, leads to overall concerns that the persons incarcerated in both the National Penitentiary and other prisons in the country are not being adequately counted toward cholera data, and the scope of the problem might be even greater than is now known.

### **Cholera comes to Haiti: the role of international and national actions**

36. Cholera, which had never been reported in Haiti, was introduced to the country in October 2010 by MINUSTAH, a UN peacekeeping force originally established in 2004 and tasked with providing security support to the Haitian National Police following the disastrous 2010 earthquake. Troops inadvertently carried cholera from Nepal to a base in Meye, and recklessly introduced it into Haiti's largest river system through deficient sanitation infrastructure at the base. As a result, drinking and bathing water used by the local Haitian community was contaminated.<sup>56</sup> The rapid spread of cholera through the country was exacerbated by the poor public health infrastructure which was severely damaged during the earthquake - and in which both national decisions and ineffectual steps on the international level have been historically intertwined - ultimately infecting over a million people, killing at least 10,000.<sup>57,58</sup>

37. After years of advocacy efforts by and on behalf of those affected by the cholera epidemic, the UN apologized for their role in 2016, and promised \$400 million of funding for, among other things, public health infrastructure. However, only 5% of that funding has been raised thus far, and access to adequate sanitation and clean drinking water remains virtually unimproved.<sup>59,60</sup>

38. By 2019, the cholera epidemic was addressed through the efforts of the Haitian Ministry of Health, NGOs, and grassroots organizations, over the course of a decade marked by scarce resources and ongoing disease.<sup>61</sup> However, recent scientific analyses suggest that the *reemergence* of cholera today is linked to the 2010 strain.<sup>62</sup> This reemergence is the result of the lack of funding - including by the UN in accordance with its 2016 promise -

<sup>56</sup> Transnational Development Clinic, Global Health Justice Partnership, Association Haitienne de Droit de L'Environnement. *Peacekeeping without Accountability: The United Nations' Responsibility for the Haitian Cholera Epidemic*. 2013.

<sup>57</sup> Varma, Monika Kalra, Margaret L. Satterthwaite, Amanda M. Klasing, Tammy Shoranick, Jude Jean, Donna Barry, Mary C. Smith Fawzi, James McKeever, and Evan Lyon. "Wòch nan soley: The denial of the right to water in Haiti On September 9, 2013· In Volume 10, Number 2." *Health and Human Rights* 10: 2.; see also: Ivers, Louise C., Paul Farmer, Charles Patrick Almazor, and Fernet Léandre. "Five complementary interventions to slow cholera: Haiti." *The Lancet* 376, no. 9758 (2010): 2048-2051.

<sup>58</sup> [Broken UN Promises Lead to Haiti Cholera Resurgence](#), October 11, 2022, Bureau des Avocats Internationaux, Institute for Justice and Democracy in Haiti.

<sup>59</sup> [Why a rights-based UN response to cholera matters for COVID-19](#), August 28, 2020, Open GLocal Rights.

<sup>60</sup> [Haiti Cholera Response Multi-Partner Trust Fund](#), United Nations MPTF Office, Partners Gateway.

<sup>61</sup> Guillaume Y., Ternier, R., Vissieres, K., Casseus, A., Chery, M.J, Ivers, L.C. Responding to Cholera in Haiti: Implications for the National Plan to Eliminate Cholera by 2022, *The Journal of Infectious Diseases* (218):S3, November 2018.

<sup>62</sup> Rubin, D.H.F., Zingl, F.G., Leitner, D.R., Ternier, R., Compere, V., Marseille, S., et al. Reemergence of Cholera in Haiti (Letter to the Editor). *The New England Journal of Medicine*. Nov. 30, 2022.

that went into infrastructure for water, sanitation, and hygiene (known as WASH infrastructure).<sup>63</sup> Additionally, public health activists and scholars have pointed to the lack of cholera vaccines in Haiti over the decade as a manifestation of vaccine inequity.<sup>64</sup>

39. Currently, the age distribution of cholera cases in the general community reflects the factors that created this epidemic. At a health center run by GHESKIO, a health NGO, 52% of confirmed cholera cases are in children under the age of 14. This may be because Haiti's political insecurity has exacerbated malnutrition among children in this age group, making them more susceptible to disease.<sup>65</sup> In addition to medical materials and hygiene supplies, addressing this cholera epidemic necessitates restoring safe passage on the country's roads, restoring fuel access so that potable water can be pumped and food can be distributed, and ensuring adequate shelter.<sup>66</sup>

### **Measures must consider jointly the illegal use of pretrial detention and the maintenance of conditions ripe for disease spread**

40. The UN has reported the prison conditions in Haiti have made it very difficult to control the spread of cholera, given the high degree of overcrowding, limited access to water, sanitation and medical assistance.<sup>67</sup>
41. Pretrial Rights International has claimed that Haiti is in violation of its commitments to human rights standards because of its prisons' extreme overcrowding and high rates of pretrial detention.<sup>68</sup> It notes that the extreme pretrial detention times are the result of "systemic deficiencies" in Haiti's criminal justice system, including under-staffing, under-training, and under-funding, as well as an outright lack of judicial oversight. A shadow report submitted by four human rights NGOs to the Universal Periodic Review (UPR) confirms this, noting the Haitian judiciary's state of "chronic dysfunction" is responsible for the fact that most of its prison population is confined without due process in pretrial detention, "in conditions that are inhumane and often life-threatening."<sup>69</sup> According to national human rights organization Réseau National de Défense des Droits Humains, of the 19 civilian prisons in Haiti, only four of them can be considered as "offering a space acceptable to persons deprived of liberty."<sup>70</sup>
42. The Inter-American Court has already found Haiti responsible for such violations - including illegal imprisonment, arbitrary detention, inhumane treatment, and lack of judicial protection - in its 2008 decision in *Yvon Neptune v. Haiti*, the orders and

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<sup>63</sup> [Need to Know: WASH](#), April 21, 2020, Partners in Health.

<sup>64</sup> [Cholera Outbreaks Surge Worldwide as Vaccine Supply Drains](#), October 31 [updated November 1], 2022, The New York Times.

<sup>65</sup> RNDDH Report, November 2022.

[<https://web.rnddh.org/wp-content/uploads/2022/11/12-Rap-Justice-Prisons-11Nov2022-FR.pdf>]

<sup>66</sup> Bartles, S.A., and Wisner, S.C. "Haiti's right to remedy and health- an urgent call to action". The Lancet: Regional Health Americas (10). June 2022.

<sup>67</sup> [Urgent action needed to end 'inhumane conditions' facing Haiti prisoners: UN rights chief](#), June 30, 2021, UN News.

<sup>68</sup> [Republic of Haiti - Overview](#), PreTrial Rights International.

<sup>69</sup> [Submission to the United Nations Human Rights Council Universal Period Review](#), February 2022, Bureau des Avocats Internationaux (BAI), Institute for Justice & Democracy in Haiti (IJDH), Alternative Chance/Chans Alternatif, and Réseau National de Défense des Droits Humains (RNDDH) / National Human Rights Defense Network.

<sup>70</sup> RNDDH Report, November 2022.

[<https://web.rnddh.org/wp-content/uploads/2022/11/12-Rap-Justice-Prisons-11Nov2022-FR.pdf>]

reparations for which Haiti continues to fail to adopt in violation of its obligations as a State party.<sup>71</sup>

43. With conditions of overcrowding such as those that exist throughout the country's prisons, where people are kept in "subhuman conditions," the ability of persons incarcerated to ward off a disease as vicious as cholera is severely restricted.<sup>72</sup> This is partially why the OHCHR has recommended that authorities take steps to reduce the number of people in detention, including by granting early release to those most vulnerable to disease.<sup>73</sup> People cannot avoid this disease while they continue to remain in crowded conditions with no food, clean water, access to medical treatment, or even toilets in which to defecate.
44. Releasing pretrial detainees, many of whom have never been formally charged with a crime and who make up the largest percentage of those incarcerated at the National Penitentiary, will alleviate conditions of overcrowding, allowing disease spread to slow. It will also make it easier to mitigate the spread of cholera for those who remain.

### **Ethical considerations regarding beneficiaries in the context of the release of those incarcerated amid a communicable disease outbreak**

45. For those outside of the prisons, poverty marked by insecurity, fuel shortages, inadequate housing, and lack of sanitation infrastructure are driving the epidemic<sup>74</sup>. The appearance (introduced by the UN in 2010), spread, and reemergence of cholera are due to international and national political factors that foment the conditions for an epidemic.
46. While persons in detention (the inter-mixed pretrial and other status persons detained) are the group most imminently vulnerable to infection due to the prison's inadequate living and health conditions, any precautionary measures must be designed to protect other members of the prison biosphere - security guards, kitchen workers, health staff, and family visitors - who are also at serious and urgent risk due to the cholera outbreak.<sup>75</sup>
47. While prison staff might have separate facilities for drinking water and restrooms, the poor conditions of the prison negatively affect their overall well-being as well. Hostile working conditions have been reported by prison staff and have led to work stoppages.<sup>76</sup> These stoppages in turn exacerbate the conditions of overcrowding and under-resourcing that lead to cholera outbreaks. Thus, in addition to release of all affected detainees, long term goals must go toward both reducing the prison population and improving the conditions of prisons.

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<sup>71</sup> Case of *Yvon Neptune v. Haiti*, Merits, I/A Court H.R. Reparations and Costs, Series C No. 180 (Judgment of May 6, 2008).

<sup>72</sup> [Reservoirs of Injustice: How incarceration for drug-related offenses fuels the spread of tuberculosis in Brazil](#), March 2019, Global Health Justice Partnership.

<sup>73</sup> [Haiti: Inhumane prison conditions demand urgent action – Bachelet](#), June 20, 2021, Office of the High Commissioner for Human Rights.

<sup>74</sup> Severe, K., Alcenat, N., Rouzier, V. Resurgence of Cholera in Haiti amidst Humanitarian Crises (Letter to the Editor). *The New England Journal of Medicine*. Nov. 30, 2022.

<sup>75</sup> For guidelines regarding the protection of prisoners and the wider "prison biosphere" from infectious diseases see: Advice of the Subcommittee on Prevention of Torture to State Parties and National Preventive Mechanisms related to the Coronavirus Pandemic (Mar 2020),

<https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>.

<sup>76</sup> RNDDH Report, November 2022, *supra* note 2.



48. Family members and NGO workers who have shouldered the state's responsibility of feeding and providing medication for incarcerated people represent a different but similarly urgent state obligation. If these family members take on care for loved ones with cholera, they risk infection themselves through contact with body fluids, especially in absence of clean water to properly disinfect after contact. The effect of the poor prison conditions then extend beyond the prison and into communities with poor public health infrastructure, potentially expanding and exacerbating the epidemic.
49. While members of the community of the National Penitentiary are the direct beneficiaries of this request, it should be noted that the administrative and legislative actions requested herein should be to the benefit of all prison communities in Haiti, especially (a) those incarcerated in contravention of both domestic laws and international treaties to which Haiti is a party with respect to pretrial detention and humane treatment of those deprived of liberty; and (b) those incarcerated in prisons that are over capacity and/or lack sufficient facilities to protect detainees from the spread of infectious diseases.
50. Furthermore, in the wake of the cholera epidemic as described above, there are implications beyond prisons which affect the Haitian people at large, the de facto government, and the international community.

#### IV. JURISDICTION OF THE COMMISSION

##### *Fulfillment of Article 25 criteria*

51. Under Article 25(1) of its Rules of Procedures, the Commission has the authority to receive and grant requests for precautionary measures that “shall concern serious and urgent situations presenting a risk of irreparable harm to persons”.<sup>77</sup> Such criteria are further elaborated in the subparagraphs (2a), (2b) and (2c).
52. The fact pattern detailed above demonstrates, *prima facie*, that the proposed beneficiaries (i) are in a **serious situation** (illegal pretrial detention, coupled with inhumane conditions of detention) that gravely threatens their rights, lives and health; (ii) are in an **urgent situation** as cholera continues to spread rapidly throughout the country, particularly within high-risk vector environments like prisons; and (iii) are at risk of **irreparable harm** to their rights to health, life, and personal integrity. As such, it should be determined that the beneficiaries require “immediate preventive or protective action”.<sup>78</sup>

##### *Relevant jurisprudence of the Inter-American Human Rights System*

###### A. Pretrial detention and Inter-American and other relevant standards

53. The overuse and abuse of pretrial detention puts Haiti in direct violation of its criminal code as well as Article 26 of its constitution, which states “no one may be kept under arrest more than forty-eight (48) hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded

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<sup>77</sup> IACHR Rules of Procedure, *supra* note 1.

<sup>78</sup> *Id.* at art. 25(2b).

decision.”<sup>79</sup> Haiti’s prison conditions also directly violate the American Convention on Human Rights (articles 5, 7, and 8).<sup>80</sup> The country is also in direct violation of the previous judgment rendered by the Inter-American Court on Human Rights in *Yvon Neptune v. Haiti*, which required Haiti to bring its prisons into compliance with international minimum standards by 2010.<sup>81</sup>

54. Haiti’s practice of pretrial detention violates all standards and precedent developed under the Inter-American system in regard to the American Convention on Human Rights Article 7, especially 7(2), (3), (4) and (5). Previous case law, including *Barreto Leiva v Venezuela*, has determined that for a person to be lawfully detained prior to conviction, the State must give “sufficient reasons regarding the achievement of a legitimate purpose in line with the Convention.”<sup>82</sup> The Inter-American Commission has explained, in its *Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas*, that the only such legitimate aims are to “not obstruct the development of the procedure or elude the action of justice.”<sup>83</sup> Therefore, unless the person detained presents a risk of obstructing justice or fleeing, the State has no legal authority to detain him or her prior to conviction.<sup>84</sup> *Tibi v Ecuador*, furthermore, determined that not informing someone of the reason for his or her detention and not bringing the detention under immediate judicial review violate articles 7(4) and 7(5).<sup>85</sup>
55. In Haiti, it is reasonable to state that around 84% of the prison population are in pretrial detention. It appears the courthouse of Port-au-Prince has lost many relevant documents and records of these individuals’ cases, after gangs set fire to the courthouse in July 2022.<sup>86</sup> While the legitimate reasons for pretrial detention are limited to cases where the individual is suspected of fleeing or obstructing justice, the large proportion of pretrial detainees and the missing documents make it difficult to believe that this standard has been met for all of the persons incarcerated pretrial.

#### B. The Inter-American system and other relevant standards relating to state obligations in regard to communicable and pandemic disease

56. The Inter-American Human Rights System (‘IAHRS’) has consistently intervened in cases involving the spread of infectious diseases in prisons. On over a dozen occasions outlined below and in Annex 1, the Commission and Court have awarded precautionary and provisional measures, respectively, to protect those deprived of liberty – as well as the wider prison community, including guards, cleaners, and visitors – due to the heightened risk of contracting contagious diseases such as cholera, tuberculosis, HIV and, most recently, COVID-19.

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<sup>79</sup> Republic of Haiti - Overview, PreTrial Rights International.

<sup>80</sup> Republic of Haiti - Overview, PreTrial Rights International; Note that, outside of IACHR’s jurisdiction, Haiti’s prison conditions also violate the International Covenant on Civil and Political Rights (articles 7, 9, and 10), and the Convention against Torture (article 16(1)).

<sup>81</sup> Submission to the United Nations Human Rights Council Universal Period Review, February 2022, Bureau des Avocats Internationaux (BAI), Institute for Justice & Democracy in Haiti (IJDH), Alternative Chance/Chans Alternatif, and Réseau National de Défense des Droits Humains (RNDDH) / National Human Rights Defense Network.

<sup>82</sup> Inter-American Court of Human Rights Case of Barreto Leiva v. Venezuela, Judgment of November 17, 2009, p. 24.

<sup>83</sup> Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, IACHR, p. 11.

<sup>84</sup> Report On The Use Of Pretrial Detention In The Americas, IACHR, p. 9.

<sup>85</sup> Inter-American Court of Human Rights Case of Tibi v. Ecuador, Judgment of September 07, 2004.

<sup>86</sup> [Prosecutor accuses gang of setting Haiti courthouse on fire](#), July 26, 2022, AP News.

## Cholera and tuberculosis at the National Penitentiary

57. Previous interventions by the IAHRs include the award of precautionary measures in favor of adolescents detained at the National Penitentiary in Port-au-Prince [Annex 1, Row 1]. In May 2017, the Commission deemed the rights to life and personal integrity of the beneficiaries to be at imminent risk of irreparable harm due to overcrowding, deficient detention conditions, and lack of access to adequate medical treatment, thus ordering Haiti to adopt measures that would prevent further rapid spread of cholera and tuberculosis already prevalent within the prison.<sup>87</sup>
58. Living conditions in the National Penitentiary and the wider prison system have deteriorated further since these measures were awarded, despite repeated reports and calls for reform.<sup>88</sup> Given the current outbreak of cholera spreading rapidly across Haiti's prison system, the Commission must renew and expand these previously awarded measures.

## IACHR Response to the COVID-19 pandemic

59. Since July 2020, the Commission has granted requests for precautionary measures in four matters to protect people deprived of liberty from the imminent and serious threat of contracting COVID-19 due to poor living conditions [Annex 1, Rows 2-5]:

(i) In July 2020, those detained at the Northwest Detention Center ('NWDC') in Washington State, USA, were deemed to be at heightened risk due to the lack of sufficient and proper measures to effectively prevent the spread of the COVID-19 within the facility.<sup>89</sup> Aside from bringing the facility into compliance with international living and health standards, the Commission requested the United States to double its "efforts in identifying *ex officio* all those who might fall under discretionary release based on medical circumstances while preventing from placing any new such persons at the NWDC".<sup>90</sup>

(ii) In October 2020, an individual deprived of liberty in Colombia, suffering from amyotrophic lateral sclerosis (ALS), was deemed to be at a severely heightened risk of contracting and dying from COVID-19 infection, due both to his neurological disease and to the inadequate conditions and health treatment provided by the prison.<sup>91</sup> An alternative measure to prison was requested by the Commission.

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<sup>87</sup> See Resolution 13/2017, PM 125-17, in favor of the "Penitenciaría Civil de Puerto Príncipe" (direct translation of the prison's original French name: *Prison Civile de Port-au-Prince*) [Haiti].

<sup>88</sup> See Report of the Independent Expert on the situation of human rights in Haiti [Secretariat], OHCHR, [A/HRC/34/73](#), 8 March 2017 [The experts call for the Haitian Government to "make prison conditions more humane, in particular by reducing prison overcrowding, providing appropriate health and sanitation facilities, ensuring that food is available for prisoners and making it possible for inmates to work or study while in prison"]; [Press release - Urgent action needed to end 'inhumane conditions' facing Haiti prisoners: UN rights chief](#), OHCHR-BINUH, 30 June 2021 ["Lack of ventilation, high degree of overcrowding, limited access to water, sanitation and medical assistance, are among the biggest concerns highlighted by the UN investigation."; also see RNDDH Report, November 2022, *supra* note 2 ["prisoners continue to live in sub-human conditions that expose them to contagious diseases and put their lives and health at risk."].

<sup>89</sup> See Resolution 41/20, PM 265-20, in favor of the Northwest Detention Center (NWDC) [USA].

<sup>90</sup> *Id.* see para. 38(a).

<sup>91</sup> See Resolution 79/20, PM 349-20, in favor of Jorge Ernesto Zea López [Colombia].

(iii) In November 2020 and April 2021, the Commission awarded two sets of precautionary measures to protect political prisoners detained in inadequate conditions in Nicaragua amid the ongoing COVID-19 pandemic, calling for the immediate evaluation of alternative measures to deprivation of liberty.<sup>92</sup>

#### Response to other infectious diseases

60. Prior to the COVID-19 pandemic, the Commission had already established a robust and consistent response to the threat of disease spread in carceral institutions. In addition to those awarded in favor of adolescents incarcerated in the National Penitentiary cited above in paragraph 53, the Commission issued six sets of precautionary measures between 2010 and 2020 to protect those deprived of liberty due to heightened risk of contracting various infectious diseases, including tuberculosis, syphilis, and leprosy [Annex 1, Rows 6-11].<sup>93</sup>
61. In addition to the above cited measures, there are two cases in which, while the Commission's initial award in favor of prisons in Brazil make no mention of infectious diseases, subsequent provisional measures issued by the Inter-American Court for Human Rights ('IACtHR') address the issue, drawing attention to the imminent and serious risk to prisoners of contracting tuberculosis, varicella (chickenpox), and diarrhea [Annex 1, Rows 12-13].<sup>94</sup>

### **V. REQUEST FOR PRECAUTIONARY MEASURES**

62. Given the double danger to rights, health and life posed by Haiti's misuse of pretrial detention, and abusive and life-threatening conditions of the prison in the context of a cholera epidemic, we, the Petitioners, respectfully request that the Commission direct the de facto Haitian government to implement the following measures:

- **Protect the life, health and personal integrity of those incarcerated in the National Penitentiary and other detention sites**, in accordance with the Convention against Torture, the International Covenant on Civil and Political Rights, the American Convention on Human Rights, and the Haitian Constitution. This requires the state to **Ensure access to adequate food, water, sanitation, and medical care.**
- **Take immediate action to reduce significantly the number of persons incarcerated at the National Penitentiary and other detention sites**, in accordance

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<sup>92</sup> See Resolution 82/20, PM 489-20, in favor of Maycol Antonio Arce and 40 other persons deprived of their liberty [Nicaragua]; and Resolution 33/21, PM 205-21, in favor of Kevin Roberto Solís [Nicaragua].

<sup>93</sup> See PM 114-10 [Resolution Unknown] awarded on 29 April 2010 in favor of persons deprived of liberty in the Judicial Police Department (DPJ) of Vila Velha [Brazil]; Resolution 14/13, PM 8-13, in favor of persons deprived of liberty at the Porto Alegre Central Prison [Brazil]; Resolution 39/2016, PM 208-16, in favor of Instituto Penal Plácido Sá Carvalho [Brazil]; Resolution 40/19, PM 379-19, in favor of Penitenciária Evaristo de Moraes [Brazil]; Resolution 6/20, PM 888-19, in favor of persons deprived of liberty in the Jorge Santana Prison [Brazil]; and Resolution 15/20, PM 23-20, in favor of the Preventive Detention Center of Cabimas [Venezuela].

<sup>94</sup> See PM 199-11 [Resolution Unknown], awarded on 4 August 2011 in favor of people deprived of their freedom at Professor Aníbal Bruno Prison [AKA Complexo Penitenciário do Curado], and subsequent provisional measures issued on 7 October 2015, 23 November 2016, and 15 November 2017; and Resolution 11/13, PM 367-13, in favor of persons deprived of liberty at the Pedrinhas Prison Complex [Brazil].

with international standards with a focus on a combination of pretrial detainees and those most at risk of cholera.

- **Adhere to its own Constitution and other laws governing the practice of pretrial detention, as well as the international treaties to which it is party.** Protections against illegal pretrial detention are delineated both in Haiti's Constitution and in the Code of Criminal Procedure. These provisions must be respected and their infringement must be remedied.
- **Consult human rights groups familiar with the situation in order to redress the extreme levels of illegal pretrial detention.** Such groups have already recommended strategies such as holding hearings with and without jury assistance to speedily reduce the number of pretrial detainees.
- **Cease the illegal detainment and incarceration of those deported from the US to Haiti.**
- **Improve the working conditions for those employed at the National Penitentiary and other prisons,** including guards, cooks, doctors, and other prison staff.
- **Collect and publicly disseminate legitimate data about cholera,** including in prisons and other detention centers. The measure should suggest that the Commission be updated with cholera data on a regular and frequent basis. The data should include treatment accessibility within prisons as well as treatment accessibility in communities to which formerly incarcerated people are returning. Furthermore, data should include relevant demographic data relating to community transmission of cholera, as certain groups are often more likely to bear the brunt of cholera exposure and illness.
- In light of previous decisions by the Commission which urge the state to work closely with beneficiaries to ensure agreed upon outcomes, the de facto government of Haiti should **Act constructively so that the work of Haitian humanitarian organizations** that have demonstrated their capacity to prevent and treat cholera and support the life, health, and personal dignity of persons incarcerated can continue, including with transnational funding and other support. The measure should direct the de facto government to work to prevent violence and intimidation that interferes with these organizations' work; respect the political neutrality of Haitian humanitarian organizations; and to commit to the safety of journalists who are reporting on cholera and the health conditions for those incarcerated. These organizations include, but are not limited to the requesting parties listed above.
- **Adhere to its responsibility to act to protect against communicable disease,** including by providing infrastructure that facilitates proper water treatment and access and removal of trash and other sanitary measures.
- **Urgently return Haiti to a status of constitutional, democratic order** by ensuring conditions are met for elections that are inclusive, fair, and consistent with Haiti's Constitution, as well as consistent with the rights of the Haitian people under the Charter of the Organization of American States ('OAS'), the American Convention on Human Rights, and the Inter-American Democratic Charter. This context must also

include efforts to resist international interference with the right of the Haitian people to self-determination.<sup>95</sup>

- **Join ongoing efforts calling on the United Nations to adhere to its promise to provide funds** that would shore up sanitary and public health systems in Haiti, as well as provide monetary reparations to those affected by the 2010 cholera epidemic. This measure should insist that these funds be used to support necessary humanitarian programs consistent with the obligations and values of the Inter-American human rights system.

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<sup>95</sup> Bureau des Avocats Internationaux, Komisyon Fanm Viktim pou Viktim, Institute for Justice & Democracy in Haiti, Center for Gender and Refugee Studies, CUNY School of Law, Human Rights and Gender Justice Clinic, MADRE. “Request for Precautionary Measures to IACHR Regarding the Situation of women and girl victims of sexual violence in Haiti.” October 2022.