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**Promotion and protection of all human rights, civil,
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including the right to development**

The human right to an effective remedy: the case of lead-contaminated housing in Kosovo*, **

**Special Rapporteur on the implications for human rights of the
environmentally sound management and disposal of hazardous
substances and wastes, Baskut Tuncak**

* Any reference to Kosovo, whether to the territory, institutions or population, is to be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

** Information complementary to that contained in the report submitted by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the Human Rights Council pursuant to Council resolution 36/15 (A/HRC/45/12).



I. Introduction, background and context

1. In the present submission, pursuant to Human Rights Council resolution 36/15, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (toxics),¹ Baskut Tuncak, focuses on the human right to an effective remedy for victims of toxics. The Special Rapporteur has chosen to illustrate the implementation of this right through the case of Roma, Ashkali and Egyptian (RAE) populations,² housed on lead contaminated wasteland by the United Nations from 1999-2013, during and after the Kosovo conflict.

2. These communities are still waiting for remediation and compensation for the serious human rights violations that they have suffered. The victims of exposure, most of whom were women of reproductive age or children, continue to suffer an ongoing violation of their human rights by the failure of the United Nations and its Member States to provide a timely and effective remedy, now over 20 years from the start of this unnecessary and preventable tragedy on this marginalized minority community.

3. In March 2019, as a follow up to previous engagement described herein, the Special Rapporteur met with the Roma community that continue to bear the burden of years of toxic exposure, within the framework of an academic visit.³ The Special Rapporteur held meetings with affected community members, the Special Representative of the Secretary General (SRSG) and Head of United Nations Mission in Kosovo (UNMIK), and other representatives of the international community. He wishes to thank all officials and individuals he met, for their time and cooperation in sharing information on their views and experiences. In the present report, the Special Rapporteur shares findings and recommendations stemming from his engagement over the past several years.

II. Right to an effective remedy for victims of toxics

4. Accountability is a fundamental principle of human rights. States and other duty bearers must be accountable to rights holders for their human rights obligations implicated by toxics. In this regard, duty bearers must comply with the legal norms and standards enshrined in international human rights instruments. Every rights holder is entitled to initiate proceedings for appropriate redress before a competent court or other judicial authority in accordance with the rules and procedures provided by law. States and other duty bearers must ensure access to justice and provide effective remedies and restitution to victims of those violations occurring because of exposure to hazardous chemicals.⁴

5. Access to justice is an essential component of the rule of law and a means by which victims of toxics can actively claim the entire range of rights they hold, including the right to access to an effective remedy. Human rights obligations in the area of toxics must be matched

¹ Consistent with the previous reports of the current mandate holder and those of his predecessors, hazardous substances and wastes are not defined strictly; they include, inter alia, toxic industrial chemicals and pesticides, pollutants, contaminants, explosive and radioactive substances, certain food additives and various forms of waste. For ease of reference, the Special Rapporteur refers to hazardous substances and wastes as “toxics”, and therefore, in the present report, the term “toxics” (or “toxic substances”) should be understood to also include non-toxic but hazardous substances and wastes.

² The acronym RAE has been widely used by the international community to refer jointly to the Romani (the Roma, Ashkali and Egyptian) minority communities in Kosovo. The issue of the distinctive ethnic identity of these communities, which share cultural traits and history of marginalization in society, is complex and debated. The community members had referred to themselves as members of the RAE or Roma community in Kosovo in their submissions to the Human Rights Advisory Panel (HRAP) of UNMIK hence the Special Rapporteur’s decision to use the same terms in this report.

³ The Special Rapporteur planned to conduct an official visit to UNMIK from 23 to 24 March 2020, as part of a follow up to his previous, academic visit. However, this visit was postponed by the United Nations due to the COVID-19 pandemic.

⁴ A/HRC/36/41.

to appropriate and effective remedies when breached.⁵ An effective system of justice and remedy helps to prevent future abuses and ensure responsible business conduct.⁶

6. Effective remedies for violations of human rights law include the right of victims to have access to relevant information concerning violations and to effective and prompt reparation for harm suffered.⁷ Reparations can involve restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition, including changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.⁸ Extrapolating from these principles, the right to an effective remedy requires, *inter alia*, the remediation of contaminated sites, compensation, the cessation of action or inaction that gives rise to impacts, the provision of health care and the dissemination of information to prevent recurrence and further, direct or indirect, harms.⁹

7. Victims have a right to fair compensation for losses suffered. Compensation can address material losses and non-material or moral suffering. Timely reparation to prevent recurrence is essential.¹⁰ Moreover, the application must be without discrimination of any kind or on any ground.¹¹ To be effective, remedies should be appropriately adapted for vulnerable groups, such as children, taking into account their special needs, risks and evolving development and capacities.¹²

8. Unfortunately, most victims of toxic exposures have neither access to justice nor an effective remedy. Most perpetrators of human rights violations relating to toxics are not held accountable. Major obstacles to accountability and remedy include the unreasonably high burden of proof, the long latency periods for consequences to manifest in some cases and the difficulty in establishing causation; substantial information gaps with respect to the identification of hazards, measurement of exposure and specification of the epidemiological impacts; possible exposure to a multitude of different substances and over a lifetime. The pervasive inaccessibility of effective remedies to victims of toxic exposures serves as a barrier to the transition to a safer, healthier environment for millions of people around the world.¹³

9. The World Health Organisation (WHO) estimates that over 12 million people die each year from an unhealthy environment, widely acknowledged an underestimation, given the information gaps on hazards and exposure.¹⁴ A minuscule number of those victims receive any semblance of effective remedy. The inability to secure justice, even by the victims of the most egregious and clear cases of malicious conduct adds insult to injury. The need to establish a causal linkage between exposure to toxics and health impacts fosters impunity, making it nearly impossible for many victims to obtain justice and remedy for chronic exposure to a cocktail of toxic substances, whether they are exposed while still in the womb or later in their lifetimes. Most people do not even know that they are victims.

10. Profound questions exist about how we uphold the principle of accountability and rights to justice and an effective remedy for people around the world for chronic exposure to a multitude of substances. The situation facing those struggling to secure their rights from

⁵ ICCPR, art. 2., Guiding Principles on Business and Human Rights, Principles 22, 25 and 26, and the Rio Declaration on Environment and Development, principle 10.

⁶ A/HRC/36/41.

⁷ 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, para. 11.

⁸ *Ibid.* paras. 15-23. See also Human Rights Committee, General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 16 and Convention on the Rights of the Child, art. 39.

⁹ See A/HRC/33/41, para. 40.

¹⁰ Committee on the Rights of the Child, General Comment No. 16, para. 31.

¹¹ 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, para. 25.

¹² A/HRC/36/41; Human Rights Committee, General Comment No. 31, para. 15; see also Committee on the Rights of the Child, General Comment No. 16, para. 31.

¹³ A/HRC/42/41.

¹⁴ See WHO, <https://www.who.int/gho/phe/en/>.

unquestionable violations brought by an unhealthy environment comes in focus. Independent assessments have identified hundreds of thousands of contaminated sites around the world, including as a result of conflict and industrial operations. Left unaddressed, contaminated sites pose a continuing threat to the rights of present and future generations. The impacts of exposure, particularly during sensitive periods of development, are often irreversible, debilitating and deadly. No less significant than the physical impacts are the impacts on mental health, including the emotional trauma for people exposed to toxic substances and for their families.

III. The case of lead-contaminated housing in Kosovo

11. Between 1999 and 2013, the United Nations housed approximately 600 members of Roma, Ashkali and Egyptian families, displaced during the Kosovo conflict, in camps constructed on lead-contaminated toxic wasteland. The camps were established close to the Trepca industrial complex. The Trepca smelter extracted metals, including lead, from the products of nearby mines from the 1930s until 1999.

12. Lead and heavy metal contamination in Mitrovica/Mitrovicë and its adverse effects on human health was documented before the displaced residents arrived. Since the 1970s, the area around the facility was known to be highly contaminated. Reports of lead poisoning among RAE residents of the camp and nearby French peacekeepers began to surface almost immediately in 1999. Peacekeeping soldiers were quickly relocated in 2000, away from the toxic dumps; however, preventative measures for the residents were not taken for many years, in some cases not until 2013. Meanwhile, irreversible diseases and disabilities developed among residents incessantly exposed to toxic lead, which is believed to have contributed to the death of several children and adults¹⁵.

13. Concerns were consistently raised regarding the situation of the RAE residents, particularly of women of reproductive age and children, housed in poor and toxic living conditions in precarious camps. A UNEP case study found that the RAE population of the IDP camps faced a high risk of contamination due to the close proximity of the camps to contaminated and unsecured waste material and the rudimentary living conditions in the camps.¹⁶ In addition, human rights NGOs (such as Human Rights Watch - HRW), local human rights institutions (primarily the Ombudsperson Institution in Kosovo) and United Nations and European human rights monitoring mechanisms, including the United Nations treaty bodies and Special Rapporteurs, and the Council of Europe Human Rights Commissioner, who had visited and monitored the camps since 2005, defined the situation in the RAE camps as the most serious humanitarian and environmental problem in Europe.¹⁷

14. Lead affects multiple body systems and is particularly harmful to children. Lead builds up in the body, often over months or years. Even small amounts of lead can cause serious health problems. According to WHO, there is no safe level of exposure to lead.¹⁸ At very high levels, lead poisoning can be fatal¹⁹. Socio-economic factors also influence exposure to lead, since families living in vulnerable conditions are more likely to live near industrial plants or work directly there. Further, poor iron or calcium deficient diets facilitate the absorption of lead, especially by children.²⁰

15. Children are especially vulnerable to the toxic effects of lead and can suffer profound and permanent adverse health effects, particularly affecting the development of the brain and the nervous system. Children younger than 6 years are especially vulnerable to lead poisoning, which can permanently impair mental and physical development. Lead in bone is released into blood during pregnancy and becomes a source of exposure to the developing

¹⁵ HRAP, N.M. and Others v. UNMIK, case 26/08 (26 Feb. 2016), paras 120, 121, 164.

¹⁶ *ibid*, para 81. See also “*Case Study and Lead and Heavy Metal contamination in Mitrovica, Kosovo*”.

¹⁷ HRAP, N.M. and Others v. UNMIK, case 26/08 (26 Feb. 2016), para 82.

¹⁸ WHO official website <https://www.who.int/en/news-room/fact-sheets/detail/lead-poisoning-and-health>.

¹⁹ Definition by Mayo Clinic, <https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/syc-20354717>.

²⁰ HRAP, N.M. and Others v. UNMIK, case 26/08 (26 Feb. 2016), para 64.

foetus, requiring multigenerational efforts for prevention. High levels of lead during pregnancy can cause miscarriage, stillbirth, and premature birth and low birth weight. Lead also causes long-term harm in adults, including increased risk of high blood pressure and kidney damage. Half of the RAE residents were children aged 14 or younger.²¹

16. According to testimonies gathered by the Special Rapporteur in 2019, many of those affected among the RAE community, including children, are still experiencing a myriad of health problems, including seizures, kidney disease, behavioural and emotional challenges, as well as memory loss – all common long-term effects of lead poisoning.²²

A. Detailed chronology of events

17. Prior to the Kosovo conflict, the Roma living in the Mitrovica/Mitrovicë region comprised one of the most distinctive communities in Northern Kosovo. The Roma Mahalla, comprised around 700-750 houses, with an estimated 8,000 inhabitants (approximately 1000 families).²³ During 1998 and 1999, thousands of representatives of the Roma community were forced to flee by the armed conflict, becoming IDPs or refugees in neighbouring countries and in Europe.

18. In 1999, the Office of the United Nations High Commissioner for Refugees (UNHCR) assisted IDPs, distributing food and organizing makeshift camps in Cesmin Lug and Zitkovac. These camps were supposed to be a temporary solution until Roma houses in the Mahalla were reconstructed. Other IDPs spontaneously occupied abandoned army barracks at Kablare (next to the Cesmin Lug camp) and Leposavic, a town 45 kilometres from Mitrovica/Mitrovicë.²⁴

19. With the exception of Leposavic, all the new IDP camps were located near the Trepca complex, a mine for lead and other heavy metals. Under United Nations Security Council Resolution 1244 (1999), UNMIK had the obligation to administer the Trepca smelter on an interim basis. In August 2000, after an environmental audit warned that the smelter was an “unacceptable source of air pollution” and after testing of French Kosovo Force (KFOR) soldiers serving near its facilities revealed that their Blood Lead Level (BLL) had increased dramatically, the former Special Representative of the Secretary-General for Kosovo (SRSG), Bernard Kouchner, ordered the closure of the plant as an emergency health measure.

20. During 2000, UNMIK and KFOR contingents based in northern Mitrovica/Mitrovicë assessed the soil toxicity in and around the camps, which indicated high lead contamination in the camps. KFOR contingents implemented measures to protect their personnel, including removing personnel with high blood lead levels from the area.

21. In November 2000, UNMIK commissioned a report to provide recommendations on how to assess risks and means of mitigation. The report recommended comprehensive epidemiological studies, periodic environmental sampling, and robust medical monitoring and medical treatment for those in need. However, it reportedly concluded that the costs of any such strategy exceeded the financial capacities of UNMIK. During the period 2000-2004, no further steps were taken to address the issue of decontamination in the region.²⁵

22. In October 2001, UNMIK took over the responsibility for managing the camps from UNHCR.²⁶ In 2004, the World Health Organization (WHO) assessed the situation in the camps, producing an internal report to UNMIK on how to manage the risks, and which recommended finding a more suitable location for the IDPs and closing the existing camps.

²¹ *ibid.*

²² WHO, <https://www.who.int/en/news-room/fact-sheets/detail/lead-poisoning-and-health>; Public statement of the UN Special Rapporteur, March 2019 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24319&LangID=E>.

²³ HRW report, <https://www.hrw.org/report/2009/06/23/kosovo-poisoned-lead/health-and-human-rights-crisis-mitrovica-roma-camps>.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ UNMIK took up functions as interim administration after Kosovo’s Declaration of Independence in 2008. See S/2008/458.

WHO also initiated blood testing on children from the camps, which demonstrated unacceptably high levels of lead. In the same year WHO released a report demonstrating very high levels of lead contamination among the Roma population in all the camps.

23. In April 2005, UNMIK initiated a multi-stakeholder task force called the Mitrovica Action Team (MAT)²⁷ to develop a framework for the temporary relocation of Roma IDPs from Cesmin Lug, Zitkovac, and Kablare to the vacant KFOR barracks in Osterode. The task force concluded that the return to the reconstructed Mahalla was the most sustainable solution available.

24. Between 1999 and 2005, WHO developed and supported technical assistance in north and south Mitrovica/Mitrovicë and the Zvečan municipalities in relation to RAE communities in the following areas: alleviation of the environmental exposure, provision of a "lead-safe" environment; provision of "lead-safe" occupations; improvement of public health (addressing poor living conditions and poverty); provision of adequate case management and treatment for the affected population. WHO supported the medical treatment of 12 children who received emergency intravenous chelation therapy during 2004 and 2005. Since 2006, WHO developed and recommended an oral chelation treatment protocol, which was associated with fewer side effects and allowed for outpatient treatment in Osterode Camp. WHO, among its other initiatives to bring relief to the situation of exposed communities, also established and equipped a "Health and Heavy Metal Unit" (HHMU) in North and South Mitrovica/Mitrovicë.²⁸

25. In March – April of 2006, Zitkovac and Kablare camps were closed and their residents moved to the Osterode camp, as a transitional location pending a durable solution in the Roma Mahalla. Residents of Cesmin Lug decline to move to Osterode. In June 2007, around 90 families (around 450 individuals) returned to the Roma Mahalla from all Mitrovica/Mitrovicë camps in Kosovo, as well as from Serbia and Montenegro. The MAT task force under UNMIK's leadership organized the return. In May 2008, UNMIK handed over management of the Cesmin Lug and Osterode camps to the Kosovo Ministry of Communities and Returns. The Norwegian Church Aid was at the time acting as manager of the Cesmin Lug and Osterode camps.

26. In October 2008, the Roma community requested the Mitrovica/Mitrovicë Institute for Health to conduct blood tests on children in Cesmin Lug, Osterode, and Leposavic. Out of 53 tested, 21 had blood lead levels requiring immediate medical intervention as they faced significant threats to their life (over 65 mcg/dl, which is the highest level the machine could register), 18 had levels of 45 mcg/dl, and only two children had results within the norm. The results in Leposavic were lower, yet still above the "acceptable norm" of 10 mcg/dl.

27. Since 2008, WHO has assisted the Kosovo health services to provide medical services to the RAE communities, guided by WHO and based on WHO protocols endorsed by the Ministry of Health in Pristina. WHO since have provided a health promoting package, including education and counselling for management of the lead poisoning as well as treatment.²⁹

28. In July 2008, a Roma rights activist on behalf of Roma families from all the camps filed a complaint with the Human Rights Advisory Panel (HRAP) of UNMIK, alleging criminal negligence leading to severe environmental contamination causing a severe health hazard to the camps' inhabitants, as well as violation of the rights to life and family life, and lack of a legal remedy. In June 2009, the HRAP ruled the claim to be admissible on multiple counts.

29. The Special Rapporteur considers it particularly important to draw attention to the fact that approximately half of the complainants were children when the complaint was filed with

²⁷ In cooperation with the Kosovo Ministry of Health and UNHCR, WHO, UNICEF, and the Organization for Security and Co-operation in Europe – OSCE.

²⁸ WHO letter, 8 October 2019, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34907>.

²⁹ *ibid.*

the Panel in 2008. About 75 complainants were women and girls, 13 of which delivered babies in the camps and had submitted the complaint on behalf of their children.

30. The Council of Europe's Commissioner for Human Rights wrote that, even if the long-term consequences of exposure to lead were harder to determine, the lead contamination undoubtedly had caused permanent developmental damage to children, which he observed personally during his visit to Osterode and Česmin Lug in March 2009. In a subsequent letter to the SRSG, the Commissioner indicated that the children he met in the camps were "clearly under-developed for their age" and defined the situation as a "humanitarian disaster".

31. In 2010, UNMIK started the massive relocation of camp residents to other areas, and the last camp was closed in 2013. Lead contamination persisted for years following the shutting down of the Trepca smelter, mainly originating from the uncontained waste piles and tailing dams eroding under wind and water, as well as from the contaminated equipment, buildings and soils left behind by previous operations.

32. In 2013, Norwegian Church Aid and USAID funded the construction of a three-story apartment building situated in the mixed community neighbourhood in Mitrovica/Mitrovicë North. Currently Roma, members of the Kosovo Albanian, Kosovo Serb, Kosovo Ashkali and Kosovo Bosniak communities reside in the neighbourhood. The families moved into the building after the closure of displaced persons camps Osterode and Česmin Lug/Cesminlukë.³⁰

33. The majority of members of the Kosovo Roma community currently reside in the Roma Mahalla area of Mitrovicë/Mitrovica South together with Kosovo Ashkali, whereas the Kosovo Ashkali community also resides in "2 Korriku/Sitničko Naselje", and Shipol/Šipolje urban quarters. Between 2003 and 2014, the support for gradual return to the Roma Mahalla led to a steady increase of the Roma and Ashkali population and improvements in the settlement's infrastructure. The "Roma Mahalla" housing infrastructure comprises private single-family permanent houses, collective apartments and individual terraced houses. Access to services, electricity, water and waste collection is functional, however, due to non-payment of utility bills, utility companies have performed several collective water and electricity cuts. The functioning of the sewage system is also an issue in Roma Mahalla. The "2 Korriku/Sitničko Naselje" is located in the centre of Mitrovicë/Mitrovica South town. It is a densely populated and mixed neighbourhood, historically inhabited by the Kosovo Albanian and Kosovo Ashkali communities.

34. Overall, the infrastructure and access to services in the neighbourhood is good and includes public lighting, waste disposal and collection, electricity, water and sewage network. The road infrastructure, however, is in a very poor condition. Due to damaged riverbanks and a malfunctioning sewage pipe system, the neighbourhood has also suffered from recurrent flooding from the river Sitnica—resulting in flood damage to houses and the evacuation of families.³¹

IV. Opinion by Human Rights Advisory Panel of UNMIK³²

35. In 2008, 138 members of the Roma, Ashkali and Egyptian communities in Kosovo who used to reside in the in northern Mitrovica/Mitrovicë since 1999 brought a case to the Human Rights Advisory Panel of UNMIK. All complainants claimed to have suffered lead poisoning and other health problems on account of the soil contamination in the camp sites due to the proximity of the camps to the Trepca smelter and mining complex and/or on account of the generally poor hygiene and living conditions in the camps.

36. In April 2016, the HRAP of UNMIK released an opinion on the case. While formulating its opinion the Panel took into account medical literature which stated that infants, children up to the age of five, and pregnant women, were at greatest risk of harm

³⁰ Overview of Roma, Ashkali and Egyptian communities in Kosovo, OSCE, January 2020, <https://www.osce.org/mission-in-kosovo/443587?download=true>.

³¹ *ibid.*

³² HRAP, N.M. and Others v. UNMIK, case 26/08 (26 Feb. 2016).

from exposure to lead and are more vulnerable to its toxic effects. Exposure of pregnant women to high levels of lead can cause miscarriage, stillbirth, premature birth and low birth weight, as well as minor malformations. Children are at a higher risk of exposure to lead. They are exposed to lead throughout pregnancy when lead accumulated in the mother's body passes to the child; they absorb 4-5 times as much ingested lead as adults; they have an innate curiosity to explore the world which results in inadvertent ingestion of lead-coated objects and contaminated soil and dust; they spend more time in a single environment; they are more likely to have nutritional deficiencies which facilitate the absorption of lead; and they lack control over the surrounding environment³³. According to the complainants, many babies were stillborn and there were numerous miscarriages in the camps. They reported that many women practiced self-induced abortions by drinking lice shampoo or pesticides, or mixing yeast with beer to produce miscarriages, out of fear that their children would be born with physical and mental health conditions.³⁴ The Panel observed that medical literature was apparently consistent in stating that, once lead poisoning has been diagnosed, the most important step in treatment would be to prevent further exposure by removing the source of exposure from the environment and/or relocating patients.³⁵

37. The complainants complained that "little or no information" was given to the IDPs for nearly six years on the health risks to which they were being exposed. Even after the release of the two 2004 WHO reports calling for the immediate evacuation of the camps, "residents were not given appropriate and understandable information about the danger to their health and the health of their children". A number of studies and reports from different sources, for example the 2004 WHO study, were "repressed by UNMIK". It was only in the fall of 2005, when local activists brought international attention to the issue, that the authorities began an information campaign. Until then, UNMIK not only failed to provide information, but also was responsible for providing "misinformation" and "misrepresentations" on the issue. In this regard, among others, the complainants stated that UNMIK officials circulated information that the camps' inhabitants were responsible for their own poor health due to their informal smelting activities.³⁶

38. The Panel noted that UNMIK was aware of the risks stemming from the operation of the Trepca complex from the time of its arrival in Kosovo in 1999. UNMIK was also made aware of the health risks the victims had been exposed to since November 2000.³⁷

39. The HRAP opinion concluded that numerous articles of the European Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESC), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC) were violated by UNMIK. Among the human rights identified by the Advisory Panel as being violated were the rights to life, freedom from inhuman and degrading treatment, health, and respect for private and family life, an adequate standard of living, and discrimination. Numerous violations of the CRC were identified, including exploitation. The Panel also agreed that UNMIK did not provide adequate information to the complainants on the risks to their health and lives deriving from their permanent presence in the camps. UNMIK was found responsible for compromising irreversibly the life, health and development potential of the complainants that were born and grew as children in the camps, in violation of Articles 3, 6, 24, 27 and 37 of the CRC.³⁸ Articles 1, 2 and 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) were also found to be violated in relation to female applicants.³⁹

40. The Panel took into consideration the burden that UNMIK had to face immediately following its arrival in Kosovo after the conflict and appreciated its efforts at reconstruction. However, it did not exclude UNMIK's responsibility towards the complainants, especially when considering that the situation lasted for more than ten years, three of which was within

³³ *ibid.*, para 66.

³⁴ *ibid.*, para 128.

³⁵ *ibid.*, para 67.

³⁶ *ibid.*, para 129.

³⁷ *ibid.*, para 209.

³⁸ *ibid.*, para 347.

³⁹ *ibid.*, para 330.

the Panel's temporal jurisdiction. The Panel found that UNMIK did not take adequate steps to remove the complainants from a situation where they suffered inhuman and degrading treatment in fulfilment of its obligations under Article 3 of the European Convention on Human Rights (ECHR).⁴⁰

41. The HRAP found that for many years, UNMIK failed to make sufficient efforts to relocate the displaced families, despite awareness of serious risk to the internally displaced community's health and wellbeing from the toxic contamination present in the camps. The Opinion highlighted the extremely poor conditions of the camps, as its inhabitants often lacked running water, electricity, heating, adequate healthcare or access to food.

42. The Panel considered that UNMIK had, in addition to the obligation not to discriminate, also the specific positive obligation to avoid the perpetuation of discriminatory practices against the RAE community in Kosovo and to afford special protection to the complainants as IDPs and as members of the RAE community. The Panel concluded UNMIK did not fulfil these obligations nor did it present a reasonable justification for doing so. The Panel found that the complainants have suffered discrimination as members of the RAE community, in violation of Article 14, in conjunction with Articles 2, 3 and 8 of the ECHR, of Articles 2 and 26 of the ICCPR and of Article 2 of the ICESCR.⁴¹

43. The Panel rejected the SRSB's argument that the Roma have historically lived in substandard living conditions, even prior to the conflict, finding this comment discriminatory and debasing, since it seemed to suggest that the social and economic marginalisation of Roma was based on race and on their own actions. To the contrary, the Panel considered that the historical marginalisation of the Roma and the traumatic experiences that led them to their IDP status in Kosovo made the complainants especially vulnerable to degrading treatment and made UNMIK more responsible for their well-being.⁴² In this respect, the Panel recalls that special consideration should be given to the situation of the complainants as IDPs, as such members of a "particularly underprivileged and vulnerable population group in need of special protection".⁴³

44. The Advisory Panel recommended that UNMIK make a public apology to the victims and their families, and take appropriate steps towards payment of adequate individual compensation for both material and moral damage to the 138 Roma, Ashkali and Egyptian (RAE) residents of the camps, among other recommendations.

V. Efforts by the United Nations toward an effective remedy

45. In order to understand the essence of the United Nations' legal response to the situation and the Organisation's own interpretation of its liability, it is useful to look into the reply given by the United Nations Under-Secretary-General for Legal Affairs to a claim on behalf of Roma, Ashkali and Egyptian residents of IDP camps from 2011.⁴⁴ On 10 February 2006, RAE complainants filed claims for compensation in the framework of the United Nations Third Party Claims Process pursuant to General Assembly Resolution A/RES/52/247. This Resolution sets forth parameters regarding third-party liability and compensation in disputes of a private law character.

46. In her letter dated 25 July 2011, the United Nations Under-Secretary-General for Legal Affairs informed the complainants of her decision to declare the claims non-receivable. She stated that under Section 29 of the 1946 Convention on the Privileges and Immunities of the United Nations, the United Nations Third Party Claims Process provided for

⁴⁰ *ibid.*, para 243.

⁴¹ *ibid.*, para 308-309.

⁴² *ibid.*, para 244.

⁴³ ECtHR [GC], *M.S.S. v. Belgium and Greece*, at para 251; ECtHR [GC], *Oršuš and Others v. Croatia*, no. 15766/03, judgment of 16 March 2010, at para 147).

⁴⁴ UN Under-Secretary-General for Legal Affairs, Letter dated July 25, 2011 from the UN Under-Secretary-General for Legal Affairs to Roma, Ashkali and Egyptian residents of IDP camps in Mitrovica, Kosovo (July 25, 2011). Available at: <http://www.sivola.net/download/UN%20Rejection.pdf>.

compensation only with respect to “claims of a private law character”, whereas the complainants’ claims amounted, in essence, “to a review of the performance of UNMIK’s mandate as the interim administration in Kosovo”.⁴⁵

47. In the same letter she indicated that “the IDP camps came into existence as a result of a major population displacement during the Kosovo conflict in 1999 and are located in the proximity of long- established residential areas in Northern Mitrovica (...) the Mitrovica region has a long history of major industrial pollution, including lead contamination from the Trepca mine. (...) the claims asserted involve alleged widespread health and environmental risks arising in the context of the precarious security situation in Kosovo. The claims do not constitute claims of a private law character and, in essence, amount to a review of the performance of UNMIK’s mandate as the interim administration in Kosovo. Based on the framework established by the Member States, therefore, the claims are not receivable under Section 29 of the General Convention or General Assembly Resolution RES/521247. (...) Notwithstanding the above, we would note that, while having no legal obligation to do so, UNMIK has taken substantial steps to improve the condition of the IDP population. Notably, in 2000, when the Trepca mine unilaterally resumed operation, UNMIK closed the smelter down. Moreover, since 2000, UNMIK and the international community, in consultation with the IDPs representatives, as well as representatives of the local structures in Kosovo have expended considerable resources in the protection and assistance of the IDP population, including the relocation of camp residents to Osterode camp and to newly constructed housing in the Roma Mahala”.⁴⁶

48. Related to the above, it is worth drawing attention to the HRAP Opinion, which considered irrelevant whether UNMIK’s actions and omissions towards the risks faced by the complainants would be attributable to UNMIK as a “UN peacekeeping mission” or as “an interim administration”. The Panel noted that, in either case, UNMIK had full legislative and executive authority in Kosovo pursuant to United Nations Security Council Resolution 1244 (1999) which established as a core part of UNMIK’s mandate in Kosovo, among others “Ensuring public safety and order [...]” (section 9, d); “Protecting and promoting human rights [...]” (section 11, j) and “Assuring the safe and unimpeded return of all refugees and displaced persons” (section 11, k). According to subsequent Regulations, UNMIK pledged to exercise its powers in Kosovo in accordance with “internationally recognised human rights standards” and the principle of non-discrimination⁴⁷, and in particular, in observance of the main international human rights instruments⁴⁸, which protect the right to life. In addition, the Guiding Principles on Internal Displacement state clearly that national *de facto* or *de jure* authorities have the primary responsibility for the protection of IDPs within their jurisdiction. In this respect, Principle No. 2 states that “all authorities, groups and persons, irrespective of their legal status”, shall respect the rights of IDPs.⁴⁹

49. The Panel acknowledged that UNMIK’s interim character and related difficulties must be duly taken into account with regard to a number of situations, but under no circumstances could these elements be taken as a justification for diminishing standards of respect for human rights, which were duly incorporated into UNMIK’s mandate. The Panel considered that the same standards must apply to the substantive obligation to protect the right to life. Furthermore, as the SRSG argued that “the financial resources of UNMIK were limited to those of the Kosovo budget and human resources, in all fields, including medical and social services”, the Panel noted that the SRSG had not provided the Panel with any detailed argumentation or evidence to prove that the relocation of the complainants and the provision of adequate medical care would have been a “disproportionate burden” that UNMIK could not handle alone or in collaboration with other United Nations agencies and other bodies operating in Kosovo.⁵⁰

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ see UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo, at Section 2.

⁴⁸ see UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo.

⁴⁹ HRAP, *N.M. and Others v. UNMIK*, case 26/08 (26 Feb. 2016), para 220.

⁵⁰ *ibid.*, para 221.

50. In 2017, following the release of the HRAP Opinion on the case, the Secretary General of the United Nations established a Trust Fund charged with implementing community-based assistance projects, primarily in Mitrovica/Mitrovicë North, South and Leposavić, which would benefit the affected communities. Contributions to the Fund were to be made on voluntary basis and the Trust Fund was not intended to offer any individual compensation to the victims, contrary to HRAP recommendation. SRSG Tanin conducted high-level meetings in Geneva, including with then-High Commissioner Zeid Ra'ad Al Hussein, to develop guidance for the Secretary-General in responding to the HRAP conclusions and findings. While the main effort in approaching donors lies with United Nations Headquarters in New York, SRSG Tanin appealed personally to all Member States in Geneva as well as to multiple Ambassadors on the ground in Kosovo to solicit contributions from their respective Governments.

51. The established Trust Fund has however never been operational due to lack of resources. On 5 October 2018, in response to a letter addressed to the Secretary General of the United Nations by the United Nations Special Rapporteur on human rights and hazardous substances and wastes (toxics)⁵¹, the Under-Secretary General for Peacekeeping Operations confirmed that despite targeted outreach and resource mobilization campaigns by a United Nations Task Force encouraging contributions to the Trust Fund, "no contribution has yet been received from the international community in response to these appeals."⁵² In response to a subsequent letter by the Special Rapporteur⁵³, no concrete details on plans to mobilize resources were provided.⁵⁴

52. In June 2019, the Secretary General of the United Nations presented a report the United Nations Interim Administration Mission in Kosovo, which stated that an initial contribution was received by the Trust Fund in May 2019⁵⁵. This was certainly a welcome development although the contribution in question was very modest (US\$ 10,000) and has not been followed by any new contributions since. In response to a letter addressed to him by the Special Rapporteur, the Secretary General of the United Nations agreed that while this initial contribution was welcome, it fell short of the resources required to address the basic needs of the affected communities. Efforts to mobilize additional resources, he added, including in follow-up to his appeal addressed to a number of Member States and other partners in June 2017, will therefore continue.⁵⁶

53. In May 2020, the Special Representative of the Secretary-General, Head of UNMIK, affirmed continued support efforts in raising awareness about the importance of committing sustainable funding to the Trust Fund. According to the letter, both UNMIK and the United Nations Kosovo Team (UNKT) have increased their engagement with Roma, Ashkali, and Egyptian communities, in cooperation with members of civil society organizations and international partners working with these communities. UNMIK involvement includes confidence-building projects and programmatic activities, projects and activities supporting non-majority communities at large, as well as protection and specialized integrated services in the context of the COVID-19 pandemic.

54. The Special Rapporteur welcomes the fact that the United Nations Secretariat continues to follow up with the Member States and organizations to encourage positive responses to the Secretary-General's appeal. Besides efforts to mobilize resources to the Trust Fund, the UNMIK and the United Nations Kosovo Team continue to direct available resources to support the RAE communities through programmatic activities and dedicated projects.

⁵¹ See <https://www.ohchr.org/Documents/Issues/ToxicWastes/LetterSGAshkaliEgyptianCommunities.pdf>.

⁵² See <https://www.ohchr.org/Documents/Issues/ToxicWastes/ResponseKosovo5Oct2018.pdf>.

⁵³ See https://www.ohchr.org/Documents/Issues/ToxicWastes/Communications/OL_OTH_23.11.2018_69.2018.pdf.

⁵⁴ See https://www.ohchr.org/Documents/Issues/ToxicWastes/Communications/OL_OTH_24.12.2018_69.2018_Response.pdf.

⁵⁵ See https://unmik.unmissions.org/sites/default/files/s_2019_461.pdf.

⁵⁶ See letter dated 4 October 2019
<https://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/LeadContaminationKosovo.aspx>.

55. During his 2019 visit, the Special Rapporteur heard from many of the community members that what they most wanted from a remedy was to be reunited with friends and family who escaped to Germany and elsewhere in the European Union during the Kosovo conflict. Not only would they establish social bonds that cannot be repaired through a “trust fund” and community assistance projects under a trust fund, but they may then also have access to much needed social services. However, UNMIK had not met with the community to ask what their hopes and expectations were from any remediation process, and no EU member state had been approached regarding this possibility.

56. With respect to the possible support to the reunification of members of the RAE communities with their families in the European Union, according to the SRSG in May 2020, this issue has not been raised directly with UNMIK and UNMIK has not been formally requested to facilitate such a process. Accordingly, the SRSG stated that such a request would have to be referred to United Nations agencies and organizations whose mandates specifically cover the movement of people, as they would be best positioned to advise on this matter. The SRSG further affirms that at the same time, these efforts cannot substitute the Trust Fund, as more dedicated resources are needed to have a greater impact.

VI. International reaction to the United Nations response

57. In his article called ‘Remedies for harm caused by UN peacekeepers’ Bruce Rashkow, who formerly held senior positions in the United Nations Office of Legal Affairs, as well as in the Office of the Legal Adviser in the U.S. Department of State and with the U.S. Mission to the United Nations writes, “since the creation of the United Nations, the need for the Organization to enjoy immunity from the jurisdiction of Member States has been widely recognized as necessary to achieve its important and far ranging purposes. However, it has also been understood that this immunity was not intended to shield the Organization from responsibility as a “good citizen” on the world stage to respond to justifiable claims against the Organization by third parties resulting from the activities or operations of the Organization.”⁵⁷

58. Various Government representatives and international human rights experts have shared the view that the particular circumstances demand the accountability of the United Nations and an end to an ongoing calamity that has befallen RAE children and other victims in Mitrovica/Mitrovicë.

A. Engagement of the European Parliament

59. In January 2019, 55 members of the European Parliament addressed a letter to the Secretary General of the United Nations urging him to take long overdue steps to ensure that the victims of widespread lead poisoning at United Nations -run camps in Kosovo receive individual compensation, adequate health care and educational support.⁵⁸ The letter stated that the United Nations’ role in the violation of their rights had been clearly documented by the Human Rights Advisory Panel, as well as by international and local human rights groups. The affected communities were struggling to care for sick family members who were exposed to toxic lead for more than a decade. Many of those affected, including children, are experiencing myriad health problems and need financial and social support for medicine or healthy food for their children. The members of the European Parliament estimated in the letter that the United Nations response has been inadequate.

60. On 29 November 2018, the European Parliament adopted a resolution on the 2018 Commission Report on Kosovo, calling on the United Nations “to swiftly deliver the necessary support to the victims of lead poisoning in some refugee camps set up in Kosovo”.⁵⁹

⁵⁷ Bruce Rashkow (2 April 2014) Remedies for Harm Caused by UN Peacekeepers, American Society of International Law.

⁵⁸ See <https://katipiri.nl/wp-content/uploads/2019/01/Letter-to-Mr.-UN-Secretary-General.pdf>.

⁵⁹ See http://www.europarl.europa.eu/doceo/document/TA-8-2018-0479_EN.html?redirect.

B. Recent engagement of the UN Human Rights Council mandate on “toxics”

61. The United Nations Special Rapporteur on human rights and toxics, Baskut Tuncak, has engaged in ongoing dialogue with the Secretary General of the United Nations, and others, on the need for an effective remedy for the lead contamination. In 2016, the Special Rapporteur on human rights and toxics endorsed a call by a number of Special Rapporteurs detailed in the next section, on the need for a remedy for the victims and accountability of UNMIK for violations of their rights. In July 2018, he addressed an open letter to the Secretary General about the state of play regarding the victims’ situation and their possible compensation.

62. In March 2019, the Special Rapporteur visited the affected communities in Mitrovica/Mitrovicë, as part of an academic visit. In a statement following his visit the Special Rapporteur stated that he was deeply disappointed by the inertia surrounding this case, and that the solution offered by the United Nations is an inoperative and fundamentally flawed Trust Fund, which will provide neither justice nor the necessary elements of an effective remedy for the victims.⁶⁰

63. In July 2019, the Special Rapporteur addressed a letter to the Secretary General of the United Nations, following news that an initial contribution had been received to the Trust Fund, inquiring if any additional steps were envisaged for mobilizing the financial and non-financial support necessary to provide the affected communities their right to an effective remedy.⁶¹ The reply of the Secretary General of the United Nations to this letter, dated 4 October 2019, stated that as part of its focus on minority issues and trust building among communities, UNMIK pursues advocacy efforts in support of improving the social inclusion of RAE communities and full exercise of their social, economic and cultural rights.⁶²

64. In June 2019, the Special Rapporteur also addressed letters to the leaders of several organizations in the United Nations system whose mandates include issues raised by the case.⁶³ The letters underlined the need for the United Nations system as a whole to contribute to mobilizing the necessary resources to provide the victims their right to an effective remedy, one that is just, sustainable, and aimed at bringing moral and physical relief. The Special Rapporteur urged the addressees to use their resources, outreach and expertise in helping the United Nations to raise the priority attributed to the situation of victims in Kosovo and advocate for greater visibility of this issue. At the time of drafting this report, the Special Rapporteur has received a reply to his letter only from the WHO⁶⁴.

C. Engagement of other independent human rights experts

65. After noting that 400 people still lived in two camps, where children were “clearly under-developed for their age,” the former Commissioner for Human Rights, Thomas Hammarberg, called upon UNMIK, as the leading authority in Kosovo, “to organise an immediate evacuation of the families in these two camps to a non- toxic site, followed by medical treatment.” He concluded his 2009 letter stating, “this is the least we can do to ensure healthy lives for this European community.”⁶⁵ Unfortunately, it took several more years from that point for the RAE residents to be completely relocated.

⁶⁰ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24319&LangID=E>.

⁶¹ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24784>.

⁶² See https://www.ohchr.org/Documents/Issues/ToxicWastes/Communications/OL_OTH_24.12.2018_69.2_018_Response.pdf.

⁶³ WHO, UNICEF; UNEP; OHCHR; UNHCR; UNDP; The letters can be consulted here - <https://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/LeadContaminationKosovo.aspx>.

⁶⁴ See <https://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/LeadContaminationKosovo.aspx>.

⁶⁵ See <https://rm.coe.int/16806db863>.

66. The Special Rapporteur on the human rights of internally displaced persons, who had visited the affected families in Mitrovica/Mitrovicë North in October 2013, expressed hope at the time that a public apology would be made to the complainants and their families and that swift action would be taken to provide redress to victims, to demonstrate that the United Nations does fully promote and ensure respect for human rights of all, particularly those of IDPs involved.

67. In 2016, United Nations Special Rapporteur on indigenous issues Rita Izsák-Ndiaye, and United Nations Special Rapporteur on the human rights of IDPs, Chaloka Beyani, made a public call upon the United Nations to implement the opinion of the HRAP, to hold UNMIK accountable for leaving Roma families exposed to lead poisoning.⁶⁶ The United Nations Special Rapporteur on minority issues stated at the time - “I am glad that justice is being now delivered to one of the most deprived communities who had to suffer conflict, displacement and negligence. The opinion of the HRAP expresses a breach of international obligations by the UNMIK and I hope that the UN will see it as an important opportunity to hold itself accountable.” This Special Rapporteur on human rights and toxics, and the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, endorsed this appeal.

68. In his 2016 thematic report on the responsibility of the United Nations towards cholera outbreak in Haiti⁶⁷, the former Special Rapporteur on extreme poverty makes a point, shared by this Special Rapporteur on human rights and toxics, stating that “it is noteworthy that the non-deceivability classification did not prevent the Human Rights Advisory Panel established by the United Nations to examine cases of alleged human rights violations in Kosovo from holding in 2016 that “UNMIK was responsible for compromising irreversibly the life, health and development potential” of the child complainants.⁶⁸

VII. Conclusions and Recommendations

69. Over the past several years, the Special Rapporteur on hazardous substances and wastes engaged in a long-standing and yet unresolved case involving 600 members of displaced Roma, Ashkali and Egyptian communities poisoned by lead and other toxic substances when housed in United Nations camps between 1999 and 2013. The camps were constructed on toxic industrial wasteland known to be contaminated since the 1970s after the community’s neighbourhood was set ablaze and their homes destroyed.

70. Following the visit of the former Special Rapporteur on internally displaced persons, a United Nations Human Rights Advisory Panel assessed the facts of the case and correctly found numerous human rights violations, including to resident’s rights to life, health, freedom from cruel and inhuman treatment, adequate housing, and to information, as well as specific rights of the child, and women. The HRAP’s 2016 analysis recommended that the United Nations take appropriate steps towards payment of adequate individual compensation to 138 members of the three communities and issue a public apology for having failed to comply with human rights standards, as part of an effective remedy. In response, the United Nations established a “Trust Fund” to help fund community-based assistance projects and made a statement of deep regret, without the possibility of individual compensation or an apology. Funding for the Trust Fund was to be provided through voluntary contributions by States and others.

71. The Special Rapporteur regularly engages with victims of exposure to hazardous substances, the vast majority of whom are unable to access an effective remedy. What stands out in this case is that neither causation nor culpability is at issue. No one is questioning that Roma, Ashkali and Egyptian women, and children, were exposed to lead and other toxic substances causing severe impacts on health, in violation of their rights to life, health, and physical integrity, among others. No one is arguing that housing the community on the toxic wasteland was necessitated or excused by the

⁶⁶ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19822&LangID=E>.

⁶⁷ A/71/367.

⁶⁸ HRAP, N.M. and Others v. UNMIK, case No. 26/08, opinion of 26 February 2016, para. 347.

circumstances. No one has questioned that it was the United Nations who housed the affected community on the site, and then failed to relocate the community for years when the harmful exposure to toxic substances known, despite relocating French peacekeeping troops a matter of weeks after they showed signs of lead poisoning. No one is questioning that the community is still suffering today from what amounts to two decades of inaction, almost entirely by the United Nations.

72. It is truly remarkable that despite so much certainty of harm, causality, and wrongdoing, the United Nations has still made no meaningful progress to provide the injured community an effective remedy. The United Nations considers that the established Trust Fund constitutes the best way forward to positively impact the health and well-being of the aforementioned communities.⁶⁹ However, to date, the Trust Fund has so far not initiated any full-fledged activities due to a dramatic lack of resources. The United Nations Trust Fund for victims of lead poisoning in Kosovo has received an appalling single, solitary contribution of US\$10,000. No contribution has been made by any Member State of the OECD. This cannot be explained by the fiscal strains brought by the COVID-19 pandemic, as contributions were solicited since 2017. The trust fund for victims of the Haiti cholera epidemic received millions from dozens of States and other entities during this period, yet only one meagre contribution has been made to this United Nations Trust Fund for Kosovo, which speaks volumes of the discrimination endured by Roma, Ashkali and Egyptian peoples. While the Special Rapporteur is dismayed at the lack of resources in the established Trust Fund and the level of disengagement of nearly every single United Nations Member State, he reiterates his previously expressed position that this does not absolve the United Nations of its responsibility towards the victims.⁷⁰

73. The RAE community is being subject to an ongoing violation of their human rights through the failure to provide them with an effective remedy. The affected communities continue to live in conditions of economic and social deprivation, lacking access and means for receiving adequate medical services. The need to provide the victims, who continue to face economic and social hardship, known to result from lead poisoning, in addition to grave health concerns, with individual compensation, remains as critical as ever. Without undermining the potential benefits that the Trust Fund could generate for the general wellbeing of the affected communities, the Special Rapporteur believes that the Trust Fund alone cannot wholly address the serious damage suffered by the victims, nor meet their pressing health needs.

74. A more insidious, ongoing violation is the tantalizing cruelty of an illusory promise of a brighter future, which has been dashed time and again by legalistic apologies, an aimless and hopeless Trust Fund, and silence from the international community after report after report of the profound injustice suffered by the Roma, Ashkali and Egyptian communities. While visits, reports, statements and legal opinions, the Special Rapporteur's included, have contributed to this mirage of remedy, the possibility of not meeting the community's expectations does not excuse the United Nations from directly engaging with the victims regarding what they want, need, and expect, for the wrongs they have suffered and endured. The lack of any tangible action by the United Nations comes despite clear findings of the HRAP of violations of the human rights of community members to life, freedom from inhuman and degrading treatment. The Special Rapporteur reiterates that the United Nations must engage with the victims regarding their demands and expectations and use this information to define an effective remedy for this tragedy and plan of action.

75. The Special Rapporteur continues to believe that the United Nations has the ultimate responsibility for providing remedy and assistance to victims housed by the United Nations in camps constructed on lead-contaminated toxic wasteland. In the view of the Special Rapporteur, the best way forward is for the United Nations itself to hold frank and detailed discussions with the community about their vision of an effective

⁶⁹ WHO letter, 8 October 2019,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34907>.

⁷⁰ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24319&LangID=E>.

remedy and to chart a clear path toward this outcome. The Special Rapporteur heard from community members of how, for example, they have been separated from friends and family who escaped to elsewhere in Europe when their homes were burned. It is surely conceivable to all involved that minority community members, who have struggled and endured so much discrimination in this locale, may not wish to remain part of a broader society that razed their homes, poisoned their bodies for up to thirteen years, and failed to uphold and defend its human rights for decades. Simply establishing a vague Trust Fund will not suffice.

76. The Special Rapporteur recommends that:

(a) The affected community should be diligently consulted by the United Nations on what they themselves consider an effective remedy, as no one appears to be considering what many in this marginalised and vulnerable community see as the only viable solution to their past and present situation;

(b) Drawing from these consultations, the United Nations must take immediate action to provide an effective remedy for displaced minority communities who were housed in United Nations camps constructed on toxic wasteland in Kosovo;

(c) If the community wishes to be relocated outside Kosovo, the United Nations should engage directly with relevant States with a view toward relocating the victims without further delay;

(d) The United Nations should address its responsibilities and the needs of the victims by providing the necessary resources, without any further delay, independent of any possible contributions to the Trust Fund by Member States;

(e) The United Nations, in addition to community-based projects, should offer individual compensation and a public apology;

(f) The United Nations Secretariat and other organisations comprising the United Nations family should make more vigorous use of their resources, outreach, and expertise in raising the level of attention and support attributed to the situation of victims in Kosovo and should continue to advocate for greater visibility on this issue;

(g) The government of Kosovo should be more vocal on behalf of the affected victims nationally and internationally;

(h) The United Nations must commission an independent, systematic review of relevant laws and policies that hinder access to justice and timely, effective remedies by victims of its wrongdoing, including recommendation for reconceptualising and reforming the immunity of international organizations.
