



# **Toxic Injustice**

## **Translating UN Responsibility Into Remedies for Lead-Poisoned Roma**

Harvard Law School International Human Rights Clinic  
and Opre Roma Kosovo



Cover Illustration  
Kosovo's Roma Refugees Live In Uncertainty  
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Kosovo Roma

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**Opre Roma Kosovo** is a Kosovo-based movement of Roma voices, friends and associates working towards political, social, and economic empowerment and inclusion for Roma communities in Kosovo and within the diaspora. Founded in 2021 in response to ongoing social inequalities experienced by the Roma people, Opre Roma Kosovo organizes community members around critical issues impacting them, including school segregation, census efforts, and redress of historic harms.

**The International Human Rights Clinic (IHRC) at Harvard Law School** seeks to protect and promote human rights and international humanitarian law through documentation; legal, factual, and strategic analysis; litigation before national, regional, and international bodies; treaty negotiations; and policy and advocacy initiatives. IHRC engages in innovative clinical education to develop advanced practice techniques and approaches to human rights advocacy. IHRC has a long record of advocating for the right to effective remedies for victims of human rights violations, including environmental harms resulting from extractive industries and toxic remnants of war. IHRC Clinical Instructor Beatrice Lindstrom has worked on UN accountability issues since 2010. For more information, please visit IHRC's website: <http://hrp.law.harvard.edu/clinic/>.

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The report draws from desk research, as well as documentation collected by Opre Roma Kosovo, Human Rights Watch, the UN Human Rights Advisory Panel, and the Special Rapporteur on Toxic Waste and Human Rights. The report was also informed by extensive conversations with legal representatives for the lead poisoning victims, UN legal experts, public health experts and advocates for Roma communities.

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# A NOTE ON TERMINOLOGY

**T**his report utilizes ‘Roma’ as an umbrella term to encompass Roma, Ashkali and Egyptian people in Kosovo. This conforms with approaches adopted by the United Nations and other international and European institutions, including the European Union and Council of Europe, to unify and strengthen equality for Roma communities.<sup>1</sup> This terminology is also in line with Opre Roma Kosovo’s mission to strengthen the power of broader Roma communities across Kosovo to take part in public and political life in Kosovo. We recognize that there are differing perspectives on the most inclusive way to refer to Roma, Ashkali and Egyptian people in Kosovo, who share complex commonalities and differences. By opting to conform with international approaches, we are not intending to exclude those who self-identify as Ashkali and Egyptian.

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<sup>1</sup> See e.g., *United Nations, The Role of the United Nations in Advancing Roma Inclusion, February 2013*. <https://europe.ohchr.org/Documents/Publications/RomaInclusion.pdf> (“the term “Roma” is used to refer to a number of different groups (Roma, Sinti, Gypsies, Kale, Romanichels, Beash, Ashkalis, Egyptians, Yenish, Travellers, Dom, Lom, and others) identified as at risk of discrimination or social exclusion. UN approaches in this area are broadly harmonized with those of other International institutions, including the Council of Europe, the European Union, the OSCE, and others”); The European Commission, “Roma equality, inclusion and participation in the EU”, [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu\\_en#:~:text=The%20umbrella%2Dterm%20'Roma',discussions%20commonly%20employ%20this%20terminology](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu_en#:~:text=The%20umbrella%2Dterm%20'Roma',discussions%20commonly%20employ%20this%20terminology) (“The umbrella-term ‘Roma’ encompasses diverse groups, including Roma... Ashkali, Egyptians...”); Council of Europe Descriptive Glossary of Terms Relating to Roma Issues, May 18, 2012, <http://a.cs.coe.int/team20/cahrom/documents/Glossary%20Roma%20EN%20version%2018%20May%202012.pdf> (explaining that the term “Roma” was adopted for use after extensive consideration of history and consultation with various sub-groups, and reflects a consensus view across the Council).

# ACRONYMS

<b>CPIUN</b>	1946 Convention on Privileges and Immunities of the United Nations
<b>EU</b>	European Union
<b>HRAP</b>	Human Rights Advisory Panel
<b>HRW</b>	Human Rights Watch
<b>IDPs</b>	Internally Displaced Persons
<b>KFOR</b>	International Security Force (commonly known as Kosovo Force)
<b>NATO</b>	North Atlantic Treaty Organization (also known as the North Atlantic Alliance)
<b>OLA</b>	United Nations Office of Legal Affairs
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>SRSG</b>	Special Representative of the Secretary-General
<b>STP</b>	Society for Threatened People
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNMIK</b>	United Nations Interim Administration Mission in Kosovo
<b>WHO</b>	World Health Organization



# EXECUTIVE SUMMARY

In 2016, a legal body created by the United Nations (UN) to assess the UN's own responsibility for human rights violations in Kosovo issued a landmark opinion. The Human Rights Advisory Panel (HRAP) found the UN Mission in Kosovo (UNMIK) responsible for exposing Roma communities to lead poisoning in its displacement camps, and instructed the organization to provide victims with remedies, including financial compensation.<sup>1</sup> Yet six years since the decision—and over 20 years since the UN first placed the displaced in lead-contaminated camps—the UN has failed to implement its own Panel's recommendations or provide redress to the victims.<sup>2</sup> This report provides the first comprehensive examination of the ways the UN has maneuvered legal processes to avoid taking responsibility for its wrongdoing in Kosovo. HRAP's decision was the result of a decade-long legal battle in which the UN sent the victims on a wild goose chase back and forth between its internal accountability mechanisms.<sup>3</sup> After creating the illusion of a judicial process that could provide justice, the UN subsequently disregarded HRAP's findings, leaving the victims to endure their injuries without relief or the possibility of securing it. This experience exposes broader gaps in the UN's accountability system that must be addressed for the organization to safeguard its moral standing as a champion of human rights and the rule of law.

## The UN's Responsibility for Lead Poisoning

From 1999 to 2008, UNMIK served as the de facto government of Kosovo, with a vast mandate that included the protection of human rights.<sup>4</sup> In the wake of the Kosovo war in 1999, about 8,000 Roma were forced to abandon their homes in northern Kosovo after their neighborhood, known as the Roma Mahala, was attacked and destroyed.<sup>5</sup> UNMIK housed around 600 of the displaced in several camps in an area widely known to be contaminated with lead.<sup>6</sup> The camps were intended to provide temporary shelter for 45 to 90 days, but remained open for over a decade, despite repeated warnings that the area was unfit for human habitation and presented a life-threatening emergency warranting immediate evacuation.<sup>7</sup> During this time, the IDPs lived in squalid conditions that likely increased their exposure to lead and exacerbated the effects of lead poisoning. The UN also failed to provide the IDPs with consistent access to the blood testing that is essential for diagnosing lead poisoning; failed to adequately inform them of the severe health risks they incurred; and failed to ensure access to comprehensive medical treatment for lead poisoning and its effects.

As a result, those who resided in the camps suffered extreme levels of lead poisoning, manifesting in irreversible damage to their health.<sup>8</sup> According to the U.S. Centers for Disease Control and Prevention (CDC), nearly all children who grew up in the camps had dangerous blood lead levels at some point in their childhood.<sup>9</sup> Many experienced severe health problems and developmental disabilities that last to this day.<sup>10</sup> Lead poisoning can be fatal at high levels, and numerous children and adults died in the camps from suspected lead poisoning, though the exact toll is unknown.<sup>11</sup>



Children running through the camp at Cesminluke/Česmin Lug. Copyright: Darren McColleston.

Since the closure of the last camp in 2013, human rights groups have documented persistent health issues among former camp residents that are associated with prolonged lead exposure, including seizures, memory loss, heart and kidney problems.<sup>12</sup> These conditions, and the weakened immune systems that often result from lead poisoning, now make the affected community especially vulnerable to COVID-19.<sup>13</sup> The need for effective remedies for the victims remains urgent.

## The UN's Illusory Accountability Mechanisms

This report examines the UN's legal processes, rules, and actions that enabled it to evade accountability for lead poisoning in Kosovo. The UN has well-established legal obligations to provide redress to civilians injured by its negligence, but also enjoys sweeping immunity that prevents courts from hearing suits against it. As a result, individuals injured by the UN

are forced to rely on the organization's own mechanisms for redress. Generally, the only avenue to redress is to seek compensation from the UN Office of Legal Affairs (OLA) in New York,<sup>14</sup> which makes determinations as to its own liability through a murky and discretionary claims process. In recognition of its unique role in Kosovo, the UN also established HRAP, a quasi-judicial, independent body with a mandate to decide cases concerning human rights violations committed by UNMIK.<sup>15</sup> HRAP presented a historic opportunity to enable the impartial adjudication of the UN's responsibility, and to ensure that victims of UN harms have access to remedies.

When former camp residents sought to avail themselves of these processes, however, the UN ensnared them in a decade-long legal process that sent them back and forth between OLA in New York and HRAP in Pristina, Kosovo.<sup>16</sup> After an eight-year litigation finally resulted in victory for the victims, the UN disregarded HRAP's findings and has yet to implement a single recommendation aimed at providing overdue remedies for the injuries incurred in the camps.<sup>17</sup>

*"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."*

- Baskut Tuncak, Special Rapporteur on Toxics & Human Rights (2020)

## Methodology

This report examines the victims' extended legal battle to seek justice from the UN and assesses the current state of remedies for the affected community since HRAP's 2016 decision. The report relies on desk research and interviews with human rights advocates, lawyers, medical experts, and activists who have worked with the affected community. The report also draws on fact-finding conducted by Opre Roma Kosovo, the UN Special Rapporteur on Toxics and Human Rights, Human Rights Watch and community activists over the last two decades. Finally, the report relies extensively on the documentation and evidence referred to in HRAP's 2016 opinion.

The report proceeds in four parts. Section I sets out the UN's role in subjecting the Roma IDPs to toxic levels of lead exposure, reflecting key facts available in public reports and legal opinions. Section II summarizes the ongoing injuries from lead poisoning among the former IDPs, as documented by Opre Roma Kosovo and investigations by other human rights groups in recent years. Section III recounts the legal efforts by victims to access justice, detailing the UN's extensive maneuvering to evade responsibility. Section IV reports on the UN's continued failure to implement recommendations issued by HRAP and the ongoing,

urgent case for remedies. Finally, Section V outlines the steps the UN and other actors must now take to fulfill their duty to the victims and strengthen future accountability.

## Key Findings

The report makes the following key findings:

### **1. The UN maneuvered its own accountability mechanisms to deny redress to victims of lead poisoning**

A group of former camp residents first filed claims through OLA's third-party claims process in New York in 2006, seeking compensation for their injuries.<sup>18</sup> For five years, OLA did not act on the claims, citing the complexity of the matter.<sup>19</sup> When the claimants brought their case to HRAP in 2008, UNMIK sought to keep the case from being heard by the independent body, arguing that the claimants had not exhausted other avenues since the claims were still pending with OLA.<sup>20</sup>

After HRAP disagreed and ruled the case admissible, UNMIK took the extraordinary step of changing HRAP's rules to strip it of jurisdiction over any claims that could potentially fall within OLA's purview.<sup>21</sup> UNMIK applied the new rules retroactively, forcing HRAP to revisit its admissibility decision and dismiss the case. UNMIK also introduced a new deadline for filing cases with HRAP, prohibiting the Panel from taking up cases filed after March 31, 2010.<sup>22</sup> Then, in June 2011, OLA finally summarily dismissed the claims as "not receivable."<sup>23</sup> By waiting until after the March 2010 deadline had passed to dismiss the claims, the UN's actions would have foreclosed the only other avenue available to seek redress.

Recognizing that this maneuvering would "offend basic notions of justice," however, HRAP decided to reopen the case in 2012 over UNMIK's objections.<sup>24</sup> In February 2016, after a robust legal process and the consideration of extensive evidence, HRAP delivered a decision in favor of the complainants.<sup>25</sup> The Panel found UNMIK responsible for violating numerous human rights, and recommended that the UN publicly apologize and pay adequate compensation to the complainants.<sup>26</sup>

### **2. The UN has disregarded HRAP's recommendations, again violating victims' rights to an effective remedy**

Shortly after HRAP issued its decision, UN Secretary-General António Guterres took office. In his remarks to the General Assembly on taking the oath, he emphasized the UN's need to "ensure transparency and accountability and offer protection and effective remedies to the victims" of sexual violence and exploitation committed under the UN flag, signaling a strong commitment to the principle of accountability.<sup>27</sup> But under Guterres' leadership, the UN has thus far failed to follow through on any of HRAP's recommendations, leaving the victims without redress. In place of a public apology, Guterres expressed regret for the camp residents' suffering but did not acknowledge the UN's responsibility.<sup>28</sup> While Guterres

created a trust fund “to implement community-based assistance projects [to] benefit more broadly the Roma, Ashkali, and Egyptian communities” of North Mitrovicë/Mitrovica and South Mitrovicë/Mitrovica, the UN has taken no steps to address the concrete and persistent injuries that the camp residents suffer.<sup>29</sup> Moreover, the UN has secured only one \$10,000 contribution to the trust fund,<sup>30</sup> and the fund now appears all but defunct.

### **3. Implementing HRAP’s recommendations and providing effective remedy to the affected community is both urgent and feasible**

Investigations conducted by human rights organizations and Roma activists since HRAP’s 2016 decision have documented the persistence of health problems and developmental disabilities among those who lived in the camps.<sup>31</sup> At the time of this report, they continue to struggle to access adequate healthcare and regular blood lead testing. The COVID-19 pandemic has only increased the need for effective remedies. Meanwhile, the UN could easily honor HRAP’s recommendations and provide compensation to the victims. Numerous factors specific to this case make remedies feasible, including the relatively small number of victims, the availability of extensive documentation of their injuries, and the fact that the UN’s responsibility has already been determined. The major barrier to justice is a lack of political will.

### **4. The experience of lead poisoning victims reveals broader structural problems with the UN’s accountability system that must be reformed**

The victims’ protracted battle for justice unveils deep flaws in the UN’s accountability framework and has wide-ranging repercussions beyond the lead poisoning case. Upon the conclusion of their mandate in 2016, the panelists who served with HRAP derided UNMIK’s persistent inaction and refusal to follow HRAP’s recommendations, deeming the process a “sham” and a “total failure.”<sup>32</sup> Moreover, the third-party claims system is devoid of transparency and lacks basic procedural safeguards to ensure fair consideration of claims. OLA’s handling of the claims calls into question whether the UN’s own lawyers can act as independent arbiters of the organization’s liabilities in a manner consistent with due process. It also highlights the need for an independent body that can provide transparent, impartial and fair adjudication on individuals’ claims. The creation of HRAP was an important pilot for such a mechanism. The UN’s ultimate disregard of its own body’s findings, however, underlines the need for such mechanisms to be empowered to issue binding decisions. Unless these gaps are addressed, victims of the UN’s negligence are unlikely to be able to access justice.

## **A Call to Action**

As the UN Special Rapporteur on Toxics and Human Rights observed in 2020, the Roma communities’ rights were indisputably violated in the UNMIK-managed camps.<sup>33</sup> But “[a] more insidious, ongoing violation” is that the community continues to suffer “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.”<sup>34</sup> This report acts as an urgent call for the UN and its member states to follow through on HRAP’s recommendations. The time is past due for the UN to publicly apologize to the former camp residents, provide compensation for their injuries, listen to and act on the demands of the affected families, and reform the UN’s accountability mechanisms to prevent a repetition of its record in Kosovo.

Specifically, we urge the following recommendations be implemented without further delay:

## **THE SECRETARY-GENERAL**

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As the leader of the UN, whose role includes safeguarding the values and moral authority of the organization, the Secretary-General should:

- 1.** Publicly acknowledge the UN’s responsibility and apologize to the lead poisoning victims.
- 2.** Commit to providing compensation to the victims of lead poisoning.
- 3.** Ensure adequate financing of compensation by requesting that Member States fund it through individual contributions or mandatory assessments.
- 4.** Conduct a comprehensive review of the UN’s accountability framework for remedying civilian harms, including by exploring the following reforms:
  - a.** Work with OLA to increase transparency and efficiency in the third-party claims process by clearly and publicly communicating the requirements and standards for admissibility and other procedural rules.
  - b.** Empower independent judicial bodies such as claims commissions to hear claims of UN harms and to issue legally binding decisions.

## **UNMIK**

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As the subject of the HRAP proceedings and the party directly addressed in the recommendations, UNMIK should:

- 1.** Provide adequate compensation to the victims and their families.
- 2.** Engage in meaningful consultation with the affected communities about the content of remedies.
- 3.** Report on progress in implementing HRAP’s recommendations in the SRSG’s quarterly briefings on the situation in Kosovo.

## OFFICE OF LEGAL AFFAIRS

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OLA plays a critical role in ensuring that the UN's responses to harms it has caused meet basic standards of due process and are consistent with the UN's legal framework and principles of the UN Charter, including the promotion of human rights. We urge OLA, and the UN Legal Counsel in particular, to exercise leadership to:

1. Increase transparency and efficiency in the third-party claims process by clearly and publicly communicating the requirements and standards for admissibility and other procedural rules.
2. Work with other parts of the UN system to ensure that the organization remedies harms for which it is responsible in a manner consistent with human rights law, including by issuing full apologies and providing adequate compensation.

## UN MEMBER STATES

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Under the UN's liability framework, the UN's members are collectively responsible for providing remedies for UN harms. Moreover, all Member States have an interest in preserving the legitimacy of the UN. As such, UN Member States should:

1. Call on the UN Secretariat and UNMIK to promptly implement HRAP's recommendations to protect the UN's legitimacy;
2. Contribute to the financing of compensation for the victims through the UN's trust fund or other multilateral efforts;
3. Advocate for the victims to be consulted in the design of remedies;
4. Support a comprehensive review of the UN's framework for remedying civilian harms attributable to the UN with a view to increasing transparency, impartiality and just outcomes.

## SECURITY COUNCIL

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As the oversight body for UNMIK, the UN Security Council should:

1. Call on the Secretary-General and SRSG to implement HRAP's recommendations—particularly pertaining to compensation for the victims of lead poisoning—without further delay.
2. Request reports on UNMIK's progress in implementing HRAP's recommendations in the SRSG's briefings on the situation in Kosovo.

# Mitrovicë/Mitrovica Displacement Camps



200 m



# I. THE UN'S RESPONSIBILITY FOR EXPOSING ROMA COMMUNITIES TO LEAD POISONING

**T**he UN's responsibility for violating the rights of those who suffered lead poisoning in UN-managed camps is well-settled. Numerous investigations and analyses by UN human rights monitors, independent international human rights organizations, and Roma rights groups have documented the UN's failures that resulted in harm to the displaced communities.<sup>35</sup> The UN's responsibility for those harms was also adjudicated and determined by HRAP in *N.M. v. UNMIK*.<sup>36</sup> This section recounts the key findings from those investigations and HRAP's 2016 decision.

## A. Context: The UN's Role in Kosovo

From 1999 to Kosovo's independence in 2008, the UN served as the de facto government in Kosovo. After NATO airstrikes ended the war in 1999, the UN Security Council set up an international security and civil presence to oversee the transition to democratic self-governance and a peaceful and normal life for the people of Kosovo.<sup>37</sup> While NATO's Kosovo Force (KFOR) was responsible for ensuring "public safety and order"<sup>38</sup> and "[e]stablishing a secure environment in which refugees and displaced persons can return home in safety,"<sup>39</sup> UNMIK became the interim administration. The UN Security Council vested UNMIK with full legislative and executive powers,<sup>40</sup> and a broad mandate which included "[p]rotecting and promoting human rights,"<sup>41</sup> and "[a]ssuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo."<sup>42</sup> UNMIK also pledged to exercise its powers in Kosovo in compliance with international human rights standards and principles.<sup>43</sup>

To carry out its vast civil mandate, UNMIK was organized into four main components: (1) a UN-led civil administration; (2) a UNHCR-led humanitarian assistance component (which was phased out in June 2000); (3) an institution-building component led by the Organization for Security and Co-operation in Europe (OSCE); and (4) an EU-led development and reconstruction component.<sup>44</sup> The UN Special Representative of the Secretary-General (SRSG) is the head of UNMIK and had "ultimate authority" over each of UNMIK's components.<sup>45</sup> The specific components acted as agents of UNMIK, making UNMIK legally responsible for their acts and omissions.<sup>46</sup>

## B. The UN Housed Roma IDPs in Camps Where Their Exposure to Lead Was Foreseeable

In the aftermath of NATO's intervention in Kosovo, ethnic tensions among the country's Albanians and Serbs prevailed. Caught in the middle were the Roma communities. The Roma are among the most marginalized groups in Europe and have long suffered



Cesminluke/Česmin Lug camp with the toxic Trepča slagheaps in the background.  
Copyright: Darren McColleston.

discrimination and persecution.<sup>47</sup> In June 1999, ethnic Albanians who viewed the Roma as “Serb collaborators” attacked and destroyed the historic Roma Mahala neighborhood, home to 8,000 Roma.<sup>48</sup> While many of the residents fled to neighboring countries, around 600-700 people sought refuge in UNHCR camps in Northern Kosovo.<sup>49</sup>

Between September 1999 and January 2000, UNHCR opened makeshift camps in Cesminluke/Česmin Lug and Zhikoc/Žitkovac in north Mitrovicë/Mitrovica and moved some 200 people from public buildings to these two new camps.<sup>50</sup> Other remaining IDPs spontaneously occupied abandoned army barracks in Kablare, next to Cesminluke/Česmin Lug, and Leposaviq/Leposavić, located 45 kilometers north of Mitrovicë/Mitrovica.<sup>51</sup> UNHCR managed the camps until 2001, when UNMIK took over responsibility.<sup>52</sup> From 2001 to 2008, UNMIK oversaw the administration of the camps and provided “technical and practical assistance” to camp residents.<sup>53</sup>

It was highly foreseeable that the Cesminluke/Česmin Lug, Zhikoc/Žitkovac, and Kablare camps’ proximity to the Trepča smelter would expose inhabitants to hazardous levels of lead that could result in irreversible health damage.<sup>54</sup> Lead is a poisonous metal that enters the body through contaminated air, soil and water. No levels of lead exposure are considered safe, but prolonged exposure at elevated levels is especially dangerous, causing severe and irreversible health problems including heart disease, high blood pressure, kidney failure, and difficulty with memory and concentration.<sup>55</sup> Lead exposure during pregnancy can result in stillbirth and miscarriage, and can negatively affect fetal brain development which may lead to intellectual disability.<sup>56</sup> Children absorb lead more easily than adults and are particularly vulnerable to lead poisoning.<sup>57</sup> Children can suffer permanent damage to the brain and central nervous system and impaired physical and mental development, leading to reduced educational attainment, increased irritability, and antisocial behavior.<sup>58</sup> In very severe cases, lead poisoning leads to coma, seizures, and death.<sup>59</sup>

The Cesminluke/Česmin Lug, Zhikoc/Žitkovac and Kablare camps were in close proximity to the lead-contaminated landfills of the Trepča mining complex, one of the largest lead smelters in Europe.<sup>60</sup> The Trepča smelter was a notorious source of lead pollution, as documented by scientific studies conducted since the 1970s.<sup>61</sup> In fact, the SRSG has acknowledged that it was a well-known fact before the camps were established that the Trepča smelter had “released tons of lead every day into the atmosphere” with a negative impact on the health of the nearby communities.<sup>62</sup>

While UNHCR initially established the camps as a temporary measure intended to last only 45 to 90 days,<sup>63</sup> they remained in operation for over a decade, subjecting residents to long-term lead exposure.<sup>64</sup> Throughout this time, living conditions in the camps were squalid, which likely increased the lead exposure and aggravated adverse health effects among the residents.<sup>65</sup> Residents lived in makeshift shacks without access to running water or adequate sanitation facilities needed to minimize the exposure to lead.<sup>66</sup> Dirt floors in some of the camps exposed residents directly to lead-contaminated soil.<sup>67</sup> Moreover, poor

diets were commonplace among residents, which may have facilitated the absorption of lead into the body.<sup>68</sup> Overall, the difficult living conditions are believed to have contributed to a weakening of immune systems among the residents that in turn made them more susceptible to the negative impacts of lead.<sup>69</sup>

Over the years, the toxic exposure resulted in extreme lead poisoning among many residents. Independent tests of residents' blood and hair revealed some of the highest lead levels ever recorded in humans.<sup>70</sup> Children were especially impacted. An assessment by the World Health Organization (WHO) and CDC in 2007 found that most, if not all, children living in Cesminluke/Česmin Lug and Zhikoc/Žitkovac had elevated blood levels at some point in their childhood, putting them at risk of lifetime developmental and behavioral disabilities and other health conditions.<sup>71</sup> Tests conducted on children between 2004-2008 consistently returned blood lead levels exceeding the highest level the machine could register.<sup>72</sup> Illnesses and disabilities consistent with lead poisoning are pervasive among the residents, and have resulted in several deaths.<sup>73</sup>



Camp conditions in Cesminluke/Česmin Lug. Copyright: Darren McCollester.

## C. UNMIK Ignored Urgent Warnings and Failed to Halt the Exposure to Hazardous Lead

The most important intervention to prevent lead poisoning is to halt exposure by removing the source of contamination or moving inhabitants from the toxic environment.<sup>74</sup> Yet for nearly a decade, the UN failed to evacuate the IDPs into safety or provide them with meaningful protection from the toxic lead.

After taking over the interim administration of Kosovo, UNMIK initially took limited but inadequate action to address the pollution. After an environmental audit found the smelter to be an “unacceptable source of air pollution,”<sup>75</sup> UNMIK seized control of its operations and later closed it in August 2000.<sup>76</sup> The SRSG at the time, Bernard Kouchner, stressed that “[a]s a doctor, as well as chief administrator of Kosovo, I would be derelict if I let this threat to the health of children and pregnant women continue for one more day.”<sup>77</sup>

Yet from August 2000 to 2004, UNMIK’s only action to address the continued lead exposure was to commission an internal report on lead pollution in Mitrovicë/Mitrovica that sought recommendations on how to mitigate the exposure.<sup>78</sup> As later reported by Human Rights Watch, that report revealed that lead contamination in Mitrovicë/Mitrovica still exceeded acceptable levels by 176 times in the vegetation and by 122 times in the soil.<sup>79</sup> Blood lead levels were especially high among the IDPs.<sup>80</sup> But according to former camp residents, UNMIK relayed “little or no” of such crucial information to the communities in the camps, and reportedly provided misrepresentations and misinformation about lead-related health risks during this time.<sup>81</sup>

UNMIK’s internal report on lead pollution also recommended a range of specific mitigation measures, including conducting comprehensive epidemiological studies and regular environmental sampling, undertaking periodic and systematic monitoring and treatment of children and pregnant women, and relocating camp residents to a safer area.<sup>82</sup> While the report concluded that the costs of implementing all of the strategies would exceed UNMIK’s financial capabilities,<sup>83</sup> it does not appear that UNMIK took *any* action for the next three years; UNMIK did not make the report public, refer the situation to the Security Council, or take any steps to mitigate the lead exposure in the camps.<sup>84</sup>

*“[T]his is the most serious humanitarian and environmental problem in Europe.”*

- Council of Europe Commissioner for Human Rights (2009)

In 2004, Roma activists and human rights organizations alerted the international community to cases of symptomatic lead poisoning among camp residents. People were suffering from

convulsions, disorientation, and headaches, and children were showing black gums and experiencing learning difficulties.<sup>85</sup> The death of a four-year old girl in the Zhikoc/Žitkovac camp after she was diagnosed with lead poisoning prompted the WHO to take action.<sup>86</sup> In the summer of 2004, the WHO conducted a health risk assessment in the Mitrovicë/Mitrovica IDP camps, which revealed that most children in the camps had dangerously high blood lead levels and that 80% of the soil in the camps was “unsafe” due to lead contamination.<sup>87</sup> The WHO cautioned UNMIK in July, and again in October 2004, of the severe and irreversible health effects of lead poisoning, pressing for the immediate evacuation of children and pregnant women from the camps.<sup>88</sup> The WHO was clear in its recommendations to UNMIK: the camps needed to be closed immediately.<sup>89</sup>

As news of the high levels of toxicity in the camps and their health impact on the inhabitants spread, Roma activists and international human rights organizations including Amnesty International and the International Committee of the Red Cross urged UNMIK to vacate the camps.<sup>90</sup> The UN Special Rapporteurs on Adequate Housing, Health, and Toxics and Human Rights jointly appealed to UNMIK to act swiftly and provide non-contaminated accommodations for the Roma, communities.<sup>91</sup> Similarly, the UN Special Rapporteur on the Human Right of Internally Displaced Persons implored the international community “to immediately evacuate the IDPs [...] and to provide the necessary resources for this without delay.”<sup>92</sup> Failure to act, he warned, “was tantamount to a violation of the right of the affected children to have their health and physical integrity protected.”<sup>93</sup>

In 2005—half a decade after the Roma first arrived in the camps—UNMIK organized a task force comprised by UNHCR, WHO, OSCE and KFOR to develop an evacuation plan and decrease the IDPs’ lead exposure.<sup>94</sup> The most sustainable relocation plan, the task force determined, was to facilitate the IDPs’ return to the Roma Mahala neighborhood in south Mitrovicë/Mitrovica where they previously resided.<sup>95</sup> The reconstruction of the Roma Mahala, which was largely destroyed in 1999, would take some time. The task force therefore devised a temporary solution: relocating IDPs to the Osterode military camp formerly occupied by KFOR.<sup>96</sup>

Osterode was also close to the toxic slag heaps, located a mere 150 meters from the Cesminluke/Česmin Lug camp.<sup>97</sup> After UNMIK cleaned and refurbished the camp, the WHO and a team of U.S. Army Engineers concluded that Osterode was more “lead safe” than Cesminluke/Česmin Lug because it had running water, better sanitation facilities, and concrete paving.<sup>98</sup> Between March and April 2006, the UN shut down the Zhikoc/Žitkovac and Kablare camps and moved the 593 IDPs living there to Osterode as an interim solution until the permanent Roma Mahala rehabilitation effort could be realized.<sup>99</sup> The majority of the 140 IDPs in Cesminluke/Česmin Lug, however, declined to relocate, believing that Osterode was just as contaminated.<sup>100</sup> As HRAP found in its 2016 decision, UNMIK’s depiction of Osterode as “safer” than the other existing camps turned out to be “misleading.”<sup>101</sup> In 2011, five years after the relocation, the CDC confirmed that the Osterode camp was in fact “far from lead-free,” containing “unacceptable levels of lead” in the soil.<sup>102</sup>



Child in Osterode with lead leaching out of their teeth. Copyright: Darren McCollester.

UNMIK eventually transitioned oversight responsibility for the camps to the Kosovo government following Kosovo's declaration of independence in 2008.<sup>103</sup> Finally, Cesminluke/Česmin Lug closed in 2010, and Osterode in 2012. Leposaviq/Leposavić, the camp furthest from the Trepča mine, closed in 2013—14 years after the IDPs had moved in on a supposedly temporary basis.<sup>104</sup>

#### **D. UNMIK Failed to Provide Camp Residents with Consistent Testing or Medical Treatment for Lead Poisoning**

When lead is detected in the environment, continuous testing is vital to detect elevated blood lead levels and diagnose lead poisoning. Yet UNMIK never implemented a systematic approach to test IDPs' blood lead levels or monitor their levels of lead absorption. Between 2004-2006, the WHO conducted three rounds of blood testing on about 50 children each time, and provided general assistance to the Roma communities.<sup>105</sup> UNMIK allegedly did not provide the affected IDPs or their family members with the results of the blood tests that the WHO had conducted.<sup>106</sup> Beyond this, testing was only available to a limited extent through voluntary efforts of Roma activists and health practitioners.<sup>107</sup> To the extent blood testing was conducted, it consistently revealed dangerously high blood lead levels, often exceeding the levels the medical equipment could detect.<sup>108</sup> Thirty percent of children tested between 2005-2007 had blood lead levels over 45  $\mu\text{g}/\text{dL}$ , meriting chelation therapy,<sup>109</sup> which involves administering substances whose molecules bind to and neutralize lead in the body and reduces the circulation of lead in blood.<sup>110</sup>

As HRAP noted in its 2016 *N.M. v. UNMIK* opinion, however: “UNMIK provided far from adequate medical care to the affected IDPs, including those found to have elevated lead blood levels.”<sup>111</sup> In 2006, the WHO administered chelation therapy to IDPs suffering from severe lead poisoning at Osterode as an “emergency intervention” because UNMIK had promised that “all these populations would be relocated within six months.”<sup>112</sup> Without eliminating lead exposure, however, chelation therapy may facilitate the body’s absorption of lead,<sup>113</sup> reinforcing the importance of removing any ongoing sources of lead exposure before administering chelation therapy. As the timely relocation from Osterode did not occur, WHO discontinued chelation therapy a few months after it had begun.<sup>114</sup> By failing to relocate the IDPs away from the contamination source, UNMIK effectively precluded camp residents’ access to this form of treatment as a feasible intervention.<sup>115</sup>

In addition, UNMIK’s failure to provide consistent access to adequate medical care, hygiene, and food to all camp residents, including those found to have elevated blood lead levels, while overseeing the camps likely compounded the adverse health effects of lead exposure.<sup>116</sup> Moreover, UNMIK abruptly ceased all blood testing, chelation therapy, and nutritional intervention in 2007, claiming that these medical interventions were “no longer . . . of necessity,” despite residents’ continued exposure to lead contamination.<sup>117</sup>



## II. THE ROMA COMMUNITIES SUFFER ONGOING HARMS FROM LEAD POISONING

**N**ow, more than two decades since the first IDPs were moved to the makeshift displacement camps, former camp residents experience ongoing harms from lead poisoning—harms that are compounded by the UN’s failure to provide compensation.

In recent years, investigations by Human Rights Watch, the Society for Threatened Peoples (STP), and the Special Rapporteur on Toxics and Human Rights have documented a range of ongoing medical conditions among the former camp residents that are consistent with lead poisoning.<sup>118</sup> In 2017, STP interviewed representatives from 50 Roma families who had spent years in the contaminated camps about their current health status.<sup>119</sup> STP found that the most commonly reported ongoing health issues included muscle weakness, memory problems, eye problems, immune system weakness, and intestinal issues or stomach pain—all of which are symptoms associated with lead poisoning.<sup>120</sup> Interviewees also reported that their children, some of whom were born or grew up in the camps, were experiencing memory problems, speech impairment, nervousness, stomachaches, motor deficits, seizures and behavioral problems.<sup>121</sup> Intellectual disabilities, developmental issues, and behavioral problems are common symptoms of lead poisoning in children, who are particularly susceptible to lead poisoning because they absorb lead more easily than adults.<sup>122</sup>

Human Rights Watch also interviewed 19 lead poisoning victims and their families in 2017.<sup>123</sup> One woman recounted that her son, who grew up in one of the contaminated camps and tested positive for lead poisoning when he was just nine months old, experienced regular seizures until he was seven years old.<sup>124</sup> At the age of 16, he struggled with memory loss and found it hard to pay attention in school.<sup>125</sup> Sheribane, a 45-year-old woman, told Human Rights Watch that she had tested positive for lead poisoning while living in the Zhikoc/Žitkovac camp.<sup>126</sup> She subsequently developed symptoms of lead poisoning and is now afflicted by heart and kidney problems and chronic fatigue.<sup>127</sup>

These findings were reinforced by the Special Rapporteur on Toxics and Human Rights, who gathered testimony from affected members of the Roma communities in 2019. The testimony confirmed that many former camp residents continued to experience health problems associated with lead poisoning, such as seizures, kidney disease, and behavioral and emotional challenges.<sup>128</sup>

*“[The United Nations] said they would compensate us, but they never gave us anything.”*

- Briton, former inhabitant of Zhikoc/Žitkovac camp, Interview with Opre Roma Kosovo (2022)

Recent interviews conducted by Opre Roma Kosovo in October 2022 echo findings from previous investigations: former IDPs have continued to suffer from severe health problems and socioeconomic challenges in the years since the camps closed.

Briton C., a former resident of Zhikoc/Zitkovac camp, told interviewers about a niece who died at age 10 because of medical conditions related to suspected lead poisoning.<sup>129</sup> Today, his son experiences ongoing cognitive problems linked to toxic lead exposure.<sup>130</sup> Yet the cost of medical treatment is high: “One visit to the doctor is \$300 just to do some small analyses and to see how it is progressing,” Briton C. told Opre Roma Kosovo.<sup>131</sup>

Poverty and financial barriers prevent many former camp residents who resettled in the Roma Mahala after its 2007 reconstruction from receiving necessary health services and medical treatment. The ongoing symptoms of lead poisoning and lack of access to medical care are particularly alarming in the context of the COVID-19 pandemic, as many of the resulting conditions make victims especially vulnerable to dying or suffering long-term health consequences from SARS-CoV-2.<sup>132</sup>

Many residents of the Roma Mahala live in extreme poverty, receiving limited social welfare or working in low-income jobs.<sup>133</sup> “We have to send our kids to school, so we need financial help,” Habib H., a former camp resident, told Opre Roma Kosovo.<sup>134</sup> “This is why they say Roma are not educated. It’s not that we don’t want to send kids [to school], but it’s because we don’t have any financial support.”<sup>135</sup>

Against this socioeconomic backdrop, government and non-profit programming has provided little relief for victims of lead poisoning. According to Human Rights Watch, “[w]hile the Kosovo government provides certain health services free, nearby health facilities in the [Roma Mahala] cannot provide all the services people who have suffered from lead poisoning need, and often require patients to pay for medication.”<sup>136</sup> An investigation by Advancing Together found that as of 2018, there was a lack of targeted programming to support victims of lead poisoning and that although occasionally small aid was provided to the victims by national authorities and non-profits, it was “never sufficient compared to the size of the needs for health improvement of this group of citizens, given that lead poisoning has caused serious illness and degeneration, some of which require continued medical treatment.”<sup>137</sup>

*“No one is giving us medicine for our sick kids. We’ve had no help with pills or injections, and nobody is helping with paying for tests”.*

- Hazbije H., Video interview with Human Rights Watch (2017)

Naim M., a father of seven, told Human Rights Watch that after he lost one of his daughters to lead poisoning, he continued to struggle to afford medical treatments for his wife and other daughter, who continued to suffer from adverse health effects.<sup>138</sup> As Elhame H., a young mother, put it: “if you don’t have money, the doctor will only give you the diagnosis, but you can’t buy medication.”<sup>139</sup>

For many former camp residents, adequate remedies would require the UN to follow the recommendations of its own human rights panel: provide individual compensation for victims of lead poisoning. “They said they would compensate us, but they did not give us anything,” Briton C. told Opre Roma Kosovo in October.<sup>140</sup> “We do not want this [compensation] to be sent to any NGO... [it] needs to be given to each family whose kid was sick from lead poisoning,” Habib H. said.<sup>141</sup>

# III. THE UN ESCHEWED ACCOUNTABILITY BY BLOCKING ACCESS TO JUSTICE

**F**or over a decade, the affected Roma communities have persistently sought remedies from the UN. Despite UNMIK’s obligation to comply with international human rights law, which includes the right to an effective remedy, and its own internal obligations to settle claims, the UN hindered and delayed the victims’ legal efforts at every turn. When victims sought redress through HRAP, the UN changed HRAP’s procedural rules to strip it of jurisdiction, and repeatedly sought to halt proceedings. The UN’s intransigence continuously revictimized the Roma communities by ensnaring them in a lengthy process that promised redress but ultimately helped the UN evade responsibility. Through its actions, the UN made a mockery of its own accountability mechanisms, undermining its moral standing as the international bastion for the protection and promotion of human rights.

## A. UNMIK’s Human Rights Obligations

Under international law and UN regulations, UNMIK had an obligation to protect and promote the human rights of the Roma communities, including by refraining from violating their rights in the first place, and by providing access to remedies for injuries that did occur. Security Council Resolution 1244, which established UNMIK’s mandate in Kosovo, made UNMIK responsible for “protecting and promoting human rights”<sup>142</sup> and “assuring the safe and unimpeded return of all refugees and displaced persons.”<sup>143</sup> In a separate report accompanying the resolution, then-UN Secretary-General Kofi Annan reiterated UNMIK’s human rights obligations in Kosovo, specifying that “UNMIK will be guided by internationally recognized standards of human rights as the basis for the exercise of its authority in Kosovo.”<sup>144</sup> In UNMIK Regulation No. 1999/24, *On the Law Applicable in Kosovo*, UNMIK restated its commitment to observing “internationally recognized human rights standards” as reflected in major human rights treaties and the Universal Declaration of Human Rights.<sup>145</sup> Indeed, the UN Human Rights Committee tasked with monitoring states’ compliance with the International Covenant on Civil and Political Rights, noted that the protection and promotion of human rights is “one of the main responsibilities conferred on UNMIK under Security Council resolution 1244.”<sup>146</sup> It therefore follows, the Committee continued, that UNMIK was “bound to respect and to ensure to all individuals within the territory of Kosovo and subject to their jurisdiction the rights recognized in the Covenant.”<sup>147</sup> Respect for human rights, in other words, was “duly incorporated into UNMIK’s mandate.”<sup>148</sup>

Victims of human rights violations are entitled to an effective remedy. The right is enshrined in major human rights treaties—including those binding UNMIK—and is considered customary international law.<sup>149</sup> The right to effective remedy entails both procedural and substantive aspects. Effective remedies must be “prompt, accessible, available before

[independent bodies],” and lead to “reparation and, where applicable, to cessation of the wrongdoing.”<sup>150</sup> Procedurally, it requires that victims of human rights violations are afforded access to independent dispute resolution bodies where they can obtain a fair hearing.<sup>151</sup> Substantively, it means that victims are entitled to reparations for the injuries suffered as a result of human rights violations.<sup>152</sup> The UN has defined reparations to include: compensation for material, non-material, and moral damages; rehabilitation, including medical and psychological services to victims; satisfaction that recognizes the harm done; guarantees of non-repetition to prevent future harms; and restitution to return the victim to the state they were in prior to the violation.<sup>153</sup>

*“Nobody cares about the twelve, thirteen years we have suffered in the camps. Nobody asks ‘how is your child doing? Has he healed? Does he have any problems, any impairment?’”*

- Latif M., Former camp leader in Cesminluke/Česmin Lug, Video Interview with Human Rights Watch (2017)

## B. The UN’s Accountability Framework

Despite UNMIK’s human rights obligations, the victims found themselves in a complete accountability vacuum. This stems from two primary reasons: UNMIK’s far-reaching, unchecked powers while operating as Kosovo’s de facto government, and the UN’s immunity regime, which protects the UN from suits in courts and leaves compensation for injuries to the discretion of the organization itself.<sup>154</sup>

First, UNMIK enjoyed “virtually unlimited powers”<sup>155</sup> in Kosovo without effective avenues for accountability.<sup>156</sup> The UN vested UNMIK with “all legislative and executive authority with respect to Kosovo, including the administration of the judiciary.”<sup>157</sup> Its governmental functions included law enforcement, tax collection, the adjudication of property disputes and liabilities for war damage, operation of school systems, and garbage collection.<sup>158</sup> Yet, unlike a state, UNMIK did not adhere to principles such as the separation of powers, offered no checks and balances on its extensive authority, and had no independent court system or supervisory mechanism that could foster accountability.<sup>159</sup>

The UN’s uniquely broad role in Kosovo was compounded by its general immunity from suit. The 1946 Convention on Privileges and Immunities of the United Nations (CPIUN) provides that the UN “shall enjoy immunity from every form of legal process.”<sup>160</sup> Immunity is intended to protect the UN’s ability to carry out its vital mission—including fostering international peace and security and promoting human rights—without interference from member states that might have an interest in obstructing the organization’s work.<sup>161</sup> This, in

turn, is important to ensure the UN's continued presence in some of the world's most precarious environments.<sup>162</sup> However, the UN's immunity only protects it from suit in courts and in no way relieves it from a legal responsibility to provide effective remedies to victims.

## The UN's General Accountability Mechanisms

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While protecting the UN from actions in national courts, the CPIUN importantly also requires the organization to “make provisions for appropriate modes of settlement of...disputes of a private law character.”<sup>163</sup> This obligation serves the critical purpose of ensuring that civilians injured by UN operations retain the ability to pursue compensation, in accordance with human rights law that protects the right to an effective remedy.<sup>164</sup>

While the CPIUN does not define “private law claims,” they are commonly considered to be contract or tort claims brought by private citizens against the UN,<sup>165</sup> such as “third party claims...for personal injury, illness or death” that arise from or are attributable to the UN.<sup>166</sup> Private law claims can thus be distinguished from claims that challenge the “political or policymaking functions of the Organization”<sup>167</sup> or the “actual performance of [the UN's] constitutional functions.”<sup>168</sup>

Claims for compensation filed pursuant to the CPIUN are generally decided by OLA at UN Headquarters in New York, or by local claims offices established within a particular mission.<sup>169</sup> In the peacekeeping context, the UN is also obligated to establish claims commissions to hear personal injury claims, but such commissions have never been established in practice.<sup>170</sup>

Observers have raised concerns that this system allows the UN to make partial, self-interested decisions without transparency.<sup>171</sup> As the Secretary-General has acknowledged, the process places “the investigation, processing and final adjudication of the claims entirely in the hands of the Organization.”<sup>172</sup> The defendant, namely the UN, is also the adjudicator, raising serious questions about the fairness and independence of the third-party complaint process.<sup>173</sup> In particular, the UN's lawyers—whose role is to protect the best interest of the organization—are also entrusted to make impartial determinations on claims.<sup>174</sup>

Further, since OLA does not publish decisions, it is difficult to ascertain the extent to which the UN compensates through this system.<sup>175</sup> In an analogous case where victims sought compensation for injuries resulting from the UN's negligent introduction of cholera to Haiti, however, OLA has been heavily criticized for similarly dismissing claims as “non-receivable” despite widespread agreement among legal experts that the case constituted a private law claim.<sup>176</sup>

## Additional Accountability Mechanisms in Kosovo

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In Kosovo, the UN envisioned additional mechanisms to provide more independent alternatives to the OLA process, but they too failed to provide avenues for legal recourse. A claims commission that was supposed to be established in 2000 to hear third-party

claims for personal injury, illness or death arising from or directly attributable to UNMIK or its personnel does not appear to have been established.<sup>177</sup> An Ombudsperson institution was put in place in 2000 to review abuses of authority, but in 2006, UNMIK stripped it of powers to investigate human rights abuses by international institutions, including UNMIK.<sup>178</sup>

International criticism of the accountability vacuum in Kosovo began to mount by the early 2000s. The Venice Commission, an advisory body of the Council of Europe, concluded in 2004 that UNMIK offered “no effective mechanism enabling individuals whose rights have been breached to initiate proceedings” against it.<sup>179</sup> The Commission’s report provided the impetus for the creation of HRAP in 2006. An independent, quasi-judicial body, HRAP was responsible for examining “complaints from any person or group of individuals claiming to be the victim of a [human rights] violation by UNMIK.”<sup>180</sup> HRAP was empowered to make determinations as to the admissibility and the merits of the complaint, to issue findings, and to make non-binding recommendations to UNMIK.<sup>181</sup> In contrast to the non-transparent claims process at OLA, procedures for initiating a complaint and adjudicating the cases were explicitly set out and publicly available in UNMIK Regulation No. 2006/12 and HRAP’s Rules of Procedure. Cases were litigated before a panel of three judges empowered to hold hearings, consider evidence and call witnesses.<sup>182</sup> As such, the establishment of HRAP presented an opportunity to bridge the accountability gap created by the UN’s immunity regime.

## C. Victims’ Efforts to Access Effective Remedies

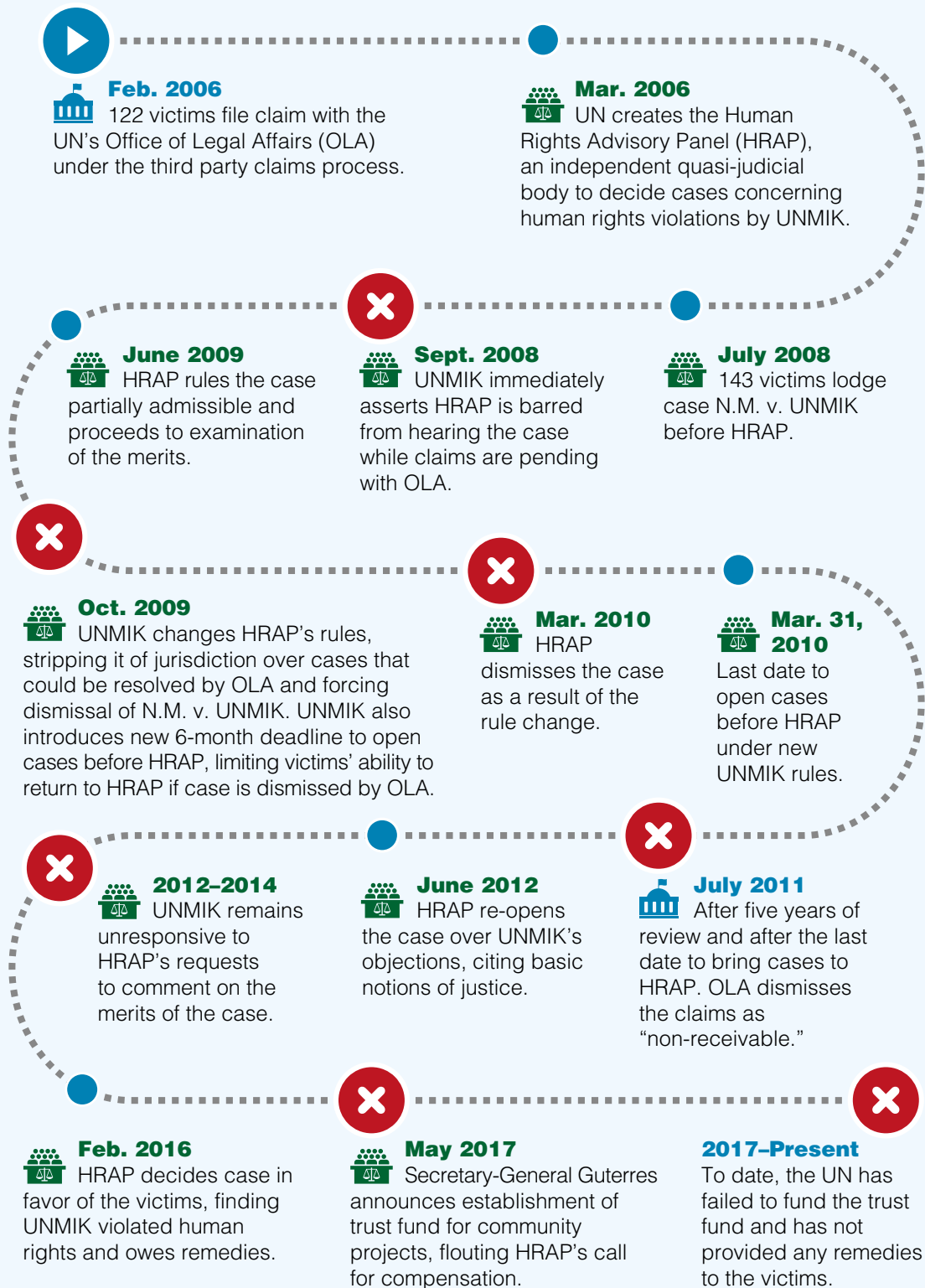
### ▶ Victims seek remedies through the third party claims process

In 2006, before HRAP was established, 122 camp residents represented by American attorney Dianne Post filed claims through the third party claims process with OLA in New York.<sup>183</sup> The complaint sought compensation for the severe and irreversible health damage they suffered due to lead poisoning, as well as for their loss of earnings, medical and rehabilitation expenses, transportation expenses associated with medical care, and burial expenses for those whose family members died as a result of lead poisoning.<sup>184</sup> The UN sat on these claims for five years without offering any transparency into its evaluation process.

In 2009, 864 camp residents represented by the British law firm Leigh Day filed another claim with OLA, seeking relocation, medical treatment and compensation for rehabilitation costs and other financial losses.<sup>185</sup>

Between 2006 and 2010, the UN responded to both groups’ requests for status updates by tersely asserting that it “was continuing its review of the matter.”<sup>186</sup> It repeatedly noted the “complexity of the matter”<sup>187</sup> and offered illusory promises of “substantive responses”<sup>188</sup> in the near future. The UN failed to apprise the victims or their legal representatives the status of any investigation and proffered no evidence that it was engaging with the purported complexity of the complaint. The UN also expressly declined to meet with Leigh Day to discuss protocols for investigation and resolution.<sup>189</sup>

# A 15-Year Quest for Justice from the UN



UN's Office of Legal Affairs (OLA)



Human Rights Advisory Panel (HRAP)



## **Victims lodge claims with HRAP**

After the UN established HRAP in 2007, a group of 143 camp residents initiated a complaint before that body in 2008.<sup>190</sup> The complainants argued that the lead-contaminated IDP camps caused detrimental damage to their health. They contended that by placing them in camps known to be highly contaminated, withholding information about health risks and required medical treatment, and failing to relocate them to a safe environment, UNMIK violated their human rights, including the right to life and the right to health.<sup>191</sup> The complainants emphasized that the deplorable living conditions in the camps not only contributed to their deteriorating health, but also denied them the right to an adequate standard of living.<sup>192</sup> They further submitted that UNMIK's failure to remove them from the lead-contaminated camps was "but one incident in a pattern of discriminatory practice by both private and public actors"<sup>193</sup> against the Roma communities in Kosovo. They claimed that all alleged human rights violations should be read in conjunction with the right to be free from discrimination.<sup>194</sup>

## **UNMIK claims non-exhaustion of other available avenues to halt HRAP proceedings**

The UN first attempted to stay the HRAP proceedings as soon as the group lodged their complaint in 2008. After two and a half years of OLA inaction on the separate third-party claims, UNMIK argued that OLA's ongoing review nonetheless meant that HRAP could not hear the case because alternative avenues to recourse had not been exhausted.<sup>195</sup>

The complainants challenged this, arguing that they had no access to effective remedies in light of OLA's prolonged inaction, the organization's immunity, and the lack of alternative institutions in Kosovo with jurisdiction over the matter.<sup>196</sup> They stressed that it had been years since they received any meaningful response from OLA or any other UN entity in regards to the matter, when they were simply told that the UN was "doing its utmost to solve the problem."<sup>197</sup>

HRAP eventually deemed the case admissible in June 2009, finding that the question of alternative remedies was more appropriately addressed on the merits.<sup>198</sup>

## **UNMIK alters HRAP's rules to strip its jurisdiction**

After HRAP ruled the case admissible and began to consider the case on the merits, UNMIK took the extraordinary step of revising the Panel's procedural rules to drastically curtail HRAP's operations. Administrative Direction No. 2009/1, issued in October 2009, significantly narrowed the scope of claims admissible by HRAP in two ways. First, the Direction stated that "any complaint that is or may become in the future subject to the UN Third Party Claims process or proceedings [...] shall be deemed inadmissible."<sup>199</sup> By excluding even such claims that theoretically could become subject to the third-party claims process, UNMIK significantly clawed back the scope of HRAP's jurisdiction, limiting it to claims that had already been dismissed through the third-party claims process or that were not conceivably disputes of a private law character.<sup>200</sup>

Second, UNMIK set an arbitrary six-month deadline for any future complaints to be submitted, stating that “no complaint shall be admissible if received by [HRAP] later than 31 March 2010.”<sup>201</sup> Accordingly, under this new rule, in the event that OLA dismissed the claims that camp residents submitted to OLA in 2006 sometime after March 31, 2010—a distinct possibility given that the claims had already been languishing at OLA for approximately three years without progress—the claimants would then be barred from bringing the case back to HRAP after they had exhausted the third-party claims process.

The Administrative Direction effectively forced HRAP to dismiss the case by “remov[ing] jurisdiction from the Panel.”<sup>202</sup> HRAP, however, reserved the right to reopen the claimants’ case even if OLA dismissed their claims sometime after March 31, 2010.<sup>203</sup> HRAP determined that because it had already deemed the complaint admissible when it was filed, any other result “would offend basic notions of justice.”<sup>204</sup>

### **OLA rejects the third-party claims**

On July 25, 2011, over five years since the first group of camp residents filed their third-party claims, OLA summarily dismissed the case in a two-page letter. Citing the “Mitrovica region[’s] long history of major industrial pollution, including lead contamination from the Trepča mine,” the UN Legal Counsel asserted that the injuries resulted from “widespread health and environmental risks arising in the context of the precarious security situation in Kosovo.”<sup>205</sup> Finding that the claims amounted to “a review of the performance of UNMIK’s mandate as the interim administration in Kosovo,” and therefore did not “constitute [claims of] private law character,” OLA rejected them as non-receivable.<sup>206</sup>

OLA’s dismissal boiled down to two paragraphs containing scant reasoning that did not articulate a legal standard or cite any relevant law in support of the decision. The cursory nature of the dismissal is particularly astonishing as OLA had continuously stressed the “complexity of the matter”<sup>207</sup> as its reason for the extensive delay.

In November 2011, Leigh Day challenged the dismissal in a letter to the Under Secretary-General.<sup>208</sup> The UN declined to engage further,<sup>209</sup> marking the end of the prospects for remedies through the third-party claims process.

### **HRAP finds in favor of the victims despite UNMIK’s stalling efforts**

Following OLA’s dismissal, the group of camp residents represented by Dianne Post requested that HRAP reopen their case. HRAP took up the case again and sought UNMIK’s engagement on the merits.<sup>210</sup> Between June 2012 and September 2014, HRAP repeatedly urged UNMIK to comment on the merits of the complaint so that the case could proceed.<sup>211</sup> UNMIK did not respond to HRAP’s repeated requests to submit comments on the merits until December 2014, delaying the proceedings by another two years.<sup>212</sup>

In February 2016—almost 10 years after the camp residents began to pursue legal action with the UN—HRAP delivered a decision in favor of the complainants.<sup>213</sup> The Panel sharply criticized UNMIK for failing to relocate the displaced families despite being aware of the health risks they suffered. It found that “through its actions and omissions, UNMIK was responsible for compromising irreversibly the life, health and development potential of the complainants that were born and grew as children in the camps.”<sup>214</sup> UNMIK had violated the complainants’ right to life, right to health, right to be free from inhuman and degrading treatment, and right to respect for private and family life.<sup>215</sup>

Moreover, the Panel found that the UN’s treatment of the Roma IDPs was *prima facie* founded on racial bias and prejudice.<sup>216</sup> The Roma communities were the only ones to be housed in the contaminated camps, and their relocation was delayed by the exceptionally slow reconstruction of the Roma Mahala relative to reconstruction for other IDP communities.<sup>217</sup> The Panel also observed that UNMIK had failed to offer an objective and reasonable justification for this situation, instead placing the blame on the “unhealthy” lifestyle of the Roma communities —excuses that themselves were “tainted by racial prejudice.”<sup>218</sup>

As a result of these findings, HRAP issued a series of recommendations, including that UNMIK take immediate measures to:

- Publicly acknowledge and apologize to the victims and their families for its failure to comply with relevant human rights standards in response to the adverse health condition caused by lead contamination in the IDP camps and the consequent harm suffered by the complainants;
- Offer adequate compensation to the complainants for material damage and moral damages suffered;
- Take appropriate steps to ensure UN bodies working with refugees and IDPs promote and ensure respect for international human rights standards as a guarantee of non-repetition.<sup>219</sup>

However, because HRAP is an advisory body, implementation of the recommendations was subject to UNMIK’s discretion. At the time of this report, the UN has failed to comply with any of HRAP’s recommendations.

## IV. THE UN HAS FAILED TO DELIVER ON HRAP'S RECOMMENDATIONS

**W**hen António Guterres took his oath of office as Secretary-General in December 2016, he avowed to promote a culture of accountability at the UN that prioritizes effective remedies for victims of violations committed under the UN flag.<sup>220</sup> Yet, six years since HRAP's decision, the UN has failed to implement any of HRAP's recommendations. This deprives the victims of their right to an effective remedy, subjecting them to "an ongoing violation of their human rights."<sup>221</sup> It also delegitimizes the UN's ability to stand for global human rights, and voids Secretary-General Guterres's pledge for greater UN accountability and credibility.

### A. UNMIK's Response to HRAP's Recommendations

As the head of UNMIK, the SRSG has authority and discretion to decide whether to act on the findings of HRAP.<sup>222</sup> In April 2016, SRSG Zahir Tanin issued a decision in response to HRAP's findings.<sup>223</sup> He expressed "regret regarding the adverse health conditions suffered by the complainants and their families at the IDP camps," but did not take responsibility or announce concrete actions to implement the recommendations for remedies.<sup>224</sup> This response falls short of the type of public apology called for by HRAP.

Moreover, while "tak[ing] note of the Panel's recommendation that compensation be paid," the SRSG insisted that the issue of compensation had already "been assessed through the existing United Nations third party claims process."<sup>225</sup> This circular assertion that the third-party claims process decision bars action on HRAP's finding is without merit. After repeatedly trying to control the outcome of the case by keeping the matter within the internal third-party claims process, OLA found that the case in fact did not concern private law and therefore fell outside the jurisdiction of the third-party claims process.<sup>226</sup> That admissibility decision has no bearing on the UN's separate obligation to provide compensation for human rights violations, which the UN specifically mandated HRAP to determine.

*"[The complainants in N.M. v. UNMIK were] victimized twice by UNMIK: by the original human rights violations committed against them and again by putting their hope and trust into this process."*

- HRAP Panelists, 2016

HRAP ceased operations when its mandate concluded in 2016. In their final annual report, the panelists expressed their deep disappointment with UNMIK's intransigence and refusal to abide HRAP's recommendations throughout its eight-year tenure.<sup>227</sup> The panelists concluded that the years of litigation before HRAP ultimately failed to provide redress for the complainants. Instead, they had been "victimized twice by UNMIK: by the original human rights violations committed against them and again by putting their hope and trust into this process."<sup>228</sup> The Panelists apologized for their own role in this "sham" process.<sup>229</sup>

## B. The UN Secretariat's Response

As the UN bears "the ultimate responsibility for providing remedy and assistance to victims," decisions on whether and how to implement HRAP's recommendations also fall to UN leadership, including the Secretary-General.<sup>230</sup> After HRAP issued its decision, top UN officials reportedly prepared a statement that would "sincerely apologize" for the UN's role in exposing the victims to lead poisoning.<sup>231</sup> According to media reports citing unnamed UN officials, this statement was repeatedly revised at the behest of OLA, which objected to any language that could be construed as an admission of responsibility.<sup>232</sup> In December 2016, then-Deputy Secretary-General Jan Eliasson reportedly finalized a draft consensus apology in response to HRAP's findings, indicating that the UN was prepared to oblige by the Panel's recommendations.<sup>233</sup> The statement was not released before Eliasson and Secretary-General Ban Ki-moon concluded their terms in December 2016, however.

*"When the UN fails to follow the recommendations with respect to violations of human rights, made by a panel in accordance with human rights law, and a panel that was created within the UN itself, it undermines the credibility of the United Nations, and I think its legitimacy when it's tackling human rights issues in general."*

- Christine Chinkin, former HRAP Panelist (2017)

When Guterres assumed the position of Secretary-General in 2017, UN Legal Counsel Miguel de Serpa Soares reportedly shifted course, recommending that the UN not apologize.<sup>234</sup> In May 2017, Guterres followed SRSR Tanin's lead and issued a muted expression of regret "for the suffering endured by all individuals living in IDP camps"<sup>235</sup>—without acknowledging the UN's responsibility for the injuries.

By not expressly admitting responsibility, Secretary-General Guterres may have sought to avoid obligating member states to finance compensation through the UN's budget.<sup>236</sup>

Guterres instead announced the creation of a Trust Fund for community-based assistance projects to be financed on a voluntary basis.<sup>237</sup> The fund was not targeted at the lead poisoning survivors, but rather designed to benefit the Roma communities in Mitrovicë/Mitrovica and Leposaviq/Leposavić “more broadly,”<sup>238</sup> addressing “the most pressing needs of the most vulnerable communities, including with respect to health services, economic development and infrastructure.”<sup>239</sup> The Trust Fund, which was devised without any consultation with the victims,<sup>240</sup> does not envision compensation to specific victims as instructed by HRAP and international human rights law. Instead, the UN has insisted that “targeted assistance through community-focused projects remains the most appropriate means of responding to the recommendations of [HRAP].”<sup>241</sup>

Moreover, as the Fund depends on voluntary contributions from member states, the UN has struggled to mobilize resources: it has so far only received an “appalling single, solitary contribution of US\$10,000.”<sup>242</sup> These limited funds, the UN has acknowledged, mean that the Trust Fund has remained inoperative since 2017.<sup>243</sup> The only activity the UN has undertaken is a series of “confidence-building projects,” including dental hygiene and breast cancer awareness campaigns that do not respond to the victims’ specific injuries.<sup>244</sup> The victims’ continuing socioeconomic hardship and lingering health concerns remain unaddressed.

### C. Critiques of the UN’s Response

Roma rights groups, human rights experts and government actors have rejected the UN’s response as inadequate, and have continued to call on the UN to fulfill its obligations to the affected community. In 2017, former HRAP panelists sent an official letter to Guterres, pointing out that the Trust Fund does not offer any compensation for UNMIK’s violations of the victims’ rights to life and health, and thus does not provide an effective remedy to the affected communities or serve as a viable resolution to the ongoing need for UN action.<sup>245</sup>

The current and former UN Special Rapporteurs on Toxics and Human Rights have repeatedly voiced disappointment in the UN’s inertia and have sought to engage the UN on its refusal to provide an effective remedy to the lead poisoning victims. The creation of the Trust Fund, the Special Rapporteur reminded the organization in September 2020, does not absolve the UN “of its responsibility towards the victims,”<sup>246</sup> who continue to suffer ongoing harms.

European governments have a particular interest in ensuring an effective remedy given their historic and ongoing support for the Roma communities in Kosovo and abroad, their geographic and political relationships with Kosovo, and their investments in ensuring a strong and accountable UN. In 2018, the European Parliament passed a resolution calling on the UN to “swiftly deliver the necessary support to the victims of lead poisoning”<sup>247</sup> in the UN-managed IDP refugee camps. A year later, in 2019, more than fifty members of the

European Parliament sent a letter to the UN Secretary-General criticizing the organization's response to HRAP's ruling as "inadequate."<sup>248</sup>

*"[T]he solution offered by the United Nations is an inoperative and fundamentally flawed Trust Fund, which provide neither justice nor the necessary elements of an effective remedy for the victims."*

- Baskut Tuncak, then UN Special Rapporteur on Toxics & Human Rights (2019)

Civil society within and outside Kosovo has similarly criticized the response. Roma rights groups who have represented and advocated for the victims over the years have denounced the UN's lack of commitment to providing compensation, medical treatment and recognition of responsibility.<sup>249</sup> Human Rights Watch has lamented the UN's creation of a virtually unfunded trust fund as the sole remedy, warning also that "[b]y refusing to acknowledge its own abuses, the UN seriously undermines its ability to press governments on their human rights violations."<sup>250</sup>

# V. NECESSARY STEPS TOWARD ACCOUNTABILITY

## A. Core Aspects of Effective Remedies for Lead Poisoning

The UN must act to provide effective remedies to the victims of lead poisoning. To fully repair the injuries suffered, remedies must respond both to the past and present injuries from lead poisoning, as well as the revictimization that stemmed from inducing the victims to place their time and hope in a legal process where the outcome was ultimately disregarded by the UN.

*“[A]t a time of backlash against human rights it is vital that the UN be seen to live up to the promise of the Charter and the obligations it has promoted: the human rights system as a whole is weakened by the failure of the UN to do this.”*

- Former HRAP Panelists (2017)

As a starting point, to comply with human rights law and ensure that the remedies will be received as justice by the affected community, the UN must place the Roma communities at the center in the design of remedies. Victims of human rights violations have a right to meaningfully participate in determining the appropriate remedies.<sup>251</sup> The Special Rapporteur on Truth, Justice, and Reparation observed that such participation ensures the remedy’s effectiveness by increasing “the likelihood that...measures will capture [the victims’] sense of justice,” facilitating “a close fit between the measures and the needs of victims.”<sup>252</sup> In order to be effective, furthermore, remedies must be appropriately adapted for vulnerable groups. They must consider the victims’ “special needs, risks, and evolving development and capacities.”<sup>253</sup>

To date, such consultations have not taken place.<sup>254</sup> Over the years, however, the victims of lead poisoning and their advocates have repeatedly sought three forms of reparations that are consistent with HRAP’s recommendations and the UN’s own definition of effective remedies: (1) a public apology, (2) compensation, and (3) access to medical treatment.<sup>255</sup>

**Apology:** The Secretary-General’s 2017 expression of regret does not meet the requirements of a full apology under human rights law. An apology must also include a clear acknowledgement of the nature, scale and duration of the harm inflicted; an admission of responsibility for that harm; and an articulation of the practical steps that have been taken to ensure that the organization will not repeat the harms.<sup>256</sup> Acknowledging the truth and



responsibility for wrongdoing is particularly essential here because the years of neglect in the camps, followed by the dashed promise of justice, have led to deep distrust of the UN amongst the affected community.<sup>257</sup> By publicly accepting responsibility, as well as naming the acts and omissions that resulted in violations of the affected communities' rights, the UN can begin to rebuild trust and signal a good faith effort to finally repair the injuries caused.

**Compensation:** Even if fully funded, the UN's community projects aimed at Roma communities at-large do not constitute adequate compensation. Under human rights law, victims should also be individually compensated for their injuries.<sup>258</sup> Accordingly, HRAP recommended that UNMIK provide "payment of adequate compensation" for both "material" and "moral" damage.<sup>259</sup> Compensation is also consistent with the UN's treaty obligations and its own legal liability regime.<sup>260</sup> It is especially important where victims cannot be restored to the situation they were in prior to the violation<sup>261</sup>—as is the case with lead poisoning, which leads to irreversible and permanent harm. Moreover, compensation could go a long way to supporting improved access to adequate medicine, healthy food, and social services that are needed to mitigate the impacts of lead poisoning.

**Medical Treatment:** Finally, victims have articulated a need for continued testing of blood lead levels, and for improved access to health care. Human Rights Watch has found that "[w]hile the Kosovo government provides certain health services free, nearby health facilities in the Roma Mahala cannot provide all the services people who have suffered from lead poisoning need, and often require patients to pay for medication."<sup>262</sup> The UN should work with the Kosovo government to improve victims' access to appropriate treatment and care.

## B. The UN Could Easily Heed HRAP's Recommendations

There are several unique characteristics of the lead poisoning case that make implementation of HRAP's recommendations readily achievable.

**UN legal responsibility is established:** UN legal responsibility is established: As the UN Special Rapporteur on Toxics and Human Rights has observed, this case stands out among toxic pollution cases because "neither causation nor culpability is at issue."<sup>263</sup> The UN's legal responsibility to the victims of lead poisoning has already been litigated and determined by HRAP – the legal body mandated by the UN itself to assess its responsibility for human rights violations in Kosovo. The UN, therefore, need not be concerned that acknowledging its responsibility through a full apology or payment of compensation would set a precedent for having to compensate in other situations where liability has not been determined.

**There is a relatively small, fixed number of victims:** The UN has documented that approximately 600 people lived in the lead-contaminated camps.<sup>264</sup> Relative to other mass injury cases, this is a small and well-documented class of victims. Based on interviews with

previous camp leaders, the identities of the camp residents have been recorded over the years and are likely reflected in existing documentation.<sup>265</sup> While the residents have since dispersed geographically, identifying and locating the affected individuals, consulting them about their needs, and delivering compensation should be achievable without incurring high administrative costs. The total amount needed to compensate the community will also be limited by this fixed maximum number of potential recipients. With a relatively modest investment, the UN could go a long way towards strengthening its accountability and closing an ugly chapter in the organization's history.

**There is substantial proof:** Substantial documentation exists establishing hazardous lead exposure in the camps, elevated blood lead levels among the residents, and injuries consistent with lead poisoning.<sup>266</sup> HRAP reviewed medical documentation, including blood and hair tests from 143 complainants and found the evidence adequate to establish lead poisoning.<sup>267</sup> The Panel also observed that the lead exposure was not limited to the complainants, but affected all inhabitants of the camps.<sup>268</sup> Indeed, since sampling conducted in and around the camps consistently showed elevated lead levels in the dust, soil, vegetation, and atmosphere, in addition to tests on blood lead levels rarely returning results below the level known to cause intellectual and developmental disabilities, there is a strong case for compensating the camp residents at large.<sup>269</sup> In analogous situations around the world where individualized assessments of compensation are unfeasible, reparations programs often set a standard sum that is awarded to each individual or household without needing to prove the specifics of their injury.<sup>270</sup>

*“The UN’s integrity is at issue ... This ongoing inaction sends a loud message to these vulnerable communities.”*

- Baskut Tuncak, then UN Special Rapporteur on Toxics & Human Rights (2019)

Financial and practical considerations thus need not stand in the way of justice. With adequate political will, the UN and its member states could readily deliver effective remedies to the affected communities.

### C. The UN Should Bring Its Claims Process into Compliance with International Standards

While the UN's role as the civil administrator in Kosovo is unique in the organization's history, the accountability failures discussed in this report point to broader structural deficiencies in the UN's legal framework that have ramifications beyond Kosovo. As discussed in Section III(A), the UN has emphasized the importance of victims of human rights violations being

able to access remedies through a fair, impartial and effective process. Administrative proceedings such as the UN's third-party claims process could satisfy requirements of effective remedies, but they must meet certain minimum standards of due process.<sup>271</sup> Specifically, they must be accessible, affordable, prompt, legitimate, predictable, compatible with rights, and transparent.<sup>272</sup>

The lead poisoning victims' experience reveals an opaque and discretionary process that does not meet these standards. Their experience is not unique: In 2011, 5,000 victims of cholera introduced to Haiti by UN peacekeepers filed claims with the UN Stabilization Mission in Haiti (MINUSTAH) which were referred internally to OLA.<sup>273</sup> OLA reviewed the claims for 15 months without communicating with the claimants or their lawyers, then dismissed the claims as "not receivable" because the claims "would necessarily include a review of political or policy matters."<sup>274</sup> OLA rejected subsequent requests for meetings or referrals to neutral alternative dispute resolution.<sup>275</sup> These two experiences, combined with the procedural shortcomings in the claims process at large, suggest that a broader review of the system's adequacy is both urgent and necessary.<sup>276</sup> In particular, the following shortcomings merit review:

**Accessibility:** OLA does not provide publicly available instructions on how to initiate a claim for compensation, including where to file claims or what documentation to submit.

**Transparency:** OLA does not provide sufficient information throughout the claims review process. Claimants lack information about the investigatory process, the status of the review, and the evidence under consideration. In the lead poisoning case, OLA repeatedly declined requests to meet with the lawyers representing the victims and refused to share information about the protocol for investigating the claims.<sup>277</sup>

**Predictability:** OLA does not provide clear standards for admissibility or liability, nor does it set out a burden of proof that must be met. After five years of review, OLA summarily dismissed the lead poisoning claims in a letter that did not tie its dismissal to a clear legal standard, nor cite any applicable law in support of its determination.<sup>278</sup> In a rare, published decision in another case, OLA recommended compensating for a civilian injury ex gratia (without accepting legal liability) because it was deemed to be "in the interest of the organization," suggesting that political considerations loom large in determining whether to compensate for a particular claim.<sup>279</sup>

**Impartiality:** The UN's third-party claims system does not have a mechanism for challenging dismissals before an independent body. When the UN's third-party liability system last underwent review by the UN in the 1990s, the Secretary-General concluded that it was critical for the UN to ensure that claimants also have access to independent adjudication before a neutral third-party, as the process for determining liability may otherwise make the UN judge in its own case.<sup>280</sup>

*“In 2005 when I started working on this issue, I was a great supporter of the UN... The 16 years I have worked on this case meeting nothing but obstruction, silence, and lies from the UN has completely changed my attitude. No organization can police itself — that includes the UN.”*

- Dianne Post, attorney for the lead-poisoned Roma in Kosovo (2021)

## D. HRAP Offers Important Lessons for the UN

HRAP provides a rare case study into how impartial adjudication of harms caused by the UN can be operationalized while preserving the UN’s immunity from courts. HRAP’s procedural rules allowed for an adversarial process wherein both UNMIK and the claimants stood on equal ground, with opportunities to submit evidence and legal argumentation for consideration. HRAP held hearings, conducted investigations, and had the power to issue interim measures.<sup>281</sup> These aspects of HRAP’s functioning could serve as a model for future adjudicatory bodies. At the same time, the UN limited HRAP’s independence in several critical ways. These gaps should be closed in future accountability mechanisms.

**UNMIK controlled HRAP’s mandate after its review of UNMIK had begun:** While HRAP was mandated to assess UNMIK’s responsibility for human rights violations, UNMIK retained power over HRAP’s operations. This allowed UNMIK to interfere in HRAP’s ongoing work and influence the outcome of cases by revising the procedural rules to significantly weaken HRAP’s jurisdiction and power to hear specific cases.

**HRAP had limited power to compel UNMIK’s cooperation in the legal process:** HRAP could not require UNMIK to submit evidence or cooperate in investigations, which impeded fact-finding in cases including the lead poisoning case.

**HRAP did not have power to issue binding decisions:** The UN established HRAP as an advisory body, without the power to issue binding decisions as to the UN’s responsibility. Instead, the SRSG was granted exclusive authority and discretion to decide whether to act on the findings of HRAP. This discretion has proven fatal to HRAP’s ability to provide justice for victims of UN harms. During the course of its work, HRAP decided 355 cases on the merits.<sup>282</sup> Of those, it found UNMIK responsible for human rights violations in 335 of the cases and recommended concrete actions for UNMIK to take to provide effective remedies.<sup>283</sup> Among these decisions, “UNMIK has followed almost none of the Panel’s recommendations...resulting in no redress for the complainants.”<sup>284</sup> In its final reflections on HRAP’s operations, the Panelists somberly concluded that “due to UNMIK’s unwillingness to follow any of the Panel’s recommendations, the eight-year process of issuing admissibility decisions, opinions and recommendations was a total failure.”<sup>285</sup>

The UN's abuse of the limitations it placed on HRAP strongly indicates a need for a truly independent mechanism that can assess liability in a transparent and impartial manner, and also compel UN involvement and issue binding judgments. To strengthen accountability into the future, the UN must draw key lessons from Kosovo and implement a legal framework that comports with due process.

*“Now that the Panel has concluded its mandate, putting an end to an eight-year process of issuing admissibility decisions, opinions, and recommendations, the Panel is forced to proclaim this process a total failure. UNMIK remains as unaccountable now for the human rights violations that it committed as it was in 2004 when the Venice Commission proposed to establish a mechanism to bring some oversight to UNMIK’s compliance with human rights standards. Due to UNMIK’s unwillingness to follow any of the Panel’s recommendations and UNMIK’s general intransigence, the HRAP process has obtained no redress for the complainants. As such, they have been victimized twice by UNMIK: by the original human rights violations committed against them and again by putting their hope and trust into this process. For many years, the Panel has exhorted UNMIK and the United Nations to undertake some beneficial activity on behalf of the complainants before the HRAP’s mandate concluded; shamefully, this did not occur. Now, the Panel can only wonder what might have been possible if UNMIK had undertaken to collaborate with the Panel in good faith, instead of turning this process into a human rights minstrel show. For its part, the Panel apologizes profusely to the complainants for its role in this sham.”*

- HRAP Final Annual Report (2016)

# CONCLUSION

In his final report on the UN's failure to afford the lead poisoning victims a remedy in September 2020, the outgoing Special Rapporteur on Toxics and Human Rights issued a sharp call to action. The UN, Tuncak lamented, had caused a particularly insidious violation of the Roma victims' human rights: 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."<sup>286</sup> The UN's elaborate maneuvering to evade accountability has revictimized the victims over and over again, and rendered the organization's accountability mechanisms a sham. Six years after HRAP issued its final decision, it is time for the UN leadership to finally act and remedy the victims' ongoing injuries.

# Endnotes

- 1 N.M. v. UNMIK, Case No. 26/08, Hum. Rts. Advisory Panel, Opinion, ¶¶ 255, 349 (Feb. 26, 2016) [hereinafter N.M. v. UNMIK (2016)].
- 2 See Part IV, *infra*.
- 3 See Part III, *infra*.
- 4 N.M. v. UNMIK, ¶ 42.
- 5 *Id.* ¶¶ 42-43; HUMAN RIGHTS WATCH, KOSOVO: POISONED BY LEAD, A HEALTH AND HUMAN RIGHTS CRISIS IN MITROVICA'S ROMA CAMPS 25 (2009), [https://www.hrw.org/sites/default/files/reports/kosovo0609web\\_0.pdf](https://www.hrw.org/sites/default/files/reports/kosovo0609web_0.pdf).
- 6 See HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 6, at 4 (“The entire region has for years been known for environmental pollution caused by the mining industry”). The lead contamination in the region had been documented in scientific studies since the 1970s. See N.M. v. UNMIK (2016), ¶ 44.
- 7 See N.M. v. UNMIK (2016), ¶¶ 45, 60.
- 8 See *id.* ¶¶ 50, 66, 115, 205, 242, 253 (discussing the irreversible health consequences camp residents suffered due to lead exposure).
- 9 MARY JEAN BROWN & BARRY BROOKS, U.S. CTRS. FOR DISEASE CONTROL [CDC], RECOMMENDATIONS FOR PREVENTING LEAD POISONING AMONG THE INTERNALLY DISPLACED ROMA POPULATION IN KOSOVO 3 (2007) (“Few if any children in the camps have maintained a blood lead level <10µg/dL for their entire childhood. These children are at tremendous risk for a lifetime of developmental and behavioral disabilities and other adverse health conditions.”).
- 10 See Part II, *infra*.
- 11 See N.M. v. UNMIK (2016), ¶¶ 120-123, 204; see also Society for Threatened Peoples [STP] & the Kosovo Medical Emergency Group [KMEG], Dossier of Evidence, Lead Contaminated Camps of Internally Displaced Roma, Ashkali and Kosovan-Egyptian Families in North Mitrovica, Kosovo (June 2009), <http://www.toxicwastekills.com/downloads/Dossier%20of%20Evidence.pdf> (documenting 81 deaths in the camps between 1999-2009. The causes of the deaths are not established.).
- 12 See Part II, *infra*.
- 13 Evidence suggests that certain common adverse health conditions of lead poisoning, including chronic kidney disease, diabetes, heart conditions, and neurological conditions, are among the underlying health conditions that result in a higher risk of severe COVID-19 outcomes. See CDC, *Underlying Medical Conditions Associated with High Risk for Severe COVID-19: Information for Healthcare Providers*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-care/underlyingconditions.html>.
- 14 In peacekeeping missions, claims under a certain monetary value can also be decided by local claims units who similarly determine claims through an internal and discretionary process. See Third Party Liability: Temporal and Financial Limitations, G.A. Res. 52/247 (Jul. 17, 1998).
- 15 UNMIK Reg. No. 2006/12 on the Establishment of the Human Rights Advisory Panel, U.N. Doc. UNMIK/REG/2006/12, Mar. 23, 2006, [https://unmik.unmissions.org/sites/default/files/regulations/02english/E2006regs/RE2006\\_12.pdf](https://unmik.unmissions.org/sites/default/files/regulations/02english/E2006regs/RE2006_12.pdf), accessed Oct. 15, 2022; see also PIERRE SCHMITT, *International Dispute Settlement Mechanisms*, in ACCESS TO JUSTICE AND INTERNATIONAL ORGANIZATIONS: THE CASE OF INDIVIDUAL VICTIMS OF HUMAN RIGHTS VIOLATIONS 207 (2017).
- 16 See Part III, *infra*; N.M. v. UNMIK (2016), ¶¶ 90-94.
- 17 See Part IV, *infra*.
- 18 Mehmeti et al., Third-Party Claim for Personal Injury or Death Under Art. VIII of the Convention on Privileges and Immunities of the United Nations (2006)(on file).
- 19 See Letter from Patricia O'Brien, UN Legal Counsel, to Dianne Post (Oct. 22, 2008)(on file)[hereinafter Letter from O'Brien to Post (2008)]; Letter from Peter Taksøe-Jensen, Assistant Secretary-General for Legal Affairs to Dianne Post (Aug. 27, 2009); see also Letter from Patricia O'Brien, U.N. Legal Counsel, to Dianne Post, Attorney, Claim for Compensation on Behalf of Roma, Ashkali and Egyptian Residents of Internally Displaced Persons (“IDP”) Camps in Mitrovica, Kosovo (July 25, 2011)(dismissing claims as non-receivable five years after their filing)[hereinafter UN Third-Party Claims Dismissal].
- 20 See N.M. v. UNMIK Admissibility Decision, ¶14, Hum. Rts. Advisory Panel, (Mar. 2010) [hereinafter HRAP Admissibility Decision of March 2010].
- 21 HRAP Admissibility Decision of March 2010, ¶ 36 (finding that “[Section 2.2 of Administrative Direction No. 2009/1] has the effect of obliging the Panel to consider the UN Third Party Claims Process as an accessible and sufficient avenue.”).
- 22 Administrative Direction No. 2009/1, Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel, §2.2 (Oct. 17, 2009) (“Any complaint that is or may become in the future the subject of the UN Third Party Claims process or proceedings under section 7 of UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo of 18 August 2000, as amended, shall be deemed inadmissible for reasons that the UN Third Party Claims Process and the procedure under section 7 of Regulation No. 2000/47 are available avenues. . . .”); *id.* §5 (creating the rule barring HRAP from hearing any complaints brought after March 31, 2010) [hereinafter Administrative Direction No. 2009/1].
- 23 UN Third-Party Claims Dismissal, *supra* note 1.
- 24 HRAP Admissibility Decision of March 2010, ¶ 37 (citing the SRSG’s opposition to HRAP reopening the case); *id.*, ¶¶ 47-48 (finding the complaint “resides squarely within its mandate” and deciding to proceed with the examination of the merits.).

- 25 See *N.M. v. UNMIK* (2016), ¶ 349.
- 26 *Id.*
- 27 U.N. Secretary-General, *Secretary-General-Designate António Guterres' Remarks to the General Assembly on Taking the Oath of Office* (Dec. 12, 2016, <https://www.un.org/sg/en/content/sg/speeches/2016-12-12/secretary-general-designate-antonio-guterres-oath-office-speech>).
- 28 See Statement Attributable to the Spokesman for the Secretary-General on the Human Rights Advisory Panel's Recommendations on Kosovo (May 26, 2017) <https://www.un.org/sg/en/content/sg/statement/2017-05-26/statement-attributable-spokesman-secretary-general-human-rights>.
- 29 *Id.*; see also Baskut Tuncak (Special Rapporteur on Toxics and Human Rights), *The Human Right to an Effective Remedy: The Case for Lead-contaminated Housing in Kosovo*, ¶¶ 71-73, U.N. Doc. A/HRC/45/CRP.10 (Sept. 4, 2020), [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session45/Documents/A\\_HRC\\_45\\_CRP\\_10\\_EN.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session45/Documents/A_HRC_45_CRP_10_EN.docx) [hereinafter Tuncak, *The Human Right to an Effective Remedy*].
- 30 *Id.* ¶ 72. The contribution was made by Qatar.
- 31 See Part II, *infra*.
- 32 Human Rights Advisory Panel [HRAP], Annual Report 2015/16, ¶ 121 (June 2016) [hereinafter HRAP Final Report].
- 33 Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 2.
- 34 *Id.*, ¶ 74.
- 35 See *e.g.*, *N.M. v. UNMIK* (2016); Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29; HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5.
- 36 See generally *N.M. v. UNMIK* (2016).
- 37 S.C. Res. 1244, ¶ 10 (June 10, 1999).
- 38 *Id.* ¶ 9(d).
- 39 *Id.* ¶ 9(c).
- 40 UNMIK Regulation No. 1999/1 on the Authority of the Interim Administration in Kosovo, Section 1.1 (Jul. 25, 1999) [hereinafter UNMIK Regulation No. 1999/1]; see also *N.M. v. UNMIK* (2016), ¶ 41 (“Pursuant to Security Council Resolution No. 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo.”).
- 41 S.C. Res. 1244, *supra* note 37, ¶ 11(j).
- 42 *Id.*, ¶ 11(k); see also *N.M. v. UNMIK* (2016), ¶ 220; Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 48.
- 43 UNMIK Regulation No. 1999/1, Section 2; UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo art. 1.3. (Dec. 12, 1999), [https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999\\_24.htm](https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_24.htm). These regulations have remained in effect with regards to UNMIK through Kosovo’s declaration of independence in 2008. HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 24.
- 44 U.N. Secretary-General, *The United Nations Interim Administration Mission in Kosovo*, ¶43, U.N. Doc. S/1999/779 (July 12, 1999); *N.M. v. UNMIK* (2016), ¶ 41.
- 45 *N.M. v. UNMIK* (2016), ¶ 41; see also U.N. Secretary-General, *The United Nations Interim Administration Mission in Kosovo*, *supra* note 44, ¶¶ 43-44.
- 46 Resolution 1244 charged UNHCR “with carrying out” one of UNMIK’s core functions, namely facilitating the safe and unimpeded return of all refugees and displaced persons to their homes. S.C. Res. 1244, *supra* note 37, ¶ 11(k). Under international law, this made UNHCR an agent of UNMIK. See Draft Articles on Responsibility of International Organizations, art. 2(d) (defining agent as an entity charged with “carrying out” one of its functions). See also Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 48 (noting that “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.”); App. No. 71412/01 *Agim Behrami and Bekir Behrami v. France*, and App. No. 78166/01 *Ruzhdi Samati v. France, Germany and Norway*, Grand Chamber Decision, ¶135 (May 2, 2007) (providing that alleged human rights violations committed by KFOR were attributable to the United Nations rather than Troop Contributing Nations, as the UN Security Council, through Resolution 1244, retained ultimate authority and control over KFOR and merely delegated operational command to NATO).
- 47 See *N.M. v. UNMIK* (2016), ¶¶ 303-04, 306.
- 48 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 4.
- 49 *N.M. v. UNMIK* (2016), ¶¶ 42-43.
- 50 *Id.* ¶ 43; HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 14, 26.
- 51 *N.M. v. UNMIK* (2016), ¶ 43; HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 14, 26-27.
- 52 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 27-28 (quoting email to Human Rights Watch from Amit Singhal, Apr. 28, 2009).
- 53 *Id.* at 27. In December 2005, Norwegian Church Aid took over day-to-day management as UNMIK’s implementing agency. *Id.* at 28. Under international law, UNMIK remained legally responsible during this time. See Maya Janmyr, *Attributing Wrongful Conduct of Implementing Partners to UNHCR*, J. INT’L HUMANITARIAN LEGAL STUDIES (2014), [https://brill.com/view/journals/ihts/5/1-2/article-p42\\_3.xml?language=en](https://brill.com/view/journals/ihts/5/1-2/article-p42_3.xml?language=en).
- 54 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 22 (“[A]cademic studies during the 1980s and 1990s showed a high concentration of lead in the water, soil, and air Mitrovica, and discussed the damaging impact on health of the region’s inhabitants.”); *N.M. v. UNMIK* (2016), ¶¶ 44, 68 (noting that the smelter was a known source of lead contamination based on scientific studies carried out since the 1970s); Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 12 (“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 adults.”).
- 55 World Health Organization [WHO], *Lead Poisoning* (Oct. 11, 2021), <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>; CDC, *Health Problems Caused by Lead* (June 18, 2018), <https://www.cdc.gov/niosh/topics/lead/health.html> (accessed Oct. 17 2022).
- 56 CDC, *Childhood Lead Poisoning Prevention* (Apr. 5, 2021), <https://www.cdc.gov/nceh/lead/prevention/pregnant.htm> (accessed Oct 17, 2022); WHO, *supra* note 55; CDC, *Health Effects of Lead Exposure*, (Jan. 7, 2020), <https://www.cdc.gov/nceh/lead/prevention/health-effects.htm>, (accessed Oct. 17, 2022).
- 57 UNICEF & PURE EARTH, *THE TOXIC TRUTH: CHILDREN’S EXPOSURE TO LEAD POLLUTION UNDERMINES A GENERATION OF FUTURE POTENTIAL* 6 (2020), <https://www.unicef.org/media/73246/file/The-toxic-truth-children’s-exposure-to-lead-pollution-2020.pdf>, (accessed Oct. 18, 2022); CDC, *Health Effects of Lead Poisoning*, *supra* note 56.
- 58 UNICEF, *supra* note 57; WHO, *supra* note 55.
- 59 *Id.*
- 60 Pashko R. Camaj, *Long-term Consequences of Environmental Lead Exposure in Kosovo: Effects of Pre and Postnatal Lead Exposure in Early Adulthood*, Columbia University, 4 (2013); Jacqueline Bhabha et al., *Post-war Kosovo and its policies towards the Roma, Ashkali, and Egyptian communities*, Francois-Xavier Bagnoud Center for Health and Human Rights, 10 (July 2014), <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2464/2020/01/FXB-Kosovo-Report-July-2014.pdf>.
- 61 N.M. v. UNMIK (2016), ¶ 133 (“With respect to the present case, the complainants claim that the environmental situation complained of was not the result of a sudden and unexpected turn of events; on the contrary, it was a long-lasting and well-known situation. Given the known dangers of lead exposure and the growing evidence of lead contamination in the camps, UNMIK authorities knew or should have known of the grave danger to the IDPs’ lives. Nonetheless, they did not take any positive step to remedy the situation or to remove the IDPs from the contaminated land. Further, UNMIK failed also to inform them of the risks they were facing by living in such a toxic environment.”).
- 62 *Id.* ¶ 151.
- 63 *Id.* ¶ 45.
- 64 See UN News, *Kosovo: UN Shuttles Lead-contaminated Camp for Displaced Persons* (Oct. 8, 2010), <https://news.un.org/en/story/2010/10/355312-kosovo-un-shuttles-lead-contaminated-camp-displaced-persons>.
- 65 HUMAN RIGHTS WATCH, *POISONED BY LEAD*, *supra* note 6, at 4 (“The living conditions in the camps were very difficult from the beginning. IDPs lived in small shacks made of wood, in wooden barracks, or in metal containers. They had no access to running water, only a few hours of electricity per day, a poor diet, and could not maintain adequate personal hygiene. At the same time, the proximity of the camps to Trepca and especially the slag heaps of leaded soil exposed them to lead contamination by air, water, and soil (especially when the wind blew from the direction of the slag heaps, or when children played in that area and brought contaminated dirt back into their houses).”).
- 66 See *id.*; N.M. v. UNMIK, ¶ 45.
- 67 Mary Jean Brown et al., *Lead Poisoning Among Internally Displaced Roma, Ashkali and Egyptian Children in the United Nations-Administered Province of Kosovo*, 20 EUR. J. PUB. HEALTH 288, 289 (2010) (“[A]ll housing units in Cesmin Lug, Zitkovic and Kablar camps had some dirt floors which were contaminated by the adjacent mine tailings.”).
- 68 Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 14 (observing that poor iron or calcium deficient diets facilitate the absorption of lead, especially by children); N.M. v. UNMIK (2016), ¶ 205 (noting that “[r]esearch . . . is concordant in indicating that the adverse effects of lead are aggravated by poor hygiene and diet.”); HUMAN RIGHTS WATCH, *POISONED BY LEAD*, *supra* note 5, at 20, 43.
- 69 HUMAN RIGHTS WATCH, *POISONED BY LEAD*, *supra* note 5, at 42 (“[A]ccording to a local Serbian doctor Human Rights Watch spoke to, . . . [Roma children living in these camps] have overall weakening of their immune systems due to their difficult living conditions.”).
- 70 See N.M. v. UNMIK (2016), ¶ 115.
- 71 BROWN & BROOKS, *supra* note 9, at 3 (“Few if any children in the camps have maintained a blood lead level <10µg/dL for their entire childhood. These children are at tremendous risk for a lifetime of developmental and behavioral disabilities and other adverse health conditions.”).
- 72 See Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 26.
- 73 *Id.* ¶ 12; N.M. v. UNMIK (2016), ¶¶ 203-04. The Society for Threatened Peoples and Kosovo Medical Emergency Group have documented 85 total deaths in the camps from 1999 to 2010, 11 of whom were children under the age of 8. The precise cause of death in most of these cases has not been independently determined. STP & KMEG, *supra* note 11.
- 74 N.M. v. UNMIK (2016), ¶ 67.
- 75 Press Release, UNMIK, *UNMIK Assumes Responsibility for Operations at Zvecan Smelter*, UN Doc. UNMIK/PR/312 (Aug. 14, 2000), [https://unmik.unmissions.org/sites/default/files/312-unmik\\_assumes\\_responsibility\\_for\\_operations\\_at\\_zvecan\\_smelter.doc](https://unmik.unmissions.org/sites/default/files/312-unmik_assumes_responsibility_for_operations_at_zvecan_smelter.doc) [hereinafter UNMIK Press Release].
- 76 N.M. v. UNMIK (2016), ¶¶ 46-47; Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 12; UNMIK Press Release, *supra* note 75.
- 77 UNMIK Press Release, *supra* note 75.

- 78 See HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 23; N.M. v. UNMIK (2016), ¶¶ 48-49.
- 79 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 23.
- 80 *Id.* at 23; N.M. v. UNMIK (2016), ¶¶ 48, 72.
- 81 N.M. v. UNMIK (2016), ¶¶ 129, 219.
- 82 *Id.* ¶ 48; Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 21.
- 83 N.M. v. UNMIK (2016), ¶¶ 48-49; Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 21.
- 84 See N.M. v. UNMIK (2016), ¶ 49; Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 21 (citing HUMAN RIGHTS WATCH, POISONED BY LEAD).
- 85 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 5.
- 86 N.M. v. UNMIK (2016), ¶ 50; HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 28.
- 87 Bernard Rorke, *Kosovo Lead Poisoning: A Tragic Timeline of Poisoned Neglect*, European Roma Rights Centre (Sept. 9, 2016), <http://www.errc.org/news/kosovo-lead-poisoning-a-tragic-timeline-of-poisoned-neglect>, (accessed Mar. 10, 2020). See also N.M. v. UNMIK (2016), ¶ 50; HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 28.
- 88 N.M. v. UNMIK (2016), ¶ 50.
- 89 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 28.
- 90 Rorke, *supra* note 87.
- 91 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 57.
- 92 Press Release, Secretary General's Representative Urges Flexible Solutions to Internal Displacement in Serbia and Montenegro, UN Press Release HR/4861 (June 24, 2005), <https://www.un.org/press/en/2005/hr4861.doc.htm>.
- 93 *Id.*
- 94 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 6.
- 95 *Id.* at 45.
- 96 *Id.* at 6.; N.M. v. UNMIK (2016), ¶ 55-56.
- 97 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 6.
- 98 *Id.*; N.M. v. UNMIK (2016), ¶ 56.
- 99 N.M. v. UNMIK (2016), ¶ 57.
- 100 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 6; N.M. v. UNMIK (2016), ¶ 57.
- 101 N.M. v. UNMIK (2016), ¶ 219.
- 102 *Id.* ¶ 80.
- 103 *Id.* ¶ 181.
- 104 *Id.*
- 105 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 36; Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 24.
- 106 N.M. v. UNMIK (2016), ¶ 219.
- 107 *Id.* ¶ 217.
- 108 *Id.* ¶¶ 71-77.
- 109 *Id.* ¶ 77.
- 110 See HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 21; WHO, WHO Guideline for Clinical Management of Exposure to Lead (2021).
- 111 N.M. v. UNMIK (2016), ¶ 218.
- 112 *Id.* ¶ 60
- 113 See HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 22.
- 114 N.M. v. UNMIK (2016), ¶ 218.
- 115 See *id.* ¶ 218 ("UNMIK not only did not take proactive measures to ensure the provision of medical assistance to the complainants but also, through its failure to relocate the complainants from the contaminated camps, de facto precluded their access to the continued chelation therapy offered by the WHO.").
- 116 *Id.*
- 117 N.M. v. UNMIK (2016), ¶ 59-60
- 118 See generally STP, POISONOUS REFUGE: INCREASING SIGNS OF LONG-TERM HARM SUFFERED BY KOSOVO ROMA REFUGEES IN LEAD-CONTAMINATED UN CAMPS (2018), [https://www.gfbv.de/fileadmin/redaktion/Reporte\\_Memoranden/2018/Kosovo\\_Poisonous-Refuge\\_Report\\_STP.pdf](https://www.gfbv.de/fileadmin/redaktion/Reporte_Memoranden/2018/Kosovo_Poisonous-Refuge_Report_STP.pdf); U.N. Office of the High Commissioner for Human Rights [OHCHR], *UN must urgently provide redress for minorities placed in toxic Kosovo camps, says UN rights expert* (Mar. 13, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24319&LangID=E>; Human Rights Watch, *UN: Compensate Kosovo Lead Poisoning Victims* (Sept. 7, 2017), <https://www.hrw.org/news/2017/09/07/un-compensate-kosovo-lead-poisoning-victims>.
- 119 See STP, POISONOUS REFUGE, *supra* note 118, at 37-38.
- 120 *Id.* at 18-24.
- 121 *Id.* at 17-19, 23.
- 122 See HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 20.
- 123 Human Rights Watch, *Compensate Kosovo Lead Poisoning Victims*, *supra* note 118.
- 124 *Id.*
- 125 *Id.*
- 126 *Id.*
- 127 *Id.*

- 128 OHCHR, *supra* note 118.
- 129 Interview by Opre Roma Kosovo with Briton C., in Mitrovicë/Mitrovica, Kosovo (Oct. 19, 2022), on file with authors.
- 130 *Id.*
- 131 *Id.*
- 132 Common adverse health conditions of lead poisoning, such as chronic kidney disease, diabetes, heart conditions, and neurological conditions, are co-morbidities that result in a higher risk of severe COVID-19 outcomes. See CDC, *supra* note 13. Lead poisoning also frequently causes a weakening of the immune system, which makes victims vulnerable to COVID-19.
- 133 Interview by Opre Roma Kosovo with Briton C., *supra* note 129.
- 134 *Id.*
- 135 Advancing Together, *Report on the Situation of Lead Poisoned Victims in Mitrovica/Kosovo*, 6-7 (2018)(on file).
- 136 UN: *Compensate Kosovo Lead Poisoning Victims*, Human Rights Watch (Sept. 7, 2017), <https://www.hrw.org/news/2017/09/07/un-compensate-kosovo-lead-poisoning-victims>.
- 137 Advancing Together, *Report on the Situation of Lead Poisoned Victims in Mitrovica/Kosovo*, pp. 6-7 (2018).
- 138 Human Rights Watch, *Compensate Kosovo Lead Poisoning Victims*, *supra* note 118.
- 139 *Id.*
- 140 Interview by Opre Roma Kosovo with Briton C., *supra* note 129.
- 141 Interview by Opre Roma Kosovo with Habib H., in Mitrovicë/Mitrovica, Kosovo (Oct. 19, 2022)(on file with authors).
- 142 S.C. Res. 1244, *supra* note 37, ¶ 11(j).
- 143 *Id.* ¶ 11(k).
- 144 U.N. Secretary-General, *The United Nations Interim Administration Mission in Kosovo*, *supra* note 44, ¶42.
- 145 UNMIK Regulation No. 1999/24, *supra* note 43, §1.3 (specifying that UNMIK officers shall abide by, among others, the Universal Declaration of Human Rights, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child).
- 146 Human Rights Committee, Serbia, *Concluding Observations on Kosovo*, ¶4, CCPR/C/UNK/CO/1 (Aug. 14, 2006), <http://hrlibrary.umn.edu/hrcommittee/Serbia2006.html>.
- 147 *Id.*
- 148 N.M. v. UNMIK (2016), ¶ 221.
- 149 See Rosa Freedman, *UN Immunity or Impunity? A Human Rights Based Challenge*, 25 EUR. J. INT'L LAW 239, 241, 250-51 (2014); DINAH SHELTON, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* 18-19 (2d ed. 2005).
- 150 INTERNATIONAL COMMISSION OF JURISTS, *THE RIGHT TO A REMEDY AND REPARATION FOR GROSS HUMAN RIGHTS VIOLATIONS: PRACTITIONER'S GUIDE* No. 2 65 (2018).
- 151 SHELTON, *supra* note 149; Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 4 (“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.”).
- 152 U.N. General Assembly Resolution 60/147, *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*, U.N. Doc. A/RES/60/147, ¶ 11, 21 (March 2006) [hereinafter UN Basic Principles].
- 153 See *id.*, ¶¶19-23; Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶¶ 6-7.
- 154 See UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo, Section 3.1, UNMIK/REG/2000/47 (Aug. 18, 2000) [hereinafter UNMIK Reg. No. 2000/47].
- 155 Nicolas Lemay-Hébert, *State-Building from the Outside-In: UNMIK and its Paradox*, 20 J. PUB. & INT'L AFFAIRS 65, 67 (2009)(citing Julie Mertus, *The Impact of Intervention on Local Human Rights Culture: A Kosovo Case Study*, 1 GLOBAL REV. ETHNOPOLITICS 21, 28 (2003). See also Alexandros Yannis, *The UN as Government in Kosovo*, 10 GLOBAL GOVERNANCE 67, 69-70 (2004).
- 156 See generally Human Rights Watch, *Better Late Than Never: Enhancing the Accountability of International Institutions in Kosovo* (2007) [hereinafter Human Rights Watch, *Better Late Than Never*].
- 157 UNMIK Regulation No. 1999/1, Section 1.
- 158 Aleksandar Momirov, *Local Impact of 'UN Accountability' Under International Law: The Rise and Fall of UNMIK's Human Rights Advisory Panel*, INT'L PEACEKEEPING 3, 3-4 (2012), <https://www.tandfonline.com/doi/pdf/10.1080/13533312.2012.642139?needAccess=true> (citing the Brahimi Report).
- 159 See generally Human Rights Watch, *Better Late Than Never*, *supra* note 156; International Law Meeting Summary, *The Kosovo Human Rights Advisory Panel*, 3 (Jan. 26, 2012), <https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/260112summary.pdf>; Lemay-Hébert, *supra* note 155, at 67.
- 160 Convention on the Privileges and Immunities of the United Nations art. 2, § 2 (Feb. 31, 1946) [hereinafter CPIUN]. See also UNMIK Reg. No. 2000/47 (applying CPIUN immunity to UNMIK).
- 161 See Kristen Boon, *The United Nations as Good Samaritan: Immunity and Responsibility*, 16 CHICAGO J. INT'L . 341, 344 (2016).
- 162 See *id.* at 351-52.
- 163 CPIUN, art. 8, § 29.
- 164 See August Reinisch, *Introduction to the General Convention*, in *THE CONVENTIONS ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS AND ITS SPECIALIZED AGENCIES: A COMMENTARY* (OUP, August Reinisch, ed. 2016).

- 165 See U.N. Secretary-General, *Procedures in place for the implementation of article 8, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946*, U.N. Doc. A/C.5/49/65 (Apr. 24, 1995) [hereinafter Implementation of Section 29]; TRANSNATIONAL DEVELOPMENT CLINIC, YALE LAW SCHOOL ET AL., PEACEKEEPING WITHOUT ACCOUNTABILITY: THE UNITED NATIONS' RESPONSIBILITY FOR THE HAITIAN CHOLERA EPIDEMIC 31 (2013); Bruce Rashkow, *Remedies for Harms Caused by UN Peacekeepers*, 108 AM. J. INT'L L. UNBOUND 10 (2014).
- 166 UNMIK Reg. No. 2000/47, Section 7.
- 167 See e.g., Letter from Pedro Medrano Rojas to Special Rapporteurs Concerning Cholera in Haiti, ¶¶ 88-89 (Nov. 25, 2014) <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=32377> (last visited Jan. 12, 2022).; Implementation of Section 29, *supra* note 165, ¶ 23; Martina Buscemi, *The Non-justiciability of Third party Claims Before UN Internal Dispute Mechanisms. The 'politicization' of (financially) burdensome questions*, 20 QUESTIONS OF INT'L L. 23, 29 (2020).
- 168 Buscemi, *supra* note 167, at 31.
- 169 Memorandum from the Office of Legal Affairs to the Controller on the Payment of Settlement of Claims, United Nations Juridical Yearbook, UN Doc. ST/LEG/SER.C/39, at 383 (Feb. 23, 2001).
- 170 Report of the Secretary-General, *Model Status of Forces Agreement for Peacekeeping Operations*, U.N. Doc. A/45/594, ¶51 (Oct. 9, 1990); TRANSNATIONAL DEVELOPMENT CLINIC, *supra* note 165, at 27 (noting that the UN "has never once honored the obligation... despite having entered into 32 such agreements since 1990"); Bruce Rashkow, *Immunity of the United Nations: Practices and Challenges*, 10 INT'L ORG. L. REV. 34 (2013) ("throughout the history of United Nations peacekeeping no such commission has ever been established.")
- 171 See e.g., Beatrice Lindstrom, *When Immunity becomes Impunity: Rethinking Liabilities for UN Harms*, 24 J. INT'L PEACEKEEPING 164, 184-186 (2021); Buscemi, *supra* note 167; CARLA FERSTMAN, INTERNATIONAL ORGANIZATIONS AND THE FIGHT FOR ACCOUNTABILITY. THE REMEDIES AND THE REPARATIONS GAPS 105-107 (OUP 2017).
- 172 Report of the Secretary-General, *Administrative and Budgetary Aspects of the Financing of the United Nations Peacekeeping Operations: Financing of the United Nations Peacekeeping Operations*, U.N. Doc. A/51/389, ¶ 20 (Sep. 20, 1996).
- 173 See e.g., *id.*; FERSTMAN, *supra* note 171, at 105 ("review boards are comprised solely of UN staff, thus not meeting basic requirements for independence and impartiality"); Kristen Schmalenbach, *Judge and Jury*, 11:2 INT'L ORG. L. REV. 247 (2014)(calling on UN to "abandon this judge-and-jury approach by submitting future disputes on the legal nature of a claim to third party adjudication.").
- 174 See U.N. Office of Legal Affairs, General Legal Division, [https://legal.un.org/ola/div\\_gld.aspx?section=gld](https://legal.un.org/ola/div_gld.aspx?section=gld) (identifying the protection of the legal interest of the U.N. as a core objective, while also identifying the resolution of claims as a core function) (accessed Oct. 18, 2022).
- 175 Frédéric Mégret, *La responsabilité des Nations Unies aux temps du cholera*, 47(1) BELGIAN REV. INT'L L. 161 (2013).
- 176 See Letter from Philip Alston, Special Rapporteur on Extreme Poverty, to Deputy Secretary-General Jan Eliasson pp. 4-5 (Oct. 5, 2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3125084](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3125084) (last visited Jan. 13, 2022).
- 177 See European Commission for Democracy Through Law (Venice Commission), *Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms*, Council of Europe Opinion No. 280/2004, ¶ 61 (Oct. 11, 2004) [hereinafter Venice Commission] (noting that UNMIK relied on internal claims offices to decide personal injury claims, which provided "no opportunity for individuals to be heard or represented by legal by legal counsel in their proceedings and all decisions [were] taken by a panel of UNMIK staff members."); Human Rights Watch, *Better Late Than Never*, *supra* note 156, at 18 (finding that the claims commission that was established was unknown to the public and limited its scope to contract disputes involving UNMIK).
- 178 See Human Rights Watch, *Better Late Than Never*, *supra* note 156, at 2.
- 179 Venice Commission, *supra* note 177, ¶ 60.
- 180 UNMIK Regulation No. 2006/12 (noting that HRAP was tasked with examining "alleged violations of human rights by UNMIK").
- 181 *Id.*, Chapter 3. The advisory nature of HRAP meant that it was inherently a weaker institution that the Ombudsman that preceded it, however.
- 182 Human Rights Advisory Panel Rules of Procedure, [https://media.unmikonline.org/hrap/Documents%20HRAP/Regulations%20Eng/Rules\\_of\\_procedure.pdf](https://media.unmikonline.org/hrap/Documents%20HRAP/Regulations%20Eng/Rules_of_procedure.pdf) [hereinafter HRAP Rules of Procedure].
- 183 Mehmeti et al., Complaint (2006); see also Post, *supra* note 181. The relief requested was the maximum allowed under UN General Assembly Resolution A/RES/52/247, which sets forth parameters regarding third-party liability and compensation in disputes of a private law character)
- 184 Mehmeti et al., Complaint (2006); see also Post, *supra* note 183. The relief requested was the maximum allowed under UN General Assembly Resolution A/RES/52/247, which sets forth parameters regarding third-party liability and compensation in disputes of a private law character.
- 185 Letter from Martyn Day to Peter Taksøe-Jensen, Assistant Secretary-General for Legal Affairs (Oct. 9, 2009) (on file [hereinafter Leigh Day Complaint]).
- 186 See e.g., Letter from O'Brien to Post (Oct. 22, 2008), *supra* note 19; Letter from Taksøe-Jensen (Aug. 27, 2009), *supra* note 19; Geoffrey Robertson QC et al., Legal Opinion on Claims for Compensation on behalf of Roma, Ashkali and Egyptian residents of internally displaced persons camps in Mitrovica, Kosovo (Nov. 14, 2011) (citing correspondences dated Oct. 30, 2009; Dec. 7, 2009; Oct. 4, 2010).
- 187 Letter from O'Brien to Post (Oct. 22, 2008), *supra* note 19; Letter from Taksøe-Jensen (Aug. 27, 2009), *supra* note 19.
- 188 *Id.*

- 189 Letter from Lamberto Zannier, Special Representative to the Secretary-General to Martyn Day (Oct. 30, 2009).
- 190 *See generally*, N.M. v. UNMIK, Hum. Rts. Advisory Panel, Admissibility Decision, Case No. 26/08, ¶ 2 (June 5, 2009) [hereinafter HRAP Admissibility Decision of June 2009]. Half of the complainants were children; 75 complainants were women and girls; at 13 women delivered babies in the camps and submitted the complaint on behalf of their children.
- 191 N.M. v. UNMIK (2016), ¶¶99, 107. *See* ¶¶132-149 for a summary of the alleged human rights violations by specific treaty.
- 192 *Id.* ¶127.
- 193 *Id.*, ¶141.
- 194 *Id.*
- 195 *See* HRAP Admissibility Decision of June 2009, ¶ 43. Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel, Section 3.1 provides that the Panel may only take up a matter once all other avenues for review of the alleged violations have been pursued. UNMIK Reg. No. 2006/12, §3.1.
- 196 *Id.* ¶¶ 44-45.
- 197 *Id.* ¶ 44.
- 198 *See* HRAP Admissibility Decision of June 2009, ¶¶ 46, 79. The Panel declared a few of the individual complainants inadmissible on jurisdictional grounds; *id.* ¶¶ 15-16.
- 199 Administrative Direction No. 2009/1, Sections 2.1-2.3 (“Any complaint that is or may become in the future the subject of the UN Third Party Claims process or proceedings under section 7 of UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their personnel in Kosovo of 18 August 2000, as amended, shall be deemed inadmissible for reasons that the UN Third Party Claims Process and the procedure under section 7 of Regulation No. 2000/47 are available avenues pursuant to Section 3.1 of Regulation No. 2006/12.”)
- 200 *See* UNMIK Regulation No. 2006/12, §3.1 (declaring that HRAP may only deal with a matter after it determines that all other available avenues for review of the alleged violations have been pursued, namely when a matter has been dismissed by the UN Third Party Claims process). Alternatively, since the UN Third Party Claims process hears claims of a private law nature, HRAP is also prohibited to hear claims that could conceivably be a private law claim. It could only hear human rights violations that do not concern torts or contract claims.
- 201 Administrative Direction No. 2009/1, §5.
- 202 HRAP Admissibility Decision of Mar. 2010 (finding that “the provision has the effect of obliging the Panel to consider the UN Third Party Claims Process as an accessible and sufficient avenue.”).
- 203 *Id.* ¶ 46.
- 204 *Id.* ¶47.
- 205 U.N. Third-Party Claims Dismissal, *supra* note 19; *see also* HRAP Admissibility Decision of Mar. 2010, ¶ 21 (noting identical dismissal was sent to Leigh Day).
- 206 U.N. Third-Party Claims Dismissal *supra* note 19.
- 207 Letter from O’Brien to Post (Oct. 22, 2008), *supra* note 19; Letter from Taksøe-Jensen (Aug. 27, 2009), *supra* note 19.
- 208 Robertson, *supra* note 186.
- 209 HRAP Admissibility Decision of Mar. 2010, ¶31 (citing SRSG comment of June 4, 2012 indicating that the UN has not responded to Leigh Day’s legal opinion of November 16, 2011).
- 210 N.M. v. UNMIK (2016), ¶ 24-25.
- 211 *Id.* ¶¶ 25-30.
- 212 *Id.* ¶ 25-31.
- 213 *See id.* ¶¶ 1, 193-309. For a full list of rights violations found under various international treaties, *see id.* ¶(349):
- 214 *Id.* ¶347.
- 215 *Id.* ¶ 349.
- 216 *Id.* ¶¶ 296-309.
- 217 *Id.* ¶¶ 298-99.
- 218 *Id.* ¶ 302.
- 219 *Id.* ¶ 349. In addition, HRAP recommended that UNMIK urges UN bodies and relevant authorities in Kosovo to protect and promote the human rights of the Roma people, especially women and children, ensuring that they have a proactive role; and takes all appropriate steps towards UN bodies that ensure effective distribution of information relevant to the health and well-being of peoples under their authority and control.
- 220 Secretary-General, *Remarks to the General Assembly*, *supra* note 27.
- 221 Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶73.
- 222 *See* UNMIK Regulation No. 2006/12, §17.33.
- 223 Zahir Tanin, Special Representative to the Secretary-General, *SRSG’s decision in the complaint of N.M. and Others (no. 26/08)*, available at <https://media.unmikonline.org/hrap/Eng/Cases%20Eng/SRSGs%20Decision%2026-08.pdf>.
- 224 *Id.*
- 225 *Id.*
- 226 *See* discussion in Section III above.
- 227 HRAP Final Report, *supra* note 32, ¶119 (“In every complaint to date in which the Panel has found a violation, the Panel has recommended that UNMIK takes immediate and effective measures to implement its recommendations and to inform the complainant and the Panel about further developments in the case. However, the Panel is disappointed to report that UNMIK has followed almost none of the Panel’s recommendations.” *Id.*).

- 228 *Id.* ¶121.
- 229 *Id.*
- 230 Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶75; *see also* App. No. 71412/01 Behrami v. France, Grand Chamber Decision, ¶135 (May 2, 2007) (providing that alleged human rights violations committed by KFOR were attributable to the UN as the Security Council, through Resolution 1244, retained ultimate authority and control over KFOR and merely delegated operational command to NATO). As the leader of the UN, the Secretary-General plays an important role in ensuring compliance with the values contained in the UN Charter, including the promotion of human rights.
- 231 Rick Gladstone, *Roma Sickened in U.N. Camps Are Still Waiting for Redress*, *The New York Times* (Apr. 18, 2017), <https://www.nytimes.com/2017/04/18/world/europe/roma-gypsies-lead-poisoning-un.html>.
- 232 *Id.*
- 233 Colum Lynch, *U.N. Chief Faces Internal Criticism Over Human Rights*, *FOREIGN POLICY* (Feb. 4, 2020), <https://foreignpolicy.com/2020/02/04/un-chief-antonio-guterres-internal-criticism-human-rights/>. The draft apology was reportedly reviewed by the *New York Times*, yet Serpa Soares denied its existence.
- 234 Louis Charbonneau, *UN Balks at Justice for Kosovo Lead-Poisoning Victims*, *Human Rights Watch* (Apr. 19, 2017), <https://www.hrw.org/news/2017/04/19/un-balks-justice-kosovo-lead-poisoning-victims#>; Gladstone, *supra* note 229.
- 235 Statement Attributable to the Spokesman for the Secretary-General on the Human Rights Advisory Panel's recommendations on Kosovo, (May 26, 2017), <https://peacekeeping.un.org/en/statement-attributable-to-spokesman-secretary-general-human-rights-advisory-panels-recommendations>.
- 236 *See* Lynch, *supra* note 231. When the UN's legal liability is triggered, the UN General Assembly has an obligation to pay for those liabilities. *See* Memorandum from the Office of Legal Affairs, *United Nations Juridical Yearbook*, UN Doc. St/leg/ser.C/39, p. 383, 23 February 2001; *Effects of Awards of Compensation made by the United Nations Administrative Tribunal*, *Advisory Opinion*, *I.C.J. Reports 1954*, p. 47; *Certain Expenses of the United Nations*, *Advisory Opinion*, *I.C.J. Reports 1962*, p. 151.
- 237 Statement attributed to Spokesman, *supra* note 233.
- 238 *Id.*
- 239 *Id.*
- 240 Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶55.
- 241 Letter from Jean-Pierre Lacroix, Under-Secretary-General for Peacekeeping Operations, to Baskut Tuncak, Special Rapporteur on Toxic Wastes (Dec. 24, 2018), [https://www.ohchr.org/Documents/Issues/ToxicWaste/Communications/OL\\_OTH\\_24.12.2018\\_69.2018\\_Response.pdf](https://www.ohchr.org/Documents/Issues/ToxicWaste/Communications/OL_OTH_24.12.2018_69.2018_Response.pdf).
- 242 Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶72. The contribution has been attributed to Qatar.
- 243 Letter from Jean-Pierre Lacroix, Under-Secretary-General for Peacekeeping Operations, to Baskut Tuncak, Special Rapporteur on Toxic Wastes (Oct. 4, 2019), <https://www.ohchr.org/Documents/Issues/ToxicWaste/ResponseKosovo5Oct2018.pdf>
- 244 Letter from Jean-Pierre Lacroix (Dec. 24, 2018), *supra* note 239
- 245 Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶73.
- 246 *Id.* ¶72.
- 247 European Parliament, *European Parliament resolution of 29 November 2018 on the 2018 Commission Report on Kosovo* (2018/2149(INI)) (Nov. 29, 2018), [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0479\\_EN.html?redirect](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0479_EN.html?redirect).
- 248 Letter from the European Parliament to the UN Secretary-General (Jan. 31, 2019), <https://ergonetwork.org/wp-content/uploads/2019/02/Letter-to-Mr.-UN-Secretary-General.pdf>.
- 249 European Roma Rights Center [ERRC], *Roma Rights Organizations Condemn Lack of UN Action on Lead Poisoning in Kosovo* (June 1, 2017), available at <http://www.errc.org/press-releases/roma-rights-organizations-condemn-lack-of-un-action-on-lead-poisoning-in-kosovo>.
- 250 Charbonneau, *supra* note 234.
- 251 Bureau des Avocats Internationaux et al., *Violations of the Right to Effective Remedy: The UN's Responsibility for Cholera in Haiti*, 21, [http://hrp.law.harvard.edu/wp-content/uploads/2020/02/HLS-IHRC-IJDH-BAI-Submission-to-Special-Procedures\\_Cholera.pdf](http://hrp.law.harvard.edu/wp-content/uploads/2020/02/HLS-IHRC-IJDH-BAI-Submission-to-Special-Procedures_Cholera.pdf).
- 252 Pablo de Greiff (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non- recurrence), *Promotion of truth, justice, reparation and guarantees of non-recurrence*, U.N. Doc. A/34/62 ¶ 25 (Dec. 27, 2016), <https://undocs.org/A/HRC/34/62>.
- 253 Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶7 (citing *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, U.N. Doc. A/HRC/36/41 (Jul. 20, 2017)); Human Rights Committee, General Comment No. 31, ¶ 15; *see also* Committee on the Rights of the Child, General Comment No. 16, ¶ 31.
- 254 Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶76 (emphasizing ongoing need for consultation with the affected community); Letter from Under-Secretary-General Jean-Pierre Lacroix, to Baskut Tuncak (Oct. 5, 2018), available at <https://www.ohchr.org/Documents/Issues/ToxicWaste/ResponseKosovo5Oct2018.pdf> (responding to request for updates and making no mention of consultations).
- 255 *See e.g.*, Human Rights Watch, *Compensate Kosovo Lead Poisoning Victims*, *supra* note 118 (drawing on interviews with victims to call on the UN to pay individual compensation and ensure access to health care and education for affected children); ERRC, *supra* note 249 (joint statement by nine Roma rights groups and activists calling on the UN to make a full apology, compensate the 138 individuals represented before HRAP, and providing urgent medical

- treatment to those affected by long-term lead poisoning); Leigh Day Complaint, *supra* note 185; Special Rapporteur on Toxics, *UN Must Urgently provide redress for minorities placed in toxic Kosovo camps, says UN rights expert*, Press Release, (Mar. 13, 2019) (“After sobering discussions with victims and their families, and assessing the facts of this case, the circumstances demand individual compensation and a public apology by the United Nations, in addition to community projects.”). However, in 2019, the Special Rapporteur on Toxics and Human Rights visited Mitrovica and met with lead poisoning victims. He heard from many community members that reunification with friends and family who left for Germany and other Western European countries was a priority for the community. Tuncak, *The Human Right to An Effective Remedy*, *supra* note 29, ¶ 55. This finding reaffirms the importance of remedies to be grounded in full consultation with the victims.
- 256 Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, U.N. Doc. A/74/147, ¶ 3.
- 257 HUMAN RIGHTS WATCH, POISONED BY LEAD, *supra* note 5, at 31.
- 258 UN Basic Principles, *supra* note 150, art. IX, ¶ 20.
- 259 N.M. v. UNMIK (2016), ¶ 349.
- 260 CPIUN Section 29; G.A. Res. 54/247 (setting out financial and temporal limits on compensation for personal injury attributable to peacekeeping)).
- 261 Pablo de Greiff, *Handbook of Reparations* p.452 (2006) (defining compensation as those measures that seek to make PABLO DE GREIFF, HANDBOOK OF REPARATIONS 452 (2006) (defining compensation as those measures that seek to make up for the harms suffered through the quantification of harms), available at <https://oxford.universitypressscholarship.com/view/10.1093/0199291926.001.0001/acprof-9780199291922-chapter-13>.
- 262 Human Rights Watch, *Compensate Kosovo Lead Poisoning Victims*, *supra* note 118.
- 263 Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶ 71.
- 264 N.M. v. UNMIK (2016), ¶¶ 43, 208.
- 265 Interviews with Dzafer Buzoli and Argentina Gidžić, Roma activists who worked in the camps (on file).
- 266 *See e.g.*, N.M. v. UNMIK (2016), ¶¶ 68-81, 206.
- 267 *Id.* ¶207.
- 268 *Id.* ¶208.
- 269 *Id.* ¶¶ 68-81.
- 270 *See* Report by the Special Rapporteur on Truth, Justice, Reparation and Guarantees of Non-recurrence, Reparations for Victims of Gross Human Rights Violations and Serious Violations of International Humanitarian Law, U.N. Doc. A/69/518, ¶43 (Oct. 14, 2014), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/564/67/PDF/N1456467.pdf?OpenElement>. As HRAP observed, lack of access to consistent medical testing and treatment forms a basis for the victims’ case against the UN, and so they cannot be penalized for any gaps in documentation. N.M. v. UNMIK (2016), ¶¶ 68-81.
- 271 DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 100 (3d. ed. 2015).
- 272 *Id.*
- 273 Petition for Relief, (filed Nov. 3, 2011), <http://ijdh.org/wordpress/wp-content/uploads/2011/11/englishpetitionREDACTED.pdf>.
- 274 Letter from Patricia O’Brien, UN Under Secretary-General for Legal Affairs, to Brian Concannon, Director of IJDH (Feb. 21, 2013) (on file).
- 275 Letter from Patricia O’Brien, Under Secretary-General for Legal Affairs, to Brian Concannon, Director of IJDH (Jul. 5, 2013).
- 276 Buscemi, *supra* note 165; Boon, *supra* note 159 (“what is currently lacking within the U.N . system is a mechanism for addressing high-value torts cases brought by classes of private law claimants.”).
- 277 *See* Part III, *supra*.
- 278 *Id.* at 94.
- 279 UN Secretary-General, Administrative and Budgetary Aspects of the Financing of the United Nations Peacekeeping Operations: Financing of the United Nations Peacekeeping Operations, UN Doc. A/51/903, ¶ 20 (May 21, 1997).
- 280 HRAP Rules of Procedure, *supra* note 182..
- 281 HRAP Rules of Procedure.
- 282 *See generally* HRAP Final Report, *supra* note 32.
- 283 *Id.*
- 284 *Id.* ¶¶ 119-121).
- 285 *Id.* ¶121.
- 286 Tuncak, *The Human Right to an Effective Remedy*, *supra* note 29, ¶74.

