

# Financing Reparations Owed to Victims of Serious Violations of Human Rights Law: Lessons from the United Nations' Approach

## Background

Victims of human rights violations are entitled to effective remedies, including reparations for harms they suffer.<sup>1</sup> This submission responds to the Special Rapporteur on the promotion of truth, justice, reparation & guarantees of non-recurrence's call for inputs related to the financing of reparations owed to victims of serious violations of human rights and humanitarian law.<sup>2</sup> While much of the discussion on this topic has focused on state responsibilities, the duty to provide reparation also applies to other legal persons such as the United Nations (UN) when they commit human rights violations.<sup>3</sup> As noted by the UN Independent Expert on Haiti in 2012, where the right to an effective remedy is concerned, "the United Nations should be the first to honour these principles."<sup>4</sup>

This submission analyzes the UN's approach to financing reparations for human rights violations attributable to the organization in two influential cases: the cholera epidemic in Haiti and the lead poisoning of Roma<sup>5</sup> communities in Kosovo. The submission draws on the

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<sup>1</sup> The right to reparations has been firmly established in international human rights instruments and jurisprudence and reflects an enshrined norm of customary international law. *See e.g.*, Universal Declaration on Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2; Convention on the Elimination of Racial Discrimination, art. 6; 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 arts. I(2)(c), II(3)(b), IX(15), G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Mar. 21, 2006) [hereinafter Basic Principles]; *see generally* DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 32-85 (3d. ed 2015) (setting out the legal sources for a right to an effective remedy).

<sup>2</sup> Special Rapporteur on Truth, Justice, Reparation and Guarantees of Non-Repitition, Call for inputs: Financing of reparations owed to victims of human rights and humanitarian law, <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-financing-reparations-owed-victims-serious-violations-human-rights>.

<sup>3</sup> SHELTON, *supra* note 1, at 44-51 (discussing legal basis for responsibility of international organizations to be bound by the right to an effective remedy under human rights law); *see also* Basic Principles, *supra* note 1, at 7; Letter from the Special Rapporteur on Extreme Poverty and Human Rights *et al.*, to Secretary-General Antonio Guterres, UN Doc. AL/OTH/35/2020 (Apr. 28, 2020), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25228> (applying the right to an effective remedy to the UN in the context of the Haiti cholera epidemic)[hereinafter Communication from Special Procedures].

<sup>4</sup> Gustavo Gallón (Independent Expert on the situation of human rights in Haiti), *Report of the independent expert on the situation of human rights in Haiti*, ¶ 77, U.N. Doc. A/HRC/25/71 (Feb. 7, 2014), [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_hrc\\_25\\_71.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_25_71.pdf).

<sup>5</sup> This 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 (UN) and other international institutions to unify and strengthen equality for Roma communities. *See e.g.*, UN, The Role of the United Nations in Advancing Roma Inclusion, February 2013, <https://europe.ohchr.org/Documents/Publications/RomaInclusion.pdf>; 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); 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>. This terminology is also in line with Opre Roma Kosovo's mission to strengthen the power of broader Roma

experience of the Institute for Justice & Democracy in Haiti (IJDH), Opre Roma Kosovo, and Harvard Law School’s International Human Rights Clinic to secure remedies for victims of these harms.<sup>6</sup> In both instances, the UN has failed to meet its duty to provide reparations. The cases reveal shortcomings in the UN’s approach to financing reparations that carry lessons for other contexts. This submission calls on the UN to adopt a financing approach that prioritizes victims’ human rights and allows for the efficient and adequate funding of reparations programs, specifically through mandatory funding mechanisms.

## Response to Call for Inputs

### I. The UN’s Reparations Framework

The UN is obligated to respect human rights throughout its operations.<sup>7</sup> When the UN causes or is otherwise responsible for violations of human rights, it has a corresponding duty to provide reparations to victims.<sup>8</sup> This principle is captured in the Draft Articles on the Responsibility of International Organizations, which state that international organizations have an obligation to make full reparations for injuries caused by internationally wrongful acts.<sup>9</sup> Such

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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.

<sup>6</sup> See p. 12, *infra* for more on each organization.

<sup>7</sup> The UN Charter identifies the promotion of human rights as one of the organization’s core functions. U.N. Charter art. 1, para. 3 (“The Purposes of the United Nations are: . . . (3) To achieve international co- operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”). As UN special rapporteurs have written to the UN Secretary-General, “[i]t would go against the very object and purpose of the Charter if the United Nations itself were not required to respect the human rights law it promotes. Letter from Leilani Farha Special Rapporteur on adequate housing as a component of the right to an adequate standard of living et al. to the UN Secretary-General Ban Ki-moon, U.N. Doc. HTI 3/2014 (Sep. 25, 2014), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18990> [hereinafter “2014 Joint Allegation Letter on Haiti Cholera”]. In response, then Assistant Secretary- General Pedro Medrano Rojas affirmed the organization’s obligation to “respect, promote and encourage respect for human rights.” Letter from Pedro Medrano Rojas to Special Rapporteurs concerning Cholera in Haiti, ¶ 56 (Nov. 25, 2014), <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=32377>.) For a fuller discussion of support for the existence of a legal obligation for the UN to comply with human rights law, see generally CARLA FERSTMAN, INTERNATIONAL ORGANIZATIONS AND THE FIGHT FOR ACCOUNTABILITY: THE REMEDIES AND REPARATIONS GAP, Ch. 2 (2017).

<sup>8</sup> See FERSTMAN, *supra* note 7, at 67-92 (explaining the legal justification for this obligation); Basic Principles, *supra* note 1, ¶15 (In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.) As the UN is legally obligated to respect human rights, it also follows that it must comply with the right to an effective remedy when it violated human rights. SHELTON, *supra* note 1, 44-51 (discussing international organizations’ duty to comply with the right to remedy).

<sup>9</sup> INT’L LAW COMM’N, DRAFT ARTICLES ON THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS, WITH COMMENTARIES, art. 31 (2011), [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_11\\_2011.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf).

reparations may include, but are not limited to, compensation.<sup>10</sup> The UN has affirmed this obligation to provide reparation, including the duty to compensate individuals who suffer injuries for which the UN is legally responsible.<sup>11</sup> Under the widely ratified 1946 Convention on Privileges and Immunities of the United Nations (CPIUN), the UN has immunity from suit in national courts, but this immunity does not shield the organization from the duty to provide reparations outside of court cases.<sup>12</sup> Under section 29 of the CPIUN, the UN is required to “make provisions for appropriate modes of settlement of private law claims against it.”<sup>13</sup> In peacekeeping contexts, where the UN has a track record of human rights violations, private law claims are defined as “third-party claims for personal injury, illness or death attributable to UN peacekeeping.”<sup>14</sup> The UN itself determines if a claim will be settled under section 29, and has not provided access to independent review of such decisions.<sup>15</sup>

The UN has adopted specific rules that limit liability for private law claims, including financial and temporal caps.<sup>16</sup> The organization has taken the position that these rules prevail over the general international obligation to provide reparation.<sup>17</sup> While these rules may define the parameters for settling private law claims, however, the section 29 regime cannot be viewed as displacing the UN’s broader duty to provide reparation to victims of human rights violations attributable to the UN. While the UN has the power to deem a claim inadmissible under section 29, if the facts on which that claim was based amount to a violation of human rights, the UN would then still owe an effective remedy to victims outside of the section 29 framework.<sup>18</sup>

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<sup>10</sup> Basic Principles, *supra* note 1. In its official comments on the Draft Articles on the Responsibility of International Organizations, the UN took the position that “in the practice of the Organization to date, compensation would appear to be the only form of reparation, although restitution and satisfaction remain possible forms of reparation. Responsibility of International Organizations: Comments and Observations Received from International Organizations, U.N. Doc. A/CN.4/637/Add.1, ¶ 16 (Feb. 17, 2011).

<sup>11</sup> UN Secretary-General, Report of the Secretary-General, Administrative and Budgetary Aspects of Financing of United Nations Peacekeeping Operations, UN Doc. A/51/389, ¶ 6 (Sep. 20, 1996)(observing that the UN’s capacity to bear international rights and obligations, including the responsibility to compensate for damage caused in breach of an international obligation, is a core attribute of its international legal personality).

<sup>12</sup> Convention on the Privileges and Immunities of the United Nations, art. 2, § 2, Feb. 13, 1946, 1 U.N.T.S. 15

<sup>13</sup> *Id.* art. 8, § 29

<sup>14</sup> Model Status of Forces Agreement for Peacekeeping Operations, UN Doc. A/45/594, ¶51 (Oct. 1990).

<sup>15</sup> See U.N. Secretary-General, Procedures in Place for Implementation of Article III, Section 29, of the Convention on the Privileges and Immunities of the United Nations, ¶¶ 12-13 (describing the role of the UN Secretariat in determining settlements of tort claims); HARVARD LAW SCHOOL INTERNATIONAL HUMAN RIGHTS CLINIC & OPRE ROMA KOSOVO, TOXIC INJUSTICE: TRANSLATING UN RESPONSIBILITY INTO REMEDIES, 26 (2022) [hereinafter TOXIC INJUSTICE] (discussing the section 29 claims process based on the experiences of claimants in Haiti and Kosovo, including the UN’s refusal to refer claims to a claims commission or arbitration). Given the lack of transparency and impartial adjudication under the section 29 framework, there are reasons to question whether this regime is consistent with the right to an effective remedy. See *e.g.*, TOXIC INJUSTICE, 38-39; Beatrice Lindstrom, *When Immunity Becomes Impunity*, 24 J. INT’L PEACEKEEPING 164, 172 (2020).

<sup>16</sup> Third Party Liability: Temporal and Financial Limitations, G.A. Res. 52/247 (Jul. 17, 1998).

<sup>17</sup> Responsibility of International Organizations, *supra* note 10, ¶ 16.

<sup>18</sup> See *e.g.*, N.M. v. UNMIK, Case No. 26/08, Hum. Rts. Advisory Panel, Opinion (Feb. 26, 2016) (finding the UN owed compensation for human rights violations to victims of lead poisoning in Kosovo after they were denied access to the section 29 process at UN Headquarters); 2014 Joint Allegation Letter on Haiti Cholera, *supra* note 7 (expressing “serious concern” that as a result of the UN’s rejection of section 29 claims as “not receivable,” victims of cholera in Haiti were being denied access to legal remedies including compensation that they are entitled to under human rights law).

Depending on the circumstances of the case, fulfilling the right to an effective remedy often entails paying compensation to victims.<sup>19</sup>

When the UN's responsibility to provide an effective remedy arises, the organization has a duty to finance reparations to meet that responsibility. In the context of private law claims, the UN Office of Legal Affairs (OLA) has stated, "once the Organization incurs a legal liability, it is legally obligated to pay that liability."<sup>20</sup> This obligation extends to the UN's member states, which make up the UN's General Assembly and finance the organization through a combination of voluntary and assessed contributions.<sup>21</sup> The International Court of Justice (ICJ) has ruled in two advisory opinions that the General Assembly has no alternative but to honor obligations incurred by the United Nations.<sup>22</sup> Further, the organization has an obligation to take active steps to enable such financing. Citing both the ICJ and general principles of law, OLA has made clear that when the compensation due exceeds budgeted amounts, the General Assembly must obtain additional funds through assessed contributions from its membership.<sup>23</sup>

While these pronouncements were made in the context of the UN's private law regime, it follows from general principles of law that the same obligation exists to finance reparations for human rights violations attributable to the UN. Without a financial duty, reparation obligations—which the UN affirms as among its accepted principles—exist as a symbolic gesture only and not a practical method of redress for victims. Surveys of state practice have found that reparations programs that are not mandatorily funded are less likely to result in reparations in practice.<sup>24</sup> Yet the UN has departed from the obligation to finance reparations in its practice, opting instead to seek financing for reparations solely through voluntary contributions.

## II. The UN's Approach to Providing Reparations for Rights Violations in Practice: Two Emblematic Examples

The UN's responsibility cholera in Haiti and lead poisoning in Kosovo represent two key instances where the UN has contemplated reparations for serious human rights violations. When establishing reparations programs for the affected communities, however, the UN has failed to acknowledge legal responsibility and declined to draw on mandatorily funded budgets to finance the programs. In both Haiti and Kosovo, the organization has instead sought to finance the initiatives as charitable endeavors guided by "moral responsibility," resulting in grave failures to provide an effective remedy to the victims.

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<sup>19</sup> This was deemed to be the case in Kosovo, where the UN's Office of Legal Affairs rejected the lead poisoning claims as "non-receivable," while the Human Rights Advisory Panel deemed that the UN still owed compensation to the victims. *N.M. v. UNMIK*, *supra* note 18.

<sup>20</sup> 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, ¶13 (Feb. 23, 2001) [hereinafter OLA Memorandum] (discussing duties of the General Assembly to finance liabilities in the private law context).

<sup>21</sup> Assessed contributions are mandatory and determined by a formula that takes into account the size and strength of a country's economy. Pete Trolio, *Simplifying the UN Budget*, DEVEX (Mar. 12, 2012), <https://www.devex.com/news/simplifying-the-un-budget-77709>.

<sup>22</sup> *Effects of Awards of Compensation made by the United Nations Administrative Tribunal*, Advisory Opinion, 1954 I.C.J. Reports 47 (July 13); *Certain Expenses of the United Nations*, Advisory Opinion, 1962 I.C.J. Reports 151 (July 20).

<sup>23</sup> OLA Memorandum, *supra* note 20, ¶10.

<sup>24</sup> Pablo de Greiff (Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of non-recurrence), *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of non-recurrence*, ¶ 13, U.N. Doc. A/69/518 (Oct. 14, 2014).

## *Remedies for Cholera in Haiti*

The UN's responsibility for causing the cholera epidemic in Haiti with a myriad of resulting human rights violations is well-established.<sup>25</sup> In 2010, the UN Stabilization Mission in Haiti (MINUSTAH) triggered a devastating outbreak of cholera. The epidemic started near a MINUSTAH base in rural Haiti where UN peacekeepers from Nepal were stationed. At the time, cholera was endemic to Nepal, yet the UN did not require peacekeepers to be tested before their arrival in Haiti.<sup>26</sup> The Mission maintained dangerous sanitation conditions on its base and recklessly disposed of untreated fecal waste into Haiti's largest river system and primary water source, sparking the deadly outbreak.<sup>27</sup> A number of genetic and epidemiological studies—including one by a UN-established independent expert panel—have since affirmed that MINUSTAH was the most likely source of the cholera epidemic.<sup>28</sup>

The epidemic, which killed over 10,000 people and hospitalized over 800,000 in its first nine years,<sup>29</sup> receded in 2019 but is again resurging since late 2022.<sup>30</sup> It has resulted in widespread violations of the rights to life, health, water and sanitation, and an adequate standard of living.<sup>31</sup> Cholera has also caused derivative harm to survivors and affected communities across Haiti. Countless children have been orphaned, resulting in deep instability and lost schooling.<sup>32</sup> Impoverished families have suffered economic consequences of losing breadwinners, and struggled to pay off debt for medical care and burial expenses, plunging them

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<sup>25</sup> See Communication from Special Procedures, *supra* note 3; Philip Alston, Special Rapporteur on extreme poverty and human rights, *Extreme Poverty and Human Rights*, UN Doc. A/71/367, ¶¶13–18, 26 (Aug. 2016).

<sup>26</sup> See Alston, *supra* note 25, ¶18 (citing *Nepal: cholera outbreak in Kathmandu*, (Sep. 23, 2010 5:20 PM), <http://crofsblogs.typepad.com/h5n1/2010/09/nepal-cholera-outbreak-in-kathmandu.html>); R.R. Frerichs et al., *Nepalese origin of cholera epidemic in Haiti*, 18 CLINICAL MICROBIOLOGY & INFECTION E158, E162 (2012) (“The soldiers were not tested for cholera, either before they left Nepal or when arriving in Haiti.”).

<sup>27</sup> See ALEJANDRO CRAVIOTO ET AL., FINAL REPORT OF THE INDEPENDENT PANEL OF EXPERTS ON THE CHOLERA OUTBREAK IN HAITI (2011), at 22; Frerichs, *supra* note 26, Fig. 1 (showing a map of the camp's location); JONATHAN KATZ, THE BIG TRUCK THAT WENT BY: HOW THE WORLD CAME TO SAVE HAITI AND LEFT BEHIND A DISASTER, 229 (2013).

<sup>28</sup> See e.g., Renaud Piarroux et al., *Understanding the cholera epidemic, Haiti*, 17 EMERGING INFECTIOUS DISEASES 1161–68 (2011); CRAVIOTO ET AL., *supra* note 27, at 29; Frerichs, *supra* note 26, at E162.

<sup>29</sup> Office for the Coordination of Humanitarian Affairs, Haiti Cholera Figures, [https://reliefweb.int/sites/reliefweb.int/files/resources/ocha-hti-cholera-figures-20190131\\_en.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/ocha-hti-cholera-figures-20190131_en.pdf), accessed 1 February 2021. The official toll is likely a severe undercount, however. Luguero et al., *Mortality Rates during the Cholera Epidemic, Haiti, 2010–2011*, 22:3 EMERGING INFECTIOUS DISEASES 410 (2016), [https://wwwnc.cdc.gov/eid/article/22/3/14-1970\\_article](https://wwwnc.cdc.gov/eid/article/22/3/14-1970_article); Rick Gladstone, *Cholera Deaths in Haiti Could Far Exceed Official Count*, N.Y. TIMES, Mar. 18, 2016, <https://www.nytimes.com/2016/03/19/world/americas/cholera-deaths-in-haiti-could-far-exceed-official-count.html>).

<sup>30</sup> See Denisse Vega Ocasio et al., *Cholera Outbreak — Haiti, September 2022–January 2023*, 72(2) MORBIDITY & MORTALITY WKLY. REP. 21, 21–25 (2023) (documenting ongoing resurgence); Rubin et al., *Reemergence of Cholera in Haiti*, NEW ENGLAND J. MED. 387 (Dec. 22, 2022) <https://www.nejm.org/doi/full/10.1056/NEJMc2213908> (reporting on strain sequencing finding the 2022 resurgence was caused by a descendant of the 2010 strain introduced by the UN),

<sup>31</sup> See BAI et al., *Violations of the Right to Effective Remedy: The UN's Responsibility for Cholera in Haiti*, 19–20, [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).

<sup>32</sup> See *id.* at 13.

deeper into poverty.<sup>33</sup> These ongoing harms underscore the need for swift and effective reparations.

The UN initially responded with a denial of responsibility and a refusal to investigate.<sup>34</sup> In 2011, approximately 5,000 victims represented by IJDH and BAI attempted to obtain remedies through the UN's internal claims process under section 29 of the CPIUN.<sup>35</sup> After 15 months of waiting, "the UN rejected the claims as 'not receivable' with the sole justification that the victims' claims 'would necessarily include a review of political and policy matters.'"<sup>36</sup> With this avenue foreclosed, survivors and advocates turned to public advocacy to try and obtain reparations for the harms.

Despite the incontrovertible evidence and significant international outrage, it took six years for the UN's leadership to publicly admit the organization's role in the outbreak.<sup>37</sup> This delay deepened the harms to the victims, and was excoriated by the Special Rapporteur on extreme poverty as "morally unconscionable, legally indefensible, and politically self-defeating."<sup>38</sup> In 2016, then-Secretary-General Ban Ki-moon finally issued a landmark apology, stating "[o]n behalf of the United Nations . . . we apologise to the Haitian people . . . we are profoundly sorry for our role."<sup>39</sup> In the spirit of this statement, the Secretary-General also announced a "New Approach to Cholera in Haiti," which represented an opportunity to "repair victims' injuries and restore trust in the UN."<sup>40</sup> The UN set a target budget of \$400 million for the New Approach, divided between two "tracks."<sup>41</sup> Track 1 focused on cholera treatment and elimination, while track 2 was intended to offer "a concrete and sincere expression of the [UN's] regret" through "a package of material assistance and support" to individuals and their families,<sup>42</sup> including the possibility of "monetary payment akin to compensation."<sup>43</sup>

In order to raise the \$400 million, the UN also announced the establishment of a Multi-Partner Trust Fund (MPTF) to be funded through voluntary contributions from member states, private foundations and individuals. Rather than ground the initiative in the victims' right to an effective remedy and a recognition of the organization's responsibility to provide reparation, the Secretary-General "determinedly quarantined from the New Approach any language that could carry legal significance" and left it up to individual governments to decide how to respond.<sup>44</sup>

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<sup>33</sup> *See id.*

<sup>34</sup> *Id.* at 9-10; *see also* Alston, *supra* note 26.

<sup>35</sup> *See* BAI et al., *supra* note 31, at 15.

<sup>36</sup> *See id.*

<sup>37</sup> *See id.* at 15-17.

<sup>38</sup> Alston, *supra* note 26, at 2; BAI et al., *supra* note 31, at 13-14.

<sup>39</sup> U.N. Secretary-General, *Secretary-General's remarks to the General Assembly on a New Approach to Address Cholera in Haiti* (New York, Dec. 1, 2016), <https://www.un.org/sg/en/content/sg/statement/2016-12-01/secretary-generals-remarks-general-assembly-new-approach-address>.

<sup>40</sup> U.N. Secretary-General, *A new approach to cholera in Haiti*, U.N. Doc. A/71/620 (Nov. 25, 2016), <https://undocs.org/A/71/620> [hereinafter *New Approach*]; BAI et al., *supra* note 31, at 2.

<sup>41</sup> *New Approach*, *supra* note 40, ¶6.

<sup>42</sup> *Id.*

<sup>43</sup> Communication from Special Procedures, *supra* note 3, at 4.

<sup>44</sup> *Id.* at 2.

This approach proved highly ineffective. By November 2017, the UN had raised only \$2.6 million of the \$400 million target.<sup>45</sup> The MPTF suffered from a combination of donor fatigue and mission confusion, as the New Approach strayed from victims’ interests and instead increasingly resembled another development initiative in Haiti untethered to specific development outcomes.<sup>46</sup> In response to the severe shortfalls, Secretary-General António Guterres sought member states’ approval to redirect \$40.5 million left over in MINUSTAH’s budget at the time of its closure in 2017.<sup>47</sup> Facing opposition from key governments, however, the UN opted for a policy that allowed individual member states to voluntarily waive their share of MINUSTAH’s left-over funds.<sup>48</sup> Collectively, member states waived a mere \$3.3 million into the MPTF.

The Secretary-General initially retained the possibility of financing the New Approach through assessed contributions in case the voluntary funds proved insufficient.<sup>49</sup> However, reportedly following the preference of certain influential member states, the Secretary-General ultimately declined to even put the New Approach before the General Assembly budget committee for debate, and opted to stick with the voluntary contributions model.<sup>50</sup>

As of March 2023, the MPTF has only obtained five percent of the target amount, leaving Haitian victims ravaged by UN-caused cholera without remedy.

### ***Remedies for Lead Poisoning in Kosovo***

The UN’s Human Rights Advisory Panel (HRAP)—an advisory body established by the UN to determine its human rights responsibilities in Kosovo—has found the organization responsible for extensive human rights violations related to lead poisoning in Mitrovica, Kosovo.<sup>51</sup> From 1999 to 2008, the United Nations Mission in Kosovo (UNMIK) functioned as the *de facto* government of Kosovo, with a “vast mandate that included the protection of human rights.”<sup>52</sup> After the war, the UN housed about 600 displaced Roma in camps in areas known to be contaminated with lead.<sup>53</sup> These camps, which opened in 1999, were intended to provide temporary shelter for 45 to 90 days.<sup>54</sup> But they remained open for over a decade, with the last

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<sup>45</sup> Karen McVeigh, ‘Shameful’: UK and US under fire over blocked funds for Haiti cholera victims, THE GUARDIAN, Nov. 2, 2017, <https://www.theguardian.com/global-development/2017/nov/02/shameful-uk-us-blocked-funds-haiti-cholera-victims-un-donors-china-france-russia>.

<sup>46</sup> See Communication from Special Procedures, *supra* note 3, at 5-6 (recounting the shift away from a victim-centered approach to an effort focused on “quick-impact, cost-effective development projects”).

<sup>47</sup> McVeigh, *supra* note 45.

<sup>48</sup> IJDH, “Cholera 9 Years on: A “New Approach”? The ongoing violation of victim’s rights in the UN’s response to cholera in Haiti”, 14 (June 2020).

<sup>49</sup> *Id.*; BAI et al., *supra* note 31.

<sup>50</sup> Rick Gladstone, *After Bringing Cholera to Haiti, UN Can’t Raise Money to Fight It*, N.Y. TIMES, Mar. 19, 2017, <https://www.nytimes.com/2017/03/19/world/americas/cholera-haiti-united-nations.html>. This despite calls to do so from some member states. See e.g., Gabrielle Duchaine, *Haiti: Ottawa versera 6 millions pour lutter contre le cholera*, LA PRESSE (Jan. 10, 2017), <https://www.lapresse.ca/actualites/politique/politique-canadienne/2017/01/09/01-5058039-haiti-ottawa-versera-6-millions-pour-lutter-contre-le-cholera.php> (“Canada believes that if voluntary contributions are insufficient, the United Nations cholera plan should be financed through assessed contributions from Member States”).

<sup>51</sup> N.M. v. UNMIK, *supra* note 14.

<sup>52</sup> TOXIC INJUSTICE, *supra* note 11, at 5.

<sup>53</sup> *Id.* at 37.

<sup>54</sup> *Id.* at 15.

camp only closing in 2013, despite “repeated warnings that the area was unfit for human habitation and presented a life-threatening emergency warranting immediate evacuation.”<sup>55</sup>

During this period, the UN failed to provide camp residents with consistent access to testing that is essential for diagnosing lead poisoning; failed to adequately inform the residents of their exposure to severe health risks; and failed to support comprehensive medical treatment for lead poisoning and its effects.<sup>56</sup> Numerous people died from suspected lead poisoning in the camps, and survivors have continued to suffer from severe health problems such as seizures and kidney disease, as well as behavioral and emotional challenges.<sup>57</sup> Additionally, the impacts of lead poisoning are worsened by entrenched socioeconomic challenges rooted in the systemic discrimination against Roma communities in Kosovo.<sup>58</sup>

Starting in 2006, groups of victims began to seek compensation from the UN through the internal claims process under section 29 of the CPIUN.<sup>59</sup> In 2011, five years from the date of the first filing, the UN dismissed the case as “not receivable” in a cursorily reasoned two-page letter, stating that the victims’ injuries resulted from “widespread health and environmental risks arising in the context of the precarious security situation in Kosovo.”<sup>60</sup>

Recognizing the prevalence of human rights violations by UNMIK, in 2008 the UN separately established HRAP to assess the organization’s responsibilities in Kosovo.<sup>61</sup> HRAP decided the case of the lead-poisoned Roma in 2016.<sup>62</sup> The Panel 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 up in the camps.”<sup>63</sup> It recommended that the UN compensate victims for physical and moral harms, issue a public apology, and take other measures consistent with the right to an effective remedy.<sup>64</sup>

In 2017, Secretary-General António Guterres responded to HRAP’s decision by announcing the establishment of a trust fund to benefit Roma communities broadly, to be funded through voluntary contributions from member states.<sup>65</sup> As of March 2023, nearly six years after it was established, the trust fund has only received one \$10,000 donation toward an estimated \$4.5 million target.<sup>66</sup> Since 2018, it is not clear what efforts the UN has undertaken to fundraise, as there is no publicly available information about the trust fund on UN websites.<sup>67</sup> Nor has the

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<sup>55</sup> *Id.* at 5.

<sup>56</sup> *Id.* at 5.

<sup>57</sup> *Id.* at 21.

<sup>58</sup> *Id.* at 21-22.

<sup>59</sup> *Id.* at 27.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 6-7.

<sup>62</sup> *N.M. v. UNMIK*, *supra* note 14.

<sup>63</sup> *Id.*, ¶347

<sup>64</sup> *Id.*, ¶ 349, 78

<sup>65</sup> 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>.

<sup>66</sup> Baskut Tuncak (Special Rapporteur on Toxics and Human Rights), The Human Rights 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).

<sup>67</sup> The most recent update on fundraising efforts found by the submitting organizations is a 2018 letter from Under-Secretary-General La Croix to the Special Rapporteur on Toxics, describing fundraising efforts in general terms.

organization published concrete details on plans to mobilize resources.<sup>68</sup> In private, some member states have expressed reluctance to contribute to the trust fund given the focus on community-based projects for Roma communities generally—which they already support through other funding channels—rather than on repairing the victims’ injuries.<sup>69</sup>

Due to the lack of resources, the trust fund has never been operational and as of March 2023 is all but defunct. The use of the voluntary contribution model has been criticized by the former UN Special Rapporteur on toxics and human rights, Baskut Tuncak, who condemned the trust fund as an “inoperative and fundamentally flawed” mechanism that “provides neither justice nor the necessary elements of an effective remedy for the victims.”<sup>70</sup>

### III. Lessons from the Case Studies

The cases of Haiti and Kosovo demonstrate that framing reparations programs as voluntary, charitable endeavors—rather than as efforts grounded in rights and obligations—is not a viable path for delivering justice and accountability. Voluntary financing requires securing the scarce attention of donor states and convincing them that their own national interests are aligned with the vindication of human rights of victims in distant places. In the UN context, this challenge is compounded by the fact that the nations where the violations have occurred may themselves be unwilling or unable to champion the rights of their citizens given their limited resources and simultaneous interest in preserving international support.<sup>71</sup> Moreover, victims of UN harms are more likely to come from marginalized communities in the Global South where UN operations are concentrated, and such communities are in turn more likely to face structural racism and marginalization that provide further obstacles to securing reparations.

Legally grounded, mandatory financing processes are thus crucial to overcoming political inertia in the context of human rights violations attributable to the UN. This approach to financing is consistent with the Special Rapporteur on truth, justice and reparations’ prior finding that states that have introduced a dedicated budget line to finance reparations have fared significantly better in adequately providing reparations than those that rely on voluntary trust funds, partly because that structure allows states to bypass political debates.<sup>72</sup> To avoid the politicization of remedies that has taken place in Haiti and Kosovo, the UN should likewise ensure the inclusion of an adequate, standing fund for compensation as a line-item in the

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Letter from Jean-Pierre La Croix, Under-Secretary-General for Peacekeeping, to Baskut Tuncak, Special Rapporteur on Human Rights and Toxics, Oct.5, 2018, <https://www.ohchr.org/sites/default/files/Documents/Issues/ToxicWaste/ResponseKosovo5Oct2018.pdf>.

<sup>68</sup> Most known details about the UN’s fundraising efforts are contained in a series of letters published by the Special Rapporteur on Human Rights and Toxics. United Nations Human Rights – Office of the High Commissioner, “Lead Contamination in Kosovo – Dialogue with the UN Secretary General,” [https://www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights/lead-contamination-kosovo#\\_ftn7](https://www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights/lead-contamination-kosovo#_ftn7).

<sup>69</sup> Advocacy meetings held with HLS IHRC & ORK (notes on file with authors).

<sup>70</sup> Tuncak, *supra* note 61.

<sup>71</sup> Because Kosovo was under international administration when the injuries occurred, no autonomous government could pursue remedies for the victims. Today, Kosovo is still striving for formal international recognition, including admission to international bodies such as the UN and European Union. In this context, authorities may be especially unwilling to take a stand against the UN. The Haitian government also has shown little interest in advocating for victims, owing in part to the government’s dependence on the UN for foreign aid and security.

<sup>72</sup> de Greiff, *supra* note 19.

mandatorily funded UN budget, and commit to seeking financing through assessed contributions to fund any gaps that arise.

The UN has often invoked budget constraints as a reason why it cannot meet its obligations for redressing harm it caused.<sup>73</sup> The International Law Commission considered this question in developing the Draft Articles on the Responsibility of International Organizations and explicitly concluded that “inadequacy cannot exempt a responsible organization from the legal consequences resulting from its responsibility under international law.”<sup>74</sup> Budget constraints are also not unique to the UN, as many reparations programs have been carried out in transitional contexts with limited financial resources. Analyses of such government programs have found that political will is a stronger factor than socioeconomic considerations in determining whether a reparations program is successfully implemented.<sup>75</sup> Moreover, if financing reparations was mandatory, the organization would have a powerful incentive to undertake the kind of basic due diligence and harm reduction that could have prevented or minimized the cholera outbreak in Haiti or reduced prolonged exposure to toxic lead in Kosovo—and ultimately reduced the organization’s exposure to liability.<sup>76</sup>

Meaningful financing is also key to ensuring that the remedies offered correspond to victims’ rights. Compensation is a core aspect of the right to an effective remedy, and has been a key demand of many victims in both Haiti and Kosovo.<sup>77</sup> Yet in both instances, the chasing of individual donors has distorted the content of remedies away from the rights of the victims to a focus on the type of support that the UN has deemed to be most appealing to donors.

When the UN first launched the New Approach in Haiti, for example, the Secretary-General committed to basing the UN’s decisions on the form that reparations would take on consultation with victims, and on an assessment of the feasibility, costs, and risks of taking an individual approach to assistance. These processes would have been important to ensuring a rights-based approach and could have supported fundraising efforts by demonstrating victim buy-in and feasibility. Yet the UN abandoned individual assistance without engaging in either process,<sup>78</sup> and ignored independent findings that such an approach would be feasible.<sup>79</sup> Instead, the UN has focused on modest community development projects in line with donor preferences and financing realities,<sup>80</sup> eventually leading to a breakdown of the reparations process altogether.

A similar dynamic has unfolded in Kosovo. Contrary to HRAP’s recommendations and the demands of victims, the trust fund is only envisioned to finance community assistance programs for Roma communities throughout Kosovo,<sup>81</sup> out of a perception that this approach is

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<sup>73</sup> See e.g., Alston, *supra* note 20.

<sup>74</sup> INT’L LAW COMM’N, *supra* note 7, at 7.

<sup>75</sup> de Greiff, *supra* note 19, ¶ 13.

<sup>76</sup> Joe Sandler Clarke & Ed Pilkington, *UN could have prevented Haiti cholera epidemic with \$2,000 health kit – study*, THE GUARDIAN, Apr. 14, 2016.

<sup>77</sup> BAI et al., *supra* note 26, at 25-27; TOXIC INJUSTICE, *supra* note 11, at 8.

<sup>78</sup> IJDH, *supra* note 42, at 15.

<sup>79</sup> AVOCATS SANS FRONTIERS CANADA, COMMENT RÉPONDRE AUX BESOINS DES VICTIMES DU CHOLÉRA EN HAÏTI? (2019), [https://asfcanada.ca/wp-content/uploads/2022/06/asfc\\_etudedefaisabilite\\_cholera.pdf](https://asfcanada.ca/wp-content/uploads/2022/06/asfc_etudedefaisabilite_cholera.pdf).

<sup>80</sup> *Id.*

<sup>81</sup> TOXIC INJUSTICE, *supra* note 11, at 8.

more appealing to donors. As of March 2023, the UN has yet to consult with the victims on what form of remedies would serve as effective reparation.<sup>82</sup>

#### IV. Conclusion

The UN's reliance on voluntary contributions has thus resulted in a failure to comply with the right to an effective remedy, including reparations, for victims of human rights violations committed by the organization. The UN should adopt a financing mechanism, such as assessed contributions, that allows for swift and adequate funding of reparations programs without the challenges and barriers of more voluntary, politicized, and ad hoc processes. The need to deliver on reparations is especially critical in the context of violations committed by the UN, where "the continued denial of effective remedies to the victims is not only a violation of their human right to an effective remedy, but also is a grave breach of public confidence in the [UN's] integrity and legitimacy."<sup>83</sup>

#### Submitting Organizations

- The **Institute for Justice and Democracy in Haiti (IJDH)** is a US-based human rights non-profit organization. Established in 2004, it is a partnership of human rights advocates in Haiti and the United States of America, dedicated to tackling the root causes of injustice that impact basic human rights in Haiti. IJDH works with its Haiti-based sister organization, the public interest law firm *Bureau des Avocats Internationaux* (BAI), to advocate, litigate, build constituencies, and nurture networks to create systemic pathways to justice for marginalized communities in Haiti. BAI and IJDH have advocated for justice for victims of cholera in Haiti since 2011, including seeking remedies through the UN's claims process and litigation in US courts. More information: <https://www.ijdh.org/about/>
- **Opre Roma Kosovo (ORK)** 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, ORK organizes community members around critical issues impacting them, including school segregation, census efforts, and redress of historic harms. ORK has an ongoing presence in Mitrovica, Kosovo and works in close partnership with the community impacted by lead poisoning there. In November 2022, ORK released a joint report with Harvard Law School's International Human Rights Clinic, [Toxic Injustice: Translating UN Responsibility Into Remedies for Lead-Poisoned Roma](#), that documented violations of the right to an effective remedy for the community. More information: <https://www.facebook.com/opreromaks/>
- **Harvard Law School's International Human Rights Clinic** seeks to advance the protection and realization of human rights around the world while training the next generation of advocates through clinical education. The Clinic serves as partner and legal advisor to a wide range of human rights and civil rights organizations in the United States

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<sup>82</sup> Tuncak, *supra* note 61; Meeting between ORK, IHRC and community leaders in Mitrovica, Nov. 7, 2022 (notes on file with author).

<sup>83</sup> Communication from Special Procedures, *supra* note 3, at 2.

and globally. The Clinic has a long record of advocating for the right to effective remedies for victims of human rights violations, including victims of environmental harms resulting from extractive industries and toxic remnants of war. In addition to co-authoring *Toxic Injustice* with ORK, the Clinic partnered with BAI and IJDH on a [submission to UN Special Procedures](#) in 2022 that documented violations of the right to an effective remedy for victims of cholera in Haiti. More information: <https://humanrightsclinic.law.harvard.edu/>