From Discrimination to Accountability: Exposing and Redressing Racism in the Case of Lead-poisoned Kosovo Roma

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Abstract

Romani communities across Europe face pervasive environmental racism. Among the most notorious of such cases is the lead poisoning of displaced Roma, Ashkali, and Egyptians in camps managed by the United Nations Mission in Kosovo (UNMIK) from 1999–2013. This article focuses on the victims' efforts to seek justice through the UN's accountability mechanisms – the only avenue available due to the UN's immunity – and examines the opportunities and limitations inherent in pursuing justice through legal processes. After a decade-long legal battle, the UN's Human Rights Advisory Panel issued a landmark decision finding UNMIK responsible for human rights violations linked to the lead poisoning. We analyze the decision as an important instrument for reframing the issue from victim-blaming to exposing the role of anti-Romani racism in enabling environmental injustice. Despite the hard-earned victory, however, the Panel's decision has yet to yield reparations for the Romani victims. We argue that this outcome reflects the limitations of legal bodies as hegemonic institutions, which make them inherently imperfect tools for redressing systemic racism. This reality underscores the importance of combining legal efforts with out-of-court advocacy by Romani communities and solidarity partners to achieve systemic change.

Keywords

- Environment
- Kosovo
- Lead poisoning
- Roma
- Racism
- Reparations
- United Nations

Introduction

The COVID-19 pandemic starkly revealed the disproportionate impact of unhealthy environments on marginalized communities across the world. This has, in turn, brought new attention to the environmental racism[1] faced by Romani communities across Europe. Romani communities have been "pushed to the wastelands" and forced to live on toxic sites with limited access to basic services such as clean water, sanitation, electricity, and waste removal (European Environmental Bureau et al. 2020; Civil Rights Defenders 2023). This "slow violence" has led to severe health consequences for and deaths of Roma that only recently are being recognized as intertwined with anti-Romani racism (Civil Rights Defenders 2023).

A notorious case of displaced Roma, Ashkali, and Egyptians[2] who suffered lead poisoning in United Nations (UN) administered camps in Kosovo is a potent case study of such environmental racism. In the wake of the Kosovo war in 1999, about 8,000 Roma, Ashkali, and Egyptians were forced to flee after the Roma *mahala* (neighborhood) in Mitrovicë/Mitrovica was attacked and destroyed.[3] The United Nations Mission in Kosovo (UNMIK), which served as the *de facto* government, housed around 600 of the displaced in an area known to be contaminated with toxic lead (Human Rights Watch 2009).[4] The camps were intended to provide temporary shelter but remained open for over a decade despite repeated warnings that the area was unfit for human habitation and residents were facing a life-threatening

1 The concept of environmental racism first emerged in the United States in the 1980s, defined by Black civil rights leader Benjamin Chavis as the "racial discrimination in environmental policy-making, the enforcement of regulations and laws, the deliberate targeting of communities of color for toxic waste facilities, the official sanctioning of the life-threatening presence of poisons and pollutants in our communities, and the history of excluding people of color from leadership of the ecology movements" (Chavis 1994).

2 This paper utilizes "Roma, Ashkali, and Egyptians" or RAE when referring to the affected community in Kosovo, as these communities are recognized as distinct by the Kosovo constitution and they do not consistently self-identify under the umbrella term "Roma." (For more on this, see Francois-Xavier Bagnoud Center for Health and Human Rights, Harvard University, *Post-war Kosovo and its Policies towards the Roma, Ashkali and Egyptian Communities*, July 2014, https://content.sph.harvard.edu/wwwhsph/sites/2464/2020/01/FXB-Kosovo-Report-July-2014.pdf.) When referring to Romani communities more generally or beyond Kosovo, we use "Roma" as an umbrella term in accordance with the approach adopted by the United Nations (UN) and other international institutions to unify and strengthen equality for Romani communities. See, for example, UN, The Role of the United Nations in Advancing Roma Inclusion, February 2013, https://issuu.com/unhumanrightseurope/docs/romainclusion; The European Commission, "Roma equality, inclusion and participation in the EU," https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combatting-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu_en]; Council of Europe Descriptive Glossary of Terms Relating to Roma Issues, 18 May 2012, http://a.cs.coe.int/team20/cahrom/documents/Glossary%20Roma%20EN%20version%2018%20May%202012.pdf.

3 *N.M. and Others v. UNMIK*, Case No. 26/08, Human Rights Advisory Panel, Opinion, ¶¶ 42–43 (26 February 2016) [hereinafter, *N.M. v. UNMIK* (2016)].

4 Lead is a poisonous metal that enters the body through contaminated air, soil, and water. No levels of lead exposure are considered safe, and 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. Lead exposure during pregnancy can result in stillbirth and miscarriage and can negatively affect fetal brain development which may lead to intellectual disability. Children absorb lead more easily than adults and are particularly vulnerable to lead poisoning. 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. In very severe cases, lead poisoning leads to coma, seizures, and death (IHRC and Opre Roma Kosovo, 15).

emergency warranting immediate evacuation.[5] UNMIK failed to provide the displaced with consistent access to lead monitoring, failed to adequately inform them of the severe health risks they incurred, and failed to ensure access to comprehensive medical treatment for lead poisoning (Harvard Law School International Human Rights Clinic and Opre Roma Kosovo 2022, 17–20). As a result, those who resided in the camps suffered extreme levels of lead poisoning, manifesting in irreversible harm.[6]

For over a decade, Roma, Ashkali, and Egyptian victims[7] have pursued reparations for their injuries (HLS IHRC 2022). In 2016, the Human Rights Advisory Panel (HRAP), a legal body created by the UN to assess the organization's responsibility for human rights violations in Kosovo, finally issued a landmark decision finding UNMIK responsible for extensive human rights violations and instructed the organization to provide victims with reparations. [8] HRAP also, importantly found that their prolonged exposure to toxic lead was grounded in racial discrimination.

This article explores victims' and activists' efforts to seek accountability for lead poisoning as a case study into how human rights law can expose environmental racism and close accountability gaps by providing a framework to assess the responsibility of duty-bearers toward marginalized communities. Part one chronicles the UN's responsibility for the lead poisoning and the harms experienced by the camp residents. Part two recounts efforts by Roma rights activists and solidarity partners to secure justice for the affected community through the UN's internal accountability mechanisms and their hard-earned victory before HRAP. We focus our analysis on HRAP's findings of racial discrimination as an important, if incremental, milestone in exposing systemic racism against Romani communities. Part three discusses the inherent limitations of relying on legal mechanisms to overcome structural racism and achieve justice. Seven years since HRAP's decision, the UN has completely failed to implement any of the recommendations to offer redress to the victims, highlighting the challenges of working within hegemonic structures to achieve racial justice. We conclude by reflecting on the ongoing importance of continued advocacy, pairing the focus on accountability with the empowerment of Romani communities.

1. Lead Poisoning of Roma, Ashkali, and Egyptian Communities in Mitrovicë/Mitrovica

The inhumane treatment that the displaced Roma, Ashkali, and Egyptians were subjected to whilst living in UN-administered camps presents a salient case study into environmental racism. The facts

5 See *N.M. v. UNMIK* (2016), ¶¶ 45, 60.

6 See *N.M. v. UNMIK* (2016), ¶¶ 50, 60, 115, 205, 242, 253 (discussing the irreversible health consequences camp residents suffered due to lead exposure).

7 The term "victim" is used throughout to describe the IDPs and reflects an intentional decision after conversation among Romani activists with Opre Roma Kosovo (ORK). It is used to reflect the harsh realities and horrific injuries suffered by the IDPs in the camps, who were indeed victimized by UNMIK and other authorities. It is not intended to subjugate or undermine the status of the individuals as rights-holders and as proud Roma.

8 *N.M. v. UNMIK* (2016), ¶¶ 255, 349.

have been well-documented by the UN's Human Rights Advisory Panel and in several human rights reports over the years (Human Rights Watch 2009, HLS IHRC and Opre Roma Kosovo 2022). The UN served as the *de facto* government in Kosovo from 1999 until Kosovo's independence in 2008. [9] During this time, it had full legislative and executive powers, and a broad mandate to "[p]rotect[] and promot[e] human rights,"[10] and "[a]ssur[e] the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo." [11] UNMIK was bound by international human rights law throughout its operations.[12]

Roma have long suffered discrimination and persecution, making them one of the most marginalized groups in Europe.[13] In the aftermath of NATO's intervention in Kosovo, Roma, Ashkali, and Egyptians were caught in the middle of persisting ethnic tensions between Albanians and Serbs. In June 1999, ethnic Albanians who viewed them as Serb collaborators attacked and destroyed the historic Roma *mahala* (neighborhood) in Northern Kosovo (Human Rights Watch 2009). While many of the 8,000 residents fled to neighboring countries, around 600–700 people sought refuge in displacement camps administered by the UN High Commissioner for Refugees (UNHCR) – which led the humanitarian assistance component of UNMIK (HLS IHRC and Opre Roma Kosovo 2022, 13).[14] Between 1999 and 2008, UNHCR, and then UNMIK operated camps in Cesminluke/Česmin Lug and Zhikoc/Žitkovac in north Mitrovicë/Mitrovica, as well as in abandoned army barracks in nearby Kablare.[15]

The camps were situated near lead-contaminated landfills of the Trepča mining complex, which was one of the largest lead smelters in Europe (Camaj 2013; Bhabha et al. 2014). Since the 1970s, numerous scientific studies have established the Trepča smelter as a notorious source of lead pollution.[16] The UN Special Representative of the Secretary-General (SRSG), who served as the head of UNMIK, explicitly acknowledged that it was well-known before the camps were established that the Trepča smelter "released tons of lead every day into the atmosphere with a negative impact on the health of the nearby

9 *Ibid.*, ¶ 42.

10 S.C. Res. 1244, ¶ 11 (10 June 1999).

11 *Ibid.*, ¶ 11(k); *see also N.M. v. UNMIK* (2016), ¶ 220.

12 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.").

13 *N.M. v. UNMIK* (2016), ¶¶ 303–04, 306.

14 As a component of UNMIK, UNMIK was legally responsible for its UNHCR's operations (*N.M. v. UNMIK* (2016), ¶ 43; Human Rights Watch 2009, 14, 26–28).

15 *N.M. v. UNMIK* (2016), ¶ 43–44.

16 *Ibid.*, ¶ 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 Internally Displaced Persons' (IDPs') lives. Nonetheless, they did not take any positive steps to remedy the situation or to remove the IDPs from the contaminated land. Furthermore, UNMIK also failed to inform them of the risks they were facing by living in such a toxic environment.").

communities."[17] While UNHCR initially intended for the camps to operate on a temporary basis only – 45 to 90 days[18] – the camps were operational for over a decade, subjecting residents to long-term lead exposure (UN News 2010).

After taking over the interim administration of Kosovo in 1999, UNMIK initially took limited but inadequate action to address the pollution (HLS IHRC and Opre Roma Kosovo 2022, 17). After an environmental audit found the smelter to be an "unacceptable source of air pollution," UNMIK seized control of Trepča and later closed it in August 2000 (UNMIK 2000). But without steps to decontaminate the land, the lead exposure continued. As first documented by Human Rights Watch in 2009, over the subsequent four years, UNMIK's only response to continued lead exposure was to commission an internal report that sought recommendations on how to mitigate the toxic exposure (23). The assessment found that a range of mitigation measures were needed, including comprehensive epidemiological studies and regular environmental sampling to test for lead levels, periodic and systematic monitoring and treatment of children and pregnant women, and relocation of camp residents to a safer area. While the report concluded that the costs of implementing all the strategies would exceed UNMIK's financial capabilities, it does not appear that UNMIK took *any* follow-up action for the next three years. Moreover, UNMIK did not share critical information from the report with the residents, leaving them in the dark about lead-related health risks in the camps.

The camps' squalid conditions likely increased lead exposure and exacerbated adverse health effects among its residents. The makeshift housing lacked access to running water or adequate sanitation facilities, hampering their ability to minimize lead exposure. Additionally, residents were exposed to lead-contaminated soil via dirt floors in some of the camps. Limited access to healthy foods may also have further facilitated the absorption of lead into the body. Overall, the challenging living conditions – consequences of irresponsible administration of the camps by UNMIK, and worsened by preexisting structural barriers faced by Roma, Ashkali, and Egyptians – contributed to a weakening of immune systems among the residents that, in turn, made them more susceptible to the negative impacts of lead.

By 2004, the situation reached new crisis levels. Individuals were exhibiting severe symptoms of lead poisoning, including convulsions, disorientation, and headaches, while children were displaying black gums and experiencing learning difficulties. Romani organizations like the European Roma Rights Center, the Roma Ashkali Documentation Center, and the Roma and Travelers Forum, as well as individual activists like Paul Polansky and Argentina Gidzic, played a central role in raising the alarm and drawing international attention to the issue (Human Rights Watch 2009). The death of a four-year-old girl in Zitkovac in 2004 finally prompted the World Health Organization (WHO) to undertake health risk assessments that found that majority of the children in the camps had dangerously high blood lead levels and that 80 percent of the soil in the camps was "unsafe" due to lead contamination (Rorke 2016). Based on this, WHO informed UNMIK in July and October 2004 of the severe and

17 *Ibid.*, ¶ 151.

18 *Ibid.*, ¶ 45.

irreversible health effects of lead poisoning and called for the immediate evacuation of children and pregnant women from the camps.[19]

UNMIK also failed to implement a systematic approach to test residents' blood lead levels. Beyond the WHO's sporadic efforts, testing was largely secured through the voluntary efforts of Romani activists and health practitioners.[20] The piecemeal tests done consistently revealed dangerously high blood lead levels, often exceeding the levels medical equipment could detect.[21] As news of high levels of toxicity in the camps spread, Romani activists and international human rights organizations called on UNMIK to immediately vacate the camps (Rorke 2016). Their advocacy helped precipitate a joint appeal by the UN Special Rapporteurs on adequate housing, health, and toxics to UNMIK to act swiftly and provide safe accommodation (HLS IHRC and Opre Roma Kosovo 2022, 18). Similarly, the UN Special Rapporteur on internally displaced persons (IDPs) implored the international community "to immediately evacuate the [IDPs] . . . and to provide the necessary resources for this without delay" (Kälin 2005). He warned that UNMIK's failure to act "was tantamount to a violation of the right of the affected children to have their health and physical integrity protected" (Kälin 2005).

In 2005, half a decade after the camps opened, UNMIK finally organized a task force to develop an evacuation plan and mitigate lead exposure (Human Rights Watch 2009, 6). The task force determined that facilitating the IDPs return to the Roma *mahala* in south Mitrovicë/Mitrovica, where they had previously resided, would be more sustainable. While the Roma *mahala* was reconstructed, the UN relocated many Roma, Ashkali, and Egyptians to the Osterode military camp formerly occupied by KFOR, the NATO-led Kosovo Force. While conditions were generally better in Osterode, the camp was also proximate to toxic slag heaps and was later found to contain "unacceptable levels of lead" in the soil.[22]

After Kosovo declared independence in 2008, UNMIK transitioned oversight responsibility for the camps to the Kosovo government. [23] In the subsequent years, the remaining camps gradually closed. Cesminluke/Česmin Lug shut in 2010 and Osterode in 2012 – 13 years after Roma, Ashkali, and Egyptians had been placed there on a, supposedly, temporary basis.[24] Since then, human rights groups have continued to document lasting symptoms of prolonged lead exposure among former camp residents, including seizures, memory loss, and heart and kidney problems (Human Rights Watch 2017; Society for Threatened Peoples 2018; Tuncak 2022). Moreover, lead poisoning can be fatal at high levels, and though the exact toll is unknown, numerous children and adults died in the camps from suspected lead poisoning.[25]

19 *Ibid.*, ¶¶72–78.

20 *Ibid.*, ¶ 217.

21 *N.M. v. UNMIK* (2016), ¶¶ 71–77.

22 *Ibid.*, ¶ 80.

23 *Ibid.*, ¶ 181.

24 *Ibid.*, ¶ 62. The Zhikoc/Žitkovac and Kablare camps were closed between March and April 2006 (HLS IHRC and Opre Roma Kosovo 2022, 18).

25 *N.M. v. UNMIK* (2016), ¶¶ 120–23.

2. Exposing Anti-Romani Racism through Human Rights Law

2.1 A Flawed Legal Accountability Framework

As the *de facto* government in Kosovo, UNMIK agreed to observe major human rights agreements, including the European Convention on Human Rights; the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural rights; and the Convention on the Elimination of All Forms of Racial Discrimination.[26] UNMIK's treatment of Roma, Ashkali, and Egyptians who lived in the camps amounts to severe violations of various human rights protected under these treaties, including the right to health, right to life, and right to freedom from inhuman and degrading treatment. When an individual's human rights are violated, they, in turn, are entitled to an effective remedy (Shelton 2005, 18–19; Freedman 2014, 241, 250–51). Under both international law and UN regulations, UNMIK and its agents had a legal responsibility to protect and promote the human rights of Roma, Ashkali, and Egyptians living in the camps and to uphold their right to effective remedy for the harms they incurred (Lindstrom 2022).

Despite these well-established duties, however, Romani victims found themselves in a lacuna of enforcement mechanisms. Because the UN and its missions are immune from suit, cases generally cannot be brought against them in court.[27] Treaty bodies or other international human rights mechanisms similarly lack jurisdiction over the UN since it is not a state party to the treaties.[28] Since Kosovo's independence in 2008, its contested statehood has continued to prevent it from joining major human rights treaties, so that its citizens continue to generally fall outside the protection of the European Convention and other key human rights mechanisms. The only avenue for victims to enforce their right to remedy against the UN is to seek compensation from the UN itself through a deficient claims process (Lindstrom 2022). This claims process is administered by the Office of Legal Affairs (OLA) at UN Headquarters in New York or by satellite local claims boards, and is notoriously opaque, slow, and discretionary (Lindstrom 2022).

In Kosovo, the UN's accountability gap was particularly pronounced in light of UNMIK's "virtually unlimited powers" that distinguish it from standard UN peacekeeping missions. Over the years, UNMIK's role as surrogate state operating without any accountability mechanisms prompted increasing criticism

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26 UNMIK Reg. No. 1999/24, § 1.3, 12 December1999.

27 Convention on the Privileges and Immunities of the United Nations, Article 2, § 2 (13 February 1946) [hereinafter, CPIUN]. See also: 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 (18 August 2000) [hereinafter, UNMIK Reg. No. 2000/47 (applying CPIUN immunity to UNMIK)].

28 In 2006, the European Court of Human Rights dismissed a case filed by the European Roma Rights Centre on behalf of 184 lead poisoning victims on the grounds that it lacked jurisdiction as UNMIK is not party to the European Convention on Human Rights. See also: https://www.errc.org/roma-rights-journal/european-court-of-human-rights-has-no-jurisdiction-in-kosovo-lead-poisoning-case.

across Europe. Under pressure from the Council of Europe, the UN eventually agreed to establish HRAP in 2007 (Yannis 2004, 69–70; Lemay-Hébert 2009, 67).[29] HRAP was a *sui generis* legal body with a mandate to assess the UN's responsibility for human rights violations in Kosovo (Nowicki et al. 2016). In contrast to the closed-door claims process operated by OLA, HRAP came closer to resembling an independent court. The Panel's rules and procedures were set out in publicly available documents, and cases were adjudicated by a tripartite panel of independent jurists with the power to hold hearings, consider evidence, and call witnesses.[30]

At the same time, UNMIK retained significant power over HRAP, ultimately curtailing its ability to hold the Mission accountable for even grave human rights violations.[31] As an advisory body, HRAP lacked the mandate to issue enforceable rulings, so that implementation of HRAP's recommendations were left to the discretion of the SRSG.[32] This distinguished HRAP from the European Court of Human Rights and other human rights courts, whose decisions are binding on state parties and may include awards of monetary damages. HRAP also lacked the authority to compel UNMIK's participation in the proceedings, slowing down the process and limiting the evidence-gathering capabilities of the panel. Importantly, since HRAP was established pursuant to an SRSG directive, UNMIK retained the ability to issue additional directives to amend rules of procedure – which it eventually did to make the rules more favorable to UNMIK's own interests.[33] These limitations and their consequences for the lead poisoning case are further discussed below.

2.2 Romani Efforts to Secure Justice through UN Mechanisms

Roma, Ashkali, and Egyptian lead poisoning victims would spend over a decade navigating the labyrinthine UN accountability processes before securing a final decision on their claims.[34] Victims first filed claims for compensation with OLA in 2006.[35] The UN took five years to reach a decision on

29 HRAP was established with agreement from UNMIK's Office of the Legal Advisor and the UN Headquarters' Office of Legal Affairs (Nowicki 2016, 8).

30 See generally the Human Rights Advisory Panel, Rules of Procedure.

31 UNMIK Reg. No. 2006/12 on the Establishment of the Human Rights Advisory Panel, UNMIK/REG/2006/12, 23 March 2006 (establishing UNMIK pursuant to authority given to SRSG under UN Security Council Resolution 1244 (2000) and preserving the ability of the SRSG to "issue any Administrative Directions for the implementation of the present Regulation").

32 UNMIK Reg. No. 2006/12, *supra* note 30, Section 17.

33 *Ibid.,* section 19; see, for example, Administrative Direction No. 2009/1, 17 October 2009 (amending procedures to, *inter alia,* allow admissibility to be challenged at any stage and to introduce a cut-off date for submission of complaints).

34 Victims and activists also pursued remedies outside the UN system, including with EULEX, the European Court of Human Rights, and Kosovo criminal authorities. All failed to progress or were dismissed for lack of jurisdiction.

35 Mehmeti et al., Complaint (2006). On 3 March 2006, an additional complaint was filed for 21 more claimants in Leposavich. See: Dianne Post, Chronology of Legal Action (4 December 2009) (on file). A separate claim was filed by a group of 846 residents represented by the British law firm Leigh Day. See: Letter from Martyn Day to Peter Taksøe-Jensen, Assistant Secretary-General for Legal Affairs (9 October 2009) (on file) [hereinafter, Leigh Day Complaint].

these claims, during which officials responded to requests for status updates by tersely asserting that it "was continuing its review of the matter."[36] The UN repeatedly cited the "complexity of the matter"[37] as a reason for the delay and offered illusory promises of "substantive responses"[38] in the near future. While the claims were pending before OLA, a group of 143 Roma, Ashkali, and Egyptian victims filed *N.M. and Others v. UNMIK* with HRAP in 2008.[39] They argued that UNMIK violated their human rights, including the right to life and the right to health, by placing them in camps known to be highly contaminated with lead, by withholding information about health risks and required medical treatment, and by failing to relocate them to a safe environment.[40] The victims 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 and amounted to inhuman or degrading treatment.[41] 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"[42] against Roma, Ashkali, and Egyptians in Kosovo. They maintained that all alleged human rights violations should be read in conjunction with the right to be free from discrimination,[43] setting the stage for HRAP to analyze the role of racism in the case.

But the road to a decision proved long and tainted with contemptible actions by the UN. UNMIK initially challenged the admissibility of the case, citing the pending claims before OLA. When HRAP disagreed and ruled the case admissible, UNMIK took the odious step of issuing a new administrative directive that retroactively stripped HRAP of jurisdiction over any case that could potentially be settled by OLA, thus forcing HRAP to dismiss the case even though OLA had failed to move forward on the related claims for years. UNMIK also set a new six-month deadline to initiate cases with HRAP. Then, on 25 July 2011, over five years since the first group of residents filed the claims with OLA, and shortly after the six-month filing deadline had passed, OLA summarily dismissed the claims as "non-receivable."[44]

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36 See, for example, Letter from Patricia O'Brien, UN Legal Counsel, to Dianne Post (22 October 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 (27 August 2009) [hereinafter, Letter from Taksøe-Jensen (2009)]; 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 (14 November 2011) (citing correspondences dated 30 October 2009; 7 December 2009; 4 October 2010).

37 Letter from O'Brien to Post (22 October 2008), *supra* note 28; Letter from Taksøe-Jensen (27 August 2009), *supra* note 28.

38 *Ibid.*

39 See generally: *N.M. v. UNMIK*, Human Rights Advisory Panel, Admissibility Decision, Case No. 26/08, ¶ 2 (5 June 2009) [hereinafter, HRAP Admissibility Decision of June 2009]. Half of the complainants were children, 75 complainants were women and girls, and 13 women delivered babies in the camps and submitted the complaint on behalf of their children.

40 *N.M. v. UNMIK* (2016), ¶¶ 99, 107. See *Ibid.,* ¶¶ 132–49 for a summary of the alleged human rights violations by specific treaty.

41 *Ibid.* ¶ 127.

42 *Ibid.* ¶ 141.

43 *Ibid.*

44 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 (25 July 2011).

In a two-page letter, OLA asserted 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."[45]

This would have been the end of the road, except HRAP – citing basic notions of justice – decided to reopen the case over UNMIK's objection.[46] Finally, on 23 February 2016 – almost a decade after victims began to pursue legal action with the UN – HRAP delivered a landmark decision in their favor.[47] HRAP found UNMIK responsible for "compromising irreversibly the life, health and development potential of the complainants" through its actions and omissions, in violation of human rights protected by major international treaties.[48] Notably, the Panel also found that the UN's treatment of the victims amounted to unlawful discrimination grounded in racial bias and stereotypes. To remedy the violations, the panel made nine recommendations to UNMIK, including to publicly apologize, to compensate for losses and moral damage, and to center and protect the human rights of Roma, Ashkali, and Egyptian people, especially women and children. The tireless advocacy of Romani activists and their partners finally had resulted in victory.

2.3 HRAP's Role in Exposing Unlawful Discrimination

While the lead poisoning case has received significant attention over the years, HRAP's finding that UNMIK's treatment of Roma, Ashkali, Egyptians was discriminatory has been mostly overlooked. This finding is an important if incremental victory in the broader struggle for Romani racial justice. While Romani activists had long charged that the prolonged placement on the toxic sites and the UN's decade-long evasion of responsibility was grounded in discrimination and prejudice against Roma, Ashkali, and Egyptians, such claims were not embraced by mainstream public narratives of the crisis. The UN's reputation as the global beacon of human rights and equality makes it particularly resistant to charges that it is itself complicit in racism, and likely played a role in leaving the role of racism unexamined in those narratives. When HRAP was asked to determine the role of racism, it triggered an analysis of the question under Article 14 of the European Convention on Human Rights, as well as under the non-discrimination provisions of the ICCPR, ICESCR, and ICERD.[49] By analyzing the underlying facts and UNMIK's proffered justifications through an international human rights law framework, HRAP was able to contribute an objective and authoritative pronouncement that racial bias and prejudice did in fact play a role in UNMIK's treatment of Roma, Ashkali, and Egyptians.

The prohibition of racial discrimination under human rights law is fundamental and deeply entrenched. Human rights law prohibits not only measures that are explicitly discriminatory but also those that are

45 *Ibid.*

46 HRAP Admissibility Decision of March 2010; *N.M. v. UNMIK* (2016), ¶¶24–25.

47 *N.M. v. UNMIK* (2016), ¶¶ 1, 193–309. For a full list of rights violations found under various international treaties, see *Ibid.*, ¶ 349.

48 *Ibid.*, ¶347.

49 *Ibid.*, ¶285.

indirectly discriminatory because of their disproportionate prejudicial effect on a particular group.[50] Duty-bearers like UNMIK are required to pay "sufficient attention to groups and individuals which suffer historical or persistent prejudice" to ensure equal access to economic and social rights for all groups.[51] Human rights law also sets out a process for assessing claims of racial discrimination. Complainants alleging discrimination bear the initial burden of making out a *prima facie* case, after which the burden shifts to the accused to establish an objective and reasonable justification for the measures or treatment.[52]

In evaluating the victims' discrimination charge, HRAP placed particular emphasis on the discrepancy between how UNMIK treated Roma, Ashkali, and Egyptians relative to other ethnic groups. It pointed to the fact that only Roma, Ashkali, and Egyptian IDPs were placed in inhumane conditions in camps known to be heavily contaminated, and that the evacuation and reconstruction of the Roma *mahala*, which would have enabled more timely relocation, took much longer than that for other displaced ethnic groups.[53] For example, by July 2005, the authorities had rebuilt nearly all properties damaged and destroyed in riots just a year prior and provided cash grants to returning families, while the Roma *mahala* destroyed in 1999 remained uninhabitable.[54] In another instance, UNMIK relocated and compensated 1,000 Albanian Kosovars from Hade village facing an unrelated environmental emergency, a striking difference when compared with UNMIK's treatment of Roma, Ashkali, and Egyptians who had languished in the toxic camps for years without compensation.[55] Finding that a *prima facie* case was established, the burden shifted to UNMIK to justify differential treatment.

This part of the proceedings proved particularly revealing. Far from offering a rational justification for the harm suffered by Roma, Ashkali, and Egyptians, the SRSG repeatedly resorted to racist stereotypes about Roma to rationalize the severe lead exposure, the inhumane conditions of the camps, and the slow pace of relocation. Disregarding well-established scientific data showing that environmental contamination from the Trepča mine was the primary source of lead exposure, the SRSG attempted to attribute the health crisis to the "unhealthy or risky lifestyles" of the IDPs.[56] Without citing any evidence in support, the SRSG pointed to manual and artisanal smelting practices to place the blame on the Roma, Ashkali, and Egyptians themselves.[57] This problematic misattribution of responsibility further influenced the

50 *Ibid.,* ¶¶ 288–289 (citing ECtHR; ICERD Committee).

51 ICESCR Committee, General Comment No. 20 on non-discrimination in economic, social and cultural rights, UN Doc. E/C.12/GC/20, § 8, 2 July 2009.

52 *N.M. v. UNMIK*, ¶¶298–301.

53 *Ibid.,* ¶¶298–299.

54 *Ibid.,* ¶142.

55 *Ibid.,* ¶143.

56 *Ibid.,* ¶280.

57 *Ibid.,* ¶173 (noting WHO reports attributed the Trepča mine as the primary source of lead exposure); ¶157.

UN's inadequate response to the crisis. Rather than take the necessary steps to protect Roma, Ashkali, and Egyptians from exposure to the mine tailings that persisted after the mine's closure, UNMIK focused on criminalizing Romani smelting activities. UNMIK banned smelting in the camps, and then sought to engage the police in enforcement action but was unable to do so since smelting did not constitute an offence under Kosovo laws.[58] Assessing these approaches, the Panel concluded that "UNMIK's inadequate response to the crisis might have been driven by discriminatory stereotypes more than scientific evidence...."[59]

The Panel also considered UNMIK's obligation to protect Roma, Ashkali, and Egyptians from inhuman and degrading treatment as deeply intertwined with the prohibition of discrimination. In response to evidence that Roma, Ashkali, and Egyptian IDPs were exposed to harrowing living conditions in the camps, UNMIK included among its counterarguments that Roma have historically lived in substandard living conditions and suffered pre-existing disadvantages, such that it should not be held responsible for the continuance of such conditions.[24] The Panel forcefully rejected this argument as "discriminatory and debasing, since it suggests that the social and economic marginalization of Roma is based on race and on their own actions and, as such, may be perpetuated without responsibility."[60] The Panel stressed that, to the contrary, the Roma's status as a historically socially excluded minority creates an additional vulnerability to degrading treatment, and imposed an added obligation on authorities to protect their well-being.[61] Even if UNMIK did not intend to subject Roma, Ashkali, and Egyptians to inhuman and degrading treatment, the fact they were made to live in humiliating conditions that diminished their dignity for such an extended period of time was sufficient to establish a violation of the right to be free from inhuman and degrading treatment.

HRAP's analysis represents an important example of international legal recognition of anti-Romani racism that was otherwise largely ignored in dominant narratives about the lead poisoning crisis. Procedurally, the burden shifting allowed marginalized communities to overcome evidentiary challenges that are otherwise intertwined with, and reflective of, the power imbalances inherent in racial discrimination claims. HRAP's application of human rights law also shifted the power between Roma, Ashkali, and Egyptians and the UN, by recasting the victims as rights-holders and the authorities as duty-bearers. Finally, the decision itself provided a vital reframing of UNMIK's conduct from inadequate and unfortunate to illegal. The decision also helped speak truth to power: in finding that the UN's treatment of Romani IDPs was founded on racial bias and prejudice, the Panel's decision exposes the reality that anti-Romani racism permeates major international institutions, including the UN, and has continued to undergird other human rights violations suffered by Roma.

58 *Ibid.,* ¶158.

59 *Ibid.,* ¶280.

60 *Ibid.,* ¶244.

61 *Ibid.* ¶244.

3. Limitations of Legal Frameworks to Remedy Structural Racism

3.1 The UN Has Failed to Deliver Reparations, Reflecting a Persistence of Hegemonic Power

The HRAP decision reflects a landmark victory after decades of struggles by Roma, Ashkali, and Egyptian victims and activists to expose the racial discrimination that enabled and perpetuated the crisis in the camps. But without compensation for the injuries, justice remains elusive. In practice, the justice-potential of HRAP's decision has been stymied by years of inaction from the UN. In the eight years since the decision, the UN has failed to implement any of the panel's recommendations, subjecting victims to "an ongoing violation of their human rights" (Tuncak 2020, ¶¶ 71–73). In 2016, the SRSG responded to HRAP's opinion by issuing a "decision" that expressed "regret regarding the adverse health conditions suffered by the complaints and their families at IDP camps," but did not accept responsibility or announce concrete actions to implement the recommendations for reparations (Tanin 2016). Instead, the SRSG insisted that compensation had already been assessed through the OLA claims process. This assertion is unfounded – OLA had previously only determined that that the case fell outside the scope of the third-party process – a jurisdictional decision that has no bearing on UNMIK's duty to compensate for human rights abuses for which it has been found responsible (Tanin 2016). UNMIK's failure to abide by HRAP's recommendations in this, and other cases, ultimately led the panelists to declare HRAP a "total failure" at the end of its eight-year tenure (Human Rights Advisory Panel 2016).

The UN Secretariat similarly has failed to honor HRAP's recommendations. Though top UN officials initially prepared a statement that would "sincerely apologize" for the UN's role in exposing victims to lead poisoning, the statement was not released before Secretary-General Ban Ki-moon concluded his term in 2016 (Gladstone 2017). When Secretary-General Guterres assumed the position in 2017, the UN changed course. Guterres instead issued a wanting statement expressing regret "for the suffering endured by all individuals living in IDP camps" without acknowledging the UN's responsibility for this suffering (Dujarric 2017). Guterres also announced the creation of a trust fund for community-based assistance projects to be financed by UN member states on a voluntary basis. The trust fund is not targeted at the lead poisoning survivors, however, but rather designed to benefit Romani communities in Kosovo "more broadly" in the areas of health, economic development, and infrastructure (Dujarric 2017). This broad focus is inconsistent with HRAP's opinion and with human rights law's requirement that victims be offered effective remedies including compensation. To date, the fund has only received a solitary contribution of US$ 10,000 (Tuncak 2020).

The UN's response has been criticized by Roma rights groups, human rights experts, governments, and multilateral institutions. In 2019, Baskut Tuncak, then UN Special Rapporteur on toxics and human rights, noted that "[t]he solution offered by the United Nations is an inoperative and fundamentally flawed Trust Fund, which provides neither justice nor the necessary elements of an effective remedy for the victims" (OHCHR 2019). The fund was devised without any consultation with the victims, their

lawyers, or Romani civil society. This departs from international best practice – much of which is defined and promoted by the UN itself – that victims must play a central role in justice processes for them to be effective (Salvioli 2023, 14). It also ignores HRAP's instruction that UNMIK must ensure that Roma, Ashkali, and Egyptian people have a "proactive role" in the protection and promotion of their own human rights.[62] But it is consistent with a long history of international and non-governmental organizations excluding Romani people from decision-making processes regarding their own well-being (European Roma Rights Center 2015, 27).

This exclusion of Roma, Ashkali, and Egyptians from participating in the design of the UN's response may be motivated by the UN's interest in controlling the form it takes. Politically and legally, the UN appears reluctant to provide compensation, fearing that this would signal an acknowledgement of legal responsibility. Community-based projects, on the other hand, can be implemented at arm's length from any acknowledgement of responsibility and fit within existing UN programming. As articulated by the European Roma Rights Center (ERRC), this approach by the UN mimics common cycles in Romani advocacy where international organizations present the image that they act on behalf of Roma when in fact they are primarily motivated by self-interest (European Roma Rights Center 2015, 27).

Finally, the Fund's focus on general community projects resembles charity, not justice. It risks replicating subordinate structures where Roma, Ashkali, and Egyptians are treated as "beneficiaries" of UN projects rather than recognized as rights-holders empowered to determine how reparative measures should be structured and administered to provide justice for their legally recognized harms. By contrast, compensation would have the distinct advantage of returning power to Roma, Ashkali, and Egyptians to decide for themselves how to best heal from their injuries. Whilst money will never be an adequate replacement for permanent injuries, disabilities, and deaths caused by the lead poisoning, compensation would shift the power back to the victims as rights-holders.

3.2 Structural Limitations Inherent in HRAP

While outrageous, the deeply deficient outcome of the HRAP litigation is unsurprising. Legal institutions have long been criticized by Critical Legal Studies and Critical Race Theory scholars as products of hegemonic structures that replicate power dynamics and were not designed to dismantle structural injustice (for example, Kennedy 1982; Unger 1983; Bell 2008). Here, these critiques are readily apparent: the only body with jurisdiction to adjudicate the UN's responsibility was one that remained under the thumb of the UN itself. The law's propensity to reflect and uphold hegemonic power is evident in the very structural foundation of HRAP. As a body mandated by the SRSG, UNMIK retained power over HRAP's operations in a way that allowed it to protect its own interest by manipulating procedural rules and impeding evidence gathering (IHRC 2022, 40). At the heart of the shortcomings was HRAP's role as an advisory body which lacked power to issue enforceable decisions.

62 *N.M v. UNMIK*, ¶ 349

This approach was not inevitable. When HRAP was first conceived, the Venice Commission – a body of the Council of Europe – considered several options for how to best fill the accountability void created by UNMIK and its personnel's immunity from suit and the European Court's lack of jurisdiction over UNMIK. They included: (1) establishing a human rights court with binding jurisdiction over UNMIK; (2) expanding the European Court's jurisdiction to include UNMIK, and (3) establishing the Human Rights Advisory Panel with advisory jurisdiction (Human Rights Advisory Panel 2016). The Venice Commission also stressed the expectation that, even if advisory, HRAP's opinions would be followed by UNMIK. While it recognized that an "Advisory Panel would not offer the same guarantees as an independent judicial body," the Commission also stressed the expectation that "UNMIK would commit itself to accept its findings, except if the SRSG personally determines that extraordinary reasons exist that do not make this possible" and that in such cases, the SRSG "would commit itself to giving reasons – in due time and publicly – why it would exceptionally not follow the finding of the panel" (Human Rights Advisory Panel 2016).

UNMIK opted for the final, least intrusive option: an advisory body over which UNMIK would retain control and decision-making power. The results have been dismal for the protection of victims' rights in Kosovo. The Commission's expectation that UNMIK would voluntarily follow HRAP's advisory opinions turned out to be entirely misplaced – at the conclusion of HRAP's mandate, UNMIK had followed none of the panel's recommendations in 355 cases where it found UNMIK responsible for human rights violations (Human Rights Advisory Panel 2016). As a result, the victims suffered double victimization, both "by the original human rights violations committed against them and again by putting their hope and trust into this process" (Human Rights Advisory Panel 2016).

3.3 Broader Limitations in Enforcing Roma Rights through Legal Institutions

The lead poisoning tragedy is part of a long history of institutionalized oppression of Romani people in Europe that the legal systems have failed to adequately correct. Roma have long faced practical barriers and deterrents to pursuing legal action to rectify rights violations, including limited access to legal representation, length, and costs (especially in countries with loser pays schemes), and earned mistrust of public institutions (Goldston 2010, 317). Importantly, as hegemonic structures, legal institutions most often reflect the power dynamics and discriminatory views from which they came. Throughout European history, the law has played a crucial role in the construction, subordination, and discrimination of racial minorities (Goldston 2010; Memetovic 2021, 4). The law has been used as a tool to subjugate Romani populations in Europe via the banning of Roma from engaging in traditional nomadic practices, wearing their distinctive clothing, speaking their native language, or marrying other Roma (Amnesty International n.d.). Anti-Romani attitudes are also often pervasive in the courts (Goldston 2010). In a study covering the status of Romani defendants in criminal courts in Bulgaria, Hungary, Romania, and Spain, Fair Trials found that anti-Romani attitudes are normalized and engrained in every step of the criminal process (Fair Trials 2020). A subsequent study of criminal justice systems in the Czech Republic, North Macedonia, Serbia, and Slovakia similarly found that institutional racism against Roma was embedded throughout the criminal justice system (European

Roma Rights Centre 2021). As a result, "the very system that is meant to impart fair and equal justice is, in fact, doing the opposite" (Fair Trials 2020, 6).

On the international plane, legal bodies charged with upholding human rights have been relatively slow to recognize racial discrimination against Roma, despite the prohibition of racial discrimination being a fundamental pillar of international human rights law. The Committee on Elimination of Racial Discrimination has stressed that the unique positioning of Roma merits special measures to address longstanding discrimination.[63] Yet until 2005, the European Court of Human Rights – Europe's predominant human rights enforcement mechanism – had never found a violation of Article 14's prohibition of discrimination in any case before it (Cahn 2015). As Judge Bonello observed in a 2002 dissent, "[l]eafing through the annals of the Court, an uninformed observer would be justified to conclude that, for over fifty years democratic Europe has been exempted from any suspicion of racism, intolerance or xenophobia."[64] Initially, the Court declined to view state measures that violated rights of Roma through an ethnic discrimination lens, opting instead to focus on their impact on the "Gypsy way of life" (Cahn 2015). Moreover, the Court's requirement that petitioners establish racial animus "beyond a reasonable doubt" made it virtually impossible for victims to prevail on racial discrimination claims (Cahn 2015, 116). In 2005, the Court finally changed this approach and issued its first ever finding that a state had violated the prohibition of discrimination, in a case concerning two Romani military conscripts who were killed by military police who shouted racial epithets at the victims.[65] The new burden-shifting approach placed the onus on the state to demonstrate legitimate aims behind the allegedly discriminatory measures and eased the way for victims to establish violations of the prohibition of discrimination.[66] Since then, the European Court's jurisprudence has evolved to recognize that "as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority" requiring heightened protection and consideration.[67] Notably, in 2019, the Court acknowledged for the first time the "institutional racism" faced by Roma.[68]

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63 See generally: CERD Committee, General Comment No. 27 (16 August 2000).

64 *Anguelova v. Bulgaria*, App. No. 3861/97, Dissent, ¶2 (13 June 2002). http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-60505%22]}.

65 *Nachova v. Bulgaria,* App. No. 43577/98 & 43579/98 (6 July 2005). https://hudoc.echr.coe.int/tur#{%22itemid%22:[%22001-69630%22]}. Though note that the Grand Chamber found the state had violated the duty to investigate possible racist motives but overturned the lower court's finding that the killing itself was racially motivated due to purported lack of evidence. In 2008, the Court finally found a case of police violence against Roma to have been racially motivated. See *Stoica v. Romania*, App. No. 42722/02, European Court of Human Rights (March 2008).

66 *Ibid.*

67 *D.H. and others v. Czech* (GC), App. No. 57325/00, 182 (13 November 2007), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-83256%22]}. It is noteworthy that Roma rights advocates have criticized the European Court of Human Rights for failing to adopt the term "antigypsyism," opting instead for language that decenters the perpetrators and undermines the gravity of anti-Romani racism throughout history – including genocide. Adam Weiss, Teaching Judges their ABCs, 7 January 2020, https://www.errc.org/news/teaching-judges-their-abcs.

68 *Lingurar v. Romania*, App. No. 48474/14, ¶80 (16 April 2019), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-192466%22]}.

Despite these developments and the fact that judgments are technically binding on states, full implementation of the European Court's judgments concerning Roma is still patchy. In December 2023, Council of Europe monitors documented 21 cases where judgments were still pending execution by the states in question (Roma and Travellers 2023). Even at the most authoritative human rights legal body in the world, legal processes have, to date, failed to effectively address racial discrimination. This underlines the importance of pairing legal strategies with out-of-court advocacy.

4. Animating Legal Frameworks for Emancipation and Environmental Justice in Kosovo

4.1 Continued Struggles to Secure Reparations for Lead Poisoning

To the extent the law has evolved to better protect Roma rights, this has largely been driven by Roma themselves. The new trend of courts and legal systems to openly discuss Romani ethnicity was spurred by Romani individuals and organizations that have offered their own views on Romani experiences of marginalization and discrimination (Simoni 2011, 125). Similarly, the quest for justice for lead poisoning is emblematic of the central role that Roma have played in these processes. Indeed, one of the most remarkable aspects of the lead poisoning saga is that, for nearly twenty years, Romani activists and victims have not given up the fight for justice, despite regularly expressing deep exhaustion and skepticism that justice will ultimately be served. Romani activists and victims were at the forefront of exposing the crisis in the first place, as well as ensuring continued attention to it over the years. They played a key role in mobilizing media attention and engagement by human rights monitors. When international and Kosovo authorities failed their responsibilities to provide medical monitoring, Romani activists stepped in to secure lead testing. These records became key medical evidence relied on by HRAP in making their findings. Their incorporation into the HRAP decision was key to combatting the stereotype that Romani communities create environmental problems and served to emphasize their agency.

To reach its full potential in disrupting longstanding anti-Romani racism, HRAP's decision must be fully implemented in practice. Recognizing this potential, Romani communities and activists have continued to organize and agitate for reparations. For example, Romani activists recently have partnered with the International Human Rights Clinic at Harvard Law School to build on the decades-long activism by victims, their legal representatives, and Roma rights organizations in Kosovo and beyond, and renew mobilization to hold the UN accountable to HRAP's recommendations (HLS IHRC and Opre Roma Kosovo). This advocacy has focused on three main points: (1) implementing rights-based processes that would place Roma, Ashkali, and Egyptian victims at the center of decision-making on the trust fund; (2) reconfiguring the trust fund to support reparations for the victims; and (3) securing government financing of a reconceptualized trust fund in order to make reparations a reality. In doing so, affected community members and activists in Kosovo are harnessing human rights frameworks to advocate for both the enforcement of their fundamental rights and participation in the process. This work has resulted in renewed attention from the UN Special Rapporteur on truth, justice and reparation, as well as key member states at the UN that are joining the calls for reparations for the victims (Permanent Missions of

Switzerland and the United Kingdom to the United Nations 2023; Salvioli 2023). If the UN were to heed these calls and comply with HRAP's recommendations, it would break cycles of marginalization that exclude Roma and enhance the participation of affected communities in decision-making and resource allocation, while improving the victims' quality of life and respecting their human rights.

4.2 Role of Romani Activists in Challenging Pervasive Environmental Racism in Kosovo

The lead poisoning case study presents just one example of pervasive environmental injustices against Romani people throughout Europe and stresses the importance of international institutions in recognizing and combating institutional racism. Romani communities across Central, Eastern and Southeastern Europe often live and work in polluted or degraded environments and are excluded from basic services, such as waste management and adequate sanitation (Heidegger and Wiese 2020, 4). Many Romani communities are forced to live in close proximity to landfills or toxic sites segregated from the rest of society (Civil Rights Defenders 2023, 2). Disproportionate proximity to environmental burdens and denial of equal access to resources and services should be understood as a manifestation of anti-Romani racism (Heidegger and Wiese 2020, 9)

Roma, Ashkali, and Egyptian communities in Kosovo suffer from exposure to environmental pollution rooted in anti-Romani racism. In Kosovo, many Roma, Ashkali, and Egyptians live in segregated *mahalas* that suffer from poor housing conditions conducive to declining health outcomes, making people vulnerable to diseases (European Roma Rights Centre 2011, 94). Environmental injustices are particularly acute for Roma, Ashkali, and Egyptian populations in Kosovo due to concerns of freedom of movement (European Roma Rights Centre, 75). Safety concerns about travelling outside of Romani communities amplifies the impact of environmental injustices, as Romani populations face continual exposure to pollution yet are unwilling or unable to relocate to Albanian-majority areas. Social housing units in Plemetina, which house many Roma, Ashkali, and Egyptian families made internally displaced persons after the Kosovo War, are emblematic of this issue. Public housing units in Plemetina are in close proximity to the Kosovo B power plant, exposing residents to toxic fumes (Salem 2013). Though exposed to high rates of pollution, Roma, Ashkali, and Egyptians continually suffer from regular power shortages (Salem 2013). Roma, Ashkali, and Egyptian residents in Plemetina have also been exposed to rain and cold weather due to structural deficiencies in housing infrastructure (OSCE Mission in Kosovo 2018). Elsewhere in Obiliq, the municipality where Plemetina is situated, Roma, Ashkali, and Egyptian people have been denied access to basic electricity and running water (Manos 2021). Inequities facing Roma, Ashkali, and Egyptian people in Obiliq were further exacerbated by the COVID-19 pandemic.

While environmental injustices against Romani communities are increasingly well-known throughout Europe, little has been done by governments, international organizations, and even civil society organizations to tackle environmental racism against Roma (Heidegger and Wiese, 10). Lack of attention from civil society organizations reflects the fact that Romani issues are often pushed to the periphery in mainstream policy and human rights discourses and institutions. In Kosovo, affected Roma, Ashkali, and Egyptian communities and activists with Roma for Democracy are seeking to change this by focusing on

empowerment as a tool to combat structural injustice. Grounded in human rights principles, Roma for Democracy seeks to remind Roma, Ashkali, and Egyptians that pride in their identity and demands for rights are means to combat environmental racism in Kosovo. Both the HRAP decision, which stresses the right to adequate sanitation, housing, and good health, and the Strategy and Action Plan for Inclusion of Roma and Ashkali Communities in Kosovo Society 2022–2026, place Romani issues within broader human rights discourses and established covenants, such as the Universal Declaration of Human Rights and the European Convention and other documents on customary international human rights law (Republic of Kosovo 2022). These documents apply human rights frameworks to Romani populations in Kosovo, allowing activists to harness them in securing rights for their communities. In Plemetina, activists are mobilizing actors to resolve electricity issues by meeting with government officials and via protests to raise public pressure. Such human rights inspired strategies have had some success in convincing authorities to remove environmental pollutants facing Roma, Ashkali, and Egyptian communities in other municipalities across Kosovo, most notably in the removal of a waste heap in Fushë Kosovo. Continued activism by Roma empowerment movements will be critical to securing a different future that is not dominated by environmental racism.

Conclusion

The case study of Roma, Ashkali and Egyptians poisoned by lead in Mitrovica reflects institutionalized anti-Romani racism within the UN. While the UN's failure to fulfill its obligations has resulted in a perpetual human rights violation towards Romani communities in Mitrovica, the decision has provided Roma, Ashkali, and Egyptian victims and activists in Kosovo with both legal recognition of racial discrimination and a framework to advocate for the UN's fulfillment of its human rights obligations in Kosovo.

At the time of writing, former camp residents continued to voice concern about the ongoing health consequences for themselves and their children. Yet, their struggle for justice persists, perhaps fueled by the fact that the evidence of UN harms and its legal responsibility for those harms are now both decisively determined. The UN's continued disregard of its duty to compensate those harms should remain, by rights, a source of shock for those social justice-minded observers who place their hope in the UN as a source of human rights. Until the UN delivers on the principles it promotes, and offers reparation to the affected community, activists will need to keep up the pressure for a greater rights-respecting future.

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