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|  |  | A/HRC/45/12 |
|  | **Advance Unedited Version** | Distr.: General5 August 2020Original: English |

**Human Rights Council**

**Forty-fifth session**

14 September–2 October 2020

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

 Duty to prevent exposure to the virus responsible for COVID-19

 Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes[[1]](#footnote-2)\*, [[2]](#footnote-3)\*\*

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| *Summary* |
|  In his report, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, addresses the issue of State’s duty to prevent exposure to hazardous substances within the context of the global crisis rising from the COVID-19 pandemic. The report was prepared pursuant to Human Rights Council resolution 36/15. |
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 I. Introduction

1. Pandemics serve as a microscope, revealing existing patterns of vulnerability, inequality and discrimination, while simultaneously exacerbating injustice and drawing attention on neglected obligations of States under international human rights law. No State can meet its human rights obligations without preventing human exposure to pollution, toxic industrial chemicals, pesticides, viruses, wastes, and other hazardous substances. Exposure to hazardous substance preys on the most vulnerable in society. The SARS-CoV-2, the novel coronavirus that causes COVID-19, is no exception.
2. In light of the current global crisis arising from the COVID-19 pandemic, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (toxics), Baskut Tuncak, reminds the international community of the State’s duty to prevent exposure to hazardous substances. He identifies key challenges and issues from the COVID-19 crisis, highlighting underlying elements of failures by governments and businesses, and their consequences for vulnerable groups, as well as good practices and progress made in the prevention of such exposure and spread of the pandemic. He concludes with recommendations for various stakeholders.

 II. Duty to prevent exposure to the virus responsible for COVID-19

1. Every State has a duty to prevent and minimize exposure to hazardous substances. This incumbent obligation flows clearly and implicitly from a number of recognized human rights and duties of States under international law and human rights standards. Every State has multiple binding human rights obligations that create a duty to take active measures to prevent the exposure of individuals and communities to SARS-CoV-2. It is necessary to assess to which extent States respect their duty to prevent and mitigate the spread of the virus and prevent further losses and new outbreaks.
2. The Special Rapporteur’s 2019 report ([A/74/480](https://undocs.org/A/74/480)) points out the States’ duty to prevent exposure to hazardous substances, outlining the legal basis of that duty, including, *inter alia,* the protection of the human rights to life, health, dignity and bodily integrity, as well as equality and access to an effective remedy. Human rights treaty bodies decisions and national and international courts have all recognized such a duty. For example, General Comment 14 of the Committee on Economic, Social and Cultural Rights notes that States have a duty to “prevent and minimize” exposure to hazardous substances to protect against preventable diseases and disabilities. From the molecular to the population levels, it is impossible to minimize exposure to hazardous substances without preventing exposure. Therefore, the duty is one of the State to prevent exposure, including to viruses.
3. The State’s duty to prevent exposure is underscored by national and international recognition of environmental and occupational rights, such as to life, bodily integrity, safe and healthy working conditions, a healthy environment, among many others.[[4]](#footnote-5) Both are essential towards fulfilment of the rights to life, health, and other human rights implicated by exposure to toxics.[[5]](#footnote-6) Strengthening laws and institutions to support constitutional recognition not only contributes to preventing occurrence of future pandemics, but also promotes a healthy future for generations to come. The COVID-19 pandemic has increasingly illustrated the importance of safeguarding a healthy environment and workplace as a human right.
4. The duty to prevent exposure is incumbent on every State, and every individual has the right to be protected from exposure to hazardous substances, including the novel coronavirus. The following examines the extent to which States have taken this obligation to heart.
5. Certain States exercised their duty with remarkable clarity, commitment and leadership, demonstrating good practices in response, management and prevention of exposure to the novel coronavirus. Measures implemented have not come without costs in terms of employment, education, and mental health. However, through strong leadership and decisive action these countries have both saved countless lives and reduced overall economic damage.
6. In all of the best responses, actions were taken quickly and decisively based on recommendations by the scientific and international community that cast aside political and other objectives and focused on preventing exposure, foreseeing the tragedy of inaction. Governments of several States exercised their duty to prevent with commendable confidence and determination, illustrating what is possible in response to public health threats due to hazardous substances, including but not limited to the novel coronavirus.
7. At the other end of the spectrum are a handful of States whose leaders have completely shunned their human rights obligations to prevent exposure to the novel coronavirus at the earliest stages. Individually and collectively, the pandemic illustrates the failure of many governments in acknowledging and upholding their duty to prevent exposure, reflected both in the entry of a novel coronavirus into society and then enabling its rapid spread within and outside national borders. For most of these States, the rejection is not unlike their rejection of the evidence surrounding other public health threats, such as environmental pollution, occupational health hazards, and the relentless production, use and eventual exposure to toxic chemicals, under a false narrative of necessary evils that cannot be reduced and eliminated.
8. A pandemic of this magnitude was preventable. The failure stems from heads of governments placing economic or political interests before national health concerns. This was reflected in their absence of precaution, sluggish response and rejection of preventative measures, lack of transparency compounded by misinformation, the callous and inexcusably irresponsible statements of certain political leaders, underinvestment in health care systems and other social protections, and poor international cooperation.
9. Obviously, efforts to prevent further exposure have been undertaken and not without consequence. The implementation of necessary measures such as lockdowns and quarantines, social distancing and mass surveillance, has been paid dearly, also in terms of aggravation of physical and mental health problems due to lack of social interaction and physical activity,and an alarming global increase of domestic violence against women and children.[[6]](#footnote-7) Millions are losing jobs and livelihoods[[7]](#footnote-8) without access to basic services, social protection and their human rights guaranteed.[[8]](#footnote-9) Students face serious limitation to their right to education also due to inequalities in digital access for remote learning.[[9]](#footnote-10) All these elements increase, directly or indirectly, vulnerability to COVID-19.But, it must be emphasized that the vast majority of these impacts could have been minimized had States responded appropriately to their obligation to prevent exposure and protect human rights.
10. The following section of this report is designed to illustrate the differences between States of these extremes. As the cases continue to rise in many countries, it will be essential for States to improve on the experiences of countries with earlier outbreaks in upholding the many human rights obligations that play an integral part in efforts to prevent exposure, recognizing the grave consequences of inaction.

 III. Key factors in the failure to prevent exposure to the virus responsible for COVID-19

1. Collectively, we have failed to stop the COVID-19 epidemic from becoming the catastrophic pandemic that it is today. Such failure is a failure among States in upholding their duty to prevent exposure. In examining the development of the pandemic and States with relative success in responding to the COVID-19 crisis versus those with far worse records, key elements come to light regarding the prevention of exposure. The Special Rapporteur identifies these below.

 A. Our environment

1. The best way to prevent exposure to zoonotic diseases such as coronaviruses is to prevent them from entering human society in the first place. While the speed at which COVID-19 spread across the world shocked many and found many States grossly unprepared, scientists and international authorities repeatedly warned governments of the grave risks of emerging infectious diseases from nature for many years. In 2005, UNEP warned governments about the imminence of such a pandemic and the urgent need to take action.[[10]](#footnote-11) Early warnings were clearly written on the walls with previous outbreaks of SARS, MERS, Ebola, bird flu, Rift Valley fever, West Nile virus, and Zika virus disease.[[11]](#footnote-12) Evidence suggests that COVID-19 is also a zoonotic disease passed on from wildlife to humans, the risk of which has been enabled through relentless destruction of natural habitats.[[12]](#footnote-13)
2. Emerging infectious diseases in humans are frequently caused by pathogens originating from animal hosts and zoonotic disease outbreaks present a major challenge to global health. The number of emerging infectious disease outbreaks increased three times every decade since the 1980s.[[13]](#footnote-14) Data shows that environmental degradation and land use changes are key drivers where deforestation, climate change, habitat fragmentation and destruction of biodiversity, wildlife trade, urban sprawl and an expanding agricultural frontier increase contacts between humans and wildlife, enhancing the chances of zoonoses emerging.[[14]](#footnote-15) Around 75% of emerging infectious diseases such as COVID-19 originate in animals,[[15]](#footnote-16) moving from the wild to humans, illustrating now more than ever the critical need to enhance protection of the environment to protect human rights. Alarmingly, at this rate, the human-mediated introduction of infectious disease and vectors, named “pathogen pollution” is expected to continue to rise via further expansion of global travel and trade.[[16]](#footnote-17)
3. Most States did not take early warnings to heart, as deforestation, biodiversity collapse, climate change, wildlife trade and other environmental concerns remain at critical levels across much of the world. Now we see the preventable results of ignoring these warnings: over 17,039,160 cases of infection resulting in more than 667,218deaths.[[17]](#footnote-18) Unemployment and economic collapse that could have been mitigated through sincere, early efforts to prevent exposure, is now costing countries billions of dollars each day, 98% of which could have been entirely avoided by some estimates.[[18]](#footnote-19) These impacts are due to States failing to prevent exposure to the novel coronavirus at the earliest point when preventive measures could have been undertaken.
4. As cases escalated, it has become increasingly clear that “people of any age with certain underlying medical conditions are at increased risk for severe illness from COVID-19.”[[19]](#footnote-20)An important consideration is that the ‘pre-existing health conditions’ referred to, appear to be diseases and disabilities linked to an unhealthy environment, including at the workplace, and toxic exposures from consumer products. Such diseases linked to exposure to hazardous substances such as pollution, pesticides, toxic chemicals in consumer products and wastes, among others, include: kidney disease, respiratory illnesses, such as chronic obstructive pulmonary disease, pulmonary fibrosis and asthma, an immunocompromised state such as those caused by therapies for environmental and occupational cancers; obesity, heart disease, hypertension or high blood pressure; and type 2 diabetes.[[20]](#footnote-21)
5. An unhealthy environment facilitates underlying health conditions. It can cause or contribute to nearly all of these pre-existing/underlying health conditions that make one extremely vulnerable to COVID-19. Air pollution, for example, causes and contributes to respiratory and cardiovascular problems that significantly increase the risk of life-threatening cases of COVID-19, mortality, and overall vulnerability.[[21]](#footnote-22) Health officials and researchers have called for air pollution reduction following previous outbreaks of zoonotic diseases.[[22]](#footnote-23) Asbestos inhalation not only causes debilitating respiratory diseases subjecting workers and communities to death from COVID-19, but so too do the treatments which can also result in an immunocompromised state. Chronic exposure to toxic chemicals at home in food, water, air and consumer products, including certain plastics, increase the risk of developing non-communicable diseases that make individuals more vulnerable to death or serious illness from COVID-19. Similarly, exposure to toxic chemicals that affect the normal functioning of hormone systems, particularly in unborn and young children, increase the likelihood of obesity and diabetes and other health conditions later in life that can elevate the risk of death from COVID-19.[[23]](#footnote-24)
6. Inequality in socio-economic conditions among various communities further accentuates the impacts of toxic exposures on victims. As described further below, people living in vulnerable situations, including low-income population groups, minorities and other marginalized communities, are exposed more to zoonotic diseases also due to environmental determinants of health and social conditions, which correlate with the spread and exposure to diseases.[[24]](#footnote-25)
7. Often, the cost of prevention of disease and disability heavily outweighs the cost of treatment, and cannot be compared to the incalculable burdens of death. The overall cost of addressing health impacts of COVID-19 are yet to be seen, yet it is already crystal clear that the economic arguments of States reluctant to take measures to prevent exposure are often nonsensical, misleading and pander to financial interests.

 B. Governance

1. Good governance systems are built on the rule of law, transparency, responsiveness, participation and inclusiveness, equity and accountability, among other pillars. Where public health challenges are poorly addressed, some of these elements are often missing. The COVID-19 pandemic is no exception. This section looks at governance systems for prevention of exposure, namely responsiveness and inclusiveness; however, transparency is addressed separately below under the right to information.
2. In general, States are duty bound to protect human rights by taking timely steps, based on technical, human and economic resources available to them, to prevent, halt and redress impacts on life, dignity, bodily integrity, among others. Measures and restrictions on some rights can be justified to protect public health as long as measures are “lawful, strictly necessary, limited in time, subject to review, not arbitrary or discriminatory, based on scientific evidence and information, respectful of human dignity, and proportionate to achieve the objective”.[[25]](#footnote-26) Despite many States having the technical, human and economic capacity, abysmal governance led to a failure to protect human rights from the novel coronavirus, especially at the early stage, which has now left hundreds of thousands of individuals and their loved ones as victims of its wake.

 1. Responsiveness

1. Rapid government response was common among States with good practices—which was driven by many factors, but predominantly effective and efficient decision-making grounded in public health available to all and the implicit recognition that the principle duty of the State in such a pandemic is to prevent exposure. The “duty to prevent” requires States develop capacity and preparedness to provide a prompt and effective response to public health emergencies. Acting timely is crucial in order to prevent further losses and to relax containment measures earlier.
2. States that successfully prevented millions of infections were better prepared, recognizing the grave risk, at least, as soon as reports emerged from the People’s Republic of China. Countries which reported some of the lowest infection and mortality rates worldwide adopted a “disease elimination strategy”[[26]](#footnote-27) at a very early stage, which allowed them to be among the first in the world declared virus-free and to relax lockdown, social distancing and other measures sooner, while still actively monitoring the response.
3. Such States adopted coherent, coordinated, and early preventative and precautionary measures, including early closing of borders, testing and tracing, orders of self-isolation, effective infection tracking systems, proper data-handling, the creative use of technologies, and participation and transparency in measures addressed to citizens. Many of these States quickly created task forces of all government ministries and, crucially, all regional and city governments, in order to ensure coordination and effective response at the national and sub-national levels. All of which was grounded on recommendations by the scientific and international community and driven by a recognition of the grave risks to life and health and a commitment to prevent exposure.
4. Prior funding and preparation of health systems, and coordination of interventions at the national level and through international cooperation, also play a crucial role in States’ rapid response. Public outreach campaigns to communicate key messages around prevention and containment measures have also been imperative. Best practices are characterized by transparency, information-sharing, participation and empathy which allow States to gain public trust in leadership and institutions.
5. Given the uncertainties related to the spread and impact of the virus, precautionary measures proved to be essential. In the States with best practices, precautionary measures were translated into targeted interventions and organization of comprehensive monitoring system that, when risk assessment allowed, permitted to limit confinement measures and closure of schools, while day-cares and basic services remained in operation. Countries that present good practices also relied on information and timely preventive measures to resume their activities and begin a phase of decontamination at an earlier stage.
6. On the other hand, when the first cases were detected, a number of governments throughout the world failed to prevent its spread. Not only were some States increasing the risks of such a pandemic through the above-mentioned environmental harms, but then States were also inexcusably unprepared despite repeated alerts from international authorities about the grave risks presented. While some States were taking measures for pandemic preparedness, other States shockingly eliminated key programs, in the years leading up to the novel coronavirus outbreak.
7. Indeed, some governments faced lack of capacity and resources,[[27]](#footnote-28) but others also dithered, denied and delayed for several critical weeks the seriousness of the pandemic, derelict in their duty to prevent exposure. Even as cases were identified in their own countries, some States failed to recommend even the most basic preventive measures, and then resisted declaring a national emergency and imposing strict measures to prevent contagion. Instead of swift action, several leaders were underestimating the risks based on unreasonable assumptions such as a miraculous disappearance of the virus, including through “herd immunity” theories which, in practice, constitute death sentences for the most vulnerable. At the same time, they used economic fear against introducing preventative and containment measures that would have minimized the overall economic impact in the long-term.
8. In many countries, tens of thousands of suspected cases of COVID-19 remained untested, untraced and freely circulating among the public for months, in defiance of WHO recommendations. States were reluctant to impose restrictions at the outset, or unable to maintain them for a reasonable period, because of both political and economic reasons. Tracing programs and protocols were not developed and resources were unavailable for testing to identify cases. Necessary considerations on how to isolate and protect different vulnerable groups were not taken. Such delay caused a phenomenal spread of the virus within and outside their borders and a preventable loss of tens of thousands of lives. In several cases, the magnitude of cases and deaths from the COVID-19 pandemic was also enabled by a lack of coordination between national and regional or local governments.
9. Even taking into account the time normally needed to develop adequate testing capacity and preventative measures, the timing of most States’ responses has been inconsistent with the rapid emergency action demanded by the duty to prevent, and the international human rights standards applicable in the event of disasters and risk management. Not only were States increasing the risks of such a pandemic through environmental harms, but then many were also inexcusably underinvesting in preparedness despite repeated alerts from international authorities about the grave risks presented.
10. In the case of most countries, the ability to take bold, decisive action to prevent exposure to the novel coronavirus was made more difficult because of an underinvestment in the progressive realization of socio-economic rights and that could have otherwise helped to mitigate the impact on national economies. For example, upon recognition of the possibility for an outbreak similar to SARS in 2003, health officials and researchers proposed various measures required, including improving housing conditions to prevent crowding.[[28]](#footnote-29)
11. The pandemic has shown the serious fragility of health care systems and infrastructure worldwide, both in terms of shortage of human resources, and equipment. This can be attributed not only to the current disruption of global supply chains[[29]](#footnote-30), but also to decades of privatization of, and funding cuts to, the health care system, which left countries and their hospitals unprepared and unequipped to manage the unforeseen crisis, causing a collapse of hospitals and a considerable delay in the response to the pandemic. In addition, the alarming number of cases concentrated in certain regions was often due to shortage of testing capacity which hindered contact tracing and caused the proliferation of sites of outbreak of the virus and undetected places of concentration of contagions. This included places of high risk such as hospitals and retirement homes, which also lacked protective equipment, contributing to a wide increase of the number of contagions registered nationally.
12. The COVID-19 pandemic is exposing the deep divide on how health care is understood in different countries. While some countries have systems that are publicly funded and almost entirely free for anyone, others, including among high-income countries, do not have universal health care, with many citizens unable to pay for treatment and private medical insurance. Once more, the economically and socially disadvantaged groups are the most affected, with limitations to access to health care. Evidence suggests that more centralized, solid, publicly funded systems with universal coverage and a strong chain of command and control could have responded better to the crisis. Such systems have been more suitable to scale up testing faster, coordinate responses, pool resources, reduce death rates, and guarantee essential health services to all. In addition, other human rights – such as to water and housing – have also been neglected, contributing to the inability to effectively prevent exposure among huge swaths of the population.

 2. Science, policy and participation

1. The role of science in responses to the coronavirus crisis was unsurprisingly critical. The rejection of the science of COVID-19 has strong parallels to the rejection of the science of the deadly impacts of pollution and toxic chemicals. The cost to economies of taking late action or lifting restrictions too early has been arguably greater than what the impact would have been had strong measures been taken quickly and retained adequately.
2. With respect to exposure to hazardous substances, an overwhelming number of States are unwilling to question bogus economic arguments, cowardly citing scientific uncertainty and incomplete financial narratives to delay taking measures that are unfavourable to powerful interests, but nevertheless a human right and a duty owed to the public. As COVID-19 infections rose, far too many States did not heed the advice of their public health experts. Instead of following scientific advice to adopt more rigorous testing and containment measures, certain government leaders proffered disingenuous arguments in support of their approaches, particularly the economic justification of not imposing a lockdown, effectively sacrificing the lives of their citizens, in particular low-income and minority communities, workers, and older persons.
3. Some political leaders have gone as far as to treat the virus as a “little flu”, contributing to, in their countries, the highest number of infections and deaths registered worldwide. They publicly rejected recommendations by scientists and the WHO, spread misinformation and downplayed the risk, contributing to the underestimation of the pandemic. Some have also called for environmental deregulation while the public “is distracted” by COVID-19.
4. States that had positive impacts in limiting the spread of the pandemic also tended to better ensure representation of women in the decision-making process without discrimination in the public sphere. Women globally face discrimination are underrepresented in decision-making processes, including those in response to COVID-19. Limited inclusion in the composition of COVID-19 crisis management bodies, such as dedicated governmental task forces and technical scientific committees, highlights the systemic discrimination of women in the scientific and political/public spheres.
5. The Special Rapporteur wishes also to highlight that the duty to prevent should not translate into the adoption of measures by States which are inconsistent with human rights, nor instrumentalized in order to perpetrate human rights violations or abuses. While the measures imposed by States on individuals were onerous, the lockdowns and other extreme measures became necessary to limit contagion because of initial failures in the prevention of exposure. This of course presented challenges to vulnerable communities, such as those living in extreme poverty, when lockdown measures were imposed. However, these challenges should never be an excuse for failing to prevent exposure to the maximum extent possible in such communities once the risk of contagion is apparent. While guaranteeing adequate services, collateral effects of measures to prevent exposure can and should be taken, rather than using the additional burdens as an excuse for inaction, in violation of the rights of such vulnerable communities.

 3. Rule of law and businesses

1. States may violate their obligations under international human rights law when they fail to take appropriate steps to prevent, investigate, punish, redress and remedy abuse by private actors. Independent of State efforts, and particularly where the State is unable or unwilling to exercise its duty, business enterprises have a responsibility to prevent exposure to hazardous substances resulting from their activities and/or business relationships. This responsibility is independent of whether or not adequate legislation is in place to protect human rights.[[30]](#footnote-31)
2. Businesses have a distinct role in both preventing and mitigating exposure to the novel coronavirus, and being a cause or a contributor of such a zoonotic pandemics. Businesses have responsibilities to undertake human rights due diligence,[[31]](#footnote-32) and to assess impacts of their operations and conduct in terms of respect for all human rights, including the right to life, and health, and to take steps to prevent, and when impossible, to mitigate impacts, including by using resources and leverage available to them.
3. With the COVID-19 crisis, some businesses demonstrated remarkable leadership, including shutting down their facilities, voluntarily providing assistance or instructing and facilitating workers to work remotely even before the State required them to do so. In order to overcome shortages of goods essential to prevent exposure, some reconverted their production facilities to make masks, sanitizing gels and ventilators. Others implemented free testing and created alliance for platforms to promote e-learning and home delivery, notably to vulnerable groups.
4. On the contrary, other businesses did not uphold their responsibility to prevent exposure. On the part of States, this showed an inadequacy or even absence of governance with respect to the private sector. Many businesses stand accused of increasing risks to vulnerable workers in their supply chains, exacerbating immediate humanitarian suffering, and enhancing further social inequalities and human rights abuses. Others have used obviously incorrect government statements as an excuse to fail to protect their workers and communities. Certain industries, such as alcohol, tobacco, junk food and beverage, and fossil fuels, are a source of deep concern due to products and practices that expose individuals to hazardous substances which can increase the prevalence of non-communicable diseases and disabilities that are exacerbating the risk of death from coronaviruses.[[32]](#footnote-33)
5. A matter of concern has also been the reckless conduct and profiteering of some business leaders, who, without any reasonable consideration for the safety and health workers, manipulate economic fear among the public and governments. Some have deliberately prevented implementation of protective measures, unfairly criticized some States for imposing lockdowns, publicly and privately pushed for the weakening of environmental and occupational standards, or threatened to move their facilities to other jurisdictions with weaker standards for prevention. Other companies have been also accused of corruption[[33]](#footnote-34), or involved in the macabre practices of the production of dangerous products and medicines, including those that are counterfeit or falsely stated as preventing COVID-19.

 C. Equality and non-discrimination

1. Zoonotic diseases have historically illustrated a mismatch between global concern and the impacts on vulnerable communities, who are often neglected.[[34]](#footnote-35) Various studies have demonstrated that racial, ethnic, and religious minorities, are disproportionately affected due to low socio-economic statuses, prevalent exclusion, and discrimination, placing them at higher vulnerability to infection and mortality, including due to unequal access measures being taken to mitigate exposure to the novel coronavirus.[[35]](#footnote-36) Their situation is accentuated due to underlying health conditions permeating environmental health responses, and illustrating entrenched inequalities and structural racism.[[36]](#footnote-37)
2. The COVID-19 pandemic has exposed and in various ways exacerbated inequalities, including through discriminatory laws and practices. 24-hour updates of cases and deaths provide a daily tabulation of a pervasive problem of unequal protection from exposure to hazardous substances. These “pre-existing” or “underlying” health conditions are mere manifestation of social injustices, including for those of living and working in unhealthy environments.
3. In numerous examples, States created situations where the most marginalized and vulnerable communities became the recipients of the greatest risk of death from COVID-19, and then failed to ensure that they were appropriately protected. The situation has been starkly apparent among high-income countries with deeply entrenched inequality. States have a heightened obligation to prevent exposure among high-risks groups, not the least of which is due to structural discrimination.[[37]](#footnote-38)

 1. Race, poverty and environmental injustice

1. As denounced by mandate holders of the Human Rights Council,[[38]](#footnote-39) the poor[[39]](#footnote-40) are becoming poorer, increasingly dispossessed and disproportionately vulnerable to exposure as a result of the COVID-19 crisis.[[40]](#footnote-41) Systemic racism[[41]](#footnote-42) has resulted in marginalized groups being far more likely to be in living conditions that increase vulnerability to COVID-19, such as pollution, unhealthy working environments, lack of access to treatments and unaffordable insurance coverage.[[42]](#footnote-43)
2. “Underlying health conditions” are in many respects the manifestation of deep-rooted and multifaceted discrimination faced by racial, and ethnic minorities, and other marginalized groups, including people of African[[43]](#footnote-44), Asian, and Hispanic descents, and indigenous peoples. For example, racial and ethnic minorities more often live in poverty and bear the burden of health conditions such as respiratory illnesses, hypertension, cardiovascular disease, chronic stress, and conditions requiring immunosuppressant treatments. According to the United Nations Working Group of Experts on People of African Descent, “the intersection of poverty and race, of gender, disability, class, and sexual orientation and gender identity further add to these complexities.” In states without universal healthcare, including high-income countries, people of African descent face even more disproportionate barriers in accessing care.[[44]](#footnote-45)
3. The intersectionality between exposure to pollution, racial discrimination, and economic inequalities is clear. This is a predictable and preventable facet of the current coronavirus pandemic because of widespread environmental injustice and racism. Among some racial and ethnic minority groups, evidence points to higher rates of hospitalization or death from COVID-19. As of June 12, 2020, age-adjusted hospitalization rates were highest in one country among minorities, 4 or 5 times higher in significant minority categories.[[45]](#footnote-46) Migrants in various countries show the highest levels of contagions and deaths from COVID-19, given their lack of access to medical care.[[46]](#footnote-47)

 2. Workers

1. Poor and minority communities at higher risk of death from novel coronavirus not only because of exposures where they live, but also because of greater exposure to the virus and hazardous substances at work. Workers – whether healthcare, food, or other “essential” workers, have been selflessly performing their jobs for society. Tragically, these risks were increased by the irresponsible conduct by some businesses and States. And thus required to be present every day at work despite the pandemic, with neither adequate protection from exposure nor access to paid sick leave. It was far too often lower-paid and minority workers who risked their lives during the pandemic to serve others and produce basic goods and services.
2. Every worker has a right to be protected from exposure to the novel coronavirus and other hazardous substances at work. States have a duty to respect, protect and fulfil the right of every worker to safe and healthy working conditions, and businesses have corresponding responsibilities.[[47]](#footnote-48) Every worker is essential.[[48]](#footnote-49) No one can be deprived of their human rights because of the work they perform nor should feel forced to work in conditions that unnecessarily endanger their health because they fear losing a job or a pay check.
3. However, some national and multinational business enterprises, including e-commerce giants, vegetable and meat packers, and mining industry players, have been reproached for exerting unacceptable pressure on their employees to work. Workers were placed at grave and foreseeable risk of exposure, where they were obligated to work in unsafe working environments lacking personal protective equipment and social distancing. For example, evidence shows that in some countries, food industry and mining workers have at least twice the rate of COVID-19 cases than other industries.
4. An alarming number of frontline workers were not given adequate protection during peak periods of contagion in various countries and economic sectors, facing a dearth of screening and isolation by businesses. In particular, workers who are minorities, low-income, older, migrants, and those with pre-existing health conditions, as well as the informal sector and those in the ‘gig’ economy, were not adequately protected.[[49]](#footnote-50) Too often, they have been arbitrarily categorized as “essential” for mere economic reasons rather than to guarantee basic services.[[50]](#footnote-51)While businesses may be willing to apply the hierarchy of hazard controls for toxic chemicals, some seem oblivious to the reality that this also applies to infectious diseases such as COVID-19.
5. The inability to secure personal protective equipment for health care workers was emblematic of the depth of the failure to prepare and adequately invest in healthcare in order to protect not only the brave and selfless health care workers, but through them also the broader communities. Until recently and still in certain countries, medical staff still reported significant shortages of basic protective equipment, such as masks, goggles, surgical gowns and gloves, not to mention respirators and equipment for intensive care. Remarkably, certain middle-income countries were supplying excess masks and gowns to some of the wealthiest countries in the world. Medical and sanitary staff also reported a lack of training.
6. Various businesses have been remarkable in prioritizing the health of their workers in the midst of the crisis, which is commendable. Deplorable, however, are those businesses that seem concerned only with profit and revenue, disregarding worker safety and health in their operations and supply chains. In many communities, the spread of COVID-19 was driven by contagion among workers.
7. All workers, including those deemed essential, have the right to remove themselves from situations they believe are hazardous, which is contingent on information about the known and unknown risks of the disease to which they are exposed including at work.[[51]](#footnote-52) States’ obligations in protecting workers must be emphasized, for it is their duty to ensure that every worker has safe and healthy working conditions, whether an emergency doctor or a supply chain worker. ILO estimates suggest that “testing and tracing for COVID-19 is strongly associated with lower labour market disruption and can help to reduce working hour losses by as much as 50 per cent".[[52]](#footnote-53)

 3. Older persons

1. Early in the pandemic, it became unsurprisingly clear that COVID-19 is particularly lethal to older persons.[[53]](#footnote-54) The biological vulnerability of older persons, combined with care support needs or housing in high-risk facilities, created tragic situations for families around the world. Heart-wrenching tales proliferate of families unable to say goodbye to loved ones trapped in isolation who tragically died alone.
2. The failure of numerous States to provide the necessary protection of the elderly is inexplicable. An immunity theory leaving the virus to circulate among society is a certain death sentence for the elderly. Harrowing tales from around the world describe an extreme detachment of States from a clear situation of extreme vulnerability. Reports proliferate of abandoned older persons suggest inadequate efforts to prevent exposure among the most vulnerable age group. In some countries, 40% to nearly 60% of coronavirus deaths were linked to nursing homes and other residences of older persons[[54]](#footnote-55) that horrifically became destinations of choice by some local authorities for people with the virus.[[55]](#footnote-56)

 4. Indigenous peoples

1. Indigenous peoples face an alarming situation as COVID-19 cases multiply.[[56]](#footnote-57) Already, COVID-19 is devastating indigenous communities, invoking the tragic history of smallpox that decimated many peoples of the Americas and elsewhere. Testing for many communities remains limited and self-isolation is often not a viable option. Illegal miners and other unwelcome outsiders continue to present an existential threat to communities, particularly those who voluntarily live in isolation.
2. Socio-economically marginalized, indigenous peoples are also at elevated risk because of lack of access to effective monitoring and early-warning systems. Lack of access to healthcare services is a pervasive problem, compounded by stigma and discrimination. Economic realities have forced a grave choice between income and health, if such a choice exists at all. For indigenous women, who are often the main providers of food and nutrition to their families, the choice is even graver.[[57]](#footnote-58)
3. For example, Navajo Nation leaders denounced one the highest per capita COVID-19 infection rate in the United States. In Brazil, Yanomami communities face a health and existential crisis from contact with illegal miners. They launched the #MinersOutCovidOut campaign to demand “the immediate expulsion of the miners from their territory, which has been the target of illegal gold mining since the 1980s [and]… caused the death of 13% of the Yanomami population from diseases such as flu, measles, pneumonia and malaria, against which the tribe has little or no immunity.”[[58]](#footnote-59) In Ecuador, indigenous federations have alleged in a series of lawsuits, violations of rights to life and health among others following the entry of COVID-19 into their territories which coincided with recent oil spills, depriving their communities of access to clean water. A provincial court ruled that relevant ministries must better communicate and coordinate with Waorani leaders to provide more COVID-19 tests, food and other necessities to communities, and to provide information on COVID-19 protocols for oil companies operating there.[[59]](#footnote-60)

 5. Disabilities

1. Persons with disabilities[[60]](#footnote-61) are disproportionately at risk of exposure, and have in many instances been left behind through, for example, the discontinuation of support services. Measures to prevent exposure, such as social distancing and self-isolation may be impossible, including for those who rely on the support of others to eat, dress and bath, and reasonable accommodation measures are essential to enable persons with disabilities to reduce contacts and the risk of contamination.

 D. Transparency and the rights to information and freedom of expression

1. Transparency is a principle of good governance and one of the most important factors in managing infectious diseases. It is a necessary precondition to prevent exposure to hazardous substances including coronaviruses, and to the full enjoyment of human rights. The human right to be protected from exposure to COVID-19, together with other human rights, have all been frustrated by lack of transparency and large information gaps throughout the spread of the novel coronavirus around the world.
2. The human right to information is integral to and inseparable from transparency. In his 2015 report,[[61]](#footnote-62) the Special Rapporteur states that the right to information is crucial to prevent human rights violations resulting from exposure and requires that relevant information is timely, appropriate, available and accessible in a manner that complies with the principle of non-discrimination and serves to respect and protect the rights of the most vulnerable.[[62]](#footnote-63) Public health and safety information must never be confidential. This can be ensured without violating the patient’s right to privacy.
3. The Special Rapporteur clarified that “States are duty-bound to generate, collect, assess and update information; effectively communicate such information, particularly to those disproportionately at risk of adverse impacts; to ensure confidentiality claims are legitimate; and to engage in international cooperation to guarantee that foreign Governments have the information necessary to protect the rights of people in their territory. In discharging their duty to conduct human rights due diligence, businesses are responsible for identifying and assessing the actual and potential impacts of hazardous substances and wastes, either through their own activities or as a result of their business relationships; to communicate information to other businesses, governments and the public effectively.”[[63]](#footnote-64)
4. Scientific progress and the protection of human rights depend on information. The Special Rapporteur on culture has highlighted that everyone has the right to enjoy the benefits of scientific progress and its applications.[[64]](#footnote-65) Its normative content include access by everyone without discrimination to the benefits of science and its application, including scientific knowledge; participation and the right to information; and adoption of a public good approach to knowledge, innovation, and diffusion.
5. States that applied best practice approaches drew on lessons from the SARS outbreak (2002), H1N1 influenza (2009), and MERS (2015) to develop an early policy of free testing, targeted investigations and maximum transparency. Other countries, despite registering high numbers of cases, were very transparent about efforts to reduce transmission of the virus and provided platforms to facilitate testing, tracing and dissemination of information on COVID-19, in order to increase public awareness, address misinformation. Such States generated, assessed, and acted up information to protect the most vulnerable, and managed to register a relatively lower death rates, showing that accurate information sharing can be the most effective means of encouraging the public to join in efforts, and to take the necessary precautions. The public in some of these States, then well informed, adopted and adhered to social distancing behaviours without mandatory measures issued by any authority.
6. However, there was a lack of transparency around COVID-19, including with regard to the first cases. It should be noted that detailed and specific due diligence duties are laid out in the WHO’s [International Health Regulations](https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf%3Bjsessionid%3DF47B6C9BE2A052B40FA9E1C9794519C9?sequence=1) (IHR). These obligations include duties of surveillance, monitoring and reporting public health emergencies of international concern within 24 hours.[[65]](#footnote-66) Nevertheless, concerning COVID-19 crisis management, the WHO denounced on multiple occasions a lack of transparency and information sharing within the international community.[[66]](#footnote-67) While there are reports that local doctors in the People’s Republic of China [warned](https://mp.weixin.qq.com/s/IzzCnz4Yr2jEIYZePiu_ow) public authorities of a surge of suspected cases of an unknown ‘viral pneumonia’ in late November,[[67]](#footnote-68) the local WHO Country Office was not notified of the outbreak until on 31 December 2019; this information was [forwarded](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf) to the WHO headquarters on 3 January 2020.[[68]](#footnote-69) Then, in February the WHO called upon all States to adopt ‘uncompromising and rigorous’ measures such as ‘extremely proactive surveillance to immediately detect cases”. Further, in March 2020, the WHO expressed concerns about the levels of States’ inaction, lack of resolve and precaution, urging States to activate and scale up emergency response mechanisms.[[69]](#footnote-70)
7. Since the beginning of the spread of the COVID-19 pandemic, health care professionals from different countries demanded transparency from public authorities, recognition of the seriousness of the disease and treatment at the source.[[70]](#footnote-71) For example, they denounced in advance the alarming spread of respiratory infections that seemed similar to prior virus outbreaks such as SARS.
8. Reports that States were reluctant to test at the outset of the pandemic and still remain unwilling to test at levels required to minimize further exposure to COVID-19 suggest deep disregard for the public’s right to information and the value of information in avoiding total calamity. Testing rates continue to remain at abysmal levels in some of the worst affected countries, and reports continued for months after spikes in cases outside Asia of the inability to access tests. While resources varied among States, for some of the best technically and financially resourced States to not have been positioned to test adequately was a multifaceted violation of their duty to protect life. Even later still, other States with less but still significant financial and technical resources, were still not testing at adequate levels and relied upon private donors[[71]](#footnote-72) to ensure that testing reached the most vulnerable communities, such as low-income communities, including favelas and other slums, without due information on the risks to exposure.
9. The disclosure of actual rates of infection and death from COVID-19 have been deeply problematic in many States. Concerning allegations suggest that various States have not disclosed the actual numbers of either positive cases, or deaths, representing a catastrophic risk and escalating factor to the spread of the pandemic, in violation of international human rights standards and health regulations. In some cases, States have even removed websites to prevent access to information, which is completely unacceptable and only serves to further increase the risk of individuals either contracting or further spreading the coronavirus, or refraining from economic and social activities that could be done safely out of fear of the unknown.
10. Uncertainty is always a factor in science. In the case of COVID-19, across the board there was remarkable lack of precaution employed by States and businesses, from the cost-effective wearing of face coverings to information about the risk of airborne spread to the deadly nature of the virus itself. The often-cited Rio Declaration of 1992 states that “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” Since the 1930s, precaution has been seen as a fundamental part of responsible development of medicines to protect public health. Yet, States continue to attack the principle of precaution in debates over international trade and environmental protection. It is not a coincidence that, leading States in arguing against the precautionary principle, including the United States, Brazil and Russia, recorded among the most severe outbreaks in the pandemic to date.
11. As highlighted by UNESCO, the outbreak has also been accompanied by waves of misinformation[[72]](#footnote-73), an “infodemic”[[73]](#footnote-74) and the spread of ‘fake news’ is putting lives at risk.[[74]](#footnote-75) This includes underreporting of cases and the promotion of untested and potentially dangerous treatments. The motives for spreading disinformation are many, and include political aims, self-promotion, and attracting attention as part of a business model. Those who do so, play on emotions, fears, prejudices and ignorance, and falsely claim to “bring meaning and certainty to a reality that is complex, challenging and fast-changing.” Irrespective of the intention being malicious or not, “the effect of sharing falsehoods and the spread of conspiracy theories is to disinform and disempower the public with deadly potential, moving away from real solutions and long-terms strategies.” In order to counter rumours and ensure their credibility, States should be more transparent, proactively disclose more data and improve access to information from official sources, in line with right to information laws and policies while promoting freedom of expression. “This work should be done in cooperation with free and professional journalism as an ally in the fight against disinformation and the respect of freedom of expression.”[[75]](#footnote-76)
12. On the other hand, others have also instrumentalized precautionary and containment measures to limit the full enjoyment of human rights, creating an environment of uncertainty and lack of trust about the information available on the actual risk of the disease and the necessity and proportionality of measures taken for prevention. Several States further entrenched repressive measures, including with regard to civil society,[[76]](#footnote-77) citizens’ and human rights defenders surveillance, censorship, restrictions on free expression and information, and unjustified limits on public participation, civic spaces and freedom of movement, far overreaching the limits of compliance under international human rights law on their powers during health emergencies of such scale.[[77]](#footnote-78)
13. Meaningful consent cannot be achieved without information. Under Article 7 of the International Covenant on Civil and Political Rights, every person has the right not to be subjected without free consent to medical or scientific experimentation. Within the context of COVID-19, protecting the capacity of individuals to be fully informed and to exercise meaningful consent about the possible exposure to viruses, treatments and vaccines, including their risks, is required under human rights laws and standards.[[78]](#footnote-79)
14. Relatedly, the COVID-19 crisis requires equitable access to medicine, including with regard to any treatments and vaccines, as part of the broader effort to prevent exposure. The protection of intellectual property rights is not inherently incompatible with human rights and should never constitute a barrier to access essential medicines or public health protection. Particular attention must be paid to States that do not have adequate resources and infrastructure for production of vaccines and other pharmaceutical products, in which circumstances favourable licensing is of little consequence.

 E. Attacking human rights defenders

1. Articles 19 of the [Universal Declaration of Human Rights](https://www.un.org/en/documents/udhr/index.shtml#a19) and the [International Covenant on Civil and Political Rights](https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx) also underpin the establishment of norms protecting sources and whistle-blowers, namely persons who bring to public knowledge otherwise undisclosed information. In this regard, in his 2015 report to the General Assembly[[79]](#footnote-80), the Special Rapporteur on freedom of expression urged states and international organizations to actively promote the right of access to information and to adopt or improve laws and practices – and to foster the necessary political will and social environments that provide protection and confidentiality to sources and whistle-blowers.
2. Historically, healthcare professionals have been whistle-blowers and, in many cases, been silenced by public authorities.[[80]](#footnote-81) Worryingly, since the beginning of the spread of COVID-19, several allegations have been collected with regard to cases of censorship by States that limited citizens’ freedom of expression and silenced of doctors, scientists, and other activists and health experts[[81]](#footnote-82) warning on the spread and proportion of the pandemic and calling for more robust State responses.[[82]](#footnote-83)In these cases, it was not until several weeks or months that authorities admitted the seriousness of COVID-19 and its outbreak and escalating diffusion, also disregarding WHO guidelines.
3. Such human rights defenders play a critical role in minimizing the impact and transmission of infectious diseases when they are first identified and in preventing transmission of contagion in a global pandemic. They observe the disease in clinics and hospitals, tracing the illness and advising patients, politicians and government agencies with data and science.[[83]](#footnote-84) Article 19(3) of the Covenant further states that restrictions on freedom of expression must be provided by law and be necessary to achieve a legitimate interest, identified as the rights or reputations of others, public order, national security, public health or public morals. Mere assertions of such interests are insufficient, and restrictions must be necessary to achieve a specified interest, and be proportionate to those objectives.
4. Health care professionals calling for action and transparency were in some cases quickly silenced, or even criminalized for “wrongdoing” and detained by the State for spreading “false rumours”.[[84]](#footnote-85) Some have since died from the novel coronavirus. Others have lost their jobs during the surging pandemic for alerting media about shortages of masks and hospital equipment.[[85]](#footnote-86) Public health experts and leaders in some States are also being silenced and undermined by their respective governments in exercising their role to prevent exposure. For example, key ministers have been removed in advocating for preventative measures, and leading scientists prevented from exercising their right to freedom of expression regarding their concerns of problematic strategies.[[86]](#footnote-87)
5. Protections against retaliation should apply in all public institutions, including those connected to national security, and effective and protective channels should be established for whistle-blowers to motivate remedial action. Participation must be guaranteed and promoted, to fully ensure the right to information and freedom of expression. When the State is the only source of information, the right to information and freedom of expression are inevitably prejudiced and the best solutions seldom if ever to be realized.[[87]](#footnote-88)

 F. International Cooperation

1. Just as States have an obligation under international human rights law to prevent transboundary pollution, they also have an obligation to prevent spread and exposure to COVID-19 and all diseases from crossing their borders. Therefore, such responsibility also extends to businesses’ due diligence and has an extra-territorial dimension. As many States do not have adequate resources to prevent exposure in the case of pandemics like COVID-19, international cooperation is essential to ensure that all States have protection measures available and accessible, as a weakness in any country is a threat to all.
2. However, not only were States not taking the necessary measures in anticipation of COVID-19 within their borders, they were also underfunding international cooperation efforts on public health threats for many years, lacking international solidarity. The politically motivated attacks on WHO must be firmly denounced. All organizations can be improved, including the WHO, and an independent inquiry should be taken of all international bodies in terms of their response to the COVID-19 crisis in due course. However, withdrawal of funding for the WHO stands only to increase the exposure to COVID-19 in low-income and some middle-income countries, with devastating results. It illustrates a complete rejection of the principle of equality enshrined in the UN Charter by its architects and callous disregard for people in Asia, Africa and Latin America, who sadly have been disparaged recently for far too much for far too long, with far too little consequence.
3. Given the highly contagious nature of COVID-19 and the ease by which individuals travel worldwide, any State experiencing cases on its territory should have directly notified and cooperated with other States from the moment in which there were signs that the virus was spreading rapidly by human transmission — which could have been as early as late December 2019. In compliance with their duty to prevent, States should establish solid and coordinated international cooperation,[[88]](#footnote-89) acknowledging that the effectiveness of responses is resource-dependent and a global issue. It is essential that countries learn from these mistakes. The current crisis should reinforce the fact that our interconnected world requires global-level crisis management, multilateralism and strong international cooperation and solidarity.
4. In this regard, the Rapporteur wishes to pay tribute and recognize the efforts of those lower-income countries that, despite financial constraints and resources, showed great commitment and preparation in tackling the pandemic and, in the name of international solidarity, have supplied trained doctors, ventilators and protective equipment to some of the wealthiest countries.

 IV. Conclusions and recommendations

1. **Prevention of exposure to hazardous substances is a human rights obligation incumbent on States. While some States have addressed the grave threats of exposure to the novel coronavirus with remarkable determination, resolve and transparency -- politics, economic miscalculations and misguided motivations enabled and emboldened many Governments to fail individually and collectively in their duty to prevent exposure. Similarly, while many businesses prioritized the public interest in prevention of exposure, many also showed a deplorable lack of consideration for the workers and the communities in which they operate. However, in the case of COVID-19 and other hazards, it is fundamentally the duty of the State to prevent exposure.**
2. **For those States that have so clearly failed in their duty to prevent exposure to the virus, the failure is a multifaceted violation of their human rights obligations. These obligations include the human rights to life, dignity, and health, often coinciding with feverish violations of the rights to information and freedom of expression. Principles such as equality, non-discrimination, international cooperation and transparency were all but lost among these States.**
3. **Most States did not take early warnings to heart, as deforestation, biodiversity collapse, climate change, illegal wildlife trade, and other environmental conditions raised the risk of emergence of COVID19. Upon its emergence, various States failed to act with prudent urgency that was so clearly required. Millions of cases of infection resulting in hundreds of thousands of preventable deaths are a direct result. Older persons, the poor, minorities, migrants, indigenous peoples, and other vulnerable groups, have all suffered predictably from the inaction of States in the face of a clear and present danger.**
4. **Ironically, the unemployment and economic collapse argued to have prevented States from exercising prudent and precautionary measures to prevent exposure, especially among communities most vulnerable, are now exacerbated by their inaction. Misguided fiscal policies that made prudent action to protect human rights excessively difficult, are now even more costly. Mental and physical health, education, and increased domestic abuse, are among the effects now prolonged by the unwillingness to take bold action to protect life and health at the earliest stages, and then to maintain restrictions until the risks were adequately lowered. All of these problems are due to States failing to prevent exposure to the virus at the outset—at the earliest point when preventive measures could have been undertaken.**
5. **Recognizing the interconnectedness between COVID-19 and non-communicable diseases, there is an urgent need to enhance global efforts to prevent non-communicable diseases resulting from unhealthy environments, workplaces and consumer products. Strengthened efforts on non-communicable diseases are necessary not only now during the COVID-19 outbreak, but most importantly long after, focusing in particular on the most vulnerable. For example, interventions to reduce exposure to air pollution have immense potential in protecting health and contributing to reducing the burden of non-communicable diseases that exacerbate the risks of exposure to viruses and other hazards. Strengthening environmental and health protections and promoting the human rights to a healthy and sustainable environment and to safe and healthy work, not only address non-communicable diseases and COVID-19 vulnerabilities, but also contribute to much broader societal benefits for public health, the environment and economies.**
6. **Transparency, responsiveness, and ensuring that the most vulnerable members of society are protected from exposure proved to be key elements of best practices. Doctors, scientists and public health experts are human rights defenders whose right to freedom of expression must be respected. States are responsible to share and take into account evidence-based information from the scientific community in the evaluation of the necessity of precautionary measures such as testing, lockdowns and restrictions. To the contrary, misinformation, the silencing of public health experts, opaque decision-making, and policy driven by politics and profit rather than science has proven catastrophic. The importance of public confidence in leadership during any crisis is crucial, and sorely lacking in so many States at present.**
7. **For years, the Special Rapporteur, has joined the chorus of medical and public health experts in warning the international community of another public health crisis, a “silent pandemic” due to chronic exposure to toxic chemicals, pollution and other hazardous substances. These exposures, starting from the earliest stages of human development, result in diverse and nuanced adverse health impacts that often go unrecognized or underappreciated by victims, policy makers, justice systems, and society at large, due to their latent effects.**
8. **In many ways, States that responded well to COVID-19 illustrate what can be done to protect public health from hazardous substances. However, it cannot be ignored that many States have failed in their duty to prevent exposure to the virus in similar fashion as the failure to prevent exposure to pollution, toxic chemicals, pesticides and other hazardous substances, which kill over 12 million people, nearly 2 million children below the age of five, every year. Parallels may be drawn with the plight of over 160 million workers who develop preventable diseases and disabilities from exposure to hazardous substances at work, which causes approximately one worker death every 30 seconds. States should recognize that what has been done in a handful of countries to save perhaps millions of lives from COVID-19 can also be done for other hazardous substances that are resulting in widespread, systemic and discriminatory violations of the rights of vulnerable groups around the world.**
9. **Everyone is essential, and everyone has a right to be protected from exposure to hazardous substances. Patterns of discrimination and inequalities are barriers to human dignity and development. Underlying structural inequalities and pervasive dis­crimination must be addressed in the response and aftermath of this COVID19 crisis, to “build back better” upon the principles of equality, dignity and accountability and international human rights standards.**
10. **The Special Rapporteur recommends that States:**
* **recognize their obligation to prevent exposure to hazardous substances, including zoonotic viruses, as part of their obligation to protect human rights, including rights to life, health, bodily integrity, among others**
* **reform the manner in which economic considerations are considered in the face of public health and environmental concerns, such as zoonotic diseases, to ensure a rights-based approach is applied**
* **identify and prioritize the protection of all vulnerable groups from exposure to viruses and other hazardous substances**
* **recognize that environmental injustice and systemic discrimination fuel underlying health conditions, and ensure that socio-economic mapping of rates of infection and death among vulnerable groups includes environmental and occupational exposures to hazardous substances in addition to other criteria such as income and race**
* **ensure the right to safe and healthy work is constitutionally protected and ratify all occupational safety and health conventions of ILO**
* **implement principles on the protection of worker’s rights from exposure to hazardous substances, including its application to the grave situation confronting workers in the COVID-19 pandemic, as encouraged by the Human Rights Council in resolution A/HRC/RES/42/21**
* **strengthen environmental governance to address destruction of nature as an essential measure to prevent exposure to health hazards such as further outbreaks of zoonotic diseases, creating effective long-term collaboration between stakeholders, including policymakers and local communities**
* **recognize the circular economy and sustainable consumption and production as key to reducing risks of future zoonotic diseases, and urgently undertake efforts to improve resource conservation and detoxification of economic output**
* **create permanent structures for rapid response to infectious diseases, such as tracing and tracking systems, to mitigate and contain their spread**
* **ensure full compliance with the WHO’s International Health Regulations and international human rights standards**
* **ensure maximum transparency in all matters regarding public health and exposure to hazardous substances, including the novel coronavirus, such as decision-making and levels of contagion**
* **ensure everyone has access to health care, and scientific progress, as a human right and preparedness of health systems including for pandemics**
* **recognize medical professionals and public health experts as human rights defenders, and ensure their right to freedom of expression is respected and protected, and effective remedies are duly provided**
* **enhance international cooperation, including bilateral and multilateral assistance to States in need, and increase all aspects of support for the World Health Organization.**
1. **The Special Rapporteur recommends that businesses:**
* **recognize that the rights to life and health, and all human rights, are paramount to the privilege of profit-making activities and stop blackmailing politicians and interfering in public health decision-making**
* **support efforts to prevent and minimize exposure and ensure that the right to safe and healthy work is recognized in policies and practices, including precautionary measures to protect older workers and other vulnerable groups**
* **implement the principles on the protection of worker’s rights from exposure to hazardous substances is applied to the grave situation confronting workers in the COVID-19 pandemic, as encouraged by the Human Rights Council in resolution A/HRC/RES/42/21**

**redesign consumption patterns and production methods to conserve resources, be free of toxic substances and advance a circular economy, thereby reducing stress for natural habitats, minimizing the risk of a future zoonoses, and reducing the risk of death from pollution and other contributing exposures.**

Annex

 The human right to an effective remedy: The case of lead contaminated housing in Kosovo[[89]](#footnote-90)

 I. Introduction, background and context

1. In the present submission, pursuant to Human Rights Council resolution 36/15, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (toxics),[[90]](#footnote-91) Baskut Tuncak, focuses on the human right to an effective remedy for victims of toxics. The Special Rapporteur has chosen to illustrate the implementation of this right through the case of Roma, Ashkali and Egyptian (RAE) populations,[[91]](#footnote-92) housed on lead contaminated wasteland by the United Nations from 1999-2013, during and after the Kosovo conflict.
2. These communities are still waiting for remediation and compensation for the serious human rights violations that they have suffered. The victims of exposure, most of whom were children and women of reproductive age, continue to suffering an ongoing violation of their human rights by the failure of the United Nations and its Member States to provide a timely and effective remedy, now over 20 years from the start of this unnecessary and preventable tragedy on this marginalized minority community.
3. In March 2019, as a follow up to previous engagement described herein, the Special Rapporteur met with the Roma community that continue to bear the burden of years of toxic exposure, within the framework of an academic visit.[[92]](#footnote-93) The Special Rapporteur held meetings with affected community members, the Special Representative of the Secretary General (SRSG) and Head of United Nations Mission in Kosovo (UNMIK), and other representatives of the international community. He wishes to thank all officials and individuals whom he met, for their time and cooperation in sharing information on their views and experiences. In the present report, the Special Rapporteur shares findings and recommendations stemming from his engagement over the past several years.

 II. Right to an effective remedy for victims of toxics

1. Accountability is a fundamental principle of human rights. States and other duty bearers must be answerable to rights holders for the observance of human rights implicated by toxics. In this regard, duty bearers must comply with the legal norms and standards enshrined in international human rights instruments. Every rights holder is entitled to initiate proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. States and other duty bearers must ensure access to justice and provide effective remedies and restitution to victims of those violations occurring because of exposure to hazardous chemicals.[[93]](#footnote-94)
2. Access to justice is an essential component of the rule of law and a means by which victims of toxics can actively claim the entire range of rights they hold, including access to an effective remedy. Human rights obligations in the area of toxics must be matched to appropriate and effective remedies when breached.[[94]](#footnote-95) An effective system of justice and remedy helps to prevent future abuses and ensure responsible business conduct.[[95]](#footnote-96)
3. Effective remedies for violations of human rights law include the right of victims to have access to relevant information concerning violations and to effective and prompt reparation for harm suffered.[[96]](#footnote-97) Reparations can involve restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition, including changes in relevant laws and practices, as well as bringing to justice the perpetrators of rights violations.[[97]](#footnote-98) Extrapolating from these principles, the right to an effective remedy requires, inter alia, the remediation of contaminated sites, compensation, the cessation of action or inaction that gives rise to impacts, the provision of health care and the dissemination of information to prevent recurrence and further, direct or indirect, harms.[[98]](#footnote-99)
4. Victims have a right to fair compensation for losses suffered. Compensation can address material losses and non-material or moral suffering. Timely reparation to prevent recurrence is essential.[[99]](#footnote-100) Moreover, the application must be without discrimination of any kind or on any ground.[[100]](#footnote-101) To be effective, remedies should be appropriately adapted for vulnerable groups, such as children, taking into account their special needs, risks and evolving development and capacities.[[101]](#footnote-102)
5. Unfortunately, most victims of toxic exposures have no access to justice and no semblance of an effective remedy, and most perpetrators of violations relating to toxics are not held accountable. Major obstacles to accountability and remedy include the unreasonably high burden of proof, the long latency periods for consequences to manifest in some cases and the difficulty in establishing causation; substantial information gaps with respect to the identification of hazards, measurement of exposure and specification of the epidemiological impacts; possible exposure to a multitude of different substances and over a lifetime. The pervasive inaccessibility of effective remedies to victims of toxic exposures serves as a barrier to the transition to a safer, healthier environment for millions of people around the world.[[102]](#footnote-103)
6. The World Health Organisation (WHO) estimates that over 12 million people die each year from an unhealthy environment, widely acknowledged an underestimation, given the information gaps on hazards and exposure.[[103]](#footnote-104) A minuscule number of those victims receive any semblance of effective remedy. The inability to secure justice, even by the victims of the most egregious and clear cases of malicious conduct adds insult to injury. The need to establish a causal linkage between exposure to toxics and health impacts fosters impunity, making it nearly impossible for many victims to obtain justice and remedy for chronic exposure to a cocktail of toxic substances, whether they are exposed while still in the womb or later in their lifetimes. Most people do not even know that they are victims.
7. Profound questions exist about how we uphold the principle of accountability and rights to justice and an effective remedy for people around the world for chronic exposure to a multitude of substances. The situation facing those struggling to secure their rights from unquestionable violations brought by an unhealthy environment comes in focus. Independent assessments have identified hundreds of thousands of contaminated sites around the world, including as a result of conflict and industrial operations. Left unaddressed, contaminated sites pose a continuing threat to the rights of present and future generations. The impacts of exposure, particularly during sensitive periods of development, are often irreversible, debilitating and deadly. No less significant than the physical impacts are the impacts on mental health, including the emotional trauma for people exposed to toxic substances and for their families.

 III. The case of lead-contaminated housing in Kosovo

1. Between 1999 and 2013, the United Nations housed approximately 600 members of Roma, Ashkali and Egyptian families, displaced during the Kosovo conflict, in camps constructed on lead-contaminated toxic wasteland. The camps were established close to the Trepca industrial complex. The Trepca smelter extracted metals, including lead, from the products of nearby mines from the 1930s until 1999.
2. Lead and heavy metal contamination in Mitrovica/Mitrovicë and its adverse effects on human health was documented before the displaced residents arrived. Since the 1970s, the area around the facility was known to be highly contaminated. Reports of lead poisoning among RAE residents of the camp and nearby French peacekeepers began to surface almost immediately in 1999. Peacekeeping soldiers were quickly relocated in 2000, away from the toxic dumps; however, preventative measures for the residents were not taken for many years, in some cases not until 2013. Meanwhile, irreversible diseases and disabilities developed among residents incessantly exposed to toxic lead, which is believed to have contributed to the death of several children and adults[[104]](#footnote-105).
3. Concerns were consistently raised regarding the situation of the RAE residents, particularly of children and women of reproductive age, housed in poor and toxic living conditions in precarious camps.A UNEP case study found that the RAE population of the IDP camps faced a high risk of contamination due to the close proximity of the camps to contaminated and unsecured waste material and the rudimentary living conditions in the camps. [[105]](#footnote-106) In addition, human rights NGOs (such as Human Rights Watch - HRW), local human rights institutions (primarily the Ombudsperson Institution in Kosovo) and United Nations and European human rights monitoring mechanisms, including the United Nations treaty bodies and Special Rapporteurs, and the Council of Europe Human Rights Commissioner, who had visited and monitored the camps since 2005, defined the situation in the RAE camps as the most serious humanitarian and environmental problem in Europe.[[106]](#footnote-107)
4. Lead affects multiple body systems and is particularly harmful to children. Lead builds up in the body, often over months or years. Even small amounts of lead can cause serious health problems. According to WHO, there is no safe level of exposure to lead.[[107]](#footnote-108) At very high levels, lead poisoning can be fatal[[108]](#footnote-109). Socio-economic factors also influence exposure to lead, since families living in vulnerable conditions are more likely to live near industrial plants or work directly in them. Further, poor iron or calcium deficient diets facilitate the absorption of lead, especially by children. [[109]](#footnote-110)
5. Children are especially vulnerable to the toxic effects of lead and can suffer profound and permanent adverse health effects, particularly affecting the development of the brain and the nervous system. Children younger than 6 years are especially vulnerable to lead poisoning, which can permanently impair mental and physical development. Lead in bone is released into blood during pregnancy and becomes a source of exposure to the developing foetus, requiring mutigenerational efforts for prevention. High levels of lead during pregnancy can cause miscarriage, stillbirth, and premature birth and low birth weight. Lead also causes long-term harm in adults, including increased risk of high blood pressure and kidney damage. Half of the RAE residents were children aged 14 or younger.[[110]](#footnote-111)
6. According to testimonies gathered by the Special Rapporteur in 2019, many of those affected among the RAE community, including children, are still experiencing a myriad of health problems, including seizures, kidney disease, behavioural and emotional challenges, as well as memory loss – all common long-term effects of lead poisoning.[[111]](#footnote-112)

 A. Detailed chronology of events

1. Prior to the Kosovo conflict, the Roma living in the Mitrovica/Mitrovicë region comprised one of the most distinctive communities in Northern Kosovo. The Roma Mahalla, comprised around 700-750 houses, with an estimated 8,000 inhabitants (approximately 1000 families).[[112]](#footnote-113) During 1998 and 1999, thousands of representatives of the Roma community were forced to flee by the armed conflict, becoming IDPs or refugees in neighbouring countries and in Europe.
2. In 1999, the Office of the United Nations High Commissioner for Refugees (UNHCR) provided assistance to the IDPs, distributing food and organizing makeshift camps in Cesmin Lug and Zitkovac. These camps were supposed to be a temporary solution until Roma houses in the Mahalla were reconstructed. Other IDPs spontaneously occupied abandoned army barracks at Kablare (next to the Cesmin Lug camp) and Leposavic, a town 45 kilometres from Mitrovica/Mitrovicë.[[113]](#footnote-114)
3. With the exception of Leposavic, all the new IDP camps were located near the Trepca complex, a mine for lead and other heavy metals. Under United Nations Security Council Resolution 1244 (1999), UNMIK had the obligation to administer the Trepca smelter on an interim basis. In August 2000, after an environmental audit warned that the smelter was an “unacceptable source of air pollution” and after testing of French Kosovo Force (KFOR) soldiers serving near its facilities revealed that their Blood Lead Level (BLL) had increased dramatically, the former Special Representative of the Secretary-General for Kosovo (SRSG), Bernard Kouchner, ordered the closure of the plant as an emergency health measure.
4. During 2000, UNMIK and KFOR contingents based in northern Mitrovica/Mitrovicë conducted assessments of the soil toxicity in and around the camps, which indicated high lead contamination in the camps. KFOR contingents implemented measures to protect their personnel, including removing personnel with high blood lead levels from the area.
5. In November 2000, UNMIK commissioned a report to provide recommendations on how to assess risk and means of mitigation. The report recommended comprehensive epidemiological studies, periodic environmental sampling, and robust medical monitoring and medical treatment for those in need. However, it reportedly concluded that the costs of any such strategy exceeded the financial capacities of UNMIK. During the period 2000-2004, no further steps were taken to address the issue of decontamination in the region.[[114]](#footnote-115)
6. In October 2001, UNMIK took over the responsibility for managing the camps from UNHCR.[[115]](#footnote-116) In 2004, the World Health Organization (WHO) conducted an assessment of the situation in the camps, producing an internal report to UNMIK on how to manage the risks, and which recommended finding a more suitable location for the IDPs and closing the existing camps. WHO also initiated blood testing on children from the camps, which demonstrated unacceptably high levels of lead. In the same year WHO released a report demonstrating very high levels of lead contamination among the Roma population in all the camps.
7. In April 2005, UNMIK initiated a multi-stakeholder task force called the Mitrovica Action Team (MAT)[[116]](#footnote-117) to develop a framework for the temporary relocation of Roma IDPs from Cesmin Lug, Zitkovac, and Kablare to the vacant KFOR barracks in Osterode. The task force concluded that the return to the reconstructed Mahalla was the most sustainable solution available.
8. Between 1999 and 2005, WHO developed and supported technical assistance in north and south Mitrovica/Mitrovicë and the Zvecan municipalities in relation to RAE communities in the following areas: alleviation of the environmental exposure, provision of a "lead-safe" environment; provision of "lead-safe" occupations; improvement of public health (addressing poor living conditions and poverty); provision of adequate case management and treatment for the affected population. WHO supported the medical treatment of 12 children who received emergency intravenous chelation therapy during 2004 and 2005. Since 2006, WHO developed and recommended an oral chelation treatment protocol, which was associated with fewer side effects and allowed for outpatient treatment in Osterode Camp. WHO, among its other initiatives to bring relief to the situation of exposed communities, also established and equipped a "Health and Heavy Metal Unit" (HHMU) in North and South Mitrovica/Mitrovicë. [[117]](#footnote-118)
9. In March – April of 2006, Zitkovac and Kablare camps were closed and their residents moved to the Osterode camp, as a transitional location pending a durable solution in the Roma Mahalla. Residents of Cesmin Lug decline to move to Osterode. In June 2007, around 90 families (around 450 individuals) returned to the Roma Mahalla from all Mitrovica/Mitrovicë camps as well as from Serbia and Montenegro. The MAT task force under UNMIK’s leadership organized the return. In May 2008, UNMIK handed over management of the Cesmin Lug and Osterode camps to the Kosovo Ministry of Communities and Returns. The Norwegian Church Aid was at the time acting as manager of the Cesmin Lug and Osterode camps.
10. In October 2008, the Roma community requested the Mitrovica/Mitrovicë Institute for Health to conduct blood tests on children in Cesmin Lug, Osterode, and Leposavic. Out of 53 tested, 21 had blood lead levels requiring immediate medical intervention as they faced significant threats to their life (over 65 mcg/dl, which is the highest level the machine could register), 18 had levels of 45 mcg/dl, and only two children had results within the norm. The results in Leposavic were lower, yet still above the “acceptable norm” of 10 mcg/dl.
11. Since 2008, WHO has assisted the Kosovo health services to provide medical services to the RAE communities, guided by WHO and based on WHO protocols endorsed by the Ministry of Health in Pristina. WHO since have provided a health promoting package, including education and counselling for management of the lead poisoning as well as treatment.[[118]](#footnote-119)
12. In July 2008, a Roma rights activist on behalf of Roma families from all the camps filed a complaint with the Human Rights Advisory Panel (HRAP) of UNMIK, alleging criminal negligence leading to severe environmental contamination causing a severe health hazard to the camps' inhabitants, as well as violation of the rights to life and family life, and lack of a legal remedy. In June 2009, the HRAP ruled the claim to be admissible on multiple counts.
13. The Special Rapporteur considers it particularly important to draw attention to the fact that approximately half of the complainants were children on 4 July 2008, when the complaint was filed with the Panel. About 75 complainants were women and girls. At least 13 of them delivered babies in the camps and had submitted the complaint also on behalf of their children.
14. The Council of Europe’s Commissioner for Human Rights wrote that, even if the long-term consequences of exposure to lead were harder to determine, lead contamination undoubtedly caused permanent developmental damage to children, which he had viewed personally when visiting Osterode and Česmin Lug in March 2009. In a subsequent letter to the SRSG, the Commissioner indicated that the children he had met in the camps were “clearly under-developed for their age”, and defined the situation as a “humanitarian disaster”.
15. In 2010, UNMIK started the massive relocation of camp residents to other areas, and the last camp was closed in 2013. Lead contamination persisted for years following the shutting down of the Trepca smelter, originating mainly from the uncontained waste piles and tailing dams eroding under wind and water as well as from the contaminated equipment, buildings and soils left behind by previous operations.
16. In 2013, Norwegian Church Aid and USAID funded the construction of a three-story apartment building situated in the mixed community neighbourhood in Mitrovica/Mitrovicë North. Currently Roma, members of the Kosovo Albanian, Kosovo Serb, Kosovo Ashkali and Kosovo Bosniak communities reside in the neighbourhood. The families moved into the building after the closure of displaced persons camps Osterode and Česmin Lug/Cesminlukë.[[119]](#footnote-120)
17. The majority of members of the Kosovo Roma community currently reside in the Roma Mahalla area of Mitrovicë/Mitrovica South together with Kosovo Ashkali, whereas the Kosovo Ashkali community also resides in “2 Korriku/Sitničko Naselje”, and Shipol/Šipolje urban quarters. Between 2003 and 2014, the support for gradual return to the Roma Mahalla led to a steady increase of the Roma and Ashkali population and improvements in the settlement’s infrastructure. The “Roma Mahalla” housing infrastructure comprises private single-family permanent houses, collective apartments and individual terraced houses. Access to services, electricity, water and waste collection is functional, however due to non-payment of utility bills, utility companies have performed several collective water and electricity cuts. The functioning of the sewage system is also an issue in Roma Mahalla. The “2 Korriku/Sitničko Naselje” is located in the centre of Mitrovicë/Mitrovica South town. It is a densely populated and mixed neighbourhood, historically inhabited by the Kosovo Albanian and Kosovo Ashkali communities.
18. Overall, the infrastructure and access to services in the neighbourhood is fairly good and includes public lighting, waste disposal and collection, electricity, water and sewage network. The road infrastructure, however, is in a very poor condition. Due to damaged riverbanks and a malfunctioning sewage pipe system, the neighbourhood has also suffered from recurrent flooding from the river Sitnica—resulting in flood damage to houses and the evacuation of families.[[120]](#footnote-121)

 **IV. Opinion by Human Rights Advisory Panel of UNMIK**[[121]](#footnote-122)

1. In 2008, 138 members of the Roma, Ashkali and Egyptian communities in Kosovo who used to reside in the in northern Mitrovica/Mitrovicë since 1999 brought a case to the Human Rights Advisory Panel of UNMIK. All complainants claimed to have suffered lead poisoning and other health problems on account of the soil contamination in the camp sites due to the proximity of the camps to the Trepca smelter and mining complex and/or on account of the generally poor hygiene and living conditions in the camps.
2. In April 2016, the HRAP of UNMIK released an opinion on the case. While formulating its opinion the Panel took into account medical literature which stated that infants, children up to the age of five, and pregnant women, were at greatest risk of harm from exposure to lead and are more vulnerable to its toxic effects. Exposure of pregnant women to high levels of lead can cause miscarriage, stillbirth, premature birth and low birth weight, as well as minor malformations. Children are at a higher risk of exposure to lead. They are exposed to lead throughout pregnancy when lead accumulated in the mother’s body passes to the child; they absorb 4-5 times as much ingested lead as adults; they have an innate curiosity to explore the world which results in inadvertent ingestion of lead-coated objects and contaminated soil and dust; they spend more time in a single environment; they are more likely to have nutritional deficiencies which facilitate the absorption of lead; and they lack control over the surrounding environment[[122]](#footnote-123). According to the complainants, many babies were stillborn and there were many miscarriages in the camps. They reported that, as many women fear that their children would be born with physical and mental health conditions they would practice self-induced abortions by drinking lice shampoo or pesticides, or mixing yeast with beer to produce miscarriages.[[123]](#footnote-124) The Panel observed that medical literature was apparently consistent in stating that, once lead poisoning has been diagnosed, the most important step in treatment would be to prevent further exposure by removing the source of exposure from the environment and/or relocating patients.[[124]](#footnote-125)
3. The complainants complained that “little or no information” was given to the IDPs for nearly six years on the health risks to which they were being exposed. Even after the release of the two 2004 WHO reports calling for the immediate evacuation of the camps, “residents were not given appropriate and understandable information about the danger to their health and the health of their children”. A number of studies and reports from different sources, for example the 2004 WHO study, were “repressed by UNMIK” and only when international attention was brought to the issue by local activists, did the authorities begin an information campaign in the fall of 2005. Until then, UNMIK not only failed to provide information, but also was responsible for providing “misinformation” and “misrepresentations” on the issue. In this regard, among others, the complainants stated that UNMIK officials circulated information that the camps’ inhabitants were responsible for their own poor health due to their informal smelting activities.[[125]](#footnote-126)
4. The Panel noted that UNMIK was aware of the risks stemming from the operation of the Trepca complex from the time of its arrival in Kosovo in 1999. UNMIK was also made aware of the health risks the victims had been exposed to since November 2000.[[126]](#footnote-127)
5. The HRAP opinion concluded that numerous articles of the European Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESC), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC) were violated by UNMIK. Among the human rights identified by the Advisory Panel as being violated were the rights to life, freedom from inhuman and degrading treatment, health, and respect for private and family life, an adequate standard of living, and discrimination. Numerous violations of the CRC were identified, including exploitation. The Panel also agreed that UNMIK did not provide adequate information to the complainants on the risks to their health and lives deriving from their permanent presence in the camps. UNMIK was found responsible for compromising irreversibly the life, health and development potential of the complainants that were born and grew as children in the camps, in violation of Articles 3, 6, 24, 27 and 37 of the CRC.[[127]](#footnote-128) Articles 1, 2 and 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) were also found to be violated in relation to female applicants.[[128]](#footnote-129)
6. The Panel took into consideration the burden that UNMIK had to face immediately following its arrival in Kosovo after the conflict and appreciated its efforts at reconstruction. However, it did not exclude UNMIK’s responsibility towards the complainants, especially when considering that the situation complained of lasted for more than ten years, three of which were within the Panel’s temporal jurisdiction. The Panel found that UNMIK did not take adequate steps to remove the complainants from a situation where they suffered inhuman and degrading treatment in fulfilment of its obligations under Article 3 of the European Convention on Human Rights (ECHR).[[129]](#footnote-130)
7. The HRAP found that for many years, UNMIK failed to make sufficient efforts to relocate the displaced families despite awareness of serious risk to the internally displaced community’s health and wellbeing from the toxic contamination present in the camps. The Opinion highlighted the extremely poor conditions of the camps, as its inhabitants often lacked running water, electricity, heating, adequate healthcare or access to food.
8. The Panel considered that UNMIK had, in addition to the obligation not to discriminate, also the specific positive obligation to avoid the perpetuation of discriminatory practices against the RAE community in Kosovo and to afford special protection to the complainants as IDPs and as members of the RAE community. The Panel concluded UNMIK did not fulfil these obligations nor did it present a reasonable justification for doing so. The Panel found that the complainants have suffered discrimination as members of the RAE community, in violation of Article 14, in conjunction with Articles 2, 3 and 8 of the ECHR, of Articles 2 and 26 of the ICCPR and of Article 2 of the ICESCR.[[130]](#footnote-131)
9. The Panel rejected the SRSG’s argument that the Roma have historically lived in substandard living conditions, even prior to the conflict, finding this comment discriminatory and debasing, since it suggested that the social and economic marginalisation of Roma is based on race and on their own actions and, as such, may be perpetuated without responsibility. To the contrary, the Panel considered that the historical marginalisation of the Roma and the traumatic experiences that led them to their IDP status in Kosovo made the complainants especially vulnerable to degrading treatment and UNMIK additionally responsible for their well-being.[[131]](#footnote-132) In this respect, the Panel recalls that special consideration should be given to the situation of the complainants as IDPs, as such members of a “particularly underprivileged and vulnerable population group in need of special protection”.[[132]](#footnote-133)
10. The Advisory Panel recommended that UNMIK make a public apology to the victims and their families, as well as take appropriate steps towards payment of adequate individual compensation for both material and moral damage to 138 members of the Roma, Ashkali and Egyptian (RAE) communities who resided in the camps from 1999, among other recommendations.

 V. Efforts by the United Nations toward an effective remedy

1. In order to understand the essence of the United Nation’s legal response to the situation and the Organisation’s own interpretation of its liability, it is useful to look into the reply given by the United Nations Under-Secretary-General for Legal Affairs to a claim on behalf of Roma, Ashkali and Egyptian residents of IDP camps from 2011.[[133]](#footnote-134) On 10 February 2006, RAE complainants filed claims for compensation in the framework of the United Nations Third Party Claims Process pursuant to General Assembly Resolution A/RES/52/247. This Resolution sets forth parameters regarding third­ party liability and compensation in disputes of a private law character.
2. In her letter dated 25 July 2011, the United Nations Under-Secretary-General for Legal Affairs informed the complainants of her decision to declare the claims non-receivable. She stated that under Section 29 of the 1946 Convention on the Privileges and Immunities of the United Nations, the United Nations Third Party Claims Process provided for compensation only with respect to “claims of a private law character”, whereas the complainants’ claims amounted, in essence, “to a review of the performance of UNMIK’s mandate as the interim administration in Kosovo”. [[134]](#footnote-135)
3. In the same letter she indicated, “The IDP camps came into existence as a result of a major population displacement during the Kosovo conflict in 1999 and are located in the proximity of long­ established residential areas in Northern Mitrovica (…) the Mitrovica region has a long history of major industrial pollution, including lead contamination from the Trepca mine. (…) the claims asserted involve alleged widespread health and environmental risks arising in the context of the precarious security situation in Kosovo. The claims do not constitute claims of a private law character and, in essence, amount to a review of the performance of UNMIK’s mandate as the interim administration in Kosovo. Based on the framework established by the Member States, therefore, the claims are not receivable under Section 29 of the General Convention or General Assembly Resolution RES/521247. (…) Notwithstanding the above, we would note that, while having no legal obligation to do so, UNMIK has taken substantial steps to improve the condition of the IDP population. Notably, in 2000, when the Trepca mine unilaterally resumed operation, UNMIK closed the smelter down. Moreover, since 2000, UNMIK and the international community, in consultation with the IDPs representatives, as well as representatives of the local structures in Kosovo have expended considerable resources in the protection and assistance of the IDP population, including the relocation of camp residents to Osterode camp and to newly constructed housing in the Roma Mahala”.[[135]](#footnote-136)
4. Related to the above, it is worth drawing attention to the HRAP Opinion, which considered irrelevant whether UNMIK’s actions and omissions towards the risks faced by the complainants would be attributable to UNMIK as a “UN peacekeeping mission” or as “an interim administration”. The Panel noted that, in either case, UNMIK had full legislative and executive authority in Kosovo pursuant to United Nations Security Council Resolution 1244 (1999) which established as a core part of UNMIK’s mandate in Kosovo, among others “Ensuring public safety and order […]” (section 9, d); “Protecting and promoting human rights […]” (section 11, j) and “Assuring the safe and unimpeded return of all refugees and displaced persons” (section 11, k). According to subsequent Regulations, UNMIK pledged to exercise its powers in Kosovo in accordance with “internationally recognised human rights standards” and the principle of non-discrimination[[136]](#footnote-137), and in particular, in observance of the main international human rights instruments[[137]](#footnote-138), which protect the right to life. In addition, the Guiding Principles on Internal Displacement state clearly that national de facto or de jure authorities have the primary responsibility for the protection of IDPs within their jurisdiction. In this respect, Principle No. 2 stated that “all authorities, groups and persons, irrespective of their legal status”, shall respect the rights of IDPs.[[138]](#footnote-139)
5. The Panel acknowledged that UNMIK’s interim character and related difficulties must be duly taken into account with regard to a number of situations, but under no circumstances could these elements be taken as a justification for diminishing standards of respect for human rights, which were duly incorporated into UNMIK’s mandate. The Panel considered that the same standards must apply to the substantive obligation to protect the right to life. Further, and insofar as the SRSG argued that “the financial resources of UNMIK were limited to those of the Kosovo budget and human resources, in all fields, including medical and social services”, the Panel noted that the SRSG had not provided the Panel with any detailed argumentation or evidence to prove that the relocation of the complainants and the provision of adequate medical care would have been a “disproportionate burden” that UNMIK could not handle alone or in collaboration with other United Nations agencies and other bodies operating in Kosovo.[[139]](#footnote-140)
6. In 2017, following the release of the HRAP Opinion on the case, the Secretary General of the United Nations established a Trust Fund charged with implementing community-based assistance projects, primarily in Mitrovica/Mitrovicë North, South and Leposavić, which would benefit the affected communities. Contributions to the Fund were to be made on voluntary basis and the Trust Fund was not intended to offer any individual compensation to the victims, contrary to HRAP recommendation. SRSG Tanin conducted high level meetings in Geneva, including with then-High Commissioner Zeid Ra’ad Al Hussein, to develop guidance for the Secretary-General in responding to the HRAP conclusions and findings. While the main effort in approaching donors lies with United Nations Headquarters in New York, SRSG Tanin appealed personally to all Member States in Geneva as well as to multiple Ambassadors on the ground in Kosovo to solicit contributions from their respective Governments.
7. The established Trust Fund has however never been operational due to lack of resources. On 5 October 2018, in response to a letter addressed to the Secretary General of the United Nations by the United Nations Special Rapporteur on human rights and hazardous substances and wastes (toxics)[[140]](#footnote-141), the Under-Secretary General for Peacekeeping Operations confirmed that despite targeted outreach and resource mobilization campaigns by a United Nations Task Force encouraging contributions to the Trust Fund, ”no contribution has yet been received from the international community in response to these appeals.”[[141]](#footnote-142) In response to a subsequent letter by the Special Rapporteur[[142]](#footnote-143), no concrete details on plans to mobilize resources were provided.[[143]](#footnote-144)
8. In June 2019, the Secretary General of the United Nations presented a report the United Nations Interim Administration Mission in Kosovo, which stated that an initial contribution was received by the Trust Fund in May 2019[[144]](#footnote-145). This was certainly a welcome development although the contribution in question was very modest (US$ 10,000) and has not been followed by any new contributions since. In response to a letter addressed to him by the Special Rapporteur, the Secretary General of the United Nations agreed that while this initial contribution was welcome, it fell short of the resources required to address the basic needs of the affected communities. Efforts to mobilize additional resources, he added, including in follow-up to his appeal addressed to a number of Member States and other partners in June 2017, will therefore continue.[[145]](#footnote-146)
9. In May 2020, the Special Representative of the Secretary-General, Head of UNMIK, affirmed continued support efforts in raising awareness about the importance of committing sustainable funding to the Trust Fund. According to the letter, both UNMIK and the United Nations Kosovo Team (UNKT) have increased their engagement with Roma, Ashkali, and Egyptian communities, in cooperation with members of civil society organizations and international partners working with these communities. UNMIK involvement includes confidence-building projects and programmatic activities, projects and activities supporting non-majority communities at large, as well as protection and specialized integrated services in the context of the COVID-19 pandemic.
10. The Special Rapporteur welcomes the fact that the United Nations Secretariat continues to follow up with the Member States and organizations to encourage positive responses to the Secretary-General's appeal. Besides efforts to mobilize resources to the Trust Fund, the UNMIK and the United Nations Kosovo Team continue to direct available resources to support the RAE communities through programmatic activities and dedicated projects.
11. During his 2019 visit, the Special Rapporteur heard from many of the community members that what they most wanted from a remedy was to be reunited with friends and family who escaped to Germany and elsewhere in the European Union during the Kosovo conflict. Not only would they establish social bonds that cannot be repaired through a “trust fund” and community assistance projects under a trust fund, but they may then also have access to much needed social services. However, UNMIK had not met with the community to ask what their hopes and expectations were from any remediation process, and no EU member state had been approached regarding this possibility.
12. With respect to the possible support to the reunification of members of the RAE communities with their families in the European Union, according to the SRSG in May 2020, this issue has not been raised directly with UNMIK and UNMIK has not been formally requested to facilitate such a process. Accordingly, the SRSG stated that such a request would have to be referred to United Nations agencies and organizations whose mandates specifically cover the movement of people as they would be best positioned to advice on this matter. The SRSG further affirms that at the same time, these efforts cannot substitute the Trust Fund, as more dedicated resources are needed to have a greater impact.

 VI. International reaction to the United Nations response

1. In his article called ‘Remedies for harm caused by UN peacekeepers” Bruce Rashkow, who formerly held senior positions in the United Nations Office of Legal Affairs as well as in the Office of the Legal Adviser in the U.S. Department of State and with the U.S. Mission to the United Nations writes, “since the creation of the United Nations, the need for the Organization to enjoy immunity from the jurisdiction of Member States has been widely recognized as necessary to achieve its important and far ranging purposes. However, it has also been understood that this immunity was not intended to shield the Organization from responsibility as a “good citizen” on the world stage to respond to justifiable claims against the Organization by third parties resulting from the activities or operations of the Organization.”[[146]](#footnote-147)
2. Various Government representatives and international human rights experts have shared the view that the particular circumstances demand the accountability of the United Nations and an end to an ongoing calamity that has befallen RAE children and other victims in Mitrovica/Mitrovicë.

 A. Engagement of the European Parliament

1. In January 2019, 55 members of the European Parliament addressed a letter to the Secretary General of the United Nation urging him to take long overdue steps to ensure that the victims of widespread lead poisoning at United Nations -run camps in Kosovo receive individual compensation, adequate health care and educational support. [[147]](#footnote-148) The letter stated that the United Nations’ role in the violation of their rights had been clearly documented by the Human Rights Advisory Panel, as well as by international and local human rights groups. The affected communities were struggling to care for sick family members who were exposed to toxic lead for more than a decade. Many of those affected, including children, are experiencing myriad health problems and need financial and social support for medicine or healthy food for their children. The members of the European Parliament estimated in the letter that the United Nations response has been inadequate.
2. On 29 November 2018, the European Parliament adopted a resolution on the 2018 Commission Report on Kosovo, calling on the United Nations “to swiftly deliver the necessary support to the victims of lead poisoning in some refugee camps set up in Kosovo”.[[148]](#footnote-149)

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

1. The United Nations Special Rapporteur on human rights and toxics, Baskut Tuncak, has engaged in ongoing dialogue with the Secretary General of the United Nations and others on the need for an effective remedy for the lead contamination. In 2016, the Special Rapporteur on human rights and toxics endorsed a call by a number of Special Rapporteurs detailed in the next section, on the need for a remedy for the victims and accountability of UNMIK for violations of their rights. In July 2018, he addressed an open letter to the Secretary General about the state of play regarding the victims’ situation and their possible compensation.
2. In March 2019, the Special Rapporteur visited the affected communities in Mitrovica/Mitrovicë, as part of an academic visit. In a statement following his visit the Special Rapporteur stated that he was deeply disappointed by the inertia surrounding this case, and that the solution offered by the United Nations is an inoperative and fundamentally flawed Trust Fund, which will provide neither justice nor the necessary elements of an effective remedy for the victims.[[149]](#footnote-150)
3. In July 2019, the Special Rapporteur addressed a letter to the Secretary General of the United Nations, following news that an initial contribution had been received to the Trust Fund, inquiring if any additional steps were envisaged for mobilizing the remainder of the financial and non-financial support necessary to provide the affected communities their right to an effective remedy.[[150]](#footnote-151) The reply of the Secretary General of the United Nations to this letter, dated 4 October 2019, stated that as part of its focus on minority issues and trust building among communities, UNMIK pursues advocacy efforts in support of improving the social inclusion of RAE communities and full exercise of their social, economic and cultural rights.[[151]](#footnote-152)
4. In June 2019, the Special Rapporteur also addressed letters to the leaders of several organizations in the United Nations system whose mandates include issues raised by the case.[[152]](#footnote-153) The letters underlined the need for the United Nations system as a whole to contribute to mobilizing the necessary resources to provide the victims their right to an effective remedy, one that is just, sustainable, and aimed at bringing moral and physical relief. The Special Rapporteur urged the addressees to use their resources, outreach and expertise in helping the United Nations to raise the priority attributed to the situation of victims in Kosovo and advocate for greater visibility of this issue. At the time of drafting this report, the Special Rapporteur has received a reply to his letter only from the WHO[[153]](#footnote-154).

 C. Engagement of other independent human rights experts

1. After noting that 400 people still lived in two camps, where children were “clearly under-developed for their age,” the former Commissioner for Human Rights, Thomas Hammarberg, called upon UNMIK, as the leading authority in Kosovo, “to organise an immediate evacuation of the families in these two camps to a non- toxic site, followed by medical treatment.” He concluded his 2009 letter stating, “this is the least we can do to ensure healthy lives for this European community.”[[154]](#footnote-155) Unfortunately, it took several more years from that point for the RAE residents to be completely relocated.
2. The Special Rapporteur on the human rights of internally displaced persons, who had visited the affected families in Mitrovica/Mitrovicë North in October 2013, expressed hope at the time that a public apology would be made to the complainants and their families and that swift action would be taken to provide redress to victims, to demonstrate that the United Nations does fully promote and ensure respect for human rights of all, particularly those of IDPs involved.
3. In 2016, United Nations Special Rapporteur on indigenous issues **Rita Izsák-Ndiaye, and** United Nations Special Rapporteur on the human rights of IDPs, **Chaloka Beyani,** made a public call upon the United Nations to implement the opinion of the HRAP, to hold UNMIK accountable for leaving Roma families exposed to lead poisoning.[[155]](#footnote-156) The United Nations Special Rapporteur on minority issues stated at the time - “I am glad that justice is being now delivered to one of the most deprived communities who had to suffer conflict, displacement and negligence. The opinion of the HRAP expresses a breach of international obligations by the UNMIK and I hope that the UN will see it as an important opportunity to hold itself accountable.” This Special Rapporteur on human rights and toxics, and the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, endorsed this appeal.
4. In his 2016 thematic report on the responsibility of the United Nations towards cholera outbreak in Haiti[[156]](#footnote-157), the former Special Rapporteur on extreme poverty makes a point, shared by this Special Rapporteur on human rights and toxics, stating that “it is noteworthy that the non-deceivability classification did not prevent the Human Rights Advisory Panel established by the United Nations to examine cases of alleged human rights violations in Kosovo from holding in 2016 that “UNMIK was responsible for compromising irreversibly the life, health and development potential” of the child complainants.[[157]](#footnote-158)

 VII. Conclusions and Recommendations

1. **Over the past several years, the Special Rapporteur on hazardous substances and wastes engaged in a long-standing and yet unresolved case involving 600 members of displaced Roma, Ashkali and Egyptian communities poisoned by lead and other toxic substances when housed in United Nations camps between 1999 and 2013. The camps were constructed on toxic industrial wasteland known to be contaminated since the 1970s after the community’s neighbourhood was set ablaze and their homes destroyed.**
2. **Following the visit of the former Special Rapporteur on internally displaced persons, a United Nations Human Rights Advisory Panel assessed the facts of the case and correctly found numerous human rights violations, including to resident’s rights to life, health, freedom from cruel and inhuman treatment, adequate housing, and to information, as well as specific rights of the child, and women. The HRAP’s 2016 analysis recommended that the United Nations take appropriate steps towards payment of adequate individual compensation to 138 members of the three communities and issue a public apology for having failed to comply with human rights standards, as part of an effective remedy. In response, the United Nations established a “Trust Fund” to help fund community-based assistance projects and made a statement of deep regret, without the possibility of individual compensation or an apology. Funding for the Trust Fund was to be provided through voluntary contributions by States and others.**
3. **The Special Rapporteur regularly engages with victims of exposure to hazardous substances, the vast majority of whom are unable to access an effective remedy. What stands out in this case is that neither causation nor culpability is at issue. No one is questioning that Roma, Ashkali and Egyptian women, and children, were exposed to lead and other toxic substances causing severe impacts on health, in violation of their rights to life, health, and physical integrity, among others. No one is arguing that housing the community on the toxic wasteland was necessitated or excused by the circumstances. No one has questioned that it was the United Nations who housed the affected community on the site, and then failed to relocate the community for years when the harmful exposure to toxic substances known, despite relocating French peacekeeping troops a matter of weeks after they showed signs of lead poisoning. No one is questioning that the community is still suffering today from what amounts to two decades of inaction, almost entirely by the United Nations.**
4. **It is truly remarkable that despite so much certainty of harm, causality, and wrongdoing, the United Nations has still made no meaningful progress to provide the injured community an effective remedy. The United Nations considers that the established Trust Fund constitutes the best way forward to positively impact the health and well-being of the aforementioned communities.[[158]](#footnote-159) However, to date, the Trust Fund has so far not initiated any full-fledged activities due to a dramatic lack of resources. The United Nations Trust Fund for victims of lead poisoning in Kosovo has received an appalling single, solitary contribution of US$10,000. No contribution has been made by any Member State of the OECD. This cannot be explained by the fiscal strains brought by the COVID-19 pandemic, as contributions were solicited since 2017. The trust fund for victims of the Haiti cholera epidemic received millions from dozens of States and other entities during this period, yet only one meagre contribution has been made to this United Nations Trust Fund for Kosovo, which speaks volumes of the discrimination endured by Roma, Ashkali and Egyptian peoples. While the Special Rapporteur is dismayed at the lack of resources in the established Trust Fund and the level of disengagement of nearly every single United Nations Member State, he reiterates his previously expressed position that this does not absolve the United Nations of its responsibility towards the victims. [[159]](#footnote-160)**
5. **The RAE community is being subject to an ongoing violation of their human rights through the failure to provide them with an effective remedy. The affected communities continue to live in conditions of economic and social deprivation, lacking access and means for receiving adequate medical services. The need to provide the victims, who continue to face economic and social hardship, known to result from lead poisoning, in addition to grave health concerns, with individual compensation, remains as critical as ever. Without undermining the potential benefits that the Trust Fund could generate for the general wellbeing of the affected communities, the Special Rapporteur believes that the Trust Fund alone cannot wholly address the serious damage suffered by the victims, nor meet their pressing health needs.**
6. **A more insidious, ongoing violation is the tantalizing cruelty of an illusory promise of a brighter future, which has been dashed time and again by legalistic apologies, an aimless and hopeless Trust Fund, and silence from the international community after report after report of the profound injustice suffered by the Roma, Ashkali and Egyptian communities. While visits, reports, statements and legal opinions, the Special Rapporteur has included, have contributed to this mirage of remedy, the possibility of not meeting the community’s expectations does not excuse the United Nations from directly engaging with the victims regarding what they want, need, and expect, for the wrongs they have suffered and endured. The lack of any tangible action by the United Nations comes despite clear findings of the HRAP of violations of the human rights of community members to life, freedom from inhuman and degrading treatment. The Special Rapporteur reiterates that the United Nations must engage with the victims regarding their demands and expectations and use this information to define an effective remedy for this tragedy and plan of action.**
7. **The Special Rapporteur continues to believe that the United Nations has the ultimate responsibility for providing remedy and assistance to victims housed by the United Nations in camps constructed on lead-contaminated toxic wasteland. In the view of the Special Rapporteur, the best way forward is for the United Nations itself to hold frank and detailed discussions with the community about their vision of an effective remedy and to chart a clear path toward this outcome. The Special Rapporteur heard from community members of how, for example, they have been separated from friends and family who escaped to elsewhere in Europe when their homes were burned. It is surely conceivable to all involved that minority community members, who have struggled and endured so much discrimination in this locale, may not wish to remain part of a broader society that razed their homes, poisoned their bodies for up to thirteen years, and failed to uphold and defend its human rights for decades. Simply establishing a vague Trust Fund will not suffice.**
8. **The Special Rapporteur recommends that:**

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

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

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

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

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

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

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

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

1. \* The present report was submitted to the conference services after the deadline in order to reflect the most recent developments. [↑](#footnote-ref-2)
2. \*\* The annex to the present report is circulated as received, in the language of submission only. [↑](#footnote-ref-3)
3. Any reference to Kosovo, whether to the territory, institutions or population, is to be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo. [↑](#footnote-ref-4)
4. A/74/480. [↑](#footnote-ref-5)
5. A/74/480. [↑](#footnote-ref-6)
6. <https://www.unwomen.org/en/digital-library/publications/2020/04/issue-brief-covid-19-and-ending-violence-against-women-and-girls>; https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25778&LangID=E. [↑](#footnote-ref-7)
7. <https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_743036/lang--en/index.htm>. [↑](#footnote-ref-8)
8. https://www.humanrights.dk/sites/humanrights.dk/files/media/Covid-19%20response%20and%20recovery%20must%20build%20on%20human%20rights%20and%20SDGs%20.pdf. [↑](#footnote-ref-9)
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10. <https://news.un.org/en/story/2005/02/129442-environmental-changes-are-spreading-infectious-diseases-un-study>. [↑](#footnote-ref-11)
11. [https://environmentlive.unep.org/media/docs/assessments/UNEP\_Frontiers\_2016\_
report\_emerging\_issues\_of\_environmental\_concern.pdf](https://environmentlive.unep.org/media/docs/assessments/UNEP_Frontiers_2016_report_emerging_issues_of_environmental_concern.pdf). [↑](#footnote-ref-12)
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14. <https://www.ncbi.nlm.nih.gov/books/NBK215318/>. [↑](#footnote-ref-15)
15. [https://environmentlive.unep.org/media/docs/assessments/UNEP\_Frontiers\_2016\_
report\_emerging\_issues\_of\_environmental\_concern.pdf](https://environmentlive.unep.org/media/docs/assessments/UNEP_Frontiers_2016_report_emerging_issues_of_environmental_concern.pdf) citing http://science.sciencemag.org/ content/347/6223/768.full-text.pdf+html. [↑](#footnote-ref-16)
16. <https://www.ncbi.nlm.nih.gov/books/NBK215318/>. [↑](#footnote-ref-17)
17. 30-07-2020,https://coronavirus.jhu.edu/map.html. [↑](#footnote-ref-18)
18. https://science.sciencemag.org/content/369/6502/379. [↑](#footnote-ref-19)
19. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html>. [↑](#footnote-ref-20)
20. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html>. [↑](#footnote-ref-21)
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22. <https://www.who.int/gard/publications/The_Global_Impact_of_Respiratory_Disease.pdf>. [↑](#footnote-ref-23)
23. <https://apps.who.int/iris/bitstream/handle/10665/78102/WHO_HSE_PHE_IHE_2013.1_eng.pdf?sequence=1>. [↑](#footnote-ref-24)
24. <http://www.who.int/zoonoses/Report_Sept06.pdf>.; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5468693>. [↑](#footnote-ref-25)
25. <http://www.oas.org/es/sadye/publicaciones/GUIA_SPA.pdf>. [↑](#footnote-ref-26)
26. https://www.health.govt.nz/system/files/documents/pages/aotearoa-new\_zealands\_covid-19\_elimination\_strategy-\_an\_overview17may.pdf. [↑](#footnote-ref-27)
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28. <https://www.who.int/gard/publications/The_Global_Impact_of_Respiratory_Disease.pdf>. [↑](#footnote-ref-29)
29. https://www.who.int/westernpacific/internal-publications-detail/critical-shortage-or-lack-of-personal-protective-equipment-in-the-context-of-covid-19. [↑](#footnote-ref-30)
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\_report\_emerging\_issues\_of\_environmental\_concern.pdf](https://environmentlive.unep.org/media/docs/assessments/UNEP_Frontiers_2016_report_emerging_issues_of_environmental_concern.pdf). [↑](#footnote-ref-35)
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<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25774&LangID=E>;
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25776&LangID=E>;
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>;
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25770&LangID=E>;
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25807&LangID=E>. [↑](#footnote-ref-36)
36. More information at:[https://www.ohchr.org/Documents/Issues/Racism/COVID-19\_and\_
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37. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25725>. [↑](#footnote-ref-38)
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42. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=25768>. [↑](#footnote-ref-43)
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48. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25892&LangID=E>. [↑](#footnote-ref-49)
49. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25892&LangID=E>
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51. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C155. [↑](#footnote-ref-52)
52. [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/
wcms\_745963.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_745963.pdf). [↑](#footnote-ref-53)
53. https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25748. [↑](#footnote-ref-54)
54. https://eu.usatoday.com/story/news/investigations/2020/06/01/coronavirus-nursing-home-deaths-top-40-600/5273075002/. [↑](#footnote-ref-55)
55. <https://www.politico.eu/article/the-silent-coronavirus-covid19-massacre-in-italy-milan-lombardy-nursing-care-homes-elderly/>. [↑](#footnote-ref-56)
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57. <https://www.un.org/development/desa/indigenouspeoples/covid-19.html>. [↑](#footnote-ref-58)
58. https://www.rightlivelihoodaward.org/media/minersoutcovidout-yanomami-leaders-launch-global-campaign/. [↑](#footnote-ref-59)
59. <https://news.mongabay.com/2020/06/court-forces-ecuador-government-to-protect-indigenous-waorani-during-covid-19/>. [↑](#footnote-ref-60)
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<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25725>;
https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25765&LangID=E. [↑](#footnote-ref-61)
61. A/HRC/30/40. [↑](#footnote-ref-62)
62. A/HRC/30/40;https://apps.who.int/iris/bitstream/handle/10665/78102/WHO\_HSE\_PHE\_IHE
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71. https://www.thenewhumanitarian.org/news/2020/05/27/Brazil-coronavirus-response-community-leaders. [↑](#footnote-ref-72)
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75. <https://news.un.org/en/story/2020/04/1061592>. [↑](#footnote-ref-76)
76. https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E. [↑](#footnote-ref-77)
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82. <https://www.article19.org/wp-content/uploads/2020/03/Coronavirus-briefing.pdf>
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88. Article 11 of [https://legal.un.org/docs/?path=../ilc/texts/instruments/english/commentaries/
6\_3\_2016.pdf&lang=EF](https://legal.un.org/docs/?path=../ilc/texts/instruments/english/commentaries/6_3_2016.pdf&lang=EF). [↑](#footnote-ref-89)
89. Any reference to Kosovo, whether to the territory, institutions or population, is to be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo. [↑](#footnote-ref-90)
90. Consistent with the previous reports of the current mandate holder and those of his predecessors, hazardous substances and wastes are not defined strictly; they include, inter alia, toxic industrial chemicals and pesticides, pollutants, contaminants, explosive and radioactive substances, certain food additives and various forms of waste. For ease of reference, the Special Rapporteur refers to hazardous substances and wastes as “toxics”, and therefore, in the present report, the term “toxics” (or “toxic substances”) should be understood to also include non-toxic but hazardous substances and wastes. [↑](#footnote-ref-91)
91. The acronym RAE has been widely used by the international community to refer jointly to the Romani (the Roma, Ashkali and Egyptian) minority communities in Kosovo. The issue of the distinctive ethnic identity of these communities, which share cultural traits and history of marginalization in society, is complex and debated. The community members had referred to themselves as members of the RAE or Roma community in Kosovo in their submissions to the Human Rights Advisory Panel (HRAP) of UNMIK hence the Special Rapporteur’s decision to use the same terms in this report. [↑](#footnote-ref-92)
92. The Special Rapporteur planned to conduct an official visit to UNMIK from 23 to 24 March 2020, as part of a follow up to his previous, academic visit. However, this visit was postponed by the United Nations due to the COVID-19 pandemic. [↑](#footnote-ref-93)
93. A/HRC/36/41. [↑](#footnote-ref-94)
94. ICCPR, art. 2., Guiding Principles on Business and Human Rights, Principles 22, 25 and 26, and the Rio Declaration on Environment and Development, principle 10. [↑](#footnote-ref-95)
95. A/HRC/36/41. [↑](#footnote-ref-96)
96. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 11. [↑](#footnote-ref-97)
97. Ibid. paras. 15-23. See also Human Rights Committee, General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 16 and Convention on the Rights of the Child, art. 39. [↑](#footnote-ref-98)
98. See A/HRC/33/41, para. 40. [↑](#footnote-ref-99)
99. Committee on the Rights of the Child, General Comment No. 16, para. 31. [↑](#footnote-ref-100)
100. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 25. [↑](#footnote-ref-101)
101. A/HRC/36/41; Human Rights Committee, General Comment No. 31, para. 15; see also Committee on the Rights of the Child, General Comment No. 16, para. 31. [↑](#footnote-ref-102)
102. A/HRC/42/41. [↑](#footnote-ref-103)
103. See WHO, <https://www.who.int/gho/phe/en/>. [↑](#footnote-ref-104)
104. HRAP, N.M. and Others v. UNMIK, case 26/08 (26 Feb. 2016), paras 120, 121, 164. [↑](#footnote-ref-105)
105. ibid, para 81. See also *“Case Study and Lead and Heavy Metal contamination in Mitrovica, Kosovo”.* [↑](#footnote-ref-106)
106. HRAP, N.M. and Others v. UNMIK, case 26/08 (26 Feb. 2016), para 82. [↑](#footnote-ref-107)
107. WHO official website <https://www.who.int/en/news-room/fact-sheets/detail/lead-poisoning-and-health>. [↑](#footnote-ref-108)
108. Definition by Mayoclinic, <https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/syc-20354717>. [↑](#footnote-ref-109)
109. HRAP, N.M. and Others v. UNMIK, case 26/08 (26 Feb. 2016), para 64. [↑](#footnote-ref-110)
110. ibid. [↑](#footnote-ref-111)
111. WHO, <https://www.who.int/en/news-room/fact-sheets/detail/lead-poisoning-and-health>; Public statement of the UN Special Rapporteur, March 2019 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24319&LangID=E>. [↑](#footnote-ref-112)
112. HRW report, <https://www.hrw.org/report/2009/06/23/kosovo-poisoned-lead/health-and-human-rights-crisis-mitrovicas-roma-camps>. [↑](#footnote-ref-113)
113. ibid. [↑](#footnote-ref-114)
114. ibid. [↑](#footnote-ref-115)
115. UNMIK took up functions as interim administration after Kosovo’s Declaration of Independence in 2008. See S/2008/458. [↑](#footnote-ref-116)
116. In cooperation with the Kosovo Ministry of Health and UNHCR, WHO, UNICEF, and the Organization for Security and Co-operation in Europe – OSCE. [↑](#footnote-ref-117)
117. WHO letter, 8 October 2019, <https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=34907>. [↑](#footnote-ref-118)
118. ibid. [↑](#footnote-ref-119)
119. Overview of Roma, Ashkali and Egyptian communities in Kosovo, OSCE, January 2020, <https://www.osce.org/mission-in-kosovo/443587?download=true>. [↑](#footnote-ref-120)
120. ibid. [↑](#footnote-ref-121)
121. HRAP, N.M. and Others v. UNMIK, case 26/08 (26 Feb. 2016). [↑](#footnote-ref-122)
122. ibid., para 66. [↑](#footnote-ref-123)
123. ibid., para 128. [↑](#footnote-ref-124)
124. ibid., para 67. [↑](#footnote-ref-125)
125. ibid., para 129. [↑](#footnote-ref-126)
126. ibid., para 209. [↑](#footnote-ref-127)
127. ibid., para 347. [↑](#footnote-ref-128)
128. ibid., para 330. [↑](#footnote-ref-129)
129. ibid., para 243. [↑](#footnote-ref-130)
130. ibid., para 308-309. [↑](#footnote-ref-131)
131. ibid., para 244. [↑](#footnote-ref-132)
132. ECtHR [GC], M.S.S. v. Belgium and Greece, at para 251; ECtHR [GC], Oršuš and Others v. Croatia, no. 15766/03, judgment of 16 March 2010, at para 147). [↑](#footnote-ref-133)
133. UN Under-Secretary-General for Legal Affairs, Letter dated July 25, 2011 from the UN Under-Secretary-General for Legal Affairs to Roma, Ashkali and Egyptian residents of IDP camps in Mitrovica, Kosovo (July 25, 2011). Available at: <http://www.sivola.net/download/UN%20Rejection.pdf>. [↑](#footnote-ref-134)
134. ibid. [↑](#footnote-ref-135)
135. ibid. [↑](#footnote-ref-136)
136. see UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo, at Section 2. [↑](#footnote-ref-137)
137. see UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo. [↑](#footnote-ref-138)
138. HRAP, N.M. and Others v. UNMIK, case 26/08 (26 Feb. 2016), para 220. [↑](#footnote-ref-139)
139. ibid., para 221. [↑](#footnote-ref-140)
140. See [https://www.ohchr.org/Documents/Issues/ToxicWastes/LetterSGAshkaliEgyptian
Communities.pdf](https://www.ohchr.org/Documents/Issues/ToxicWastes/LetterSGAshkaliEgyptianCommunities.pdf). [↑](#footnote-ref-141)
141. See <https://www.ohchr.org/Documents/Issues/ToxicWastes/ResponseKosovo5Oct2018.pdf>. [↑](#footnote-ref-142)
142. See [https://www.ohchr.org/Documents/Issues/ToxicWastes/Communications/
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143. See [https://www.ohchr.org/Documents/Issues/ToxicWastes/Communications/
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144. See <https://unmik.unmissions.org/sites/default/files/s_2019_461.pdf> . [↑](#footnote-ref-145)
145. See letter dated 4 October 2019 [https://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/LeadContaminationKosovo.aspx](https://www.ohchr.org/EN/Issues/Environment/SRToxicsandhumanrights/Pages/LeadContaminationKosovo.aspx). [↑](#footnote-ref-146)
146. Bruce Rashkow (2 April 2014) Remedies for Harm Caused by UN Peacekeepers, American Society of International Law. [↑](#footnote-ref-147)
147. See <https://katipiri.nl/wp-content/uploads/2019/01/Letter-to-Mr.-UN-Secretary-General.pdf>. [↑](#footnote-ref-148)
148. See <http://www.europarl.europa.eu/doceo/document/TA-8-2018-0479_EN.html?redirect>. [↑](#footnote-ref-149)
149. See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24319&LangID=E>. [↑](#footnote-ref-150)
150. See <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24784>. [↑](#footnote-ref-151)
151. See <https://www.ohchr.org/Documents/Issues/ToxicWastes/Communications/OL_OTH_24.12.2018_69.2018_Response.pdf>. [↑](#footnote-ref-152)
152. WHO, UNICEF; UNEP; OHCHR; UNHCR; UNDP; The letters can be consulted here - [https://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/LeadContaminationKosovo.aspx](https://www.ohchr.org/EN/Issues/Environment/SRToxicsandhumanrights/Pages/LeadContaminationKosovo.aspx). [↑](#footnote-ref-153)
153. See [https://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/LeadContaminationKosovo.aspx](https://www.ohchr.org/EN/Issues/Environment/SRToxicsandhumanrights/Pages/LeadContaminationKosovo.aspx) [↑](#footnote-ref-154)
154. See <https://rm.coe.int/16806db863>. [↑](#footnote-ref-155)
155. See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19822&LangID=E> [↑](#footnote-ref-156)
156. A/71/367. [↑](#footnote-ref-157)
157. HRAP, N.M. and Others v. UNMIK, case No. 26/08, opinion of 26 February 2016, para. 347. [↑](#footnote-ref-158)
158. WHO letter, 8 October 2019, <https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=34907>. [↑](#footnote-ref-159)
159. See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24319&LangID=E> . [↑](#footnote-ref-160)