

Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

REFERENCE:
OL OTH 28/2019

19 June 2019

Dear High Commissioner,

I have the honour to address you in my capacity as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolution 36/15.

I am writing to you following the letters I have sent to the Secretary General of the United Nations on 11 July 2018 and 23 November 2018 and the responses provided by the Deputy Under-Secretary General for Peacekeeping Operations of the United Nations on 5 October 2018 and 24 December 2018. The letters are public and are attached for your information¹.

In 2017, the Secretary General of the UN established a Trust Fund charged with implementing community-based assistance projects, primarily in the municipalities of North Mitrovica, South Mitrovica and Leposavić in Kosovo*. Those projects would benefit Roma, Ashkali and Egyptian communities who had been housed on lead-contaminated toxic lands between 1999 and 2013 in Kosovo.

** 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*

¹ The two letters addressed to the Secretary General of the UN as well as answers provided by the Deputy Under-Secretary General for Peacekeeping Operations of the UN can be consulted on the OHCHR webpage of my mandate at <https://www.ohchr.org/EN/Issues/Environment/ToxicWastes>.

Contributions to the Trust Fund are to be made on voluntary basis and the Trust Fund is not intended to offer any individual compensation to the victims, contrary to recommendations of the Human Rights Advisory Panel². However, this Fund has never been operational and for over two years no contribution had been made to operationalize it. In May 2019, an initial modest contribution from one State was reportedly received by the Trust Fund. I also had the opportunity to discuss the current situation of the Trust Fund in person with Mr. Lacroix, Under Secretary General for Peacekeeping Operations of the UN in April 2019 and was left with the understanding that expectations regarding the operation of the Trust Fund for the near future remain very dim. Further, the UN has so far not offered an apology to the victims.

I am convinced that the Trust Fund established by the Secretary General, without specified projects will not, on its own, mobilize the necessary resources to provide a remedy. Furthermore, I am gravely concerned that the envisioned Trust Fund will not provide an effective remedy to the victims, without an apology from the Organization, direct compensation to the victims and their families. I understand from a recent visit to Kosovo and subsequent conversations that the UN has not held consultations with the affected victims about their expectations regarding an effective remedy.

While I regret the lack of resources in the established Trust Fund and the level of disengagement of Member States, I also believe that this does not absolve the United Nations of its responsibility. I note the UN's Basic Principles on the Right to a Remedy, which clearly states: "In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim [...]"³

Nothing will replace the future that these child victims and their families have been deprived. In my view, the inaction on this case continues to erode the integrity of the UN.⁴

As part of my ongoing engagement with the Secretary General of the United Nations regarding the United Nation's responsibility towards victims of lead-poisoning in Kosovo and my determination to contribute to international efforts for finding just and sustainable solutions aimed at bringing moral and physical relief to the victims, I am raising this issue with the Heads of several organizations in the United Nations system whose mandates include issues raised by this case and which I believe could make a positive contribution to realizing the right of these victims and their families to an effective remedy.

² Human Rights Advisory Panel, *N.M. and Others v. UNMIK*, case 26/08 (26 Feb. 2016), <http://www.unmikonline.org/hrap/Eng/Cases%20Eng/26-08%20NM%20etal%20Opinion%20FINAL%2026feb16.pdf>

³ 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, paragraph 15 (adopted and proclaimed by UN General Assembly resolution 60/147 of 16 December 2005).

⁴ Press release - UN must urgently provide redress for minorities placed in toxic Kosovo camps, says UN rights expert
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24319&LangID=E>

I urge you, as the United Nations High Commissioner for Human Rights to use the resources, outreach and the expertise available to the OHCHR 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 in your discussions with Member States and UN entities.

I would be very grateful if you could provide me with an answer whether your Office has already taken steps in this regard, or whether you intend to do so in the future.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Ms. Bachelet, the assurances of my highest consideration.

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