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HRAP decision on the Mitrovica RAE v. UNMIK and Lead Poisoning

The Human Rights Advisory Panel, (HRAP) a human rights tribunal in Kosovo, issued their decision on 5 April 2016 in *N. M. v. UNMIK* (United Nations Mission in Kosovo) finding that the failure of the UN to protect the Roma after the 1999 NATO bombing and in fact the negligence of the UN in placing and then leaving the Roma IDPs (Internally Displaced Persons) on lead poisoned sites resulting in long term harm to their physical and mental health was a violation of Article 2 both substantive and procedural, Article 3, Article 8 and Article 14 of the European Convention on Human and Fundamental Rights. In addition the Panel found that there has been a violation of articles 2, 11 and 12 of ICESR; 2 and 26 of the ICCPR; 1, 2 and 12 of CEDAW; and 3, 6, 24, 27 and 37 of the CRC.

The court ordered a public apology as well as compensation for material and moral damages and assurance that UN bodies will in the future not only enforce international human rights norms but live by them. The decision is the long awaited morsel of justice for the hundreds of Kosovo Roma community members who were herded onto lead poisoned land after the war in 1999 and then abandoned for ten years as UNMIK ignored the pleas of the Roma that were supported by reports from WHO, international medical and scientific evidence and local and international human rights advocates.

The merits decision was issued after the case had been refilled in October 2011 when the New York legal office of the UN rejected the third-party claims as not receivable because they were not “claims of a private law character”, the same reason given in 2015 for rejecting the claim against the UN for bringing cholera to Haiti.

The case was first filed with HRAP in July 2008 with a favorable admissibility decision on 5 June 2009. However, UNMIK then changed the rules for HRAP cases deciding any case that was or could be filed in New York was not admissible in Kosovo. The problem of course was that every case could be filed in New York and New York then denied every claim for the same unsupported and illogical reasons leaving the claimants in reality without a remedy. Because of that foreseeable eventuality, the HRAP on 31 March 2010 left the door open a crack by saying if the claim was denied in New York, it could be refilled in Kosovo and so it as.

The harm to the Roma can never be rectified, like the harm to the residents of Flint, Michigan poisoned by appointed government managers. High lead concentration in the blood 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 because they are exposed to lead throughout pregnancy (the lead accumulated in the mother's body passes to the child); they absorb 4-5 times as much ingested lead as adults; have innate curiosity to explore the world with their mouth which results in the ingestion of lead-coated objects and contaminated soil and dust; spend more time in a single environment; are more likely to have nutritional deficiencies which facilitate the absorption of lead; and lack control over the surrounding environment. Common and well-recognised effects of lead poisoning in children involve the gastrointestinal and nervous systems. According to WHO, gastrointestinal symptoms may be present at BLLs as low as 20 µg/dL, although they are more common in children with BLLs higher than or equal to 50 µg/dL. Lead is particularly harmful to the developing brain and nervous system of fetuses and young children. Recent research indicates that lead can cause neurobehavioural damage in children at blood levels of 5 µg/dL and even lower, as "there appears to be no threshold below which lead causes no injury to the developing human brain." The consequences on children's brains from exposure to lead include loss of intelligence, shortening of attention span and disruptive behaviour. Other effects beginning at low blood lead levels include: decreased stature or growth, decreased hearing acuity, and decreased ability to maintain a steady posture or growth. At higher levels (higher than 100 µg/dL) children may experience signs of encephalopathy, including marked changes in mental activity, ataxia, seizures, coma and even death, as occurred in two cases of these complainants. The neurological and behavioural effects of lead are believed to be irreversible. Lead poisoning is, for the most part, asymptomatic; the lack of open symptoms, however, does not preclude the risk of children being exposed to continued damage to the nervous system.

In the ten plus years the Roma remained on the poisoned sites, an entire generation of Roma children was lost. While the decision validates the claims of the Roma that they were discriminated against, denied due process and wrongfully harmed by the actions and inactions of UNMIK, it can in no way, make up for the deaths caused by lead poisoning, for the permanent mental impairment and physical injury caused by lead exposure, and for the family and community disruption created by the living conditions of the camps. The decision is at least a recognition that the UN itself must follow the international

principles of human rights and dignity that it establishes for others and that these principles apply equally to the Roma who have a right to a remedy and a right to justice.