INTRODUCTORY NOTE TO N.M. AND OTHERS V. UNMIK (H.R. ADVISORY PANEL)

BY LAUREN C. BAILLIE*

[February 26, 2016]
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Introduction

On February 26, 2016, the Human Rights Advisory Panel (Panel) of the United Nations Interim Administration Mission to Kosovo (UNMIK) issued an opinion in *N.M. and Others v. UNMIK*.[1] The Panel's opinion found UNMIK responsible for significant violations of the rights of 138 displaced members of the Roma, Ashkali, and Egyptian (RAE) community placed at lead-contaminated internally displaced person (IDP) camps in northern Kosovo. This opinion sets a strong precedent in support of accountability in international administrations, albeit limited by the Panel's advisory role.

Background

N.M. and Others was brought on behalf of 138 members of the RAE community placed in IDP camps following the end of the conflict. The complainants suffered from lead poisoning and other health problems resulting from lead contamination and poor living conditions in the camps.

Following the NATO intervention in 1999, more than 8,000 RAE were displaced by retaliatory acts carried out by Kosovar Albanians.[2] UNMIK-administered IDP camps housed over 600 of the RAE in facilities downwind from mine tailings of the Trepca smelter and mining complex.[3] The tailings were contaminated with lead, resulting in high levels of contamination at the camps. Poor living conditions in the camps increased the health impact of the contamination on residents.

UNMIK became aware of the lead contamination in 2000 when it closed the Trepca smelter and commissioned a survey to test the lead levels around the camps.[4] Despite this notice, UNMIK made only nominal efforts to relocate IDPs. Further, UNMIK made no meaningful effort to provide medical care or to inform IDPs of the risks posed by exposure to high levels of lead. The health impact of this exposure was significant, particularly on women and children. At least three children died, allegedly as a result of lead poisoning.[5]

The Panel was created in 2006 to provide accountability for alleged human rights violations resulting from an act or omission of the UNMIK administration.[6] It holds jurisdiction over claims occurring from April 23, 2005, through the end of the administration in 2008.[7] The Panel considers complaints related to UNMIK's performance for compliance with international human rights treaties including the Universal Declaration of Human Rights (UDHR), the European Convention on Human Rights and Fundamental Freedoms and Protocols thereto (ECHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the International Convention on the Rights of the Child (CRC). The Panel issues findings and non-binding recommendations for corrective action.

The complaint in *N.M. and Others* alleged that "UNMIK had violated [the complainants'] human rights by placing them in IDP camps on land known to be highly contaminated, by not providing them with timely information about the health risks or the required treatment, as well as by failing to relocate them to safer location."[8] The complainants initially filed suit with the Panel in 2008, but the Panel found the complaint inadmissible because it fell *prima facie* within the jurisdiction of the UN Third Party Claims Process.[9] The Panel left open the possibility of resubmitting the complaint following the conclusion of the Third Party Claims Process.[10] The Third Party Claims Process dismissed the claim in 2011 as outside its scope given its public law character, and the complaint was subsequently resubmitted.[11]

The Human Rights Advisory Panel's Opinion

The Panel's opinion found that UNMIK's administration of the IDP camps resulted in significant violations of the complainants' rights, including their most fundamental rights to life and freedom from inhuman and degrading treatment. The Panel determined that "the heavy exposure to contamination, coupled with poor living conditions in the

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camps, a situation which lasted for more that 10 years, . . . was such as to pose a real and immediate threat to the complainants' lives and physical integrity."[12] Further, the Panel found that UNMIK was aware of the situation, having halted the smelting activities and received the findings presented by the World Health Organization and others. The Panel additionally found that UNMIK's "sporadic remedial actions" were insufficient to correct the situation, that UNMIK had the full legislative and executive authority and therefore the power to address the situation, and that UNMIK failed to provide sufficient evidence that the necessary remedial measures would be a disproportionate burden.[13] This amounted to a violation of the complainants' right to life and freedom from inhuman and degrading treatment under Articles 2 and 3 of the ECHR. With regard to the violation of Article 3, the Panel determined that UNMIK held additional responsibility for protecting the rights of the RAE community as a "particularly underprivileged and vulnerable population group."[14]

The Panel also found violations of the right to private and family life under Article 8 of the ECHR; health and adequate standard of living under Article 25 of the UDHR and Articles 11 and 12 the ICESCR; the prohibition on discrimination in Article 14 of the ECHR taken in conjunction with Articles 2, 3, and 8 of the ECHR; the prohibition on discrimination against women, particularly in the area of health care, outlined in Articles 1, 2, and 12 of the CEDAW; and children's rights to health and the prohibition of discrimination outlined in Articles 3, 6, 24, 27, and 37 of the CRC.[15]

To provide relief to the complainants, the Panel recommended that UNMIK publicly acknowledge its failure to comply with human rights standards, "take[] appropriate steps toward" paying compensation for material and moral damages suffered, improve protections for IDPs and RAE, and ensure that health information is effectively delivered to affected individuals.[16]

Conclusion

The Panel's opinion is a significant step toward promoting accountability in UNMIK and other UN transitional administrations. Prior to the Panel's opinion, the complainants sought relief through a number of institutions, including the Kosovo justice system, the European Court of Human Rights, the UN Third Party Claims Process, and the EU Rule of Law Mission in Kosovo (EULEX).[17] Each complaint was found inadmissible due to jurisdictional limits resulting from UNMIK's status as a public international administration. This left a considerable gap in the relief provided to the victims and decreased UNMIK's accountability in exercising its authorities. The Panel's opinion attempted to filled this gap, holding UNMIK accountable not only for its violations of the complainants' rights, but also for failing to protect a particularly vulnerable group within the Kosovar population. Further, the Panel's authority to evaluate the complaint for compliance with a broad range of human rights treaties gives it significant latitude to assess UNMIK's performance. This broad latitude sends a strong message to UNMIK that it is expected to comply with human rights standards similar to those required of a sovereign state.

While the Panel's opinion signals a high expectation of accountability for UNMIK and UN transitional administrations, the impact of this expectation is limited by the Panel's advisory role. To date, the UN has resisted implementing the Panel's advisory recommendations, particularly in providing compensation. This limits the impact of the opinion, as well as the satisfaction of the complainants, and should be a key consideration in applying the lessons of the Human Rights Advisory Panel to future UN transitional administrations.

ENDNOTES

1 N.M. and Others v. UNMIK, Case No. 26/08, Opinion, UN Interim Administration Mission to Kosovo (Feb. 26, 2016).

2 *Id.* ¶ 39.

3 *Id.* ¶¶ 43–44.

4 *Id.* ¶¶ 46–48.

5 *Id.* ¶ 193.

6 Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel, UNMIK/REG/2006/12 (Mar. 23, 2006).

7 N.M and Others, *supra* note 1, ¶¶ 180–81.

8 *Id.* ¶ 99.

9 *Id.* ¶¶ 1, 14.

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10 *Id.* ¶ 15.

11 *Id.* ¶ 94.

12 *Id.* ¶ 207.

13 *Id.* ¶¶ 212, 220–21.

14 *Id.* ¶ 244.

15 *Id.* ¶¶ 247–347.

16 *Id.* ¶ 349.

17 *Id.* ¶¶ 90–97.

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N.M. AND OTHERS V. UNMIK (H.R. ADVISORY PANEL)*
[February 26, 2016]
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N.M. and Others v. UNMIK

Case No. 26/08

OPINION

26 February 2016

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The Human Rights Advisory Panel, sitting on 26 February 2016,
with the following members present:

Christine Chinkin, Presiding Member
Françoise Tulkens

Assisted by
Anna Maria Cesano, Acting Executive Officer

Having considered the aforementioned complaint, introduced pursuant to Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel,

Having noted Marek Nowicki's withdrawal from sitting in the case, pursuant to Rule 12 of the Panel's Rules of Procedure,

Having deliberated, makes the following findings and recommendations:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was introduced on 4 July 2008 and registered on the same date. During the proceedings before the Panel, the complainants have been represented by Ms Dianne Post, a lawyer from the United States.

2. On 24 July 2008, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG)[1], for UNMIK's comments on the admissibility and merits of the complaint. On 18 September 2008, the SRSG provided UNMIK's response with respect to the admissibility of the complaint.

3. On 7 October 2008, the Panel forwarded UNMIK's response to the complainants and invited them to submit comments if they wished to do so. A response from the complainants' representative was received on 8 October 2008.

4. On 31 October 2008, the Panel requested the complainants to provide additional information. A response was received on 24 November 2008.

5. On 14, 15, 16 and 23 February 2009, additional documentation was received from the complainants.

6. By a decision of 5 June 2009, the Panel declared the complaint admissible in part and inadmissible in part.

7. On 8 June 2009, the Panel forwarded to the SRSG the decision on admissibility and requested UNMIK's comments on the merits of the complaint. On 10 August 2009, the SRSG provided UNMIK's response.

8. On 12 August 2009, the Panel forwarded the SRSG's response to the complainants inviting their further submissions if they wished to do so. The complainants responded on 25 August 2009.

9. On 16 September 2009, the complainants' response of 25 August 2009 was forwarded to the SRSG for comments.

10. On 22 and 23 October 2009 respectively, the Panel, having noted that Administrative Direction No. 2009/1 Implementing UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel had been issued by the SRSG on 17 October 2009, invited the complainants and UNMIK to submit their respective comments in relation to the effect of that Administrative Direction on the present case.

11. The SRSG responded to the 16 September 2009 request for comments on 4 November 2009. This response was sent to the complainants for their comments. On 9 November 2009, the complainants provided their response.

12. On 18 January 2010, the Panel received the SRSG's reply to its letter of 23 October 2009. This reply was dated 30 October 2009.

13. On 16 March 2010, the Panel requested further information from the complainants, who replied on the same day.

14. On 31 March 2010, the Panel declared the complaint inadmissible, having regard to Administrative Direction No. 2009/1. The Panel found, in particular, that the substantive parts of the complaint fell *prima facie* within the

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ambit of the United Nations (UN) Third Party Claims Process and was therefore deemed inadmissible. It further noted that the substantive and procedural parts of the complaint were so interlinked that it would be artificial to separate them. For that reason, it deemed the entire complaint inadmissible.

15. In its decision, the Panel applied Rule 49 of its Rules of Procedure, which provides that questions not governed by these Rules shall be settled by the Panel. It decided that once the UN Third Party Claims Process had been concluded, the complainants could request the Panel to reopen the proceedings. The Panel indicated that it would then decide, on the basis of the information available to it, whether or not to accept such a request.

16. On 7 October 2011, the complainants informed the Panel of the completion of the UN Third Party Claims Process through a decision of 25 July 2011 that declared their claims, filed prior to the commencement of proceedings before the Panel, non- receivable. In the same communication, the complainants requested the Panel to re- open its proceedings.

17. On 10 November 2011, the Panel communicated the complainants' request to re-open the proceedings to the SRSG.

18. On 31 January 2012, the SRSG provided UNMIK's comments on the complainants' request to re-open the proceedings.

19. On 9 February 2012, the Panel requested the complainants to comment on UNMIK's response of 31 January 2012. On 13 February 2012, the complainants sent their response.

20. On 15 February 2012, the Panel communicated the complainants' response to the SRSG and requested UNMIK's further comments on the matter.

21. On 30 March 2012, UNMIK provided its further comments.

22. On 8 May 2012, the Panel requested further information from UNMIK. On 4 June 2012, UNMIK sent its response.

23. On 9 May 2012, the Panel communicated UNMIK's comments of 30 March 2012 to the complainants. On 14 May 2012, the complainants submitted their response.

24. On 10 June 2012, the Panel decided to re-open its examination of the complaint, declaring it admissible.

25. On 12 June 2012, the Panel forwarded to the SRSG its decision to re-open this case and invited UNMIK to complete its comments on the merits, if deemed necessary. On the same date, the Panel forwarded its decision to the complainants inviting them to submit additional comments on the merits of the complaint if they wished to do so.

26. On 16 August 2012, the Panel reiterated its requests for UNMIK's comments on the merits of the complaint. No response was received.

27. In the meantime, the Panel received further submissions from the complainants' representative, which were forwarded to the SRSG on 19 October 2012.

28. On 5 March 2013, additional documents were received from the complainants.

29. On 23 April 2013, the Panel again requested the SRSG to provide UNMIK's comments on the merits of the complaint. No response was received.

30. On 11 September 2014, the Panel reiterated its request to the SRSG for additional information and documentation.

31. On 5 December 2014, the SRSG submitted UNMIK's comments on the merits of the complaint but without supporting documentation. With a separate correspondence, also dated 5 December 2014, the SRSG provided UNMIK's response that the Panel's request for documentation was too general and therefore could not be complied with.

32. In response, on 19 December 2014, the Panel submitted requests to the SRSG and to the UNMIK Office in Mitrovicë/Mitrovica to have access to a detailed and itemized list of documents relevant to the case, including

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the copies of the complainants' medical records previously submitted by Ms Post to the UN Headquarters in New York as well as to UNMIK. In this request, the Panel stated that, in the absence of a response, the Panel would proceed to examine the complaint on the basis of the complainant's submissions, material available in the public domain. However, the requested documents were not submitted to the Panel.

33. On 19 January 2015, the Panel forwarded UNMIK's comments on the merits of the complaint to the complainants' legal representative, who provided her counter- comments on 5 February 2015.

34. Further, at its request, the Panel received additional documentation and information from the complainants' legal representative on 12 January, 23 and 24 February and, again, on 6 March 2015. This documentation included copies of the complainants' medical records with evidence that they had been received by the UN Headquarters and UNMIK.

35. On 25 March and 5 April 2015, Ms Post submitted requests for reimbursement of costs and expenses incurred during the proceedings before the Panel.

36. On 30 April 2015, the Panel forwarded the documentary evidence and counter comments received from the complainants to the SRSG inviting him to submit UNMIK's additional comments. No further response was received.

II. THE FACTS

37. Insofar as the complaint has been declared admissible, the complainants are 138 members of the Roma, Ashkali and Egyptian (RAE)[2] communities in Kosovo who used to reside in the camps for internally displaced persons (IDPs) set up in northern Mitrovicë/Mitrovica since 1999. All complainants claim 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. The Trepca smelter extracted metals, including lead, from the products of nearby mines from the 1930s until 1999.

38. The following account of the facts is based on the documentary evidence (including medical records) provided by the complainants, as well as on documents in the public domain (reports of local and international organisations, press material, correspondence etc.). The Panel emphasises that no documents have been provided by UNMIK, notwithstanding its reiterated requests to this end.

A. Background events

39. Prior to the Kosovo conflict, the city of Mitrovicë/Mitrovica in North Kosovo was home to a Roma population numbering approximately 8,000 people - one of the largest Roma communities in the former Yugoslavia - living in the Roma neighbourhood or Mahala located south of the Ibar river. It is estimated that the Mitrovicë/Mitrovica Roma Mahala (also known as the "Fabricka" Mahala) comprised approximately 700 houses, and 1,000 families, who were integrated into the social and economic life of the city.

40. The armed conflict during 1998 and 1999 between the Serbian forces on one side and the Kosovo Liberation Army and other Kosovo Albanian armed groups on the other is well documented. Towards the end of the conflict, thousands of Roma considered by Kosovo Albanians to have collaborated with the Serbian authorities were subject to violent attacks throughout Kosovo, including in Mitrovicë/Mitrovica, and many of them left *en masse* to become IDPs or refugees in Serbia proper, Montenegro, Western and Northern Europe.

41. On 10 June 1999, the UN Security Council adopted Resolution 1244 (1999). Acting under Chapter VII of the UN Charter, the UN Security Council decided upon the deployment of international security and civil presences - KFOR and UNMIK respectively - in the territory of Kosovo. Pursuant to Security Council Resolution No. 1244 (1999), the UN was vested with full legislative and executive powers for the interim administration of Kosovo. KFOR was tasked with establishing "a secure environment in which refugees and displaced persons can return home in safety" and temporarily ensuring "public safety and order" until the international civil presence could take over responsibility for this task. UNMIK comprised four main components or pillars led respectively by the United

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Nations (civil administration), United Nations High Commissioner for Refugees (UNHCR) (humanitarian assistance, which was phased out in June 2000), the OSCE (institution building) and the EU (reconstruction and economic development). Each pillar was placed under the ultimate authority of the SRSG. UN Security Council Resolution 1244 (1999) mandated UNMIK to "promote and protect human rights" in Kosovo in accordance with internationally recognised human rights standards.

B. Destruction of the Roma Mahala and placement in the IDP camps

42. On 21 June 1999, after the withdrawal of the Yugoslav forces, and as the first KFOR troops and UNMIK personnel were being deployed in Kosovo, the Mitrovicë/Mitrovica Roma Mahala was looted and burnt to the ground by the Albanian population and its inhabitants were forcibly expelled under the watch of the French KFOR[3]. It is estimated that half of the population of the Mahala managed to relocate in other countries. Those who did not have the means to leave at first occupied several public buildings in northern Mitrovicë/Mitrovica and the surrounding areas.

43. Around 600/700 displaced Roma were later placed in IDP camps in Northern Mitrovicë/Mitrovica. Between September 1999 and January 2000, the IDP camps of Zhikoc/Žitkovac and Cesminluke/Česmin Lug were established. Another camp, Kablare, was established in 2001. A further camp was built at Leposaviq/Leposavić, approximately 25 kilometres north of Mitrovicë/Mitrovica. About half of the residents were children aged 14 or younger.

44. The camps of Zhikoc/Žitkovac, Cesminluke/Česmin Lug and Kablare were established in close proximity to the Trepca mining and smelting complex, the largest producer of zinc and lead in the former Yugoslavia, with approximately 15,000 workers employed in 1999. The complex, which included in the Mitrovicë/Mitrovica area a factory lead smelter and three big tailing dams (used to store the waste from mining) located near to the camps, was known to be the cause of environmental pollution and lead contamination of the surrounding areas, as documented by scientific studies carried out since the 1970s.

45. In addition to the problems of lead contamination, living conditions in the camps, which were intended to provide only temporary accommodation (45 to 90 days) pending the negotiation of a durable solution for the RAE IDPs, were extremely poor. On account of the frequent lack of water and poor drainage, hygiene in the camps was described as appalling, resulting in frequent illnesses amongst residents. The camps often had no running water, electricity, heating, adequate health care or access to food inside the camp. The conditions were particularly dangerous for pregnant women.

46. Under UNSC 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 KFOR soldiers serving near its facilities revealed that their Blood Lead Level (BLL) had increased dramatically, the then SRSG, Bernard Kouchner, ordered the closure of the plant as an emergency health measure.

47. During 2000, UNMIK and KFOR contingents based in northern Mitrovicë/Mitrovica conducted assessments of the soil toxicity in and around the camps, which indicated a high blood level of lead contamination in the camps. KFOR contingents implemented measures to protect their personnel, including removing personnel with high blood lead levels from the area.

48. In November 2000, UNMIK commissioned a report *"First Phase of Public Health Project on Lead Pollution in Mitrovica Region"*, by Sandra Moreno and Andrej Andrejew, which was not released to the public. Quoting this document, Human Rights Watch (HRW) has reported that in 2000 lead contamination in vegetation and soil samples in Mitrovicë/Mitrovica exceeded acceptable standards by 176 times in the vegetation samples and by 122 times in the soil; further it documented high concentrations of lead in dust (up to 4630 mg/kg)[4]. Referring to the same report, HRW also noted that, based on blood tests of various population groups in the area, particularly high BLLs had been recorded in the Roma living in the IDP camps[5]. The report contained several recommendations to UNMIK, including carrying out epidemiological studies and regular environmental sampling, undertaking periodic and systematic monitoring and medical treatment of those most in need (children and pregnant women) and the relocating

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the IDPs to a lower risk area[6]. The report also warned that the costs of implementing all those recommendations would exceed UNMIK's financial capabilities[7].

49. Nevertheless, at this time, UNMIK did not make the report public, did not report the situation to the UN Security Council, and did not provide information about the high levels of lead concentrations in the camp to the RAE residents of the camps. No action was taken in the following years to address the risks of lead exposure in the camps.

50. The first cases symptomatic of lead poisoning among the children living in the camps were brought by Roma activists to the attention of the authorities and the media in early 2004. The death of the four-year-old D.M. in the Zhitkovc/Žitkovac camp after she had been diagnosed with lead poisoning, prompted the World Health Organisation (WHO) to conduct a health risk assessment during May, June and July 2004 to determine the extent of exposure of children to heavy metals, particularly lead, in Mitrovicë/Mitrovica and Zveçan/Zvečan. Random blood and soil tests conducted by WHO showed that most children living in the IDP camps in Mitrovicë/Mitrovica and Zveçan/Zvečan had BLL above acceptable levels and that more than 80% of soils in the camps were "unsafe" because of lead contamination. In July and again in October 2004, WHO warned about the chronic irreversible effects of lead on the human body and urged UNMIK to immediately evacuate children and pregnant women from the camps (see the details of WHO findings and recommendations at §§ 73 and 76 below). Similar appeals were subsequently made by both the International Committee of the Red Cross (ICRC) and Amnesty International, which publicly requested UNMIK to immediately evacuate the camps.

51. In January 2005, the WHO in tandem with the United Nations Children's Fund (UNICEF) and the United States Centre for Disease Control and Prevention (CDC), initiated a Blood Lead Surveillance Programme conducting periodic rounds of blood testing to monitor the BLLs of children living in the camps. The results of these tests, intended to be communicated only to the families, were not made public. There is no indication in the documents in the Panel's possession whether the above-mentioned results were or were not communicated to the concerned families.

52. In his fifth Annual Report (11 July 2005), the Ombudsperson Institution in Kosovo also described the living conditions in the camps of Zhikoc/Žitkovac, Kablare and Cesminluke/Česmin Lug as "appalling . . . marked by poverty, malnutrition and a lack of the most basic hygiene and health services"[8]. The Ombudsperson Institution invited the authorities to treat the need for an urgent evacuation of the camps separately from the reconstruction of the Roma Mahala, which it was foreseen would take many years.

53. No submission or documentation has been provided by UNMIK indicating what specific actions were taken in response to the WHO's warnings on the health hazard in the camps and its related recommendations. Several documents in the Panel's possession and in the public domain show that in August 2004 12 Roma IDPs were relocated for two weeks to a hotel outside Mitrovicë/Mitrovica at UNMIK's expense, where they were given treatment and a better diet. Further, UNMIK initiated sporadic remedial actions in the camp of Cesminluke/Česmin Lug - the only one under the direct administration of the UNMIK Administration in Mitrovicë/Mitrovica - including cleaning the camp, repairing the sanitary facilities and distributing milk and food packages to counter the impact of lead upon the residents. Commencing from November 2004, UNMIK held meetings with other international stakeholders (WHO, UNHCR, OSCE, the Danish Refugee Council) to explore options for the relocation of the IDPs to a new, uncontaminated site. It appears that in February 2005 UNMIK, through its office of Returns, Communities and Minorities Affairs, met with representatives of the IDPs. They, unanimously, rejected the idea of evacuating the camps, saying they were not willing to "move again into secondary displacement". However, they were not made fully aware of the dangers stemming from lead[9].

54. Starting from April 2005, a so-called Risk Management Plan was decided upon by UNMIK and implemented mainly through the NGO Danish Refugee Council. The Plan consisted of the distribution of hygiene packs, wood stoves, nutritional supplements and improved access to clean water in the camps, which led to a "significant improvement of the sanitation in and around the camp". Within this initiative, some children were also taken for testing and treatment to Belgrade. However, in the words of the Ombudsperson Institution in Kosovo "these measures . . . do not do too much to take care of the real problem faced by all inhabitants . . . as long as they continue to live in these camps, their health will keep on deteriorating"[10].

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55. In mid-2005, UNMIK established the Mitrovicë/Mitrovica Action Team (MAT), a task-force comprising members from UNHCR, UNICEF, WHO and the OSCE, to coordinate efforts aimed at decreasing lead exposure of the IDPs while organising their evacuation from the contaminated camps. After difficult negotiations, on 18 April 2005, the "Return to Roma Mahala Agreement" was signed between UNMIK, the OSCE, UNHCR and the Municipality of Mitrovicë/Mitrovica to allow and support the return of the IDPs who originated from the former Mahala to new homes to be built with donors' contributions in the area of the Mahala. No RAE representative agreed to sign the agreement. The "Return to Roma Mahala Project", a joint UN-NGO project, envisaged the permanent resettlement of 102 families, or more than 500 people, who could prove ownership rights in the former Mahala, to newly constructed houses by the end of the summer 2007. At an international donor conference in May 2005, the Provisional Institutions for Self-Government of Kosovo (PISG) and UNMIK committed 200,000 euros and 250,000 euros respectively to launch the project, while limited additional funding was made available by international donors to start the reconstruction work in the Mahala. According to UNMIK public documents, the first phase of the project, co-managed by the signatories of the Agreement, was completed on 30 March 2007, with the return of about 462 individuals from the IDP camps (as well as from other relocation countries such as Serbia and Montenegro) to newly-constructed apartment blocks and private houses[11].

56. In the meantime, in December 2005, UNMIK took over the Osterode barracks from the French KFOR, identified by the MAT as a suitable interim relocation site for the IDPs, notwithstanding that its location was also in proximity of the lead slag heaps. The camp had been cleaned and refurbished by UNMIK in line with the recommendations of CDC and a team of environmental engineers of the US Army, who had found the camp to be lead safe. WHO had also tested the camp after remediation, concluding that the camp was "safer" because of the concrete paving of the camp, the absence of lead paint doors found in other camps, and the better hygienic conditions, including the presence of running water[12]. A joint appeal was launched by UNMIK, WHO and UNICEF in February 2006, urging the RAE IDPs "to vacate the lead polluted camps in Northern Mitrovicë/Mitrovica and Zvečan/Zveçan" and to move their families to the Osterode camp as "an emergency health requirement", pending the permanent return of the IDPs to their homes in the Mahala[13]. According to an UNMIK press release dated 9 February 2006, recent blood tests by WHO had confirmed that many children in Cesminluke/Česmin Lug, Kablare and Zhikoc/Žitkovac had "exceedingly high blood lead levels". According to the press release, a number of remediation measures had been undertaken at the camps. However, due to the high pollution level "no amount of remediation at these sites can protect the residents from serious health consequences"; therefore the immediate relocation to a "safer location" was the only solution. Under the auspices of WHO, a small clinic inside the Osterode camp, with a doctor and two nurses, would conduct regular testing and provide children with high blood lead levels with chelation therapy, a treatment to remove lead from the blood and which requires the patients to be moved to a lead-free environment for convalescence.

57. During March and April 2006, 593 IDPs from Zhikoc/Žitkovac and Kablare camps, and a small number of residents from Cesminluke/Česmin Lug, moved voluntarily to Osterode[14]. The Zhikoc/Žitkovac and Kablare camps were subsequently closed and demolished by UNMIK. The majority of Cesminluke/Česmin Lug residents (about 140 IDPs) refused to relocate, believing that Osterode, only 150 metres away from their current location, was as contaminated as Cesminluke/Česmin Lug.

58. On 1 September 2006, UNMIK welcomed the commencement by WHO, through the Republic of Serbia Institute for Public Health, of "specialised medical treatment for lead toxicity" (chelation therapy) at the Osterode health clinic. The treatment, combined with therapeutic food distribution by the Norwegian Church Aid, the NGO managing the camp, was limited to children who had relocated from Zhikoc/Žitkovac, Kablare and Cesminluke/Česmin Lug camps, as requested by WHO. According to WHO standards, chelation therapy should not be provided to patients who return to a lead-polluted environment, since their bodies would absorb even larger quantities of metal causing a greater health risk[15].

59. Both the distribution of food supplements and medical treatment in Osterode were discontinued in 2007 (in January and October respectively). Further, the general situation in the camps had deteriorated: security arrangements became ineffective in preventing on site lead-smelting activities; the camp premises, supposed to be washed

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twice a month to keep the surfaces free of lead dust, were not cleaned for months due to lack of funding for the water truck.

60. According to UNMIK, "the medical components" of the therapy were discontinued "as it was determined by WHO to no longer be of necessity"[16]. However, two years after the treatment was discontinued, a task-force of WHO, CDC's experts and a Roma rights NGO conducted an assessment of the situation in the area. A WHO press release, dated 31 January 2009, states that the data gathered clearly showed "a continuing decrease in the community's mean blood lead levels", with "most significant improvements in those that had returned to the Roma Mahala in Southern Mitrovicë/Mitrovica". However, "individual blood levels" were still "high"; for this reason WHO appealed for "those still living in temporary camps to be relocated to a lead-safe environment as soon as possible, and particularly Cesminluke/Česmin Lug to be closed as a matter of urgency" and that the "area near the tailing dams should be declared a hazardous place for humans"[17]. In another press release, dated 9 September 2009, WHO clarified that chelation therapy is "not recommended in contaminated areas" and explained that WHO had conducted chelation therapy at Osterode as an emergency intervention under the promise that "all these populations would be relocated within six months", which had not happened. The same press release states that WHO had "consistently called for the immediate and urgent need to evacuate all Roma, Ashkali and Egyptians Internally Displaced People from Osterode and Cesmin Lug camps to a lead safe environment" since the residents of the camps "have life threatening lead toxicity proven through laboratory and clinical findings"[18].

61. After the closure of the Osterode clinic, in 2008 independent medical practitioners in Mitrovicë/Mitrovica carried out further testing at the request of the RAE leaders and NGOs and found continuing high level of contamination. The reports of some of these tests have been presented to the Panel by the complainants' legal representative (see § 113 below).

62. Following the unilateral declaration of independence by the Kosovo authorities, in May 2008 the oversight responsibility for the management of the Osterode and Cesminluke/Česmin Lug camps was transferred from UNMIK to the Kosovo Ministry of Communities and Return of the PISG. The camps were eventually closed down in October 2010 (Cesminluke/Česmin Lug), December 2012 (Osterode) and December 2013 (Leposaviq/Leposavić).

C. Lead contamination in Mitrovicë/Mitrovica and the IDP camps

63. The Panel examined and takes account of a good deal of pertinent literature concerning the effects of lead contamination, including in the camps.

1. Sources, effects and treatment of lead poisoning

64. Lead is a highly toxic heavy metal whose widespread use has caused environmental pollution and health problems in many parts of the world[19]. Lead, which is found in the environment mainly as lead sulphide, has become widely distributed in the biosphere only in the past few thousands of years, largely as a result of human activity. Because it has a low melting point and can be easily shaped and combined with other metals, lead is used in a variety of products. Today, the major sources of exposure to lead include: lead added to petrol; lead from an active industry, such as mining (especially in soils); lead-based paints and pigments; lead solder in food cans; drinking-water systems with lead solder and lead pipes; smelting and recycling of lead-containing waste such as batteries; lead contamination as a legacy of historical contamination from former industrial sites; lead in the food chain, via contaminated soil; lead in electronic waste. Socio-economic factors greatly influence exposure to lead, since poor families are more likely to live near industrial plants, to dwell on polluted lands, to work in polluting industries or to live in older housing with lead- based paint. Further, poor iron or calcium deficient diets facilitate the absorption of lead, especially by children.

65. Lead enters the human body through inhalation or ingesting food or water from lead contaminated soil and it accumulates in the brain, liver, kidney, bones and teeth. The level of lead exposure is primarily assessed through determination of lead concentration in the blood, although the examination of hair, teeth, bones and urine can also reveal lead contamination. In 1991, the US CDC and WHO established 10 μg/dL (microgram *per* decilitre) as the

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safety threshold above which BLL give cause for "concern". However, most recent studies assert that no level of lead in the blood is safe[20]. Lead poisoning can have adverse effects on virtually every organ of the body. The principal affected organs are the central and peripheral nervous system, particularly in children, and the cardiovascular, gastrointestinal, renal, endocrine, reproductive immune and haematological systems. Prolonged and high-dose exposure to lead can cause symptoms such as abdominal pain, colic (*lead colic*), vomiting, constipation, fatigue, anaemia and neurological effects from poor concentration to stupor and, in the most severe cases, encephalopathy, coma and convulsions. Low- dose exposure to lead at blood levels previously thought to be safe has long-term damaging effects on the immune, reproductive and cardiovascular systems. It is known that, as lead exposure increases, the range and severity of symptoms and effects also increases.

66. The Panel takes account of medical literature which states that infants, children up to the age of five and pregnant women are 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[21]. 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[22]. 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 foetuses 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[23]. 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. 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. For this reason, venous blood lead measurement is the most reliable way of diagnosing lead poisoning[24].

67. The Panel observes that medical literature is apparently consistent in stating that, once lead poisoning has been diagnosed, the most important step in treatment is to prevent further exposure by removing the source of exposure from the environment and/or relocating patients. Chelation therapy is the treatment commonly used to decrease the blood lead concentrations in most severe cases of lead poisoning. During chelation therapy - a process that lasts two or three hours - several chelating agents can be administered, orally or through intravenous injections, to bind lead (as well as other heavy metals) in the bloodstream, forming a compound which is then expelled from the body. As chelation treatment may also deplete useful elements in the body, such as iron, zinc, and copper, dietary supplements and vitamins are recommended to be taken during the treatment. According to the CDC - which recommends chelation therapy to be given to children with blood lead concentrations equal or above 45 μg/dL - therapy may not be fully effective unless the exposure to lead is reduced. On the contrary, chelating agents may in fact facilitate the absorption of lead in the gastrointestinal tract[25].

2. *WHO, CDC and other documentation on lead contamination in northern Mitrovicë/Mitrovica and the IDP camps*

68. The Panel notes the number of surveys and studies carried out since the late 1970s by the Division of Epidemiology and Public Health of Columbia University (United States), which documented high levels of environmental pollution and lead contamination in the area surrounding the Trepca mining and smelting complex in Northern Mitrovicë/Mitrovica. Among them, a study entitled *On Determinants of Elevated Blood Lead during Pregnancy in a Population Surrounding a Lead Smelter in Kosovo, Yugoslavia* (1990), revealed that pregnant women in

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Mitrovicë/Mitrovica had markedly elevated blood lead levels (86% of them had BLLs higher than 10 μg/dL, as compared to 3.4 % of pregnant women in Prishtinë/Priština). The study highlighted that the "the zone of residence was the most important predictor" of elevated maternal BLLs as lead concentration "declined as the distance from the smelter to the home increased". Other factors influencing the increase in the BLLs were: the husband's employment in the lead industry; the family's ethnic group (it was found that Albanian women had the lowest BLLs probably due to their custom of removing shoes at the entrance to the home, which prevents contaminated soil from being brought inside); nutritional factors.

69. It appears that environmental tests were conducted immediately after the arrival of UNMIK in Kosovo in June 1999. In August 2000, UNMIK ordered the closure of the Trepca smelter. An UNMIK press release issued on 14 August 2000 states:

> "The people of Mitrovica are at risk because of this smelter", said SRSG Bernard Kouchner. "As a doctor, as well as chief administrator of Kosovo, I would be derelict if I let this threat to the health of children and pregnant women continue for one more day.
>
> Recent tests indicate that current levels of lead exposure are approaching the most extreme in decades. Levels of atmospheric lead measured last month [in July 1999] were around 200 times the World Health Organization's acceptable standards. The smelter had worked sporadically since the 1999 conflict in Kosovo. However, an environmental audit ordered by UNMIK and conducted in March and April this year, warned that it should be closed as an "unacceptable source of air pollution". Six weeks after the daily smelting operations restarted in June, tests of KFOR soldiers serving near the smelter revealed dramatically increased blood-lead levels. French tests of atmospheric lead taken in June-July showed average levels of 250 micrograms per cubic meter, two-thirds higher than acceptable limits for workers' exposure in France. UNMIK immediately deployed medical and public health specialists as well as an international epidemiological team to the Mitrovica region. Last week UNMIK embarked on a public health campaign to inform residents . . . of the rising levels of lead; to further measure the incidence of lead . . .; and to offer testing, advice and medical treatment"[26].

70. Medical and public health specialists were subsequently deployed by UNMIK in Mitrovicë/Mitrovica. In November 2000, a report commissioned by UNMIK, entitled *"First Phase of Public Health Project on Lead Pollution in Mitrovica Region"* was issued but never made public. As stated in § 48 above, according to HRW, this report confirmed that, based on the analysis of dust, soil and vegetation samples collected in the region, the level of lead contamination in Mitrovicë/Mitrovica exceeded the acceptable standards by 176 times in the vegetation samples and by 122 times in the soil. High concentration of lead was also recorded in the dust. The report also noted that, based on blood tests of various population groups in the area, particularly high BLLs had been recorded in the RAE living in the IDP camps set by the UNHCR since 1999 and stated that the contamination levels were "higher for Roma than non- Roma persons". Other risk factors identified in the report were previous employment at Trepca and proximity to its facilities. It appears that this report contained the recommendation to relocate the IDPs camps to a lower risk area.

71. As documented in successive studies, lead contamination in Mitrovicë/Mitrovica 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[27].

72. From May through July 2004, following reports from Roma rights activists of symptomatic lead poisoning cases, including deaths of children in the camps, WHO carried out a health risk assessment to determine the extent and routes of exposure of children in the municipalities of northern Mitrovicë/Mitrovica and Zveçan/Zvečan to heavy metals, particularly lead, in the environment. To this end, WHO conducted environmental sampling, blood testing and physical and psychological examinations of a target group of 58 children aged 24 to 36 months old, all conceived after the closure of the Trepca smelter. The results of the assessment are contained in the WHO *Preliminary Report on Blood Levels in northern Mitrovica and Zvecan* (July 2004) which states:

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> "According to medical institutions, approximately 150 children . . . are living within this defined area. We have sampled a total of 58 children and 34 have above acceptable levels. This represents 58.6 % of the total sampled.
>
> Twelve (12) children were found to have exceptionally high levels. Six of them possibly fall within the range described by the United States Agency for Toxic Substances and Disease Registry (ATSDR) as constituting a medical emergency (≥ 70 μg/dL). (Our instrumentation is only able to read up to 65 micrograms per deciliter).
>
> These 12 children all live in the Roma camps where small scale smelting is or has occurred.
>
> We expect to see elevated Blood Lead Levels in other age groups of children.
>
> [. . .]
>
> Without the results of the environmental samples we can only suspect that smelting activities in the camps is producing these excessive and dangerous blood lead levels in the blood as this is the main exposure difference with the rest of the sample group in the North Mitrovica and Zvecan area. Another possible reason is their local remedies, where molten lead is dropped into a glass of water . . ., although this is less likely as all children in the camps have high levels."

73. The report stated that the situation required an urgent response including: the immediate closure of the open smelter in the Zhikoc/Žitkovac IDP camp and the removal of dust and soil in the immediate surroundings of the Zhikoc/Žitkovac smelter and tailing dam; investigation of possible smelting activities in the camps and their cessation; ensuring access to clean water as a preventative measure in the Zhikoc/Žitkovac camp, since the residents complained that it had been cut off; the immediate removal from the camps, until the confirmation of the results, of pregnant women and children aged up to six years old "to a clear area as a precautionary measure". The WHO environmental epidemiologist author of the report concluded:

> "I do not recommend this lightly. This is a standard measure to prevent continuing human exposure and with these excessive blood lead levels these children are a true risk of encephalopathy and possible death".

74. On 22 October 2004, WHO forwarded to UNMIK a second report on *Capillary Blood Lead Confirmation and Critical Lead-related Health Situation of the Roma Camps Children*, which confirmed the July 2004 blood test results [with an accuracy rate of +/− 14.5 %] and identified soil contamination in the camps. The report states:

> "Venous blood samples were then collected from children with capillary blood levels above 15 μg/per deciliter and per every 10th child in the sample population . . . We have just received some of the results . . . These results confirm the results of the local capillary blood screening of June and July 2004 and raise concerns as to some greater impact than originally thought. Due to lack of parental willingness to give venous blood in Zvecan, North Mitrovica and the Roma Community, only six venous samples were taken from the neighbourhoods instead of 24 samples. Of the six collected, three were Roma children and all three results came from RIVM [laboratory in Holland] with the highest levels in the entire sampled population – one had 74.4 μg/dL of blood, one had 58.5 and one had 37.4 μg/dL of blood."

75. Concerning the results of environmental sampling, the report states:

> "Soil samples were collected from the homes of children in their play area and from vegetable gardens. A total of 49 samples were collected in Zvecan, North and South Mitrovica. Only 13 of the samples are within the safe limits recommended for residential soils and soils for agricultural use. [. . .]
>
> 17 of the 49 soil samples were collected from the two Roma camps (8 from Chesminluc and 9 from Zitkovac). Of these 17, only two of them are within the cut off limit of 450 mg/kg considered safe for residential, gardening and children's playground. The conclusion, therefore, is that 88.23 % of soils in the both camps are unsafe for human inhabitation and for gardening."

76. The report, again, addressed several recommendations to the authorities including: the "immediate removal of children (0-6 years) and pregnant women; the temporary, pending a sustainable solution, and permanent re-location of the camps" (Cesminluke/Česmin Lug and Zhikoc/Žitkovac); "medical emergency considerations (immediate hospitalization and treatment) for children with BLLs higher than 70 mg/dL"; medical analysis and treatment

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of children whose BLLs were 30 mg/dL and over; retesting on a weekly basis of children with BLL of 10 mg/dL and above and provide treatment for those showing persistent high levels. The report also recommended to "immediately begin guidance education, nutritional evaluation and intervention, environmental investigation and public health referral for case management and psychological screening for the general public". In the conclusion, the report states:

> "Our professional opinion is that the Roma case is urgent. Children's lives and development potentials are at risk. Their future is jeopardy, yet these kids have a fundamental human right to good health. A prompt and concerted action is in dire need"[28].

77. At the request of WHO and UNICEF, the US CDC carried out an assessment of the situation in the camps in 2007. The CDC report "*Recommendations for Preventing Lead Poisoning among the Internally Displaced Roma Population in Kosovo from the Centers for Disease Control and Prevention*" (October 2007), concerning the blood lead surveillance programme conducted jointly by these three institutions, reads:

> "In the last 3 rounds of blood lead testing, conducted between 2005 and 2007, on average, 30% of children tested had capillary blood lead levels 45 μg/dL, the level at which CDC recommends chelation therapy. Few if any children in the camps have maintained a blood lead level < 10 μg/dL for their entire childhood. These children are at tremendous risk for a lifetime of developmental and behavioral disabilities and other adverse health conditions[29]. [. . .]
>
> The BLL data have been reported to parents but have not been formally released by WHO because interpretation of these data is difficult due to non-standardized collection, relocation of families among the camps and to the Mahala and selection bias[30].

78. The above-mentioned report contains also an assessment of the level of lead contamination of Cesminluke/Česmin Lug and Osterode – the two remaining IDPs camps by the Trepca complex after Kablare and Zhikoc/Žitkovac had been demolished in 2006 – as well as of the Roma Mahala site, where the first IDPs families were being relocated starting from spring 2007. The report states:

> "Cesmin Lug: This camp has at least 4 sources of lead exposure for children. 1) The camp is downwind of lead mine tailings, raising ambient soil and air lead levels. 2) There is evidence of informal lead smelting activity in the camp . . . Burn areas in the camp adjacent to the houses are undoubtedly heavily contaminated. Children play in these areas, and the dust is walked into the house by children and adults, particularly those who don't wear shoes. 3) Many of the doors and window frames are painted with lead paint, and they are peeling profusely. 4) There is evidence of recent informal lead smelting in the old Kablar camp which is adjacent to Cesmin Lug. . . Nonetheless, the smoke and dust from lead smelting can be carried home by the individuals who are engaging in it and contaminate the home environment.
>
> Osterode: This camp has at least 2 sources of lead exposure for children. 1) The camp is downwind of lead mine tailings, raising ambient soil and air lead levels. 2) Individuals in Osterode may also be engaged in the informal lead smelting in the old Kablar camp . . . However, in 2006 the site was inspected by Mr. Brooks, a licensed lead inspector from CDC. The site was found to be lead-safe. Recommendations for maintaining lead safety— including washing down paved surfaces every day—are in place and were visible during the visit in June 2007. In addition, families in Osterode are visited by health educators (facilitators) who reinforce the need for families to implement measures to decrease lead contamination including removal of shoes when entering the house and good hygiene. These activities were also in evidence during the June 2007 site visit.
>
> Roma Mahala: There is no obvious source of lead exposure in the Mahala. The Trepça/Trepča directors informed CDC that in the past the Mahala was perhaps the least contaminated area in Mitrovica . . .".

79. The recommendations issued by the CDC to UNMIK and other relevant agencies included the immediate closure of Cesminluke/Česmin Lug and relocation of its residents to Osterode, intended as a "staging area" for the Mahala; demolition of residencies as they were vacated to prevent the settling-in of other families; instituting a battery recycling programme to prevent informal smelting; publication of all blood lead surveillance and treatment

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data as well as environmental data to ensure effective and transparent monitoring; provision of adequate medical treatment for elevated BLLs.

80. In 2011, the CDC conducted an evaluation of the situation as the efforts to relocate the IDPs to the Roma Mahala intensified and after the Cesminluke/Česmin Lug camp was demolished in September 2010. The 2011 report states that the Osterode camp, inhabited by 80 IDP families in 2010 was actually found to be "far from lead-free", with "soil that contained unacceptable levels of lead". The report also states that a further round of blood testing was conducted in December 2010 on 45 children at the "Ambulanta" in the Roma Mahala. Among them, 16 % had BLLs $\geq$ 45 μg/dL; 49% had BLLs 20-44 μg/dL, 24% had BLLs 10-19 μg/dL; and only11 % had BLLs below 10 μg/dL[31].

81. Lead and heavy metal contamination in Mitrovicë/Mitrovica and its adverse effects on human health has been documented in further studies, including a report of the UNEP on *"Case Study and Lead and Heavy Metal contamination in Mitrovica, Kosovo"* (cited in footnote 27 above), which also states that the RAE population of the IDP camps were exposed to 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.

D. Living, hygienic and health conditions in the IDP camps

82. The general living conditions in the camps, as documented, were very poor. Human rights NGOs (such as HRW), local human rights institutions (primarily the Ombudsperson Institution in Kosovo) and UN and European human rights monitoring mechanisms, including the UN treaty bodies and Special Rapporteurs, and the Council of Europe (CoE) 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[32].

83. Several reports and documents describe the housing and living conditions in the camps as "sub-standard", "particularly distressing"[33], and "appalling . . . marked by poverty, malnutrition and a lack of the most basic hygiene and health services"[34]. In 2008 (that is two years after the camps of Kablare and Zhikoc/Žitkovac had been closed down) HRW documented accommodation in the camp of Cesminluke/Česmin Lug as consisting of small huts made of wooden boards (often second-hand lead painted boards), with no insulation (or cardboard insulation) and no heating. Hygiene was a main issue in this camp, due to the lack of any sewage system or running water within the huts (the inhabitants would collect water from outside pumps) and frequent power interruptions[35]. The Leposaviq/Leposavić camp, located 45 km northwest from the toxic slag heaps, is described as being the least exposed to lead contamination. Nonetheless, according to Human Rights Watch, this camp, which included a hangar and barracks formerly occupied by the Yugoslav Army and had hosted about 130 IDPs, was "dark, cramped, damp and cockroach-infested", with no indoor running water.

84. As pointed out by the Ombudsperson Institution in Kosovo in July 2005, the camps of Zhikoc/Žitkovac, Cesminluke/Česmin Lug and Kablare had the worst living conditions, since they were dangerously close to the waste dumps belonging to the remnants of the Trepca mining complex[36]. The UN Special Rapporteur on the rights of IDPs stated that, during his first visit to the camps in 2005, he was "shocked" to see first-hand that the RAE IDPs had been settled on "highly contaminated land" in northern Mitrovicë/Mitrovica and appealed to the international community to immediately evacuate the camps[37]. Urgent appeals to evacuate the camps were also made by the UN Special Rapporteur on the right to adequate housing, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on toxic waste, in October 2005 and, again, in January 2007.

85. After the Osterode camp, previously occupied by KFOR troops, had been identified by the MAT as a temporary relocation site, Roma camp leaders as well as human rights bodies were unanimous in questioning the suitability of the camp, located just beside Cesminluke/Česmin Lug and therefore alleged to be also contaminated by toxic chemicals[38]. This camp, where most IDPs were relocated after the closure of Kablare and Žitkovac, offered better housing conditions with most IDPs living in small flats or barracks and having improved access to running water, electricity and heating. However, medical evidence suggested that the lead levels in the blood of the IDPs

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in Osterode "still exceeded medical accepted levels many times", being "still too high to even begin therapy measures"[39]. As reported by HRW, the Osterode camp leaders believed that KFOR had moved its staff from Osterode at the beginning of 2005, due to high lead levels found among soldiers. HRW's enquiries about this were not confirmed or refuted by the KFOR[40].

86. The Panel notes the many reports that highlight that the biggest problem in the camps was the health situation of the residents. In a letter addressed to the UNMIK SRSG, Mr Lamberto Zannier, in April 2009, the CoE Commissioner for Human Rights stated that when visiting the camp he was "struck by both the very poor conditions in which the families lived as well as the extremely serious health hazards", which they faced on a daily basis by virtue of the fact that they were living in a lead- contaminated area. In the Commissioner's view, "reports of higher than normal death rates" were "credible"[41]. According to interviews conducted by HRW with camp leaders, IDPs and health professionals working in the camps, there was a high incidence of diseases such as kidney problems, high blood pressure, diabetes, rheumatism, asthma and heart diseases. The director of the Mitrovicë/Mitrovica hospital stated to HRW in 2008:

> "Even though these problems are quite common in Kosovo, and it would require scientific studies to say something authoritative, these problems are more aggravated in the case of Roma IDPs from the camps simply because of the living conditions they are in (low temperatures, high moisture), poor diet, less frequent medical visits and examination, and the physical work they do"[42].

87. Reports consistently stressed the particularly critical health situation of children. According to HRW, camp children suffered from serious health problems possibly linked to lead contamination (stunted growth, nervousness, epilepsy, fatigue). In addition, because of their weak immune systems, and as a consequence of their poor diet and hygiene, they were vulnerable to all kinds of disease and epidemics, such as diarrhoea, skin problems, pneumonia[43]. The CoE Commissioner for Human Rights wrote that, even if the long term consequences of exposure to lead were harder to determine, lead contamination undoubtedly causes permanent developmental damage to children, which he had viewed with his own eyes when visiting Osterode and Cesminluke/Česmin Lug in March 2009[44]. In a subsequent letter to the SRSG, he wrote that the children he had met in the camps were "clearly under-developed for their age" and defined the situation as a "humanitarian disaster". The CoE Advisory Committee on the Framework Convention on the Protection of National Minorities stated that the "serious health risk" to which children and pregnant women were particularly exposed in the camps was not compatible with Article 4 of the Convention prohibiting discrimination of persons belonging to a national minority[45].

88. Concerning access to health services and treatment, most IDPs, both adults and children, were holders of "health books" to access Serbian hospitals in northern Mitrovicë/Mitrovica and Serbia proper[46]. However, no medications were provided free of charge; in fact, HRW documented the case of a family which had been economically ruined when they had to pay for their children's medications[47]. After the opening of Osterode, a small clinic (*ambulanta*) staffed with nurses was established in the camp to provide basic health services to the IDPs living in Osterode and Cesminluke/Česmin Lug, although the camp residents complained that the clinic suffered from a "chronic lack of medicine"[48].

89. HRW states that similar problems with access to medicine and medical help were observed in other RAE IDP camps and settlements that the organisation visited in November/December 2008, but what was unique about the situation in the Mitrovicë/Mitrovica camps was the lack of systematic efforts to monitor the levels of lead contamination and provide adequate treatment[49]. In this respect, the UN Committee on Economic, Social and Cultural Rights expressed its concern that medical treatment for lead poisoning had been discontinued in 2007 and that there was no continuous monitoring of the lead blood levels in the camps[50]. The UN Rapporteur on the rights of IDPs, in his follow-up visit in June-July 2009, stated that he was "particularly disturbed" to note that the IDP children who had been moved from the contaminated camps to the Roma Mahala had not been provided with "access to therapy, even though this would be feasible and urgently needed". He expressed concern that "such a life-threatening situation", after years, remained "basically unsolved" [51].

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E. Criminal and civil claims brought by the complainants

1. Proceedings against UNMIK

90. On 31 August 2005, the European Roma Rights Centre (ERRC), an international public interest law organisation, filed a criminal complaint with respect to the situation in the IDP camps with the "Office of the Public Prosecutor in Kosovo". The complaint was filed on behalf of 550 "RAE not yet identified", among them the complainants, under Article 291.5 (causing general danger) of the Provisional Criminal Code of Kosovo. The complainants made specific reference to the death of D.M.[52].

91. According to information provided by the complainants' legal representative, on 9 January 2015, no response had been received with respect to the above-mentioned criminal complaint.

92. On 20 February 2006, the ERRC on behalf of the complainants filed an application with the European Court of Human Rights against UNMIK. According to the ERRC, the Court informed them that it did not have jurisdiction to review the case, since UNMIK was not party to the European Convention on Human Rights (ECHR).

93. On 10 February 2006, the complainants filed claims for compensation in the framework of the UN Third Party Claims Process (see § 16 above).

94. On 25 July 2011, the UN 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 UN 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". She further stated:

> "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".

2. Proceedings against EULEX

95. In addition, proceedings were brought against EULEX. On 2 February 2010, the complainants requested the EULEX Chief Prosecutor to investigate the possible criminal liability arising from the situation in the RAE IDP camps in northern Mitrovicë/Mitrovica. However, they were informed by the Chief Prosecutor that no investigation would be commenced as the case, according to him, fell outside of EULEX's jurisdiction.

96. On 21 November 2013, the complainants filed a criminal complaint with the Basic Prosecution Office in Mitrovicë/Mitrovica and on 15 April 2014, an investigation was initiated by the designated EULEX prosecutor. However, following the entry into force on 30 May 2014 of the Kosovo Law No. 04-L-273, which establishes with retroactive effect that EULEX prosecutor has the authority to conduct criminal investigations only in cases for which the decision to initiate investigations is filed prior to 15 April 2014, the case was handed over to the Kosovo prosecutors at the Basic Prosecution Office in Mitrovicë/Mitrovica.

97. On 22 April 2015, the EULEX Human Rights Review Panel (HRRP) issued its decision on the case (filed with them on 9 June 2011) finding that EULEX had violated the complainants' right to an effective remedy (see HRRP, *X. and Others v. EULEX*, case no. 2011-20, decision and findings of 22 April 2015).

III. THE COMPLAINT

98. The 138 complainants were inhabitants of the IDP camps of Zhikoc/Žitkovac (operational from 1999 to 2006), Kablare (2001-2006) Cesminluke/Česmin Lug (1999-2010), Osterode (2006-2012) and Leposaviq/Leposavić (1999-2013) in northern Mitrovicë/Mitrovica. Approximately half of the complainants were children on

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4 June 2008, when the complaint was filed with the Panel. About 75 complainants are women and girls. At least 13 of them delivered babies in the camps and have submitted the complaint also on behalf of their children. They requested the Panel to maintain their identities confidential "because of serious concerns of their safety and fears of any violence or other repercussions". Therefore only a summary of the submissions, including medical documentation, made by the complainants is provided below.

99. The complainants complain that UNMIK violated their human rights by placing them in IDP camps on land known to be highly contaminated, by not providing them with timely information about the health risks or the required medical treatment, as well as by failing to relocate them to a safer location. In particular, they allege that UNMIK violated its positive obligations to protect the right to life, as envisaged by Article 2 of the ECHR, their right to be free from inhuman and degrading treatment (Article 3 ECHR), their right to respect for private and family life (Article 8 ECHR), their right to a fair hearing (Article 6 § 1 ECHR) and to an effective remedy (Article 13 ECHR). They also claim that UNMIK's decision to place the RAE IDPs in the contaminated camps and its failure to move them to a safer environment constituted discrimination against the complainants as members of the RAE community in violation of Article 14, ECHR, taken in conjunction with the provisions mentioned above.

100. The complainants further claim that the unhealthy and unhygienic conditions in the camps constituted a violation of their right to adequate housing, health and sanitation (Article 25 of the Universal Declaration of Human Rights (UDHR)), Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and that the rights of women and children under several provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) have also been violated.

101. Complainants N.M. (no. 1) and S.M. (no. 2), parents of D.M., complainant S.M. (no. 8), husband of R.M., and complainant I.I. (no. 20), wife of V.S., also complain, insofar as their complaints have been declared admissible, that no investigation was launched regarding the deaths in the camp of their family members, in violation of the procedural obligation under Article 2, ECHR.

IV. THE LAW

Admissibility

102. In his comments on the merits of the complaint dated 5 December 2014 (see § 31 above), the SRSG states that the complaint is inadmissible.

103. The SRSG states that there is no legal basis for the re-opening of the complaint, which had been declared inadmissible by the Panel on 31 March 2010 based on Section 2.2. of UNMIK Administrative Direction no. 2009/1 (UN Third Party Claim Process). The SRSG argues that there is no provision in UNMIK Regulation 2006/12 establishing the Panel which allows for the re-opening of a complaint previously declared inadmissible by the Panel. While the above-mentioned Regulation provides, at Section 18, that the "Advisory Panel shall adopt rules of procedure for its proceedings", it "does not mandate the creation of a new procedure that is inconsistent with the spirit and intent of the Regulation or Administrative Directions issued thereunder". In the view of the SRSG, the Panel's decision to re-open the complaint has therefore been taken *ultra-vires*.

104. The SRSG adds that his comments on the merits of the complaint shall be considered "without prejudice to the admissibility of the complaint and only done as a matter of courtesy to the Advisory Panel".

105. The Panel has already analysed and dismissed this objection of the SRSG in its admissibility decision of the case dated 10 June 2012 (at § 24).

106. The Panel does not see any reason to depart from its previous conclusion on the issue and rejects the SRSG's objection.

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Merits

A. The parties' submissions

1. *The complainants' submissions*

a) Medical documentation on testing for lead contamination in the camps

107. The complainants state that the high level of lead contamination coupled with the poor hygiene and living conditions in the camps, have caused severe damage to their health and the health of their family members. The complainants submit that, after entering the camps, they have experienced a variety of serious medical conditions including the following: paralysis, encephalitis (inflammation of the brain), weakened immune systems, anaemia, weight loss, behavioural disorders, hypertension, breathing difficulty, fainting, high blood pressure, muscle and joint pain and spasms, kidney problems, vomiting, stomach aches, impaired hearing, impaired breathing, fatigue and headaches.

108. The Panel was provided by the complainants with several sets of medical records, mostly reports of lead tests carried out in the camps at different dates in the period 2005-2008. These reports concern 65 complainants or their family members, as well as a greater number of IDPs residing in the camps who are not among the complainants. These documents consistently indicate high, or extremely high, levels of lead contamination among the camps' residents throughout the indicated period.

109. The first set of records are copies of blood and hair testing reports carried out, at the request of local NGOs, by the Health Centre in Mitrovicë/Mitrovica in April/May 2005 and by the German clinic "IFU" in October 2005. The blood test reports show that, out of 13 complainants/complainants' family members tested, ten qualified as medical emergencies, having BLL over < 65 μg/dL (the maximum that could be measured by a hand-held lead analyser). As for the hair testing, the reports submitted indicate that the 21 complainants/complainants' family members tested had high levels of lead concentration.

110. The complainants also submitted copies of blood tests carried out on 20 December 2005 by WHO Europe on 24 children from the IDPs camps of Kablare, Zhikoc/Žitkovac and Cesminluke/Česmin Lug, including six complainants/their family members. These tests show that 18 children tested qualified for immediate treatment with chelation therapy (they were found having BLL <45) and that, among them, 11 were medical emergencies (having BLL 65 μg/dL).

111. The Panel also received copies of blood tests conducted by the "Clinički Centar Srbije" on July and August 2006 on 177 individuals (all children, except for nine adults) from the three camps mentioned above, including 30 complainants or their family members. These tests show that, with the exception of 16 individuals, all the children tested had considerably high BLL (10 μg/dL and above), although none qualified for medical emergency.

112. The Panel considered copies of the blood tests carried out by the Mitrovicë/Mitrovica Health Center in the camps of Cesminluke/Česmin Lug and Osterode in 2007. The tests stated that, over a sample of 103 IDP children (including ten complainants/their family members), ten qualified as medical emergency (BLL over 65 μg/dL), whereas the remaining were found having high or extremely high BLL.

113. Finally, the Panel considered copies of additional blood tests carried out by the Mitrovicë/Mitrovica Health Center in the camps of Osterode and Leposaviq/Leposavić in December 2008. The tests show that, out of 84 children tested in Osterode (including 17 complainants/their family members), 12 were found to have BLL over 65 μg/dL (medical emergency), with the rest showing considerably high BLLs. The tests conducted in Leposaviq/Leposavić state that, out of over 31 individuals (23 children) tested, including six complainants or their family members: eight had BLLs below 10 μg/dL; fourteen had BLLs between 10-20 μg/dL; five between 20-30μg/dL; one between 30-40 μg/dL; three between 40-50 μg/dL.

114. Eleven complainants state that their blood was tested and they were found to have high (unspecified) BLLs; however they were not provided with copies of the results. A total of 34 complainants alleged that they had experienced the symptoms of lead poisoning but could not provide the Panel with any medical documentation to this effect.

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115. As supporting evidence, the complainants also submitted the report "Highest level of lead contamination ever registered in samples of human hair: 560 Roma refugees exposed to deadly heavy metals since 1999" which was published by the human rights NGO Society for Threatened Peoples (GfbV) in 2005. One section of the report is authored by Mr Klaus-Dietrich Runow, specialist for environmental medicine at the German-based institute IFU who, at the request of the GfbV, visited the camps and took hair tests from a sample of 64 RAE IDPs in October 2005 (see § 109 above). The article contains diagrams of the tests and an analysis of test results by Mr Runow:

> "Preliminary investigations had shown that many persons had high lead values in their blood. As blood analyses reflect only the acute concentration and gives no indication on the body as a whole, I suggested that hair analyses be carried out. Hair analyses do provide a good method of determining the concentration of heavy metals in the body [. . .]
>
> The analyses show an extremely high concentration of various toxic elements consisting of: lead, arsenic, antimony, aluminium, cadmium, tin, manganese and vanadium [. . .]
>
> The results obtained are reported by our laboratory to be the highest ever seen in the values of heavy metal in human hair samples . . . In terms of environmental medicine the refugees will suffer irreversible damage to nerve and immune system and impairment to bone growth and blood system if prompt assistance is not forthcoming. Medical assistance must be aimed at ascertaining the exact cause of the heavy metal concentration. Soil tests should have been analysed not only for lead, but also for all other toxic elements found in the hair analyses. In the decontamination operation extreme care must be exercised as considerable amounts of toxic elements can be mobilised in the usual decontamination therapies (e.g. Na-EDTA, DMPS, etc.) and thus unforeseeable reactions can occur . . . Treatment should therefore only be carried out in institutions with experience of many years in environmental medicine.
>
> Since in all cases examined a low level of selenium was found, I should like to point out that paediatricians see a correlation between the lack of selenium and sudden child death. Particularly with reference to pregnant women and children born in camps the selenium level should be examined and if necessary normalised.
>
> From the point of view of the preventive medicine it is necessary to improve the level of nourishment of the persons concerned. In addition to the intake of uncontaminated foodstuffs treatment with minerals, trace elements and vitamins should be provided . . . These measures will have little effect if the persons concerned remain exposed to environmental poisons. The evacuation of the people in the refugee camps is essential from the point of view of environmental medicine and should take place immediately. An up-to-date environmental medical diagnosis and therapy is indicated"[53].

116. In addition, documented in the report is a testimony from a Roma NGO worker who worked for two years in the camps on an hygiene education project. Extracts of this statement read as follows:

> "During this time we have seen many children fall ill because of lead poisoning. Their mothers tell us how they discover that their children are sick. They start to have behavioral problems, getting angry and violent over little things. They lose their hearing, get disoriented when they walk. As they get worse they lose their memory and vomit every day. Near the end they get pains in their legs, and fall in and out of consciousness [. . .]
>
> Most women who get pregnant in the camps these days miscarry. No matter if it is their first child or tenth child, it is most likely they will miscarry [. . .]
>
> Out of those 50 pregnant women [interviewed], most had miscarriages before their fifth month. Others decided to self-induce an abortion . . .[54]"

117. The same NGO worker states in the report that one of the pregnant women interviewed was R.M., age 43, who complained about her 3-year-old displaying symptoms of lead poisoning and who died with her new-born baby in July 2005[55].

b) Medical documentation concerning family members who died in the camps

118. The supporting evidence presented to the Panel includes the medical records presented by the N., M. and S. families, whose family members (one child and 2 adults) died in the camps.

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119. Concerning the family N., the complainants provided medical records from the Mitrovicë/Mitrovica Health Centre stating that their 4-year old daughter D.M., who died in July 2004, was first hospitalised on 11 and 12 March 2004 unconscious and with convulsions. She was referred as an emergency case to the hospital of Kgragujevac where she had been diagnosed with "with viral aetiology most probably Herpes virus". They also provide copies of the medical records for their second daughter, N.M. (complainant no. 3). The discharge papers from the Mitrovicë/ Mitrovica Health Centre state that she was admitted for the first time from 28 May to 2 June 2004 with convulsions, seizures and tonsillitis and, for the second time, from 2 to 24 March 2005, when she was diagnosed with lead poisoning and anaemia. The documents also include copies of blood tests performed on N.M. in February 2005 stating that she had BLL higher than 65 μg/dL. They also provided copies of blood tests for other members of their families (complainant no. 4, 5, 6 and 7) dated June 2005, stating that they also had BLL higher than 65 μg/dL.

120. The complainants also provided experts' opinions on the possible connections between D.M.'s death and their own health problems and lead contamination in the camps. In the expert opinion provided at the request of the complainants, Dr S.M., a medical consultant specialising in lead poisoning, states that, since no lead test was performed, "based on the discharge papers, anamnesis and other clinical findings, there is no scientific proof" that she was affected by lead poisoning. The opinion also states that, however, the history of D.M.'s illness shows that she was affected by a serious immune system dysfunction - which could have been caused by lead poisoning - which, in turn, caused a viral infection with subsequent significant damage to the central nervous system. The cause of D.M.'s death had to be looked at in the context of the fact that her siblings had been tested and found to have alarming levels of lead in their blood. Considering that they "shared the same space water and food", it was "logical" to assume that she was also affected by lead poisoning "even without direct laboratory findings" in this regard.

121. The opinion, dated 4 November 2005, by a toxicological expert, Dr. B.G., with respect to the death of D.M., states that "no differential diagnosis was performed to exclude lead poisoning (severe lead contamination of soil in Roma camps was very well known at that time)" and that "there is no denying that the fact that severe lead poisoning may predispose to and be complicated by infectious diseases". With respect to the case of D.M. the opinion concludes "the great probability is that lead poisoning was not diagnosed . . . as a cause of her clinical status and finally, death. In her sister [N.M.] lead poisoning was diagnosed one year later".

122. The family M., composed of the husband, his late wife, R.M., who died in July 2005, due to complications arising from child birth and their ten children, submit discharge documents from the Birth clinic in Mitrovicë/ Mitrovica. These state that R.M. "was treated in this hospital from 12 July 2005 until 13 July 2005, when she was discharged with a diagnosis Gar ml X. Dyabetes mellitus typ II. St. Post infarctus myocard. Diagnosis for the child: Fetus mortus in utero. Hydrops foetalis." This complainant also submits copies of the hair test results conducted in October 2005 by the IFU on his children (complainants nos. 13, 14, 15, 16 and 17) showing that they had high level of lead concentration. Concerning complainant no. 18, a blood test report, dated 13 April 2005 from the Mitrovicë/Mitrovica Health Centre is provided showing that she had BLL higher than 65 μg/dL, as well as discharge papers from the Belgrade Hospital, dated 26 April 2005, stating that she had been diagnosed with lead poisoning.

123. Concerning the family S., where the father, V.S., died in March 2006, at the age of 26, among other documents the complainants submit copies of the blood tests conducted by the Mitrovicë/Mitrovica Health Centre in April 2005 and by the "Clinički Centar Srbije" in July 2006 and December 2008 for four members of the family (one adult and three children) stating that they all had BLL higher than 65 μg/dL in 2005 and higher than 40 μg/dL in December 2008, after they had been moved to Osterode.

c) The complainants' claims and arguments

124. The complainants state that they became IDPs as a consequence of the Kosovo war and the destruction of the Roma Mahala, where most of them used to live. Because of the post-conflict inter-ethnic dynamics in Kosovo, and because of their status as IDPs, they did not enjoy full freedom of movement and could rely only on the "custody of UNMIK".

125. UNMIK established the IDPs camps of Žhikoc/Žitkovac, Cesminluke/Česmin Lug and Kablar/Kablare on land that had been known by UNMIK since the year 2000 to be lead contaminated or "a toxic waste dump site".

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In this respect, the complainants refer to the UNMIK internal report of November 2000, the WHO reports of July 2004 and October 2004 mentioned above (see §§ 50 and 73 above), as well as to further assessments and reports documenting the lead contamination in the camps including: assessments allegedly carried out by the American and French KFOR in 2000 documenting high blood lead levels among the troops and warning of the serious health risks stemming from lead contamination; soil testing carried out by UNMIK in the camps in May 2005 whose results were allegedly not disclosed to the public; a further report issued by WHO in late 2005, only the executive summary of which was made available to the general public, confirming previous findings on dangerous levels of lead contamination among children in the camps; and assessment of the soil in the Osterode camp made by an American environmental team in October 2005, whose results as well reportedly have not been made public.

126. The complainants state that "despite overwhelming evidence of a medical emergency", the inhabitants of Žhikoc/Žitkovac, Cesminluke/Česmin Lug and Kablar/Kablare were not relocated and the camps remained on contaminated ground at the moment of filing the complaint, that is about eight years after their establishment.

127. The complainants complain that, in addition to their location on lead contaminated ground and the resulting health emergency, the general conditions in the camps were "deplorable", which contributed to the immediate and long-term health problems of the complainants. They claim that the inhabitants of the camps had often no access to running water, electricity, heat, health care or food. The complainants submit that, due to the lack of water in the Žhikoc/Žitkovac camp, maintaining hygiene was difficult and children often had bad skin conditions. They also claim that, in September 2005, the common toilets in the Žhikoc/Žitkovac camp "had no locks on the door, not toilet paper, no towels, no soap for hand washing and were covered with human faeces and urine". They state that nearly everyone in the three mentioned camps "has or has had lice" and that "everyone in the Cesminluke/Česmin Lug and Kablare has or had ringworm". The complainants state that several NGOs and international organisations had also stated in their reports that the living standards in the camps fell far below international standards.

128. Of particular concern was the situation of pregnant women in the camps. According to the complainants, many babies were still-born and there were many miscarriages in the camps. They claim that, as many women knew that their children would be born "mentally retarded", they would practice self-induced abortions by drinking lice shampoo or pesticides, or mixing yeast with beer to produce miscarriages.

129. The complainants complain that "little or no information" was given to the IDPs for nearly six years on the health risks they were being exposed to and that, 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". They further state that a number of studies and reports from different sources, for example the one mentioned in § 50 above, were "repressed by UNMIK" and that 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 was responsible for providing "misinformation" and "misrepresentations" on the issue. In this regard, among others, the complainants state that UNMIK officials circulated information that the camps' inhabitants were responsible for their own poor health due to their informal smelting activities.

130. Concerning the relocation of most IDPs to the Osterode camp in 2006, the complainants argue that Osterode was probably even more contaminated than the other camps, certainly no safer, as proven by blood tests carried out in that camp in 2007. The complainants state that tests, copies of which were provided both to UNMIK and to the Panel (see §§ 109-113 above), show that children had "higher blood lead readings after a year in Osterode than previously".

131. The complainants further state that, since chelation therapy should be administered away from the source of contamination, and because of the still high lead pollution in Osterode, the chelation therapy and distribution of food supplement, which had been initiated in the fall of 2006, was suddenly discontinued in 2007. Regardless of the better living conditions, the IDPs were still living in a highly contaminated area in Osterode, which made the chelation therapy ineffective. The complainants also claim that no information in this respect, including about the results of the treatment undertaken, was ever provided to the parents of the children being treated.

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132. In light of the above, the complainants contend that the conditions of the camps in which they lived put their lives in serious danger, in clear violation of Article 2 of the ECHR protecting the right to life. The complainants state that Article 2 imposes a duty on states not only to refrain from intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within their jurisdiction. They refer to the case law of the ECtHR extending this obligation to the field of "dangerous activities", "any activity, whether public or not, in which the right to life may be at stake", and "*a fortiori* in the case of industrial activities, which by their very nature are dangerous, such as the operation of waste-collection sites". This positive obligation may include the provision of information regarding possible risks to life caused by the actions of the State and also the obligation to take particular steps to protect the most vulnerable categories of people such as ethnic minorities and women.

133. With respect to the present case, the complainants claim that the environmental situation complained of was not the result of a sudden and unexpected turn of events; on the contrary, it was a long-lasting and well-known situation. Given the known dangers of lead exposure and the growing evidence of lead contamination in the camps, UNMIK authorities knew or should have known of the grave danger to the IDPs' lives. Nonetheless, they did not take any positive step to remedy the situation or to remove the IDPs from the contaminated land. Further, UNMIK failed also to inform them of the risks they were facing by living in such a toxic environment.

134. The complainants complain that the harm and damage suffered by them is "immediate and irreparable". They state that their case presents a "strong combination of direct evidence and presumptions" which makes it reasonable to conclude that the victims' health deteriorated as a result of their prolonged stay on heavily toxic land. The prolonged exposure to lead contamination made them more vulnerable to various diseases adversely affecting their future quality of life, especially among the children. For these reasons, they submit that UNMIK's acts and omissions as described above have been in violation of Article 2 of the ECHR.

135. The complainants submit that their "initial placement and long term maintenance" in lead contaminated IDPs camps and the consequent adverse effects on their health also constitutes a violation of Article 3 of the ECHR, which prohibits inhuman or degrading treatment. While acknowledging that according to the jurisprudence of the European Court the ill-treatment complained of shall reach a "minimum level of severity" to amount to inhuman or degrading treatment under Article 3, the complainants state that this assessment shall take into account factors such as the victims' sex, age and status of health, which impact on the vulnerability of victims to physical or emotional suffering.

136. The complainants further argue that, following the same reasoning, their Romani ethnicity and the fact that they belong to a historically disadvantaged minority group in Kosovo has rendered them particularly vulnerable to degrading treatment. The complainants claim that the indifference of the authorities to their suffering has caused "humiliation and indignity" and that their ethnic identity "resulted in reinforcing their feeling of degradation, utter helplessness and lack of any legal protection", which shall be given consideration to in considering the allegations under Article 3.

137. The complainants state that their rights to the highest attainable standard of health, the right to housing and the right to an adequate standard of living, including adequate food, clothing and housing, provided for by Articles 12 and 11 respectively of the ICESCR, have also been violated.

138. The complainants state that health hazards stemming from lead contamination in the camps and UNMIK's failure to take remedial action also amount to a violation of Article 8 of the ECHR, which protects the right to respect for private and family life, the right to home and the right to correspondence. Article 8 involves both a duty to refrain from interference as well as the duty of relevant authorities to adopt measures to secure the protected rights, even in the relationship between private individuals.

139. The complainants argue that they consider their dwellings in the camps as "homes" in the sense of Article 8 and that under the case-law of the Court, the failure by state authorities to protect individuals from environmental harm, including the harm generated from private industry, amounts to a violation of Article 8 of the ECHR. In this respect, they submit that UNMIK's failure to remediate the contamination or to relocate them away from the source of contamination constitutes a violation of Article 8.

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140. They further contend that UNMIK also violated Article 8 by not providing them with access to proper and timely information on the health risks they were being exposed to. They claim that, even when studies were made, their results were not released to them or made public (see §§ 49-51 above).

141. The complainants state that the discrimination against the RAE community in Kosovo in access to employment, decent housing, education and health care and the general exclusion of RAE persons from mainstream society are well-documented in the reports of international organisations, such as the OSCE. They complain that the failure to remove the RAE IDPs from the lead contaminated camps is "but one incident in a pattern of discriminatory practice by both private and public actors" against the RAE community in Kosovo. They submit that Article 14, as read in conjunction with Articles 2, 3, 8, 6 and 13 of the ECHR has also been violated, as well as relevant provisions of the ICCPR, ICESCR, and the International Convention against All Forms of Racial Discrimination (ICERD).

142. The complainants argue that only the RAE IDPs, as compared to IDPs from the Kosovo conflict of different ethnic origin, have been placed in such close proximity to the Trepca complex on land known to be contaminated. They further complain that public authorities have acted in a quicker manner to "return, rebuild and compensate" non-RAE inhabitants of Kosovo who had their property lost or destroyed during the conflict. As an example, they quote the Fifth Annual Report of the Ombudsperson Institution in Kosovo which states that, with respect to the riots and consequent property destruction which occurred in March 2004, at the date of 11 July 2005, the Government had "undertaken reconstruction of almost all properties damaged or destroyed" and "provided cash grants to returning families". The complainants state that "Roma still await reconstruction and compensation from properties destroyed in 1999" and that UNMIK's plans to rebuild the Roma Mahala have been designed and continued without the prior agreement of the RAE community.

143. The complainants also make mention to another unrelated suspected environmental emergency involving over 1,000 Albanians from the Hade village, located on a coal mine and in danger of being subject to a landslide. The complainants state that the residents who had to leave their homes were temporarily provided with food and shelter as well as . . . allocated new land parcels and new homes or apartments. This matter is also documented in the Ombudsperson Institution's Fifth Annual Report which states that "after innumerable efforts by the Government to achieve a settlement with the residents of Hade village . . . 29 families refused to be relocated. Nevertheless, the involuntary relocation of the latter families on 2 June 2005 had reflected intensive planning during a period of time and was well organised and carried out carefully. For the arisen property losses or damages, compensation payments were already underway . . .". The complainants conclude that these actions from UNMIK demonstrate that the "the evacuation from a potentially dangerous environmental situation is possible for over 1,000 Albanians. In contrast the removal of half that number of Roma from a known and well-documented contamination site has been delayed for six years".

144. The complainants argue that, having *prima facie* established that the placement and the maintenance of the RAE IDPs in lead contaminated camps follows this pattern of discrimination, it is for UNMIK to prove that the matter was not managed by them in a discriminatory manner.

145. In addition to the other alleged human rights violations, specifically concerning the female complainants, the complainants contend breaches of relevant provisions of the CEDAW.

146. The complainants contend that as the respondent knew or should have known of the grave danger to the lives and health of the women victims through the lead contamination in the camps and the general living conditions, and did not take any positive steps to remove the victims from the danger due to discrimination, entails a violation of the relevant provisions of CEDAW (including Articles 1, 2 and 3). It is further contended on behalf of those complainants, who, at the relevant time were residents of the Zhikoc/Žitkovac, Cesminluke/Česmin Lug and Kablare camps and are now residents of the Osterode camp, that their initial placement and long term maintenance in IDP camps on contaminated land near a toxic waste dump and attendant detrimental effects on their health and well-being constitute a violation of Article 12 of the CEDAW. It is also alleged that the conditions under which the complainants lived interfered with their ability to have proper family education and access to health and information, and further interfered with family life, thus constituting further violations of the CEDAW. The complainants emphasise that the alleged lack of adequate health care, the poor living conditions and the lack of appropriate medical

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information about the attendant risk were particularly serious for pregnant women on account of their increased vulnerability and that of their unborn children.

147. A number of specific violations of the CRC are alleged by the complainants. They allege that Article 2 has been violated on account of ethnic and gender discrimination by the respondent; Article 3 has been violated as the respondent has not taken into account the best interests of the child in its actions; Article 5 has been violated as the rights of the parents have not been respected through the respondent's failure to report the results of the blood tests or give correct information; moreover, Article 6 has been violated for those children who have died and, further, that the right to development contained in Article 6 has been denied as a consequence of the permanent mental deficiencies of children born with lead poisoning and through the lack of medical treatment.

148. The complainants allege a violation of Article 16 of the CRC through a breach of the right to protection from attacks on or interference with privacy, family life and home. Article 19 is allegedly violated by the respondent's failure to take measures to protect the children from physical or mental violence, injury or abuse. On account of the respondent's failure to create conditions in which a mentally or physically disabled child can enjoy a full and decent life with special care, the complainants allege a violation of Article 23. It is alleged that the respondent has violated the right of the child to the highest attainable standard of health required by Article 24 through stopping the provision of nutritious food and medical care, failing to take into account the risks of environmental pollution and through failing to provide adequate or any information. Finally, the complainants contend a violation of the Article 27 right to an adequate standard of living and a violation of Article 37 on account of the subjection of child complainants to cruel, inhuman or degrading treatment.

149. In addition, the complainants state that they have been unable to bring any complaint concerning the violation of their rights under Article 2, 3 and 8 of the ECHR to "any national authority with effective enforcement power". They state that, on the one hand, they "have been barred from legal action because of KFOR and UNMIK immunity"; on the other hand, they have been facing "an incoherent and uncertain judicial system" in Kosovo "which made it impossible for them to take legal action against responsible parties". For this reason, they claim that their right to a fair trial and their right to an effective remedy under Article 6 and 13 respectively of the ECHR have been violated.

2. The SRSG's submissions

150. At the outset, the SRSG states that the right to health seems to be the main human right that UNMIK has allegedly violated with regard to the complainants. Since the right to health is closely related to and dependent upon the realisation of other human rights "such as the right to food, housing and shelter, work, education, human dignity, non-discrimination, equality, the prohibition of torture and the right to life", the complainants allege the violation of a broad spectrum of human rights by UNMIK.

151. The SRSG argues that UNMIK cannot be held accountable for a situation that existed for decades prior to its establishment and that UNMIK had done everything within its power to end. The SRSG states that it is a well-known fact that for 60 years before the establishment of UNMIK, the Trepca smelter "released tons of lead every day into the atmosphere from its site in the North bank of the Iber/Ibar river" with a negative impact on the health of the nearby communities. He refers to academic and scientific studies conducted since the 1980s and 1990s reports (mentioned in § 68 above) which showed the highest concentration of lead in the water, soil and air in the entire Mitrovicë/Mitrovica region. The inhabitants of the area – and in particular pregnant women – back then showed far higher levels of BLL as compared to Kosovars from the Prishtinë/Priština region. Notwithstanding these findings, the Trepca smelter plant continued to operate until UNMIK closed it in August 2000 "in an effort to alleviate the environmental problems".

152. The SRSG further states that subsequent reports, such as the UNMIK commissioned report of November 2000 and the 2004 WHO Report (mentioned in §§ 48 and 50 above respectively), highlight the fact that the history of environmental pollution in the Mitrovicë/Mitrovica region, as well as "any environmental pollution issues contributing to the alleged lead poisoning of the RAE communities" is "decades old" and thus not attributable to UNMIK. He also states that the same WHO reports "repeatedly pointed to manual and artisanal smelting as the

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major contributing factor of lead poisoning among RAE communities", where the lead residue in the soil surrounding the area and the proximity to the Trepca mine waste tailings have seen by other experts as "additional contributing factors".

153. The SRSG further argues that UNMIK and other international actors took a lot of initiatives "to ensure that RAE communities were protected from lead contamination and other health hazards" and that the complainants' submissions on UNMIK's alleged inaction towards their situation are "factually inaccurate". To list the actions undertaken by UNMIK, the SRSG starts by saying that, in the aftermath of the Kosovo conflict in 1999, the Roma Mahala in northern Mitrovicë/Mitrovica was the largest area of destroyed homes in Kosovo, with 700-800 destroyed houses and approximately 8,000 members of the RAE community displaced and rendered homeless. UNMIK and UNHCR immediately assumed responsibility for establishing and managing IDP camps and constructing "temporary community shelters". According to the SRSG, as part of this initiative, local medical doctors visited the camps on a weekly basis and took charge of the health care in the camps.

154. The SRSG states that following a first report on lead poisoning in Mitrovicë/Mitrovica issued in the year 2000, UNMIK took the decision to close the Trepca smelter on grounds of public health, despite opposition from the Serbian authorities to the closure and the economic repercussions that it entailed (laid off workers continued to be paid by UNMIK). The SRSG submits that with its decision to shut down the smelter, UNMIK ensured a gradual reduction of air and soil contamination in Mitrovicë/Mitrovica. In addition, UNMIK Department of Public Information, with the participation of other international organisations including WHO, conducted extensive public education and awareness initiatives (distribution of pamphlets, door-to-door campaigns, town hall meetings) on lead hazards and hygiene within the camps and with the local population in Mitrovicë/Mitrovica.

155. The SRSG argues that tests subsequently conducted by WHO and other international organisations reveal that, despite a reduction of lead levels within the region since the closure of the Trepca smelter, the blood lead levels remained high within the RAE communities. Among others, he refers to the results of a survey of blood lead levels conducted by WHO in 2004, which showed a decline in the BLL within Serbian children since the closure of the smelter, whereas the BLL of Roma children remained high. According to the SRSG, this difference was "suspected to be attributable to the RAE communities' lifestyles that included battery recycling, craft smelting and other income generating activities with negative health implications". He also refers to the results published in 2008 by the "Serbian Institute of Public Health" in Mitrovicë/Mitrovica showing "continuing contamination, yet in limited and improved levels, among residents of both Osterode and Cesmin Lug/Lluge"; and to the results of air tests and blood tests conducted by the French military showing that "the lead in the air fell to acceptable levels (i.e. within the accepted norms for urban areas in France) a few months after the smelter was stopped, as did blood lead levels". However, the Panel notes that none of the reports and studies mentioned by the SRSG have been presented along with UNMIK's submissions to the Panel.

156. The SRSG further argues that, upon the release of the WHO findings on the public health crisis caused by lead poisoning, UNMIK and WHO met with RAE representatives and proposed the "immediate temporary relocation of pregnant women and children" but that this plan was "met with stiff resistance from most of the affected communities". He further states that UNMIK, UNHCR, WHO and other international partners embarked upon measures to find more suitable locations for the relocation of the IDPs. Consequently, most of the affected RAE population was moved to Osterode camp, an initiative which was implemented over a considerable period of time and notwithstanding the resistance from the RAE community leaders to relocate. The SRSG states that Osterode camp was identified as a much "safer" zone, but acknowledges that "in itself, being located in Mitrovicë/Mitrovica, was never an entirely lead free location". The SRSG states that within this initiative "medical issues were also prioritised and chelation therapy was carried out on children and others with critically high blood lead levels".

157. Prior to the relocation of the IDPs to Osterode, on 5 May 2005 UNMIK organised a "Roma Mahala donor's conference" and "several other conferences" which, reportedly, resulted in nearly two million euros being raised towards improving the living conditions of the IDPs by ensuring that shelter and accommodation were provided in a safe environment. In particular, UNMIK raised money for the reconstruction of the Roma Mahala as part of a permanent solution to the displacement of RAE communities and created a Contingency Fund to manage donor funding. The SRSG states that, despite these efforts "RAE communities resisted relocation, did not take account

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of public awareness campaigns, and continued with lead smelting activities and battery cycling practices, even in IDP camps".

158. In response to this situation, UNMIK and Zveçan/Zvečan Municipality banned smelting activities in the camps. The SRSG states that UNMIK explored ways of using the support of the police to take enforcement action against smelting activities; however, it was difficult to engage enforcement measures since such activities were not an offence under the Kosovo laws.

159. Among other measures taken to deal with the public health crisis caused by lead poisoning, UNMIK also established in 2005 the Inter-Agency Task Force on Lead Contamination, which developed a risk management strategy on the basis of WHO recommendations. These included the distribution of food supplements (shown to be effective in reducing lead absorption), improving the hygiene conditions in the camps (water, sewage and garbage collection), providing health education, putting in place proper camp management, hiring doctors and nurses to work in the camps, providing blood screening and medical treatment. Most of the costs associated with these services were paid for by the SRSG's Contingency Fund.

160. The SRSG states that UNMIK also established in 2005 the inter-agency Mitrovicë/Mitrovica Action Team, which, under the coordination of the UNMIK Civil Administration in Mitrovicë/Mitrovica, held regular meetings to formulate practical strategies on how to further assist the IDPs through an Operational Plan and which reportedly costed 1,4 million euros. This included the provision of incentives to the RAE Communities (such as non-food items, free medical services, electricity, water, waste management and food supplements for one year) and the provision of income generation schemes (i.e. clearing of debris, rubble, bushes and garbage at Roma Mahala, cleaning of the Orthodox Cemetery; Vocational Training Centre; construction of the camp at the relocation site).

161. Concerning remediation activities, the SRSG states that, by mid-2005, several interventions were carried out in Cesminluke/Česmin Lug and other camps "where contaminated soil was removed and lead hotspots were covered with concrete"; in Zhikoc/Žitkovac, the European Agency for Reconstruction in coordination with UNMIK funded a project "to isolate the mine tailings deposits, remediating and covering the slopes to prevent children from playing there". The SRSG states that, notwithstanding these efforts, the RAE leadership consistently opposed any form of interim relocation, since, as expressed in public meetings in May and June 2005, they "all wanted to go back to Roma Mahala and nowhere else in Kosovo".

162. In view of the foregoing, the SRSG argues that UNMIK and UN agencies "took key policy decisions and diligently implemented prudent relocation strategies and reconstruction of Roma Mahala in order to alleviate the plight of RAE communities. Regrettably, relocation was impeded by the difficulty in identifying a locale that was secure and free from inter-ethnic clashes away from northern Mitrovicë/Mitrovica that was lead free and acceptable to all stakeholders, and by the general and persistent opposition of the affected population to all interim measures". The SRSG further submits that all actions undertaken by UNMIK as described above were "acts of an interim administration", not taken "in the capacity of a UN peacekeeping mission". Consequently "the financial resources of UNMIK were limited to those of the Kosovo budget and human resources, in all fields, including medical and social services".

163. In addition, while noting with regret the deaths of the complainants' relatives and the ill health suffered by the complainants and their families, the SRSG states that the "allegations of health conditions are not in all cases fully documented by clear and certain medical evidence". He submits that UNMIK "stresses that it is important to establish that cause of medical condition is incontrovertibly established in all cases by the information provided by the complainants". In this respect, it is the SRSG's view that "while the complainants provide some *post facto* medical evidence based on limited medical records, there is a lack of medical evidence to establish without a doubt that health conditions were caused or contributed to by lead pollution or by the acts or omissions of UNMIK". Furthermore, the SRSG argues that certain complainants were "temporary visitors" to the camps and this shall be taken into account when considering allegations of injury suffered.

164. In response to the complainants' allegations that their right to life has been violated because of the lead contamination and the conditions in the camps, the SRSG states that, when UNMIK became aware of the risk to health posed by lead pollution "through its own investigations or reports made to it by its partners", it took all the

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necessary actions within its means to prevent those risks from materialising. Concerning the allegations under the procedural limb of Article 2 of the ECHR, that UNMIK failed to conduct investigations into the deaths of certain residents, the SRSG submits that it is "evident from the foregoing that the conditions in the camps were constantly under review by UNMIK and its partners, including WHO, and reports of an investigatory nature on conditions in the camps were prepared and recommendations made to protect the right to life of the camp occupants". He further states, specifically concerning the deaths of D.M., R.M. and V.S., that "it is not established that these deaths were caused by lead poisoning". According to the SRSG, the complaint refers to a "*post-facto* analysis" by a medical doctor and to the "description of symptoms given to the complainants' representative by relatives of the deceased".

165. On the complainants' allegation that conditions in the camps inflicted physical and mental suffering amounting to inhuman and degrading treatment, the SRSG states that UNMIK rejects the complaint that UNMIK "deliberately caused severe suffering among the RAE community". The SRSG states that, even prior to the conflict, the RAE community suffered "pre-existing disadvantages in terms of health, education, economic participation, housing and social conditions" and lived in a lead polluted area. The SRSG acknowledges that without doubt, conditions in the camps "were harsh because of the post-conflict situation"; on the other hand, he argues that UNMIK "diminished the hard conditions as far as possible while a longer term solution was found and reconstruction of the Roma Mahala was undertaken". The SRSG further argues that the ECtHR "applies a standard of proof that the applicant must show that it is beyond reasonable doubt that a violation of Article 2 took place"; however, in his view, the complainants failed to establish that they were subject to inhuman and degrading treatment.

166. Responding to the allegations that UNMIK violated the complainants' right to adequate housing, health and standard of living, the SRSG, at the outset, states that, according to the UN Committee on Economic, Social and Cultural Rights, in determining which actions or omissions amount to a violation of the right to health, it is important to distinguish the "inability" from the "unwillingness" of a State party to comply with its obligations under the ICESCR. The SRSG therefore argues that UNMIK's failure to immediately find an alternative relocation option to the affected communities, in light of the security situation in Kosovo and the long-standing lead pollution in the area of Mitrovicë/Mitrovica, was "an inability beyond its control, and not an indication of its unwillingness to comply with human rights obligations". According to the SRSG all resources at UNMIK's disposal, as limited as they were, "were galvanised to ensure the rights of the RAE communities". The SRSG further states that, despite all efforts by UNMIK, it was not possible to guarantee the "highest standard of health and absolute protection from lead contamination", also due to the craft smelting practices within the IDPs, as already outlined above. In this respect, he refers to the comments of the Committee on Economic, Social and Cultural Rights, that the adoption of "unhealthy or risky lifestyles" may play an important role with respect to an individual's health, which may exclude the responsibility of the state.

167. Concerning the alleged violation of Article 8 of the ECHR, the SRSG states that UNMIK and its partners took all reasonable steps to prevent environmental factors interfering with the complainants' right to their private and family life. In response to the complainants' submission that they were denied access to information on the risks of lead poisoning in the period 2000-2005 and that UNMIK provided "insufficient information thereafter" and misrepresented the adequacy of conditions in the camps, the SRSG states that "the Roma were kept constantly apprised by UNMIK and its partners, including camp managers and attending medical professionals" and that public education campaigns were conducted.

168. The SRSG rejects the complainants' allegation that, as members of the RAE community, they were subject to direct and institutional discrimination and, in particular, that other IDP communities have been treated more favourably. The SRSG states that, as a matter of fact, all the measures taken by UNMIK and its partners as described above, indicate that "the RAE communities' needs were treated as a priority by UNMIK and its partners".

169. The SRSG also rejects the allegation that UNMIK violated relevant provisions of the CEDAW by not taking action to protect women, including pregnant women and their unborn children, from the risks of lead poisoning. The SRSG states that, as described above, UNMIK and its partners did take action (including closing the Trepca smelter, remedial works in the camps, provision of medical assistance and health education campaigns) and that the specific impact of lead contamination on the health of pregnant women was addressed by WHO in its reports

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and recommendations stating that pregnant women and children should be removed from the camps. According to the SRSG, "attempts to move vulnerable persons from the camps were resisted by the community".

170. Similarly, the SRSG rejects all allegations that UNMIK violated children's rights and relevant provisions of the CRC. In this regard he argues that "as set out, UNMIK and its partners complied with positive obligations to protect the rights of the children by provision of protection, shelter, health care and education".

171. Concerning the complaints under Articles 6 and 13 of the ECHR, the SRSG states that, as far as the complaint under Article 6 is concerned, UNMIK established a functioning justice system in Kosovo, as well as Provisional Institutions of Self- Government (including the Ministry of Health, Environment and Spatial Planning and the Ministry of Labour and Social Welfare), which were not immune from legal process. He states that the complainants were not prevented in any way from requesting support or services from the above-mentioned institutions, nor was there a procedural bar to seeking access to court vis-à-vis these institutions. Further, in his view, the complainants have not proved that they were denied such access at any time. As far as the complaint under Article 13 of the ECHR is concerned, the SRSG states that the UN and UNMIK's privileges and immunities, including from the legal process, in Kosovo are "based on legitimate, established principles of international law which the Advisory Panel is not mandated to examine". In addition, both the Ombudsperson Institution in Kosovo and the Human Rights Advisory Panel were established with the mandate to examine allegations of human rights violations committed in Kosovo.

3. The complainants' additional submissions

172. In their comments of 5 February 2015, the complainants argue that the SRSG's submission explaining how UNMIK inherited the environmental lead pollution in the Mitrovicë/Mitrovica region, which had existed for decades prior to its deployment, makes it clear that UNMIK was aware of the contamination in the camps before their establishment. However, the complainants clarify that they are not submitting that UNMIK is responsible for the pollution caused by Trepca. Their complaint focuses rather on UNMIK's failure to take effective measures to remedy the situation after they had taken responsibility for the administration of Kosovo and for the well-being of the IDPs.

173. In response to the SRSG's argument that the IDPs were primarily responsible for the lead poisoning due to their smelting activities, which UNMIK was not in a position to stop, the complainants state that these allegations are not supported by scientific evidence. The complainants refer to the reports issued by WHO and other organisations, which clearly state that the main source of lead poisoning was the inhalation of contaminated dust by the IDPs, as well as the extremely high level of contamination of the soil on which the camps had been established.

174. On the measures reportedly adopted by UNMIK, the complainants argue that it is evident that all the actions listed by the SRSG were ineffective and that UNMIK did not take the only measure which would have made a difference, that is the evacuation of the IDPs to a lead free environment, as repeatedly requested by WHO and other international bodies. In particular, the complainants submit that the Osterode camp, where some of the IDPs were relocated in 2006, was even more contaminated than the other camps. This is proven by the blood tests carried out in 2008 on the IDPs living in Osterode, as well as by the fact that the chelation therapy and other remediation measures were quickly started and discontinued by WHO, since they are not effective if carried out in contaminated environments.

175. Concerning the measure proposed by UNMIK to temporarily relocate pregnant women, the complainants argue that it was not culturally sensitive. Only a few women could take up the offer, temporarily, since the RAE have a "strong family ethic" which makes it unacceptable to separate the family. The complainants further argue that "the solution was not to separate families but to remove all of the IDPs from the contamination".

176. In their counter-comments of 5 February 2015, the complainants point out the inconsistencies in the SRSG's argument that UNMIK managed the camps in its capacity as an interim-administration and not that of a peace-keeping mission (being therefore subject to budgetary constraints, see § 162 above) and the argument developed above that UNMIK enjoyed legitimate diplomatic immunity in Kosovo.

177. The complainants also contest that the SRSG did not submit any evidence proving that UNMIK did provide adequate information to the affected communities, including reference to "specific instances, affidavits, copies of notices, announcements about community meetings, notes of meetings, sign in sheets of attendance".

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178. Further, and in response to the SRSG's argument that the complainants did not submit sufficient evidence to prove the damage suffered, the complainants state that they have provided overwhelming evidence to the Panel, including copies of blood tests, medical reports, expert opinions, scientific studies, reports of NGOs and international organisations. They state that had they had access to adequate medical services, they would have been in a position to provide additional medical evidence. On the other hand, they reiterate that the SRSG has not provided any evidence or documentation whatsoever in support of his own arguments.

B. The Panel's preliminary observations

1. The scope of the Panel's review

179. Before turning to an examination of the complaint, the Panel would like to clarify the scope of its review.

180. The Panel notes that Section 2 of UNMIK Regulation No. 2006/12 provides that the Panel shall have jurisdiction over complaints relating to alleged violations of human rights "that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights". It follows that events that took place before 23 April 2005 generally fall outside the jurisdiction *ratione temporis* of the Panel. However, to the extent that such events gave rise to a continuing situation, the Panel has jurisdiction to examine complaints relating to that situation, but only insofar as the situation continued after 23 April 2005.

181. The Panel also notes that Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel provides that the Panel "shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of (their) human rights". It follows that only acts or omissions attributable to UNMIK fall within the jurisdiction *ratione personae* of the Panel. In this respect, it should be noted, as stated above, that following the unilateral declaration of independence by the Kosovo authorities, in May 2008, the oversight responsibility for the management of the camps was transferred from UNMIK to the Kosovo Ministry of Communities and Return. It follows that after this date UNMIK was no longer exercising executive authority over the camps. UNMIK bears no responsibility for any violation of human rights allegedly committed after the Kosovo authorities incurred responsibility. Insofar as the complainants complain about acts that occurred after that date, they fall outside the jurisdiction *ratione personae* of the Panel.

182. The Panel further notes that with the adoption of the UNMIK Regulation No. 1999/1 on 25 July 1999 UNMIK undertook an obligation to observe internationally recognised human rights standards in exercising its functions. This undertaking was detailed in UNMIK Regulation No. 1999/24 of 12 December 1999, by which UNMIK assumed obligations under the following human rights instruments: the Universal Declaration of Human Rights, the European Convention on Human Rights and Protocols thereto, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child.

183. Therefore, the Panel emphasises that, as far as its jurisdiction *ratione materiae* is concerned, as follows from Section 1.2 of UNMIK Regulation No. 2006/12, it can review acts or omissions complained of for their compatibility with the international human rights instruments referred to above.

184. The Panel also takes inspiration from the UN Guiding Principles on Internal Displacement[56], which are grounded in the existing normative standards of the treaties in § 182 above.

2. The burden of proof

185. At the outset, the Panel notes that certain facts of the case are disputed by the parties and that this raise issues of burden of proof.

186. In this regard, the Panel refers to the approach of the ECtHR and to its own previous approach. The general rule is that it is for the party who asserts a proposition of fact to prove it, but that this is not a rigid rule.

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187. The Court has held that, when assessing evidence, the general principle has been to apply the standard of proof "beyond reasonable doubt". However, it has been the Court's practice, and the Panel's own practice to allow flexibility, taking into consideration the nature of the substantive right at stake and any evidentiary difficulties involved. In this respect, the Court has also stated that if the authorities fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, ECtHR [GC], *Varnava and Others v. Turkey*, nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, judgment of 18 September 2009, at § 184; see also, UN Human Rights Committee (HRC), *Benaniza v Algeria,* Views of 26 July 2010, at § 9.4, UN Doc. CCPR/C/99/D/1588/2007; HRC, *Bashasha v. Libyan Arab Jamahiriya*, Views of 20 October 2010, at § 7.2, UN Doc. CCPR/C/100/D/1776/2008; see also Human Rights Advisory Panel (HRAP), *Jokić v. UNMIK*, case no. 34/09, opinion of 23 April 2013, at §§ 62-64).

188. The Panel notes that this international jurisprudence, which first developed in a context where the Governments were alleged to be directly responsible for killings and enforced disappearances, has been subsequently also applied to alleged violations of the right to life arising from environmental issues (see ECtHR, *Budayeva and Others v. Russia,* nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008, at § 146, ECtHR, *Fadeyeva v. Russia*, no. 55723/00, judgment of 9 June 2005, at §§ 79-80).

189. Turning to the present case, the Panel takes special note of the particular situation of the complainants, as IDPs, and the related challenges in obtaining evidence beyond the documents provided to the Panel (see §§ 31-32 above).

190. The Panel also takes note of the fact that no documentation has been submitted by UNMIK, notwithstanding the special knowledge that UNMIK had or should have had about the health situation in the camps and despite the Panel's repeated requests to submit especially those documents referred to or relied upon by the SRSG.

191. The Panel recalls that Section 15 of UNMIK Regulation No. 2006/12 states that the Panel may request the submission from UNMIK of any documents and that the SRSG shall cooperate with the Panel and provide the necessary assistance including, in particular, in the release of documents and information relevant to the complaint. The Panel in this regard refers to the case-law of the European Court of Human Rights that inferences shall be drawn from the conduct of the respondent party during the proceedings, including from its failure "to submit information in their hands without a satisfactory explanation" (see ECtHR, *Çelikbilek v. Turkey*, no. 27693/95, judgment of 31 May 2005*,* § 56).

192. The Panel therefore considers that the principle that "strong inferences" may be drawn from the available documentation is applicable to the instant case.

C. The Panel's assessment

1. Alleged violation of the right to life

a) Substantive obligation

193. In its admissibility decision of 9 June 2009, the Panel declared inadmissible *ratione temporis* the complaints concerning the death of D.M. (who passed away on 22 July 2004), and inadmissible due to the six-month rule the complaints concerning the deaths of R.M. (who passed away in June 2005), and V.S. (who passed away on 13 July 2005, see HRAP, *N.M. and Others v. UNMIK*, case no. 26/08, decision of 5 June 2009, at § 57). On the other hand, the Panel declared admissible under Article 2 of the ECHR, substantive obligation, the remainder of the complaint, concerning the life-threatening conditions in the camps.

i) General principles

194. The Panel recalls that the European Court has held that Article 2 not only imposes an obligation on authorities to refrain from taking life intentionally but also lays down a positive obligation to take appropriate steps to

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safeguard the lives of those within their jurisdiction (see, for example, ECtHR, *L.C.B. v. the United Kingdom*, no. 14/1997/798/1001, judgment of 9 June 1998, at § 36, and ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, judgment of 14 March 2002, at § 54; ECtHR [GC], *Öneryıldız v. Turkey*, no. 48939/99, judgment of 30 November 2004, at § 71; ECtHR, *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008, at § 128). This obligation applies in the context of any activity, whether public or not, in which the right to life may be at stake, and *a fortiori* in the case of industrial activities which are by their nature dangerous, such as the operation of waste collection sites (see ECtHR [GC], *Öneryıldız v. Turkey*, cited above, at §§ 71 and 90), nuclear testing (see ECtHR, *L.C.B. v. the United Kingdom*, cited above, at § 38), the exposure to toxic emissions from a fertiliser factory (see ECtHR, *Guerra and Others v. Italy*, nos. 116/1996/735/932, judgment of 19 February 1998, at §§ 60 and 62) or the exposure of workers to asbestos (see ECtHR, *Brincat and Others v. Malta*, nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11, judgment of 24 July 2014, at § 81).

195. According to the case-law of the European Court, the positive obligation to take all appropriate steps to safeguard the right to life for the purposes of Article 2 entails a primary duty on authorities to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (see ECtHR [GC], *Öneryıldız v. Turkey*, cited above, at §§ 89-118; ECtHR, *Budayeva and Others v. Russia*, cited above, at § 129; ECtHR, *Vilnes and Others v. Norway*, nos. 52806/09 and 22703/10, judgment of 5 December 2013 § 220; ECtHR, *Brincat and Others v. Malta*, cited above, at § 101).

196. In the context of dangerous activities, the Court has found that special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned "to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks". The Court has held that, among these preventive measures, particular emphasis should be placed on the public's right to information, as established in the case-law of the Convention institutions (ECtHR [GC], *Öneryıldız v. Turkey*, cited in § 194 above, at § 90).

197. As to the choice of particular practical measures to fulfil the obligations under Article 2, the European Court has consistently held that, where the State is required to take positive measures, the choice of means is in principle a matter that falls within the Contracting State's margin of appreciation (see, among other cases, ECtHR, *Fadeyeva v. Russia*, no. 55723/00, judgment of 9 June 2005, at § 96). In assessing whether the authorities have complied with their obligation, the Court must consider the particular circumstances of the case, regard being had, among other elements, to the domestic legality of the authorities' acts or omissions, the domestic decision- making process, including the appropriate investigations and studies, and the complexity of the issue, especially where conflicting Convention interests are involved (see ECtHR [GC], *Hatton and Others v. the United Kingdom*, no. 36022/97, judgment of 8 July 2003, at § 128; ECtHR, *Fadeyeva v. Russia*, cited in § 194 above, at §§ 96-98). In this respect "an impossible or disproportionate burden must not be imposed on the authorities without consideration being given, in particular, to the operational choices which they must make in terms of priorities and resources" (see ECtHR, *Osman v. the United Kingdom*, no. 87/1997/871/1083, judgment of 28 October 1998, at § 116).

198. The Panel also recalls the case-law of the European Court that there may be a positive obligation under Article 2 on the authorities to protect the life of the individual from third parties or from a "threat to their physical integrity" (ECtHR, *Budayeva and Others v. Russia*, cited in § 194 above, at § 146) or the risk of "life-endangering illness" (ECtHR [GC], *Makaratzis v. Greece*, no. 50385/99, judgment of 20 December 2004, at § 49). Therefore, Article 2 also applies where no life is lost, having regard to the circumstances of the case and to the object and purpose pursued by Article 2 (see, ECtHR, *Budayeva and Others v. Russia*, cited above, § 146; *mutatis mutandis*, ECtHR [GC], *Makaratzis v. Greece*, cited above, at §§ 49-50; see also HRAP, *Balaj and Others v. UNMIK*, case no. 04/07, opinion of 27 February 2015, at §§ 162-180).

199. The Panel also refers to the jurisprudence of the UN human rights treaty-bodies that the right to life has been "too often narrowly interpreted". The HRC has stated that the protection of this right requires that states adopt positive measures and, in this connection, has considered that "it would be desirable for States parties *to take all possible measures* to reduce infant mortality and to increase life expectancy, especially in adopting measures to

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eliminate malnutrition and epidemics" (see HRC, General Comment No. 6, U.N. Doc. HRI/GEN/1/Rev.1 (1994), at § 5). The Committee has stated that the duty to adopt positive measures in order to protect human life in principle applies also to environmental matters, such as those involving the storage of radioactive waste in residential areas (see, HRC, *EHP v. Canada*, communication no. 67/1980, decision of 27 October 1982) or the exposure to radiation stemming from nuclear tests (see HRC, *Bordes and Temeharo v. France*, communication no. 167/1984, views of 22 July 1996, although the HRC declared the first case inadmissible due to non-exhaustion of domestic remedies, whereas it found no violation of the right to life in the second case, due to the applicants' failure to substantiate their allegations).

200. The Panel further refers to the case-law developed by the Inter-American Court of Human Rights (IACtHR) concerning the alleged violation of the right to life of indigenous communities. The Inter-American Court has stated that the protection of the right to life entails the adoption of positive measures to ensure "access to conditions that may guarantee a decent life". The Court has determined that from this general obligation "special duties are derived that can be determined according to the particular needs of protection of the legal persons, whether due to their personal condition, or because of the specific situation they have to face, such as extreme poverty, exclusion or childhood" (see IACtHR, *Sawhoyamaxa Indigenous Community v. Paraguay*, judgment of 29 March 2006, at §§ 153-154; see also IACtHR, *Xákmok Kásek Indigenous Community v. Paraguay*, judgment of 24 August 2010). The IACtHR has further clarified that "in order for this positive obligation to arise, it must be determined that at the moment of the occurrence of the events, the authorities knew or should have known about the existence of a situation posing an immediate and certain risk to the life of an individual or a group of individuals, and that the necessary measures were not adopted within the scope of their authority which could be reasonably expected to prevent or avoid such risk" (IACtHR, *Sawhoyamaxa Indigenous Community v. Paraguay*, cited above, at § 155).

ii) Application in the present case

201. At the outset, the Panel notes that the SRSG does not contest the applicability of Article 2 of the ECHR, protecting the right to life, to this part of the complaint. Nonetheless, he rejects the claim that UNMIK violated its positive obligations under this provision. The SRSG states that when UNMIK became aware of the health risks stemming from lead, it took all necessary measures that were within its means - considering its budget as an interim administration and the post-conflict challenges - to prevent those risks from materialising. Measures included taking steps to minimise lead pollution in the camps, the relocation to Osterode, the provision at Osterode of medical facilities and treatment "to the standard of Kosovo", and providing education about the risks of lead contamination. In addition, the SRSG argues that the medical conditions allegedly suffered by the complainants are not fully documented and that it is not proven that any death in the camps (and in particular the death of D.M., R.M. and V.S.) was actually caused by lead poisoning (see §§ 163-164 above).

202. The Panel will first consider the SRSG's objection that the complainants' alleged conditions of ill-health and their causal connection to lead poisoning have not been properly documented. In light of the SRSG's comments referred to above about the steps reportedly taken by UNMIK in order to minimise the risks stemming from lead pollution, the Panel considers that it is not contested by the SRSG that the IDP camps were lead-contaminated. However, the SRSG does contest that the complainants gave sufficient evidence that they suffered bad health conditions as a consequence of their exposure to lead poisoning. On their side, the complainants state that they have provided overwhelming evidence proving widespread lead contamination in the camps, as well as their individual exposure to lead. They argue that since they did not have access to adequate medical services – which is a core part of their complaint – they were unable to provide further medical documentation of their condition of bad health.

203. The Panel recalls that the complainants submitted the following evidence: statements in which they list their symptoms and condition of ill-health; copies of the blood and hair tests carried out by several institutions in all the camps in the period 2005-2008; experts' opinions stating that the symptoms suffered by the complainants are "compatible" with lead poisoning (see § 120 above). The Panel is satisfied that the blood and hair tests prove that, at least throughout the period 2005-2008, the complainants and their family members had consistently high or extremely high levels of lead accumulated in their blood and bodies, including after the partial relocation to Osterode. The Panel notes that, according to these tests, many of the complainants (mostly children) were qualified

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as "medical emergencies" according to WHO standards. The Panel also takes note of the results of tests concerning a larger number of IDPs who are not complainants before the Panel. These IDPs were also found to have high or extremely high levels of BLL, which indicate the widespread scale of high lead contamination in the camps where the complainants were living. The Panel notes that the authenticity of these tests has not been contested by the SRSG.

204. The Panel also takes into consideration the documentation provided by the family of D.M., who died in the Zhikoc/Žitkovac camp in 2004. This documentation, whose authenticity has not been contested by the SRSG, states: a) that D.M. was hospitalised with convulsions and died in 2004 of *herpes virales* at four years of age, with no lead test being performed on her; b) that N.M., the younger sister of D.M. was first hospitalised in 2004 with convulsions, seizures and tonsillitis and, again, in 2005, when she was diagnosed with lead poisoning (BLL higher than 65 μg/dL) and anaemia; c) that four other members of the family had BLL higher than 65 μg/dL in 2005 (see § 119 above). The Panel deems that the medical history of the M. family, as documented, provides circumstantial evidence of the adverse health conditions stemming from high levels of lead in the bodies of other complainants.

205. The Panel further takes account of medical literature and scientific studies on lead poisoning, including the articles submitted by the complainants, which since the 1970s highlight without contradiction the adverse effects of lead on every organ of the human body. Most recent studies state that there is no "safe level" to lead exposure and that also prolonged low-dose exposure, if not treated, can produce long- term irreversible effects on the immune, reproductive and cardiovascular systems, with severity of symptoms and effects increasing as the exposure also increases (see §§ 64–67 above). The Panel especially notes the studies indicating that lead is more easily absorbed in children, whose development and growth is irreversibly jeopardised by the exposure to lead. The Panel also recalls the scientific findings according to which lead poses a serious threat to the health and life of pregnant women and foetuses. The Panel finally notes that research also is concordant in indicating that the adverse effects of lead are aggravated by poor hygiene and diet.

206. The Panel also takes note of the reports of UN specialised agencies (WHO) and human rights bodies (UN human rights treaty bodies and special rapporteurs), as well as those of other national and international human rights organisations (the Ombudsperson Institution in Kosovo, HRW, the CoE Commissioner for Human Rights among others) covering the relevant period (2004-2008), whose authority has not been contested by the SRSG. The Panel notes that these bodies and organisations, inspected the camps and recorded the situation as posing a serious threat to the life and health of the Roma IDPs. In particular, the Panel recalls: the statements of WHO in 2004 that half of the children tested were in a situation of "medical emergency" (see § 72 above) and that their "lives and development potentials are at risk" (see § 76 above); the 2009 WHO statement that "residents of the camps have life threatening lead toxicity proven through laboratory and clinical findings" (see § 60 above); a 2006 joint appeal from WHO, UNICEF and UNMIK calling on the IDPs to relocate from Kablare, Cesminluke/Česmin Lug and Zhikoc/Žitkovac to Osterode as an "emergency health requirement" and to pre-empt "serious health consequences" (see § 56 above); the 2005 opinion of the CoE Advisory Committee on the Framework Convention on the Protection of National Minorities stating that the situation of the IDPs "constitutes a serious health risk in particular for children and pregnant women" (see § 87 above); the 2009 HRW report on the particularly distressful health situation of IDP children who because of their weak immune systems, and as a consequence of their poor diet and hygiene, were vulnerable to all kinds of disease and epidemics, such as diarrhoea, skin problems, pneumonia (see § 87 above); the 2009 letter from the CoE Commissioner for Human Rights to the SRSG stating that the children he had met in the camps were "clearly under-developed for their age" and defined the situation in the camps as a "humanitarian disaster" (see § 87 above).

207. In light of the above, the Panel considers that the heavy exposure to contamination, coupled with poor living conditions in the camps, a situation which lasted for more than 10 years, three of them within the Panel's jurisdiction, was such as to pose a real and immediate threat to the complainants' life and physical integrity. The Panel also considers established the bad health conditions incurred by the complainants, and especially by children and pregnant women, as a result of their prolonged exposure to lead.

208. The Panel further notes that this situation, not only affected the complainants, but all the inhabitants of the camps, approximately 600 IDPs, that is the remaining Roma population in northern Mitrovicë/Mitrovica after the destruction of their Mahala. In light of these data, the Panel also considers that the extent and scale of lead

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contamination, coupled with the poor living conditions in the camps, greatly affected the right of the RAE in in northern Mitrovicë/Mitrovica to a decent and secure existence, human dignity and indeed to physical survival.

209. Concerning UNMIK's awareness about the situation, the Panel notes that UNMIK was aware of the risks stemming from the operation of the Trepca complex in northern Mitrovicë/Mitrovica from the time of its arrival in Kosovo in 1999 (see § 69 above). In fact, the then SRSG, Bernard Kouchner, ordered the smelter to be shut down on public health grounds in August 2000. Regarding the situation of the complainants, the Panel considers it established that UNMIK was made aware of the health risks they had been exposed to since November 2000 (see §§ 48 and 70 above). The Panel further considers that UNMIK became aware, including through the communication of clinical findings by WHO, of the actual critical health situation incurred through lead contamination and poor living conditions in the camps, by October 2004 (see §§ 74 and 206 above).

210. The Panel also notes that, based on the documents made available to it, UNMIK also knew, or should have known, that the main source of exposure to lead was the proximity of the camps to the Trepca smelter and complex, and not the informal smelting activities carried out by the IDPs, as maintained but not supported by the SRSG. In this respect, the Panel recalls in particular the October 2004 findings of WHO experts that 88.23 % of the soil was "unsafe for inhuman habitation and gardening" (see § 74 above), as well as the subsequent assessments (in 2007 by CDC and in 2010 by UNEP) which identified the position of the camps, downwind from the waste piles and tailing dams and the contaminated equipment, buildings and contaminated soils left behind by Trepca as the main sources of exposure to lead (see §§ 78 and 81 above).

211. The Panel will next assess whether UNMIK took all necessary actions that could reasonably be expected from it to protect the complainants' right to life, as required by Article 2 of the ECHR.

212. Relying on the SRSG's comments in this respect, the Panel notes that the only actions taken by UNMIK as of March/April 2005 were accommodating 12 IDP families for two weeks in a hotel outside Mitrovicë/Mitrovica, and undertaking some sporadic remedial activities (i.e. cleaning the camp and distributing food supplements) in Cesminluke/Česmin Lug (see § 53 above). The Panel notes that, as a result of UNMIK's inactivity, the health risks stemming from lead contamination in the camps persisted and likely increased due to the prolonged exposure of the IDP population to lead and the continued lack of access to basic services such as adequate food, hygiene and medical care. Coming to the period within the Panel's jurisdiction, starting on 23 April 2005, the Panel notes that some efforts were made in this period, namely through the design and implementation of a Risk Management Plan and the establishment of the MAT to decrease the level of exposure to lead and other heavy metals while finding a lead-free relocation site for the Roma IDPs.

213. The Panel considers that, especially in the regulatory and institutional vacuum within Kosovo in the aftermath of the conflict, the findings and recommendations of WHO experts, as well as other specialised bodies, should have informed UNMIK's actions in response to the health crisis in the camps. In this respect, the Panel notes that, from June-October 2004, WHO had identified key measures to be taken in order to prevent serious risks to the life of the IDPs from materialising and had urged UNMIK to take timely action in this respect. These measures included: a) the removal of the children IDPs from the source of exposure (that is the immediate removal from the camps of children and pregnant women and a temporary and permanent relocation of the camps to a safe area); b) the provision of medical services, that is the immediate hospitalisation and treatment of patients found to have the highest BLL (higher than 70 mg/dL); medical analysis and treatment of those found with BLL of 30 mg/dL and over; monitoring on a weekly basis of those found with the lowest BLL. In addition, WHO recommended that additional measures be taken for the rest of the inhabitants of the camps, including education, setting a system for referrals and undertaking an environmental investigation (see § 76 above).

214. Indeed, according to the SRSG's submissions, the Risk Management Plan referred to above, which was initiated by mid-2005, was in principle based on WHO's recommendations. However, the Panel notes that, notwithstanding repeated requests in this respect, UNMIK did not provide it with any evidence of the extent of the actions taken to prevent harm to the IDPs, as they are listed by the SRSG. On its side, based on the documents submitted by the complainants and those available in the public domain, the Panel notes that the most important preventive measures as spelled out by WHO were not implemented, or were implemented for only a very limited period of time.

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215. On the issue of the relocation of the affected IDPs from the contaminated camps, the Panel acknowledges UNMIK's efforts, from 2005 onwards, to raise funds and rebuild the Roma Mahala. The Panel however, agrees with the assessment made by the Ombudsperson Institution in Kosovo that the reconstruction of the Roma Mahala, which was foreseen to take at least until 2007, could not be regarded as the solution to the need for urgent evacuation of the camps (see § 52 above). The Panel also considers that the relocation of many IDPs to Osterode in 2006 was neither appropriate nor suitable to the aim of removing the IDPs from the source of contamination. Osterode camp was also contaminated, as shown by the persistence of high BLL among its residents and as confirmed by WHO. The Panel cannot verify the complainants' allegations that the French KFOR troops previously residing in Osterode had vacated it due to the high lead levels found in their blood; however, the Panel deems that common sense should have suggested that this camp was also contaminated, given its location just a few metres away from Cesminluke/Česmin Lug and the toxic lead heaps. The Panel notes that, instead, UNMIK encouraged the IDPs to relocate to that camp, defined by UNMIK as "safer". The Panel also notes, as will be explained in more detail below, that the situation of Osterode, also prevented the IDPs' access to chelation therapy.

216. The Panel recalls the SRSG's submission on the issue of evacuation of the camps (see § 161 above) that the IDPs opposed any attempt at relocation and that inter-ethnic tensions and the political situation in northern Mitrovicë/Mitrovica made it very challenging for UNMIK to identify a suitable and "lead-free" location for relocation. In this regard, the Panel notes that the SRSG did not state what alternative options, apart from the lead-contaminated Osterode camp, were offered to the IDPs for their short-term relocation, that they opposed. The Panel also notes that, in addition to the relocation, UNMIK failed to implement additional preventive measures as explained in the sections below.

217. Concerning the recommended monitoring of the BLLs among the IDPs with lower BLL, the Panel notes that a Blood Surveillance Programme was initiated with the collaboration of WHO in January 2005, to be later discontinued on an unspecified date with no explanation being provided by the SRSG in this respect. The Panel notes that, since UNMIK did not take responsibility for this task, blood testing was available to the IDPs only to a limited extent, thanks to the voluntary efforts of local health institutions and practitioners.

218. Further, the Panel notes with great concern that UNMIK provided far from adequate medical care to the affected IDPs, including those found to have elevated lead blood levels. In particular, the Panel notes that basic medical services, as well as the administration of chelation therapy to those IDPs severely affected by lead contamination, was initiated only in January 2007 and was discontinued, a few months later, in October 2007 without any alternative care being offered to the IDPs. The Panel finds disturbing the explanation provided by UNMIK to the UN Committee on Economic, Social and Cultural Rights in 2008, that the therapy had been discontinued because it was deemed to be no longer necessary by WHO. On the contrary, the Panel notes that a different explanation is provided by WHO in its press release of 9 September 2009. In this communication, WHO publicly clarified that it had initiated the chelation therapy in Osterode under the promise, by UNMIK, that all the IDPs would have been relocated in the space of six months, which, however, had not happened. As the administration of chelation therapy in contaminated areas is proven to be extremely dangerous for those affected, because it enables the human body to absorb much higher quantities of toxic materials, WHO had refused to continue with the treatment (see § 60 above). The Panel therefore considers that UNMIK not only did not take proactive measures to ensure the provision of medical assistance to the complainants but also, through its failure to relocate the complainants from the contaminated camps, *de facto* precluded their access to the continued chelation therapy offered by WHO.

219. The Panel also recalls that the European Court has established that positive obligations under Article 2 in the context of dangerous activities and environmental matters, include the obligation on the competent authorities to provide access to essential information enabling individuals to assess risks to their health and lives (ECtHR [GC], *Öneryıldız v. Turkey*, cited in § 194 above, at § 90, and ECtHR, *Brincat and Others v. Malta*, cited in § 194 above, at § 102). The Panel notes that UNMIK did not provide any documentation to prove the type, extent and target of the education or awareness raising activities that were reportedly carried out by UNMIK to inform the Roma IDPs, including the complainants, about the risks to their health and lives deriving from their heavy exposure to lead. On the other hand, from the documentation in its possession, the Panel finds substantiated the complainants' allegations that UNMIK did not disclose or communicate to the IDPs affected or their family members the results of the blood

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tests conducted by WHO in 2004 and 2005. Further, the Panel has already noted that UNMIK failed to provide on-going monitoring of the level of lead absorption by the complainants, which would have enabled them to have a better understanding of the risks incurred. Lastly, the Panel also notes that UNMIK did provide misleading information to the complainants with respect to their relocation to Osterode camp, depicting it as "safer" compared with the other camps. Drawing conclusions from these elements, the Panel agrees with the complainants 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.

220. Lastly, the Panel considers irrelevant whether UNMIK's actions and omissions towards the risks faced by the complainants shall be attributable to UNMIK as a "UN peacekeeping mission" or as "an interim administration". The Panel notes that, in either case, UNMIK had full legislative and executive authority in Kosovo pursuant to UNSC 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 (see UNMIK Regulation No. 1999/1 *On the Authority of the Interim Administration in Kosovo*, at Section 2), and in particular in observance of the main international human rights instruments (see UNMIK Regulation No. 1999/24 *On the Law Applicable in Kosovo*), 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 states that the rights of IDPs shall be respected by "all authorities, groups and persons, irrespective of their legal status".

221. The Panel has already found that it is true 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 (with respect to the right to life, see HRAP, *S.C. v. UNMIK*, no. 02/09, opinion of 6 December 2012, at § 88, and subsequent opinions on UNMIK's failure to conduct effective investigations under Article 2 of the ECHR; for violation of property rights, see HRAP, *Milogorić and Others v. UNMIK,* nos. 38/08, 58/08, 61/08, 63/08, 69/08, opinion of 24 March 2011, § 44; *Berisha and Others v. UNMIK,* nos. 27/08 and others, opinion of 23 February 2011, § 25; *Lalić and Others v. UNMIK*, nos. 09/08 and others, opinion of 9 June 2012, at § 22). The Panel considers that the same standards must apply to the substantive obligation to protect the right to life. Further, and insofar as the SRSG complains 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 notes that the SRSG has 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 UN agencies and other bodies operating in Kosovo. The Panel emphasises the absolute nature of Article 2 of the ECHR.

222. The Panel further notes that, in fulfilment of its mandate, UNMIK should have afforded special protection to the right to life and physical integrity of complainants as vulnerable persons, as a result of being displaced following the conflict in Kosovo and the destruction of their homes, and as members of a disadvantaged minority (see, *mutatis mutandis*, ECtHR [GC], *M.S.S. v. Belgium and Greece*, no. 30696/09, judgment of 21 January 2011, at § 251).

223. In light of the above, the Panel considers that UNMIK did not comply with its obligations under Article 2 of the ECHR as it did not take all measures that one could have reasonably expected from it to protect the life of the complainants.

224. The Panel therefore finds that there was a violation of the substantive part of Article 2 of the ECHR.

b) Procedural obligation

225. Complainants N.M. (no. 1) and S.M. (no. 2), parents of D.M., S.M. (no. 8), husband of R.M., and I.I. (no. 20), wife of V.S. complain, insofar as their complaints have been declared admissible, that that no investigation

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was launched regarding the deaths in the camp of their family members, in violation of the procedural obligation under Article 2 of the ECHR.

226. On this point, the SRSG argues that "there is no evidence that these cases were specifically brought to UNMIK's attention as deaths caused by lead exposure thus there are no grounds to suggest that specific investigations should have been launched".

227. In this respect, the Panel notes that, on 2 September 2005, a criminal complaint was filed with the Office of Public Prosecutor in Prishtinë/Priština requesting it to launch a criminal investigation pursuant against those responsible for endangering the health of the RAE IDPs (see § 90 above). The Panel also notes that, since its deployment in 1999, UNMIK had executive responsibility over the administration of justice in Kosovo, which was handed over to EULEX on 9 December 2008 (see HRAP, *S.C. v. UNMIK*, no. 02/09, opinion of 6 December 2012, at § 20). In light of these facts, the Panel cannot accept the SRSG's argument that the criminal complaint was not brought to the attention of relevant UNMIK authorities.

228. The Panel also refers to the general principles expressed in the case-law of the European Court on Article 2 that "where lives have been lost in circumstances potentially engaging the responsibility of the State, that provision entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished" (see, ECtHR, *Budayeva and Others v. Russia*, cited in 194 above, at § 140; ECtHR [GC], *Öneryıldız v. Turkey*, cited in 194 above, at §§ 91-94; ECtHR, *Osman v. the United Kingdom*, cited in § 197 above, at § 115; and ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, cited in § 194 above, at § 54).

229. The Court has held that where " lives are lost as a result of events engaging the State's responsibility for positive preventive action, the judicial system required by Article 2 must make provision for an independent and impartial official investigation procedure that satisfies certain minimum standards as to effectiveness and is capable of ensuring that criminal penalties are applied to the extent that this is justified by the findings of the investigation" (see ECtHR, *Hugh Jordan v. the United Kingdom*, no. 24746/94, judgment of 4 May 2001, at §§ 105-09, and ECtHR, *Paul and Audrey Edwards v. the United Kingdom*, cited in § 194 above, at §§ 69-73). In such cases, the competent authorities must act with exemplary diligence and promptness and must of their own motion initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved in whatever capacity in the chain of events in issue (ECtHR, *Brincat and Others v. Malta*, cited in § 194 above, at § 121, and ECtHR [GC], *Öneryıldız v. Turkey*, cited in § 194 above, at § 94).

230. The Panel also notes that, based on the documentation available, there is no indication that an investigation was conducted or even contemplated, notwithstanding the fact that *prima facie* evidence had been put forward that deaths probably caused by lead contamination had been occurring in the camps and notwithstanding the public attention. Indeed, the SRSG states that he did not know anything about it.

231. In view of the foregoing, the Panel considers that Article 2 of the ECHR, procedural limb, was also violated with respect to the complainants listed in § 225 above.

2. Alleged violation of the right to be free from inhuman or degrading treatment

a) General principles

232. Under Article 3 of the ECHR, the complainants complain that the living conditions in the IDP camps in northern Mitrovicë/Mitrovica amounted to inhuman and degrading treatment in violation of Article 3 of the ECHR.

233. The SRSG argues that there was no violation of Article 3 for the following reasons: the complainants failed to prove their "suffering" beyond any reasonable doubt and, in any case, UNMIK did not "deliberately" cause such suffering; the conditions in the camps were "harsh" because of the post-conflict situation in Kosovo; moreover the complainants, as members of the Roma community, lived in a lead contaminated area and suffered "pre-existing disadvantages in terms of health, education, economic participation, housing and social conditions" even prior to

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the conflict; UNMIK did all what it could to alleviate the complainants' hard living conditions while the reconstruction of the Roma Mahala was ongoing.

234. The Panel refers to the well-established case-law of the European Court of Rights establishing that Article 3, along with Article 2, enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, ECtHR [GC], *M.S.S. v. Belgium and Greece*, cited in § 222 above, at § 218; ECtHR [GC], *Labita v. Italy*, no. 26772/95, judgment of 6 April 2000, at § 119).

235. The Court considers treatment to be "inhuman" when it was "premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering". Treatment is considered to be "degrading" when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance (see ECtHR [GC], *M.S.S. v. Belgium and Greece*, cited in § 222 above, at § 220; and ECtHR, *Pretty v. the United Kingdom*, no. 2346/02, judgment of 29 April 2002, at § 52). The Court states that "in considering whether a particular form of treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3" (ECtHR, *Moldovan and Others v. Romania (no. 2)*, nos. 41138/98 and 64320/01, judgment of 12 July 2005, at § 101; ECtHR, *Raninen v. Finland*, no. 20972/92, judgment of 16 December 1997, at § 55). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (ECtHR [GC], *M.S.S. v. Belgium and Greece*, cited in § 222 above, at § 219; ECtHR, *Peers v. Greece*, no. 28524/95, judgment of 19 April 2001, at § 74).

236. According to the Court's case law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see, among other authorities, ECtHR, *Ireland v. the United Kingdom*, no. 5310/71, judgment of 18 January 1978, at § 162). However, the Court has stated that the assessment of this minimum is relative and depends "on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim" (see, among other authorities, ECtHR [GC], *M.S.S. v. Belgium and Greece*, cited in § 222 above, at § 219; see also ECtHR [GC], *Kudła v. Poland*, no. 30210/96, judgment of 26 October 2000, at § 91). The Court has held that, even in the absence of actual bodily injury or intense physical or mental suffering, "where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3" (see ECtHR [GC], *Bouyid v. Belgium*, no. 23380/09, judgment of 28 September 2015, at § 87).

237. The Court has held that special protection against torture, inhuman and degrading treatment shall be afforded to categories of persons, such as children and other "vulnerable persons" (see ECtHR [GC], *Z. and Others v. the United Kingdom*, case no. 29392/95, judgment of 10 May 2001, at § 73; and, *mutatis mutandis*, ECtHR, *Osman v. the United Kingdom,* cited in § 197 above, at § 116).

238. In this context, the Court has stated that the Roma have "become a specific type of disadvantaged and vulnerable minority", requiring "special protection" against ill- treatment (see ECtHR [GC], *D.H. and Others v. Czech Republic*, no. 57325/00, judgment of 13 November 2007, at § 181) and has found, for example the destruction of Roma homes in Turkey and Yugoslavia respectively, amounted to ill-treatment in violation of the European Convention and the CAT Convention (see ECtHR, *Selçuk and Asker v. Turkey,* nos. 12/1997/796/998-999, judgment of 24 April 1998, at §§ 78-80; in the same sense, see UN CAT Committee, *Dzemail et al. v. Yugoslavia*, CAT/C/29/D/161/2000).

239. The Court has also stated that asylum seekers shall be considered members of "a particularly underprivileged and vulnerable population group", as such "in need of special protection" (ECtHR [GC], *M.S.S. v. Belgium and Greece*, cited in § 222 above, at § 251; *V.M. and Others v. Belgium*, no. 60125/11, judgment of 7 July 2015[57], at § 153). Moreover, the European Court has ruled that living conditions of certain categories of persons depending

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on state support (such as detainees, asylum seekers, inmates of psychiatric institutions), when characterised by overcrowding, inadequate sanitation facilities and poor health care services, constituted cruel, inhuman and degrading treatment in violation of Article 3 of the ECHR (see, for asylum seekers, ECtHR [GC], *M.S.S. v. Belgium and Greece*, cited above, at §§ 229-234; concerning conditions of detention and lack of adequate medical treatment see, among others, ECtHR, *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, judgment of 29 November 2007, at §§ 107-122; ECtHR, *Keenan v. United Kingdom*, no. 27229/95, judgment of 3 April 2001, at §§ 109-116 on living conditions in psychiatric institutions; see also ECtHR, *Moldovan and Others v. Romania (no. 2)*, cited in § 235 above, on the destruction of Romani houses in Romania, as well as the degrading circumstances in which the victims were forced to live after the even).

b) Application in the present case

240. The Panel notes that the destruction of the complainants' housing, which took place in June 1999, is outside of its jurisdiction *ratione temporis*. Concerning the complainants' submissions on the living conditions in the IDP camps established by UNMIK, the Panel finds that they are supported by the findings of bodies and organisations throughout the period within the Panel's temporal jurisdiction (2005-2008) and beyond. The Panel considers it established that living conditions in the camps (with the exception of Osterode) were "sub-standard", "particularly distressing", and "appalling" (see §§ 82-89 above). In addition, the Panel recalls its findings that the camps were heavily contaminated with lead due to their proximity to the Trepca complex and its slag heaps.

241. The Panel also attaches great importance to the status of the complainants and the special situation of vulnerability in which they found themselves as IDPs and as Roma. The Panel notes that they had been displaced as a consequence of conflict and violence without, however, having access to refugee status and the rights attached to it[58]. As members of a historically disadvantaged minority, they, along with other non-Serb minorities, found themselves in the aftermath of the conflict "caught between the two main ethnic communities in Kosovo"[59]. Within the complainants, the Panel notes the further vulnerability and the hardship faced by children and pregnant women, the most harmed by the absorption of lead when exposed to its harmful effects.

242. The Panel recalls that in the case of *V.M. and Others v. Belgium and Greece*, concerning a family of asylum seekers with small children who had remained for four weeks in conditions of extreme poverty, the European Court found the Belgian government accountable under Article 3 for exposing the applicants to degrading treatment (see ECtHR, *V.M. and Others v. Belgium*, cited in § 239 above, at § 162; see also ECtHR [GC], *Tarakhel v. Switzerland*, no. 29217/12, judgment of 4 November 2014, at §§ 119-122). The Panel notes that, in the present case, the complainants endured the cumulative effects of lead poisoning and such harsh living conditions for more than ten years, three of which fall within the Panel's temporal jurisdiction (see ECtHR, *Dougoz v. Greece*, no. 40907/98, judgment of 6 March 2001, at §§ 46-49; see also, *mutatis mutandis*, HRAP, *Krasniqi v. UNMIK*, no. 85/10, opinion of 13 November 2015, at § 52). The Panel notes the detrimental effects that this situation had on their health and well-being as pointed out in its findings under Article 2 of the ECHR. The Panel also notes that the harsh and unhealthy living conditions in the camps were particularly harmful to children and pregnant women. These complainants incurred negative consequences for their development and well- being, which are irreversible. The Panel has no doubt that the undignified living conditions in the camps caused them considerable suffering and feelings of humiliation. In this respect, the Panel finds it irrelevant that UNMIK did not intentionally cause this level of suffering.

243. The Panel does not underestimate the burden that UNMIK had to face immediately following its arrival in Kosovo after the conflict and appreciate its efforts at reconstruction. However, the Panel does 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 within the Panel's temporal jurisdiction. Finally, the Panel stresses the absolute character of Article 3 of the ECHR, which cannot absolve authorities from their obligations under this provision. As assessed with respect to UNMIK's obligations under Article 2 of the ECHR, the Panel considers 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 ECHR.

244. The Panel cannot accept either the SRSG's argument that the Roma have historically lived in substandard living conditions, even prior to the conflict (see § 165 above). The Panel finds this comment discriminatory and

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debasing, since it suggests 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 considers that the historical marginalisation of the Roma and the traumatic experiences which led them to their IDP status in Kosovo made the complainants especially vulnerable to degrading treatment and UNMIK additionally responsible for their well-being. 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" (see ECtHR [GC], *M.S.S. v. Belgium and Greece*, cited in § 222 above, at § 251; ECtHR [GC], *Oršuš and Others v. Croatia*, no. 15766/03, judgment of 16 March 2010, at § 147).

245. In light of the above, the Panel considers that the poor living conditions in the camps (with exception of Osterode), coupled with the exposure to lead contamination and lack of adequate medical care for an extended period of time, attained the level of severity required by Article 3. Consequently, the Panel considers that the complainants were subject to inhuman and degrading treatment.

246. It follows that, through UNMIK's failure to take appropriate actions, the complainants were placed in situations incompatible with Article 3 of the Convention. Accordingly, there has been a violation of that provision.

3. Alleged violation of the right to respect for private and family life

247. In addition to their complaint under Article 2 and Article 3 of the ECHR, the complainants state that health hazards stemming from lead contamination, coupled with poor living conditions in the camps, and UNMIK's failure to take remedial action, also amount to a violation of Article 8 of the ECHR, which protects the right to respect for private and family life.

248. Concerning the alleged violation of Article 8 of the ECHR, the SRSG states that UNMIK and its partners took all reasonable steps to prevent environmental factors interfering with the complainants' right to their private and family life and that the "the Roma were kept constantly apprised by UNMIK and its partners, including camp managers and attending medical professionals".

a) General principles

249. The Panel refers to the well-established case-law of the European Court finding that severe environmental pollution (as well as noise, emissions, and smells), whether stemming from a publicly or privately owned-business, may prevent individuals from enjoying their homes, intended as the place where private and family life develops, in such a way as to affect their private and family life, contrary to Article 8 of the ECHR (see, among many other authorities, ECtHR, *Guerra and Others v. Italy*, cited in § 194 above, at § 60; ECtHR, *López Ostra v. Spain*, no. 16798/90, judgment of 9 December 1994, at § 51; ECtHR, *Powell and Rayner v. the United Kingdom*, no. 9310/81, judgment of 21 February 1990, § 41; and, more recently, ECtHR, *Di Sarno and Others v. Italy*, no. 30765/08, judgment of 10 January 2012, at § 96, and ECtHR, *Brincat and Others v. Malta*, cited in § 194 above, at § 102).

250. The Court has held that Article 8 may apply in environmental cases whether the pollution is directly caused by the state or whether state responsibility arises from failure to regulate private sector activities properly. In both cases - whether the case is analysed in terms of interference by a public authority or violation of the states' positive obligation to take appropriate measure to secure the right concerned - the applicable principles are broadly similar. The Court has stated with respect to Article 8 that "in both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention" (see ECtHR, *Giacomelli v. Italy*, no. 59909/00, judgment of 2 November 2006, at § 78).

251. The European Court has also recognised that in the context of dangerous activities, the scope of the positive obligations under Articles 2 and 8 of the Convention largely overlap (see ECtHR, *Brincat and Others v. Malta,* cited in § 194 above, at § 102; ECtHR, *Budayeva and Others*, cited in § 194 above, at § 133). Indeed, the positive obligations under Article 8 require the national authorities to take the same practical measures as those expected of them in the context of their positive obligation under Article 2 of the Convention (see ECtHR *Brincat and Others*

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v. Malta, cited above, at § 102; and ECtHR, *Kolyadenko and Others* v. Russia, nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, judgment of 28 February 2012, at § 216).

252. These obligations include the duty to regulate by law certain activities and to adopt other practical measures that could be reasonably expected to guarantee the right to private and family life. In particular, the Court has affirmed a positive obligation, in relation to Article 8, to provide access to essential information enabling individuals to assess risks to their health and lives (see ECtHR, *Brincat and Others v. Malta*, cited in 194 above, at § 102 and, by implication, ECtHR, *Guerra and Others v. Italy*, cited in § 194 above, at §§ 57-60; ECtHR, *López Ostra v. Spain*, cited in § 249 above, at § 55; ECtHR, *McGinley and Egan v. the United Kingdom*, no. 10/1997/794/995-996, judgment of 9 June 1998, at §§ 98-104; and ECtHR [GC] *Roche v. the United Kingdom*, no. 32555/96, judgment of 19 October 2005, at §§ 157-69) and, in certain circumstances, also the duty to conduct "appropriate investigations and studies so that effects of the activities that might . . . infringe individuals' rights may be predicted and evaluated in advance" (see ECtHR*, Giacomelli v. Italy*, cited in § 250 above, at § 83; and ECtHR, *Vilnes and Others v. Norway*, cited in § 195 above, at § 235).

b) Application in the present case

253. The Panel first notes that Article 8 of the ECHR applies to the situation of the complainants in the camps. The Panel considers it established, also in light of its findings under Articles 2 and 3, that the level of lead poisoning and the health hazards for the IDPs residing in the camps were sufficiently severe to affect the complainants' enjoyment of their private and family life. Indeed, the Panel notes, based on the documentation presented to it, that entire families from the complainants have endured the most serious health consequences from residing in the camps, a situation that understandably compromised, in many instances in an irreversible manner, their family life.

254. The Panel acknowledges, as pointed out by the SRSG, that widespread lead pollution in northern Mitrovicë/ Mitrovica originated from the operation of the Trepca minining complex well before the arrival of UNMIK. The Panel also notes that shortly after its arrival, UNMIK closed down the smelter on health grounds, a measure which likely improved the general environmental situation in the area.

255. With respect to the situation of the complainants, however, the Panel notes that UNMIK was responsible for their placement, since 1999, in IDP camps established on land highly contaminated, due to their proximity to the non-disposed toxic waste from the Trepca time. The Panel also recalls that it is well established that UNMIK was aware of this situation, as well of the life-threatening health risks stemming from it, at the latest from November 2000. It cannot therefore be doubted that UNMIK had the responsibility to adopt appropriate measures that could be reasonably expected to guarantee the complainants' right to private and family life.

256. The Panel, recalling that obligations under Articles 2 and 8 of the Convention may overlap, refers to its findings concerning the complaints under Article 2 (see §§ 212-223 above) that UNMIK did not take all measures that one could have reasonably expected from it – including relocation to a safe area, appropriate and continued remediation activities, provision of medical treatment, and provision of information – to protect the complainants from the environmental hazard in the camps.

257. With particular respect to the violation by UNMIK of its duty under Article 8, to give access to and provide relevant information on the risks stemming from the environmental situation in the camps, the Panel notes with concern that key information gathered by UNMIK after November 2000 was never made public or communicated to the complainants. This material was not even presented to the Panel, notwithstanding its repeated requests. The Panel notes that most of the information (risk assessment, blood tests) that became in principle available to the complainants from 2005, was collected and published independently from UNMIK by other entities, such as WHO and local NGOs and health centres. However, as already stated, there is no indication that this information and findings were subsequently disseminated and properly communicated to the complainants.

258. The Panel also notes that the lack of access to relevant information adversely affected the reproductive rights of women in the camps, in particular of pregnant women such as those who reportedly incurred self-abortion or miscarriage as a consequence of lead poisoning. The Panel refers to Article 10 (h) of the CEDAW which states that women enjoy the right to have "access to specific educational information to help to ensure the health and

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well-being of families, including information and advice on family planning" (see also CEDAW Committee, *A.S. v. Hungary*, Communication No. 4/2004, Views of 29 August 2006, UN Doc. CEDAW/C/36/D/4/2004, at § 11.2).

259. The Panel further notes that other interests, such as political and security issues or economic constraints, have been put forward by UNMIK to justify its failure to take certain actions in order to protect the complainants from the environmental hazards they were exposed to (see § 162 above). In this regard, the Panel acknowledges UNMIK's efforts to accommodate the complainants, but considers that no sufficient evidence has been presented by the SRSG to prove that the relocation of the complainants to a safe area was impeded by other pressing difficulties which made the relocation a disproportionate burden (see § 221 above). Having regard to the foregoing, the Panel considers that UNMIK did not succeed in striking a fair balance between the interests of the community and the complainants' enjoyment of their rights to respect for private and family life.

260. Therefore, the Panel finds that Article 8 of the ECHR has been violated.

4. Alleged violation of the right to health and the right to an adequate standard of living

a) General principles

261. The complainants state that, through UNMIK's acts and omissions, their right to health and the right to an adequate standard of living have also been violated.

262. The right to an adequate standard of living, including adequate food clothing and housing, and the right to health are both envisaged by the UDHR which, at Article 25.1, recognises everyone's right to:

> "a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control"

263. Comprehensive definitions of both the right to health and the right to an adequate standard of living are found in the ICESCR, which also clarifies the scope of states' obligations to respect, protect and fulfil these rights. On the right to an adequate standard of living, Article 11.1 of the ICESCR recognises

> "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing [. . .]".

264. The UN ICESCR Committee has clarified in particular that the right to housing, as a component of the right to an adequate standard of living, shall not be interpreted in a narrow or restrictive sense; for example this right would not be fulfilled by merely providing "a roof over one's head". Rather, it should be seen as the right "to live somewhere in security, peace and dignity" (see ICESCR Committee, General Comment No. 4 *on the right to adequate housing*, 1991, at § 7). Housing is adequate when it provides "adequate space" and protects "from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors". From this perspective, the Committee has emphasised that the right to adequate housing cannot be seen in isolation from the right to health, since, as is also pointed out by WHO, "inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates" (*ibid.*, at § 8).

265. With respect to the right to health, Article 12.1 of the ICESCR states that everyone has the right to "the highest attainable standard of physical and mental health"; Article 12.2 envisages the obligations for the authorities concerned to take steps for:

> "(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
>
> (b) The improvement of all aspects of environmental and industrial hygiene;
>
> (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
>
> (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness".

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266. The right to health – which does not equate to the "right to be *healthy*" – shall be interpreted as an inclusive right extending "not only to timely and appropriate health care", but also to "underlying determinants of health", such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment, access to health related education and information (UN ICESCR Committee, General Comment No. 14 *on the right to the highest attainable standard of health*, 11 August 2000, UN Doc. E/C.12/2000/4, at § 8 and § 11 respectively). For the right to health to be fulfilled, health facilities, goods, services and programmes shall be: a) available; b) accessible and affordable, which encompasses also the right to seek, receive and impart information concerning health issues; c) culturally acceptable and appropriate; d) of good quality (*ibid.*, at § 12).

267. It is accepted that, pursuant to Article 2 of the ICESCR, which concerns the scope of states' obligations, the full realisation of these rights can only be reached "progressively", to the maximum of states' available resources. However, it is understood these provisions of the ICESCR also impose obligations which are of immediate effect. These include: the obligation to guarantee that the exercise of these rights shall be free from discrimination; and ensuring at least the enjoyment of "minimum essential levels" of each of the rights concerned.

268. On the prohibition of discrimination in the enjoyment of economic, social and cultural rights, the Panel recalls that Article 5 of the ICERD imposes the obligation not only to "prohibit" discrimination but also to "eliminate" racial discrimination in the enjoyment of economic, social and cultural rights, in particular, the right to housing (Article 5 (iii)) and the right to public health, medical care, social security and social services (Article 5 (iv)).

269. Concerning the core obligation to ensure minimum essential levels of the rights in question, the Committee has stated that, for example, "a state party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing [. . .] is, *prima facie*, failing to discharge its obligations under the Covenant", unless it can demonstrate that "every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations" (ICESCR Committee, General Comment No. 3 *on the nature of State Parties' obligations*, 14 December 1990, UN Doc. E/1991/23, at § 10). In this context, the phrase "all available resources" shall be intended as referring to "both the resources existing within a State and those available from the international community, through international cooperation and assistance (*ibid.*, at § 13).

270. Moreover, the Committee has underlined that the minimum core obligations stated above, do apply "also in times of severe resource constraints", where authorities have obligations to protect "the vulnerable members of society" (ICESCR Committee, General Comment No. 3 cited in § 269 above, at § 12). Specifically concerning the right to adequate housing, the ICESCR Committee has also stated that, especially in times of economic crisis or other constraining situations, "due priority" and consideration should be given to "those social groups living in unfavourable conditions" (ICESCR Committee, General Comment No. 4, cited in § 264 above, at § 11).

271. The right to health and the right to an adequate standard of living, as envisaged in the ICESCR, apply to everyone "including non-nationals, such as refugees, asylum seekers, stateless persons, migrant workers . . ., regardless of their legal status", as well as to "internally displaced persons" (ICESCR Committee, General Comment No. 14, cited in § 266 above, at §§ 30 and 34 respectively). Further, the rights and principles expressed in the paragraphs above are reflected in the UN Guiding Principles on Internal Displacement cited in § 184 above which, at Section 18 and 19, read in relevant parts:

> Principle 18
>
> "1. All internally displaced persons have the right to an adequate standard of living.
>
> 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
>
> a) essential food and potable water;
>
> b) basic shelter and housing;
>
> c) appropriate clothing; and
>
> e) essential medical services and sanitation [. . .]"

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Principle 19

"All wounded and sick internally displaced persons, as well as those with disabilities, shall receive to the fullest extent practicable, and with the least possible delay, the medical care and attention they require, without distinction of any kind, rather than the medical ones [. . .]".

b) Application in the present case

272. At the outset, the Panel recalls the principle that all human rights are universal, indivisible, interdependent and interrelated as they all emanate from the "dignity and worth inherent of the human person" (see preamble of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 25 June 1993, UN Doc. A/CONF.157/23). The Panel notes that, even more so in the circumstances of the present case, the alleged violation of the complainant's right to an adequate standard of living, which encompasses key underlying elements of the right to health, such as the right to adequate food, clothing and housing, are intrinsically linked to the alleged violation of their right to health itself and will therefore consider them jointly.

273. Although this point has not been contested by the SRSG, the Panel notes the full applicability of the right to health and the right to an adequate standard of living, as well as of all other economic, social and cultural rights, to the complainants, regardless of their status as IDPs. Moreover, the Panel notes that the complainants should have been regarded as particularly vulnerable members of society, due to their displacement following violence and due to their marginalisation, as such deserving special protection and consideration. In this sense, it is established that, throughout Europe, the average life-expectancy of Roma and travellers is much shorter than that of non-Roma and non-travellers[60].

274. The Panel notes that, based on the documentation submitted to it and available in the public domain which include the findings of several bodies, for instance the OSCE, HRW, UN Special Rapporteurs, the Ombudsperson Institution in Kosovo, the CoE (see §§ 82-89 above), such consideration was not given to the complainants and to the rest of the IDPs in the camps.

275. The Panel notes that, in the process of addressing the Roma IDP crisis in northern Mitrovicë/Mitrovica in 1999, UNMIK accommodated the complainants on unsafe, highly toxic, land (including after the relocation to Osterode), for more than ten years, three of which within the Panel's jurisdiction, which alone would raise the question of a violation of their right to health and an adequate standard of living. The Panel notes that, in addition to that, the complainants were placed in makeshift shelters which did not have adequate access to water (running water as well as potable water), sanitation (adequate toilet and sewage system), electricity or heating. The Panel also refers to the findings that this housing, hygiene and nutrition situation in the camps created a situation whereby the complainants' exposure and vulnerability to lead poisoning, and consequently to a wide range of other diseases, was dramatically heightened.

276. The Panel further takes account of the fact that, at the start of the Panel's temporal jurisdiction in April 2005, the health crisis in the camps deriving from lead poisoning became most evident, especially among children, with UNMIK authorities being fully informed about it. Nonetheless, various reports indicate that including in this period and in the years to follow, much needed health services were not available or accessible, physically (i.e. referral services in Serbia proper; unavailability of chelation therapy in contaminated environment, as stated in §§ 60 and 218 above) or economically (i.e. costs of medications, never provided free of charge) to the complainants[61]. A similar concern was expressed by the UN Special Rapporteur on the Rights of the IDPs at the end of his visit in June 2005[62].

277. While assessing the complaint under Article 2 and Article 3 respectively of the ECHR, the Panel determined that the complainant's general living conditions in the contaminated camps were life-threatening and amounted to degrading treatment. From the perspective of Article 11 and Article 2 of the ICESCR, the Panel also considers that they were certainly not in compliance with the minimum requirements of the right to an adequate standard of living and the right to the highest attainable standard of health.

278. The Panel has already acknowledged that some relevant efforts were undertaken by UNMIK in this period, mainly to relocate the complainants to better living conditions, first in Osterode camp, which offered better housing

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conditions but in an equally contaminated environment, second, in the newly reconstructed Roma Mahala starting from spring 2007. However, the Panel notes with concern the slow pace of UNMIK's response process as compared to the very serious health threats faced by the complainants, especially the children[63], which required the their immediate evacuation from the camps as appealed for by many, including WHO.

279. In addition, in light of the obligation under Article 12.2 of the ICESCR to take steps to reduce child mortality and still-birth, prevent, treat and control diseases, the Panel recalls its findings under Article 2 of the ECHR that UNMIK failed to provide systematic monitoring of the lead contamination in the camps, through regular blood testing. Concerning the chelation therapy, that is the treatment to counter the effects of lead poisoning, the Panel has also noted that: it was implemented only for a few months; that no treatment at all was provided to the complainants who had in the meantime returned to the Roma Mahala; and that since October 2007 IDPs have been left without the health treatment that counters the effects of lead poisoning (see § 59 above). In light of the above, in this regard, the Panel considers that UNMIK did not take all appropriate steps towards the progressive realisation of the complainants' right to health in the period within its jurisdiction.

280. As pointed out also by HRW[64], the Panel also considers that no comprehensive public health policy could be designed because of the lack of systematic monitoring and data collection in the camps. In this context, the Panel takes note of the comment by the SRSG there was only as much that UNMIK could do to improve the complainants' health, considering their "unhealthy or risky lifestyles" and involvement in "informal smelting activities". The SRSG maintains that these activities were the main source of lead poisoning in the camp but offers no supporting evidence. The Panel is concerned that UNMIK's inadequate response to the crisis might have been driven by discriminatory stereotypes more than scientific evidence, as the latter would have shown that proximity to the Trepca smelter and its tailing dams was the main source of lead contamination (see §§ 74-75, 78 above).

281. The Panel is not convinced by the further argument made by the SRSG that UNMIK used all the resources available, which would include resorting to international cooperation and assistance if needed, in order to it to fulfil the complainants rights. First the Panel finds this argument too general or abstract, not being supported by any documentation to show, for example that UNMIK appealed to donors for the provision of adequate monitoring and treatment to the complainants as it did for the reconstruction of the Roma Mahala. Secondly, the Panel notes that UNMIK did not create the conditions to receive full assistance by other UN entities, such as WHO, who refused to continue to administer chelation therapy in a highly toxic environment (see § 60 above). Lastly, the Panel notes that the main channel through which UNMIK would appeal to cooperation of UN member states is through its regular reporting to the UN Security Council via the Secretary-General. However, the Panel could not find any mention of the health crisis generated by lead poisoning in the camps in the SG's quarterly reports to the Security Council on the activities of UNMIK for the relevant period.

282. Taking notes of the findings, among others, of the CoE Commissioner for Human Rights stating that the life-threatening condition of approximately 600 Roma, for a decade in lead contaminated camps of northern Mitrovicë/Mitrovica has been "probably the most extreme case in Europe to safeguard Romas' right to health"[65], the Panel considers shameful that such a record is attributable to the action and/or inaction of an entity of the United Nations – UNMIK – at the core of whose mandate was the protection of displaced persons from the conflict.

283. In light of the above, the Panel considers that UNMIK also violated the complainants' right to health (Article 12, ICESCR) and an adequate standard of living (Article 11, ICESCR).

5. Alleged violation of the prohibition of discrimination

a) Discrimination on the ground of etrimination on the ground of ethnicity

284. The complainants complain that, as members of the Roma community in Kosovo, they have been subject to general, direct and indirect, discrimination. They claim that UNMIK's decision to place the Roma IDPs in the contaminated camps and its failure to move them to a safer environment was a further manifestation of discrimination against them, based on their Roma ethnicity. In support of their claim, the complainants argue that only the

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Roma IDPs, as compared to Kosovo IDPs of different ethnic origin have been placed on a land known to be contaminated and that authorities have acted in a quicker manner to "return, rebuild and compensate" non- Roma inhabitants of Kosovo who had their property lost or destroyed during the conflict.

285. The Panel deems that his part of the complaint falls to be examined under the alleged violation Article 14 of the ECHR, taken in conjunction with Articles 2 (substantive obligation), 3 and 8 of the ECHR, as well as under the non-discrimination provisions of the ICCPR, ICESCR and ICERD.

i) General principles

286. The Panel notes that the prohibition of discrimination is a fundamental pillar of international human rights law. Within the European Convention system, Article 14 of the ECHR prohibits discrimination in the enjoyment of the rights guaranteed in the Convention, on any grounds such as sex, race, colour, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The prohibition of discrimination is also contained in the ICCPR (Articles 2 and 26), ICESCR (Article 2) and ICERD (Articles 2 and 5).

287. The Panel refers to the case-law of the European Court, as well to the jurisprudence of the treaty bodies that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see ECtHR, *Willis v. the United Kingdom*, no. 36042/97, judgment of 11 June 2002, at § 48, and ECtHR, *Okpisz v. Germany*, no. 59140/00, judgment of 25 October 2005, at § 33; see also ICESCR Committee, General Comment No. 20 *on non-discrimination in economic, social and cultural rights*, 2 July 2009, UN Doc. E/C.12/GC/20, at § 7). However, the European Court has also stated that Article 14 of the ECHR does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (see ECtHR [GC], *Thlimmenos v. Greece*, no. 34369/97, judgment of 6 April 2000, at § 44; on the legitimacy of "positive measures" see also ICESCR Committee, General Comment No. 20, cited above, at § 9; and HRC Committee, General Comment No. 18 *on non-discrimination*, 11 October 1989, at § 10).

288. It is well established that the prohibition of discrimination includes prohibition of indirect or *de facto* discrimination. The European Court states that "a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group and that "discrimination potentially contrary to the Convention may result from a *de facto* situation" (see, ECtHR [GC], *D.H. and Others v. Czech Republic*, cited in § 238 above, at § 175 and the cases cited therein).

289. Likewise, under the ICERD Convention, the definition of discrimination shall be understood as extending "beyond measures which are explicitly discriminatory, to encompass measures which are not discriminatory at face value but are discriminatory in fact and effect" (see ICERD Committee, *L.R. et al. v. Slovak Republic*, decision of 7 March 2005, at § 10. 4). In assessing such indirect or *de facto* discrimination, the CERD Committee states that it must take full account of the particular context and circumstances of the petition", since by definition indirect discrimination "can only be demonstrated circumstantially" (*ibid.*).

290. In this respect, the ICESCR Committee has also stated that eliminating discrimination in the enjoyment of economic, social and cultural rights "requires paying sufficient attention to groups and individuals which suffer historical or persistent prejudice" and adopt measures "to prevent, diminish or eliminate the conditions and attitudes which cause or perpetuate" *de facto* discrimination". For example, "ensuring that all individuals have equal access to adequate housing, water and sanitation will help overcome discrimination against women and girl children and persons living in informal settlements and rural areas" (see ICESCR Committee, General Comment No. 20, cited in § 287 above, at § 8).

291. In particular on racial discrimination, the Court has held that it is a "particularly invidious kind of discrimination" which, "in view of its perilous consequences, requires from the authorities special vigilance and a

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vigorous reaction" and "that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures" (see ECtHR, *Horváth and Kiss v. Hungary*, no. 11146/11, judgment of 29 January 2013, at § 101).

292. As also noted above, the European Court, as well as the UN treaty bodies have recognised that, as a result of their turbulent history and uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority, requiring special protection and consideration (see, among others ECtHR authorities, ECtHR [GC] *Oršuš and Others v. Croatia*, cited in § 244 above, at § 102; for the UN treaty bodies see for example ICERD Committee, General Recommendation No. XXVII on *Discrimination against Roma*, 2000, UN Doc. HRI/GEN/1/Rev. 6, which highlights state's obligations towards improving Roma's access, *inter alia*, to adequate living conditions and health services).

293. Further, it shall be noted that some individuals or groups face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying" (ICESCR Committee, General Comment No. 20, cited in § 287 above, at § 17; CEDAW Committee, General Recommendation No. 28 *on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 16 December 2010, UN Doc. CEDAW/C/GC/28, at § 18).

294. On the issue of burden of proof in cases where discrimination has been alleged, the ECtHR has established that "once the applicant has shown a difference in treatment it is for the Government to show that it was justified" (see ECtHR [GC], *D.H. and Others v. Czech Republic*, cited in § 238 above, at §§ 176-177; see also ECtHR [GC], *Oršuš and Others v. Croatia*, cited in § 292 above, at § 150). As regards the question of what constitutes *prima facie* evidence capable of shifting the burden of proof on to the respondent State, the Court has held that in proceedings before it there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment (see ECtHR, *Nachova and Others v. Bulgaria,* nos. 43577/98 and 43579/98, judgment of 6 July 2005 § 147). The Court has stated that "the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (ECtHR [GC], *D.H and Others v. Czech Republic*, cited above, at § 178). Moreover, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *ibid.* and the case-law cited therein).

295. Similarly, the ICERD Committee states that, particularly when assessing indirect or *de facto* discrimination, one must take full account of the particular context and circumstances" of the case, since by definition indirect discrimination "can only be demonstrated circumstantially" (see also, ICERD Committee, *L.R. et al. v. Slovak Republic*, cited in § 289 above, at § 10.4).

ii) Application in the present case

296. The Panel has already found that the complainants' placement and permanence on lead contaminated IDP camps amount to a violation of their fundamental human rights, notably the right to life (both substantive and procedural), the prohibition of inhuman and degrading treatment, the violation of their right to health and adequate standard of living. Under this part of the complaint, the Panel will assess whether racial bias and prejudice towards the complainants as members of the RAE community played a fundamental role in this case, amounting to a further violation of their right not to be discriminated against.

297. The Panel takes note of the evidentiary difficulties inherent to discrimination claims and refers to the approach and practice of the European Court and the UN treaty bodies (see §§ 294-295) consisting of the shifting of the burden of proof on to the respondent and the free evaluation of evidence, which can include statistical data, when a *prima facie* case of discrimination has reasonably been put forward by the complainants.

298. Having examined the submissions and documentation provided to the Panel, the Panel deems that the placement of the complainants in contaminated camps and UNMIK's later failure to relocate them to a non-contaminated

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area and to provide access to living conditions commensurate with human rights standards was *prima facie* discriminatory. The Panel notes that, based on the documentation available to it, only RAE IDPs were accommodated in those areas of northern Mitrovicë/Mitrovica known to be highly contaminated. The Panel also notes that the consequent humanitarian and health crisis affected disproportionately the RAE minority.

299. Further, the Panel notes, concerning the complainants' submission that the reconstruction of the destroyed Roma Mahala, and thus the displacement of the RAE, was delayed for much longer than the reconstructions undertaken in favour of other communities of IDPs, the statement of the Ombudsperson Institution in Kosovo pointing out that, in 2004, the Roma Mahala was still the largest area of destroyed houses in Kosovo.

300. Considering all the circumstances of the case, the Panel deems that the complainants have also established a *prima facie* case of discrimination with respect to UNMIK's failure to initiate any investigation following the filing of a criminal complaint by the ERRC concerning the suspicious deaths, including of children, in the camps.

301. The Panel notes that it should be consequently up to UNMIK to prove that the treatment of the RAE IDPs was not discriminatory, that is, that there was an objective and reasonable justification for their placement in lead contaminated land and the failure to relocate them. The Panel notes that the SRSG did not provide any specific argumentation to reject the claim of discrimination, except for a generic statement that "all the measures taken by UNMIK and its partners" indicate that "the RAE communities' needs were treated as a priority by UNMIK and its partners" (see § 168 above).

302. Taking note of the SRSG's comments concerning other parts of the complaint, the Panel appreciates that the establishment of the RAE IDP camps occurred immediately after the conflict, when ethnic tensions were still very high, in response to the plight of thousands of RAE IDPs left homeless after the destruction of the Roma Mahala (see § 153 above). However, the Panel notes that such solution, intended to be temporary, lasted for about a decade under UNMIK's tenure (three years of which within the Panel's jurisdiction) and that during this time the RAE IDPs were left in hazardous living conditions and without the medical attention that their situation required. In this respect, the Panel finds tainted by racial prejudice, and certainly not objective and reasonable justification the argument – contradicted by scientific evidence- that that the health crisis in the camps was generated by the "unhealthy" life-style of the RAE IDPs or the argument that UNMIK could not move the RAE IDPs to an alternative, safe, location that was "acceptable" to all local stakeholders. The Panel finds that such political considerations and discriminatory attitudes of local stakeholders should not in a democratic and pluralistic society take priority over the life, health and well-being of those in a vulnerable situation. Moreover, the Panel notes that no objective and reasonable justification has been offered by the SRSG to explain why no action whatsoever was taken by UNMIK as a follow-up to the criminal report filed by the complainants' representatives.

303. Further, the Panel notes that pervasive discrimination against the RAE community across Europe, including Eastern Europe, is widely documented. Reports of human rights bodies and international organizations highlight that the residential segregation of Roma, usually accompanied by hazardous living conditions, is a common problem in many European countries[66]. Statistics on the health impact of the historical segregation and sub-standard living conditions coupled with lack to adequate health services show that Roma life-expectancy is ten years lower than the average in some European countries[67] and that Roma communities suffer disproportionately of chronic health diseases, higher infant mortality and miscarriages[68]. A predominant negative attitude against the Roma in Europe has also been noted in the process of affording international protection to asylum seekers and refugees, with the Roma being often denied protection in compliance with international standards. In this respect it has been noted that Roma asylum seekers from the Kosovo conflict were provided in certain European countries (Germany for example) with forms of temporary protection, which did not encompass residence status, while in countries such as Moldova, Georgia and Montenegro IDPs of Roma ethnicity living in collective centres suffered from lack of decent housing[69]. In particular with respect to the Roma IDPs, it has been highlighted that they suffer double discrimination, on the grounds of ethnicity and as displaced persons.

304. The Panel notes that systemic discrimination against the Roma in Europe has been manifested, as established by the European Court of Human Rights, also in the failure by domestic authorities to effectively investigate crimes committed against Roma and the possible racist motives behind them (see, on the failure to conduct effective investigation into killings and attacks against Roma, ECtHR, *Šečić v. Croatia*, no. 40116/02, judgment of 31 May

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2007; ECtHR, *Angelova and Iliev v. Bulgaria*, no. 55523/00, judgment of 26 July 2007; ECtHR, *Koky and Others v. Romania*, no. 13624/03, judgment of 12 June 2012; on the failure to investigate possible racist motives behind attacks, see also ECtHR [GC], *Nachova and Others v. Bulgaria*, nos. 43577/98 and 43579/98, judgment of 6 July 2006, at §§ 160-168).

305. The Panel recalls that UNMIK itself had the obligation not to discriminate and to ensure non-discrimination by non-state actors (see HRC Committee, General Comment No. 18, cited in § 287 above, at § 9; and ICESCR Committee, General Comment No. 20, cited in § 287 above, at § 11).

306. The Panel further notes the reports which document the general discrimination suffered by the RAE community in Kosovo in the access to decent housing, employment, education, health and other services. These reports state that in the years following the conflict, the RAE have been confronted with hostility and prejudice by both the Albanians and Serbians communities and, as a result of prevalent discrimination, have been affected to a much greater extent by poverty and social exclusion than members of other communities in Kosovo[70].

307. The Panel notes the particularly vulnerable situation of the RAE internally displaced within Kosovo. After his visit to Kosovo in June 2005, the UN Special Rapporteur on the human rights of IDPs pointed out the efforts of the international community were mostly focused on returns, while those remaining displaced in Kosovo, and especially the RAE IDPs, were largely being neglected[71]. After his visit to Kosovo in 2009, the Special Rapporteur states that more than a decade after displacement, the Kosovo IDPs were behind the resident population in respect of key socio-economic indicators[72] and that, among them, on third of the RAE IDPs were reported to live in an "object not intended for housing"[73].

308. In light of the above, the Panel considers 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, in a particularly vulnerable situation. These obligations required UNMIK to act firmly against the segregation of the RAE and any discriminatory practices by local authorities, to make arrangements to provide equal and adequate access to health care, to implement special activities to improve the health of the women and children among the RAE IDPs (see ICERD Committee, General Recommendation XXVII, cited in § 292 above, Annex V). The Panel, following the reasoning developed in §§ 221, 244 and 281 above, considers that UNMIK did not fulfil these obligations nor presented a reasonable justification for doing so.

309. Consequently, in view of the reasons highlighted above, the Panel finds 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.

b) Discrimination against women

310. The female complainants complain that the poor and hazardous living conditions in the camps had a particular negative impact on their life and health as women and that, therefore, they have been discriminated against on the ground of their ethnic origin as well as sex.

i) General principles

311. The Panel recalls that the Panel's findings with respect to previous parts of the complaint are fully applicable to the female complainants. In addition, the Panel recalls that UNMIK had specific obligations towards the protection of women rights in the camps in accordance with the CEDAW Convention, applicable to UNMIK pursuant to UNMIK Regulation No. 1999/24 cited in § 182 above.

312. In particular, the Panel deems that the complainants' claim of discrimination based on sex falls to be examined under relevant provisions (Articles 1, 2 and 12) of the CEDAW which prohibits all forms of discrimination against women, defined in Article 1 of the Convention as:

> "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their

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> marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, cultural, civil or any other field".

313. In particular, Article 12 of the CEDAW establishes the legal obligation to eliminate discrimination against women in the access to health services throughout their life. This provision reads:

> "1. State parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
>
> 2. Notwithstanding the provisions of paragraph 1 of this article, State parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."

314. In its General Recommendation No. 24, which clarifies the extent and scope of states' obligations under Article 12 of the Convention, the CEDAW Committee has stated the general obligation of authorities to "place a gender perspective" at the centre of all health programmes in order to address the distinctive features - such as biological (i.e. the reproductive function), socio-economic (i.e. unequal power relations) and psychological factors - that differ for women in comparison to men and which determine their respective health status (CEDAW Committee, General Recommendation No. 24 *on Article 12 of the Convention (Women and Health)*, 1999, UN Doc. A/54/38/Rev.1, at §§ 12 and 31(a)). The CEDAW Committee has further highlighted specific measures that states parties have the obligation to take in fulfilment of the women's health rights. They require, among others that:

> **"Article 12 (1)**
>
> 10. States parties are encouraged to include in their reports information on diseases, health conditions and conditions hazardous to health that affect women or certain groups of women differently from men, as well as information on possible intervention in this regard. . .
>
> 15. The obligation to protect rights related to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations by private persons and organisations . . .
>
> 21. States parties should report on measures taken to eliminate barriers that women face in access to health-care services and what measures they have taken to ensure women timely and affordable access to such services . . .
>
> 22. States parties should also report on measures taken to ensure access to quality health care services, for example, by making them acceptable to women. Acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees confidentiality and is sensitive to her needs and perspectives . . .
>
> 23. In their reports, States should state which measures they have taken to ensure timely access to a wide range of services that are related to family planning, or to sexual and reproductive health in general . . .
>
> **Article 12 (2)**
>
> 26. Reports should also include measures taken to ensure women appropriate services in connection with pregnancy, confinement and the post-natal period. Information on the rates at which these measures have reduced maternal mortality and morbidity . . . in general, and in vulnerable groups, regions and communities, in particular, should also be identified.
>
> 27. States parties should include in their reports how they supply free services where necessary to ensure safe pregnancies, childbirth and post-partum periods for women . . . The Committee notes that it is the duty of the State parties to ensure women's right to safe motherhood and emergency obstetric services and they should allocate to these services the maximum extent of available resources".

315. The Committee has also stated that "while biological differences between women and men may lead to differences in health status, *there are also societal factors that are determinative of the status of women and men and can vary among women themselves*. For that reason, special attention should be given to the health needs and

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rights of women belonging to vulnerable and disadvantaged groups, *such as migrant women, refugee and internally displaced women, the girl child and older women* . . . (emphasis added)[74].

316. The Panel further recalls that the obligations stated above do not cease to exist in periods of armed conflict or in states of emergency and they are due, without discrimination, to all those under the state's jurisdiction, that is citizens and non- citizens, such as refugees, asylum seekers, migrant workers and stateless persons (see CEDAW Committee, General Recommendation No. 28, cited in § 293 above, at §§ 10-12).

ii) Application in the present case

317. The Panel notes that more than half of the complainants (about 75, see § 98 above) are female complainants, women and girls.

318. The Panel has established that the combination of lead poisoning and inadequate living conditions in the camps were such to infringe the complainants' most fundamental human rights and were discriminatory on the ground of ethnic origin. Under this part of the complaint, the Panel will assess whether, in light of the principles expressed above, the female complainants were also discriminated against on the basis of their sex/gender.

319. The Panel takes account of the reports and other material which provide evidence that Roma women are historically likely to experience multiple discrimination, as in the practices of forced and coercive sterilisation or the practice of forced and child marriage existing in many European countries.

320. The Panel notes with concern that there is no official data on the actual impact of lead contamination on pregnant women among the RAE IDPs in northern Mitrovicë/Mitrovica. Nonetheless, the Panel considers that there is little room for doubt that, *de facto*, the female complainants were additionally and disproportionately affected by the extremely unhealthy situation in the camps.

321. The Panel recalls that it is well-established that pregnant women, along with children under the age of five, are those at greater risk of suffering the harmful effects of lead poisoning. Lead absorbed by pregnant women is passed to the foetus through the umbilical cord and is responsible for miscarriage, stillbirth, premature birth and low birth weight, as well as malformations in the new-born child (see § 66 above). The Panel also refers to the reports of NGOs containing the only information presented to it on the situation of pregnant women in the camps, according to which most women getting pregnant in the camps would miscarry or decide to self-induce an abortion for fear to deliver a child affected by malformation (see § 116 above).

322. The Panel notes, as also stated by the SRSG in his comments to the Panel, that since its early days UNMIK was aware of the high health risks posed by lead poisoning to pregnant women and children. Indeed, for this reason, the then SRSG Bernard Kouchner had decided to stop the operation of the Trepca complex in August 2000 (see § 69). The Panel notes, however, that this measure benefited to a limited extent the RAE IDPs, since they continued to be exposed to the danger of lead in their shelters located in highly contaminated land.

323. The Panel notes that, again in June and in October 2004, WHO pointed at the particularly serious situation of pregnant women (and children) in the camps, warning UNMIK that they needed to be urgently evacuated from the camps and that their cases amounted to medical emergencies (see §§ 72-73 above).

324. The Panel notes that, in these circumstances, UNMIK had the obligation under the CEDAW to recognise how the situation in the camps was affecting differently and disproportionately the female complainants and to adopt positive measures to adequately respond to their situation of particular disadvantage. These included: *in primis* the obligation to ensure that the pregnant women could carry out their pregnancy in a safe environment, providing easy access to regular screening and adequate health care for pregnant women, access to adequate hygiene and nutrition, collection of data on still-births and miscarriages for the purpose of monitoring, provision of psychological and support services to those women who had incurred miscarriage, abortion or still-birth.

325. With regard to the SRSG's argument that the RAE community opposed UNMIK's attempt to relocate pregnant women (see § 169 above), following the WHO 2004 recommendations, the Panel notes that this attempt consisted of the relocation of 12 families who were accommodated for two weeks in a hotel at UNMIK's expense (see §§ 175 and 212 above). The Panel considers that UNMIK's response was neither timely, adequate and proportionate

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to the extent of the crisis, nor culturally appropriate since, as pointed out by the complainants, it did not take account of the complainants' needs and perspectives, including the fact that it would be culturally unacceptable for Roma women to be separated from the rest of the family (see § 175 above).

326. As for the other measures reportedly taken by UNMIK pending the relocation of the complainants or as substitute of the relocation (remedial works in the camps, provision of medical assistance and health education campaigns, as listed by the SRSG in § 212 above), the Panel recalls with concern that the services mentioned-above were provided on an intermittent basis to the RAE IDPs and were all discontinued in 2007, with no justification offered by the SRSG in this respect. The Panel further notes that the immediate relocation of pregnant women was the only way to ensure them a safe pregnancy and delivery, when considering that their status would not have allowed for any chelation or other remedial treatment for any diseases incurred due to lead poisoning.

327. Further, the Panel notes that creating conditions whereby women self-induced abortion is a form of gender-based violence and therefore a manifestation of gender- based discrimination, which UNMIK failed to take measures to protect women against (see CEDAW Committee, General Recommendation No. 19 *on Violence against Women*, 1992, UN Doc. A/47/38).

328. In such circumstances, the Panel concludes that while, as already determined, all complainants had their rights violated, the female complainants were also subject to multiple discriminations in the enjoyment of their fundamental rights, as women, as IDPs and as members of the RAE community.

329. The Panel further notes that under Article 12 of the CEDAW, UNMIK had the obligation to provide the complaints with judicial protection and access to judicial remedies against discrimination. In this respect, the Panel notes that UNMIK's failure to investigate the deaths in the camps, including the cases of deaths (like the death of M., described in § 122 above) reportedly caused by delivery complications determined by lead poisoning, amounted to a further discrimination of the complainants.

330. The Panel therefore finds that relevant provisions of the CEDAW Convention were also violated.

6. Alleged violation of children's rights

331. The complainants allege that certain provisions of the CRC protecting children's rights (see § 148 above) have also been violated.

332. While recalling that the Panel's findings concerning other parts of the complaint are fully applicable to the children, the Panel notes that the CRC, directly applicable to UNMIK by virtue of UNMIK Regulation No. 1999/24 (see § 182 above) imposed specific obligations with respect to the protection of children's rights in the camps, which have not been fully considered in other parts of the complaint.

333. In particular, the Panel considers that this part of the complaint falls to be examined under Article 3 (right of the child to have his best interest taken as a primary consideration), Article 6 (child's inherent right to life), Article 24 (right of the child to the highest attainable standard of health), Article 27 (right of the child to a standard of living adequate for the her/his physical, mental, spiritual, moral and social development), Article 37 (prohibition of inhuman and degrading treatment against children).

a) General principles

334. The relevant provisions of the Convention on the Rights of the Child read as follows:

> Article 3
>
> 1. In all actions concerning children . . . the best interests of the child shall be a primary consideration . . .
>
> Article 6
>
> 1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

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Article 24

"1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition . . .through, inter alia . . . the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers . . .;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development"

Article 37

States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment . . .

335. In its General Comment No. 14, the CRC Committee has stated that Article 3 of the CRC, which states that the best interest of the child shall be a primary consideration in all actions concerning directly or indirectly children, places a "strong legal obligation" on the authorities. This means, that the authorities "may not exercise discretion as to whether children's best interests are to be assessed and described the proper weight as a primary consideration in any action undertaken" (see CRC Committee, General Comment No. 14 *on the right of the child to have his or her best interest taken as primary consideration*, 20 May 2013, UN Doc. CRC/C/GC/14, at § 36).

336. The Committee has clarified that "primary consideration" means that "the child's best interests may not be considered at the same level as all other considerations". The Committee states that "this strong position is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of the children are not highlighted they tend to be overlooked" (CRC Committee, General Comment No. 14, cited above, at § 37).

337. The child's right to have her/his best interest taken as a primary consideration is a substantive right but also a procedural rule: "whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned . . ." (CRC Committee, General Comment No. 14, cited in § 335 above, at § 6 (c)).

338. The protection of the child's inherent right to life, survival and development, as well as the child's right to health and her/his health condition, are "central" when assessing and determining the child's best interest (see CRC Committee, General Comment No. 14, cited in § 335 above, at §§ 42 and 77). Further, the Committee has stated that an important element to consider in the process of assessing the best interest of the child in a specific

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situation is "the child's situation of vulnerability, such as disability, belonging to a minority group, being a refugee or an asylum seeker . . . etc." (CRC Committee, *ibid.*, at § 75).

339. Further, in its General Comment No. 15 on the right of the child to the highest attainable standard of health, the CRC Committee has stated that the principle of the best interest of the child "must be observed in all health-related decisions". For example, this principle should "guide treatment options superseding economic considerations where feasible" and be "the basis for all decision-making with regard to providing, withholding or terminating treatment for all children" (CRC Committee, General Comment No. 15 *on the right of the child to the highest attainable standard of health*, 17 April 2001, UN Doc. CRC/C/GC/15, at §§ 12-14).

b) Application in the present case

340. The Panel first notes that about half of the complainants (as stated in § 98 above) were children when a complaint on their behalf was filed with the Panel.

341. The Panel considers it established that it was children who suffered the most, and in an irreversible manner, from the situation in the IDP camps, including the lead poisoning and the poor living and hygiene conditions.

342. The Panel recalls that, at the latest since June 2004, UNMIK was informed about the serious and specific dangers that lead poisoning posed to the lives and health of the children in the camps. In fact, since 2004 WHO transmitted clinical findings (see §§ 72-73) to UNMIK which indicated that among a population of children sampled, who were born in the camps, about 58.6 % had BLL above an acceptable level and about one out of five of the children tested were classified as a medical emergency, presenting BLL so high that the machines in use were not able to record it. UNMIK was warned that the situation required immediate intervention (evacuation, treatment, distribution of nutrition supply), without which the IDP children would incur serious consequences ranging from loss of intelligence and brain damage (for lower exposure) to encephalopathy and death (for higher levels of BLL).

343. The Panel notes the SRSG's submission that, in light of the measures adopted by UNMIK in response to the situation in the camps, it "complied with positive obligations to protect the rights of the children by provision of protection, shelter, health care and education" (see § 170 above).

344. However, in light of the documentation presented to it and in light of the findings of the Panel concerning other parts of the complaint, the Panel considers insufficient and inadequate the actions taken by UNMIK to fulfil its obligation under Article 24.2 of the CRC (take measures to prevent and reduce child mortality, provide necessary medical assistance, ensure appropriate pre-natal and post-natal health care for mothers).

345. The Panel considers that the lives and health of children should have been the overriding consideration guiding UNMIK's response to the situation. However, the Panel notes that UNMIK did not explain (nor provided any documentation in this respect) how the best interest of the children in the camps was considered, assessed and determined when deciding and enacting measures in response to the situation in the camps.

346. The Panel also notes that in particular following the adoption of the United Nations Millennium Declaration and establishment of the Millennium Development Goals (MDGs) in 2000, the UN has put considerable efforts and called upon member states to take all necessary measures to reach the goals of reducing child mortality and improving maternal health (established respectively as fourth and fifth MDGs), considered as attainable objectives for the international community. The attainment of MDGs has supposedly shaped all UN programming and actions. However, the Panel notes that such considerations seem not to have guided UNMIK's response to the situation of the complainants.

347. Consequently, the Panel finds that, through its actions and omissions, UNMIK was responsible for compromising irreversibly the life, health and development potential of the complainants that were born and grew as children in the camps, in violation of Articles 3, 6, 24, 27 and 37 of the CRC.

6. Alleged violation of the right to a fair trial and to an effective remedy

348. Concerning the complaint under Articles 6 and 13 of the ECHR, the Panel deems that the most important substantive legal aspects of this case have been fully analysed and is not necessary to make a further assessment concerning this part of the complaint.

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V. FINDINGS AND RECOMMENDATIONS

349. For the above reasons, the Panel, unanimously:

1. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 2, SUBSTANTIVE LIMB, OF THE ECHR;**
2. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 2, PROCEDURAL LIMB, OF THE ECHR, WITH RESPECT TO COMPLAINANTS NO. 1, 2, 8, AND 20;**
3. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 3 OF THE ECHR;**
4. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 8 OF THE ECHR;**
5. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLES 11 AND 12 OF THE ICESCR;**
6. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLE 14, TAKEN IN CONJUNCTION WITH ARTICLES 2, 3 AND 8 OF THE ECHR;**
7. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLES 2 AND 26 OF THE ICCPR AND ARTICLE 2 OF THE ICESCR;**
8. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLES 1, 2 AND 12 OF THE CEDAW WITH RESPECT TO FEMALE COMPLAINANTS;**
9. **FINDS THAT THERE HAS BEEN A VIOLATION OF ARTICLES 3, 6, 24, 27 AND 37 OF THE CRC WITH RESPECT TO CHILDREN;**
10. **FINDS THAT IT IS NOT NECESSARY TO MAKE A FURTHER ASSESSMENT CONCERNING ARTICLES 6 AND 13 OF THE ECHR.**

RECOMMENDS THAT UNMIK:

a. **PUBLICLY ACKNOWLEDGES, INCLUDING THROUGH THE MEDIA, UNMIK'S FAILURE TO COMPLY WITH APPLICABLE HUMAN RIGHTS STANDARDS IN RESPONSE TO THE ADVERSE HEALTH CONDITION CAUSED BY LEAD CONTAMINATION IN THE IDP CAMPS AND THE CONSEQUENT HARMS SUFFERED BY THE COMPLAINANTS, AND MAKES A PUBLIC APOLOGY TO THEM AND THEIR FAMILIES;**

b. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANTS FOR MATERIAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF THE HUMAN RIGHTS PROVISIONS LISTED ABOVE;**

c. **TAKES APPROPRIATE STEPS TOWARDS PAYMENT OF ADEQUATE COMPENSATION TO THE COMPLAINANTS FOR MORAL DAMAGE IN RELATION TO THE FINDING OF VIOLATIONS OF THE HUMAN RIGHTS PROVISIONS LISTED ABOVE;**

d. **TAKES APPROPRIATE STEPS TOWARDS REIMBURSEMENT OF ALL FEES AND EXPENSES INCURRED BY THE COMPLAINANTS IN RELATION WITH THE PROCEEDINGS BEFORE THE PANEL;**

e. **TAKES APPROPRIATE STEPS TO ENSURE THAT UN BODIES WORKING WITH REFUGEES AND IDPS PROMOTE AND ENSURE RESPECT FOR INTERNATIONAL HUMAN RIGHTS STANDARDS AND THAT THE FINDINGS AND RECOMMENDATIONS OF THE PANEL IN THIS CASE ARE SHARED WITH THESE BODIES, AS A GUARANTEE OF NON-REPETITION;**

f. **URGES UN BODIES AND RELEVANT AUTHORITIES IN KOSOVO TO PROTECT AND PROMOTE THE HUMAN RIGHTS OF RAE PEOPLE, ESPECIALLY WOMEN AND CHILDREN, ENSURING THAT THEY HAVE A PROACTIVE ROLE;**

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g. **TAKES ALL APPROPRIATE STEPS TOWARDS UN BODIES TO ENSURE EFFECTIVE DISTRIBUTION OF INFORMATION RELEVANT TO THE HEALTH AND WELL-BEING OF PEOPLES UNDER THEIR AUTHORITY AND CONTROL;**

h. **TAKES IMMEDIATE AND EFFECTIVE MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE PANEL AND TO INFORM THE COMPLAINANTS AND THE PANEL ABOUT FURTHER DEVELOPMENTS IN THIS CASE.**

Anna Maria Cesano
Acting Executive Officer

Christine Chinkin
Presiding Member

Annex

ABBREVIATIONS AND ACRONYMS

BLL – Blood Lead Level

CCPR – International Covenant on Civil and Political Rights

CEDAW – International Convention on All Forms of Discrimination against Women

CDC – Centre for Disease Control

ICERD – International Convention on the Elimination of All Forms of Racial Discrimination

CESCR – International Covenant on Economic, Social and Cultural Rights

CoE – Council of Europe

CRC – International Convention on the Rights of the Child

ECHR - European Convention on Human Rights

ECtHR – European Court of Human Rights

ERRC – European Roma Rights Centre

EULEX - European Union Rule of Law Mission in Kosovo

GfbV – Society for Threatened Peoples *[Gesellschaft für bedrohte Völker]*

HRAP – Human Rights Advisory Panel

HRC – United Nation Human Rights Committee

HRRP – EULEX Human Rights Review Panel

HRW – Human Rights Watch

IACtHR – Inter-American Court of Human Rights

ICRC – International Committee of the Red Cross

IDPs – Internally Displaced Persons

KFOR – International Security Force (commonly known as Kosovo Force)

MAT – Mitrovica Action Team

MDGs – Millennium Development Goals

NGO – Non-governmental Organisation

OSCE – Organization for Security and Cooperation in Europe

PISG – Provisional Institutions for Self-Government

RAE – Roma, Ashkali, Egyptian

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SRSG – Special Representative of the Secretary-General

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNEP – United Nations Environmental Programme

UNICEF – United Nations International Children's Emergency Fund

UNHCR – United Nations High Commissioner for Refugees

UNMIK – United Nations Interim Administration Mission in Kosovo

WHO – World Health Organisation

ENDNOTES

1 A list of abbreviations and acronyms contained in the text can be found in the attached Annex.

2 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. For the purpose of the present case, the Panel will refer to the complainants alternatively as members of the RAE or Roma community in Kosovo, as these are characterisations provided by them in their submissions to the Panel.

3 See European Roma Rights Centre, *Abandoned Minority. Roma Rights History in Kosovo*, December 2011, at p. 18, accessed at http://www.errc.org/cms/upload/file/abandoned-minority-roma-rights-history-in- kosovo-dec-2011.pdf on 25 February 2016.

4 See Human Rights Watch, *Poisoned by Lead, a Health and Human Rights Crisis in Mitrovica's Roma Camps*, 2009 (hereinafter HRW Report), at p. 23.

5 *Ibid*.

6 *Ibid*. See also *Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo (23-27 March 2009)*, CommDH(2009)23, Strasbourg, 2 July 2009, at § 139; European Roma Rights Centre, *Alarming Facts about Roma Camps in North Mitrovica: Lead Poisoning of Romani Children,* January 2006, accessed at http://www.errc.org/article/alarming-facts-about-roma-camps-in-north-mitrovic%C4%82%C2%ABa-lead-poisoning-of-romani-children/2461 on 25 February 2016.

7 HRW Report, cited in footnote 4 above, at pp. 5, 34 and 39.

8 Ombudsperson Institution in Kosovo, *Fifth Annual Report to the Special Representative of the Secretary- General of the United Nations*, 11 July 2005, at p. 35.

9 Laurie Wiseberg, Minority Rights Advisor, UNMIK Office of Returns, Communities and Minority Affairs, Statement at the OSCE Conference on the Implementation of Policies/Action Plans for Roma, Sinti, and Travellers, and Measures against the Anti-Gypsyism Phenomenon in Europe, Warsaw, 20-21 October 2005.

10 Ombudsperson Institution in Kosovo, *Fifth Annual Report*, cited in footnote 8 above, at p. 37.

11 See SRSG Letter to Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 17 April 2009 (in response to the letter from Mr Hammarberg dated 6 April 2009).

12 See HRW Report, cited in footnote 4 above, at p. 28.

13 See UNMIK Press Release, "UNMIK, WHO and UNICEF renew call for immediate temporary relocation of Roma IDPs an emergency health requirement", UNMIK/PR/1486, 9 February 2006.

14 See UNMIK Press Release, "SRSG welcomes start of lead-toxicity treatment for IDPs at Osterode camp", UNMIK/PR/1577, 1 September 2006.

15 *Ibid.*

16 United Nations Committee on Economic, Social and Cultural Rights, Replies by the Government of UNMIK to the list of issues to be taken up in connection with the consideration of the initial report of UNMIK, UN Doc E/C.12/UNK/Q/1/Add.1, 6 October 2008, at § 48.

17 WHO Press Release, "WHO Calls for More Efforts to Reduce Lead Toxicity in Temporary Camps", 31 January 2009.

18 WHO Press Release, "WHO Insists Once Again that the Only Solution to the Life Threatening Lead Exposure to the Roma, Ashkali and Egyptians in North Mitrovica IDP Camps is Their Immediate Evacuation", September 2009.

19 The references drawn upon by the Panel in setting out this section include: WHO, *Childhood Lead Poisoning*, Geneva, 2010; CDC*, Lead Poisoning Prevention and Treatment. Recommendations for Refugee Children*, Medically Oriented Fact Sheet, 24 September 2012; CDC "Blood levels in children aged 1-5 years, United States, 1999-2010", *Morbidity and Mortality Weekly Report*, vol. 62, no. 13, 5 April 2013, at pp. 245–248; WHO, *Lead Poisoning and Health*, Fact Sheet no. 379, reviewed October 2014.

20 Helen Gavaghan, "Lead, Unsafe at any Level", *Bulletin of the World Health Organization*, vol. 80, no. 1, 2002, accessed at http://www.who.int/bulletin/archives/80%281%2982.pdf on 25 February 2016; see also WHO publications cited in footnote 19 above.

21 WHO, *Lead Poisoning and Health*, cited in footnote 19 above.

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22 WHO, *Childhood Lead Poisoning*, cited in footnote 19 above, at p. 21.

23 *CDC*, *Lead Poisoning Prevention and Treatment. Recommendations for Refugee Children*, cited in footnote 19 above.

24 WHO, *Childhood Lead Poisoning*, cited in footnote 19 above.

25 U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Environmental Health, Agency for Toxic Substances and Disease Registry, Division of Emergency and Environmental Health Services, *Development of an Integrated Intervention Plan to Reduce Exposure to Lead and Other Contaminants in the Mining Center of La Oroya, Perú*, May 2005, accessed at http://www.cdc.gov/nceh/ehs/docs/la_oroya_report.pdf on 25 February 2016.

26 UNMIK Press Release, UNMIK/PR/312, 14 August 2000.

27 See for example, United Nations Environment Programme (UNEP), *Case Study on Lead and Heavy Metal Contamination in Mitrovica, Kosovo,* Geneva/Amsterdam, November 2010.

28 It appears no blood testing was conducted in the camp of Kablare although many children there also show symptoms of lead poisoning, such as loss of memory, loss of coordination, vomiting and convulsions (see European Roma Rights Centre, *Alarming Facts about Roma Camps in North Mitrovica: Lead Poisoning of Romani Children*, cited in footnote 6 above).

29 CDC, Recommendations for Preventing Lead Poisoning among the Internally Displaced Roma Population in Kosovo from the Centers for Disease Control and Prevention, 27 October 2007, at p. 3.

30 *Ibid*., at p. 7.

31 CDC, *Evaluation and Recommendations for Preventing Lead Poisoning among the Internally Displaced Roma Population in Kosovo from the Centers for Disease Control and Prevention*, 10 January 2011.

32 *Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo (23-27 March 2009)*, cited in footnote 6 above, at § 146.

33 *A comprehensive review of the situation in Kosovo*, Report of the Special Envoy of the Secretary-General, Kai Eide, UN Document S/2005/635, 7 October 2005, at p. 4.

34 *Ibid.*

35 See HRW Report, cited in footnote 4 above, at p. 40.

36 Ombudsperson Institution in Kosovo, *Fifth Annual Report*, cited in footnote 8 above, at p. 35.

37 See Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, Mission to Serbia and Montenegro*,* UN Doc. E/CN.4/2006/71/Add. 5, 12 January 2006, at § 63.

38 See Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari, UN Doc. E/CN.4/2006/41/Add.1, 23 December 2005, at § 41; see also HRW Report, cited in footnote 4 above, at p. 42.

39 See Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, cited in footnote 38 above, at §§ 41 and 63.

40 HRW Report, cited in footnote 4 above, at p. 42.

41 Letter from the Council of Europe Commissioner for Human Rights to Ambassador Lamberto Zannier (UNMIK), Special Representative of the UN Secretary General, CommDH (2009), 20/23 April 2009.

42 HRW Report, cited in footnote 4 above, at. p. 41.

43 *Ibid.*, at pp. 40–44.

44 *Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo (23-27 March 2009)*, cited in footnote 6 above, at § 148.

45 Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo*, adopted on 25 November 2005, at §§ 47 and § 151.

46 HRW Report, cited in footnote 4 above, at pp. 44–45.

47 *Ibid.*, at p. 44.

48 *Ibid.*, at p. 41.

49 *Ibid.,* at p. 40.

50 Committee on Economic, Social and Cultural Rights, *Consideration of Reports submitted by States Parties under Articles 16 and 17 of the Covenant*, UN Doc. E/C.12/UNK/CO/1, 19 November 2008, at § 29.

51 See Report of the Representative of the Secretary-General on the Human Rights of the Internally Displaced Persons, Walter Kälin, Follow-Up Visit to the Mission in Serbia and Montenegro (including Kosovo) in 2005, UN Doc. A/HRC/13/21/Add.1, 11 December 2009, at §§ 63-64.

52 Copy of the criminal complaint accessed at http://reliefweb.int/sites/reliefweb.int/files/resources/3CACE-6190D88ECC2492570750022EDE1-errc-yug-31aug.pdf on 25 February 2016.

53 Society for Threatened Peoples, *Highest Level of Lead Contamination Ever Registered in Samples of Human Hair: 560 Roma Refugees Exposed to Deadly Heavy Metals Since 1999,* December 2005, at pp. 7–8.

54 *Ibid.*, at pp. 9–10

55 *Ibid.*, at p. 10.

56 UN Doc. E/CN.4/1998/53/Add.2.

57 Judgment not final.

58 See Republic of Kosovo Ombudsperson Institution, *Eighth Annual Report, 2007/2008*, 21 July 2008, at pp. 47–48.

59 See 2009 Report of the Representative of the Secretary-General on the Human Rights of the Internally Displaced Persons, cited in footnote 51 above, at § 42.

60 See CoE Commissioner for Human Rights, *Human Rights of Roma and Travellers in Europe*, Strasbourg, February 2012, at p. 167.

61 See HRW Report, cited in footnote 4 above, at pp. 40–44.

62 See UN Doc. E/CN.4/2006/71/Add.5, at § 46.

63 See Republic of Kosovo Ombudsperson Institution, *Eighth Annual Report*, cited in footnote 60 above, at p. 41.

64 See HRW Report, cited in footnote 4 above, at p. 54.

65 See CoE Commissioner for Human Rights, *Human Rights of Roma and Travellers in Europe*, cited in footnote 62 above, at p. 168.

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66 *Ibid.*, at pp. 140–141.

67 *Ibid.*, at p. 173.

68 *Ibid.*, at p. 174.

69 *Ibid.*, at p.196.

70 See, among others, Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Kosovo*, November 2005, at § 18.

71 See 2006 Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, cited in footnote 37 above, at § 42.

72 See 2009 Report of the Representative of the Secretary-General on the Human Rights of the Internally Displaced Persons, cited in footnote 51 above, at § 8.

73 *Ibid.*, at § 52.

74 *Ibid.*, at § 6.

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