



The Human Rights Advisory Panel

Building D, UNMIK HQ Prishtinë/Priština, Kosovo | E-mail: hrap-unmik@un.org | Tel: +381 (0)38 504-604, ext. 5182

N.M. and Others v. UNMIK

Case No. 26/08

OPINION

26 February 2016

list of documents relevant to the case, including 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

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.

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 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 KFOR³. 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

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.

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 camps⁵. 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

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.*

pregnant women) and the relocating the IDPs to a lower risk area⁶. The report also warned that the costs of implementing all those recommendations would exceed UNMIK's financial capabilities⁷.

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 Zvečan/Zvečan. Random blood and soil tests conducted by WHO showed that most children living in the IDP camps in Mitrovicë/Mitrovica and Zvečan/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.

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.

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 lead⁹.
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.
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

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.

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 houses¹¹.

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 water¹². 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/Zvečan” 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 Mahala¹³. 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 Osterode¹⁴. 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

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.

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 risk¹⁵.

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 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

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.

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 world¹⁹. 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 safety threshold above which BLL give cause for “concern”. However, most recent studies assert that no level of lead in the blood is safe²⁰. 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

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.

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 malformations²¹. 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 environment²². 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 growth²³. 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 poisoning²⁴.
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

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

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.

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 tract²⁵.

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 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

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_roya_report.pdf on 25 February 2016.

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 operations²⁷.
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 Zvečan/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:

"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

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.

Substances and Disease Registry (ATSDR) as constituting a medical emergency ($\geq 70 \mu\text{g/dL}$). (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 $15 \mu\text{g}/\text{per deciliter}$ 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 $74.4 \mu\text{g/dL}$ of blood, one had 58.5 and one had $37.4 \mu\text{g/dL}$ 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 Žitkovac). 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” (Cesminluc/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 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 conditions²⁹. [...]

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.

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 bias³⁰.

78. The above-mentioned report contains also an assessment of the level of lead contamination of Cesminluka/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 Trepča/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 Cesminluka/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 data as well as environmental data to ensure effective and transparent monitoring; provision of adequate medical treatment for elevated BLLs.

³⁰ *Ibid.*, at p. 7.

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 $\geq 45 \mu\text{g/dL}$; 49% had BLLs 20-44 $\mu\text{g/dL}$, 24% had BLLs 10-19 $\mu\text{g/dL}$; and only 11 % had BLLs below 10 $\mu\text{g/dL}$ 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 Europe³².
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 interruptions³⁵. 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

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.

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 complex³⁶. 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 camps³⁷. 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 chemicals³⁸. 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 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 KFOR⁴⁰.
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

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.

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, pneumonia⁴³. 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 2009⁴⁴. In a subsequent letter to the SRSB, 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 minority⁴⁵.
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 proper⁴⁶. 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 medications⁴⁷. 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

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.

lead contamination and provide adequate treatment⁴⁹. 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 camps⁵⁰. 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.

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:

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/3CACE6190D88ECC2492570750022EDE1-errc-yug-31aug.pdf> on 25 February 2016.

“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 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".

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 SRSB.
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 SRSB 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, *Çelikkilek 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 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 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 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 contamination, coupled with the poor living conditions in the camps, greatly affected the right of the RAE 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.
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 Cesminluge/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], *Öneriyıldız 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 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 no investigation 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 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

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”.

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 [...]

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-travellers⁶⁰.

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

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

(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 complainants⁶¹. A similar concern was expressed by the UN Special Rapporteur on the Rights of the IDPs at the end of his visit in June 2005⁶².

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 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 children⁶³, which required 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

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.

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 HRW⁶⁴, 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.

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.

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 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 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, *Okpiz 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).

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.

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;**
- 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

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
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