129 Roma in Kosovo v. Norwegian Church Aid

1. **The identity of the complainant or complainants including your identity, the main contact person, name of the organisation, contact details (including email, web-site, telephone).**

129 Roma not to be disclosed due to request from the complainant

2. **If you are bringing a complaint on behalf of others (e.g. on behalf of a local union or community), explain your interest in this case and mandate or reason for bringing the complaint.**

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I have been representing this group of Roma since 2005 when I worked at European Roma Rights Centre in Hungary.

3. **The identity and location of the company offices and why you consider this company is relevant to the Norwegian NCP. Provide relevant information on the company' corporate structure and location that you consider will assist the NCP in this regard.**

   Norwegian Church Aid

   http://www.kirkensnodhjelp.no/en/

   Address:
   Bernhard Getz' gate 3, 0165 Oslo, Norway (visitors' address) Postboks 7100, St. Olavs plass, 0130 Oslo, Norway (postal address)
   Tel: (+47) 22 09 27 00 Fax: (+47) 22 09 27 20 E-mail: nca-oslo@nca.no Donor service: giver@nca.no

   General secretary
   Atle Sommerfeldt Tel. +(47) 917 55 112, e-mail as@nca.no

   Deputy General secretary Torbjørn Buer Tel. +(47) 934 44 348, e-mail tbu@nca.no

   Employees in Norway: 153
   Employees abroad: 622 (959 incl. Darfur)
   Revenue in 2007: NOK 610.5 million
   Administration costs for 2007 = NOK 63.3 million (8.8 %)

International projects: 87,1 %

Administration: 9,6 %
Fundraising: 3,3 %

The Board of Delegates is the supreme organ of Norwegian Church Aid, and comprises:

- Delegates from each diocese of the Church of Norway
- Seven members of the Church Council of the Church of Norway (whereof one representative of the Saami Church Council and a youth representative under the age of 25)
- Five representatives of nationwide home mission organizations and organizations for children and youth
- One representative from each of the following organizations: the Evangelical Lutheran Free Church, the Free Evangelical Congregations, the Baptist Union of Norway, the Norwegian Mission Society, the Salvation Army, the Norwegian Methodist Church and the Pentecostal Movement in Norway.
  NORME and Global Aid Network meet as observers

While NCA is not a "business" as such, it is a Norwegian organization that receives nearly half its money from public funds and spends most of the money operating internationally in several different countries. Therefore, it is a multinational enterprise whose acts impact Norway.

In that annual report, they state that $460,000 of the $799, 000 budget is from public funding, p 47. Since public funding is involved, the public might want to know how it's being spent and whether it's being spent in accordance with human rights standards.

Page 28 of the 2009 Annual Report of NCA (on their website) discusses the work they did in managing the camps in Kosovo. It tacitly acknowledges the very problems outlined in the complaint.

4. Provide detailed information on the alleged breaches of the Guidelines and provide relevant information on developments. List the chapter(s) and paragraph(s) in the Guidelines that you consider the company to be breaching.

The specific sections of the Guidelines that the complainants consider the company to be breaching are as follows:

II. General Policies

A. Enterprises should:

1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.
2. Respect the internationally recognised human rights of those affected by their activities.

5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.

10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.

If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm. (Commentary, p. 22)

IV. Human Rights
States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:
1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

VI – Environment

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate

environmental impact assessment.
4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

5. **Provide detailed evidence and information that supports the allegations. Official documents, reports, studies, articles, witness statements can all be considered. The Norwegian NCP requires enough information to substantiate what has taken place – anecdotal statements or unsubstantiated allegations are not sufficient.**

After the 1999 NATO bombing of Kosovo, those Roma who did not flee Kosovo to other countries, approximately 600, were placed in camps for internally displaced persons (IDPs) in Northern Mitrovica, called Žitkovac/Zhikoc, IDP camp/Cesminlukë and Kablare. All three camps were established on land that was known by UNMIK to be contaminated with lead or was a toxic waste dump site or both. A fourth camp, Leposavic/q was built approximately 45 kilometers from the mine. NCA did not manage this camp though some of the occupants moved about freely.

The lead contamination on the camp sites is rooted in an extensive history of mining and metallurgic activities in and around the Mitrovica and Zvecan municipalities of northern Kosovo. The detrimental effects to the environment and public health resulting from such mining and smelting activities, and specifically the mining and smelting activities in Zvecan, have been known since at least the early 1980's. Epidemiological studies conducted by Columbia University researchers in the early 1980s, in order to determine the health effects of emissions from the lead smelter, showed high concentrations of blood lead levels in children and accompanying risk of neurological damage as early as 1982.

As described in many studies, adverse health effects of lead exposure include: damage to the brain and nervous system; reproductive abnormalities in males and females; high blood pressure; memory and concentration problems; muscle and joint pain; and digestive irregularities. In children, the effects can be even more detrimental and include: behavior and learning problems; slowed growth, hearing problems; headaches, and damage to the brain and nervous system.

According to the National Institute of Health and Safety, symptoms include lassitude (weakness, exhaustion), insomnia; facial pallor; anorexia, weight loss, malnutrition, constipation, abdominal pain, colic, anemia, gingival lead line, tremor, paralysis in wrist and ankles, encephalopathy, kidney disease, irritation in eyes, and hypotension. The target organs are eyes, gastrointestinal tract, central nervous system, kidneys, blood, and gingival tissue.

Other studies have shown that lead toxicity can also cause "…impaired speech and hearing problems, decreased mental abilities, reduced growth…behavior problems, such as hyperactivity in young and antisocial behavior at an older age and more."

In addition to epidemiological studies, environmental studies showed lead concentrations in the air in excess of accepted levels, high concentrations of lead in the soil and lead concentration in vegetables substantially higher than the recommended intake. Specifically, a World Health Organization (WHO)

report indicated that lead concentrations in the air exceeded local accepted levels between 62% and 87% of the time. Concentrations of lead in spinach from Mitrovica were 20 to 30 times higher than ordinary and the lead intake of people consuming the local produce was measured at three times higher than the recommended weekly intake.

The Trepca smelter continued to operate sporadically after the 1999 conflict and in June of 2000, the Trepca management, with the agreement of government authorities, restarted daily smelting operations. Six weeks after daily operations were restarted, the medical services of KFOR started to receive reports of air lead contamination as well as rising blood lead levels among military personnel. The reports were analyzed by experts who concluded that "the activity of the lead smelter was responsible for unacceptably high environmental contamination and consequently, was a hazard" to the population.

Subsequent tests of the atmospheric lead content conducted in June and July showed average levels of 250 micrograms per cubic meter of lead in the atmosphere, two-thirds higher than the acceptable limits for French workers in France.

In June 2000 the American Army also conducted its own assessment to determine the environmental health risks to soldiers in Mitrovica. It recommended implementing a bio-monitoring program and removing personnel with blood lead levels higher than 50 micrograms (μg)/deciliter (dl). Likewise the French military (Osterode base) conducted its own tests in June 2000 and found that all samples were above the acceptable atmospheric exposure allowed in France. After finding in 2000 that 32-55% of the blood samples exceeded the allowable limits, they embarked on a program for protection of personnel though they only had a tour of duty for four months except women of procreation age who stayed only one month. Blood lead levels were monitored before departure and following return and those with readings over 20 μg/dl for women or 30 μg/dl for men were monitored. The French soldiers were prohibited from consuming local fresh food products or drinking local water and told to limit physical activities. The report points out that while the military personnel are exposed only four months, the civilian population is exposed permanently. No such prohibitions regarding eating and exercise were suggested for the Roma living on the contaminated sites and in fact, they were encouraged to engage in physical activities in the "Alley of Health."

After taking control of the plant, UNMIK conducted its own environmental sampling in August 2000. A sampling of local produce showed higher than acceptable limits of lead in the dust, soil and vegetables in Mitrovica. Soil samples contained 9 to 122 times more lead than the accepted limit in the United Kingdom. In the year 2000, the Special Representative of the Secretary-General (SRSG), Bernard Kouchner stated: "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." He let it continue for eleven more years.

Aware of the health risks posed by lead exposure UNMIK initiated an internal report in November 2000 to analyze the toxicity of the soil in and around the camps. The report revealed a high level of lead contamination in the camps indicating that the blood lead levels of the Roma children were disproportionately higher than those in other tested groups. This information was not given to the Roma inhabitants.

The World Health Organization subsequently issued a report dated November 2000 titled "First Phase of Public Health Project on Lead Pollution in Mitrovica Region" ("First Phase Report/Report") by Sandra Molano and Andrej Andrejew. The report consisted of a study of 496 non-occupationally exposed adults broken down by age, gender and ethnicity. The study found that all children and most

adults living around the industrial site had blood lead concentrations exceeding the permissive limits. Specifically, the researchers found a higher concentration of lead among children than adults and a higher average lead concentration among the Roma communities as compared with the non-Roma population. Based on these studies, the Report recommended, among other things, retesting for assessment of lead-induced disease with the help of UNMIK and WHO, as well as further medical and neurological examinations. The Report concluded by recommending relocation of the Roma camp to a lower risk area. This information was not given to the Roma inhabitants.

In July 2004, the WHO issued a second report that revealed that 88% of the camps' areas were considered unsafe for human habitation because the soil contained four to five times more lead than what is considered dangerous to human health. A third report released by WHO in October 2004 confirmed the July results, establishing the urgency of the situation in the camps and requesting the immediate removal of the camp's inhabitants. None of these reports were given to the Roma inhabitants.

In May, June and July 2004, WHO conducted a Health Risk Assessment to determine the extent of exposure of children in the Mitrovica region to heavy metals, particularly lead, in the environment. Noting that the WHO and Center for Disease Control (CDC) acceptable level for lead in blood is 10 micrograms per deciliter, the WHO report found that:

> "Lead has chronic multi system effects in the human body, but the most significant effect is on IQ levels where meta analysis of numerous studies shows increases in blood lead from 10 to 20 micrograms/dl was associated with a decrease of 2.6 IQ points. These impacts are irreversible."

WHO sampled 58 children of whom 34 were found to have above acceptable blood lead levels. None of the Roma children sampled had a blood lead level below 10 µg/dl. Twelve of the Roma children were found to have exceptionally high levels, with six of them possibly falling within the range described by the United States Agency for Toxic Substances and Disease Registry (ATSDR) as constituting a medical emergency (=>70µg/dl). WHO recommended urgent action for the twelve children including immediate diagnostic testing, aggressive environmental interventions and ongoing evaluation according to ATSDR guidelines." These children were never treated with the possible exception of Kasandra Mustafa.

In October 2004, the WHO issued its third memo addressing the health situation of the children in the Roma IDP camps. WHO found that 88.23% of the soil in both camps was unsafe for human habitation and for gardening and concluded that soil contamination constituted a major source of lead exposure to the Roma population." In Žitkovac/Zhikoc, some of the soil tested was 100.5 times above recommended levels, while in, IDP camp/Cesminlukë, the results were even more dire, with levels exceeding 359.5 times the safe limits. The WHO further found that Roma children consistently had the highest blood lead levels of the entire population sampled, with one child having been determined to represent a medical emergency and requiring immediate hospitalization. The memo recommended the immediate removal from the camps of children and pregnant women and called the case of the Roma "urgent".

In November 2004 WHO issued a fourth memo, in which it again called the deterioration in IQ levels the "most significant effect" of high blood lead concentrations and once again recommended that the population living in the camps should be moved away on an emergency basis. By November 2004, WHO, the UN's "specialized agency for health" had been warning the UN's interim administration, UNMIK for nearly six years of an escalating health emergency in the IDP camps.

In February 2005, Dr. Rokho Kim, a WHO expert from Bonn, Germany, visited the camps and described the situation there "as one of the most serious lead-related (Environmental Health) EH disasters in the world and in history." Still UNMIK took no action.

WHO issued a draft of its fifth report which has been provided to select officials in Kosovo in late 2005, but for which only the executive summary has been released. The Executive Summary states, "There are 531 persons including 138 children (<6 years) in these RAE populations. Most children have dangerously high levels of lead in their blood. In Zitkovac camp, 23 of 26 (88%) children (<6 years) tested in 2004 had blood lead levels greater than 65 µg/dL (the highest level the on-site blood lead analyser can register). Many children were not receiving appropriate medical treatment while suffering from lead poisoning of an acute medical emergency nature. Alarmingly, even the lowest level of blood lead measured in this camp was 3 times higher than the permissible level for children (10 µg/dL). The overall situation of public health is disturbingly dreadful in all three camps. Activities of lead battery recycling activities and the alleged use of lead-containing folk remedies in the camps might be adding even more risk. The levels of lead in the blood of RAE children reported by WHO Kosovo office are among the highest in the literature. The reliability of these blood lead tests was validated by a reference laboratory. Deaths from lead poisoning have not been officially confirmed yet, although they are likely to have happened. Children's lead poisoning in the north Mitrovica/ë Region of Kosovo is considered one of the most serious children's environmental health crises in contemporary Europe."

Dr. Graziano, an expert in lead toxicity, also notes that because of the "profound adverse effects," of lead contamination, there is a clear "need for immediate evacuation from the site of exposure." The children have to date not all been evacuated nor received appropriate or sometimes even any medical treatment.

During the last week in July 2005, with the assistance of a sophisticated new soil testing machine, soil testing was again carried out in the camps. However these results have not been released by UNMIK. Similarly, the Osterode camp (former French base) allegedly was tested by an American environmental team in October 2005. Those results have also been withheld.

An October 2005 study commissioned by the Society for Threatened Peoples, conducted by German doctor Klaus-Dietrich Runow and analysed at Doctor's Data, Inc. an independent reference laboratory in Illinois, USA added to the mounting data concerning the extent of the lead contamination in the camps. Dr. Runow analysed hair samples from 49 children between the ages of 1 and 15 and found lead levels ranging from 20 to 1200 µg/g, which place all of the tested children in the 100th percentile on a scale of average lead levels. Although hair sample analysis is not the most accurate determinant of lead contamination, there is a strong correlation between high lead levels in hair sample and high lead content in the blood. While blood samples reflect only a recent contamination, hair samples show the body burden of the last 3-4 months.

Hair samples cannot be directly compared to blood samples to give a precise contamination level. However, in one study both blood levels and hair samples were tested in a group of girls and boys in two German towns; one polluted and one not. The blood level readings of microgram per deciliter were 11.30, 7.39, 4.09, and 3.34. The same readings from hair in micrograms per gram were 15.51, 8.82, 4.03, and 2.83. Thus it appears that at high levels, the hair levels are somewhat higher but at low levels, they are virtually the same.

In another study lead hair content was found to be .87 micrograms/gram and blood levels 2.5 micrograms/deciliter showing blood levels higher than hair levels. However in both studies, the

highest hair level was 15.51 µg/g while in the Roma children in Kosovo, the lowest hair level was 20 µg/g and the highest 1200 µg/g. Hair samples as a biomarker has been used in many surveys. Some of these studies have shown a high correlation between lead in hair and the blood of children. Since biological limit values for lead in hair are not yet established, blood has to be checked for individual cases, but the hair values can tell you that a particular population has toxic levels – such as the Roma in the Kosovo IDP camps.

In addition to high levels of toxic lead and other heavy metals, including antimony, arsenic, cadmium, zinc, vanadium and magnesium, Dr. Runow also found disturbingly low levels of selenium, a mineral essential for thyroid function and for binding and inactivating toxic heavy metals. In conclusion, Dr. Runow notes that, "such high lead level readings are unprecedented in the world and pose an extreme health risk to the children in the camps."

Norwegian Church Aid became the administrators of the Osterode Camp on or about March 2006 until on or about December 2009. They were well aware of the problems of lead poisoning and local Roma and international activists constantly informed them of the danger and asked for their assistance. The did not assist in violation of Guidelines II (A)(2), (10-12, 14) IV and VI (3-5).

At least three people but perhaps as many as 33 have died from lead related symptoms. In addition to the placement of the camps on contaminated ground and the resulting health emergency, inhabitants of the camp reported frequently foraging through the garbage in search of food and inability to meet their basic hygienic requirements.

Of particular concern is the issue of pregnant women. Claimant Miradija Gidzic describes the situation for pregnant women in the camp in her report in January 2006. She and her sister have worked for two years in the camps and seen many children fall ill. The women in the camps describe many babies still-born and many miscarriages. Worse, many women know their children will be born mentally retarded and thus self-induced abortions by drinking lice shampoo or pesticides. Some mixed yeast with beer to produce miscarriages. "There is nothing more important in a Romani woman's life than her children." The impact of both the necessity of self-induced abortions and watching your children slowly die before your eyes is "soul destroying."

Despite long-known and consistently alarming epidemiological studies and reports, all the Roma placed in the IDP camps have still not been relocated. Instead, and inevitably, they have begun to suffer the well-known and predictable detrimental health effects of exposure to lead and to sicken and die. The harms suffered by Claimants are immediate and irreparable. NCA knew of the harm to the IDPs and was asked to assist their removal to a safe place for treatment and to obtain necessary medical assistance. They did not therefore violating the Guidelines II (A)(2), (10-12, 14) IV and VI (3-5).

In this claim, the very strong combination of direct evidence and presumptions results in the conclusion that the victims' health deteriorated as a result of their prolonged stay on heavily toxic land and at least three died from the impact. In addition, their prolonged exposure inevitably made the Claimants more vulnerable to various diseases, and will lead to their early death and irreparable injury, adversely affecting their future quality of life - most especially the children. Furthermore, the children are irrevocably damaged in the level of their intellectual capacity, which negatively impacts their total life prospects.

The claimants consider that all of the following human rights instruments have been violated in violation of Guidelines II (A)(2) and IV.

- The Universal Declaration of Human Rights (DHR)
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
- The Convention on the Elimination of All Forms of Racial Discrimination (CEFRD)
- The International Covenant on Civil and Political Rights (CCPR)
- The International Covenant on Economic Social and Cultural Rights (CESCR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment
- The Convention on the Rights of the Child (CRC)

European Convention on the Protection of Human Rights and Fundamental Freedoms

The legal argument following addresses primarily the European Convention on the Protection of Human Rights and Fundamental Freedoms, in particular, Article 2, Article 3, Article 6, Article 8, Article 13 in conjunction with the other listed Articles, and Article 14 taken together with Articles 2, 3, and 8.

However, the serious violations in the ECHR likewise violate the other international instruments listed above. Arguments are made regarding discrimination against women in violation of CEDAW, long term and permanent injury to children in violation of CRC, treating the claimants in a cruel, inhuman and degrading manner in violation of CCPR, and discrimination based on their ethnicity and culture in violation of the CEFRD, DHR and CESCR.

A. Violations of Article 2

Article 2 requires that, "everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

Additionally, all the Applicants contend that the situation they and their families are facing everyday is seriously putting their lives in danger, in clear violation of Article 2 requirements to protect life. These Applicants assert that they and their children and relatives are suffering extreme negative health conditions as a result of lead poisoning and in view of the inaction from the respondent, their lives are in peril.

1. General Principles

In their claim of a violation of Article 2, the Applicants rely on a number of principles developed under the Convention. It has been repeatedly affirmed that Article 2 protects one of the most fundamental rights in the Convention, the right to life. The object and the purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective.

The Court has noted repeatedly that Article 2 read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms in

[the] Convention, protects one of the most fundamental rights of the Convention, the right to life.

The first sentence of Article 2(1) enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. This obligation may involve the provision of information regarding a possible risk to life caused by actions of the State. Equally the State is under an obligation to take particular steps to protect certain categories of people who are known to be vulnerable […] including ethnic minorities […] and women. […].

There are other obligations on the State as well. In cases concerning a victim's mistreatment while in a State detention facilities, the Court ruled that "[i]n the event of injuries being sustained during police custody, it was for the government to provide evidence establishing facts which cast doubts on the account of events given by the victim, particularly if this account was supported by medical certificates." In *Aksoy v. Turkey*, the Court affirmed that, "where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the causing of the injury." The logic of this reasoning – articulated by the Court in cases addressing Article 3 claims – applies with no lesser force to claims under Article 2. In view of the fundamental character of the right to life and the unavailability of the single most competent witness capable of substantiating the applicant's allegations of intentional mistreatment, the governing entity should be required to demonstrate that the victims' deaths were not caused by its agent's acts or omissions.

2. Application to the instant case

The Applicants submit that such reasoning and a similar burden or presumption should also apply to circumstances in which the victim is in such a position that he or she is at the mercy of agents of the State and is not free to leave. The Applicants, having been forced against their will to leave their homes and property in South Mitrovica, found themselves essentially trapped on toxic land awaiting action by the authorities to relocate them and return them to their homes. With their homes destroyed and without identification documents or money, with no other State willing to take them as refugees, they were essentially in the custody of the state without freedom of movement. NCA knew they were in serious danger but took no action to move them to safety or treat them for their deadly conditions. While NCA is not the party who put them in the danger, the OECD guidelines, specifically II (2, 11, 12 and 14), IV(3) and VI (3) required that even when NCA is not the party causing the harm, they must takes steps to mitigate it, they must do due diligence to ameliorate it, must prevent and mitigate and must prevent negative health consequences.

Since the State authority knew or should have known of the grave danger to the lives of the victims and did not take any positive steps to remove the victims from such danger, it is in violation of Article 2. In *Oneryildiz v. Turkey*, the Court extended to the field of dangerous activities the notion of the State's obligation to take appropriate action to protect life against a real and imminent threat of which the authorities are or should be aware. The Court found that the State's positive obligation "must be construed as applying 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 by their very nature are dangerous, such as the operation of waste-collection sites". The particular case concerned an explosion that had taken place at a rubbish tip beside which a shanty town had built up over the years.

The resultant landslide had destroyed the applicant's home and killed several members of his family. The Court found that the authorities were aware of the potential risk to the inhabitants of the shanty town and that they had failed to take adequate measures to avoid that risk. It considered that there were measures which could have been taken and which would not have been prohibitively expensive and added that it would not have been sufficient simply to inform the inhabitants of the risk and it concluded that there had been a substantive violation of Article 2.

In the present case, the environmental situation complained of was not the result of a sudden and unexpected turn of events, but, on the contrary, was long-lasting and well-known. Serious concerns were expressed as early as 2000 inside the U.N. and the evidence clearly shows that the authorities knew or should have known of the danger posed to the Applicants by their long-term residence in the camps. The data showing the causal link between the proximity to a lead smelting plant and severe health effects as a result of lead poisoning was available from as early as 1980. NCA knew or should have known of the environmental situation and was required under Guideline VI (3-5) to take action to prevent the deterioration of the health of the Roma. They did not.

In the instant case, the very strong combination of direct evidence and presumptions makes it reasonable to conclude that the victims' health deteriorated as a result of their prolonged stay on heavily toxic land. Furthermore, their prolonged exposure inevitably made the Applicants more vulnerable to various diseases, and will lead to their early death and irreparable injury, adversely affecting their future quality of life - most especially the children. The continued refusal to provide adequate medical treatment for the claimants results in increased harm.

3. Conclusion

In view of the insurmountable evidence of the harm caused by lead poisoning in the IDP camps, the Applicants submit that the continuing dire health situation has been caused by acts and omissions of those responsible and that this constitutes a violation of Article 2.

B. Violations of Article 3

Article 3 states that, "no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

All the Applicants respectfully submit that their long term maintenance in IDP camps on contaminated land near a toxic waste dump, the continuing refusal of adequate medical treatment, poor living conditions and attendant detrimental effects on the Applicants' health and well-being constitute a violation of Article 3 of the Convention. Furthermore, they allege that the conditions in which they have been and continue to be forced to live and the attendant effects on the Applicants' health and well-being inflict on them great physical and mental suffering amounting to inhuman and degrading treatment.

In evaluating the claims of the Applicants, the fact finder should take into account their Romani ethnicity and the fact that their membership in a discrete and historically disadvantaged minority group renders them particularly vulnerable to degrading treatment.

1. General Principles

The Court has made clear that, in evaluating claims of violation of Article 3, it will take into account a range of factors that bear on the vulnerability of the victim. Thus, in its judgment in *Ireland v. United Kingdom*, the Court held:

> "…ill-treatment must attain a minimum level of severity if it is to fall within the scope of article 3. The assessment of this minimum is in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and in some cases, the sex, age, and state of health of the victim, etc."

The rationale for taking account of the victim's sex, age and state of health in assessing whether Article 3 has been violated is clear: the level of ill-treatment required to be "degrading" depends, in part, on the vulnerability of the victim to physical or emotional suffering. The same reasoning supports the conclusion that association with a minority group historically subjected to discrimination and prejudice may, as in the instant case, render a victim more vulnerable to ill-treatment for the purposes of Article 3, particularly where, as in Kosovo, the law enforcement bodies have consistently failed to address systematic patterns of violence and discrimination against Roma.

In its admissibility decision in the case of *Arthur Hilton v United Kingdom* -- where the author, a black inmate, complained of various forms of ill-treatment -- the Commission found that "the author's allegations of assault, abuse, harassment, victimization, racial discrimination and the like raise an issue under Article 3 of the Convention...."

All else being equal, a given level of physical abuse is more likely to constitute "degrading or inhuman treatment or punishment" when motivated by racial animus and/or coupled with racial epithets, than when racial considerations are absent. As the Court found in *Moldovan and others v. Romania*, discrimination must be taken into account as an aggravating factor in examination of a complaint under Article 3.

Moreover, discrimination against an individual or group of individuals may itself amount to degrading treatment sufficient to amount to a violation of Article 3. In *East African Asians v. United Kingdom*, the Applicants complained about the discriminatory nature and effect of legislation that imposed restrictions on admission to the United Kingdom of citizens of the United Kingdom and the Commonwealth who were resident in East Africa. The Commission stated (at paras 207 and 208):

"… discrimination based on race could, in certain circumstances, of itself amount to degrading treatment within the meaning of Article 3 of the Convention. The Commission recalls in this connection that, as generally recognized, a special importance should be attached to discrimination based on race; that publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity; and that differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment when differential treatment on some other ground would raise no such question. The Commission considers that the racial discrimination to which the Applicants had been publicly subjected by the application of the above immigration legislation constitutes an interference with their human dignity which, in the special circumstances described above, amounted to 'degrading treatment' in the sense of Article 3 of the Convention."

In *Cyprus v. Turkey* the Court held that treatment found to be in violation of Articles 8 and 9 of the Convention gave rise to an additional violation of Article 3 because it was directed at members of the Karpas Greek-Cypriot community for the very reason that they belonged to this class of persons. In that case, the Court held that "the Karpas Greek Cypriots live and are compelled to live: isolated, restricted in their movements, controlled and with no prospect of renewing or developing their community. The conditions under which that population is condemned to live are debasing and violate the very notion of respect for the human dignity of its members. … The discriminatory treatment attained a level of severity which amounted to degrading treatment."

We respectfully submit that the identity of the Applicants as Roma, and as such members of a particularly vulnerable minority, resulted in reinforcing their feeling of degradation, utter helplessness and lack of any legal protection and must be given consideration in considering Article 3 violations.

Additionally, the Court has considered treatment to be "inhuman" in circumstances in which, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudla v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). In considering whether a particular form of treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see, for example, *Raninen v. Finland*, judgment of 16 December 1997, *Reports* 1997-VIII, pp. 2821-22, § 55). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

As the European Commission explained in the *Greek case*, "the notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical, which in the particular situation, is unjustifiable… Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience." It is clear that the Applicants suffer severe mental and physical pain.

In *Moldovan v. Romania (*Judgment of 12 July 2005) the Court went a step further when it stated that "[i]t […] considers that the Applicants' living conditions in the last ten years, in particular the severely overcrowded and unsanitary environment and its detrimental effect on the Applicants' health and well-being, combined with the length of the period during which the Applicants have had to live in such conditions and the general attitude of the authorities, must have caused them considerable mental suffering, thus diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement." (para 110) The court found that these conditions constituted a continuing violation and a violation of Article 3.

In *Lopez Ostra v. Spain*, the Court held that environmental pollution suffered by the applicant as a result of living near a waste treatment plant did not constitute a breach of Article 3 because the conditions were not sufficiently severe. However, that case is easily distinguishable from the present claim. In *Lopez Ostra*, the applicant did suffer serious inconvenience from the smells and the noise coming from the plant, but the applicant was not a trapped IDP minority and the plant did not present

grave danger to the applicant's life. In the present case, as shown by the numerous scientific studies, WHO reports, doctor's affidavits, and in the medical reports, the Applicants' long term residence at the toxic site and in horrendous conditions has resulted in severe and ongoing medical problems, irreversible health effects for the children and in some cases, death of their family members. The level of danger to health and life in the present case goes far above and beyond that present in *Lopez Ostra*.

2. Application to the instant case

The authority's complete indifference to their suffering has caused them much humiliation and indignity. Applicant Izjzit Isnija, pregnant when her husband died, threatened to kill herself because she had no means of support for herself and the children. She could frequently been seen on the streets of Mitroveca, pregnant and dragging her three girls with her as she searched through garbage cans for food. Chazim Guzmani from Leposavic/q said, "We have been here six years now. There is no possibility of a life. … What kind of life is this? This is a second hand life. Now we live like animals. … We don't want to spend the winter here again. Last year three children died from the cold. We don't want to wait for a catastrophe." That feeling was echoed by the site administrator for Kablare, "We are not animals" and Haibab Haibabi, site administrator for Zitkovac and later a group in Osterode, "They have no legal rights. See how we live! What legal right is that?"

The living conditions as described above, clearly are inhuman and have caused these Applicants severe health problems including death and irreversible brain damage.

3. Conclusion

In view of the above, the Applicants respectfully submit that their living conditions in the IDP camp, including the severe and permanent health damage caused by their long-term exposure to lead, and the continuing refusal to treat them adequately for lead exposure amounts to inhuman and degrading treatment or punishment and constitutes a violation of Article 3.

C. Violations of Article 8

The Applicants submit that the unbearable and dangerous conditions existing in their homes by failure to abate the lead pollutants amounts to a violation of Article 8 of the Convention. Article 8 provides for four separate rights including the right to respect for "private and family life", the right to "home" and right to "correspondence."

The notion of private life is broad and is not susceptible to exhaustive definition. It protects the moral and physical integrity of an individual and includes the right to live privately, away from unwanted attention and interference. "Family life" covers family relationships and matters essential to those relationships, including all interferences seriously affecting married and unmarried couples as well as their children. "Home" is where one lives on a settled basis and encompasses the right to enjoyment of one's home without interference and/or intrusion.

A. General Principles

The Court has found that Article 8 involves both a duty to refrain from interference as well as a duty

of positive obligation by the States Parties. Although the primary duty of the State is to refrain from interference, Article 8 also involves positive obligations by the State to protect an individual from interference in his or her private and/or family life, home and correspondence. In *Marck v. Belgium*, a case challenging the Belgian legal regime applicable to children born out of wedlock, the Court explained that "the object of the Article is essentially that of protecting the individual against arbitrary interference by the public authorities." Nevertheless, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective "respect for family life." The positive obligations imposed by Article 8 are not confined to the relationship between the individual and the State. In *X and Y v. The Netherlands*, a sexual abuse case, the Court stated that "these obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations between individuals themselves." In this case, NCA was an administrator under both UNMIK and EULEX and by failing to take action to prevent or mitigate the damage has violated the Guidelines II (A)(10-12), IV (6), VI (3-5).

a) "Home" includes environmental safety

1) General principles

According to the Court's case law, the concept of home includes the peaceful enjoyment of residence including protection from infringements upon private life and home from nuisance and disturbance.

Although Article 8 does not guarantee the "right to a clean environment," a failure by state authorities to take measures to protect individuals from environmental harm may nevertheless amount to a violation of Article 8. The Court has stated that whether environmental damage amounts to an actual interference or to a failure to respect the rights protected by Article 8 is immaterial, since in both cases a fair balance must be struck between the needs of the community and the protection of the individual.

In *Lopez Ostra v. Spain*, the Court established the full applicability of Article 8 to the context of environmental nuisance. A plant for the treatment of liquid and solid waste was built on municipal land twelve meters away from the applicant's home. The applicant complained about smells, noise and polluting fumes caused by the waste treatment plant and the resulting infringement of her right to respect for her home, private and family life that this caused. On the facts of the case, the Court noted that even taking the State's margin of appreciation into account, the State did not succeed in striking a fair balance between the interest of the town's economic well-being – that of having a waste treatment plant – and the applicant's effective enjoyment of her right to respect for her home and family life.

Similarly, in *Guerra v. Italy*, the Court held that the direct effect of toxic emissions from a private factory on the Applicants' home (and consequently on their right to respect for their private and family life) meant that Article 8 was applicable. To determine whether there had been a breach of the state's positive obligation to "respect" private and family life the Court considered that "severe environmental pollution may affect individuals' well being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely.

… The respondent state did not fulfill its obligation to secure the Applicants' right for their private

and family life, in breach of Article 8 of the Convention."

In the past, the Court has focused on the proportionality of considerations in evaluating Article 8 claims, especially those involving private industry. Violations have been found only where the interests of the individuals outweigh those of the State in supporting a particular industry. The situation in the IDP camp is not one of a daily nuisance, such as the noise pollution violations the Court has found under Article 8, but a full-scale unabated environmental emergency, which continues to cause daily harm to the lives of the inhabitants of the camp.

In *Moldovan and others v. Romania,* the Court found, in connection with a makeshift settlement for Roma families who had been ousted from their homes by mob violence, that unsanitary living conditions, can rise to the level of an Article 8 violation. Specifically, regarding Article 8, the Court noted, the hindrance of the State to resolution of the problem and the repeated failure to put a stop to the breaches of the applicant's rights, amounted to a serious violation of Article 8. Here the Applicants' present living situation is similar to that of the Applicants in *Moldovan,* but also includes substantially more serious exposure to toxic lead poisoning. Both Applicants and local NGOs have protested about the situation for years to UNMIK and EULEX and NCA asked to remedy the situation with no result. WHO made specific findings of a medical emergency and recommended immediate evacuation. The failure of to relocate the Roma IDPs immediately and provide adequate medical treatment for all severely interferes with their right to a home and private life in violation of Guidelines II(A)(2, 10-12, 14), IV and VI (3-5).

B. Application to the instant case

In the instant case, NCA assumed operational management of the IDP camp in 2006. Despite having actual knowledge of the lead contamination on the property on which the camps were built, NCA took no significant action to remove the Roma from the contaminated sites. Relocation is the only possible solution with such high lead levels. WHO recommended evacuation as early as 2000. Applicants' right to respect for their private lives and homes has been violated by the failure to remove the Applicants from the source of the contamination and to adequately treat the damage. NCAs lack of due diligence to mitigate the damage to the IDPs is a violation of the Guidelines II (A) (10-12, 14), IV and VI (3-5). The refusal of NCA to work with the Roma leaders and the NGOs who were working to abate the lead conditions is a specific violation of the Guidelines II (A) (14).

C. Conclusion

Because of the contamination in and around their homes, the Applicants' home lives have revolved around death, physical illness and the difficulty of dealing with emotional instability in the form of confusion, anxiety, nervousness, hyperactivity and insomnia, all symptoms of excessive lead exposure. One Applicant expressed his desire for the simple normalcy of family life, noting" I want to go on a picnic…I want to take my wife and children to somewhere where there is blue sky and green grass and stay overnight in a motel…Is that so wrong?" He asked, "Why can't I get work? Instead I have to watch my children go to bed at night hungry."

The mental retardation caused by the lead poisoning forces pregnant women to miscarry, self-abort or to watch their children die. No greater impact on family life can be imagined. Applicants submit that

this is a violation of Article 8 right to home life.

E. Violation of Article 14

The relevant part of Article 14 provides that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as … race,… national or social origin, association with a national minority." The language of the article makes it clear that its anti-discrimination provisions are applicable only with respect to an independent substantive right guaranteed in the Convention. In view of this, the Court noted in the *Belgian Linguistics* case that Article 14 has "no independent existence."

A. General principles

The Court has defined discrimination as different treatment under similar situations when there is no objective and reasonable justification, no legitimate aim and no proportionality. Further, if the discrimination is a fundamental aspect of the case Article 14 is implicated. When other ethnic groups are treated differently, the burden shifts to the government to justify that treatment. (para. 54, 57) But, "In any event, the Court considers that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures." (para 58)

In relation to the standard of proof used to prove a substantive violation of Article 14, the Court noted in *Nachova v. Bulgaria* that the standard it uses is not identical to the 'beyond reasonable doubt' standard used in national legal systems to rule on criminal guilt. The Court went on to emphasize the specificity of the task of the Court in seeing that State Parties abide by their obligations in accordance with the Convention in the context of an Article 14 claim:

> "The specificity of its task under Article 1 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers in the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights".

B. Application to the instant case

The RAE community in Kosovo regularly face both direct and institutional discrimination suggesting that the failure to remove Roma from the IDP camps is but one incident in a pattern of discriminatory practiced by both private and public actors. Discrimination in access to employment, substandard

housing conditions and denial of the right to self-determination are all part of a general exclusion of RAE from mainstream society. That the Roma remain in the toxic IDP camps and without adequate treatment appears to be yet another manifestation of discrimination in a pattern of discriminatory practice that is a fundamental factor in this case.

The authorities' decision to place the Roma IDP camps on contaminated land differed from their decisions with regard to other IDPs in Kosovo. Only the Roma were placed in such close proximity to the Trepca mine on land known to be contaminated with high levels of lead. While the lead levels are elevated generally in the Mitrovica area, the WHO reports clearly find that the levels in the Roma camps were the highest by a large margin.

Once the dangerous health effects of lead exposure were known, as early as 2000, KFOR personnel affected and non-Roma IDPs were informed of the risks and provided access to medical care, while the Roma residents were given neither information nor treatment options.

The failure of authorities to act promptly and responsibly to move the Roma to safer land, despite technical, medical and expert recommendations to do so, was also contrary to action taken to provide assistance to other non-Roma groups. The public authorities have acted to return, rebuild and compensate non-Roma inhabitants of Kosovo who have had property lost or destroyed during the 1999 conflict. For example, with respect to the more recent property destruction in 2004, the "Government has undertaken reconstruction of almost all properties damaged or destroyed in March 2004 and has provided cash grants to returning families." The Roma still await reconstruction and compensation from properties destroyed in 1999.

In addition, in an unrelated suspected environmental emergency, UNMIK successfully evacuated over one thousand Albanians from the village of Hade, which was located on a coal mine and in danger of being subject to a landslide. Residents, who had to leave their homes were provided temporary food and shelter as well as allocated new land parcels and new homes or apartments. As described in the Ombudsperson's Fifth Annual Report dated 11 July 2005, " after innumerable efforts by the Government to achieve a settlement with the residents of Hade village…29 families refused to be relocated. Nevertheless, the involuntary relocation of the latter families on 2 June 2005 had reflected intensive planning during a long period of time and was well organized and carried out carefully. For the arisen property losses or damages, compensation payments were already underway…."

The governmental actions of UNMIK demonstrate that the evacuation from a potentially dangerous environmental situation is possible for over 1,000 Albanians. In contrast the removal of half that number of Roma from a known and well-documented contamination site has been delayed for twelve years. Clearly other ethnic groups were treated differently. Therefore, the burden shifts to the authorities. However, as the Court has said, such treatment cannot be objectively justified.

No one has investigated the deaths linked to lead poisoning. In *Nachova v. Bulgaria*, the Court found that the failure of the authorities "to take all possible steps to establish whether or not discriminatory attitudes played a role" in the events at issue, constituted a violation of Article 14. The Court further noted that, "when investigating violent accidents … State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events."

According to the Global IDP report, Roma are at a disadvantage in identification documents, education, access to social security, and employment. "Among the displaced population in Serbia and Montenegro (including Kosovo) Roma IDP's generally face the worst conditions, including with respect to housing and access to social welfare and education."

Likewise the Group 484 report, states that more Roma have more political asylum claims because they are threatened and that Roma face systemic discrimination in employment, social security, housing, health care and education (p. 19 & 31), and that in March 2005, UNHCR said to stop sending Roma to Kosovo because the situation was not safe.

The Roma themselves are well aware of the discrimination they face in Kosovo. One Applicant said "We live everywhere in the world. We live with any kind of people all over the world. We can work with anyone. Why do they hate us?" He has personally experienced employment discrimination. "I went to high school with Albanians and Serbs. I have the same education they do. Why can't I get work?" Another resident stated, "I am 43 years old. I have been trained but I have never been able to get a job because I'm a Gypsy." And they are aware of how they are used by both the Serbs and the Albanians. "We are a bridge between the Albanians and the Serbs and everyone walks on us."

Even the OSCE Mission in Kosovo has found that the RAE community faces discrimination in education, employment, and health care and that policy changes do not translate to protection of human rights on the ground. Likewise, The International Commission on the Balkans has said, "But a substantial share of the blame for the failure of the project of a multiethnic society in Kosovo should be placed at the door of UNMIK and the international community. Over the past few years, UNMIK has on several occasions been actively involved in a policy of reserve discrimination in Kosovo." The failure of NCA to carry out due diligence, to prevent and mitigate the discrimination against Roma that was evident to all is a violation of the Guidelines Ii (A)(2) and IV.

C. Conclusion

The Applicants respectfully submit that the violation of their Convention rights and their Roma ethnicity are interlinked and inseparable. The inhabitants of the RAE IDP camps in North Mitrovica have had to endure and continue to endure suffering, neglect and callous disregard for their health and well-being because of their Roma ethnicity which violates Article 14. We submit that the facts of this case are sufficiently strong to warrant a finding that there had been a difference in treatment on the basis of race and to shift the burden of proof. If no satisfactory alternative explanation can be found – and the applicants assert that it cannot – then the Applicants respectfully urge the panel to make a finding of violation of the substantive aspect of article 14 read in conjunction with articles 2,3 and 8.

Claimants submit that these violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms are sufficient to also violate the Universal Declaration of Human Rights, Convention on Civil and Political Rights, Convention on Economic and Social Rights, CEDAW , Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Racial Discrimination.

F. Violation of other international instruments

The specific provisions of the human rights instruments alleged to have been violated in addition to those in the immediately preceding section are detailed below.

Universal Declaration of Human Rights

While the Declaration is not binding, it provides evidence of international customary law. The facts as stated in the claim violate Articles 1, 2 and 7 because of the ethnic and gender discrimination against the Roma, and because they are being denied their rights because of the "political, jurisdictional or international status of the country or territory to which a person belongs…" Because the territory is and was at the relevant time administered by international organizations, many remedies that would have been available to the parties are not available. The facts illustrate a clear violation of Article 3 based on the medical harm, permanent and sometimes fatal, to the parties and thus the failure of the right to life, liberty and security of person. Article 5 is violated by the inhuman or degrading treatment.

The facts illustrate a violation of Article 12 because of the interference with privacy, family, home and attacks upon their honour and reputation.

The IDPs have not been afforded the economic, social and cultural rights indispensable for their dignity and the free development of their personality in violation of Article 22. (See the section on CESCR below) They certainly have not had the standard of living adequate for health and well-being nor have motherhood and childhood been given special care and assistance in violation of Article 25.

Convention on the Elimination of All Forms of Discrimination Against Women

The parties respectfully submit that the facts of the instant case disclose a number of violations of CEDAW including : Article 1 regarding discrimination against women, Article 2 failure to eliminate discrimination against women and to refrain from engaging in acts of discrimination, Article 3 failure to take action to guarantee equality, Article 5 failure to take measures regarding family education in the best interest of the children, Article 12 failure to take measures to eliminate discrimination against women in the field of health care and access to health care and ensuring appropriate services in connection with pregnancy including free services and adequate nutrition, and Article 16 by the refusal to give the Roma women the necessary information in the best interest of the child so as to exercise their rights.

a. Violations of Article 1, 2 and 3 – Discrimination against women, failure to eliminate discrimination and failure to take action to guarantee equality.

The facts of the discrimination against Roma are stated above. Since NCA knew or should have known of the grave danger to the lives and health of the victims and did not take any positive steps to remove the victims from such danger or treat them to reduce the danger due to discrimination, it is in violation of Articles 1, 2 and 3 of CEDAW and the Guidelines II (A) (2, 10-13), IV and VI (3-5).

In analyzing claims of discrimination and failure to guarantee equality, the European Court of Human Rights has made clear that the vulnerability of the victim must be taken into account.

The treatment of these particular Roma women, the refusal to take any action to end discrimination or promote equality clearly violates Articles 1, 2 and 3 of CEDAW.

b. Violations of Article 5, 12 and 16 regarding family education and access to health and information.

i. Denial of access to health care

All the parties contend that the situation they and their families are facing everyday is seriously putting their lives in danger, in clear violation of Article 12 access to health care especially for pregnant women. These parties in the camps assert that they and their children are suffering extreme negative health conditions as a result of lead poisoning and in view of the inaction from the respondent, their lives are in peril.

All the parties who are or have been residents of Zitkovac, Chesmin Lug and Kablare and who then became residents of Osterode during the time the camp was administered by NCA respectfully submit that that their initial placement and long term maintenance in IDP camps on contaminated land near a toxic waste dump and attendant detrimental effects on the parties' health and well-being constitute a violation of Article 12 of CEDAW. Furthermore, all the applicants allege that the conditions in which they have been and continue to be forced to live and the attendant effects on the parties' health and well-being inflict on them great physical and mental suffering amounting to inhuman and degrading treatment.

In evaluating the claims of the parties, the National Contact Point should take into account their Romani ethnicity and the fact that their membership in a discrete and historically disadvantaged minority group renders them particularly vulnerable to degrading treatment.

Such conditions under which these families were forced to live interfere with the ability to have proper family education and access to health and information. These conditions interfere with family life.

In the instant case, despite having actual knowledge of the lead contamination on the property on which the camps were built, (WHO recommended evacuation as early as 2000) NCA took no or only very slow action to promote the mitigation of the damage and remove the Roma from the contaminated sites. Some twenty-three families are still not moved. Immediate relocation is the only possible solution with such high lead levels.

The living conditions described above in the camps have caused these parties severe health problems including death and irreversible brain damage. The mental retardation caused by the lead poisoning forces pregnant women to miscarry, self-abort or to watch their children die. No greater cruelty can be imagined than forcing pregnant women to abort or to watch their children slowly die without any access to health care or information. This is a violation of Article 12 and 16.

<u>Convention on the Rights of the Child</u>

The provisions violated include Article 2 due to ethnic and gender discrimination. Article 3 is violated in that the best interest of the children is not taken into account. In fact child after child is born with permanent mental deficiencies and with lifelong kidney and other organ

problems. The rights of the parents have not been respected in Article 5 by failing to report the results of the blood tests. The right to life in Article 6 is violated in particular for the children who have died. The right to development in Article 6 is denied by the permanent mental deficiencies of the children born with lead poisoning and the denial of adequate medical treatment. Like the parents, the child has a right to protection from attacks on or interference with privacy, family and home under Article 16, which has been violated.

Article 19 is violated by the failure to take measures to protect the children from physical or mental violence, injury or abuse. NCA is violating Article 23 by not creating conditions in which a mentally or physically disabled child can enjoy a full and decent life with special care.

The right of the child to the highest attainable standard of health in Article 24 is violated. The standard of living these children have been forced to endure falls far below that of adequate as required in Article 27. As these are IDPs, NCA has a responsibility under the guidelines to do due diligence, and take steps to prevent and mitigate these harms. They did not, therefore violating II(A) (2, 10-13), IV and VI (3-5).

Article 37 is violated by the subjugation of these children to cruel, inhuman or degrading treatment.

International Convention on Civil and Political Rights

Article 2 and 26 are violated by the discrimination based on status of the parties as Roma and the failure to provide an effective remedy (2)(3)(a) regardless of the fact that the violator was in an official capacity, and the failure to provide a competent authority to hear the complaint.

As with the other conventions, the victim's right to life under Article 6 is violated by the long term poisoning. Article 7 prohibits inhuman or degrading treatment, which these victims suffered. Various scientific studies that have been done but their results never released. Since we do not know the content or purpose of those studies, it may be possible that the second sentence of Article 7 is violated as well since perhaps these Roma were subjected without their consent to what could be considered medical and scientific "experimentation" – i.e. what this level of lead poisoning does to the human body. While this may sound shocking, it is believable to the Roma who were subject to such medical experimentation during World War II. The recent fingerprinting in Italy reminds them that those days are not so far away.

Once again Article 17 prohibits interference with privacy, family, home or correspondence or attack on honor and reputation. Every child is entitled to protection without discrimination (Article 24). These children have been denied such protection.

Convention against Torture and other Inhuman and Degrading Treatment

Article 1 is violated because these parties have been subjected to severe physical and mental pain and suffering that was intentionally inflicted. Article 16 is violated by the failure of NCA to prevent and mitigate public officials and others acting in their official capacity to participate in such acts.

International Covenant on Economic, Social and Cultural Rights

Article 2(2) is violated by discrimination against the parties for their status as Roma. Article 10 is violated in that protection and assistance was not accorded to families, especially mothers (2) or children (3). Article 11 is violated in that the parties did and do not now have an adequate standard of living including adequate food, clothing and housing and to continuous improvement of said living conditions. The fundamental right to be free from hunger is violated in Article 11(2).

Article 12 is violated by the failure to assist the IDPs in attaining the highest possible standard of physical and mental health. In contra distinction to Article 12 (2)(b) NCA did not work for the improvement of environment hygiene but colluded with the authorities to keep the families on even more polluted ground at Osterode. In violation of Article 12 (2)(c), NCA failed to provide prevention, treatment and control of the medical harms from lead or to provide medical services or attention (Article 12 (2)(d)) in violation of the Guidelines II (A)(2, 10-12), IV and VI (3-5).

H. Violations of international standards and customary international law

International Standards include the right to life and health, freedom from torture and inhumane and degrading treatment, adequate housing and a decent standard of living.

Right to Life

The right to life and the prohibition of torture and cruel and degrading treatment are peremptory norms (*jus cogins)* in international law. Likewise international documents repeat the three humanitarian duties: to respect, protect, and fulfill the rights outlined in the instrument. In ICCPR General Comment 6 (Sixteenth session, 1982): Article 6: The Right to Life, A/37/40 (1982) 93 at para. 5 the committee outlined that the right to life should not be construed narrowly but in fact means that the state must take positive measures.

CEDAW General Recommendation 24 (Twentieth session, 1999): Article 2: Women and Health, A/54/38/Rev.1 part I (1999) 3 at para. 6 mandates that special attention be paid to the health of Internally Displaced Persons (IDPs) who are women. In addition, CEDAW General Recommendation 19 (Eleventh session, 1992): Violence Against Women, A/47/38 (1992) 5 at paras. 20 and 24(m) requires states to ensure that women are not forced to seek unsafe medical practices such as illegal abortion due to lack of service.

Many cases have held that denial of medical care or treatment for a medical condition is a violation of Article 10 of the ICCPR. [1] However, denial of adequate medical care can also

[1] *Whyte v. Jamaica* (732/1997), ICCPR, A/53/40 vol. II (27 July 1998) 195

(CCPR/C/63/D/732/1997) at para. 9.4.; *Henry v. Jamaica* (610/1995), ICCPR, A/54/40 vol. II (20 October 1998) 45; (CCPR/C/64/D/610/1995) at para. 7.3; *Setelich / Sendic v. Uruguay* (R.14/63), ICCPR, A/37/40 (28 October 1981) 114 at para. 20; *Lewis v. Jamaica* (527/1993), ICCPR, A/51/40 vol. II (18 July 1996) 89 (CCPR/C/57/D/527/1993) at para. 10.4; *Henry and Douglas v. Jamaica* (571/1994), ICCPR, A/51/40 vol. II (25 July 1996) 155 (CCPR/C/57/D/571/1994) at para. 9.

constitute cruel and inhuman treatment under Article 7 as well. [2] It isn't even necessary that the state be the one who actually caused the harm; only that they did not take adequate steps to prevent it. [3]

In the instant case, NCA has grievously violated those standards by failing to ensure adequate medical care for those affected by the lead poisoning for those in Osterode during the time NCA administered the camp in violation of Guidelines II (A)(l0-12), IV and VI (3-5).

Right to adequate housing

Housing rights are protected in numerous international instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child.

For instance, the Universal Declaration of Human Rights, article 25(1), states:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and 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.

Similarly, the International Covenant on Civil and Political Rights, article 17(1), protects persons from arbitrary or unlawful interference with their homes. The International Convention on the Elimination of All Forms of Racial Discrimination, article 5(e)(iii), prohibits discrimination on account of race, color, or national or ethnic origin with respect to the right to housing. Likewise, the Convention on the Elimination of All Forms of Discrimination Against Women, article 14(2)(h), obliges states parties to eliminate discrimination against women in rural areas to ensure that such women enjoy adequate living conditions, particularly in relation to housing.

363. The Convention on the Rights of the Child, article 27(3), obliges states parties to provide, in cases of need, material assistance and support programs, particularly with regard to housing. Other international instruments guaranteeing housing rights include various International Labor Organization conventions and humanitarian law instruments.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), however, provides the most advanced international standard protecting housing rights. Article 11(1) of the ICESCR states:

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[2] *Linton v. Jamaica* (255/1987), ICCPR, A/48/40 vol. II (22 October 1992) 12

(CCPR/C/46/D/255/1987) at paras. 2.7 and 8.5; *Williams v. Jamaica* (609/1995), ICCPR, A/53/40 vol. II (4 November 1997) 63 (CCPR/C/61/D/609/1995) at para. 6.5.

[3] • *A. T. v. Hungary* (2/2003), CEDAW, A/60/38 part I (26 January 2005) 80 at paras. 2.1-2.7,

3.1 and 9.2-9.6.

> The States Parties to the present Covenant recognize the right of everyone to have an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The Committee on Economic, Social and Cultural Rights, charged by the international community with implementing and monitoring the ICESCR, provided a more precise meaning of the right to adequate housing as expressed in article 11(1) with the adoption of General Comment No. 4 in 1991. This comment articulates component elements of the right to adequate housing, elements that provide a more concise interpretation of the right and thereby further the capability of its content to be judicially determined. The comment also lays out such general principles of international human rights law as the principle of nondiscrimination and discusses the practice of forced eviction, stating that the practice is a prima facie violation of the ICESCR.

The seven components of the right to adequate housing articulated in General Comment No. 4 are legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. The habitability and accessibility components touch most closely on the issue of health. The former requires that housing provide shelter from threats to health as well as disease vectors.

General Comment No. 14 on the right to the highest attainable standard of health, adopted in 2000, also lends itself to the promotion and protection of housing adequacy. This comment gives clearer meaning to article 12 of the ICESCR, which states:

> "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. "

The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

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

In General Comment No. 14, the committee recognized that "the right to health is closely related to and dependent upon the realization of other human rights . . . including the right . . . to housing" and that "these and other rights and freedoms address integral components of the right to health." With this comment, the committee also expressly interpreted the human right to the highest attainable standard of health to be "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as . . . housing."

ICESCR General Comment 4 (Sixth session, 1991): Article 11 (1): The Right to

Adequate Housing, E/1992/23 (1991) 114 at paras. 1, 3, 4 and 6-19 states that the right of adequate housing is of central importance to every other right. The right applies to everyone (Article 6) including IDPs and constitutes more than just a roof over one's head but also includes security, peace and dignity (Article 7). As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means...adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost". (7)

Paragraph 8 defines what is adequate housing which includes legal tenure(a) and:

> (b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services; …
>
> (d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing 5/ prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates; …

Article 11 requires that priority be given to social groups living in unfavourable conditions. But ICCPR General Comment 27 (Sixty-seventh session, 1999): Article 12: Freedom of Movement, A/55/40 vol. I (2000) 128 at para. 7 requires that persons may not be forceably displaced without good reason and due process.

In explaining the habitability requirement, General Comment No. 4 expressly encourages states parties to the Covenant to "comprehensively apply the Health Principles of Housing prepared by the World Health Organization which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses."

The Health Principles of Housing, WHO, Geneva 1990, says "Over and above their basic purpose of providing shelter against the elements and a focus for family life, human dwellings should afford protection against the hazards to health arising from the physical and social environments." In this situation, the opposite has been true – the Roma have been placed in and forced to remain in "homes" that are poisonous and deadly.

The *Health Principles of Housing* elaborate six major principles governing the relationship between housing and health: (1) protection against communicable diseases; (2) protection

against injuries, poisonings, and chronic diseases; (3) reducing psychological and social stresses to a minimum; (4) improving the housing environment; (5) making informed use of housing; and (6) protecting populations at risk. Some principles are particularly relevant to health.

Principle 2 "Protection against injuries, poisoning and chronic diseases" mandates that to be adequate, housing must provide protection against injuries, poisoning and other types of dangerous pollutants. Principle 6 "Protecting populations at special risk" says that adequate housing should reduce to a minimum hazards especially to certain populations such as women, children and IDPs. Principle 7.1 says that the role of the health authorities requires active leadership and informed advocacy.

These principles are more than idle dreams but have been translated to reality in *L. R. et al. v. Slovakia* (31/2003), CERD, A/60/18 (7 March 2005) 119 at paras. 2.1-2.4,10.2-10.10, 11 and 12. In that case, the Roma were living in appalling housing conditions like those of the parties in this case. The city not only failed to remedy the situation but actively interfered with potential remedies. The CERD committee found Slovakia guilty of racial discrimination (Art 2), violation of right to housing (Art 5) and for lack of remedy (Art. 6).

The right to adequate housing includes ensuring access to adequate services. The right to adequate housing does not just mean that the structure of the house itself must be adequate. There must also be sustainable and non-discriminatory access to facilities essential for health, security, comfort and nutrition. For example, there must be access to safe drinking water, energy for cooking, heating, lighting, sanitation and washing facilities, means of storing food, refuse disposal, site drainage and emergency services.

The right to adequate housing is a human right recognized in international human rights law as part of the right to an adequate standard of living. People on the move, whether they are refugees, asylum-seekers, internally displaced persons (IDPs) or migrants, are particularly vulnerable to a range of human rights violations, including violations of the right to adequate housing. Displaced persons are also particularly vulnerable to discrimination, racism and xenophobia, which can further interfere with their ability to secure sustainable and adequate living conditions. The Guiding Principles on Internal Displacement, issued by the Representative of the Secretary-General on internally displaced persons, recall that all IDPs have the right to an adequate standard of living and that, at a minimum, regardless of the circumstances and without discrimination, the competent authorities shall provide IDPs with and ensure safe access to basic shelter and housing (principle 18). There is also an immediate obligation to take steps, which should be concrete, deliberate and targeted, to fulfil the right to adequate housing.(The Right to Adequate Housing, Fact Sheet No. 21/rev. 1, Office of the UN High Commissioner for Human Rights, UN Habitat). By failing to engage in due diligence, by failing to identify, prevent and mitigate and actual adverse impacts of living on lead poisoned land, NCA violated Guidelines II(A)(2, 10-13), IV and VI (3-5).

<u>Right to an adequate standard of living</u>

Articles that establish the right to an adequate or decent standard of living, which includes food, clothing and shelter, are:

CERD (Art 5)(e) (iii) – right to housing

ICESR Article 11 - standard of living, food, clothing, housing

CEDAW

Art 12 - access to health care and nutrition especially during pregnancy

Art 14(2)(h) – adequate living standard –housing, sanitation, electric, transport, water, communications

CRC

Art 24 - food, water, environmental pollution, information

Art 27 – standard of living, nutrition, clothing, housing

In ICESCR General Comment 12 (Twentieth session, 1999): Article 11: The Right to Adequate Food, E/2000/22 (1999) 102 at paras. 1-41 the Committee said:

> 4. The Committee affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights. This right is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.

The Comment goes on to say in Article 6 that the right is not to be interpreted narrowly, but to include the food needed for physical and mental growth and development especially for children and pregnant women (Art. 9). Having food accessible applies to those with special needs (Art 13). When a person is hungry, that at the least, is a violation (Art. 17). Hunger and the lack of appropriate food for the lead poisoning is common among these victims. See paragraphs 318, 144-271.

A right without a remedy is no right at all and the Comment goes on to state:

> 32. Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen and human rights commissions should address violations of the right to food.

This mandates specifically applies to IDPs and priority should be given to the most vulnerable groups (Article 36). The role of the UN is outlined:

> 40. The role of the United Nations agencies, including through the United Nations Development Assistance Framework at the country level, in promoting

the realization of the right to food, is of special importance. Coordinated efforts for the realization of the right to food should be maintained to enhance coherence and interaction among all the actors concerned, including the various components of civil society.

CEDAW General Recommendation 24 (Twentieth session, 1999): Article 2: Women and Health, A/54/38/Rev. 1 part I (1999) 3 at paras. 7 and 28 makes it clear that women have a fundamental human right to nutritional well-being throughout their life span by means of a food supply that is safe, nutritious and adapted to local conditions. States parties are obligated to take positive measures to ensure these rights. (Art. 28) When the applicant families are forced to forage for food in garbage cans, clearly their rights are being denied. This was obvious to NCA but no action was taken to prevent and mitigate in violation of Guidelines II (A) (2, 10-13), IV and VI (3-5).

NCA has violated local criminal law by indifference and negligence in stopping the continuing poisoning and contamination of the persons living in these camps and those who visit them.

The provision applicable from the Provisional Criminal Code of Kosovo (PCCK) that covers the acts alleged is the one provided for in the Chapter XXV (Article 291), specifically Article 291, paragraph 5.[4] On the other hand, the former laws applicable (ASPK code) provided for an almost identical provision. (Article 167 – same heading).

No effort was made by NCA to use the criminal law to remedy the harm to the IDPs they were charged to protect. The crimes against the Roma are serious crimes causing death and permanent injury. Arguments have been made that the actions constitute slow genocide and

[4] Causing General Danger - Article 291
(1) Whoever, by using fire, flood, weapons, explosives, poison or poisonous gas, ionizing radiation, mechanical power, electrical power or any other kind of energy causes great danger to human life or to property of substantial value, shall be punished by imprisonment of three months to three years.
(2) An official or a responsible person who, contrary to the provisions on his or her obligations in the workplace, does not install equipment for protection against fire, flood, explosion, poison or poisonous gases, ionising radiation, mechanical power, electrical power or any other kind of energy or fails to maintain such equipment in proper condition or fails to put it to use or in general fails to comply with the rules or technical regulations on protective
measures and thereby causes great danger to human life or property of substantial value shall be punished as provided for in paragraph 1 of the present article.
(3) When the offence provided for in paragraph 1 or 2 of the present article is committed in a place where a large number of people are gathered, the perpetrator shall be punished by imprisonment of six months to five years.
(4) When the offence provided for in paragraph 1 or 2 is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one year.
(5) When the offence provided for in paragraph 1 or 2 of the present article results in serious bodily injury or substantial material damage, the perpetrator shall be punished by imprisonment of one to eight years and when such offence results in the death of one or more persons, the perpetrator shall be punished by imprisonment of one to twelve years.
(6) When the offence provided for in paragraph 4 of the present article results in serious bodily injury or substantial material damage, the perpetrator shall be punished by imprisonment of up to five years, and when such offence results in the death of one or more persons, the perpetrator shall be punished by imprisonment of one to eight years.

are war crimes. They have not been properly investigated. In addition, the Roma have been victims of continuing persecution and intimidation amounting to discrimination and inhuman and degrading treatment.

VII. LIST OF DOCUMENTS /EXHIBITS

Number	Document
1	Republic of France, Institute de Veille Sanitaire, Evaluation and Surveillance of Lead Exposure by French military at Mitrovica, Kosov No. 34/2002, 20 August 2002.
2	"Determinates of Elevated Blood Lead during Pregnancy in a Populati Surrounding a Lead Smelter in Kosovo, Yugoslavia", Joseph Grazian Dusan Popovac, Pam Factor-Litvak, Patrick Shrout, Jennie Kline, Mar Murphy, Yu-hua Zhau, Ali Mehmeti, Xhemal Ahmedi, Biljana Rajovi Zorica Zvicer, Dragoslav U. Nenezic, Nancy J Lolacono and Zena Ste Environmental Health Perspectives, Vol, 89, pp. 95-100, 1990, and "" Yugoslavia Prospective Study of Environmental Lead Exposure", Pan Factor-Litvok, Gail Wasserman, Jennie K. Kline, & Joseph Graziano, Environmental Health Perspectives, Vol. 107, No. 1, Jan 1999.
3	Tenth Assessment of the Situation of Ethnic Minorities in Kosovo, OS
4	Effects of Early childhood lead exposure on academic performance an behavior of school age children, Chandramouli, Steer, Elis, Emond
5	Sandra Molano and Andrej Andrejew, "First Phase of Public Health on Lead Pollution in Mitrovica Region," November 2000.
6	Fatal Pediatric Lead Poisoning, CDC, 2000
7	World Health Organization, Preliminary Report on Blood Lead Levels North Mitrovica and Zvecan, July 2004, together with Memorandum f Gerry McWeeney, Health Environment Programme Manager, WHO, July 2004, Pristina, Kosovo (July 2004 WHO Report).
8	Recommendations for Preventing Lead Poisoning among Internally Displaced Roma Population in Kosovo, CDC, 2007
9	Executive Summary, received from Dr. Rokho Kim
10	Investigation of the heavy metal load in refugee camps with Mitrovec Kosovo: Results of the hair analysis, Klaus Dietrick Runow.
11	Highest Level of Lead Contamination Ever Registered in Samples of I

	Hair, Society for Threatened People, December 2005, "My work with women and children in the Kosovo refugee camps contaminated with Miradija Gidzic.
12	IDPs from Kosovo: stuck between uncertain return prospects and den local integration, Global IDP, 2005
13	UNMIK press release re Dr. Kouchner, 2000
14	The Yugoslavia Prospective Study of Environmental Lead Exposure, Graziano et al, 1999
15.	Return from Western Europe, Group 484, Project team
	I have additional documentation, in fact voluminous documentation, including medical records of the claimants. Much is not on line and w have to be scanned or sent hard copy.

6. **Provide details on dealings that you or co-complainants have had with the company (including details of exchanges) relevant to address the reasons for this complaint.**

Sept 10-14, 2006 I was at Osterode. The officials of NCA facilitated my visit with the clients there but did not meet with me. In fact there had been some threat that I would not be allowed into the camp or to meet with my clients.

8 September 2007 I was again at Osterode talking to clients. Again INCA officials would not meet with me.

14-19 January 2009 I was in Osterode meeting with clients but NCA officials would not meet with me.

The Roma in the camps, their chosen representatives, and the Kosovo Roma Refugee Foundation and their staff have had extensive dealings with NCA regarding various health problems including lack of treatment and the condition of living including the food supply. While most camp residents describe the NCA workers themselves as decent people, they failed to take any systemic action to ameliorate the conditions the Roma struggled with. The NCA did not cause the condition, but under the Guidelines they are not allowed to simply observe violations of human rights and take no positive action.

Under Guideline II (A) (10) they must identify, prevent and mitigate actual and potential adverse impacts of human rights violations. Under subsection (12) they must seek to prevent or mitigate even when such harm is not caused by them. Under (14) they must engage with the relevant stake holder to take their views into account. The pleas of the Roma for safe and

healthy living conditions and for adequate treatment for the lead poisoning went unanswered by NCA.

7. **What actions do you consider the company should take to resolve the problem?**

    1. Remediation and mitigation of the violation of human rights by providing the desperately needed medical care.

    2. Remediation and mitigation of the human rights violations by relocation of the remaining Roma out of Osterode (23 families).

    3. Remediation and mitigation of the human rights violations by sponsoring any Roma families that want to come to Norway to receive the medical treatment and improve their lives.

8. **What is your objective in bringing the case?**

Justice for the Roma.

Immediate relocation for those still on poisoned land.

Desperately needed medical care for all those poisoned by the lead. One particular boy, Ergin Salihi, who is not one of my clients, is near death and yet everyone who is approached to help turns away. Sara Jahizovic, who is one of my clients, is also in severe medical condition with no way to obtain treatment.

Decent living conditions.

9. **Are there any additional details that you wish to bring to the attention of the Norwegian** NCP and the company?

10. **In addition to ensuring that all the information above has been provided, you should also confirm that:**

Please confirm that you are aware that all the information you provide to the Norwegian NCP will be shared with the company. If you wish to make an exception and keep information confidential please provide justification. Please also confirm that you understand that the Norwegian NCP's approach to resolving complaints is in the first instance to facilitate conciliation or mediation between the complainant and the company.

I would request that the names of the complainants and the medical conditions be kept confidential between NCP and NCA. Some of the complainants have already been subject to harassment and intimidation from Albanians, Serbs and even other Roma for bringing complaints. Some had had to flee to save their lives. NCA is already aware of the terrible medical conditions of the IDPs.

I also ask that you act in an expedited manner as every day that passes without any medical treatment bring serious medical consequences to the applicants.