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**WRITTEN COMMENTS
OF THE EUROPEAN ROMA RIGHTS CENTRE**

CONCERNING KOSOVO

**FOR CONSIDERATION BY THE
UNITED NATIONS HUMAN RIGHTS COMMITTEE**

**ON THE OCCASION OF REVIEW OF THE COUNTRY REPORT OF TASK FORCES ON
UNMIK**

In accordance with Security Council Resolution 1244 (1999), Kosovo remains a part of Serbia and Montenegro and continues to be bound by the International Covenant on Civil and Political Rights ("ICCPR" or "Covenant").¹ The Human Rights Committee has, however, noted that although Kosovo remains a part of Serbia and Montenegro, "the protection and promotion of human rights" is the responsibility of the United Nations Interim Administration Mission in Kosovo ("UNMIK"),² which constitutes the primary international civilian presence in the province.

In its Concluding Observations on Serbia and Montenegro at its 81st session, the Human Rights Committee noted the responsibility of UNMIK for the protection of human rights on the territory of Kosovo and encouraged UNMIK, in cooperation with the Provisional Institutions of Self-Government ("PISG"),³ to submit a report on the human rights situation in Kosovo since 1999.⁴ The Committee also noted that it would address the situation in Kosovo at its subsequent (82nd) session.⁵ The Committee has not yet done so. According to an agenda posted on the UN High Commissioner for Human Rights as accessed on 6 January 2006, the Committee has indicated that it will hold

¹ (S/RES/1244 (1999), UN Security Council Resolution 1244, adopted by the Security Council at its 4011th meeting on 10 June 1999; Concluding Observations of the Human Rights Committee: Serbia and Montenegro, 12/08/2004CCPR/CO/81/SEMO. (Concluding Observations/Comments) (2004), para 1. Yugoslavia ratified the ICCPR on 2 June 1971. Serbia and Montenegro succeeded to the Covenant on 12 March 2001.

² Concluding Observations of the Human Rights Committee: Serbia and Montenegro, 12/08/2004CCPR/CO/81/SEMO. (Concluding Observations/Comments) (2004), para. 3.

³ Additionally, by virtue of article 3.2 (c) of UNMIK Regulation No. 2001/9, the Provisional Interim Governments in Kosovo are also bound by the Covenant.

⁴ *Supra* note 2, para 3.

⁵ *Supra* note 2, para 1.

closed discussion on the “Country Report” of “Task Forces on UNMIK” during its 86th session, 13-31 March 2006.

With a view to the Committee’s request for information during its 81st session and in light of up coming discussion currently scheduled for the 86th session, the European Roma Rights Centre (ERRC)⁶ respectfully submits observations concerning the human rights situation of Roma and others regarded as “Gypsies” in Kosovo.

The ERRC is concerned that for a number of reasons, compliance with the ICCPR by the competent authorities in Kosovo is called into question due to the very problematic situation of the Roma, Ashkali and Egyptian (“RAE”) communities in Kosovo. In the pages that follow, the ERRC has summarised a number of its concerns with respect to the treatment of the RAE community in Kosovo in areas of relevance to the Covenant. Following a short introduction on the RAE in Kosovo this submission includes subsections on:

- Violence and Other Cruel and Degrading Treatment of RAE, in violation of **Article 6, Article 7** and **Article 9**
- Failure to Prevent Exposure to Extremely Hazardous Conditions, in violation of **Article 6** and **Article 7**
- Failure to Provide Remedy for Gross Violations of Human Rights, in violation of **Article 2**
- Denial of the Right to Return to Place of Origin in Safety and Dignity, in violation of **Article 12**
- Systemic Discrimination, in violation of **Article 2** and **Article 26**
- Denial of Personal Documentation, in violation of **Article 16**

A number of recommendations follow at the end of this document, based on materials provided here.

The ERRC further notes that the establishment of United Nations administration over Kosovo may have changed the character of the international human rights law protections available to individuals in Kosovo, the statement by the Committee that it “considers that the Covenant continues to remain applicable in Kosovo”⁷ notwithstanding.

In the first place, under present arrangements, the authorities of Serbia and Montenegro, the State Party responsible for ensuring that Covenant rights are realized in practice in Kosovo, effectively has no access to most of the territory of Kosovo. This fact changes the character of accountability for human rights and human rights violations on the territory of Kosovo. The Committee tacitly recognized the complex issues of

⁶ The European Roma Rights Centre (ERRC) is an international public interest law organisation that monitors the situation of Roma in Europe and provides legal defence in cases of human rights abuse. Since its establishment in 1996, the ERRC has undertaken first-hand field research in more than a dozen European countries including Germany, and has disseminated numerous publications, from book-length studies to advocacy letters and public statements. *ERRC* publications about the situation of Roma in Germany, as well as additional information about the organisation, are available on the Internet at <http://www.errc.org>.

⁷ *Supra* note 2, para 3.

accountability in Kosovo in paragraph 3 of its 2004 Concluding Observations on Serbia and Montenegro.⁸

Secondly, under current arrangements, individuals in Kosovo may now face very significantly heightened difficulties in accessing the protections set out under the Covenant, due to the fact that the accountability of UNMIK and its staff is problematic and that procedures for bringing action against UNMIK personnel, where such persons may be culpable for human rights abuses, are either not widely known or do not in fact exist. The ERRC notes in this context that the corpus of international law establishing the international human rights regime and the related field of refugee law, has responded to the threats arising from administrative arrangements of this kind by building into the 1951 Convention Relating to the Status of Refugees (“1951 Refugee Convention”) Article 1(D), establishing separate conditions for persons under “protection or assistance” of United Nations agencies, as well as for situations in which “such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.”⁹ Insofar as such persons would “*ipso facto*” benefit from the 1951 Refugee Convention, the vulnerability of persons who are no longer on territories enjoying effective state protection is resoundingly affirmed. The heightened complexity of accountability in places under United Nations administration such as Kosovo significantly raises the bar of standards by which UN administrators in places such as Kosovo are to be held. In light of these circumstances, the Human Rights Committee is urged to view with the utmost possible gravity the very serious situation of RAE individuals and communities currently prevailing in Kosovo, as well as the vacuum of effective human rights protections in Kosovo today.

The written comments that follow do not purport to constitute a comprehensive survey of the human rights situation of RAE living in Kosovo, nor does the present submission aim to provide comment on all issues arising in Kosovo of relevance to the rights secured under the Covenant. This document is intended solely to provide the Committee with information arising from some areas of documentation undertaken by the European

⁸ This states, in full, “3. The State party explained its inability to report on the discharge of its own responsibilities with regard to the human rights situation in Kosovo, and suggested that, owing to the fact that civil authority is exercised in Kosovo by the United Nations Interim Administration Mission in Kosovo (UNMIK), the Committee may invite UNMIK to submit to it a supplementary report on the human rights situation in Kosovo. The Committee notes that, in accordance with Security Council resolution 1244 (1999), Kosovo currently remains a part of Serbia and Montenegro as successor State to the Federal Republic of Yugoslavia, albeit under interim international administration, and the protection and promotion of human rights is one of the main responsibilities of the international civil presence (para. 11 (j) of the resolution). It also notes the existence of provisional institutions of self-government in Kosovo that are bound by the Covenant by virtue of article 3.2 (c) of UNMIK Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo. The Committee considers that the Covenant continues to remain applicable in Kosovo. It welcomes the offer made by the State party to facilitate the consideration of the situation of human rights in Kosovo and encourages UNMIK, in cooperation with the Provisional Institutions of Self-Government (PISG), to provide, without prejudice to the legal status of Kosovo, a report on the situation of human rights in Kosovo since June 1999.” (Ibid.)

⁹ Article 1(D) of the Refugee Convention states, in full, “This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.” 1951 Convention on the Status of Refugees, para. 1(D).

Roma Rights Centre as concerns the RAE community in Kosovo and the ability of RAE individuals in Kosovo to realise rights secured under the Covenant. The materials provided here are based on ERRC monitoring and field research into the situation of Roma in Kosovo. These include media monitoring during the period 1997-present, intensive field missions in 1999, 2000, 2002, 2004 and 2005, as well as six months of durable field presence in 2000.

The Roma, Ashkali and Egyptian ("RAE") community in Kosovo

Beginning in June 1999, following the end of the NATO bombing of the former Yugoslavia and the establishment of United Nations administration over Kosovo, Roma, Ashkalis, Egyptians and others regarded as "Gypsies" ("RAE") were violently expelled from their homes in Kosovo by means including killings; targeted "disappearances" in which in many cases the persons concerned remain missing and are presumed dead; threats of killings; rape – including gang rape in the presence of family members; mass arson; wholesale destruction of houses, whole neighbourhoods and/or community infrastructure; wholesale appropriation of property; and general threats of violence carried out in the context of ethnic cleansing.¹⁰ As is well-known, these events followed decades of repression in Kosovo by Yugoslav authorities, and were immediately preceded by several years of effective civil war between a guerrilla movement known as the "Kosovo Liberation Army" and Yugoslav forces. Today, persecution of the members of these communities continues, manifested in their systematic exclusion from access to fundamental human rights. Racial discrimination against RAE communities in Kosovo is pervasive, depriving tens of thousands from even a bare minimum of dignity. Anti-Gypsy sentiment among the majority is widespread, ranging from assaults on RAE individuals to verbal abuse and dissemination of defamatory images, including images stigmatising RAE as perpetrators of crimes against Albanians, in the media.

Living in an atmosphere of persistent threats to their security, unprotected against massive exclusion from employment and denial of access to alternate sources of income, exposed to extremely substandard and hazardous living conditions, marginalised in the public sphere, RAE communities and individuals today experience extreme levels of rights deprivation and/or infringement. Oppression of RAE is further aggravated by

¹⁰ The first indication of the single biggest catastrophe to befall the Romani community since World War II came on 5 June 1999, when a group of ethnic Albanian refugees from Kosovo in a refugee camp in Skopje, Macedonia, set upon a number of Roma in the camp and made a concerted effort to beat them to death, before camp authorities intervened. The expulsion of tens of thousands of RAE individuals from their homes began in the following weeks. As noted, these were not the first major human rights abuses against RAE in Kosovo. During the period 1997-2006, via methods including monitoring of the media as well as direct, first-hand field research and regular communication with a number of RAE persons in and from Kosovo, the ERRC has documented systemic human rights abuses against RAE. A non-exhaustive list of municipalities in which the ERRC has documented evidence of violent attacks and/or threats of attacks includes: Brekovac/Brekovc, Burim/Jović, Crkvena Vodica, Dashevc/Doševac, Djakovica/Gjakovë, Dosevac/Dashevc, Ferizaj/Uroševac, Fushe Kosove/Kosovo Polje, Gjakovë/Djakovica, Gjilan/Gnjilane, Gllavicë/Glavica, Gnjilane/Gjilan, Gorna Brnjica, Hallac i Vogel/Mali Alas, Istok, Janjevo, Kačanik/Kaçanik, Kosovo Polje/Fushë Kosovë, Obiliq/Obilić, Klinë/Klina, Kosovska Kamenica, Kosovka Mitrovica/Mitrovica, Lipjan/Lipljane, Mitrovicë/Mitrovica, Obiliq/Obilić, Ogoshtë/Ogošte, Orahovac/Rahovec, Pejë/Pec, Plemetina, Podujevo, Priluzje, Priština/Prishtinë, Prizren/Prizren, Rrahovec/Orahovac, Shtime/Štimlje, Srbica/Skenderaj, Suharekë/Suva Reka, Uroševac/Ferizaj, Velika Kruša, Viti/Vitina, Vushtrri/Vučitrn, Žitkovac/Zhikoc, and Zvezdara.

failure of the Kosovo international civil administration to bring to justice the perpetrators of even the most egregious crimes committed against RAE since June 1999.

Article 6, Article 7 and Article 9: Violence and Other Cruel and Degrading Treatment of Roma

Article 7 of the ICCPR requires that "no one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment." Article 6 of the ICCPR guarantees every human being the "right to life". Article 9 of the ICCPR guarantees the "right to liberty and security of person". These guarantees notwithstanding, RAE and others considered "Gypsies" in Kosovo today live in a state of pervasive fear, nourished by routine intimidation and verbal harassment, as well as by periodic racist assaults.¹¹ The RAE community has been the target of massive, systemic, racially-targeted violence in Kosovo since 1999. Following systemic violence in 1999, under UNMIK administration, persistent threats and impunity for perpetrators are the norm. Many if not most incidents of violence have gone unreported to the authorities, due to lack of trust and fear of retaliation, especially in the wake of periodic outbursts of anti-minority violence, most recently in March 2004.

Following the cessation of NATO action against the Federal Republic of Yugoslavia in June 1999 and the subsequent return of predominantly ethnic Albanians from abroad, ethnic Albanians violently expelled approximately four fifths of Kosovo's pre-1999 Romani population -- estimated to have been around 120,000 -- from their homes. The ERRC conducted field research in Kosovo during the summer of 1999, in the course of which the ERRC documented numerous abuses, primarily by ethnic Albanians evidently intent on purging Kosovo of RAE individuals and communities, along with other minorities, after the withdrawal of Yugoslav forces from the region in early June 1999. Abuses documented include killings of Roma by ethnic Albanians; abduction and illegal detention of Roma by ethnic Albanians; torture, beating and other physical abuse; rape; expulsions of Roma from homes and communities; house burnings; forced labour; forced entry into Romani houses; and confiscation of houses and other property.¹²

Whole Romani settlements were burned to the ground by ethnic Albanians, in many cases while NATO troops looked on. A number of Romani individuals who disappeared during the summer months of 1999 remain to date missing and are presumed dead.

The massive, systemic, race-based crimes of the ethnic cleansing were not immediately quelled or redressed by any authority in Kosovo, or elsewhere. Indeed, they have persisted in the years following 1999. For example, in the town of Dosevac/Dashevc, four Romani men, Mr Hajzer Mehmeti, Mr Istref Bajrami, Mr Isuf Ahmeti, and 15-year-old Agron Mehmeti were found slain in November 2000. The men comprised an advance party of a group of RAE families who were ready to return to the village of Dosevac/Dashevc from Kosovo Polje, where they had been living as displaced persons for more than one year.. According to a UN spokesperson, three of the victims had

¹¹ For example, on the night of 14 May 2004, Kosovo police officers beat Mr. Irfan Kurtesi, a Romani man living in a mixed Serb-Romani neighbourhood, in the eastern Kosovar town of Kosovska Kamenica, according to the Belgrade radio station B92 on 14 May 2004. B92 reported that the attack was un-provoked. See www.errc.org for details.

¹² Cahn, Claude and Deyan Kiuranov, "ERRC in Kosovo; Pogrom Situation," in *Roma in the Kosovo Conflict*, European Roma Rights Center, 1999, pg. 14.

bullet wounds in the forehead. The same UN spokesperson stated that the crime was likely ethnically motivated. To date, no one has been brought to justice in connection with the Dashevc killings.

In March 2004, hundreds of RAE were targeted for violent attacks during anti-minority riots by ethnic Albanians. On 17 March 2004, Serbian and RAE communities in the town of Gjilan/Gnjilane, about 35 km south of Prishtinë/Priština, were attacked by a mob of ethnic Albanians, reportedly predominantly persons in their teens. According to eyewitnesses with whom the ERRC spoke, twenty-three houses belonging to Serbs were burnt. Also on 17 March 2004, in the town of Obiliq/Obilic, a number of Romani persons with whom the ERRC spoke recounted how they fled their homes and sought refuge in the nearby Plemetina refugee camp when they saw a mob of people approaching their neighbourhood. At least three Romani families were reportedly forced to flee from their homes in Obiliq/Obilic in advance of rioters there. Also on 17 and 21 March 2004, in the town of Lipjan/Lipljan, three houses belonging to Ashkali and Romani families were burnt to the ground.

On 18 March 2004, in the town of Vushtrri/Vučitrn, approximately 70 houses belonging to Ashkalis were burned and destroyed.¹³ In the aftermath of the violence the houses were rebuilt but the previous owners have not returned for fear of renewed violence. Over 50 newly built houses are reportedly currently empty and only six Ashkali families have returned. One of the returnees described his life in Vushtrri/Vučitrn after the pogroms as “home-prison”.¹⁴

Although since March 2004 there has reportedly been a general decline in the number of violent racist attacks taking place, barriers to effective safety continue to exist throughout Kosovo, calling into question whether in fact Article 9 of the ICCPR is fully secured in Kosovo. Many RAE who fled the area and are suspected of having collaborated with the Serbs during “Operation Horseshoe”¹⁵ and/or in the period preceding it, are severely limited in their freedom of movement and fear renewed violence by Albanians.¹⁶ Many RAE do not leave their neighbourhoods after dark, do not travel alone, and fear retaliation, which deters many from reporting human rights violations to police and/or other authorities. Verbal harassment and intimidation are routine. The following are a few – though by no means all -- of the reported incidents of violence against RAE in Kosovo in the recent period¹⁷:

- In May 2005, Ramiz Šabani, a 16-year old boy from the Plemetina IDP camp was reportedly attacked by Kosovo Albanians outside the camp. The boy, who was riding a bicycle, was reportedly knocked down by several people and beaten. About a week later another youth from the camp was allegedly threatened and intimidated by Kosovo Albanians in the vicinity of the camp.

¹³ "Ethnic Cleansing of 'Gypsies' in Kosovo." News Roundup: Snapshots from Around Europe. <http://www.errc.org/cikk.php?cikk=1873&archiv=1>.

¹⁴ ERRC interviews, 29 May 2005 in Vushtrri/Vučitrn.

¹⁵ “Operation Horseshoe” was a large-scale operation in Kosovo by Serbian forces, purportedly for the purposes of taking military action against ethnic Albanian insurgents in Kosovo, but in practice resulting in the flight of many hundreds of thousands of persons from Kosovo to Albania and Macedonia. The NATO action against the former Yugoslavia in early 1999 was a response to “Operation Horseshoe”.

¹⁶ "Refugees International Kosovo: Roma Returns Stalled by Security Concerns, Politics and Discrimination," Refugees International, 27 June 2005.

¹⁷ Further details are available on the ERRC website at www.errc.org.

- In May 2005 in the town of Prizren, Ramo Mandinki, 17, was attacked by ethnic Albanians, one of whom was wielding a shovel. Mr Mandinki reported the case to the police and was allegedly told that if he had more problems with the individuals who attacked him, they would be prosecuted.
- In April 2005 in Prishtinë/Priština twenty-year old Mexhit Stolla was reportedly attacked and beaten by a group of 15-16 Kosovo Albanians, following previous threats. The incident was reported to the police, but Mr Stolla told the ERRC that since he knew the parents of some of the attackers, he did not want to press charges.

There is now a permanent, persistent and pervasive threat of anti-minority, including anti-RAE violence in Kosovo in the context of possible independence or altered status for Kosovo. Despite more than six and a half years of UN administration, there has been no major, effective effort by any authority in Kosovo to disarm extremists.

Because of a durable climate of violence and intimidation prevailing in Kosovo now for many years, as well as a result of the comprehensive ethnic cleansing implemented beginning in June 1999, the RAE community in Kosovo is currently in a state of extreme distress. The events of March 2004 reaffirmed the proximity of mass violence, and RAE are aware that if similar violence were to erupt again, they would likely be primary targets. Many humanitarian workers on the ground, as well as representatives of the United Nations High Commissioner for Refugees (UNHCR) have noted that they suspect violence that could erupt again, and have expressed concern regarding safety of the RAE community following the possible planned withdrawal of international personnel.¹⁸ This concern has been echoed by the Kosovo Ombudsperson, who noted in his latest Annual Report that those members of the RAE communities living in rural areas are literally not protected at all.¹⁹

Article 6 and Article 7: Failure to Prevent Exposure to Extremely Hazardous Conditions

Article 6 of the ICCPR provides that "every human being has the inherent right to life", and Article 7 guarantees freedom from "inhuman or degrading treatment." In violation of Articles 6 and 7, RAE have been placed by UN authorities in camps for internally displaced persons ("IDP") in the towns of Zitkovac/Zhikoc, Cesmin Lug/Cesminlukë and Kablare, approximately two kilometers from the Trepca Mines factory complex and situated on highly contaminated land. The World Health Organization ("WHO") has declared a health emergency on the camp grounds. Although the camps were reportedly intended as temporary housing for victims of the 1999 looting and burning of the Romani Mahala settlement in the town of Mitrovica, these camps continue to exist today under UNMIK supervision, despite known and documented health hazards arising from

¹⁸ "In the current volatile context, a serious ethnically motivated crime against an ethnic community may spark, like in March 2004, a downward spiral towards inter-ethnic violence and civil unrest and lead to other serious ethnically motivated crimes. Kosovo Serbs, Roma, as well as Albanians in a minority situation would be the communities most likely to be affected." "UNHCR position on the continued international protection needs of individuals from Kosovo (March 2005)" available at www.unhcr.ch.

¹⁹ Kosovo Ombudsperson Institution, "Fifth Annual report 2004-2005 addressed to the Special representative of the Secretary-General of the United Nations," 12 July 2004, at pg. 45.

toxic lead contamination.²⁰ In the more than six years since the camps were established, dozens of inhabitants have fallen ill from lead-related illnesses, and two people, including at least one young child, have died.

It is probable that UNMIK knew of the scale of the health emergency as early as 2000, when the WHO issued its first report analyzing the effect of lead pollution on the Mitrovicë/Mitrovica region. The report found that all children and most adults living around the industrial site had blood lead concentrations exceeding the permitted limits.²¹ Specifically, the researchers found a higher than average lead concentration among the RAE communities as compared with the non-RAE population.²² By October 2004, the WHO had declared the area in and around the IDP camps uninhabitable, issuing a report that revealed that the soil in Zitkovac/Zhikoc camp was 100.5 times above recommended levels, while in Cesmin Lug/Cesminlukë, the levels exceeded 359.5 times those considered dangerous to human health.²³ The ERRC knows of no effective plan implemented to date to evacuate the people living there to areas safer to any significant degree than the highly toxic areas they currently inhabit.

Meanwhile, the RAE community continues to live on contaminated land, with detrimental implications for their health and well-being. The most significant effect of lead poisoning on the human body is its irreversible effect on IQ levels. A WHO analysis of numerous studies has shown that increases of lead in the bloodstream from 10 to 20 micrograms (“µg”)/dl has been associated with a decrease of 2.6 IQ points.²⁴ The WHO sampled 58 children living in the IDP camps, of whom 34 were found to have above acceptable blood lead levels. None of the children sampled had a blood lead level below 10 µg/dl. Twelve of the children were found to have exceptionally high levels of lead in their bloodstreams, 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). At the time of the report, in the summer of 2004, the WHO recommended urgent action for the twelve children in the camps, including immediate diagnostic testing, aggressive environmental interventions and ongoing evaluation according to ATSDR guidelines.”²⁵ By October 2004, the WHO recommended the immediate removal from the camps of children and pregnant women and called the case “urgent”.²⁶

²⁰ 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. *See, e.g.* Finkelstein Y, Markowitz ME, Rosen JF. "Low-level lead-induced neurotoxicity in children: an update on central nervous system effects." *Brain Res Brain Res Rev.* 1998 Jul;27(2):168-76; *See, also* Winneke G, Kramer U. "Neurobehavioral aspects of lead neurotoxicity in children." *Cent Eur J Public Health.* 1997 Jun;5(2):65-9.

²¹ Molano, Sandra and Andrej Andrejew, “First Phase of Public Health Project on Lead Pollution in Mitrovica Region,” November 2000, pg.17.

²² *Id.* at pgs.13, 19, 18.

²³ Memorandum of the World Health Organization, “Capillary Blood Lead Confirmation and Critical Lead-Related Health Situation of the Roma Camps Children,” 22 October 2004, p. 3.

²⁴ World Health Organization, Preliminary Report on Blood Lead Levels in North Mitrovica and Zvecan, July 2004, together with Memorandum by Gerry McWeeney, Health Environment Programme Manger, WHO, 11 July 2004, Pristina, Kosovo (July 2004 WHO Report).

²⁵ World Health Organization, Preliminary Report on Blood Lead Levels in North Mitrovica and Zvecan, July 2004.

²⁶ Memorandum of the World Health Organization, “Capillary Blood Lead Confirmation and Critical Lead-Related Health Situation of the Roma Camps Children,” 22 October 2004, p. 3.

More than one year later, the IDP camps remain on contaminated land considered to constitute an environmental and health emergency.²⁷ Jenita Mehmeti, a four-year-old Ashkali girl died in Žitkovac/Zhikoc in July 2004, after being treated for two months in a Serbian hospital for symptoms very likely related to lead poisoning. Her two-year-old sister, Nikolina, shows similar symptoms and has been in and out of hospital in Belgrade for treatment. However, without immediate evacuation, medical treatment will likely have little effect.

Of particular concern is the situation of pregnant women at these sites. Lead poisoning in pregnant women is associated with an increased risk of spontaneous abortion and stillbirth. ERRC first hand documentation in the camps indicates that there have been a high number of still births and miscarriages in recent years. Further, many women know their children will be born mentally disabled and thus have undertaken self-induced abortions by drinking anti-lice shampoo or pesticides. Some have reportedly mixed yeast with beer to cause miscarriages.²⁸

The initial placement and subsequent failure to remove the RAE from the camps raises serious concerns that individuals in Kosovo are not benefiting from the protections guaranteed by Covenant Articles 6 and 7. These concerns are magnified by the fact that although UNMIK is authorized by UN Security Council Resolution 1244²⁹ to act as the civilian administration in Kosovo, there is effectively no domestic remedy available for human rights violations committed by it or any other UN organ operating in Kosovo.³⁰

In July 2005, the ERRC sent a letter to UN Secretary General Kofi Annan urging him to lift immunity for any persons responsible for crimes as a result of the negligent or

²⁷ In February 2005, Dr. Rokho Kim, a WHO expert, 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.” Appendix 1, Background Paper, “The Way Forward Regarding the Roma, Ashkaeli and Egyptians (RAE) and the Lead Contamination,” forwarded to the ERRC on 31 May 2005 by Laurie Wiseberg, Minority Rights Advisor and Executive Officer for Return to Roma Mahala Project, UNMIK.

²⁸ In addition to these concerns, extremely poor housing conditions may heighten the impact of environmental toxicity. In Žitkovac/Zhikoc, for example, the “buildings” consist of scavenged used boards, tin, sticks and plastic. Most houses have dirt floors covered with layers of rugs. Often rugs are also used on the walls to keep out the cold. Blue plastic sheeting is used to create some semblance of privacy. The “furniture” is often folded and piled up carpets arranged to make a couch. The cooking area in most homes is outside so heat and smoke can escape. This means the women must go outside in heat or cold, rain or snow to prepare meals. Many of the women complained it was impossible to keep such places clean. There is no proper place for bathing resulting in many illnesses due to lack of hygiene. The women also complained that the winter is the worst because it is so cold and they have insufficient heat. At the same time, they have no warm water. Since the women do the washing and bathing of children, they frequently have their hands in cold water resulting in rheumatism for many of them. The women also tend to have higher blood lead levels than the men because they are in the camps all day. The men leave during the day to work, look for work, or look for food. The women are in the camps, on the contaminated land, with the children. Thus their absorption rates are higher and the resulting health damage higher.

²⁹ S/RES/1244 (1999), UN Security Council Resolution 1244, adopted by the Security Council at its 4011th meeting on 10 June 1999.

³⁰ The UN Charter grants broad-based immunities to the UN and its employees. Charter of the United Nations, 26 June 1945, Can. T.S. 1945 No. 7 (entered into force 24 October 1945), Article 105(1)(2), as well as Convention on the Privileges and Immunities of the United Nations (“CPIUN”) (adopted by G.A.13 February 1946).

malicious failure to move RAE persons from the contaminated areas.³¹ In September 2005, the ERRC requested criminal investigation into the matter with the Kosovo Public Prosecutor's office. In November 2005, Mr. Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations, responded to the request to waive immunity, stating that UNMIK was "doing its utmost to solve" the problem and requesting further detailed information in order to make the determination whether to waive immunity. Further information was sent to the Office of the Secretary General in November 2005. Although months have passed, inhabitants of the IDP camps continue to suffer from lead poisoning while the UN has not demonstrated a real will to lift immunity or to remove the threatened persons from the contaminated areas.

During 2005, UNMIK was finally moved to act to begin efforts to relocate the persons concerned. Current plans as available to the ERRC, envision a two-stage location. During the first phase, camp inhabitants are to be moved to a series of barracks previously inhabited by French KFOR soldiers. This location is too close to the current sites to constitute an improvement; it is exposed to the same environmental conditions which render the current IDP camps unsafe. It is unclear what issues are hindering the identification of a location which might actually be safe for human habitation.

During a second phase, it is envisioned that camp inhabitants will move to new housing on the territory of the area of the former mahalla, next to where their houses previously stood. There are widespread fears that this second phase will never happen, particularly given the proximity of talks for independence and the presumed bad faith of ethnic Albanian authorities.

On 3 February 2006, the inhabitants of the camps issued a public appeal stating, *inter alia*, "We ask to be relocated to a safe place for survival and medical treatment. We ask for safe and humane living conditions for those in all IDP camps."

Article 2: Failure to Provide Remedy for Gross Violations of Human Rights

Article 2 of the ICCPR requires implementation of the Covenant rights, including through "existing legislative or other measures", to guarantee that the rights set out in the ICCPR are given effect. Article 2(3) further sets out that:

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

³¹ Letter from Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations to Claude Cahn, Acting Executive Director of the European Roma Rights Centre, 9 November 2005. On file at the ERRC.

In contravention of these guarantees, RAE are denied the right to compensation for the violent crimes committed against them beginning in June 1999 after the end of the NATO bombing, and continuing in the following years. In addition to massive destruction of property and continuous verbal intimidation, as noted above, numerous RAE individuals and communities have been targeted for violent assault in the period since 1999. Efforts to bring the perpetrators of gross human rights abuses against RAE and others have begun late and for the most part have met with little success. In all or most of the cases at issue, the perpetrators of these crimes have not been brought to justice to date. The European Commission for Democracy through Law (“Venice Commission”) has also found that progress in bringing to justice those responsible for the abduction of around 1,200 Serbs, Roma and other ethnic minorities has to date been extremely slow.³² In general, the ethnic cleansing of the RAE remains totally unremedied, with the result that RAE are afraid to report renewed incidents of violence because they have plausible reasons to believe they will not be protected against retaliation. Additionally, the court system in Kosovo remains at best only somewhat accessible to the RAE minority. RAE individuals and communities living in mainly Albanian-dominated areas can only access courts if they are accompanied by members of the local Court Liaison Office. In the municipalities of Skenderaj/Srbica and Malishevë/Mališevo in central Kosovo and in the municipality of Kaçanik/Kaçanik in south-eastern Kosovo -- areas where violence during “Operation Horseshoe” in 1999 was particularly vicious -- RAE individuals can reportedly only access courts if they are accompanied by international escort.³³

Article 12: Denial of the Right to Return to Place of Origin in Safety and Dignity

Article 12 requires that everyone have the "right to liberty of movement and freedom to choose his residence." To date, however, authorities in Kosovo have failed to comply with these Covenant guarantees, nor with UN Security Council Resolution 1244, to ensure the safe and unimpeded return of RAE refugees and displaced persons to their homes in Kosovo. As of June 2005, numerous persons belonging to RAE communities remain in internal displacement inside Kosovo, while many tens of thousands of Roma from Kosovo are displaced in rest-Serbia and Montenegro, or are outside these international borders and are refugees (de facto or recognised) in other countries. Some of these persons have reported to the ERRC that return to their old neighbourhoods would be unsafe and consequently many of these are currently completely deserted. Others are unable to return to their previous homes which have been destroyed and not rebuilt or are now illegally occupied by other persons. Persons belonging to RAE minorities currently in internal displacement live in extremely substandard conditions, including in prefabricated houses inside IDP camps and crowded into houses living with many relatives. RAE individuals and communities are denied the right to return as a result of numerous factors:

³² European Commission for Democracy through Law (Venice Commission), “Opinion on Human Rights in Kosovo” (11 October 2004), CDL-AD (2004)033, par. 44.

³³ *Supra* note 19, at pg. 21. “According to [...] UNMIK Report of 2 June 2005, access to justice for members of non-majority communities in Kosovo is impeded by tangible barriers arising from lack of security, physical safety, transportation, language, poverty and court fees. It is also obstructed by intangibles like delay, uncertainty in the law, lack of confidence in the fair application of the law, and the non-majority communities' limited knowledge of law and legal rights.” *Id.*

- Individuals are unwilling to return to their old places of residence because they believe them to be unsafe. Some of these – such as the Dalmatinska neighbourhood in Prishtinë/Priština, for example – were as of June 2005 completely deserted by their former RAE inhabitants and occupied by Kosovo Albanians – but housing in other parts of Kosovo is reportedly unavailable;
- Proceedings for reinstating the legal owners of houses which have been illegally occupied are slow and enforcement is ineffective;
- Reconstruction of houses is unduly delayed and in some instances altogether stalled;
- Individuals cannot prove title to the land on which their houses stood, due to lost or invalid property ownership documents, or because ownership has never been formally recognised for housing in certain areas, despite years, decades or even centuries of factual, tolerated occupation;
- Municipalities have failed to allocate land for the construction or reconstruction of housing; and/or
- Municipalities intend to use land where RAE houses were located for more lucrative purposes and propose unacceptable alternate solutions to housing, or otherwise obstruct returns.

The ERRC is not aware of an existing estimate of the number of displaced RAE in Kosovo which would be reliable to any significant degree. However, in several municipalities visited by the ERRC, the numbers of displaced RAE reported by local community leaders ranged between 2-3 families to several dozens of families. The following non-comprehensive review of the current placement of some RAE persons displaced within the borders of Kosovo provides some indication of the larger failure in this area:

- The IDP camp Plemetina, near Obiliq/Obilic, built in 1999, was, as of May 2005, home to 116 families or about 464 persons originating from five Kosovo municipalities. Only two out of the five municipalities have so far allocated land to build houses for the RAE concerned. According to local RAE, in the Obiliq/Obilic municipality there are around 50 reconstructed houses of RAE out of about 1,000 houses destroyed in 1999-2000.³⁴
- In the Fushë Kosovë/Kosovo Polje municipality there were an estimated 70 internally displaced RAE families, including 20 families of voluntary returnees assisted by UNHCR in returning to Kosovo from outside the province, but not yet brought to their original places of residence. Out of an estimated nearly 350 houses, only 144 have been rebuilt thus far.³⁵
- An estimated 15 RAE families in Montenegro as of June 2005 could not return to their homes in Gjakovë/Đakovica which were destroyed and had not been rebuilt as of that date. The municipality has claimed the land as municipal property, and because the RAE families do not possess property ownership documents, they cannot prove their ownership of the land.³⁶
- The population of the Abdullah Presheva neighbourhood of Gjilan/Gnjilane decreased from approximately 4,000 Roma before 1999 to about 250 today. Out of 360 Romani houses, some 290 were destroyed. As of June 2005, approximately 20 out of 30 Romani families had returned to Gjilan/Gnjilane and

³⁴ ERRC interviews, 26 May 2005, Plemetina camp.

³⁵ ERRC interviews, 28 May 2005, Fushë Kosovë/Kosovo Polje.

³⁶ ERRC interviews, 2 June 2005, Gjakovë/Đakovica.

lived in rented accommodation.³⁷ The construction of 30 houses for Roma families from Abdullah Presheva neighbourhood in Gjilan/Gnjilane was reportedly suspended with only 9 houses rebuilt or reconstructed. The rebuilding of the houses, which started in mid-2004 and for which reportedly a total of 1,500,000 EUR had been donated by the Dutch government and the municipality, stopped, reportedly due to lack of funds.³⁸ Roma from Abdullah Presheva also reported thefts of building material for the reconstruction of Romani houses and a reluctance by the Kosovo Police Service ("KPS") to investigate these thefts.³⁹

- Before 1999, the Crystal neighbourhood in the town of in Pejë/Pec was home to more than 100 RAE families. Currently only 2-3 families live in the neighbourhood. According to a local official, in 2002, the then-UNMIK administrator of the municipality had promised to clean the area and start rebuilding the houses, but ultimately failed to fulfil the promise. According to the same source, donors have been reluctant to fund projects for rebuilding houses, fearing that the houses would be vandalised. In 2003, for example, two RAE houses were reportedly rebuilt and immediately after burned down. At least 10 RAE families currently live with relatives in Pejë/Pec while waiting for the municipality to act on their request to rebuild their houses.⁴⁰

Ineffective Procedures for Reclaiming Illegally Occupied Houses

Many RAE reported to the ERRC that they are denied access to their houses, which in many cases have been occupied by Kosovo Albanians. According to RAE, proceedings before the UN Housing and Property Directorate ("HPD") Claims Commission – the organ which has jurisdiction over claims raised by persons who were the owners or occupancy rights-holders of residential real estate and who are not in possession of the property, are reportedly lengthy, and sometimes decisions are not effectively executed. For example, according to ERRC field research in 2005, Alihajdar Krekaqe and his family were forced out of their house in Prizren in 1999 by ethnic Albanians, purportedly members of the Kosovo Liberation Army ("KLA"). As of June 2005, the house was still occupied by ethnic Albanians, despite claims filed with the HDP, the Ombudsperson's Institution and the municipality of Prizren.⁴¹ In another case, a RAE woman who lived in the Dalmatinska neighbourhood of Prishtinë/Priština was unable to regain possession of her house after two eviction attempts following a decision by the HDP. As of June 2005, the house was reportedly still occupied and the rightful owner was therefore unable either to occupy or to sell it.⁴²

In many instances, owners of occupied residential property are afraid to reclaim their property due to intimidation by the occupiers. According to RAE representatives in the town of Gjakovë/Đakovica, as of June 2005, there were at least 10 occupied houses formerly belonging to RAE in the town.⁴³

³⁷ ERRC interviews, 4 June 2005, Gjilan/Gnjilane.

³⁸ ERRC interviews, 4 June 2005, Gjilan/Gnjilane.

³⁹ ERRC interviews, 4 June 2005, Gjilan/Gnjilane.

⁴⁰ ERRC interviews, 1 June 2005, Pejë/Pec.

⁴¹ ERRC interviews, 31 May 2005, Prizren.

⁴² ERRC interviews, 1 June 2005, Pejë/Pec.

⁴³ ERRC interviews, 1 June 2005, Gjakovë/Đakovica.

In general, where individuals deriving from or perceived as deriving from the RAE communities return to locations surrounded by areas inhabited by the majority population, they face a series of difficulties. They come home to occupied houses, limited mobility due to security concerns and high levels of unemployment, making it difficult for families to sustain themselves without outside humanitarian aid.

Article 26 and Article 2: Systemic Discrimination

Under Article 2, each State Party “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights” within the Covenant, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 26 of the ICCPR guarantees all people “equal protection of the law”. Despite these guarantees, RAE in Kosovo face systematic discrimination as a result of widespread antipathy toward persons regarded as “Gypsies” and related forces giving rise to systematic exclusion of RAE individuals and communities.

Discrimination in Access to Employment

Discrimination apparently plays a very significant role in the systemic exclusion of RAE from employment throughout Kosovo. Although unemployment in Kosovo is generally high, it is close to 100% in many places for RAE minorities. Apart from an insignificant number of individuals who work in civil service and the municipal offices, very few others have permanent employment. Many RAE individuals lack any form of work at all. The Ombudsperson noted in a recent press release that in a meeting with community minority leaders, all agreed that their citizens are routinely overlooked when employment vacancies were posted.⁴⁴ According to testimonies of RAE in all municipalities visited by the ERRC, RAE (as well as minorities in general) were entirely or nearly entirely excluded from the workforce after privatisation of Kosovo enterprises.

For example, Mr Gani Elshani, 45, who worked in a pharmaceutical factory in Prizren for 18 years, was laid off, together with other RAE, after privatisation in 2004. When the factory began operating again, Mr Elshani was not offered employment with the explanation that there had been a reduction in the workforce. According to him, other RAE workers were similarly not offered employment after the privatisation of the factory.⁴⁵ In Shtimje/Stimlje municipality, as of June 2005, there were reportedly 7 individuals who have permanent employment – 2 worked in the municipal office, 2 were teachers and 3 were janitors. Around 50-60 RAE from Shtimje/Stimlje municipality worked in factories before 1999. None of them have reportedly been re-hired after the privatisation of the factories.⁴⁶

Roma are denied both high-skilled and low-skilled jobs. For example, a professional operator of a milling machine in Gjakovë/Đakovica found it impossible to secure gainful employment after 2000, despite being qualified and having a good reputation in the community. According to ERRC information, approximately 30 RAE applied for a job

⁴⁴ Ombudsperson Institution in Kosovo Press Release, 7 July 2004, "Non-Serbian Minority Representatives Discuss Ongoing Human Rights Issues with Ombudsperson Institution." The Ombudsperson also reported that, as an urgent solution, several community leaders described situations in which citizens were forced to sell their property and homes as an emergency source of income

⁴⁵ ERRC interviews, 31 May 2005, Fushe Kosove/Kosovo Polje.

⁴⁶ ERRC interviews, 2 June 2005, Shtime/Štimlje.

as a driver at Prishtinë/Priština airport in 2004. Although many of the RAE applicants had finished high school, and in one case a university education, none were hired.⁴⁷

According to a number of RAE community leaders, as in other areas, Kosovo authorities have not responded adequately to the evident crisis of massive unemployment among RAE, as well as indications that employers in Kosovo discriminate on the basis of race. For example, an activist from Gjilan/Gnjilane told the ERRC that, according to unofficial information given to her by a municipal official, positions announced for minorities are usually meant to be filled by Kosovo Serbs.

High levels of unemployment and lack of access to social benefits have resulted in severe deprivation for many RAE families. Most of the returnee community are unemployed and often do not have money to buy food. These persons must therefore resort to scavenging from garbage containers. Unconfirmed reports reveal several cases in which individuals have fallen ill as a result of consuming food found in the garbage. In light of the extreme poverty faced by many RAE in Kosovo, some returnees expressed frustration with KFOR and UNMIK for arranging for their return amidst guarantees of a better life and social services to aid in their recovery. Mr. Berisha Hajrush, who returned in December 2004 from Macedonia to Fushë Kosovë/Kosovo Polje, told the ERRC that his decision to return was a mistake and that he planned to move to Croatia.

Extremely Substandard Housing Conditions

Numerous RAE families in Kosovo are confined to inhumane housing conditions in marked contrast to housing conditions in the rest of the province. Such for example is the Bata neighbourhood in Pejë/Pec, home to approximately 120 families. The houses in this settlement are tiny, dilapidated and in many cases cramped, housing family members from several generations. At the time of an ERRC visit to the community in May 2005 there was no sewage removal or running water, and some parts of the neighbourhood had no roads. Although the RAE have lived in Pejë/Pec for several decades, they have no proof of ownership allowing the municipality to claim ownership of the land or the structures built on it. According to local RAE leaders, the municipality refuses to build infrastructure insisting that the families should be moved to social housing.

Similarly, in the Colonia neighbourhood of Gjakovë/Djakovica approximately 117 RAE families did not have property ownership documents as of February 2006, although they had been living there for several decades. The families in this neighbourhood, located near the city dump site, live in dilapidated houses with extremely substandard conditions. Typically, houses have one or two rooms and are home to 10 or more individuals crammed into one room with no sewage, electricity or running water. The children played on a nearby dumpsite, while their elderly siblings and parents collected food scraps, as well as tin cans and other garbage to sell in order to buy food. The municipality reportedly refuses to build infrastructure in the neighbourhood because it was planning to remove the RAE families from there.

Substandard housing conditions, including lack of sewage removal and clean water also leads to a greater incident of diseases and infections among RAE communities.⁴⁸ However, Roma are usually only able to access the most basic health services, as the vast majority of them are not covered by any form of health insurance, do not have the

⁴⁷ ERRC interviews, 28 May 2005, Fushe Kosove/Kosovo Polje.

⁴⁸ Kosovo Ombudsperson Institution, "Fourth Annual report 2003-2004 addressed to the Special representative of the Secretary-General of the United Nations," 12 July 2004, at pg. 31

money to pay for medical treatment in hospitals and in many instances are denied access to medical centers because of a lack of proper state documentation.⁴⁹

Ineffective Anti-Discrimination Law

Kosovo currently has among the most comprehensive and detailed domestic laws banning discrimination – including racial discrimination – to be found anywhere in the world. The Anti-Discrimination Law (ADL) entered into effect on 19 September 2004, as a result of UNMIK Regulation No. 2004/32 of 20 August 2004 On the Promulgation of the Anti Discrimination Law adopted by the Assembly of Kosovo. The Law substantially complies with the European Union’s Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (RED), and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation prohibiting discrimination on the grounds of religion or belief, disability, age or sexual orientation (FED). Kosovo’s ADL goes significantly beyond the protections set out in these two European Union directives. For example, while the RED prohibits direct or indirect discrimination based on racial or ethnic origin, Article 2 of the ADL prohibits direct or indirect discrimination based on any ground. Second, while the RED is limited in the scope of the rights which are protected, Article 4 of the ADL prohibits direct or indirect discrimination in access to and enjoyment of any right set forth by law. Additional rights specified under Article 4 include fair treatment before tribunals and all other organs administering justice, personal security, participation in public affairs including the right to vote and be voted for, and access to public places. The ADL also provides that segregation as defined in Article 3(f) shall be deemed to be discrimination in violation of the principle of equal treatment as defined in Article 2(a) of that law. In addition, ADL provides in Article 9.4 that all monies collected through the imposition of penalties on those who have violated its provisions shall be placed in a fund for the purposes of supplying free legal assistance to any natural or legal person whose right to equal treatment is violated.

While Kosovo authorities must be commended for adopting the Anti-Discrimination Law of September 2004, similar praise is not merited with respect to efforts at implementation of that law: as of late 2005, there were no known efforts to apply the ADL, and no one had been brought to justice under it.

In addition, according to Mr. Gregory Fabian, a former employee of the Organization for Security and Co-operation in Europe (OSCE) closely involved in preparation of the ADA, as of late 2005, “... the Office of the Prime Minister is working on a draft Administrative Instruction to provide a structure for implementation of the Anti-Discrimination Law. The Instruction is intended to provide practical rules, and physical facilities for dealing with discrimination complaints, to provide independent legal assistance during case review, to collect information and create independent surveys regarding discrimination, to publish independent reports and provide recommendations on any matter related to discrimination, and generally to provide protection for any complainant regarding any form of discrimination.”⁵⁰ It remains to be seen what impact these efforts may ultimately have.

⁴⁹ Ibid., at pg. 32.

⁵⁰ See Fabian, Gregory, “Implementation of the Anti-discrimination Law in Kosovo: A Plan in Need of Execution”, in Roma Rights 3 and 4/2005 *Justice for Kosovo*, at: <http://www.errc.org/cikk.php?cikk=2459>

Article 16: Denial of Personal Documents

Article 16 requires that "everyone shall have the right to recognition everywhere as a person before the law." These guarantees notwithstanding, a number of Roma in Kosovo today lack important personal documents and are therefore unable to take advantage of public services necessary for the realization of fundamental human rights, and/or are *de facto* stateless. Documents at issue include personal identity cards, passports, documents required in order to access the public health system, drivers' licenses, as well as other personal documents.⁵¹ This issue is, if anything, even more extreme among displaced RAE from Kosovo in rest-Serbia and Montenegro.⁵² In addition, in many cases RAE also lack registration documents for their now-destroyed housing or documents of title for land on which they may have factually lived for years or decades, or for housing they may continue to inhabit. Many RAE have never obtained birth certificates, a fact which may trigger failure to secure any form of personal documentation and lead to a phenomenon whereby persons may have literally no administrative existence.

Of the displaced RAE living in the three IDP camps of Žitkovac/Zhikoc, Cesmin Lug/Cesminlukë and Kablare, very few have documentation to prove ownership of their destroyed houses in the Mahala. Although many of the families have lived in the multi-story houses for several generations, the municipality has asserted a claim to the land which compromised the former Mahala as municipal land.

In addition to the lack of property ownership documents, RAE IDPs in Kosovo also lack personal documentation necessary to access many social services. One especially troubling example of a lack of personal documentation is that of the Roma IDPs living in Žitkovac/Zhikoc, Cesmin Lug/Cesminlukë and Kablare who are unable to obtain medical services, despite suffering from the very serious effects of lead poisoning. Many of the RAE living in the camps have UNMIK-issued IDP cards, however those are not recognized in the Serb-operated hospitals in Northern Mitrovica, where the camps are located.

Research on the situation of lack of personal documentation of displaced RAE in Kosovo is scant. However, ERRC research in the IDP camps of Žitkovac/Zhikoc, Cesmin Lug/Cesminlukë and Kablare offer indications of some of the difficulties with which RAE in Kosovo contend. The international community is reportedly planning a census in Kosovo for 2006.⁵³ The census would serve as an opportunity to simultaneously register undocumented IDPs and refugees living in Kosovo. However, in order for the census to be valuable, particular attention must be paid to the situation of the RAE, many of whom are living as IDPs or with family members because it is not yet safe to return to their homes.

⁵¹ During "Operation Horseshoe" as well as before it, Serbian authorities frequently destroyed the personal documents of non-Serbs in Kosovo. Remedying these issues has been rendered complex by the fact that as Serbian forces withdrew from Kosovo in June 1999, in many instances, they took with them the administrative records of a number of municipalities and established "shadow" municipal authorities in Serbia proper for towns in Kosovo.

⁵² See Cameron, Lindsay, "The Right to an Identity", in *Roma Rights* 3/2003, at: <http://www.errc.org/cikk.php?cikk=1066>.

⁵³ Müller, Stephan, "Civil Registration of Roma-Background Paper", Regional Conference on Civil Registration of Roma in South Eastern Europe. Belgrade, 28 November 2005, pg. 10.

Conclusion and Recommendations

Mr. Marek Antoni Nowicki, then-Kosovo Ombudsman, has expressed concerns that in the "upcoming status discussions the bi-polar frame of competing political forces, Albanian versus Serb, will force the Roma off the road of greater inclusion."⁵⁴

Under the "standards before status" policy, PISG were supposed to achieve certain standards before the final status of Kosovo could be addressed. The eight standards under the policy are: functioning democratic institutions; rule of law; freedom of movement; returns and reintegration; economy; property rights; dialogue with Belgrade; and the Kosovo Protection Corps.⁵⁵ The cruel and degrading treatment; the failure to prevent exposure to extremely hazardous conditions; the failure to provide effective remedy for gross violations of human rights; the denial of the right to return to the place of origin; and the systemic discrimination in access to goods and services indicate that the eight standards have remained unfulfilled with respect to the RAE minorities.

The ERRC urges the Committee to undertake all actions available under its mandate to address the extreme situation of RAE in Kosovo. In light of the above, the ERRC urges the Committee to recommend that UNMIK undertake the following measures:

- Without delay, remove the inhabitants of Žitkovac/Zhikoc, Cesmin Lug/Cesminlukë and Kablare from the heavy metal-contaminated grounds of the current IDP camps and provide them with immediate medical care and treatment; plans to move the individuals concerned to a former French KFOR barracks should be abandoned; camp inhabitants should be moved, without any further delay, to areas which are actually safe.
- Without delay, provide real, effective and durable protection to all RAE individuals and communities.
- Investigate and bring to justice those responsible for violence against RAE individuals and communities; establish procedures for providing comprehensive justice in the matter of the ethnic cleansing of minorities, including persons regarded as "Gypsies", implemented in the period since June 1999 and as yet unchecked by any competent authority, such that all culpable parties are brought to justice, and victims and/or surviving members of their families have access to due remedy.
- Ensure that, in compliance with UN Security Council Resolution 1244, refugees and displaced RAE enjoy unimpeded, safe and secure return to their homes in Kosovo.
- Adopt measures to ensure that Kosovo's comprehensive anti-discrimination law is implemented in practice, such that discriminators are swiftly and adequately punished, and victims have access to due remedy.
- Without delay, adopt and implement measures to address the extreme exclusion of members of RAE communities from access to gainful employment, taking particular account of the need for such policies to reach all relevant individuals, and to be adequately gender-sensitive.

⁵⁴ "Pariah's Fate" Off the Record, Marek Antoni Nowicki, Kosovo Ombudsperson Institution, 4 November 2005.

⁵⁵ UN Press Release SC/7951. "Security Council, in Presidential Statement, Expresses Support for 'Standards for Kosovo', Welcomes Launch of Review Mechanism." Security Council 4880th Meeting (PM), 12 December 2003.

- Take measures to ensure that the extremely substandard slum conditions prevailing in many RAE settlements in Kosovo are swiftly improved through comprehensive policy measures by Kosovo authorities aimed at eliminating massive inequalities in the area of housing currently prevailing in Kosovo.
- Adopt and implement procedures to rectify the current systemic deprivation of RAE in Kosovo of personal and other documents crucial for the realisation of fundamental human rights; ensure that policies adopted in this field result in practice in all RAE individuals in Kosovo being provided in practice to all relevant documentation.