



Distr.: General

16 March 2010

الجمعية العامة

Arabic

Original: English

مجلس حقوق الإنسان

الدورة الرابعة عشرة

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية

والاجتماعية والثقافية، بما في ذلك الحق في التنمية

## تقرير المقرر الخاص المعني بحقوق الإنسان للمهاجرين، خورخي بوستامانتي

إضافة

البعثة التي قام بها المقرر الخاص إلى رومانيا\*

(15-20 حزيران/يونيه 2009)

□□□□

يبحث هذا التقرير حماية حقوق الإنسان الخاصة بالمهاجرين، مقدّماً رومانيا بالأساس كبلد منشأ وعبور للتنقّلات الهجرية، لكن أيضاً كبلد يشكل فيه هجرة العمال والتمسك اللجوء اتجاهين ناشئين. ويبرز التقرير الإطار القانوني على المستويات الدولي والأوروبي والمحلي، مشدداً على بعض الثغرات التي تعترض تنفيذ القوانين القائمة، ومشيراً إلى السياسات التي تثير مشاكل. وبلي ذلك تحليل للفتات الرئيسية في ظاهرة الهجرة، بمن في ذلك رومانيو الشتات والعمال المهاجرون والأطفال الذين هاجر ذووهم وتركوهم فيأتوا من ضحايا الاتجار بالبشر. ويبرز التقرير التحديثات الرئيسية والممارسات الحسنة ويقدم عدداً من التوصيات.

\*يُعمّم موجز هذه الوثيقة بجميع اللغات الرسمية. أما التقرير، الذي يرد في مرفق الموجز، فيُعمّم باللغة التي قدم بها فقط وباللغة الفرنسية.

## Annex

## Report submitted by the Special Rapporteur on the human rights of migrants, Jorge Bustamante, on his mission to Romania 15–20 June 2009

## Contents

		Paragraphs
Page		
I.	Introduction.....	1–
5	4	
II.	General background: The migration phenomenon in Romania.....	6–27 4
A.	The Romanian diaspora.....	8–
11	5	
B.	The impact of migration on children.....	12–
14	5	
C.	Transnational organized crime.....	15–
21	6	
D.	Emerging trends.....	22–
27	7	
III.	Normative and institutional framework for the protection of migrants in Romania.....	28–70 8

32	8	A. The international legal framework.....	28–	
9		B. The regional legal and institutional framework.....	33–37	
		C. The national legal, policy and institutional framework.....	38–70	10
78	14	IV. Good practices.....	71–	
		A. Enhancing cooperation between migrants’ countries of origin and destination.....	72	15
		B. Sharing the responsibility of protecting persons in urgent need of international protection.....	73–74	15
15		C. Enhancing cooperation with emigrants.....	75	
		D. Partnering with stakeholders to implement a rights-based approach to border control and monitoring.....	76	15
		E. Broadening people’s opportunities in the context of abusive forms of migration.....	77	16
		F. Enhancing the protection of those left behind by migrants in countries of origin.....	78	16
		V. Major challenges in the protection of the human rights of migrants in Romania.....	79–103	16
		A. The criminalization of irregular migrants and the detention of migrants.....	80–85	16
		B. The protection of migrant workers and the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.....	86–92	17
		C. The protection and assistance of victims of human trafficking.....	93–95	18
		D. The protection of children in the context of migration.....	96–100	19
		E. The protection of women in the context of migration.....	101–103	19
20		VI. Conclusions and recommendations.....	104–114	

## I. Introduction

1. The Special Rapporteur visited Romania from 15 to 20 June 2009 at the invitation of the Government. Based on the information gathered, this report examines the protection afforded to migrants by the Government of Romania in the light of international human rights standards, presents major trends in the migration phenomenon, highlights key challenges and good practices and makes recommendations.

2. During his visit, the Special Rapporteur consulted Government officials from the Ministry of Foreign Affairs; the Ministry of Administration and Interior; the Ministry of Labour, Family and Equal Opportunity (hereinafter “Ministry of Labour”); the National Council against Discrimination; the National People’s Advocate Institution; the Senate’s Committee for Human Rights, Cults and Minorities; the National Authority for the Protection of Children’s Rights and the National Agency against Trafficking in Persons (NAATP).

3. The Special Rapporteur conducted field trips to Galati, Constanta, Tulcea, Otopeni and Pitesti where he consulted with Government officials and, in some instances, with non-governmental organizations, migrant inmates and victims of trafficking in persons. In Constanta, the Special Rapporteur visited a NAATP centre and was briefed by the Brigade of Countering Organized Criminality on the implementation at the county level of the programme of protection for victims of trafficking in persons, as well as on local activities to counter the smuggling of migrants, human trafficking and forced labour. In Otopeni, he also visited a short-term accommodation centre for migrants where he interviewed inmates on a random basis. At the Government’s initiative, he also visited the Danube Delta near the border with Ukraine.

4. The Special Rapporteur also held consultations with the United Nations Resident Coordinator and representatives of the United Nations Development Programme; the United Nations Children’s Fund (UNICEF); the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Population Fund. He met with representatives of the International

Organization for Migration (IOM), the International Committee of the Red Cross, non-governmental organizations and research institutions.

5. The Special Rapporteur expresses his appreciation to the Government of Romania, especially to the Ministry of Foreign Affairs and the Permanent Mission of Romania in Geneva, as well as to the United Nations country team and other United Nations officials for their cooperation in the organization and conduct of the visit. He also thanks all stakeholders for their time and cooperation.

## **II. General background: The migration phenomenon in Romania**

6. Migration patterns in Romania have changed over time. From being at the crossroads of migration, with the fall of the communist regime, Romania has become primarily a country of origin of emigration flows. Romania is also nowadays a country of transit for those moving towards Western Europe and is emerging as a country of labour immigration and asylum-seeking.

7. Emigration flows have stimulated the national economy but have also posed challenges to Romania. Protection challenges include specific groups such as the Romanian diaspora, children (especially those left behind by migrating parents) and those sectors of the population which are more vulnerable to transnational organized crime, including trafficking in persons. Reference is made to those groups and emerging trends hereinafter.

### **A. The Romanian diaspora**

8. There is a dearth of statistical information on Romanians abroad. While some sources estimate an approximate number of two million, in January 2006, the Romanian Presidency estimated a diaspora community of approximately eight million individuals.<sup>[1]</sup>

9. Until 2001, the main countries of destination for Romanian emigrants included Germany (which received half of all emigrants), Canada, Hungary, Italy, Spain and the United States of America. Emigration flows towards the United States of America and to the United Kingdom of Great Britain and Northern Ireland and towards other Western European countries have reportedly been increasing since 2004. Currently, Romanians also appear to be working in France, Germany, Greece, Hungary, Israel, Ireland, Portugal and Turkey.

10. From the data collected by the IOM in 2005, approximately 50 per cent of Romanian emigrants worked irregularly. Romanian migrant workers have reported cases of low wages, lack of minimum work protection, targeted attacks and racial profiling by police and Government agencies at entry checkpoints of some of the European countries that are not a party to the Schengen agreement.

11. Information provided by the Ministry of Labour in June 2009 suggests that the highest numbers of Romanian migrant workers are found in Italy and Spain. This information is corroborated by data available at the national statistical institutions of those countries.<sup>[2]</sup> For example, information released in 2007 indicated that Romanian immigrants in Italy accounted for 15 per cent of the international migration stock with a population totalling 600,000 individuals. Furthermore, information released in 2008 indicated that Romanian immigrants constituted 14 per cent of the international migrant stock of Spain. Statistical information available in June 2009 showed that the number of Romanian immigrants with a regular permit to stay in Spain amounted to 700,618 individuals.

### **B. The impact of migration on children**

12. Outmigration in Romania has affected children, particularly children left behind by their parents who migrate abroad for labour. Various studies carried out in Romania between 2006 and 2008 have documented that children left behind encounter increased vulnerability, particularly in the areas of protection and education.<sup>[3]</sup> According to a study released in 2008 by UNICEF,<sup>[4]</sup> the complexity of this phenomenon arises from aspects related to the economic and social situation of Romanians, including large gaps between the different strata of society. Studies also show that this phenomenon greatly affects western Romania.

13. The Government of Romania indicated to the Committee on the Rights of the Child in 2007<sup>[5]</sup> that the phenomenon of children left behind by migrating parents at home in the care of relatives, extended family and even State institutions increased with the opening of the country's borders following its accession to the European Union.

14. In 2008, UNICEF estimated that around 350,000 children (over 8 per cent of the child population) were affected by this phenomenon. Of these, approximately 126,000 were affected by the migration of both parents, 50 per cent were below the age of 10, and 16 per cent had lived apart from their parents for more than one year.<sup>[6]</sup> The phenomenon seems to be on the decline, since information provided by the National Authority for the Protection of Children's Rights updated to include March 2009, showed that at least 51,790 children were left behind by one migrating family member. Of these, at least 10,995 had a single caregiving parent working abroad and 28,447 children had both parents working abroad. A total of 3,560 children left behind benefited from the special protection system established by the Government, which is described below.

### **C. Transnational organized crime**

15. Romanian nationals have been prey to transnational organized crime, primarily trafficking in persons for the purposes of sexual exploitation, forced labour and forced begging mostly in Europe. Forced labour takes place in the agriculture, construction and service sectors, among others. Romania is also a country of transit and, to some extent, destination<sup>[7]</sup> in the human trafficking cycle. Roma children are reportedly major victims of transnational organized crime, including trafficking in persons and forced begging.

16. According to the European Agency for the Management of Operational Cooperation at the External Borders of the Member

States of the European Union (Frontex),<sup>[8]</sup> in 2007, the human trafficking phenomenon in Romania involved 2,492 victims and a total of 1,509 identified facilitators. According to the Government, the total number of victims identified in 2007 was 1,780 and there were no reported cases of human trafficking in foreign citizens.

17. While the majority of cases of international trafficking in persons involved Western Europe, particularly Italy and Spain, cases of domestic trafficking in persons were also reported in 2008 according to a human rights report issued by the United States Department of State.<sup>[9]</sup> Other countries of destination for trafficked persons of Romanian origin for commercial sexual exploitation and forced labour are Belgium, Cyprus, Czech Republic, Denmark, Germany, Greece, Hungary, the Netherlands, Poland, Portugal, Slovakia, Sweden and Turkey. Information provided by the Government indicates that, in 2008, 18 cases (8 females) of trafficking in foreign citizens were identified in the Romanian territory: 13 from Honduras, 3 from the Republic of Moldova, 1 from France and 1 from Colombia.

18. Information gathered by the Commissioner for Human Rights of the Council of Europe in a visit to Italy in January 2009 shows that a significant number of unaccompanied migrant children of Romanian origin entered Italy irregularly, most of whom reside in Rome. By the end of 2006, 6,551 unaccompanied migrant children were recorded, with 36 per cent of them coming from Romania. Many of these children were reportedly involved in irregular employment and begging, theft and sexual exploitation.<sup>[10]</sup>

19. Information provided by the Romanian authorities indicates that human trafficking networks operate in several counties and the majority of them tend to traffick victims into the following European countries: Spain (counties of Teleorman, Olt, Brăila, Bihor, Alba, Sibiu, Bucureşti); Germany (county of Mureş); Greece (counties of Doj and Mehedinţi); Italy (county of Vaslui); Czech Republic (county of Prahova). This phenomenon affect also other countries in the Balkans and western Europe.

20. The Special Rapporteur was also informed by the Romanian authorities of the constant decrease in trafficking in persons in Romania since 2005. However, stakeholders also informed the Special Rapporteur of a possible shift in the patterns of recruitment of victims of trafficking in persons, which may lead to an increase in such recruitment in countries to which persons of Romanian origin emigrate. In this connection, the Special Rapporteur wishes to draw the Government's attention to the continued vulnerability of women and girls to such trafficking once they travel to Western European countries and encounter limited working opportunities.

21. Although traditionally a country of origin and transit of victims of trafficking, stakeholders claimed that Romania might become a country of destination in human trafficking cycle. In that connection, the National Agency against Trafficking of Persons (NAATP), registered and assisted 216 non-national victims of trafficking in 2008. According to information provided by UNHCR, none of these persons applied for asylum in Romania.

#### **D. Emerging trends**

22. According to information provided by the Ministry of Labour, immigration is a relatively new phenomenon in Romania, which began with its political and economic transition after 1990. The most recent national census<sup>[11]</sup> shows a total of 21,680,974 inhabitants, consisting of the following ethnic groups: Romanian (19,399,597 or 89.46 per cent); Hungarian (1,431,807 or 6.6 per cent); Roma (535,140 or 2.46 per cent); Ukrainian (61,098); German (59,764); Russian-Lipovans; Turks; Tartars; Serbs; Slovaks; Bulgarians; Croats; Greeks; Hebrews; Czechs; Polish; Italian; Chinese; Armenian; Csango; other ethnic groups; and non-declared ethnic groups.

23. There is a dearth of data on the number of international migrants in Romania. The information available indicates that the Republic of Moldova has been the main country of origin of immigrants into Romania from 1997 until the accession of Romania to the European Union (Moldovan migrants account for approximately 75 per cent of the international migrants in the country). Currently, the Republic of Moldova remains a main country of origin of immigration flows into Romania owing to, inter alia, common linguistic features and a more favourable economic situation in Romania.<sup>[12]</sup> Other countries of origin of migrant workers in Romania are Bangladesh, China, India, Turkey, Philippines, and Viet Nam, as well as, to a lesser extent, Australia, Canada, Israel, Serbia, Switzerland, the Syrian Arab Republic, Ukraine and the United States of America.

24. Information provided by the Ministry of Labour shows that a total of 15,000 work permits were issued in 2008 to nationals of 84 countries.<sup>[13]</sup> The most work permits were issued to nationals from Turkey (4,831 work permits); China (4,761); the Republic of Moldova (1,214); Bangladesh (859) and Vietnam (566), as well as nationals of the Philippines (455 work permits); India (422); Egypt (206); Serbia (145); Israel (142) and Sri Lanka (126). The Ministry of Labour reported that Romania may increasingly resort to labour immigration as a consequence of population ageing and outmigration trends.

25. Irregular migration continues to be a concern in Romania. Information gathered by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) on irregular border crossing reported at the Eastern land border of Romania indicates a total of 756 interceptions in 2008.<sup>[14]</sup>

26. In the course of his visit, the Special Rapporteur was informed of the decrease in trafficking in persons and the increase in smuggling of migrant workers. In the view of a number of stakeholders and Government authorities, the latter was due to an increase in the demand for cheap labour arising from the economic crisis.

27. Pursuant to a Government decision issued in December 2008, Romania has become a resettlement country, with a quota of 40 refugees to be resettled each year during the period 2008 to 2010. Although, in 2008, the resettlement quota was not met, in 2009, the Government decided to resettle 40 refugees of Myanmar origin, currently in Malaysia, who are expected for permanent resettlement in Romania in 2010. Romania is also contributing to the intra-European Union relocation programme, with seven refugees to be permanently relocated from Malta in 2010.

### **III. Normative and institutional framework for the protection of migrants in Romania**

#### **A. The international legal framework**

28. The Constitution, which is the supreme law of the State, recognizes in its article 11 that international treaties ratified in accordance with Romanian law are part of national law and that obligations stemming from those treaties are pledged to be fulfilled as such and in good faith by the Romanian State.

29. Romania is a party to the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption, ratified in 2002 and 2004 respectively, both of which contain provisions requiring or encouraging measures for the protection for witnesses to offences sanctioned under those treaties. Romania is also a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both of which supplement the United Nations Convention against Transnational Organized Crime.

30. Romania has ratified six of the core international human rights instruments adopted within the framework of the United Nations, which it joined in 1955. Nevertheless, Romania has not ratified the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, although it has repeatedly been encouraged to do so, for example, by the Committee on the Elimination of Discrimination against Women.<sup>[15]</sup> In the context of the universal periodic review (), Romania did not accept the recommendation regarding the ratification of the Convention, but highlighted that it would consider its ratification on the basis of an evaluation of all relevant factors proving the added value of such a decision.<sup>[16]</sup> This position was reiterated to the Special Rapporteur.

31. While recalling that all European Union member States are yet to ratify the Convention, Romanian authorities also stated that by default of a coordinated action at the European Union level, Romania cannot act alone as a vanguard of the migrant workers' rights, as it risks to infringe its obligation of cooperation assumed towards the European Union.

32. The Special Rapporteur regrets that the voluntary pledges and commitments to developing and strengthening the role of the United Nations in the universal promotion of human rights made by Romania contrast with its position regarding the ratification of the Migrant Workers Convention.<sup>[17]</sup> The Special Rapporteur will address below a number of misconceptions related to the Convention and its ratification.

#### **B. The regional legal and institutional framework**

33. Romania has full membership in the Council of Europe (1993), the North Atlantic Treaty Organization (2004) and the European Union (2007). At the regional level, Romania is a party to the Council of Europe Convention on Action against Trafficking in Human Beings, which it ratified by Law No. 300/2006, and has cooperated in the fight against migrant smuggling and trafficking in persons, inter alia, by leading the support for the South-East and Black Sea Cooperation Processes.<sup>[18]</sup>

34. Romania became a party to the European Convention for the Protection of Human Rights in 1994 and accordingly allowed access to the European Court of Human Rights to all persons under its jurisdiction, including migrants, to defend the rights and freedoms recognized in the Convention.

35. Romania benefited from the European Union's pre-accession assistance (PHARE) for legal harmonization in the field of migration. As a European Union member, Romania has to comply with European Union regulations, which, in the area of migration, include a set of regulations applicable to non-European Union nationals, referred as third-country nationals, inter alia, on integration policies for long-term residents (Council Directive 2003/109/EC); the right to family reunification for regular migrants (Council Directive 2003/86/EC); the general framework for equal treatment in employment and occupation (Council Directive 2000/78/EC); social security benefits (Council regulations Nos. 1408/71, 859/2003 and 574/72) and the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Council Directive 2009/50/EC). Directives on such issues as occupational health and safety or working conditions are, in principle, applicable to all workers, irrespective of their nationality.

36. A model agreement on the readmission of third-country nationals to their country of origin was adopted in 1994 and its implementation principles in 1995, as the basis for bilateral negotiation between European Union member States and third countries.

37. Human rights concerns have been raised, particularly about the standards applicable to irregular migrants in Directive 2008/115/EC on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals (commonly referred as the "return directive"). Major concerns highlighted by the Special Rapporteur, jointly with other special procedures in a letter dated 16 December 2008,<sup>[19]</sup> include detention issues (proportionality, maximum period, detention and return of unaccompanied children, judicial review of the legality of administrative detention), emergency situations, entry ban and the protection of vulnerable groups. The Romanian legal system has incorporated this directive in the legislative plan for 2010, with a view to integrating it in the national law package.

#### **C. The national legal, policy and institutional framework**

38. The current Constitution of Romania, adopted in 1991 and amended in 2003, establishes the legal framework for the protection of human rights in the context of migration. Limitations on the exercise of those rights and freedoms in times of public emergency are determined by Law No. 453 of 2004.

39. Freedom of movement is guaranteed in article 25 of the Constitution, which also recognizes the right of Romanian citizens to establish their domicile or residence anywhere in the country, emigrate and return to Romania. Article 3 further prohibits the displacement or colonization of foreign populations on the territory of the Romanian State.

40. The basis for the protection of non-nationals in Romania is stipulated in article 18 of the Constitution, which recognizes, on the one hand, the general protection afforded to aliens and stateless persons living in Romania and their assets and, on the other hand, the right of asylum, which may be granted and withdrawn in compliance with national laws and the international treaties to which Romania is a party.

41. The Constitution also provides the basis for the cooperation with diaspora communities and host countries. Article 7 recognizes that the State shall support the strengthening of links with Romanians living abroad, including the preservation, development and expression of their ethnic, cultural, linguistic and religious identity, with due observance of host countries' laws. Article 17 further guarantees that Romanian nationals, while abroad, shall enjoy the protection of the Romanian State and shall be bound to fulfil their duties, excepting those incompatible with their absence from the country. Further provisions safeguarding human rights in the context of migration are contained in organic and ordinary laws, including Government decisions, Government ordinances and emergency ordinances.

42. Migration policies in Romania are mainly the responsibility of the Ministry of Administration and Interior and some of its structures: the Romanian Immigration Office manages policies on migration, asylum, the integration of migrants and the implementation of relevant legislation on these areas (Emergency Ordinance No. 55 and Government Decision No. 639 of 2007); the Border Police is in charge, inter alia, of the prevention of irregular migration as well as the surveillance and control of border crossing (Emergency Ordinance No. 105 of 2001).

43. Other institutions with the potential to play a key role in the protection of the human rights of migrants are the People's Advocate; the National Council for combating discrimination; the Romanian Institute for Human Rights; the Senate's Committee for Human Rights, Cults and Minorities and the Committee for Human Rights, Cults and Minorities from the Chamber of Deputies.

44. In 2004, Romania adopted a National Strategy on Migration, which was abrogated in 2007 with the approval of the National Strategy on Immigration for 2007–2010 which unified policies in the fields of migration, asylum and social integration of aliens, in line with international and European standards. Each year, action plans and activities are devised for the strategy's implementation.

45. The legal framework for migration governance includes legislation on aliens, asylum-seekers, migrant workers, trafficking in persons and management of irregular migration, including through administrative detention. National policies, plans and programmes on the protection of children have addressed migration-related concerns.

### **1. The regime applicable to aliens**

46. The term "alien" refers to all persons who are not Romanian citizens or citizens of any European Union member State. The aliens' regime currently applies only to third-country nationals but prior to accession of Romania to the European Union it encompassed any non-Romanian citizen.

47. The Aliens Law of 2002 (republished in 2008) regulates the entry, stay and exit of aliens, including the aliens' rights and obligations when in Romania, visa requirements, residence permits and leave to remain, the removal and expulsion of aliens, administrative detention (known as public custody), the issuance of travel and identity documents for aliens and the use and protection of aliens' personal data.

48. The law provides that those intercepted trying to enter Romania irregularly are to be returned to their countries of origin within 24 hours, unless there are reasons preventing deportation; these include appeals to deportation decisions. When there are reasons preventing removal, aliens are accommodated in short-term holding centres, which are detention facilities for aliens under the responsibility of the Romanian Immigration Office. The centre in Otopeni, near Bucharest, can accommodate up to 150 persons and the centre in Arad, near the Hungarian border, up to 25 persons.

49. According to the Aliens' Law, administrative detention of aliens (known as public custody in the Aliens' Law) may apply when: (a) the alien cannot be removed from the Romanian territory within the term provided by the law; (b) the alien is issued with an expulsion order following a criminal conviction; (c) the alien is declared undesirable for reasons of national security. While in case (a), it is the prosecutor who decides to place the alien under administrative detention, in cases (b) and (c), it is the court that takes that decision under article 97 of the Aliens' Law.

50. An alien in administrative detention is released if she/he submits an asylum application (including rejected asylum-seekers who submit a new asylum application if they are granted access to a new asylum procedure in Romania), unless the alien in question has been issued an expulsion order or been declared undesirable.

51. Aliens that are not granted permission to stay in Romania but who cannot be removed from the Romanian territory for objective reasons are granted the status of "person tolerated". According to the Aliens' Law, this status is granted by the Romanian Immigration Office in the following circumstances: (a) when an alien in administrative detention cannot be removed from the Romanian territory within six months, or after two years, when an expulsion order was issued; (b) when the alien has been subject of smuggling or is a victim of trafficking in persons; (c) when the administrative authority has established the temporary impossibility to remove an alien from the territory owing to objective reasons, such as the impossibility to verify the aliens' country of origin.

52. The status of "person tolerated" allows aliens to remain in the Romanian territory, for a given period of time, without the right to receive social benefits. This status is initially granted for a maximum of six months, with the possibility of extension for additional periods of up to six months. Work permits are not granted to persons holding this status.

53. The procedure for declaring an alien undesirable and expelling him or her from the Romanian territory is governed by article 85 of the Aliens' Law. Decisions declaring an alien undesirable are subject to appeal, which, if granted, suspends the execution of the decision except "in well-founded cases in order to prevent imminent damages". Accordingly, when reasons of national security are

the basis for declaring an alien undesirable, data and information are not revealed to the person concerned, in contradiction with the guarantees associated with the due process of law.

## **2. The asylum regime and the protection of refugees**

54. The Asylum Law prevails over the Aliens' Law, except if reasons of national security or public order justify the removal of an alien from the Romanian territory, in accordance with article 147 of the Aliens' Law. In articles 82–87, an accelerated procedure at border points is established. During the border procedure, asylum-seekers may be confined to the transit zone for a maximum period of 20 days, thereafter the asylum-seeker is granted access to Romanian territory, irrespective of the stage of the refugee status determination procedure. Safeguards against refoulement include article 17 (1) (a) of the Asylum Law, which recognizes the right of asylum-seekers to remain on the territory throughout the duration of the refugee status determination.

55. Asylum-seekers are exempted from penalties for irregular entry (article 31 (1) of the 1951 Refugee Convention), pursuant to article 11 of the Asylum Law. To date, none of the asylum-seekers who entered Romania irregularly has been convicted for irregular entry according to information provided to the Special Rapporteur by UNHCR.

56. Romania has established five refugee reception centres administered by the Romanian Immigration Office, which are open centres with a total accommodation capacity of nearly 1,300 places. They accommodate asylum-seekers, refugees and persons with subsidiary protection (such as refused refugees who cannot be returned to their countries because of internal conflict, the threat of torture or death penalty) and are located in Bucharest, Timisoara, Galati, Radauti and Somcuta Mare.

57. The Law on Prevention and Suppression of Terrorism of 2004 establishes exceptions to the principle of non-refoulement and the withdrawal of the right to stay followed by a declaration of a person as "undesirable", for example, when information or well-founded indications suggest that aliens, refugees, victims of armed conflict or stateless persons intend to commit terrorist acts or favour terrorism. However, the measure to remove from Romania asylum-seekers who are subject to this exception is executed only after the asylum request has been rejected through an executory decision.

## **3. The labour migration regime**

58. Labour migration is generally understood as a phenomenon related to third-country nationals only. This is a consequence of the *acquis communautaire*, in particular Directive 2004/38/EC on the right of European Union citizens and their family members to move and reside freely within the territory of the member States and its guidelines of transposition, as the authorities explained to the Special Rapporteur.

59. The domestic legal framework applicable to migrant workers in Romania includes five major legal instruments: the Labour Code (Law No. 53 of 2003); regulations on employment and posting of foreigners in the territory of Romania (Emergency Ordinance No. 56/20 of 2007); regulations on the regime applicable to foreigners in Romania (Emergency Ordinance No. 194/12 of 2002); the public system of pensions and other social security rights (Law No. 19/17 of 2000); and provisions on the recognition of foreign diplomas and vocational qualifications (Law No. 200 of 2004).

60. Social protection benefits in the case of unemployment cover third-country nationals, including stateless persons. Unemployment benefits are monthly payments, determined according to the length of contributions to the unemployment insurance system at the time of employment. These benefits amount to a maximum of 12 months when contributions to the employment system have been higher than 10 years.

61. Seasonal work is regulated by Emergency Ordinance No. 56 of 2007. A seasonal worker is a person working in Romania for a limited period of time, at most 6 months within a 12-month interval, under an individual labour contract in a seasonal sector. Seasonal workers require a work authorization issued by the Romanian Immigration Office at the request of the employer, which cannot be prolonged for the pursuit of another type of work.

62. Romanian legislation allows immigration for family reunification. Aliens holding a valid residence permit may request family reunification, inter alia, with the spouse; dependent children and dependent relatives of the sponsor or his/her spouse of first-degree kinship in the ascending line, in cases where they are unable to look after themselves. The visa is generally issued for a period of 90 days. Residence permits can be extended for the duration of the sponsor's permit or, up to five years for family members of a Romanian citizen.

## **4. Counter-trafficking in persons and the protection of victims**

63. Human trafficking is a criminal offence punishable with imprisonment between 3 and 12 years in cases involving adults and between 5 and 15 years, in cases involving children. These penalties may be increased up to three years, if the trafficker belongs to a group of organized crime and, by five years, if coercion is applied against children.<sup>[20]</sup>

64. NAATP is the specialized structure in charge of monitoring and reporting cases of trafficking in persons as well as promoting assistance to and protection of victims. It refers victims, through the 15 regional centres, to specialized structures which provide assistance services such as the National Authority for the Protection of Children's Rights. The agency also coordinates victim/witness cooperation with law enforcement agencies and victims' access to social services. NAATP operates under the authority of the Inspectorate of the Romanian Police within the Ministry of Administration and Interior.

65. Activities related to the fight against trafficking in persons are coordinated by the Ministry of Administration and Interior through the General Directorate on Combating Organized Crime, as part of an inter-ministerial working group pursuant to Government Directive No. 299 of 2003. Activities for the prevention of human trafficking and the protection of and assistance to victims of trafficking are coordinated by NAATP through an inter-ministerial working group. NAATP is also the technical secretariat

of a number of inter-ministerial groups on issues pertaining to trafficking in children.

66. The Government cooperates with stakeholders to build public awareness of the risks involved in trafficking in persons, conduct research and training programmes for targeted groups and improve services offered to victims, including the State-administered system for the protection, rehabilitation, and social reintegration of victims of domestic and international trafficking.

#### **5. The protection of children in the context of migration**

67. The National Authority for the Protection of Children's Rights is the central body established under the authority of the Ministry of Labour. Its main responsibilities include the coordination and control of children's rights-related activities in Romania.

68. The institutional structure for the protection of children left behind, inter alia, by migrating parents, includes the National Authority at the central level, the General Departments of Social Assistance and Child protection at the municipality level and the Public Social Assistance Services within municipalities. Representatives of the general departments of social assistance and child protection can access corporate bodies' offices and private homes to verify cases of child abuse and neglect.

69. Law No. 272 of 2004 on the protection and promotion of the rights of the child provides the general legal framework for governmental intervention in cases of children at risk, which includes children left behind. Pursuant to Order No. 219 of 2006, local authorities are responsible for identifying cases of children left behind, while parents migrating for labour abroad have the obligation to inform local authorities of their departure and the child's social welfare guardianship arrangements.

70. The National Authority for the Protection of Children's Rights coordinates and oversees the implementation of plans, programmes and activities on the prevention of child trafficking as well as on the protection and assistance of child victims of trafficking. In that capacity, it chairs the working sub-group for the prevention of and fight against trafficking, formed by experts from different ministries and central authorities, civil society and international organizations such as UNICEF and IOM (Government Decision No. 1295 of 2004 and Joint Order No. 123-429 of 2004).

#### **IV. Good practices**

71. During his visit, the Special Rapporteur was informed of a number of good practices of cooperation between various stakeholders, which show their commitment to work towards strengthening the protection of human rights of migrants.

##### **A. Enhancing cooperation between migrants' countries of origin and destination**

72. The Special Rapporteur appreciates the interest of Romania in strengthening partnerships with countries of origin and destination of migrants as co-responsible actors in mainstreaming human rights into migration governance. He welcomes cooperation, for example, between Romania and the Republic of Moldova. He also welcomes cooperation between Germany and Romania through a project initiated in 2007, aimed at promoting sustainable development in the field of asylum and migration in the Republic of Moldova.

##### **B. Sharing the responsibility of protecting persons in urgent need of international protection**

73. The Special Rapporteur commends the establishment of the Evacuation Transit Centre in Timisoara in 2008 as a result of an agreement between the Government of Romania, UNHCR and IOM. This multilateral initiative aims at providing temporary accommodation in Romania for up to 200 persons in urgent need of international protection as defined in the Convention relating to the Status of Refugees and its Protocol of 1967, for a maximum period of six months. In exceptional circumstances, this period may be prolonged to facilitate the rapid evacuation of refugees from first countries of asylum to Romania in view of preparing their onward resettlement to a third country. This practice sets an important precedent for the region, as this centre is the first of its kind in Europe.

74. By highlighting this practice, the Special Rapporteur wishes to encourage similar cooperation agreements concerning other groups in need of protection such as victims of trafficking in persons, especially when reasonable grounds suggest that repatriation of trafficked victims would pose a serious risk to their or their families' safety.

##### **C. Enhancing cooperation with emigrants**

75. The Special Rapporteur praises the institutionalization of the cooperation with diaspora communities, through the establishment of a Department for Romanians Living Abroad under the authority of the Ministry of Foreign Affairs. He welcomes efforts to provide assistance and information to prospective migrants and commends the inclusion of the Romanian scientific diaspora in the National Strategy for Research, Development and Innovation (2007–2013) and the adoption of measures to support those Romanians abroad who want to return to finish studies in Romania (Emergency Ordinance No. 10/13 of 2008).

##### **D. Partnering with stakeholders to implement a rights-based approach to border control and monitoring**

76. The Special Rapporteur appreciates cooperation between the Romanian Government and various stakeholders in order to implement a rights-based approach to border control and monitoring. Such is the case of the Memorandum of Understanding on border monitoring activities between the General Inspectorate of Border Police, UNHCR and the Romanian National Council for Refugees, signed in 2008, as a formalization of cooperation undertaken since 2001. The parties concerned have access to border areas to conduct monitoring missions and training sessions, inter alia, on the principle of non-refoulement and on access, legal and procedural safeguards in the refugee status determination procedure.

##### **E. Broadening people's opportunities in the context of abusive forms of migration**

77. The Special Rapporteur notes with appreciation the work carry out by NGOs for the assistance of victims of trafficking in



persons, including the establishment of “safe houses” where victims are accommodated and supported through a number of services. These include psychological assistance, legal counselling, health-care access and the opportunity to complete education, shape their competencies and/or develop new skills with a view to finding employment so as to prevent them re-entering in the trafficking cycle.

#### **F. Enhancing the protection of those left behind by migrants in countries of origin**

78. The Special Rapporteur welcomes partnership initiatives between the Government and stakeholders to implement projects focused on the protection of vulnerable groups in the context of migration. This is the case of a project focused on children left behind and the elderly for the period 2009–2011, under the auspices of the Ministry of Foreign Affairs. He also praises projects implemented by stakeholders aimed at bringing children left behind in Romania closer to their parents who have migrated to work abroad through electronic means of communication and scheduled long-distance telephone conversations, which have proven to have positive effects on programmes dealing with youth gangs and criminal behaviour.

#### **V. Major challenges in the protection of the human rights of migrants in Romania**

79. The Special Rapporteur recognizes the commitment of Romania to the realization of human rights in the context of migration and hereinafter wishes to draw the Government’s attention to a number of challenges that he believes still need to be overcome.

##### **A. The criminalization of irregular migration and the detention of migrants**

80. There are two main categories of aliens who are apprehended by the border police while trying to leave Romania irregularly: asylum-seekers registered under the refugee status determination procedure, and other aliens such as irregular migrants or asylum-seekers who are yet to apply for asylum. As a general rule, those falling into the first category are returned to the asylum-seeker accommodation centres; those falling into the second category, are treated on a case-by-case basis and, accordingly, are either transferred to one of the Romanian Immigration Office’s refugee reception centres or taken into administrative detention with a view to removal from Romania.

81. The conditions of detention should respect the standards set in the Constitution, the Criminal Procedure Code and other legal instruments on the treatment of detainees. Article 23 of the Constitution provides, *inter alia*, that initial custody may not exceed 24 hours; thereafter detention can only be prolonged on the basis of a detention order issued by a court, for a maximum period of 30 days, with a possible extension of up to 180 days. Nevertheless, the maximum period of administrative detention is different for various categories of aliens: six months for irregular aliens; two years for aliens for whom an expulsion order has been issued; and an indefinite time for the detention of aliens declared undesirable. If, after the maximum period of detention, the alien cannot be removed from the Romanian territory, he/she is released and granted a temporary right to stay, by granting them the status of “tolerated persons”, as described above in section III.

82. Aliens in administrative detention in the Otopeni Centre have access to regular legal counselling. However, according to information received, aliens in administrative detention in the Arad Centre do not benefit from regular assistance or legal counselling. The Special Rapporteur also heard allegations concerning the lack of specialized free legal assistance and interpreters for aliens – even via telephone – during court proceedings in counties other than Bucharest.

83. Information received by the Special Rapporteur also indicates that immigrants arriving or staying irregularly are often detained for prolonged periods well beyond those prescribed by the law and at times without proper judicial safeguards, including not being regularly updated on the status of their case proceedings or the expected date for their deportation. Although conditions of detention and treatment of inmates were generally reported to be good, concerns were expressed to the Special Rapporteur about the need to provide food according to religious preferences.

84. The Asylum Law does not contain provisions on the detention of asylum-seekers and refugees. However, article 17, paragraph 6, of the Asylum Law provides that for reasons of public interest, national security, public order, health, public morals or the protection of the rights and freedoms of other persons, the Romanian Immigration Office can designate a place of residency for the entire duration of the refugee status determination procedure.

85. Persons granted the “tolerated” status do not receive any social benefits and are not granted a permit to work. Accordingly, those persons are left without any type of assistance and, if they decide to work, they may need to resort to irregular employment, which may expose them to human rights violations. They are trapped in a vicious circle and may become prey of criminal networks. According to information received, they depend exclusively on charity or ad hoc help, except for free antiretroviral treatment, which is provided by the Government.

##### **B. The protection of migrant workers and the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

86. The Special Rapporteur received information on migrant workers recruited regularly in their respective countries of origin by private companies based in Romania. They reported having been devoid of protection at the end of their labour contracts. Some of them also reported having been compelled to surrender their passports or other identity documents to their employers, misinformed about labour conditions and benefits, and left without access to medical and psychological counselling and support and consular protection.

87. The Special Rapporteur observed a number of misconceptions regarding what is perceived by the Romanian authorities as obstacles to the ratification of the Migrant Workers Convention, for example, in relation to its perceived lack of added value and possible incompatibility with standards adopted at the European Union level.

88. In relation to the added value of the Convention, the Special Rapporteur wishes to recall that one of the Convention’s main values is that it makes explicit how the rights contained in the International Bill of Human Rights apply to migrants, including to those

who are in an irregular situation. This is of particular importance in the European context, especially in the light of the national implementation of the European Union return directive. In the case of Romania, there is a particular need to uphold the rights of migrants, particularly irregular migrants, who in some instances are exposed to prolonged and de facto indefinite detention.

89. In relation to a possible incompatibility with standards adopted at the European Union level, the Special Rapporteur is of the view that no insurmountable or even major legal or administrative barrier exists to the ratification of the Convention. In that connection, the Special Rapporteur invites the Government to give a close reading to the text of the Convention regarding, for example, article 79.

90. Many reasons call Romania to ratify the Convention. Romania should uphold and strengthen the rule of law by ensuring that legal norms define the basis of labour migration policy, its implementation and its supervision, and that this policy complies with universal standards adopted in the framework of the United Nations and not only with European norms.

91. Ratifying the Convention will also help Romania to strengthen social cohesion by conveying a clear signal on the protection of migrant workers and their families. The Convention discourages the “commodification” and consequent abuse of migrant workers by legally asserting their human rights. This is linked to the need to reduce irregular migration by eliminating incentives for labour exploitation, work in abusive conditions and unauthorized employment that fuel trafficking in persons and smuggling of migrants, the latter reported to be on the rise in Romania, as described in section II above.

92. Another reason for Romania to ratify the Convention is that after ratification States parties may benefit from the review by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families of their reports, which highlight progress and challenges in the implementation of the Convention at the national level. During this review process, the Committee provides States with guidance on implementation of human rights norms for migrant workers and members of their families.

### **C. The protection and assistance of victims of human trafficking**

93. The Special Rapporteur welcomes that domestic legislation related to the criminalization of trafficking in persons recognizes the prerogative of the victim to decide whether or not to testify in court against traffickers. Nevertheless, the Special Rapporteur heard allegations of the failure of some of the local authorities to provide adequate protection to returned trafficked victims. Alleged violations of the right to life and security of the person and the right to an effective remedy were frequently expressed to the Special Rapporteur during his visit.

94. A number of victims alleged that assistance and protection measures were dependent on their cooperation in testifying against the traffickers. Some victims stated that they had cooperated as a result of fear of criminalization, but that the protection granted by the authorities was not sufficient to avoid reprisals from the traffickers’ networks and therefore, they had to escape and look for alternative non-governmental assistance in other counties. This was reported to be a particular concern in the county of Iasi, which the Special Rapporteur was regrettably not able to visit, mostly because of time constraints.

95. Allegations of revictimization and multiple discrimination were also reported to the Special Rapporteur. Trafficked persons who returned to Romania either after investigation and punishment of traffickers in countries of destination or after escaping from exploitative situations in those countries informed the Special Rapporteur about their treatment as both victims and offenders by the NAATP authorities. They reported having felt that they were treated as mere pieces of evidence to prove the traffickers guilty, having been left without adequate protection and having sometimes been treated as “returned prostitutes” and not as “returned victims”. A number of stakeholders and trafficked victims interviewed alleged instances of corruption among the local police and NAATP officials and reported on the need to strengthen the law enforcement system.

### **D. The protection of children in the context of migration**

96. The Special Rapporteur identified the phenomenon of children left behind by migrating parents and child trafficking as major issues affecting children in the context of migration in Romania.

97. In connection with the protection of children left behind, the Special Rapporteur shares the concern expressed by the Committee on the Rights of the Child about the mismatch between responsibilities and resources allocation at the local level as a result of decentralization in the provision of social services.<sup>[21]</sup>

98. The Special Rapporteur heard allegations on the existence of “houses of confinement” in Bucharest where children, including foreign children, would be hidden away during the day and sexually exploited at night. According to allegations, those houses would periodically change location to avoid detection. Furthermore, the Special Rapporteur was informed by the Brigade of Countering Organized Criminality in Constanta, that similar allegations were made several years ago in their area of responsibility, which led to the apprehension of those responsible.

99. According to information received, there is a correlation between birth registration and immigration status in Romania, since migrant parents lacking identity or resident documents tend not to register their children at birth. Most such children have access to education; however, undocumented children, including migrant children, seem to face difficulties in getting access to health care.

100. Domestic legislation does not contain provisions on the conditions for taking irregular migrant children into custody or on a special detention regime. Irregular migrant children who are unaccompanied are usually escorted to welfare centres where they are accommodated until granted refugee status or temporary rights to stay or returned to their families. During such time, they have the right to education and may benefit from counselling and assistance from child welfare staff. The Special Rapporteur was not informed of the criteria for deciding on returning unaccompanied children, but was nevertheless informed that unaccompanied children are only returned to their families in the country of origin or in a third country where parents or other family members are located.

## **E. The protection of women in the context of migration**

101. The Special Rapporteur welcomes the attention devoted to gender by the United Nations agencies in Romania and wishes to draw the Government's attention to the gender dimension of migration and the need to mainstream a human rights and gender perspective into migration governance.

102. The Special Rapporteur wishes to highlight that migrant women are at a higher risk of exposure to gender-based discrimination during all phases of the migration process. Women migrants often work in unregulated sectors, including domestic work and sexual exploitation and may become victims of trafficking in persons for purposes of sexual exploitation, forced labour and other forms of exploitation.

103. During his visit, the Special Rapporteur heard allegations of a lack of gender sensitivity and awareness in the treatment of female victims of trafficking in persons by police officers and NAATP officers. He also heard allegations of instances of multiple discrimination and revictimization, which phenomena seem to be fuelled by the media, which still stereotype and label returned trafficked victims as "returned prostitutes".

## **VI. Conclusions and recommendations**

104. The progress made by Romania in the protection of human rights in the context of migration is noteworthy. During his visit, the Special Rapporteur observed efforts made by the authorities to protect children left behind by migrating parents, improve detention conditions of irregular migrants in short-term holding centres, combat transnational organized crime, including trafficking in persons, facilitate the temporary evacuation of refugees to Romania and institutional reforms to increase efficiency in the management of migration. There still remain some challenges that warrant further attention and resources and, accordingly, the Special Rapporteur wishes to make the following recommendations.

105. In relation to the criminalization of irregular migration and the administrative detention of migrants, the Special Rapporteur recommends that the Government:

(a) Consider the recommendations made by the Working Group on Arbitrary Detention in a 2009 report to the Human Rights Council,<sup>[22]</sup> particularly the call to States to study the set of measures contained in the United Nations Convention against Corruption, with a view to implementing them for the prevention and prosecution of corrupt practices and other efforts in combating arbitrary detention;

(b) Restrict the use of detention for immigration purposes, ensuring that it is a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available, and therefore to use and make available alternative measures to detention both in law and in practice;

(c) Take measures to review national laws applicable to the detention of migrants to ensure that they are harmonized with international human rights norms that prohibit inhumane treatment and ensure the due process of law;

(d) Take all necessary steps to ensure that migrants in detention are granted all guarantees associated to the due process of law, kept informed on the status of their cases and receive specialized free legal assistance and interpretation, during the entire procedure, including at administrative stages;

(e) Consider reviewing the provisions regulating the status of "person tolerated" with a view not to deprive of protection persons under the jurisdiction of Romania.

106. In relation to the protection of migrant workers, the Special Rapporteur recommends that the Government:

(a) Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families with the aim of further strengthening efforts to protect migrant workers from abusive practices;

(b) Conduct a study on the compatibility of Romanian legislation with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in order to ease the process of ratification of the Convention;

(c) Seek technical assistance from the United Nations Country Team, the Office of the High Commissioner for Human Rights (OHCHR), the International Labour Organization (ILO) and other stakeholders such as the International Organization for Migration (IOM) with a view to conducting the above-mentioned study;

(d) Take all necessary steps to protect all migrant workers and their families, with special attention to the accountability of abusive employers, and ensure that labour contracts are inclusive and written in a language that the migrant can understand, contain detailed employment conditions including the employee's right to terminate the contract under specified conditions and contain all other relevant information (workplace, duration, salary, working hours and the conditions of stay, including residency documents and work permit, suitable and sanitary living quarters, adequate food and medical services and information on where to find assistance in case of problems);

(e) Avail itself of the expertise of the United Nations, including the Statistics Division of the Secretariat and the United Nations Country Team to develop appropriate national data collection and analysis methodologies that will

generate comparable data on the international migrant population, tracking abusive employers of migrant workers and reporting abuses and irregularities in connection with the employment of migrant workers;

(f) Ensure that its legislation prohibits the retention of identity documents by employers or recruitment agents; prohibits all systems of forced sponsorship of migrants, which are designed to ensure control over the migrant throughout the period of residence, and avoids linking the residence permit of a migrant worker to a single employer as measures to prevent exploitation and forced labour;

(g) Establish effective and accessible channels which allow all migrant workers to lodge complaints of violations of their rights without fear of retaliation on the grounds that they may be in an irregular situation;

107. In relation to the protection and assistance of victims of trafficking in persons, the Special Rapporteur recommends that the Government:

(a) Take all necessary measures to guarantee the effective protection of witnesses and victims of trafficking in persons sale of children, contemporary forms of slavery and forced labour as a key element for the successful investigation and prosecution of perpetrators;

(b) Incorporate into national policies, plans and programmes, and effectively implement the Recommended Principles and Guidelines on Human Rights and Human Trafficking;<sup>[23]</sup>

(c) Enhance the protection of and assistance to victims of trafficking in persons, in cooperation with international and regional organizations, non-governmental organizations, the private sector and other stakeholders;

(d) Take all necessary steps to prevent multiple discrimination and revictimization of trafficked persons, including prohibiting the labelling of returned trafficked victims as “returned prostitutes”;

(e) Ensure that appropriate training is given to law enforcement officials and adopt the necessary measures to ensure the implementation by law enforcement officials of legal provisions guaranteeing that assistance and protection provided to victims are not dependent on their cooperation in testifying against the traffickers;

(f) Ensure that effective structures and mechanisms are put in place to assist victims in reintegrating into the society, including by providing them with psychological, health and social assistance as well as professional training;

(g) Take all necessary steps to verify the accuracy of the allegations of the existence of “houses of confinement” in Bucharest where children, including foreign children, could be hidden away during the day and sexually exploited at night and which allegedly periodically change location to avoid detection.

108. In relation to the protection of children in the context of migration, the Special Rapporteur recommends that the Government:

(a) Consider submitting its initial report under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography with the aim of further strengthening efforts to protect Romanian children from such practices;

(b) Consider entering into bilateral agreements envisaged under the European Union Directive 77/486/CEE to promote learning of the heritage language in host countries among migrant children and children from a migrant background;

(c) Increase regional cooperation, inter alia, by entering into human rights-based bilateral and multilateral agreements to protect migrant children, especially unaccompanied children, including in matters of safe repatriation, the fight against trafficking in persons, sexual exploitation and smuggling;

(d) Consider revising existing bilateral agreements on the return of unaccompanied Romanian children, in light of international standards, inter alia, to introduce clauses recognizing that return and repatriation of children should be encouraged only when it is in the child’s best interests;

(e) Consider establishing centres for hosting separated and unaccompanied children, regardless of their immigration status, where they could be provided with specialized assistance according to their protection needs by staff and interpreters (who might be recruited from the migrant community) trained on such issues as cultural and religious sensitivity, multicultural understanding and post-traumatic treatment;

109. In relation to the protection of children left behind by migrating parents, the Special Rapporteur recommends that the Government:

(a) Continue implementing policies to address the situation of children left behind by migrating parents, taking into account the best interests of the child as a guiding principle and ensuring the participation of these children in the design and implementation of such policies;

(b) Continue strengthening the programme for the protection of children left behind by migrating parents, including by implementing the four recommendations made in the study on this phenomenon published by UNICEF in 2008, which are: revise the Order No. 219/2006 issued by the Secretary of State of the National Authority for the Protection of Children’s Rights, through consultations with all the public and private stakeholders with relevant expertise

in the field; improve and strengthen monitoring and reporting mechanisms at local level, with emphasis on the Public Social Assistance Services; build the capacity of public social services at the national level and raise awareness and improve information on the negative effects of migration on children among all those concerned (parents and the public at large);

(c) Increase training programmes in parenting skills and continue strengthening efforts to raise awareness among potential migrants of the child protection measures available to children left behind by migrating parents and the responsibility of migrating parents to inform relevant authorities and appoint a guardian responsible for the child in their absence;

(d) Strengthen capacity-building efforts at the local level particularly by equipping all Romanian counties with the resources necessary to provide the adequate support to children left behind, including children left behind by migrating parents;

(e) Continue improving measures for the identification and support of children left behind by migrating parents, including by considering the increase in human and financial resources available to social assistance services belonging to municipalities, with a view to strengthening their role, particularly in the early identification of risk situations affecting children left behind;

(f) Compile and take steps to share good practices in addressing the situation of children left behind by migrating parents, especially in the areas of health and education, with countries of origin of migration flows in all regions.

110. In relation to the protection of women in the context of migration, the Special Rapporteur recommends that the Government implement the recommendations made by the Committee on the Elimination of Discrimination against Women, particularly general recommendation No. 26, on women migrant workers and mainstream gender into migration governance.

111. The Special Rapporteur recommends that the People's Advocate strengthen cooperation in the area of migration, particularly in light of regional initiatives such as the Migration Working Group of the European Group of National Human Rights Institutions and the Central European Forum for Migration and Population Research in order to foster the implementation of the Declaration adopted at the Eighth International Conference of National Human Rights Institutions in Santa Cruz, Bolivia, in October 2006 (the Santa Cruz Declaration).

112. The Special Rapporteur encourages the National Council for combating discrimination, the Senate's Committee for Human Rights, Cults and Minorities, and the Romanian Institute for Human Rights to play an active role in the promotion and protection of the human rights of migrants.

113. The Special Rapporteur strongly encourages the media to contribute to the promotion of a culture of tolerance in Romania, inter alia, by highlighting the positive aspects of migration, raising awareness on the risks of trafficking and the trafficked victims' need of protection.

114. The Special Rapporteur welcomes the inclusion of migration as a theme for cooperation in the United Nations Country Programme for Romania (2010–2012) and encourages both the United Nations Country Team and the Government to continue cooperating in this area, particularly in the follow-up and implementation of recommendations made by human rights mechanisms, including treaty bodies, special procedures and the universal periodic review.

[1] Romanian Presidency, Press release, 26 January 2006. Available from

[http://www.presidency.ro/?\\_RID=det&tb=date&id=7048&\\_PRID=](http://www.presidency.ro/?_RID=det&tb=date&id=7048&_PRID=).

[2] The Istituto Nazionale di Statistica and the Instituto Nacional de Estadística.

[3] See, for example, the studies elaborated by the Soros Foundation and UNICEF, as well as the surveys, undertaken, inter alia, by the Alternative Sociale Association.

[4] See Alternative Sociale and UNICEF, "National analysis of the phenomenon of children left home by their parents who migrate abroad for employment", 2008. Available from

[http://www.unicef.org/romania/Research\\_report\\_final.pdf](http://www.unicef.org/romania/Research_report_final.pdf).

[5] See CRC/C/ROM/4.

[6] "National analysis of the phenomenon of children left home by their parents who migrate abroad for employment", p. 19.

[7] Ibid., para. 16.

[8] General Report 2008, p. 15. Available from

[http://www.frontex.europa.eu/gfx/frontex/files/justyna/frontex\\_general\\_report\\_2008.pdf](http://www.frontex.europa.eu/gfx/frontex/files/justyna/frontex_general_report_2008.pdf).

[9] United States Department of State, *Trafficking in Persons Report 2009 – Romania* (16 June 2009). Available from

<http://www.unhcr.org/refworld/docid/4a4214962d.html>.

[10] Council of Europe, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13–15 January 2009, document CommDH(2009)16. Available from <https://wcd.coe.int/ViewDoc.jsp?id=1428427>.

[11] Carried out in March 2002 by the Institutul National de Statistica.

[12] See, inter alia, “Romania Country Profile, Focus Migration No. 9”, September 2007. Available from <http://www.focus-migration.de/Romania.2515.0.html?&L=1>.

[13] The full list of countries as provided by the Ministry of Labour is available at the Secretariat.

[14] “National analysis of the phenomenon of children left home by their parents who migrate abroad for employment”, p. 19.

[15] CEDAW/C/ROM/CO/6, para. 36.

[16] A/HRC/8/52, para. 961.

[17] See of the Romania’s voluntary pledges and commitments on human rights in accordance with General Assembly resolution 60/251 presented to the United Nations General Assembly on April 2006, paras. 1, 3, 4 and 11. Available from <http://www.un.org/ga/60/elect/hrc/romania.pdf>.

[18] See, inter alia, the South East Europe Transnational Cooperation Programme.

[19] A/HRC/11/7/Add.1, paras. 81–122.

[20] Changes have been introduced by new provisions in the Criminal code (Law No. 286 of 2009), as follows: 3–10 years’ imprisonment for the crime of human trafficking (art. 210) and 5–12 years’ imprisonment for human trafficking in children (art. 211).

[21] See CRC/C/ROM/CO/4, para. 5.

[22] A/HRC/10/21.

[23] E/2002/68/Add.1.