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Informe de la Relatora Especial sobre las formas contemporáneas de esclavitud, incluidas sus causas y consecuencias, Sra. Gulnara Shahinian

Adición

Misión a Rumania *

Resumen

La Relatora Especial sobre las formas contemporáneas de esclavitud, incluidas sus causas y consecuencias, Gulnara Shahinian, visitó Rumania en misión oficial entre el 13 y el 17 de diciembre de 2010. En el presente informe se facilita información sobre la legislación vigente, y los mecanismos institucionales, los programas, los planes y las actividades, destinados a prevenir, combatir y erradicar las formas contemporáneas de esclavitud, sus causas y sus consecuencias, a la luz de las normas internacionales de derechos humanos. En el informe se ponen de relieve los logros conseguidos y las medidas prometedoras que se han adoptado para erradicar las formas contemporáneas de esclavitud, así como las peores formas de trabajo infantil, y se señalan los principales retos. Se formulan asimismo recomendaciones para seguir combatiendo las peores formas de trabajo infantil y para evitar que se den situaciones análogas a la esclavitud entre los trabajadores migratorios procedentes de fuera de la Unión Europea (UE), los trabajadores migratorios rumanos y las víctimas de la trata de personas destinadas al trabajo forzoso o a la explotación sexual, así como para responder a los factores de riesgo que suponen un aumento de la vulnerabilidad frente a la explotación y a las situaciones análogas a la esclavitud.

Anexo

Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her visit to Romania (13-17 December 2010)

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I.Introduction

In accordance with the mandate approved by the Human Rights Council in its resolution 6/14, and at the invitation of the Government of Romania, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, visited Romania from 13 to 17 December 2010. The main objectives of the mission were to examine the nature and incidence of contemporary forms of slavery, its causes and consequences - in particular forced labour and the worst forms of child labour (WFCL), engage in a dialogue with the Government in order to analyse the policies and laws towards the eradication of contemporary forms of slavery, study good practices undertaken by Romania to combat slavery in all its forms as well as identify the challenges that the country faces in responding to such issues, explore solutions, and strengthen partnerships.

The present report presents information gathered on the legislation, institutional mechanisms, programmes, plans and activities aimed at preventing, combating and eradicating contemporary forms of slavery, its causes and consequences, in light of international human rights standards. The report also presents major challenges and makes recommendations to address the worst forms of child labour , to prevent slavery-like situations among non-European Union (EU) country migrant workers, Romanian migrant workers and victims of trafficking in human beings for forced labour or sexual exploitation, and to respond to risks indicating increased vulnerabilities to exploitation and slave-like situations.

During her visit, the Special Rapporteur had extensive consultations with high-level Government representatives from the Ministry of Foreign Affairs; the Ministry of Labour, Family and Social Protection, including the General Directorate for Child Protection and the Labour Inspection; the Ministry of Education, the Ministry of Administration and the Interior, including the National Agency against Trafficking in Persons (NAATP), and the Ministry of Justice. She also met with a representative of each chamber of the Parliament, the Romanian Institute for Human Rights, the Romania People's Advocate (Avocatul Poporului), civil society organizations, trade unions, the United Nations country team and the donor community.

The Special Rapporteur visited Bucharest, as well as Slobozia in the Ialomita County where she met with the local intersectoral team, a multidisciplinary and inter-institutional team set up in each county with the mandate to identify, refer and monitor cases of child labour exploitation. She also interviewed children who were the beneficiaries of a joint public-private programme aimed at offering a second chance to children who have dropped out of school before finalizing the compulsory education because they had to help out their parents.

The Special Rapporteur takes this opportunity to thank the Government for its invitation and its assistance and cooperation prior to and during her mission. She greatly appreciated the assistance and cooperation of the numerous civil society organizations and the United Nations country team, in particular the United Nations Children's Fund (UNICEF) and the United Nations Development Programme (UNDP).

II.General background to the visit

Romania is the second-largest country in Central and Eastern Europe and the seventh-largest among the 27 current members of the European Union (EU), which Romania joined on 1 January 2007. Fifty-four (54) per cent of the population lives in urban areas. Over the past few years, Romania has had negative annual population growth, partially explained by its migration outflows. In the context of the international financial crisis, which has already seriously affected Romania and whose impact is likely to endure, the Special Rapporteur aimed at gathering information in situ on risk factors that could increase the vulnerability among sectors of the population at high risk of becoming subject to contemporary forms of slavery, such as migrants workers and children left behind by emigrating parents. She focused her visit on sectors of labour in which, according to information received, the worst forms of child labour, the exploitation of children for economic purposes as well as other exploitative, slave-like situations persist.

Since 1989, Romania has gone through an economic transition characterized by land retrocession, but also by poverty, unemployment and the development of an informal economy. Romania is a country confronted with a shortage of labourers caused by a departure of a large number of workers to Western Europe. This shortage on the labour market is often filled by immigrants coming mainly from Asia. Nowadays, Romania is referred to as a middle-income country with an annual growth for 2008 that was estimated around 9 per cent. The prospect of becoming an EU member constituted a solid external anchor for the transformation of the country throughout its transition. However, Romania's widespread poverty continues , with 23 per cent of the population being at risk of

poverty in 2008, including 33 per cent of children aged below 17 years. Half the population was defined as being forced to deprive itself of some material benefits. The poverty risk is three times higher in rural than in urban areas and 75 per cent of poor children live in rural areas.

In spite of strong growth in recent years, the international financial crisis has harshly impacted the population, and in particular pre-existing vulnerable groups, such as children living in poor agricultural rural areas, Roma children, and children working and living on the street, among others, increasing their pre-existing vulnerabilities to contemporary forms of slavery.

The employment rate in 2010 was 7.3 per cent. Since 2000, an increasing number of Romanian citizens have emigrated to work in various EU countries, particularly Italy and Spain. A World Bank study shows that remittances from Romanians working abroad were expected to amount to a total US\$ 9 billion in 2008, ranking Romania in eighth place among recipient countries worldwide. However, this same report forecast a slowing due to the international economic crisis. The shortage of labourers caused by Romanian workers going to Western Europe is partially filled by foreign immigrants.

On the basis of information received, the Special Rapporteur focused her visit on the worst forms of child labour, and the exploitation of children for economic purposes. She also aimed at gathering information in situ among sectors of the population at high risk of becoming subject to slavery-like practices such as non-EU migrant workers, as well as children left behind by their parents' emigration. The Special Rapporteur analysed information, bearing in mind the prevailing economic situation and its impact on the worst forms of child labour and other exploitative slave-like situations.

III. Normative and institutional framework

A. The international and regional legal framework

In 1957, Romania signed the Protocol amending the 1926 Slavery Convention, and signed the Slavery Convention adopted in 1926 as amended by the aforementioned protocol but has yet to ratify those instruments. In 1957, Romania ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

Romania is also a party to a number of International Labour Organization (ILO) Conventions, which are relevant for the prevention and/or the elimination of contemporary forms of slavery, such as the ILO Convention concerning Forced or Compulsory Labour (Convention No. 29); the ILO Convention concerning the Abolition of Forced Labour (Convention No. 105); the ILO Convention concerning Minimum Age for Admission to Employment (Convention No. 138); the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182) and the Recommendation No. 190/1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour which supplements ILO Convention No. 182.

Romania holds an important record of ratification of international treaties adopted within the framework of the United Nations. It has ratified all major international human rights instruments, except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Protection of Persons from Enforced Disappearance (CED).

Since 2002, Romania is also a party to the United Nations Convention against Transnational Organized Crime (UNTOC), as well as 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 UNTOC.

Romania became member of the Council of Europe on 7 October 1993 and ratified the European Convention on Human Rights and Fundamental Freedoms in 1996. It is a party to the Council of Europe Convention on Action against Trafficking in Human Beings, Romania joined the EU on 1 January 2007 following a pre-accession period which saw many reforms in the fields of justice, public administration, trafficking in human beings, child protection and other areas linked to the EU's "acquis communautaire". This also included promotion of social inclusion for vulnerable groups such as Roma, people with disabilities and children at risk, and increasing the effectiveness and efficiency of decentralized services.

B. The national legal framework

The 1991 Constitution is the fundamental law that establishes the structure of the Government, the rights and obligations of the country's citizens, and its mode of passing laws. It was most recently revised by a national referendum in 2003. It provides in article 20 (2) that in case of "any inconsistencies ... between the covenants and treaties on fundamental human rights Romania is a party to, and internal laws, the international regulations shall take precedence".

1. Legal and policy framework on contemporary forms of slavery

(a) Forced labour

Article 42 (1) of the Constitution prohibits forced labour, while article 42 (2) excludes, in line with article 8, paragraph (3) (c), of the International Covenant on Civil and Political Rights, what is to be considered as not falling under forced labour. Forced labour is also prohibited in article 4 of the Labour Code (law no. 53/2003) which defines it as "any work or service imposed on a person under threat or for which the person has not freely expressed consent".

The prohibition of slavery and forced labour is also recognized in the Criminal Code. Article 202 provides that placing or keeping a person in slavery, as well as trafficking in slaves, shall be punished by strict imprisonment from 3 to 10 years and restriction on the exercising of certain rights. Article 203 provides that the act of subjecting a person, in other cases than those provided in the law, to

any kind of labour against his/her will or to any kind of obligatory labour, shall be punished by strict imprisonment from one to three years.

(b) Child exploitation for economic purposes

With regard to the protection of children and young people from exploitation, article 49 (2) of the Constitution prohibits the exploitation of minors, their employment in activities that might be harmful to their health, or morals, or might endanger their life and normal development. Article 49 (4) provides that minors under the age of 15 may not be employed for any paid labour.

Article 13 of the Labour Code sets the minimum age of employment at 16 years, but provides that a person may also conclude an employment contract as an employee at the age of 15, with the agreement of his/her parents or legal representatives, related to activities corresponding to his/her physical development, skills and knowledge, unless his/her health, development and vocational training are harmed. The Labour Code prohibits the employment of persons under the age of 15 years.

Children under 16 who work have the right to continue their education, and the law obliges employers to assist in this regard. Children aged 15 to 18 may work no more than six hours/day and no more than 30 hours/week, provided that their school attendance is not affected. In practice, however, reports indicate that many children did not attend school while working. Minors cannot work overtime or during the night, and they have the right to an additional three days of annual leave.

According to article 280 of the Labour Code, it is a criminal offence punishable with a prison term from one to three years to employ minors in breach of legal age conditions or to use them to perform some activities in violation of legal provisions relating to the employment of minors.

Law No. 272/2004 for promoting and protecting children's contains a chapter regarding child protection against economic exploitation and provides for the schools' obligation to promptly inform the social services of any minors who miss classes in order to work. In particular, article 87 (1) provides that the child has the right to be protected against exploitation and cannot be forced to perform any work with a potential risk and which is likely to compromise the child's education, or be harmful to the child's health or physical, mental, spiritual, moral or social development.

(c) The worst forms of child labour

Article 49 (3) of the Constitution prohibits the exploitation of minors, their employment in activities that might be harmful to their health, or morals, or might endanger their life and normal development.

Article 13 (5) of the Labour Code provides that the employment in difficult, unhealthy or dangerous workplaces may only take place after the age of 18 and that such workplace categories shall be established by Government Decision.

In relation to the implementation of the ILO Convention No. 182, a Government decision establishes criteria for determining hazardous work for children and a list of dangerous work and sanctions for offenders. Parents whose children carry out hazardous activities are required to attend parental education programs or counselling and can be fined between 100 and 1,000 lei for failure to do so. Persons who employ children for hazardous tasks can be fined between 500 and 1,500 lei.

2. Institutional framework relevant to the mandate

Two umbrella ministries, i.e. the Ministry of Labour, Family and Social Protection (MLFSP) and the Ministry of Administration and the Interior (MAI) are instrumental for the implementation and coordination of plans, programmes and policies related to the elimination of contemporary forms of slavery. A number of other ministries are also crucial in this endeavour. This is the case of the Ministry of Justice, the Ministry of Education and the Ministry of Foreign Affairs.

Within the MLFSP, two institutions play a key role in dealing with aspects of the protection against contemporary forms of slavery. Those are the General Directorate for Child Protection (GDCP) and the Labour Inspection.

The GDCP, known until July 2010 as the National Authority for the Protection of Children's Rights (ANPCD), ensures monitoring of compliance with the rights of the child, coordination and control of activity of protecting and promoting the rights of the child, including monitoring and coordinating all programs for the prevention and elimination of the worst forms of child labour. At the local level, the GDCP has representation in counties and in the sectors of Bucharest through the General Directorates of Child Welfare and Protection (GDWCP).

The Romanian Labour Inspection, a special body of the central public administration subordinated to the Ministry of Labour, Family and Social Protection, has representation in all the counties and municipality of Bucharest (in total 42 territorial labour inspectorates). Its main aim is to verify that employers comply with their obligations in respect of labour relations, working conditions, and health and safety standards. It has broad prerogatives to ensure compliance with national and international employment regulations in all types of organizations, business or otherwise, irrespective of ownership – public, private or mixed.

Labour inspectors are members of the Intersectoral County Teams for preventing and combating child labour (ICTs), the identified cases being reported to the General Directorates of Child Welfare and Protection (GDWCP) at the county level in order to provide necessary services for children and families. These cases are in turn reported to the National Steering Committee for the Prevention and Elimination of Child Labour (NSC) for further action at the central level. In 2009, the Labour Inspection reported a total of 164 youths between 15 and 18 years old found at work without observing the legal conditions for employment. The civil penalties/fines applied for the identification of the above-mentioned persons amounted to 260,000 ron. The Labour Inspectorate also developed a campaign on the elimination of child-labour exploitation focusing on raising awareness of employers about their obligations to comply with legislation, in order to eliminate the worst forms of child labour and identify child labour.

The National Programme for the Prevention and Elimination of WFCL was launched by the International Programme on the Elimination of Child Labour (IPEC) of the International Labour Organization in 2000 and completed in 2009. As part of its main achievements at the central level resulting from the implementation of this programme were, beside numerous legislative measures taken to prevent and combat the worst forms of child labour and to promote and protect child rights, the creation of the NSC, the inter-institutional organ which coordinates and monitors the programmes for the prevention and suppression of the worst forms of child labour. The Child Labour Specialized Unit (CLSU), within the GDWCP, provides technical secretariat services for the NSC.

The Intersectoral County Teams (ICTs) are an institutional capacity at county and Bucharest city level which were developed through the 10-year cooperation between ILO-IPEC and the Government. An ICT is a multidisciplinary and inter-institutional team whose mission is to identify, refer and monitor cases of child labour that occur in its jurisdiction. However, the ICT is not a team for direct intervention. It includes representatives of relevant institutions and organisations that are involved in combating the exploitation of children through labour. Its basic membership includes the GDWCP, which coordinates the work, the territorial labour inspectorate, the county police inspectorate, the county school inspectorate, the county directorate of Public Health and NGOs. Also, the ICT supervises the global monitoring activity regarding cases of child labour exploitation, and the GDWCP is in charge of centralizing the monitoring of data.

At the community level, there are two relevant institutions for monitoring children rights and identifying children at risks of exploitation through labour, sexual exploitation and trafficking, the Social Welfare Public Services (SWPS) and the Consultative Community Structures (CCS). Both collaborate with and report cases to the GDWCP at local level. The CCS is composed of volunteers and may comprise a wide range of people such as local counsellors, priests, school counsellors, school managers and representatives of community associations.

Within the MAI, the National Agency against Trafficking in Persons (NAATP), established in 2005 and which runs 15 regional anti-trafficking centres, plays the role of national coordinator and rapporteur in the field of trafficking in persons. Activities for the prevention and the protection of and assistance to victims of trafficking are coordinated by the NAATP through an inter-ministerial working group while activities related to the fight against trafficking in persons are coordinated by the General Directorate on Combating Organized Crime, as part of an inter-ministerial working group. The NAATP is also responsible for maintaining a central database on victims of human trafficking, and plays a key role in the referral mechanism.

The institution of the Advocate of the People (Ombudsman) deals with complaints about violations of children's rights or workers' rights by public authorities. It is assisted by deputies who are specialized in the different areas of competence, including human rights, child protection and labour. Any person, including children, can address the Ombudsman. To support the citizens in general and children in particular, the Ombudsman has established 15 territorial offices. The Ombudsman can either take actions on complaints submitted by citizens themselves or act ex officio and request information and data from the targeted authority which must provide the requested information. It then issues a non binding recommendation to the authority in question. The Special Rapporteur was informed that the number of received petitions and actions taken ex officio regarding violations of children's rights or workers' rights are low.

IV. Main findings relevant to the mandate

A. Worst forms of child labour and economic exploitation of children

At the outset, the Special Rapporteur wishes to acknowledge and underline the difficulty in practice of drawing a clear distinction between work that children can legitimately carry out, because such work is entirely consistent with their education and physical and mental development, and work that should be prohibited because it clearly violates international standards, such as the worst forms of child labour and the economic exploitation of children. She has therefore aimed at collecting information on the magnitude of WFCL and economic exploitation of children and has been guided to do so by both the ILO Convention No. 182 and article 32 of the Convention on the Rights of the Child which recognizes the right of the child to be protected from economic exploitation and from any work that is likely to be hazardous, or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

The Special Rapporteur received information according to which some children, mostly Roma children, were involved in street begging, washing cars at dangerous intersections, loading and unloading heavy merchandise, or collecting waste products such as scrap iron, glass or paper. She also received information about children working in the agriculture sector, including in animal farming and in the construction sectors. She was informed that, most of the time, child labour is performed for some food and money that will support the child's family. In the absence of official centralized and updated data, the Special Rapporteur refers to information provided by other stakeholders, while bearing in mind the outdated nature of those figures. A report developed in 2004 by the National Institute of Statistics estimated that the number of children involved in the worst forms of child labour in the urban and rural areas to be about 70,000.

The latest data available from the Child Labour Monitoring System indicates that in 2009, out of the 47 Intersectoral County Teams (ICT) established at national level, 30 ICTs received notifications of 1,274 cases of children involved in worst forms of child labour and at risk of entering such labour. A total of 1,049 cases were confirmed, out of which 964 were cases of children involved in worst forms of child labour and 85 were cases of children at risk of starting WFCL. As concerns the cases of children involved in WFCL, 604 were in urban areas (62.65 per cent) and 360 in rural areas (37.35 per cent). Children found in the WFCL were begging (642 cases), victims of cross-border and internal trafficking (71 cases), domestic workers (65 cases), engaged in forced labour (45 cases), working without a contract (44 cases), working in the streets (41 cases), involved in prostitution (23 cases), in illicit activities (22 cases), and in hazardous child labour (11 cases). The number of cases of children involved in worst forms of child labour in 2009 slightly increased compared to 2008 (from 925 to 964).

The Special Rapporteur received information indicating that the extent of worst forms of child labour and economic exploitation in the rural sector remains unknown due to underreporting caused by the cultural background, as well as by the lack of awareness of families on the negative effects of such labour and economic exploitation.

1. Specific vulnerabilities of street children, including Roma street children, to labour and sexual exploitation

When dealing with the issue of street children, a distinction needs to be made between children who are occasionally found on the streets and children permanently living there. Both types are very vulnerable to labour and sexual exploitation, either by their own extended family or by some organized groups. Those children are also at great risk of being trafficked for illegal activities.

With regard to children occasionally found on the streets, the Special Rapporteur received information according to which, in urban areas, most of them are forced to beg or perform other activities such as washing cars, selling small goods, loading and unloading merchandise, collecting recyclable objects, stealing or even prostituting themselves in order to help their families survive. Reports indicate that they do so in very difficult conditions and unsafe environment, some for over eight hours a day, the majority of them having dropped out of school at an early age. This category of children works in the streets but usually return to their family every day.

The Special Rapporteur met with children permanently living in the streets of Bucharest. Those children are the second generation of street children, i.e. they are the children of those who ended up in the street as a result of the opening of the orphanages in the early 1990s. While there are no official estimates on the number of street children and young adults living permanently in the streets of Bucharest, civil society organizations reported that they were between 800 and 1,000. This second generation of street children usually emanate from destitute and dysfunctional families and live in a physical or sexually abusive environment until they run away at around 10 years. The Special Rapporteur witnessed the inhuman living conditions of those children who are occupying dilapidated houses at night and who are inadequately protected from the harsh cold and who sniff bags of paint solvent to suppress hunger. She was also informed of the violent environment in which those children live. While noting the existence of shelters in big cities, she received information according to which some do not accept minors, others are open only during the day and request identification documents. It is the view of the Special Rapporteur that the continuing existence of this category of street children, who are a legacy from the past, shows that reintegration programmes have failed.

In 2009, the Committee on the Rights of the Child, while noting the adoption of an Action Plan for the social reintegration of street children as well as a reported decrease in the number of children living in the streets, was concerned that many of them have to work for their sustenance, the majority do not go to school and lack birth certificates.

The Special Rapporteur notes that the Government has recognized the issue of undocumented children who live in the streets and deliver temporary identification documents which allows them to go to school and have access to health services. She further notes the work done by NGOs in assisting undocumented children to go through the process of acquiring temporary identification.

The Special Rapporteur praises the work done by the very dedicated and tireless social workers she met. They provide to street children in Bucharest, using funds raised by themselves, meals, temporary accommodation, vocational training and mediation to help them find a job, assist them in relation to obtaining identity documents and accessing health services. Although there are no official data, there are still cases of children deprived of identity documents, mainly among the category of street children and Roma ethnic group.

The Special Rapporteur wishes to draw attention to the fact that Roma children are overrepresented in the total number of street children and that they are at the highest risk of becoming involved in the worst forms of child labour.

2. Other forms of worst forms of child labour and child exploitation

According to written information submitted by the MLFSP, most young people and children provide seasonal labour during summer holidays (e.g. agriculture, construction) and are tempted to perform undeclared work and accept employment inconsistent with their physical and mental immaturity. Lack of civic education, a poor financial situation, lack of supervision and parental interest and dropping out of school, are some of the reasons mentioned by the Ministry that push young people to perform activities such as those which may endanger seriously their health and physical and intellectual integrity. Other contributing factors include access to effective State protection programmes.

The Special Rapporteur was informed that the Labour Inspectorate has been focusing since 2001 in particular on the extent of undeclared work and its negative consequences. It has launched national campaigns to reduce this phenomenon. The Labour Inspectorate has also been developing campaigns on the elimination of child-labour exploitation aimed at raising the awareness of employers. Statistical data provided by the MLFSP shows, however, that the monitoring actions performed by the Labour Inspectorate focus broadly on the detection of cases of undocumented work which deprive employees of any legal protection and social safety nets, hence exposing them to increase vulnerability. Those statistics further shows that fines have only been imposed on the cases detected which leads the Special Rapporteur to conclude that the threshold may not have been met so as to bring those cases under article 280 of the Labour Code. This article makes it a criminal offence punishable with a prison term to employ minors in breach of legal age conditions or to use them to perform some activities in violation of legal provisions relating to the employment of minors. During its meeting with the Special Rapporteur, the Labour Inspectorate had informed her that the majority of those cases were not prosecuted as charges against the employers were dropped if no social harm had resulted. According to the law, the determination of the level of "social harm" is left at the judge's discretion. The judge will apply several criteria to assess social harm, such as the age of the child, the type of labour performed, the financial status of the child's family, etc. It further reported that while it notifies the prosecutor of the facts through a report, it is not part of the legal proceedings and is often not notified of the result of the case. The Labour Inspectorate did not exclude that case of bonded labour might occur but that such cases were not detected.

The Special Rapporteur also received information according to which some children, but mostly adolescents from rural areas, were brought to big cities under false promises made to their parents that they would get a job, then they ended up being sexually exploited in private homes and drugged for that purpose. The Special Rapporteur notes that prostitution is illegal but that the demand side is not being addressed. When alerted of cases, the police allegedly only fine the prostitutes when caught, but are unable to enter the houses where girls are allegedly retained. Reports of children witnessing this sexual promiscuity and then becoming themselves pimps has been also brought to her attention, as well as sporadic actions by the Government in relation to this issue. The Special Rapporteur notes with concern that allegations of a similar nature were also received by the Special Rapporteur on migrants during his visit to Romania in 2009 (A/HRC/14/30/Add.2, para.98)..

The Special Rapporteur also looked at child trafficking as one of the worst forms of child labour according to article 3 (a) of ILO Convention No. 182, which classifies

trafficking as being among “forms of slavery or practices similar to slavery”. Children who have been trafficked to foreign countries, or who are trafficked internally, will by definition end up in situations amounting to WFCL as either labour exploitation or sexual exploitation. The Special Rapporteur received information in relation to recent and broadly publicized cases of trafficking in Romanian children who were exploited in the destination country in a wide range of activities and sectors, such as agricultural work, organized begging, and petty thefts. Information received indicates that Romanian children from the Roma community disproportionately fall victim to these exploitation rings. She refers in particular to the following two cases, which were brought to her attention to illustrate the prevalence of the phenomenon. In October 2010, seven Romanian children, some as young as 9, were found being forced to work as farm labourers in near-freezing conditions in Worcester, United Kingdom. The children were among 50 Romanian workers discovered picking spring onions. Also, in spring 2010, a child-trafficking ring, which sent hundreds of Romanian children to beg and steal in the streets of the United Kingdom, was crushed in a major police operation in southern Romania. More than 300 policemen and prosecutors searched over 30 houses in the town of Tandarei and arrested 17 people on child-trafficking and money-laundering charges. During the raids, authorities found firearms, jewellery, large sums of money and forms giving the child traffickers permission to take the children out of the country. At least 168 children, aged between 7 and 15, have been identified as victims of the trafficking ring, which earned millions of euros a year. The majority of children were of Roma origin and were taken from their families in Tandarei and forced into shoplifting and pickpocketing.

The Special Rapporteur also received information according to which children are also trafficked internally and that, in most cases, their exploitation occurs in private dwellings, making such cases difficult to uncover.

B. Other exploitative slave-like situations

1. Third-country economic migrant workers

The Special Rapporteur’s attention was drawn to an emerging phenomenon which could, if not adequately addressed, result in a resurgence of forced labour. The inflow of economic migrant workers originating from third countries, mainly from Eastern European countries and Asia, on the Romanian labour market has and will continue to increase in the future as a consequence of ageing and outmigration trends. Several cases of foreign migrant workers who were subjected to working conditions amounting to forced labour have already made the headlines. Third-country immigrants often do not speak the language, face cultural differences and lack any social network making them very vulnerable to exploitative labour conditions. Sources reported that the labour-migration legislation is not effectively implemented and that many employers make use of informal recruitment practices and unregulated forms of employment, leaving migrant workers vulnerable to exploitation.⁸ In that regard, the Special Rapporteur refers to the Special Rapporteur on migrants who in 2009 had also received information on migrant workers who had been allegedly compelled to surrender their passports or other identity documents to their employers, were misinformed about labour conditions and benefits, and left without access to medical and psychological counselling, support and consular protection (A/HRC/14/30/Add.2, para. 86). The Special Rapporteur was further informed of a prominent case which occurred in 2007 and which involved Chinese women workers in the textile industry who had been deceived *inter alia* about wages, and had to repay exorbitant fees with the money earned, ensuring they would be selected by the recruitment agency, and then had to contribute for their accommodation while sleeping in small overcrowded makeshift rooms. These Chinese female workers were reportedly threatened with being reported and deported when they complained to their employer. Elements such as retention of passports and threat of denunciation to the authorities are indicative of forced-labour situations.

While noting that the majority of such cases happened prior to Romania’s adhesion to the EU, the Special Rapporteur warns against any relaxation in the protection guaranteed by labour legislation which might lead to a resurgence of more serious cases than cases of mere failure to respect labour laws and working conditions.

2. Romanian migrant workers

Numerous cases of Romanian workers who migrated abroad to seek better job opportunities and who also ended up in slave-like situations were also brought to the Special Rapporteur’s attention. Those cases are said to have decreased since 2009 due to several factors, including the decrease in available jobs abroad, the awareness campaign conducted by the Labour Inspectorate to inform candidates for emigration of their rights, the national campaigns targeted at recruitment agencies, the conclusion of bilateral agreements between the Romania labour inspectorate and foreign labour inspectorates and the establishment of a liaison office within the EU of labour inspectorates. The Special Rapporteur notes that some bilateral agreements have been concluded between Romania and the main receiving countries, such as France, Italy and Spain. She encourages the Government to seek to establish such bilateral agreements with other receiving countries.

3. Trafficking in human beings for the purpose of forced labour or sexual exploitation

Information received indicates that Romania continues to be a country of origin for trafficking in human beings, even if official statistics

show a decreasing trend in this phenomenon. In 2008, there were 1,240 identified victims, while in 2009 the number decreased to 780 victims, and in the first nine months of 2010 the NAATP identified approximately 505 victims. Another trend shows a decrease in trafficking for sexual exploitation but an increase in trafficking for forced labour, with the overall number of men victims of trafficking outnumbering the number of women victims. The number of prosecutions for trafficking in human beings has also decreased, from 183 convictions in 2009 to 51 in the first half of 2010.

C.Risks factors indicating increased vulnerability to exploitation and slave-like situations

1.Children left behind as a consequence of parents' emigration

A recent phenomenon, which has emerged as a consequence of the economic situation pushing parents to go abroad to find employment or better jobs opportunities, is what is referred to as "children left behind" without parental care.

The Special Rapporteur received information showing that, as a consequence of this new phenomenon, the school dropout rate has increased in recent years. While the school dropout rate is indicative of the magnitude of the phenomenon, the Special Rapporteur regrets that no recent statistical data were available. The law provides that parents emigrating need to notify authorities about this, but it was reported that few parents do so, and most of these situations remaining therefore undocumented.

A range of measures have been developed to address this issue, including daycare services as well as emergency centres. The Government acknowledged the necessity of developing an instrument which would identify and monitor the situation of those children, develop preventive measures and further develop social and counselling services for both children and relatives taking care of them was acknowledged by the Government. According to studies carried out on this issue, this phenomenon is more characteristic of poor areas of the country, where large communities migrated abroad, leaving behind a high number of children, in the care of grandparents, other relatives or even in no one's care. Data collected by the GDCWP indicate 84,084 children were left behind as of 31 December 2010. The Special Rapporteur notes the Government's assessment, according to which this phenomenon is decreasing due the financial crisis that has impacted countries of destination.

The Special Rapporteur appreciates the issue of children left behind as a consequence of parents' emigration has been recognized by the Government as constituting a specific vulnerability risk that needs to be adequately addressed as a matter of priority.

2. Increase in school dropouts

The Special Rapporteur notes that in 2009, the Committee on the Rights of the Child was concerned that the enrolment in primary school had decreased and that the number of school dropouts had increased significantly in recent years, affecting children from urban areas and disproportionately children of Roma origin(CRC/C/ROM/CO/4, para. 76). The Special Rapporteur's attention was in particular drawn to an increase in the dropout rate of boys between the ages of 12 and 15, an age deemed to be good to start to work.

The Special Rapporteur would like to emphasize the need to address child labour as a cause of school dropout or low education performance. Understanding this interplay between education and child labour as well as the context of the country where children have traditionally always helped out parents, in particular in the agriculture area, the Special Rapporteur welcomes the efforts carried out by the Government to retain children in schools, such as through innovative measures making child allowances payments tied to school attendance. However, much more is required in order to address this growing phenomenon.

V.Achievements as well as promising measures to eradicate contemporary forms of slavery and prevent vulnerability to slavery-like situations

During her visit, the Special Rapporteur was informed of both major achievements in the eradication of contemporary forms of slavery and of various initiatives for cooperation that illustrate the commitment of the Government and/or other stakeholders to the realization of human rights in the context of the elimination of contemporary forms of slavery. In this regard, the Special Rapporteur wishes to highlight a non-exhaustive list of measures already taken and of some promising measures.

A.Consolidated legislative and institutional framework

1. Consolidated legislative framework

The Special Rapporteur notes with appreciation the legislator's efforts at constantly adapting the legislation to new challenges as demonstrated by the adoption of a new Criminal Code in July 2009 and due to enter into force in October 2011. The new Criminal Code establishes as separate offenses many crimes amounting to contemporary forms of slavery, such as exploitation for begging, forcing a minor to beg, and benefiting from the services of an exploited person.

The Special Rapporteur welcomes the information received by the Government according to which the Law on the Rights of the Child is in the process of being amended so as to encompass compensation in case of violations of children's rights.

With regard to immigrant workers, the Special Rapporteur notes with appreciation the Government's intention, as orally stated, to modify the visa regime so that visa issuance will no longer be tied to the sponsorship of a single employer, making immigrant workers particularly vulnerable to exploitation, abuse and subjugation to slavery-like practices.

2. Consolidated institutional framework

As a result of the 10 years of partnership between the ILO and the Government, the institution of the Intersectoral County Teams, referred to in paragraph 35 as new coordination mechanisms in addressing the worst forms of child labour, is worth mentioning. During her visit, the Special Rapporteur met with the Intersectoral County Team of the Slobozia County which is composed of 13 different departments. She was apprised about the work carried out by its dedicated representatives in the prevention and fight against child labour exploitation. In an emergency situation, each department will get involved under its jurisdiction in a coordinated manner. It also carries out awareness-raising activities targeting both decision makers and the general public on child labour as well as professional training on child labour. It also submits reports on child labour to the Child Labour Unit and the GDCP for follow-up action. Each intersectoral team has a different plan of action so as to take into consideration the specificities of each county when it comes to issues of child protection. The role of such institution which operates at the local level but also constitute a platform dialogue for the county and national level and who reunites all the key actors is crucial for ensuring a coordinated and strategic response to child labour in the country. The Special Rapporteur was deeply impressed by both the elaborated conceptual framework under which this institution performs its work and the dedication of its members. In her opinion, this innovative institutional framework constitutes a best practice and its quality and efficiency should be ensured in the long run. However, the Special Rapporteur was informed that no specific budget line exist within each department represented in the ICT for the work carried out by this institution.

The Special Rapporteur notes with appreciation the crucial role played by the Labour Inspectorate, which has the responsibility to control employment agencies based in Romania through which Romanian citizens apply to jobs abroad, hence helping to curb down occurrence of labour trafficking. She further notes with appreciation the national awareness-raising campaigns organized on a regular basis through the media and other communication support, which invite applicants for jobs abroad to address the territorial labour inspectorate in which the recruiting company is based to inform it of the elements of the individual contract of employment abroad. In this way, the working conditions and other legal requirements can be verified.

B.Addressing school dropout and poverty as major root causes of the worst forms of child labour

The Special Rapporteur welcomes Government efforts to address the root causes of the worst forms of child labour and provide alternatives to the alleviation of poverty. Poverty, education and worst forms of child labour being inextricably linked, she welcomes the establishment of some government programmes in the area of education, including programmes to tackle dropout at school and to reduce the disadvantages in education affecting children living in rural areas. She refers in particular to social programmes supporting parents in poor rural areas to send their children to school, such as free transportation or the reimbursement of the travel costs for distances longer than 50 km from home to school, free school supplies, the distribution of some milk and bread in the morning, as well as the granting for parents of various social benefits. The Special Rapporteur further welcomes efforts undertaken by the Government, with the key participation of civil society organizations, aimed at reintegrating children who were compelled to abandon school to help their families survive, such as the “A second chance” programme. She wishes to emphasize the importance of projects for either improving access of children from disadvantaged group to education or offering them a second chance as an efficient tool to fight the increased vulnerability to labour exploitation of some categories of children, such as Roma children and “children left behind”.

VI.Major challenges to the elimination of contemporary forms of slavery in Romania

The Special Rapporteur noted the significant knowledge of governmental authorities about the different dimensions and manifestations that contemporary forms of slavery take today. She also observed with appreciation the commitment of the Government to translate the obligations of the State regarding the elimination of slavery-like practices into effective laws, policies and programmes.

Despite the legal, policy and institutional framework aimed at eradicating contemporary forms of slavery as well as the measures that illustrate the strong commitment towards the achievement of this goal, in the Special Rapporteur's view, some challenges remain.

The Special Rapporteur shares the Government's view that the most pressing challenges are related to the economic crisis, which has worsened the pre-existing poverty and discrimination and made strengthening the implementation capacities of both State actors and civil society organizations a pressing need.

A.The lack of statistical data on the nature and extent of child labour, including the worst forms of child labour

As previously indicated, there is a lack of recent statistics and there are no centralized data on the extent of child labour, including the worst forms of child labour, which make it difficult to develop coherent strategies and which might give misleading indications that such problem does not exist in Romania. The Special Rapporteur also notes that the National Institute of Statistics does not include a category that corresponds to worst forms of child labour but uses instead the category of “children who perform hard activities”, which appears to have a narrower meaning than the definition of worst forms of child labour in ILO Convention No. 182.

B.Remaining gaps in the legal and institutional frameworks

The Special Rapporteur, impressed by the legislative framework in place, is of the opinion that its enforcement remains overall insufficient. The Special Rapporteur notes as well some legislative inconsistencies that reduce the institutional capacity put in place to monitor and eliminate the worst forms of child labour. The Labour Code applies only to persons employed on the basis of a labour contract, and there is no minimum age for admission to unpaid employment in national legislation. Another inconsistency is that the minimum age for entry into employment is established at 15, while the age for completion of compulsory education is 16.

Following information received, discrepancies exist between the increased responsibilities of newly created State and public agencies in the context of decentralization, in particular those at the local levels and resources made available to them to perform their functions.

The Special Rapporteur also received information showing a general trend towards budgetary cuts which might lead to a weakening in the child's protection and child's welfare and which can only be partially explained by the economic constraints faced by the Government. In this regard, the Special Rapporteur does not share the Government's view that renaming the National Authority for the Protection of the Rights of the Child and removing it from the State Secretariat under the authority of the MFLSP does not have any detrimental impact on the protection of children's rights. According to information received, the new entity has lost some of its supervision and coordination functions, hence the leading role it used to play in the overall protection of children's rights, including protection from the worst forms of child labour.

In relation to the labour inspectorate system, it was also reported to be understaffed, with an average of 17 labour inspectorates by county. The complexity of situations as well as difficulties in accessing areas greatly varies among counties. The Special Rapporteur was further informed of the difficulties in monitoring and inspecting private households to uncover domestic work. But the main gap lies in the fact that inspection reports can be challenged in courts. The Special Rapporteur was told that this happens in 99 per cent of cases. Such challenge usually results in fines being reduced to warnings only, as cases are difficult to prove in court.

The Special Rapporteur also received information which shows that the referral system for children in worst forms of child labour might not always work efficiently in practice. One explanation being that, in some people's mentality, child exploitation might still be seen as something acceptable.

Regarding the sectoral strategy for decentralization in the field of child rights protection, which has been included in the sectoral strategy for decentralization in the labour and social protection fields, the Special Rapporteur has received information that tends to indicate that the ongoing decentralization process might have resulted in some disparities in the delivery of services among different counties.

C.Cooperation with civil society

The Special Rapporteur met with numerous members of a vibrant civil society committed to work on issues of child protection through both the delivery of services and advocacy work. Civil society's work started in the early 1990s, but after EU accession, international donors either stopped funding NGOs and international organizations such as UNICEF, or drastically reduced their contributions. The Special Rapporteur was informed of difficulties faced by NGOs with proven track record to secure the funds required for carrying out their activities, including loans to supplement operational funds as a pre-condition for receiving EU assistance. She was further informed that some NGOs had to change their sectors of activities as State resources were no longer available.

The Special Rapporteur also received information according to which NGO collaboration with the Government is sometimes perceived as unilateral, as often they tend to substitute for the State in the delivery of social services to victims when such assistance is provided for in legislation. In that regard, the Special Rapporteur received allegations according to which the responsibility for the delivery of the physical, psychological and social recovery of victims of trafficking fell under the responsibility of civil society organizations.

VII.Conclusions and recommendations

Romania has shown genuine efforts and a strong political will to establish policies aimed at the elimination of contemporary forms of slavery affecting different sectors of the population. The implementation of some of those policies, particularly in connection with the eradication of the worst forms of child labour shows its commitment to progress towards the elimination of contemporary forms of slavery.

83.Despite progress made, the Special Rapporteur holds the view that some forms of worst forms of child labour, the economic exploitation of children and other exploitative and slave-like situations persist. She warns against any further relaxation in the field of child's protection and labour protection in the current context of economic downturn. She calls for increased attention in favour of segments of the population who were already vulnerable to exploitation before the financial crisis, in particular impoverished children and their families, and children left behind by their parents who went abroad to find better job opportunities. These individuals are put into conditions that make them extremely vulnerable exploitation. Based on her findings, she wishes to make the recommendations set out in the paragraphs below.

A.Measures to further strengthen implementation of legislation and institutional capacity

84. The Special Rapporteur recommends that the Government:

(a) Develop additional programmes to support the implementation of the legislation relevant to the worst forms of child labour and other exploitative slave-like situations, emphasizing the role of individual state agencies and providing them with the necessary funding;

(b) Take further appropriate and effective measures to ensure equal enjoyment of human rights by Roma by further promoting equal access of Roma children to education, thereby contributing to prevent them from being engaged in the worst forms of child labour, and as well as to right to housing, health care and employment;

(c) Consider elevating the status of the General Directorate for Child Protection by establishing a post of State Secretary which would address in a comprehensive and holistic way all issues affecting children by developing, coordinating and monitoring all programs and actions on child protection;

(d) Consider establishing an ombudsman for children as an independent structure for child rights monitoring;

- (e) Further disseminate information among the general public on the existence of the National Ombudsman and the modalities to access it and provide support to individuals who want to use it;
- (f) Ensure that local intersectoral teams (LITs) are provided with their own budgets and that they are adequate for the implementation of its mandated activities;
- (g) Increase resource allocation to build the capacity of labour inspectors as well as their number so as to improve the monitoring of child labour and labour practices throughout the whole country, including in remote areas;
- (h) Provide labour inspectors with the necessary legal powers, in cases of credible allegation of serious violations of labour standards, to carry out inspections in informal workplaces, such as private households.

B. Measures to prevent the worst forms of child labour and economic exploitation of children

85. The Special Rapporteur recommends that the Government:

- (a) Design a comprehensive strategy for improving the efficacy of national and local institutions dealing with child labour, and ensuring sufficient human and financial resources for its implementation;
- (b) Take immediate and effective measures to change the widespread public perception that child work is a tradition which is harmless by undertaking awareness raising campaigns, particularly for children, parents and other caregivers, on various kinds of negative consequences resulting from the worst forms of child labour and economic exploitation of children, in particular in the rural areas. Measures should include educational programmes for parents as well as systematic inclusion in school curricula about children's rights and their relationship to child labour;
- (c) Collect and keep up-to-date statistical data on the nature and extent of the worst forms of child labour in accordance with the national and international standards and definitions so as to determine priorities and design targeted strategies for its elimination as a matter of urgency;
- (d) Take all measures to ensure that children complete their 10-year compulsory education, taking concrete action to address the reasons behind non-completion of schooling, including cultural traditions and poverty; in particular strengthen initiatives aimed at addressing the indirect costs of attending schools and the lack of school transportation in rural areas;
- (e) Consider raising the minimum age employment to sixteen so as to make it coincide with the age for completion of compulsory education.

86. The Special Rapporteur wishes to draw the attention of the Government to the definition provided by article 3 (d) of ILO Convention No. 182 as well as to accompanying Recommendation 190 concerning the prohibition and immediate action for the elimination of the worst forms of child labour (1999) and encourages the State:

- (a) To consider child work in the streets as one of the worst forms of child labour as the Special Rapporteur gathered evidence according to which, the circumstances in which this work is carried out by children, harm their safety and morals, exposing them to exploitative practices, including sexual violence;
- (b) To include street children as belonging to vulnerable groups so as to make them benefit from discrimination policies and take measures to eradicate the deep stigma affecting street children, including Roma street children.
- (c) To take all necessary steps to implement the recommendations made by the Committee of the Rights of the Child in its 2009 concluding observations in relation to economic exploitation, including child labour, the street children, and sexual exploitation and abuse ;
- (d) Establish within the police specialized units on children sexual exploitation.

87. The Special Rapporteur welcomes the Government initiative to undertake a national census in 2011 and strongly recommends that statistical information on child labour be included as a special chapter in this endeavour in a gender disaggregated manner.

88. The Special Rapporteur recommends that the Government develop a nation-wide policy:

- (a) To raise awareness on the rights of the child and on the worst forms of child labour as both a violation of the rights of the child and a contemporary form of slavery;
- (b) To monitor the compliance with the prohibition of the worst forms of child labour in all sectors of the economy;
- (c) To extend bilateral cooperation agreements with receiving States for the protection of unaccompanied Romanian children, their return to the country of origin and the fight against networks of child exploitation.

C. Measures to prevent exploitative slave-like situations

89. The Special Rapporteur urges the Government to consider ratification of the International Convention on the Rights of Migrant Workers and Members of Their Families and to seek to further the cooperation of countries receiving Romanian workers as well as of countries from where migrant workers originate through the conclusion of bilateral agreements so as to ensure them a better protection.

90. The Special Rapporteur encourages the Government to further strengthen measures to prevent labour exploitation and slavery-like situations among migrant workers.

91. In connection with the protection of migrant workers and their families, regardless of immigration status, against labour exploitation and slavery-like situations, the Special Rapporteur recommends that the Government establishes

effective and accessible channels which allow all migrant workers, including irregular migrant workers, to lodge complaints on violations of their rights without fear of retaliation.

D.Addressing risks factors indicating increased vulnerability to exploitation and slave-like situations

92. In relation to children left behind as a consequence of parents' migration, the Special Rapporteur recommends that the Government:

(a) Strengthen awareness-raising campaigns for parents aiming at informing them regarding the risks their children may encounter while they are left behind;

(b) Develop counselling services for the persons taking care of children in the absence of their parents and for the children themselves;

(c) Develop local-action strategy to enable local social institutions to identify children and support children left behind by migrating parents, and allocate the necessary budget for protecting these children.

E.Assistance to victims

93. The Special Rapporteur recommends that the Government:

(a) Establish special mechanisms for compensating victims of contemporary forms of slavery for the crimes committed towards them;

(b) Ensure effective implementation of anti-trafficking legislation and allocate funding for non-governmental organizations that deliver victims services and anti-trafficking prevention programmes; victim

(c) Take all necessary steps to prevent multiple discrimination and revictimization, ensuring that effective structures and mechanisms are put in place to assist victims to reintegrate into society, including by providing them with psychological, health and social assistance.

F.Other recommendations

94. The Special Rapporteur recommends that the Government undertake a comprehensive analysis of the consequences of the decentralization process and its impact on the delivery of social services, evaluating roles and capacities at different levels.