

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report -
Universal Periodical Review:

ROMANIA

I. BACKGROUND INFORMATION

Romania acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 1991. In 2005, the Romanian Parliament approved Romania's accession to the *1961 Convention on the Reduction of Statelessness*, through Law no. 361/2005, and to the *1954 Convention relating to the Status of Stateless Persons*, through Law no. 362/2005, with reservations to Articles 23, 27 and 31 of the latter. The current Asylum Law and its Methodological Norms entered into force in 2006 and they transpose several relevant EU Directives and Regulations.

The Romanian Constitution provides that the international conventions to which Romania is party are part of national legislation and are applied directly and with priority over national laws. Article 18 states that aliens and stateless persons enjoy all the general protections established by the Constitution and other laws.

Integration Law 44/2004 represents the national legal framework for the integration of persons granted a form of protection. This law gives access to certain rights on an equal basis with Romanian citizens, including the right to employment, access to housing, education and medical and social assistance. In October 2006, the Integration Law (established by Government Ordinance 44/2004) was amended through Government Ordinance 41/2006, which extends provisions related to social integration to include other lawfully residing foreigners. According to the provisions of the Integration Law, refugees and persons with subsidiary protection are also eligible for welfare benefits, free vocational training and job search assistance, and refugee and asylum-seeking children can receive the monthly State Child Allowance up to the age of 18. The Individual Integration Programme established by the Integration Law provides cultural orientation sessions, psychological and social counselling, and Romanian language courses for a period of six months. These sessions are organised and delivered by specialised staff from the Romanian Immigration Office (RIO)¹ and/or from the Ministry of Education. The programme is offered by the RIO through its Regional Centres for Reception and Asylum Procedures established in Bucharest, Timisoara, Galati, Radauti, Somcuta Mare and Giurgiu.

¹ RIO functions as the central authority for the implementation of Romanian policy in the field of migration, asylum and integration of aliens. UNHCR works closely with two of the four RIO Directorates, namely the Directorate for Migration (DM) and the Directorate for Asylum and Integration (DAI).

As regards the status of foreigners in Romania, Law no.157/2011 amends several normative acts in order to conform to the Schengen *acquis* and to transpose the Returns Directive.² The new law brought several positive changes, including access to the labour market for foreigners who were granted a “tolerated stay” in Romania, provisions regulating alternatives to detention, the release of foreigners who apply for asylum while in detention and the requirement that removal decisions be communicated to foreigners in a language they understand. Although the Aliens Law does not contain a specific reference to the best interest of the child³, it provides safeguards against detention for unaccompanied minors who are staying irregularly in Romania. These minors are accommodated in centres for children. They can only be removed from the Romanian territory for the purpose of family reunification; in the absence of such solution they will be granted the right to stay in Romania.⁴ The maximum period of detention for irregular migrants was extended from 6 months to 18 months.⁵

From 1991 to 31 December 2011, a total of 21,620 asylum-seekers were registered in Romania, of whom 3,292 were granted some form of protection. In 2011, 1,720 asylum applications were registered in Romania, mainly from Algeria (463), Tunisia (213), Morocco (217) and Pakistan (145). 108 asylum-seekers, mostly Afghans and Iraqis, were granted protection (either in the form of refugee status or as subsidiary protection). Current migratory routes often include Turkey as a transit country, with asylum-seekers arriving there by plane from Morocco, Algeria and Tunisia, or by land from Afghanistan, Pakistan and India. Asylum-seekers then continue on to Greece, Macedonia, Serbia and Romania. Many persons in need of international protection leave Romania and travel onwards to Western European countries, often abandoning their application before their interview with RIO.

II. ACHIEVEMENTS AND BEST PRACTICES

UNHCR welcomes the Government’s achievements in the following areas:

1. National legislation

Chapter 2 of the Asylum Law of Romania explicitly provides for the following procedural principles and guarantees, among others: unhindered access to the asylum procedure, non-discrimination,⁶ respect for the principles of non-*refoulement*, family unity, the best interest of the child, confidentiality, the benefit of the doubt, non-penalization for illegal entry and specific guarantees for unaccompanied minors seeking asylum.⁷

2. Access to territory and asylum procedures

² Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

³ See also Law no 272/2004 for the protection and promotion of child’s rights.

⁴ The application of these provisions is also confirmed by the practice of last years.

⁵ According to the 2011 modifications of the Aliens Law, the prolongation of the period of public custody over 6 months may be done exceptionally with a period that may not be over 12 months and based on a court decision, upon the request of RIO.

⁶ Art. 5 of the Asylum Law on non-discrimination reads as follows: “The provisions of the present law are applied without discrimination, regardless of the race, nationality, ethnic group, language, social class, convictions, sex, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection or belonging to a disadvantaged class, of material circumstances, status at birth or status gained or any other distinction.”

⁷ These guarantees include the priority processing of asylum applications of minors, the appointment of a legal guardian for the entire RSD procedure and access to education. Furthermore, asylum applications submitted by unaccompanied minors may not be processed in the accelerated or border procedure.

The right to seek asylum is fully respected by the border police, such that foreigners apprehended after crossing the border in an irregular manner are granted access to asylum procedures if they express a fear of persecution. The increased number of asylum applications submitted to the border police since mid-2011, mainly at the Romanian-Serbian border, confirms this reality. From the total number of 1457 asylum applications registered in Romania in the first 6 months of 2012, some 1200 applications were submitted with the border police at the external EU border (these are foreigners who were apprehended when entering Romania in an irregular manner and who then applied for asylum with the border police).

3. Emergency transit for refugees awaiting resettlement

Romania hosts the Emergency Transit Centre (ETC) in Timisoara, which provides a valuable service to UNHCR in cases of urgent resettlement needs. The Government of Romania had approved past emergency evacuations in 1999, 2005, 2006 and 2008 based on ad-hoc Ministerial Ordinances. The first permanent ETC was established by the Tri-Partite Agreement (TPA) between the Government of Romania, UNHCR and IOM “Regarding Temporary Evacuation to Romania of Persons in Urgent Need of International Protection and their Onward Resettlement.” This agreement was signed on 8 May 2008 and ratified by the Romanian Parliament on 24 November 2008. Since 2009, a total of 967 refugees have been accommodated in the ETC (out of which 12 were babies born in Romania) and 871 have been resettled to the following countries: USA (538), UK (122), Canada (65), The Netherlands (78), Sweden (49), Finland (8), Australia (7), Norway (3) and Germany (1). A number of 96 refugees are currently⁸ in the ETC awaiting resettlement to the US (49), the Netherlands (27), Germany (7) and Finland (13).

4. Resettlement

Through Government Decision no. 1596/2008, Romania established a resettlement programme under which 38 Myanmar refugees arrived in Romania from Malaysia at the end of May 2010 to fill the 2009 annual quota. Romania is in the process of adopting a new Government Decision on Resettlement for 2012-2013 with an annual quota of 20 persons.

5. Right to work

As a result of the 2011 modifications of the Law on the Status of Foreigners, foreigners with a “tolerated status” (most of whom are rejected asylum-seekers) have the right to work in Romania.

6. Naturalization

According to the Romanian Citizenship Law, refugees enjoy more favourable provisions in acquiring Romanian citizenship than do other foreign nationals, which is in line with Article 34 of the *1951 Convention*.

7. Asylum System Quality Assurance and Evaluation

Romania successfully implemented the Asylum Systems Quality Assurance and Evaluation Mechanism (ASQAEM) Project funded by the European Refugee Fund (ERF) between September 2008 and February 2010 and the Further Developing Asylum Quality (FDQ), which was finalized on 30 September 2011. Recognizing the importance of ensuring high quality decision-making at the administrative stage of the RSD procedure, RIO continues to cooperate with UNHCR on quality assessment and evaluation.

⁸ As of 21 June 2012.

8. Suspension of transfers of Dublin cases to Greece:

In February 2011, the Romanian Minister of Administration and Interior formally adopted the decision to suspend transfers to Greece under the Dublin II Regulation, following the ECtHR ruling in the case *MSS v Belgium and Greece*.⁹

III. KEY PROTECTION CHALLENGES AND RECOMMENDATIONS

Issue 1: Preserving the quality of the asylum system

Romania is going through a very difficult economic, social and political situation that has forced governmental bodies to undertake significant re-organisation, reduction of staff and salary cutbacks. Certain social benefits, including those applicable to persons with a form of protection, were also reduced, and governmental bodies have been reluctant to take any action that might lead to an increase in public expenditures.

The total accommodation capacity of the RIO in its 6 regional centres is 920 places, divided as follows: Bucharest (320), Galati (250), Timisoara (50), Radauti (100), Somcuta Mare (100) and Giurgiu (100). Asylum applications are processed in each regional centre, with a total of 17 RIO staff working in the RSD procedure (including 9 decision-makers and 8 legal counsellors).

In spite of the generally positive protection environment in Romania, the accommodation facilities and processing capacity of the RIO regional centres are strained with the current number of arrivals. In light of the continuing increase in the numbers of asylum-seekers arriving in Romania,¹⁰ UNHCR is concerned that the quality of the asylum system and reception conditions may be affected, unless the existing capacities are further expanded.

Romania has become an entry point into the EU through a new migratory route,¹¹ with some 1,400 persons having been apprehended at the Serbian-Romanian border and applying for asylum in Romania in 2011. Many asylum-seekers continue to abandon the RSD procedure and leave Romania in an irregular manner. This leads to an increased number of asylum applications being rejected in accelerated procedures in Romania, some without any personal interview having been conducted to assess the merits of the claim and in the absence of any judicial control over negative administrative decisions.¹² Upon the return of these persons to Romania on the basis of the Dublin Regulation, they are taken into public custody (administrative detention) as they had previously been rejected *in absentia*, in order to remove

⁹M.S.S. v. Belgium and Greece, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, available at: <http://www.unhcr.org/refworld/docid/4d39bc7f2.html>.

¹⁰ The number of asylum applications submitted in 2011 increased to about 1,700 new asylum applications from the average of 800-1000 in previous years (the 5 main countries of origin were: Algeria, Tunisia, Morocco, Pakistan and Afghanistan). In the first 6 months of 2012, a total of 1457 asylum applications were lodged in Romania.

¹¹ This is mainly the result of more migrants and persons in need of international protection travelling from Greece to Macedonia, then Serbia. Asylum-seekers trying to reach Hungary are pushed back to Serbia, from where they then enter Romania and apply for asylum when apprehended by the border police.

¹² When asylum-seekers abandon the RSD procedure in Romania, not only are their applications rejected at the administrative stage, but they would usually also lose their right to appeal, when failing to comply with established timeframes for lodging an appeal. Therefore, even in the absence of any assessment of the merits of the asylum claims, such negative decisions become final and irrevocable.

them from Romanian territory. This situation may lead to possible violations of the non-*refoulement* principle. This has recently been acknowledged by RIO and additional safeguards were introduced. Rejected asylum-seekers who had not undergone an in-merits interview before abandoning the RSD procedure are now provided the opportunity to be granted access to a new asylum procedure upon their return to Romania under the provisions of the Dublin Regulation.

Despite economic challenges and increased numbers of asylum applications, the quality of the entire RSD procedure at both the administrative and judicial stages should be maintained, including specialised legal counselling and assistance to all asylum-seekers, quality interpretation and easy-to-understand protection information.

Recommendations:

- Ensure adherence to the principle of non-*refoulement*, in particular with respect to asylum-seekers returned from other EU countries under the Dublin Regulation and who did not benefit from a fair RSD procedure in Romania.
- Enhance the quality of the RSD procedure in Romania by increasing the number of decision-makers in all RIO regional centres and ensure that all asylum-seekers receive timely specialized legal counselling and assistance.
- Avoid the detention of those aliens who, for objective reasons, cannot be removed from the Romanian territory, and grant them toleration in Romania as an alternative to detention, thus preventing additional harm to these persons.

Issue 2: Improvement of reception and living conditions

Due to the deteriorating economic situation in Romania, the material support provided by RIO in its reception centres has remained unchanged since the Asylum Law came into force (approximately 30 USD/month).¹³ This amount is insufficient to cover the basic needs of asylum-seekers, who receive no other regular in-kind support from NGOs or other actors. Although RIO is fully aware of this situation and is planning to revise the Asylum Law to increase material assistance or to complement it with food, the situation is affecting many persons in need of international protection, especially asylum-seekers with specific needs.

Asylum-seekers' access to recreational activities, language classes, vocational training, cultural orientation and psychological and medical assistance (especially for victims of trauma and torture) is still insufficient in RIO Regional Centres, in spite of the ERF-funded projects that address these issues.

Recommendations:

- Improve general reception conditions, with a particular focus on material assistance, as well as social, psychological and medical services provided to asylum-seekers in RIO. The accommodation capacity for asylum-seekers should be increased to respond to the growing number of asylum-seekers arriving in Romania.
- Allocate the necessary financial and human resources in order to assist RIO and other specialised institutions in preserving a positive protection environment and reducing secondary movements out of Romania.

Issue 3: Improvement of integration prospects

¹³ This amount is lower than the minimum guaranteed income that nationals are entitled to receive.

The current economic crisis and the re-organisation of the entire public administration system have recently had negative effects on integration efforts. Furthermore, there is a need to streamline the coordination of activities by service providers and to improve record-keeping of assistance provided on a case-by-case basis.

The integration process is also affected by a lack of professional staff employed in the system. It should be noted that refugees enrolled in the individual integration programmes can choose to remain accommodated in the same reception centres for periods of 6-12 months, regardless of whether they are single or with families. Although this is meant to be an additional integration support service, the result is often the opposite, creating dependency, institutionalization and confusion about who is entitled to different services.

Legal employment of asylum-seekers is only possible one year after the asylum application has been submitted, but even then, it is difficult for asylum-seekers to find a job because of ID validity problems, lack of a personal numerical code, language and skill barriers and the lack of awareness among employers regarding asylum-seekers' legal employment status. UNHCR is also concerned about the scarcity of employment opportunities in areas where reception centres are located. Moreover, RIO grants the right to work only to asylum-seekers submitting their first asylum application, thus preventing asylum-seekers from seeking employment if they have been granted access to a new asylum procedure and have been staying in Romania for more than one year. Persons granted refugee status in Romania can apply for Romanian citizenship after 4 years of continuous stay in the country. However, these favourable conditions do not apply to persons with subsidiary protection, as they are required to have lived in the country for a continuous period of at least 8 years prior to applying for naturalization.

Recommendations:

- Amend the Asylum Law so as to grant asylum-seekers the right to legally work in Romania after a maximum period of 6 months after lodging an asylum application.
- Revise the laws that explicitly require Romanian, EU or EEC citizenship for practicing certain liberal professions, such as for example the professions of legal counsellor (Law no. 514/2003) and public notary (Law no. 36/1995), to bring them into conformity with the Asylum Law (article 20 (1c), which provides refugees and persons granted subsidiary protection the right to perform liberal professions and trade activities.
- Amend the Citizenship Law so that persons with subsidiary protection can benefit from the same favourable provisions as refugees for acquiring Romanian citizenship.
- Create a functional system for the recognition of qualifications and for the assessment of competencies. Responsible Ministries, such as the Ministry of Education and the Ministry of Labour should establish common guidelines for skills assessment and qualification recognition in the absence of diplomas and in languages other than Romanian. The present Centres for the Recognition of Competencies should provide free services for persons granted protection in Romania, as part of the Integration Programme coordinated by RIO in Romania.
- Proactively initiate and implement public advocacy and awareness-raising campaigns so as to promote a better understanding of issues relating to human rights, migration, and persons in need of international protection. The Government should also encourage media, professional institutions and educational institutions to include in their curricula courses related to multiculturalism, diversity, equal opportunities,

human rights, and the particular situation of persons in need of international protection.

Issue 4: Statelessness

Romania is a State party to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness* and it has also ratified the *European Convention on Nationality*.

Romania does not have any procedure in place to determine statelessness, which undermines its ability to meet its protection obligations towards stateless persons in its territory as set out in the *1954 Convention*.

The Romanian Citizenship Law is generally in compliance with the standards contained in the *1961 Convention*. However, a significant gap exists because of the lack of a safeguard against statelessness for children born in Romania who would be stateless because their parents are either themselves stateless or foreigners unable to pass on their nationality.¹⁴

Recommendations:

- Reform the Citizenship Law to include a safeguard against statelessness which provides that children born in the territory, who would otherwise be stateless, acquire Romanian nationality.
- Withdraw the reservations to Articles 23, 27 and 31 of the *1954 Convention Relating to the Status of Stateless Persons*.
- Establish a statelessness determination procedure.

Human Rights Liaison Unit
Division of International Protection
UNHCR
July 2012

¹⁴ The Romanian Citizenship Act 21/1991 can be found on the official website at: <http://cetatenie.just.ro/LinkClick.aspx?fileticket=i6NdjVsgDnc%3d&tabid=42&mid=405>.

Annex

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports - Universal Periodic Review:

ROMANIA

We would like to bring your attention to the following excerpts, taken directly from Treaty Body Concluding Observations and Special Procedures' reports relating to issues of interest and persons of concern to UNHCR with regards to Romania.

1. Treaty Body Concluding Observations and Recommendations

Committee on the Elimination of Racial Discrimination

CERD/C/ROU/CO/16-19, 77th session

13 September 2010

Concerns and Recommendations

10. The Committee is concerned that the temporary austerity measures taken by the State party in 2009 and 2010 to cope with the global economic and financial crisis may have a negative impact on the situation of those groups in society that are most vulnerable and most at-risk of racial discrimination.

In light of its general recommendation No. 33 (2009), the Committee recommends that the State party take appropriate measures, or strengthen existing measures, to ensure that the economic and financial crisis does not have harmful effects on the social situation of the most vulnerable groups, particularly refugees, immigrants and minorities, including the Roma, and that it does not lead to a rise in racial discrimination against these groups.

Committee on the Rights of the Child

CRC/C/ROM/CO/4, 51st session

30 June 2009

Positive Aspects

1. The Committee notes with appreciation that since consideration of the second report of Romania in 2003 (CRC/C/65/Add.19), the State party has ratified or acceded to, inter alia:
 - (a) The Council of Europe Convention on Action against Trafficking in Human Beings, on 19 July 2006;
 - (b) The 1954 Convention relating to the Status of Stateless Persons in January 2006;
 - (c) The 1961 Convention on the Reduction of Statelessness in January 2006.

Birth registration

35. The Committee is concerned at the extent of non-registration of births, which disproportionately affects the children of Roma origin, street children, new born children

abandoned in hospitals, and children born in the home and other settings. The Committee, while noting significant efforts to address the non-registration of children, including those placed in special protection, through periodic inspection of facilities, notes the rise in recent years of undocumented children. The Committee is in particular concerned that despite legislation requiring the registration of children within 30 days from ascertaining their abandonment, a very high proportion of abandoned children leave maternity hospitals without a birth certificate. The Committee is further concerned at the unduly long procedure of late registration of births, especially in cases concerning children born at home or of parents who themselves lack a birth certificate.

36. The Committee recommends that the State party raise awareness of hospital staff, administrators and other health professionals, of their responsibilities to register births and to facilitate the issuing of birth certificates.

Families affected by migration

49. The Committee, while noting that some programmes have been undertaken and a draft law aiming to improve the identification and monitoring of children left behind by parents migrating for work abroad, is concerned at the high number of such children remaining in a vulnerable situation. The Committee also notes the increased incidence in recent years of unaccompanied or separated Romanian children coming to the attention of foreign authorities abroad and the special needs of such children, some having endured abuse and neglect, including at the hands of parents or relatives. In this regard, the Committee takes note of bilateral agreements between Romania and destination countries regarding the return of unaccompanied Romanian children abroad. It remains concerned that the return and re-integration of such children may in some cases lead to re-victimization.

50. The Committee recommends that the State party organizes nation-wide campaigns to inform potential migrants of the child protection measures available and improve measures for the identification and support of children left behind by migrating parents. The Committee recommends that the State party ensure, including through the signing of bilateral agreements containing appropriate safeguards, that decisions for return and re-integration of unaccompanied Romanian minors are carried out with the primary consideration of the best interests of the child and taking into account the Committee's views contained in its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin.

Asylum-seeking and refugee children

80. The Committee notes that the new Law on Asylum adopted in 2006 (Law No. 122/2006) encompasses explicitly the principle of best interests of the child in all decisions regarding the refugee determination status affecting children as well as the principles and procedural guarantees of family unity, non-refoulement, non-discrimination, confidentiality and the benefit of the doubt. However, the Committee is concerned that the Law on Asylum does not extend some special measures to cover separated children, in addition to unaccompanied ones, and that persons with responsibilities for unaccompanied children, including those processing asylum applications, have not been equally exposed to the same training. While welcoming the excellent cooperation among the relevant stakeholders, the Committee notes with concern that the authority responsible for age assessment of unaccompanied children operates without consideration to possible margins of error.

81. The Committee recommends that, while taking into account its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, the State party:

- a. Extend in law and continue to provide in practice specific guarantees for unaccompanied children and separated children;
- b. Expand the training throughout the country on child-friendly interview techniques to all decision makers involved in the refugees status determination (RSD) as well as to those acting as legal guardians;
- c. Apply the benefit of the doubt concerning age assessment;
- d. Ensure that when return of children occurs, this happens with adequate safeguards, including an independent assessment of the conditions upon return, including the family environment.

Sexual exploitation and abuse

87. The Committee notes that the Criminal Code has been amended to ensure compliance with the Optional Protocol on the sale of children, child prostitution and child pornography. The Committee further acknowledges the numerous efforts in the area of trafficking, among which the setting up of the National Agency against Traffic of Human Beings in 2006, the adoption of the National Action Plan for the prevention and fight against child trafficking, and of the National Action Plan for the prevention and fighting of sexual abuse and sexual exploitation of children for commercial purposes. However, the Committee is concerned that:

- (a) The number of sexually exploited children is high, including foreign children trafficked within Romania, and the number of children trafficked from Romania to other European States has increased;
- (b) Internationally and domestically trafficked girls victims of sexual exploitation are treated differently as they are sometimes seen as criminals;
- (c) There are no specific provisions in criminal law and procedure for the hearing of child victims of crime, including sexual exploitation and sexual abuse;
- (d) Children who spend time in child protection institutions are particularly vulnerable to trafficking for sexual exploitation;
- (e) According to the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78/Add.2), data on trafficking are not consistent as different institutions provide different data depending on the target group they focus on.

88. The Committee recommends that the State party:

- (a) Intensify its efforts to collect data on the extent of sexual exploitation and abuse of children, essential to prepare adequate responses and combat these phenomena;
- (b) Consider all children victims of these criminal practices, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders;
- (c) Set up specific provisions in criminal law and procedure for the hearing of child victims of crime, including sexual exploitation and sexual abuse;
- (d) Ensure that children are provided with special protective measures to prevent victimization and re-victimization;
- (e) Submit its initial report under the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.

2. Reports of Special Procedures Mandate Holders

Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian

Addendum: Mission to Romania
Human Rights Council, 18th session

RECOMMENDATIONS

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 nationwide 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;
- (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.

Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante

Human Rights Council, 14th session

A/HRC/14/30/Add.2

Addendum: Mission to Romania (15-20 June 2009)

17 March 2010

Transnational Organized Crime

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.

Emerging Trends

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.

The regional legal and institutional framework

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, 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.

The national legal, policy, and institutional framework

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.

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.

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.

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.

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.

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.

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.

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.

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.

The protection of children in the context of migration

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.

Conclusions and 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,¹⁵ 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.**

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

(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;**

¹⁵

A/HRC/10/21.