**Questionnaire du Rapporteur special sur les droits de l’homme des migrants:**

**Mettre fin a la detention des enfants dans le cadre de l’immigration et leur rechercher un accueil et des soins adequats pour eux**

1. ***Veuillez fournir des informations sur toute législation ou politique qui interdit ou restreint le recours à la détention d'enfants migrants et de leur famille dans votre pays. Nous vous serions reconnaissants de bien vouloir nous soumettre le texte original de la législation ou de la politique, accompagné d'une traduction en anglais s'il est rédigé dans une langue autre que l'anglais, le français ou l'espagnol.***

International human rights laws and standards, also acceded to by Romania, make it clear that taking into public custody (or detention, in case of migration and asylum) should be used only in exceptional cases as a last resort, after all other options proved inadequate following an individual analysis of the case, respectivelly when less restrictive / non-custodial measures are not possible and sufficient in relation to the procedure according to which are ordered and to their purpose.

Placing migrant children into public custody is a major challenge, and the first condition to be analyzed is the existence of a legitimate purpose, as well as the detention to be necessary, reasonable and proportionate.

The national legislative framework governing the measure of public custody is represented by:

* *Emergency Ordinance no. 194/2002 on the regime of aliens in Romania, with subsequent amendments and completions* sets the framework which regulates the entry, stay and exit of aliens on Romanian territory or from Romanian territory, their rights and obligations, as well as specific immigration control measures, in accordance with the obligations undertaken by Romania through the international documents to which it is bound. **The measure of public custody is regulated by article 101.**
* *Law no. 122/2006 on asylum in Romania, with subsequent amendments and completions*, which sets the legal regime of aliens seeking international protection in Romania, the legal regime of aliens benefiting from international protection in Romania, the procedure for granting, terminating and revoking international protection in Romania, the procedure for establishing the Member State responsible for examining the asylum application, as well as the conditions for granting, excluding and terminating temporary protection. **The measure of public custody is regulated by article 1913;**

**Taking into public custody** is the measure of temporary restriction of freedom of circulation on the territory of Romania, ordered against foreigners / applicants for international protection, in the following situations:

* in order to fulfill all the necessary steps for removal under escort, when the foreigner does not voluntarily leave the Romanian territory;
* in order to ensure the transfer to the responsible Member State, within the procedure of determining the responsible Member State;
* if the applicant has been taken into public custody in order to be removed from the Romanian territory and he/she has submitted an application for international protection aiming to delay or prevent the implementation of the removal or expulsion measure, even though prior to such a measure he had the possibility to submit such an application.

**Taking into public custody** is ordered, in writing, by ordinance motivated by law and in fact by the appointed prosecutor from the Prosecutor's Office attached to the Bucharest Court of Appeal, for a period of 30 days, when motivated request is made by the General Inspectorate for Immigration (IGI) of the Ministry of Internal Affairs, against the alien who cannot be removed under escort within 24 hours, as well as against the asylum seeker who is in one of the following situations:

a) is at risk of evading the removal under escort or the transfer procedure in the Member State responsible;

b) did not respect the term of voluntary departure granted by the return decision;

c) avoids or prevents the preparation of the return or the removal process under escort;

d) was declared as undesirable person on the territory of Romania;

e) is subject to expulsion.

**The unaccompanied minor aliens are not taken** into public custody. For this category of persons, regardless the way of entry into Romania, they are provided with representation through a competent institution according to law, which will ensure the necessary protection and care, including accommodation in special centers for child protection under the same conditions as for Romanian minors.

*The measure of placement in a specially arranged confined space* **cannot** be ordered against applicants for international protection which are minors, unless the unaccompanied minor cannot prove his age and there are serious doubts about his minority, respecting the principle of the best interests of the child.

In Romania, the taking into custody of accompanied minors is not regulated. GII cannot propose nor can the Prosecutor take the measure of public custody by Ordinance of the accompanied minors. However, in fact, they end up in Accommodation Centers for foreign nationals taken into public custody as companions. Thus, although the measure is not taken against the minor, he is taken into custody with his family, thus being subject to a measure restricting freedom of circulation. In fact, **minors are taken into public custody, only if they are accompanied by at least one of the parents or the legal representative, being subject to the same legal regime as the person taken into public custody.**

1. ***Veuillez fournir des informations sur les alternatives à la détention des enfants migrants non privatives de liberté dans votre pays (par exemple, les solutions d'accueil communautaires) et expliquer en détail comment ces alternatives renforcent efficacement la protection des droits des enfants migrants et de leur famille.***

According to the provisions of Article 1061 and 1062, IGI tolerates, ex officio or upon request, aliens’staying on the Romanian territory, for those who do not have the right of residence and for objective reasons, do not leave the Romanian territory.

Tolerance is granted for a period of up to 6 months which may be extended for new periods up to 6 months, until the causes disappear.

During the period when they were tolerated to remain on the Romanian territory, the aliens have access to the labour market under the conditions provided by law for the Romanian citizens. The right to work granted to aliens who have been granted the tolerance for remaining on the Romanian territory ceases by right, in all situations in which the tolerance ceases.

The tolerance has territorial validity, limited to the area of competence of the IGI’s territorial unit that issued the document to be tolerated, any movement outside only with prior approval being allowed.

In case that the asylum application submitted by the unaccompanied minor was rejected after the asylum procedure provided by Art. 17 paragraph (7) of Law 122/2006 on asylum in Romania having been completed, the Social Assistance and Child Protection Directorate General competent according to the legislation in force, undertakes the steps provided by law with the view to establishing special protection measure for him and informs the IGI competent migration structure regarding on his situation. This measure lasts until the child returns to the parents’ country of residence or to the country where other family members willing to take the child have been identified (Art. 58 paragraphs (6) and (7) of the Methodological Norm for the application of Law 122 / 2006 on Asylum in Romania).

In the case of minor aliens entering unaccompanied or remaining unaccompanied on the Romanian territory when there are no serious doubts about their minority, IGI proceeds as follows:

* Regardless of the way in which the unaccompanied minors enter Romania, representation by a competent institution according to the law will be provided. This institution will also provide the necessary protection and care, including accommodation in special centres for the minors’ protection, under the same conditions as for Romanian minors (Art. 131 paragraph (1) letter b) of GEO 194/2002 regarding the regime of aliens in Romania).
* Their identity will be established, also trying to identify the parents in order to *reunite the family*, while right to the educational system being granted.

**No** restrictive measures can be disposed against an applicant for international protection for the sole reason that he has filed an application for international protection in Romania.

With regard to asylum seekers, in order to limit abuses against the asylum procedure, as well as in case that they represent a threat to national security, IGI may impose **restrictive measure**, on the basis of an individual analysis, as following:

* the obligation to present periodically at the headquarters of the IGI structure on set dates and hours, as well as upon demand;
* establishing the residence in a regional centre for proceedings and accommodation for the asylum seekers;
* placing them in specially arranged closed spaces.

During the asylum procedure and during the procedure aimed at determining the Member State responsible for examining the asylum application, in order to ensure the transfer, IGI may dispose **the establishment of a place of residence** for the applicant for international protection even if he/she has means of maintenance and the obligation not to leave that place unless the head of the centre was informed.

In order to *maintain* *the family unit*y and respect *the principle of the child’s best interest*, IGI may allow the applicant's family members who were obliged to reside in a regional centre for proceedings and accommodation for asylum seekers to live together with him/her.

During the asylum procedure and during the procedure for establishing the Member State responsible for examining the asylum application in order to ensure the transfer, as well as to limit abuses against the asylum procedure, the applicant for international protection may be placed in a special confined arranged space, by temporarily restricting the freedom of movement.

**Placement in closed spaces** is disposed only in the following situations:

a) for checking the declared identity;
b) for establishing the elements on which the application for international protection is based, which could not be obtained without taking action, in particular when there is a applicant risk of applicant’s avoidance;
c) at the request of one of the institutions with responsibilities in the field of national security, proving that the applicant for international protection represents a danger to the national security.

According to Article 195 paragraph (2) of Law No. 122/2006 on asylum in Romania, with subsequent amendments and completions, the restrictive measure of placement in specially arranged closed spaces may not be disposed minor applicants for international protection, unless they are unaccompanied, cannot prove their age and there are serious doubts about the minority (case in which a forensic examination will be carried out with the view to determining his/her age, with the prior written consent of the person concerned and his / her legal representative).

Accommodation of minor asylum seekers is done together with the accompanying relatives, irrespective of the degree of kinship (Article 58 paragraph (1) of the Methodological Norm for the application of Law 122/2006 on asylum in Romania).

Accommodation of 16 aged unaccompanied minor applicants who do not have the necessary material means for maintenance is made in the regional centre for proceedings and accommodation of asylum seekers, until the expiry of 15 days from the asylum procedure completion, according to Article 17, paragraph (7) of the Law, if they have not been granted a form of protection, or until the transfer date, in the case of the determination procedure of the responsible Member State (art. 58 paragraph (2) of the Methodological Norm application of Law 122/2006 on asylum in Romania).

Accommodation of unaccompanied minor asylum seekers who have not reached the age of 16 is made according to the provisions of Article 78 of Law No. 272/2004, on the children's rights protection and promotion (Art. 58 paragraph (3) of the Methodological Norm for the application of Law 122/2006 on asylum in Romania).

The opinion of the unaccompanied minor asylum seeker regarding the place where he / she will be accommodated is taken into account and given due importance, in relation to his / her age and degree of maturity (Article 58 paragraph (3) of the Methodological Norm of application of Law 122/2006 on asylum in Romania).

1. ***Veuillez fournir des informations sur les bonnes pratiques ou les mesures adoptées dans votre pays pour protéger les droits de l'homme des enfants migrants et de leur famille pendant la procédure de résolution de leur statut migratoire, y compris, entre autres, leurs droits à la liberté, à la vie familiale, à la santé et à l'éducation (par exemple en leur assurant un accès effectif, entre autres, à un accueil adéquat, aux soins de santé, à l'éducation, aux conseils juridiques et au regroupement familial).***

During the entire period of their staying in the centres, aliens are provided with the possibility to communicate with the diplomatic and consular representatives of the country of origin, family members, as well as with the legal representative (Article 104 paragraph 4 of GEO 194/2002).

In the case of minor aliens who enter unaccompanied or who remain unaccompanied in Romania, when there are no serious doubts about their minority, IGI proceeds to:

* Irrespective of the way of entering Romania, aliens are provided with representation through a competent institution according to Law, which will ensure the necessary protection and care, including accommodation, in special centres for minors’ protection under the same conditions as for Romanian minors;
* measures are taken to identify the parents, irrespective of their place of residence, with the purpose of family reunification;
* until parents having been identified, the school age minors have access to the education system;
* the performance of measures to remove an unaccompanied minor can be done following a prior assessment by the competent authorities, only if the minor is sent to the parents, in case they have been identified and do not reside in Romania, to family members, with their consent, designated tutor or appropriate reception centres in the state of return;

Minors accommodated in the centre, accompanting at least one of the parents or their legal representative, taken into public custody, may carry out recreational activities outdoors or in spaces equipped with games, only accompanied by at least one of his/her parents or legal representative.

Minors admitted to centres who accompany at least one of the parents or legal representative, taken into public custody, have free access to the compulsory education system.

Aliens, members of a family taken into public custody, are accommodated in the same room. Aliens not being members of that family cannot be accommodated in the room where members of a family are accommodated.

IGI analyses the opportunity to maintain the measure of taking into public custody at intervals of maximum 3 months. In the case of families with minors taken into public custody, the analysis is performed at intervals of maximum one month.

According to Law No. 122/2006 on asylum in Romania, with subsequent amendments and completions, asylum seekers benefit from the following assistance measures:

* Benefit on request from free accommodation, in one of the 6 IGI centres. These accommodation centres have well-equipped living rooms and kitchens, as well as recreation areas.
* Accommodation of unaccompanied minor asylum seekers, who have reached the age of 16 and not having the necessary material means for maintenance is done in the regional centres of procedures and accommodation for asylum seekers.
* Accommodation of unaccompanied minor asylum seekers, not having reached the age of 16 is done in a residential-type service provided by Law No. 272/2004 on the protection and promotion of children's rights, republished, with subsequent amendments and completions, belonging to the Directorate General of Social Assistance and Child Protection or an authorized private body.
* Accommodation in the regional centres of procedures and accommodation for asylum seekers also involves the provision of personal hygiene and cleaning products, as well as the provision of material goods necessary for the preparation and serving of food.
* Benefit from food, upon request, if they do not have material means of maintenance, within the amount of 10 lei / person / day, an allowance for the purchase of clothing worth 100 lei / cold season and 67 lei / hot season and other expenses, up to the amount of 6 lei / person / day.
* Benefit from access to the labour market under the conditions provided by law for Romanian citizens, *after the expiry of a 3 month period from the date of submission of the asylum application*, if the asylum seeker is still under the asylum procedure.
* Benefit free of charge from primary and emergency healthcare, as well as free medical care and treatment in case of acute or chronic diseases.
* Asylum seekers having special needs benefit from the adapting the accommodation conditions as well as adequate medical assistance.
* Receive social assistance, under the conditions provided by the Social Assistance Law No. 292/2011;
* Participate free of charge in cultural adaptation activities and can benefit from psychological counselling.
* IGI shall take steps to appoint, as soon as possible, a legal representative to assist the unaccompanied minor asylum seeker during the asylum procedure, including during the first asylum procedure, secure third country procedure, secure European third country procedure or the procedure for determining the Member State responsible, as appropriate.
* The minors asylum-seeking minors participate in the Romanian language learning courses, during a school year, after its graduation being enrolled in the compulsory school education system, under the same conditions as the Romanian citizens.
* Childrenseeking asylum benefit from the state allowance granted to minors, under the same conditions as for Romanian citizens.
1. ***Veuillez indiquer les difficultés ou les obstacles dans l'élaboration et/ou la mise en œuvre de mesures alternatives à la détention d’enfants migrants et de leur famille.***

The limited capacity to provide accommodation, in the event of an influx of migrants represents an obstacle. Nevertheless, within the specific identification procedures in relation to the diplomatic missions, difficulties are encountered in carrying out these procedures under optimal conditions, in most cases because of the distance between the aliens’ place of residence and the headquarters of the diplomatic mission.

1. ***Quel soutien d’autres parties prenantes (autres que votre gouvernement) pourraient-elles apporter pour renforcer l’élaboration et/ou la mise en œuvre d'alternatives non privatives de liberté à la détention d’enfants migrants et de leur famille aux fins d’immigration, qui amélioraient la protection de leurs droits?***

We consider that the implementation of new projects, financed from dedicated funds (eg Asylum, Migration and Integration Fund) is useful in order to support the category of aliens subject of this request for information.