

CHILD MARRIAGES IN SERBIA

An abstract line art illustration featuring a black line that forms a large, tangled knot on the left side. From this knot, several lines extend across the page: one curves upwards and to the right, another curves downwards and to the right, and a third extends horizontally to the right. A brown triangle points to the right, positioned below the horizontal line. The overall style is minimalist and graphic.

Situation analysis
and
recommendations

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Situation analysis and recommendations

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Foreword

Child marriages represent a problematic practice within which a child forcibly enters into a marriage union with another child or with an adult. This phenomenon is characteristic of various communities in many countries, but, as a rule, primarily affects girls. Although in Serbia this practice is present to a lesser extent, compared to some other areas, and although it is prohibited and punishable, unfortunately, there are still thousands of children who, on an annual basis, enter into child marriages. In Serbia, this problem is particularly pronounced among the Roma community.

For decades now, attempts have been recorded to, both at international and national levels, put a stop to this practice. In this regard, a series of documents, conventions, and declarations, as well as laws and national strategies, have been adopted with a task to repress the phenomenon of child marriage. Numerous institutions have been established tasked to protect the rights of the child, and to care for those children who have entered into marriage, i.e. who are at risk of child marriage. Although these attempts gave certain results, it seems that we are still far from the complete eradication of this practice.

Child marriages affect children who enter into it with vast and grave consequences. From chronic poverty and illiteracy, through early parenthood, to a complete lack of prospects for any kind of personal development, this practice completely dereifies children, and condemns them to spend the rest of their life in a grievous and meaningless way. This happens everywhere where there are child marriages, and it is happening right now,

among us, in Serbia. In order to protect the rights of the child, and allow proper childhood for all children, especially those from vulnerable groups in Serbia, primarily Roma, it is essential that the competent institutions always and promptly react to the phenomenon of child marriage and find a way to protect that child. No tradition can be justified if it endangers the child's life, and therefore it is necessary to create good and sustainable programs for the communities within which this practice is widespread, in order for the communities themselves to realize the harmfulness of the practice and become involved in its suppression, and for each child to become free of fear that suffering is their only certain future.

In order to solve the problem of child marriages and stand in the way of this serious violation of human, and children's, rights, we all need to work together. We believe in a society in which every girl and every boy have a carefree childhood and an opportunity to go to school and develop their potentials. We envisaged this study as a step closer to that goal, and we thank all those who participated in its creation.

Ana and Vlade Divac Foundation and NGO Atina

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1. ●

Introduction

– Why is it necessary to deal with this issue?

Humanity has greeted the end of World War II with high hopes and stepped into an era of progress in various areas. Today, we are on the threshold of the colonization of Mars, gradual transition from fossil fuels to natural renewable and clean energy sources, we communicate virtually in real-time and process an immense amount of data. At the same time, today, at the beginning of the third millennium, millions of people are still struggling with hunger, lack access to clean water, millions of lives are destroyed in armed conflicts, millions of children are deprived of childhood. Unfortunately, for many, even today, childhood does not end once they grow up but much earlier, often before the age of ten violently and suddenly, with the act of marriage or extramarital union they have no concept of, and which someone arranged on their behalf.

Despite numerous attempts to put an end to early, i.e. juvenile, marriages, despite numerous international documents and decades of activities, legal restrictions and severe sanctions in many countries, this problem is still very much present, and requires continuous and thorough work until the very last child is freed from the fear that their childhood will be interrupted in such a violent way. Although the number of early marriages is lower

today than a few decades ago, predictions suggest that in 2020 there will still be as many as 50 million children (primarily girls) in the world who will enter into early marriages before the age of thirteen.¹ All this shows how deeply rooted this problem is, how difficult it is to find real and sustainable solutions, and that these solutions cannot be found overnight.

Child marriages affect children who enter into it with vast and grave consequences. Their human rights and their children's rights are completely negated, they are deprived of education, their health is disrupted, along with their development, family and personal relationships,² and their lives are being completely dereified. Early marriages are a generator of the vicious circle of poverty, illiteracy, family and social violence. Early marriages, therefore, affect girls with especially severe consequences, because they are much less likely to have a chance of any personal progress, they often remain at the margins of society, with lasting psychological consequences and disrupted reproductive health.

There are various and different reasons why early marriages occur, i.e. why they are being justified. Their “defenders” usually refer to tradition and customary law, economic conditions and the need to “reduce” poverty, to “settle” family and personal debts, etc. However, it must be said that early marriages and giving/selling children cannot, and should not, be justified in any way whatsoever. A tradition that is in deep conflict with the respect and exercise of fundamental human rights cannot be supported, nor can anyone turn a blind eye to gross violations of the law just because that is, allegedly, required by the customary law of a community. No community can refer to a tradition if its consequence is direct or indirect destruction of children's lives.

Marriage can be concluded only when those entering into it do so freely, voluntarily, and knowingly. It is almost impossible to say that this applies to those who enter into marriage before the age of 18,³ and certainly not for those whose marriage has been arranged by someone else. Therefore,

¹ *Making Early Marriages in Roma Communities a Global Concern*, European Roma and Travellers Forum & Romani Women Informal Platform, „Phenjalipe”, 2013, p. 7

² *A Theory of Change on Child Marriages*, Girls Not Brides p. 5

³ *A Theory of Change...*, o.c., p. 5

it should be ensured in legislation, and in the practices of all countries, that a marriage is considered valid only when there is an agreement of wills, and that perpetrators of child and early marriages, those who live with children in common law unions, are punished without exception. As long as there is a selective application of the law and sanctions (because this offense is punishable in most countries), that is as long as such customary law is being “tolerated”, the problem of early marriages will remain impossible to resolve.

Previous attempts to respond globally to this problem have not been entirely successful. In order for the strategy of resolving this issue to yield the expected results, the approach must be changed, and it must be “localized”: it is necessary to work with communities and individuals, with children and their closest environment. Both girls and boys must be offered opportunities that go beyond their traditional roles.⁴ Only then can we expect lasting solutions. Furthermore, the problem of early marriages must be constantly spoken about, it must be constantly reminded of, it must not be ignored. Declarative commitment means nothing if it is not accompanied by specific actions; communities now more than ever must make sure that all their members enjoy the same rights and share the ability to build a better world.

The Republic of Serbia has ratified a number of international documents, and acceded to the adoption of laws and other acts that directly or indirectly attempt to suppress and punish the practice of child marriages. The most important among the international instruments adopted by the United Nations or its agencies relating to Serbia, which Serbia ratified or enacted legislation/regulation on their ratification, are the following: *Universal Declaration of Human Rights and Freedoms* (at its adoption, Yugoslavia abstained); *UNGA Resolution 843; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (ratified in 1958); *Declaration on the Rights of the Child*; *The Convention on the Elimination of All Forms of Discrimination against Women* (ratified in 1981); *The Convention on the Rights of the Child* (ratified in 1990); *The Beijing Declaration and Platform for Action*; *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children*,

⁴ Ibid.

Child Prostitution and Child Pornography (ratified in 2002); *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (ratified in 2003). Acts of the Council of Europe ratified by Serbia, or relating to it, are as follows: *Recommendation R (84) 4 on parental responsibilities*; *Framework Convention for the Protection of Minorities*; *Convention for the Protection of Human Rights and Fundamental Freedoms* (ratified in 2003); *Resolution 1468 on Forced Marriages and Child Marriages*. Regarding domestic legislation, Serbia has adopted the following acts related to the field of child protection: *the Constitution of the Republic of Serbia, Family Law, Criminal Code, and the Law on Prohibition of Discrimination*. The most important listed documents will be discussed in more detail later.

The practice of child marriages, unfortunately, exists in Serbia as well, and is dominantly linked to the Roma community. Although precise data are not available, the number of child marriages, i.e. common-law marriages with children, on an annual basis in Serbia certainly reaches several thousand. According to the Republic Bureau of Statistics, in 2011 the percentage of women in the total population who entered into marriage before the age of 18 was as follows:

Age/statistical group	Married before the age of 18 (%)	Married before the age of 15 (%)
45-49	18	3
40-44	17	2
35-39	17	2
30-34	7	1
25-29	7	1
20-24	8	3

Table 1: The percentage of women in the total population in Serbia, who entered into marriage before the age of 18;

Source: National Bureau of Statistics publication: *Women and Men in the Republic of Serbia, 2011*

In the same statistical analysis, we also find information about the number of young mothers, i.e. about a certain downward trend from 2005 to 2010, which also point out to the issue of child marriages.

Age of the mother	2005		2010	
	married	not married	married	not married
Younger than 15	-	60	-	59
15-19 years old	2329	2899	1404	2705

Table 2: The number of underage mothers of liveborn children in Serbia

Source: National Bureau of Statistics publication: *Women and Men in the Republic of Serbia, 2011*

Bearing, therefore, in mind that the practice of child marriages in Serbia is mainly associated with the Roma population, it can be concluded that a large proportion of individuals in these statistical surveys actually consists of women from that community. The following table, based on data compiled by UNICEF, MICS 4, and the Republic Institute for Statistics (2011), speaks about it even more thoroughly and shows that this problem should not be ignored.

Respondent's age	Married before the age of 15 (%)	Married before the age of 18/ currently married (%)
15-19	14,8	44,3
20-24	13,2	50,5
25-29	15,2	48,5
30-34	18,9	54,1
35-39	18,8	60,6
40-44	17,8	58,1
45-49	17,6	55,0

Table 3: The percentage of Roma women who have entered into child marriages in Serbia;

Source: report "Roma women speak out"⁵

⁵ "Roma Women Speak Out", Shadow report to the Committee on the Elimination of Discrimination against Women (CEDAW Committee) to be considered at its 55th session, Roma Women Network of Serbia, p.83

Finally, the characteristics of early, i.e. child, marriages in other countries can be identified in the practice of this custom in Serbia as well. Therefore, the description of this phenomenon on a global level represents an enlarged picture of what is happening to those children in Serbia who were forced to enter into marriage. Although there were attempts to put an end to this problem in Serbia, responses of the government and other interested social actors so far failed to provide adequate and satisfactory results. Therefore, it is necessary to attract attention to this issue and insist on its resolution. This analysis, in which we will try to shed light on all aspects of the issue of child marriage and look at the specific situation in Serbia, is exactly a step in that direction.

2.

Problematization
of the concept

2.1. Definition

In practice, and thus in literature, we are faced with a variety of terms which often designate similar concepts and partially overlap in meaning, but are almost never identical. Therefore, it is necessary to make a difference between them at the beginning. In the issue we explore here, we are finding terms “early marriage”, “juvenile marriage”, “child marriage”, “common-law marriage with children”, “forced marriage”, or “arranged marriage”. In customary and religious law, there are various other names as, for example, the countries of Central Asia know so-called bride kidnapping, i.e. abduction of the bride, which represents a non-consensual act of marriage in violation of all basic human rights of the future bride, after which she is also denied freedom of movement.⁶ The so-called *nikah* marriages⁷ between minors in Tajikistan and other countries find their footing in the (Sharia) Islamic law, but remain unregistered and unrecognized by the state, which puts those who have entered it at risk of being pushed to the margins of society. On the one hand, all of the above-mentioned terms can refer to one and the same case in practice, and then, separately observed, each of them may be applicable to various cases, or cases which partially overlap. In this regard, it is possible to challenge all these names, i.e. individual words from the above phrases. For example, early marriage usually considers a union of two persons who have not met the legal, minimum age for marriage. It is also a union where only one person has not met the legal minimum age for marriage. Given that the law and various international or domestic political acts consider those who need to seek/obtain consent of another to enter into a marriage to be children, we can say that early marriages are child marriages or juvenile marriages. Thus, if only one person in such union is a child, or both of them are, then it is a case of children's, i.e. juvenile, marriage.

⁶ Thomas, Cheryl, *Forced and Early Marriage: A Focus on Central and Eastern Europe and Former Soviet Union Countries with Selected Laws from Other Countries*, Expert Paper, UN , 2009, p. 8

⁷ *Ibid.*, p.13

However, given that “child marriages” are illegal in most countries, and as such cannot be registered, such unions cannot even be considered in a legal sense, or called marriage, but only *extramarital union with children*. Again, on the other hand, a creation of such a union is not taking place within the formal legal system, but relies on customary law which still perceives such a union as marriage. Accordingly, it is still possible to colloquially refer to it as a marriage. It can further be said that early, or child, marriage is also a *forced marriage*. Given that there is no consent of will, and that such a marriage will be concluded regardless of the will of children/child, it is clear that the marriage is forced. Nevertheless, “forced marriage” may have a significantly broader meaning and interpretation, since it does not always involve children/child, as an adult may also enter into marriage against their will, i.e. be forced into it under different circumstances. Finally, child marriage is also an *arranged marriage*, as it is planned by the parents and/or other persons in charge of the child’s care. But, as in the case of forced marriage, arranged marriage also does not necessarily involve child/children, but can be practiced in adults as well. On the other hand, in customary law, the consent of the parties to an arranged marriage is usually assumed, and falls on the family or someone in the family, and that is what represents the dividing line between an arranged and forced marriage.⁸ Of course, in practice this may not always be the case.

This confusing diversity of terminology sheds a light on all the depth of the issue we are dealing with, but also the risk of it remaining elusive. In order to avoid differences in interpretation, we will use the term “child marriage” from now on. It is exactly the word “child” rather than “early” or “juvenile” marriage that refers to all the weight of this issue because the child is a victim,⁹ and such term calls to action, to an attempt to do something, because, above all, a child must be helped. Also, to avoid the confusion over whether the child who entered into marriage is exploited in any way, that is whether the marriage was concluded for the purpose of exploitation of a

⁸ *Child, Early and Forced Marriage: A Multi-Country Study*, OCHCR, 2013, p. 8.

⁹ *Submission to Support the Development of a General Comment/Recommendation of Harmful Practices*, CRISS, 2011, p. 5

child, it should be emphasized that **the mere act of entering into child marriage represents a form of exploitation of the child**, and there is no need to further examine their position in the marriage - whether they are exploited or not, but take urgent steps to eliminate such a marriage.

Furthermore, the issue with child marriages, and the successful fight against the practice of entering into child marriage, also lies in different interpretations of the upper age limit to which someone is considered a child, or the age in which someone can freely enter into marriage without seeking court consent, or the consent of a parent or a guardian. Although Article 1 of the UN Convention on the Rights of the Child says that a child means every human being below the age of eighteen years, later in the text it provides individual state laws the possibility to prescribe a lower age limit as a condition for acquiring adulthood. Accordingly, unfortunately, there is still no uniform solution for the definition of a child (in terms of years) that could be applied to all countries.

Considering that the practice of child marriages in Asian and African countries is much more present, than, say, in Europe, the legislation of these countries on this issue also differs. Thus, for example, in most European countries the legal age limit is set at 18 years, while in Uzbekistan it is at 17 years, in Yemen at 15, and in Equatorial Guinea at 12! On the other hand, in Uganda, for example, where about 50% of girls are being married at the age of 15 to 19, or in Zambia where the percentage is just under 30%, the minimum legal age for marriage for both sexes is at 21 years old.¹¹ This discrepancy eloquently shows how deeply rooted the issue, i.e. the practice of entering into child marriage, is and how naive it is to expect that it can be stopped by simply issuing certain legal norms.

Although the minimum legal age in most countries is equal for both sexes, some laws still make a difference between girls and boys, and define a different age for entering into marriage. Thus, for example, in Iran, where in 2009 there were more than 40,000 girls who entered into marriage before

¹⁰ <http://www.youthpolicy.org/factsheets/country/equatorial-guinea/>

¹¹ *Early Marriage Child Spouses*, UNICEF, Innocenti Digest No. 7, Florence, March 2001, 7

the age of 15, the legislator set the minimum age for entering into marriage at 13,¹² while in Kuwait it is at 17 years of age for boys and 15 for girls, and the situation is reversed in Cameroon - 15 years of age for boys, and 18 for girls, and so on.¹³

When it comes to consent, the legal systems of most countries also distinguish between the minimum age for consensual agreement - the consent of a parent/guardian to the marriage of a child. Thus, the minimum legal age for consensual marriage is generally higher and, as we have seen, usually around the age of 18, while the minimum legal age for marriage with the consent of the parent/guardian (most often when it comes to special circumstances and, above all, teen pregnancy) is generally lower, although it varies widely from country to country. For example, for marriage with the consent of a parent in the Philippines it is necessary for the child to have reached the age of 18, in Mozambique - 16, Slovenia - 15, Tanzania - 14, and the like. In Lebanon, for example, the minimum legal age for indirect consent depends on, and is determined in relation to, ethnicity, or religion of spouses, and thus members of Druze, with the court permission, may be married at the age of 15 (girls) and 16 (boys), and Shia Islam followers, with the same permission, at the age of 9, i.e. 15.

In the case of countries with complex state regulation, it happens that there is no unique solution for determining the legal minimum for marriage, which is left to the regions and provinces to regulate themselves. Thus, for example, in Alabama, in the United States, the minimum legal for marriage is 18, in Nebraska - 19, whereas, for example, in Mississippi it is 21. However, due to various legal provisions that govern age limits, and because of various interpretations of the circumstances which are needed for child marriage, it is possible to make justification, or legalization of violence against children, no matter that it was not the initial intention of the legislator. For instance, in the state of Maryland, sexual intercourse between a child younger than 14 and a person four or more years older is

¹² *Child/Forced Marriage Factsheet*, Honor Diaries, 2013, available at: http://www.honordiarries.com/wp-content/uploads/2013/06/HD-FactSheet-Child_Forced-Marriage.pdf

¹³ <http://www.youthpolicy.org/factsheets/>

recognized and treated as rape. However, another law in this country allows girls younger than 16 to marry in case of pregnancy. This means, and often occurs, that a man who is, for example, 15 years older is given the opportunity to marry a girl who is, for example, 13 years old.¹⁴

Once again, differences in determining the minimum legal age for marriage further negatively affect the definition of the issue of child marriages and the attempt to resolve it. For the purposes of this research, but also with the aim to overcome the issue, child marriage is defined very rigorously and restrictively, as an ***illicit and harmful union between two human beings, at least one of whom is under the age of 18***. If, and only if, **the best interests of the child**, due to certain circumstances (teen pregnancy, etc.) dictate otherwise, should the child marriage be considered, i.e. approved. Thus, in order to successfully fight against child marriages in their fields, all countries of the world must begin to recognize and define this phenomenon in their legislation in such rigorous and restrictive way.

2.2. Scope

Although the issue of child marriages affects both girls and boys, when comparing the data it is clear that this problem mainly concerns women, or girls, and this fact should always be taken into account. Every year, about 14 million girls enter into marriage before the age of 18.¹⁵ According to UNICEF data, today there are about 400 million women in the world between 20 and 50 years old who were married before the minimum legal age, and 23 million between 20 and 24 years old, entered into marriage before the age of 15. In fact, estimates show that in developing countries

¹⁴ *Early Marriage Child Spouses*, o.c., p. 8

¹⁵ *A Theory of Change*, o.c., . 4

(excluding China), this trend will continue, and that one out of three girls is very likely to be married before the age of 18, and one out of nine before the age of 15.¹⁶

Despite the fact that, as noted above, in some countries child marriage represents a less, and in some more significant issue, it remains an omnipresent global phenomenon. The practice of early marriage, of entry into a child marriage, is widespread and deeply rooted tradition in many countries, the leading ones being those of South Asia and sub-Saharan Africa. Bangladesh has the highest rate of child marriage in South Asia; data show that over 65% of young women entered into marriage before the age of 18, and that more than 30% of them entered into marriage before the age of 15.¹⁷ A survey from 1993 showed that in the Indian state of Rajasthan out of 5,000 respondents, 56% were married before the age of 15, and 17% before the age of 10.¹⁸ Marriages with 10-year-old, or younger girls, even under the age of 8, are not uncommon in African countries such as Ethiopia, Nigeria, and the like. In Kebbi State, in northwestern Nigeria, for example, the average age at which girls are married is only 11.¹⁹

Although to a lesser extent, child marriages are also present in Latin America and Eastern European countries, but in these areas they are now primarily related to specific (ethnic) communities, and mostly recorded between the the ages of 16 and 18. In Romania and other neighboring countries, this phenomenon, for example, is mainly linked to Roma population, but is not exclusively limited to it. On the other hand, in countries of the former Soviet Union, for example, the issue of child marriages today has become stronger than before, because after the fall of communism, for various reasons, there has been an increase in the number of child marriages.²⁰ Finally, even developed Western countries are not immune to this issue. Of these countries, the highest rate of child marriages is present in the USA and the UK where about 8,000 such marriages²¹ are recorded annually. In truth, children who are being “married” in the

Marring Too Young – End Child Marriage, UNFPA, 2012, p. 6

Making Early Marriages in Roma Communities..., o.c., p. 8

Early Marriage Child Spouses, o.c., p. 4

Ibid.

Thomas, C., *Forced and Early Marriage...*, o.c.

Child/Forced Marriage Factsheet,

traditional way in the United Kingdom mainly belong to immigrant communities from South Asia.

Data show that children, or young girls, who have entered into child marriage are on average 16,4 years old, which is very close to the average age of their mothers, which was 16 years old.²² We can therefore conclude that, in certain communities, child marriages have a repetitive pattern, and the probability of entering into child marriage increases in those girls whose mothers were also married as children and who had an early pregnancy. All this represents an additional argument that, in resolving this problem, aside from working with individuals, work needs to be done with entire communities as well. Also, in many areas with the widespread practice of child marriages, or marrying girls to older men, it is highly likely that these girls will live in polygamous communities, that they will be the second or third wife,²³ which will further complicate their position. The phenomenon of child marriages is mainly related to girls, in other words - marrying girls to older men, as numerous studies confirm. However, one must not forget a significant number of boys, in many countries, who are being forcibly married, which involuntarily and prematurely introduces them into the “world of adult men”. According to UNICEF data, more than 150 million men who are now adults were forcibly and early married.²⁴ As is the case with girls, the number of child marriages is again the highest in sub-Saharan Africa and South Asia. In India, for example, about 5% of boys from 15 to 19 years of age enter into marriage.²⁵ Despite the fact that this number is far smaller than the number of girls in India who are already married at that age (almost one-quarter of them, according to data from 2006), the problem of child grooms cannot be ignored. Moreover, taking into account current research and activities to combat child marriages, it seems that there is a much higher risk of these boys remaining invisible. It is essential not to

²² *Early Marriage Child Spouses*, o.c., p. 3

²³ *Ibid.*, p. 4

²⁴ *The Sad Hidden Plight of Child Grooms*, <http://www.thedailybeast.com/articles/2014/09/18/the-sad-hidden-plight-of-child-grooms.html>

²⁵ *Ibid.*

overlook the fact that they suffer equally negative consequences as girls: they are deprived of education, which “condemns” them to the worst and lowest-paid jobs, while coping with the responsibility they are absolutely unable to cope with. It is likely that all this results in a continuous and almost insurmountable poverty. Therefore, it is clear that these children need help and support as well. Unfortunately, when it comes to their approach to the issue of child marriages, numerous international organizations and UN agencies are focused primarily toward supporting child brides, which places the issue of child grooms aside. Although the efforts of international actors are nominally dedicated to providing assistance to all children, i.e. eliminating the consequences of negative practices for both girls and boys (acts and institutions primarily mention children in their titles), it seems that the issue of child grooms remains neglected.

2.3. Causes

We have already noted that the reasons why a child is forced into marriage, and why child marriage as a social phenomenon exists for such a long time, are numerous and varied. However, it is necessary to examine the causes of this practice in a deeper and more systematic manner, and see whether, in fact, some general traits and regularities can be drawn and, therefore, possibly find appropriate solutions more easily.

General conclusion that the practice of early marriages arises solely from the traditional life of certain communities, or more accurately from their customary laws, is also wrong. Although this really is a practice that is repeated through generations and is, unfortunately, consequently linked with the identity of certain communities, there are actually other individual, and very specific, reasons behind each case of child marriage under the guise of tradition or religion. **These reasons may be personal, economic, political, or of other nature.**

In many communities, early marriage of girls is considered to be an insurance against premarital sex. Given that in such communities

premarital sex is largely stigmatized, parents often choose to marry their daughters early, out of fear of illegitimate pregnancy, social shame which this pregnancy brings, and even the resulting probability that she would never marry after that. Bearing in mind that in these communities it is assumed that children, and especially boys, in puberty are prone to sexual intercourse, or at least attempts to sexual intercourse, early marriage is considered a protective measure, since the girls who are married mainly become inaccessible to these boys, and the marriage protects them from sexual harassment and violence.

Fear of premarital sex also represents one of the main reasons why parents do not allow their daughters to attend school, which will be discussed later. At school, the risk of premarital sex is much higher, and therefore in the opinion of many of these parents, it is safer for their daughters to stay at home, or to marry immediately. For example, in Serbia, and even some neighboring countries, there is a large percentage of Roma children who begin, but do not complete, primary education. This is especially true among girls from this community. While it is not the only reason, as it is considered that they should marry as virgins, many of them leave, or are forced to leave school in puberty.²⁶ In this way, they are “pulled” from “socially risky circumstances” and safe from premarital sex. Moreover, the cult of innocence is so strong in this community that it is still often accompanied by the practice of ‘testing virginity’, that is proving innocence after the wedding night.

After the wedding night, the husband and mother-in-law come and take the sheet. If there is blood, the girl is “true”, “good” and may stay in her husband’s house. The outcome is always announced to the community (by playing music in the house). If there is no blood, no announcement, the girl will be returned to her parents. That is a great shame for the girl.²⁷

On the other hand, similar reasons may be heard when it comes to early marriage of boys. Thus, in a study on early marriages conducted in Eastern Serbia

²⁶ *Child Marriage in Serbia (Summary)*, UNFPA.

²⁷ Stories from the field: I.S., 33 years old, from Zemun: Vucaj, Suncica, *Report*, NGO Atina, Belgrade, 2010

there is the following statement from the field, "...the main reason why parents marry their son at such a young age is to obtain an additional worker in the house as soon as possible, and also to prevent the young man from wandered after girls..."²⁸.

The statement above provides one more cause of child marriages - economic situation and material needs of a particular family. In fact, many researchers of early marriages find that the economic troubles are main cause behind this practice.²⁹ Admittedly, in many communities, early marriage of girls is seen as (the only) way for the family to escape poverty. On the one hand, less food is needed when a family has fewer members, and on the other hand, it is possible to obtain additional funds, given that girls who are being married are in many cases - sold. Also, in such communities there is a belief that elementary existence is ensured for the girl who is sold/given to another family, as well as certain economic stability.³⁰ The statement in the preceding paragraph shows that it is believed the bride represents an additional workforce in the house that will ensure the birth of a new generation of workforce, and thus in fact positively impact on the prosperity of the family she is married into. Economic reasons as a basis for child marriages persist even today. In the last few years, that is after the beginning of civil war in Syria, for example, an increase has been observed in the number of forced marriages of Syrian girls, especially those whose families are in exile. In a situation of increased risk of sexual violence, but also due to the fact that the economic resources of these families are becoming more limited, for many of them marrying off their daughters, unfortunately, represents the best, if not the only option.³¹

Political and other similar goals may also be the cause of child marriage. History is full of cases where marriages were concluded between and with the royal children, in order to ensure peace, confirm the conquered

²⁸ Stojmenovic, Dragan, Juvenile marriages. Social and health issue in the villages of Bor municipality, *Timok medical gazette*, vol. 29, No. 1, 2004, p. 49-55

²⁹ *Making Early Marriages in Roma Communities...*, o.c., p. 8

³⁰ *Early Marriage Child Spouses*, o.c., p. 1

³¹ *Too Young to Wed*, The Save the Children Fund, London, 2014, p. 1

territory or receive certain benefits. King of France Louis XVI and Marie Antoinette entered into marriage at the age of 15, i.e. 14. Another well known case is that of Byzantine princess and Serbian queen Simonida, the last wife of King Milutin, who was given to Serbian ruler when she was six years old!³² Moreover, child marriages are still being used in some communities to ensure peace between the rival groups. In Pakistan, for example, there is a tribal custom “vani” wherein young girls are forcibly married to end hostility and resolve disputes.³³

Despite the fact that, in practice, it often happens that girls are married before the age of ten, which has already been discussed, it appears that puberty, or its beginning, is one of the most critical periods in which early marriage may occur. In this regard, it must be mentioned that there are different perceptions of development phases of boys and girls, understanding of childhood, puberty and adolescence in various traditional communities, with consequently different, sometimes almost completely anachronistic, understanding of child marriages. Some of these communities, for example, do not recognize the concept of adolescence as a transitional stage between the puberty and adulthood, and some do not even recognize adolescence, but only childhood and adulthood. The beginning of menstrual cycle for girls is interpreted as maturity and readiness for giving birth in many traditional communities, and they cease being a child in the eyes of community and become adult women to be married as soon as possible.³⁴ Similarly, the boys who marry are expected to

³² There are numerous interesting and instructive details in this story. Simonida's marriage was a guarantee of truce between Serbia and Byzantium at the end of 13th century. However, her married life was anything but peaceful. Chroniclers record that she was subjected to sexual acts at the age of 8, which caused damage to her uterus, and it is the reason why she was not able to give birth. While she spent most of her days locked, and suffered jealousy of elderly Serbian King, Simonida dreamt about becoming a nun as the only possible way out of her situation. Although she tried to do it while Milutin was alive, without success, she finally succeeded after his death. Still, Simonida's story clearly shows all the distance of the former and contemporary perspective of the position and protection of a child. Patriarch of Constantinople, John XII, was the greatest opponent of this marriage, not because Milutin married a child, but because that was his fourth marriage, while at the same time he was in the third marriage, and his second wife was still alive as well. Orthodox Church does not consider fourth marriage canonical, and the Patriarch's worry about Simonida's legal status nearly led to open animosity with her father, Byzantine emperor Andronicus II Palaeologus. It ended once the Church accepted this marriage as legal, under “political pressure”.

³³ *Child/Forced Marriage Factsheet...*, o.c.

³⁴ *Early Marriage Child Spouses...*, o.c., p. 6

behave like adult men, and take full responsibility for their new family!

2.4. Consequences of child marriages on children

We mentioned above that early marriages are negatively correlated to education; on the one hand, therefore, the inclusion of the child into the education system in certain traditional communities increases the risk of early marriage, because as we have seen it supposedly protects the child against high-risk circumstances and illicit sexual intercourse. On the other hand, the child's entry into marriage almost certainly means that they will drop out of school, which makes the low level of education of these children a direct result of such practices. However, in many communities, this is not perceived as a drastic and disturbing consequence, especially when it comes to girls. Parents, apparently, do not find it profitable to invest in the education of their daughters, because they will get married and bring an income to another family. It is in such a situation that they find another excuse to withdraw their children from school,³⁵ absolutely refusing to view the child's perspective.

Speaking about the consequences of early marriages on the lives of children, it could be said that they are in most cases negative. It is clear that none or low level of education, consequently, generates poor economic situation, poverty, lack of personal and social development. It is very likely that the girls who drop out of school early and marry early are going to become mothers early as well, and it will be almost impossible for them to continue their education. Finally, the data show that women who have spent at least seven years in the education system marry four years later and have an average of 2,2 children less than those who have

³⁵ Ibid., p. 11

no formal education.³⁶

Regardless of the girls' possible refusal to perceive themselves as women after they are married, they will in many cases be forced to it, primarily due to early pregnancy. One common and highly important consequence of child marriage is the early motherhood. It is expected of the girls who are married early to have children, and to prove that they can produce offspring. This is often the case in Roma and other marginalized communities. On the other hand, if it turns out that a girl cannot give birth, she is often faced with a difficult family and social stigma,³⁷ and sometimes even rejected by the community.

Child marriage and early pregnancy may produce another severe consequence for a married girl. The lack of maturity, unpreparedness of the body for reproduction, poor sanitary conditions and inadequate monitoring of pregnancy, may lead to death of the girls - future mothers. According to available data, about 50,000 girls from 15 to 19 years old die annually due to pregnancy or consequences of pregnancy. This puts it in the top factors of mortality for that age. It is also estimated that girls between the ages of 10 and 14 are five times more likely to die during pregnancy than it is, say, the case with women who become pregnant between the ages of 20 and 24.³⁸ Poor material and hygienic conditions, poor health and physical condition of the mother, also negatively affect the newborn child, and it significantly increases the risk of infant deaths.

Early, or non-consensual, marriage, early and forced entry into sexual relations, early childbearing, for many girls also mean that they will become permanently unhappy. In the new environment, girls become isolated, without an opportunity to talk to someone about their position, suffering they are experiencing, they have no one to confide in, and are surrounded by silence. All this may result in psychological and emotional instability and leave a lasting trauma. Since the environment now perceives these

³⁶ *Early Marriage Child Spouses*, o.c., p.11

³⁷ *Preventing Early Marriages*, Astarta, Plovdiv, 2011, p. 7

³⁸ *Early Marriage Child spouses*, o.c., p. 11

girls as grown women, they are expected to respond to the new marital and family responsibilities, although they are in no way capable to do so, and suffer additional pressure. Finally, many married girls soon face the physical and other forms of torture, they are being abused not only by the members of their new family, but often the old one as well if they escape or attempt to go back home, which means that violence often becomes an integral and inevitable part of the lives of these children.³⁹

Although it may seem as if such difficult life conditions can only be ended through a “divorce”, i.e. the cessation of marital relationship, if it occurs it does not necessarily mean that these children will escape severe circumstances. Moreover, it is highly likely that due to a divorce or death of a husband a girl will end up on the streets, in an even worse position. At that point, she is no longer wanted by her husband's nor her own family, and it is unlikely that she will marry again, much less find any kind of job that would enable her to support herself since she probably has no education. The vast majority of these girls lived in unregistered marriages, and face an additional aggravating circumstance as their status remains invisible to the state, which results in the inability to obtain any assistance from that side. Overall, after the end of child marriage, they remain without any resources and without life perspective. If they have children, their situation is deteriorating even more, because they are now the only caretakers probably without any outside assistance. Completely marginalized, these girls become “easy prey” for traffickers and often end up in an endless circle of permanent exploitation.

³⁹ Ibid., p.9

...But from the perspective of these girls, does anyone hear their voice? Does anyone show what is happening to those women? Negative examples of these marriages: once she realizes that she will enter the family of her future husband, the girl flees [...], but loses the right to return to her family. She enters another family and cannot be protected by her husband, who is a few years older than her. What happens to this girl later? She cannot raise her head and say what she thinks, until one day she becomes a mother-in-law. When she becomes a mother-in-law, if her husband respects and appreciates her, she is respected. If not, she is beaten and harassed. She has no right of succession, and is left at the mercy of her children. These aspects are ignored, and only the women who have gone through such experiences can speak about these cases...⁴⁰

⁴⁰ Submission to Support the Development of a General Comment/Recommendation of Harmful Practices, CRISS, 2011, p. 3

3.

Global
response -
international
acts and
institutions

3.1. Conventions and other related documents

Attempts to globally protect the position of a child, regardless of their social and family status, and regardless of whether or not they are in marriage/extramarital union, go back to the beginnings of the institutionalization of international relations. In this regard, it is important to mention the **Geneva Declaration on the Rights of the Child** of 1924, issued by the League of Nations, in which one point (out of five contained in this Declaration), clearly states that children must be protected from all forms of exploitation. However, significant activities related to the international protection of the child and their rights are taken only after the establishment of the United Nations, and some of its agencies, with the adoption of a range of documents in the field of protection of human and children's rights. In 1948, UN adopted the **Universal Declaration of Human Rights**, from which it is important to emphasize the contents of two articles. Article 4 states, "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms". Furthermore, Article 16, paragraph 2, states, "Marriage shall be entered into only with the free and full consent of the intending spouses".⁴¹

With the aim of suppressing the practice of child marriages, UN General Assembly has, at its session in September 1954, adopted **Resolution 843** (*The Status of Women in Private Law: Customs, Ancient Laws and Practices Affecting the Human Dignity of Women*), which later inspired the adoption of a number of other documents. Due to this, but primarily due to its significance for our research, we will quote its two points in entirety:

⁴¹ Universal Declaration of human rights, http://www.poverenik.rs/images/stories/Dokumentacija/54_Idok.pdf

1. *[General Assembly] Urges all States, including States which have or assume responsibility for the administration of Non-Self-Governing and Trust Territories, to take all appropriate measures in the countries and Territories under their jurisdiction with a view to abolishing such customs, ancient laws and practices⁴² by ensuring complete freedom in the choice of a spouse; abolishing the practice of the bride-price; guaranteeing the right of widows to the custody of their children and their freedom as to remarriage; eliminating completely child marriages and the betrothal of young girls before the age of puberty and establishing appropriate penalties where necessary; establishing a civil or other register in which all marriages and divorces will be recorded; ensuring that all cases involving personal rights be tried before a competent judicial body; ensuring also that family allowances, where these are provided, be administered in such a way as to benefit directly the mother and child;*
2. *Recommends that special efforts be made through fundamental education, in both private and public schools, and through various media of communication, to inform public opinion in all areas mentioned in the second paragraph of the preamble above⁴³ concerning the Universal Declaration of Human Rights and existing decrees and legislation which affect the status of women.⁴⁴*

After this Resolution, which holds strong messages, in 1956 the United Nations adopted the **Supplementary Convention on the Abolition of Slavery**⁴⁵ (complementing the **Convention to Suppress the Slave Trade and Slavery** issued by the League of Nations of 1926). In addition to provisions concerning the protection of women's position, their right to freely enter into marriage, and call to the states parties to clearly define a minimum age limit for entering into marriage, and sanctions for its violation, the

⁴² (affecting the human dignity of women)

⁴³ The second paragraph of the Preamble cites, "Bearing in mind that, in certain parts of the world, women are subjected to customs, ancient laws and practices relating to marriage and family which conflict these principles..."

⁴⁴ UN Resolution 843, <http://daccess-ods.un.org/TMP/6089670.65811157.html>

⁴⁵ Full title: Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>

Supplementary Convention, in Article 1, part (d), also urges states parties to take all the necessary measures to eliminate child exploitation and abolish any practice “whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labor”.

Furthermore, in 1959, **Declaration of the Rights of the Child** was adopted, and in 1962 **Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages**, with the aim of additional protection and securing the position of the child. The Convention of 1962, for example, in Article 1, states that no marriage will be legal unless there is full and free consent of both parties, expressed in person after due publicity in the presence of competent authorities, while the Article 2 calls States Parties to specify a minimum legal age for marriage.⁴⁶ The need for gender equality and equal rights for women in marital relations are underscored in the **Convention on the Elimination of All Forms of Discrimination against Women**, adopted in 1979. In terms of the prohibition of child marriages, paragraph 2 of Article 16 of this document is particularly significant, and states, “The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory”.⁴⁷

Finally, in 1989, the UN adopted the **Convention on the Rights of the Child**, and today it represents one of the international umbrella documents in the field of child protection. In addition to other rights and obligations referred to in this Convention, the best interests of the child are the basic concern of the parents, or guardians (Article 18), while the states shall be responsible for ensuring that primary education is compulsory and available free for all children in their territory (Article 28). It further prohibits any abuse of the child's position, labor, sexual and other exploitation. Although child

⁴⁶ Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, <http://www.ushrnetwork.org/sites/ushrnetwork.org/files/conventiononmarriage.pdf>

⁴⁷ Convention on the Elimination of all Forms of Discrimination against Women, <http://www.unmikonline.org/regulations/unmik-gazette/05bosniak/BConEliminationDiscriminationWomen.pdf>

marriage is not explicitly mentioned anywhere, its ban can be inferred from Article 35, which reads, “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form”. After this universal document, it is also important to mention the **Beijing Declaration and Platform for Action** of 1995, which focuses on gender equality and protection of women's rights. In addition to the confirmation of other women's rights, cited in the previously mentioned documents, the governments are once again urged to prescribe and fully implement laws to ensure that marriage may be concluded only with the free and full consent of those who enter into it, and to prescribe the minimum legal age for marriage, or to raise the limit where it is needed (Article 274).

In addition to universal documents, issued by the United Nations or under their auspices, there is a whole range of regional document adopted by various regional organizations dedicated to the protection of the child and their rights, which emphasize the need to eradicate this problem, and the fight against harmful practice of child marriages (this is, for example, particularly emphasized in the African Charter on the Rights and Welfare of the Child of 1990).

The most relevant documents for Serbia are primarily the **Recommendation R (84) 4 on parental responsibilities**, which the Council of Europe adopted in 1984, and the **Resolution 1468 on Forced Marriages and Child Marriages**, adopted by the same institution in 2005. In the latter document, child marriage is defined as “the union of two persons at least one of whom is under 18 years of age”, and in line with that urges national parliaments of all member states to provide that 18 years is the minimum legal age for entering into marriage for both men and women, and to consider ways to criminalize forced marriages. This issue is processed in other documents adopted by the Council of Europe, which are also relevant to Serbia, such as the **Framework Convention for the Protection of Minorities** (1995), **European Social Charter** (1996), etc.

3.2. Institutions and organizations

In regard to global institutional support in solving this issue, there are several international bodies with the focus on combating child marriages, as well as numerous international and regional organizations. **The United Nations Children's Fund (UNICEF)** and **United Nations Population Fund (UNFPA)** should be mentioned above all. The **Committee on the Rights of the Child (CRC)** monitors the implementation of the Convention on the Rights of the Child, and consists of 18 experts in the field of child protection and their rights. The Committee submits regular reports on the implementation/violations of the Convention as well as several optional protocols. It is important to mention the **United Nations Commission on the Status of Women (CSW)**. This body was established by the UN Economic and Social Council, with a mandate to promote gender equality and empowerment of women. There is also a **Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, which is made up of 23 independent experts whose task is to monitor the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women. The **World Health Organization (WHO)** also plays an important role, given that it is committed to improving the overall health status of vulnerable groups (women and children) and reproductive health of women. As for the European continent, the **Council of Europe** has a leading role on this issue, given the numerous conventions adopted in this regard, and the task of monitoring their implementation.

There are numerous organizations, at the global and regional level, dealing with the protection of children. Significant activities in this field are globally conducted by the following organizations: **Breakthrough**, **CARE**, **Girls not Brides**, **Humanium: Help the Children**, **Defense for Children International**, as well as **Save the Children**. Regional organizations are particularly active in the areas where the issue of child marriages is distinctly present, such as South Asia and sub-Saharan Africa (e.g. **The Knowledge Hub on Child Marriage** in India, **World Vision - Marriage Later/Studies First Programme** in Bangladesh, **Forum for African Women Educationalists / FAWE** in Tanzania, etc.).

4.

Child
marriages
in Serbia

4.1. Previous experiences

The practice of child marriages is immanent in the area of Southeast Europe, and all countries in the region, including Serbia, are faced with it to a greater or lesser extent. As in the case of other countries, the practice of child marriages is not new in Serbia either, and has been recorded for hundreds of years. We have already mentioned that, during the Middle Ages, juvenile marriages were widespread among royal families as a way to achieve certain political goals.

However, the custom to give, i.e. marry off, children was present in the entire nation, and was not necessarily tied to a specific ethnic or religious community in this area. During the 19th, and early decades of the 20th century, the age of maturity was lower, 17 years, and was not dependent on the mental and physical maturity of the bride and groom.⁴⁸ However, general competence for entering into marriage, including marriage between, or with, a minor, was mostly in the hands of local and church authorities, and therefore their estimate played a decisive role in assessing the marriage capability. It was not until after World War I that work on a more detailed regulation of this matter started. The law at the time, for example, allowed the marriage with a minor without consent of a parent/guardian. In this regard, it was a duty of the court to, in the absence of a parent/guardian, hear the minor, as well as the person they are to enter into marriage with, and to legislate the marriage if it is determined that the minor enters into it freely and with full understanding.⁴⁹

The postwar family law brought significant changes. The law on marriage passed in the 1950s, raised the minimum legal age for marriage to 18 years,⁵⁰ and placed a significant emphasis on the procedure of granting permission for marriage with a minor. Although the law recognized

⁴⁸ Stojmenovic, D., o.c.

⁴⁹ Stankovic, dr Gordana, *Procedure of granting permission for marriage in minors*, in: Collected papers of the Faculty of Law in Nis. – Nis : Faculty of Law, 1982. – No. 22 (1982), p. 197-214, p. 199

⁵⁰ Stojmenovic, D., o.c.

underage marriage as a nuisance, it was avoidable under certain, precisely defined, circumstances. Teen pregnancy represents a major reason for obtaining consent for marriage, given that the legislator recognizes marriage as the best framework for parenting, i.e. for the best interests of the child.⁵¹ In the procedure of granting consent, the legislator primarily evaluated the maturity of marriage partners. Obtaining consent meant marriage capability was acquired, and once marriage was concluded (with the permission) legal capability of minors followed next. During the procedure, it was necessary for the guardians to be present, and participate.⁵²

4.2. Description of the current situation

Currently valid legislation in the Republic of Serbia, which will be discussed later, handles this field even more precisely and restrictively. As far as the legislator, child marriages are now prohibited and illegal, but the practice of their conclusion still exists (in the legal sense, they at least have to be recognized as extramarital unions with children). Census data of population conducted in 2011 show that in Serbia there were 420 extramarital unions in which one of the partners was under the age of 16, and in 395 of the cases it was a girl.⁵³ Bearing in mind that the practice of child marriages in Serbia today is mostly associated with the Roma population, and the Vlachs to a lesser extent, these figures should be taken with a grain of salt, given that the estimated number of Roma is higher than that presented in the official census data. In this regard, it is likely that the number of extramarital unions, or child marriages, that exist today in Serbia is higher as well. Moreover, the

⁵¹ Stankovic, G., o.c., p. 197

⁵² Ibid., p. 212

⁵³ Ombudsman website, http://www.ombudsman.rs/index.php/lang-sr_YU/2011-12-25-10-17-15/3037-2013-10-11-12-22-37

latest estimates of UNICEF indicate that in Serbia there are more than 14,000 girls of high school age who are in extramarital unions, and that 6% of women from 20 to 24 years old were “married” before the age of 18 years.⁵⁴

Research also shows that there is a different distribution of the practice of child marriages per different areas. Previously, for example, the practice of child marriages was much more prevalent in eastern, than in some other parts, of Serbia, primarily because this practice was widespread among the Vlachs, but this is no longer the case. On the other hand, the conclusion of child marriage will much more likely occur in rural than in urban areas. Estimates show that the number of girls from 15 to 19 years of age who enter into marriage in rural areas is twice as high as the number of their peers from the cities. When it comes to Roma population, the ratio is 52% in rural, compared to 40% in the urban areas.⁵⁵ These data correlate with economic indicators, namely, families from rural areas who marry off their daughters are poorer than families in urban areas. However, this practice cannot be exclusively linked to the urban/rural area, and the financial situation of the family, because child marriages are recorded among wealthy families from urban areas as well.⁵⁶

Regardless of the data presented, it should be noted that the issue of child marriages in Serbia today is of much smaller scale than it was the case in previous decades. However, it seems that it still represents a huge challenge that the competent institutions, as well as the society in a whole, do not know how to combat properly. The impression is, in fact, that this problem is entirely left to the margins of society, which is why institutions are not interested enough in responding adequately when such cases are recognized. Despite the historical pervasiveness and geographical spread of this phenomenon, permanent indifference is eloquently illustrated by the fact that, prior to the 2000, at the Department of Ethnology and Anthropology of the University of Belgrade, there was no academic work,

⁵⁴ Novosti, <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:377342-Pred-maticara-i-pre-mature>

⁵⁵ *Making Early Marriages in Roma Communities...*, o.c., p. 6

⁵⁶ Novosti, o.c.

(whether graduate, master's or doctoral), which dealt with the phenomenon of child marriage.⁵⁷

4.3. Local normative and institutional framework

In addition to these acts, which have been issued by international and regional organizations, and ratified by Serbia, domestically there have been several regulations that directly or indirectly regulate matters related to the law and protection of children's rights. Above all, we should mention the **Constitution of the Republic of Serbia**,⁵⁸ which, without explicitly mentioning it, in many places still points to the issue of child marriage. According to Article 26, for example, no person may be kept in slavery or similar position, all forms of human trafficking are prohibited, as well as sexual and economic exploitation of a person in unfavorable position. Furthermore, Article 64 proclaims the protection of the child “from psychological, physical, economic and any other form of exploitation or abuse”. After the Constitution, protection of children and their rights in Serbia is more closely specified in several laws, above all the **Family Law**, the **Criminal Code** and the **Law on Prohibition of Discrimination**.

⁵⁷ Stojmenovic, D., o.c.

⁵⁸ Official Gazette of RS, No. 98/2006

4.3.1. Family Law

The Family Law⁵⁹ explicitly states that marriage “may be concluded only upon the free consent of future spouses” (Article 3), that it “may not be concluded by a person who has not reached 18 years of age” (Article 23), i.e. that a marriage “is voidable if concluded by a minor without court permission” (Article 37). On the other hand, Article 23 also prescribes that “a court may, for justified reasons, permit a minor who has reached sixteen years of age, and who has reached the physical and mental maturity necessary to perform the rights and duties of marriage, to conclude a marriage”. This means that the minimum age for marriage, with, therefore, court approval, is 16 years. Parenting, i.e. entering into marriage at 16 years of age, also provides a minor acquiring legal capacity, again with the approval of the court (Article 11). It is important to mention that Article 5 of this law proclaims that the woman has the right to freely decide on birth.

Bearing in mind relevant international documents, it appears that the minimum legal age for marriage with approval (16 years) still needs to be revised. Moreover, the Committee that monitors implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) adopted, in 2007, Concluding Comments regarding this age limit and instructed them to Serbia. They state that “The Committee urges the State party to enforce the legal minimum age of marriage, which is set at 18, and to undertake awareness-raising measures throughout the country on the negative effects of early marriage on women’s enjoyment of their human rights, especially their rights to health and education”.⁶⁰

⁵⁹ Official Gazette of RS, No. 72/2011

⁶⁰ CEDAW/C/SCG/CO/1, section.36

4.3.2. Criminal Code

Criminal Code⁶¹ provides penalties for violation of the guaranteed rights of the child, i.e. the practice of child marriages. Thus, Article 190, paragraph 1, prescribes an imprisonment of three years for an adult “cohabiting with a minor”, and the same punishment is prescribed to a parent, adoptive parent, or guardian “ who enables or induces a minor to cohabit with another person” (paragraph 2). Furthermore, Article 191 stipulates a fine or imprisonment to “whoever unlawfully detains or abducts a minor from a parent, adoptive parent, guardian or other person or institution entrusted with care of the minor or whoever prevents enforcement of decision granting custody of a minor to a particular person”.

The Criminal Code also prescribes punishment for the neglect of a minor, abuse, begging, and forcing to excessive labor (Article 193). Given that one of the motives for the conclusion of child marriage can be an acquisition of material gain, meaning that a child may be sold to a future spouse, it is clear, therefore, that the practice of child marriage may contain elements of human trafficking, which is additionally punishable in the legislation of the Republic of Serbia. It is (based on the **Palermo Protocol** of 2000) defined, and sanctioned, by Article 388 of the Criminal Code. Paragraph 3 of this Article explicitly says that if the offense of human trafficking is committed “against a minor, the offender shall be punished by imprisonment of minimum five years”.

4.3.3. Law on the prohibition of discrimination

The Republic of Serbia endeavored to secure the position of the child and protection of their rights with the provisions of the **Law on the Prohibition of Discrimination**.⁶² In this regard, Article 6 of this law states that “every child, that is every minor, shall have equal rights and protection in the

⁶¹ Official Gazette of RS No. 108/2014

⁶² Official Gazette of RS No. 22/2009

family, society and the state, regardless of his/her personal characteristics, or those of his/her parents, guardians or family members”. The same article emphasizes that it is forbidden to give priority to children of one gender over the other, regardless, therefore, whether it is done by an individual, group, or institution. Moreover, if such discrimination is committed, the legislator has set certain fines for a legal entity, entrepreneur, public administration organ, and a physical person (Article 57).

4.3.4. Strategic and related documents

In addition to legal, Republic of Serbia also adopted a number of political and strategic documents aimed at combating human trafficking, violence against women, violations of children's rights, and consequently eradicating the practice of child marriages. In this regard, the National Plan of Action for Children for 2004-2015 was adopted, which proclaims “reduction of child poverty, as the cause of numerous rights’ violations”,⁶³ and General Protocol for the Prevention of Child Abuse and Neglect (2005), which underscores the importance of recognizing the risks of abuse and neglect of a child. Among other relevant documents are also the Strategy for the prevention and protection of children from violence (2008), National Youth Strategy (2008), and the Strategy for Improving the Position of Women and Promoting Gender Equality (2008), which highlights the need for women's empowerment in multiple marginalized groups,⁶⁴ such as in the case of Roma. The National Action Plan, which accompanies this strategy, and which lists all the needed actions, cites, among other things, that it is necessary to “provide effective mechanisms to identify, prevent, and solve the problem of underage and arranged marriages, as well as the practice of bride-selling”.⁶⁵ The deadline for this activity expired in 2012, but it is not clear whether any funds were allocated for it. Finally, given that the Roma represent one of the

⁶³ Moraca, Tijana et al. *Local communities in the fight against human trafficking*, Atina NGO, Belgrade, 2013, p.41

⁶⁴ Strategy for Improving the Position of Women, p. 44

⁶⁵ National Action Plan (2010-2015), activity 5.1.1.4.

most vulnerable social groups, in 2005 Serbia signed the Declaration of the Decade of Roma Inclusion 2005-2015, from which a ten-year Strategy for Improvement of the Status of Roma derived, which will further be discussed later.

It should be noted that a new Strategy for Social Inclusion of Roma in the Republic of Serbia for the period 2015-2025 is currently being prepared, which will also include the practice of child marriages. In this document, the focus is on *education, housing, employment, health, and social protection* of this population. For now, it remains to be seen what will be the achievements accomplished by this strategy.

4.3.5. Institutions responsible for combating the practice of child marriages

Combating child exploitation, including the practice of child marriages in Serbia, is in different ways a responsibility of several institutions, both at local and central levels. In Serbia, in case of detection of child marriage, the following institutions are primarily obliged to react:

- *The police*
- *Center for social work*
- *Educational institution*
- *Health institution*
- *Center for the development of local services – shelter*
- *Nongovernmental organization/Human Rights Committee*

When any of these services, and this is certainly true for all other bodies as well, comes into contact with a child who has been abused or exploited in any way, it shall immediately notify the nearest center for social work, that is the center responsible for the area where the child resides,⁶⁶ as the institution mandated to resolve the issue. Social welfare institutions in the territory of the Republic are networked, and act in accordance with different

⁶⁶ Moraca, Tijana et al., o.c., p. 42

rules and protocols. Protocols for action of centers for social work, for example, emphasize the coordinating role which the centers have over other agencies and organizations, related to preventive action, or overcoming unfavorable position of a child.⁶⁷ Local government also has a particular responsibility in this regard, since it partly finances some of the social welfare services in the local community.

In Serbia, there is also a Center for Human Trafficking Victims Protection, which is located in Belgrade. This institution has a department which is formally responsible for the identification and support to victims of human trafficking, but it unfortunately does not provide emergency accommodation, therapeutic and educational services to victims. In addition to the state institutions, a range of (non-governmental) organizations in various places in Serbia deal with this issue and the protection of children's rights (a list of institutions and organizations is attached).

4.4. Problematic practice

We saw there are numerous legal and political acts related to the matter of child marriages, and that there are institutions in the state system responsible for addressing the problem of child marriages. However, from interviews with relevant institutions and organizations, notably Roma organizations, it can be concluded that the response of the competent authorities and institutions to the challenge of child marriages is inadequate, that is, that their current response has not been sufficiently aimed at combating this phenomenon. On the one hand, the very state authorities do not implement the legal provisions, primarily penalties, when they come to the knowledge of the existence of child marriage, and on the other hand, there is a lack of work with the communities, and families, in which this issue is detected.

⁶⁷ Ibid., p. 44

In most cases, child marriages in Serbia are concluded between an adult and a minor, the latter mostly being a girl. According to the Criminal Code, the older spouse should, therefore, face imprisonment, but in practice this rarely happens.⁶⁸ No matter that the police records reports that are primarily related to forced marriages (including child marriages), the process often remains without a court resolution.

Criminal charges for forced marriage	2009	2010	2011	2012	Total
	5	4	2	2	13

Table 4: The number of criminal charges for forced marriage;

Source: Local communities in the fight against human trafficking, p. 84

Although the number of criminal charges in the above table does not match the situation on the ground, that is, it is lower than the actual number of forced marriages in Serbia for the period indicated, it is not certain whether all of these reports were processed to the end. In this regard, the behavior of centers for social work is highly problematic: experience shows that their activities do not correspond to the number of criminal charges submitted by the police in a certain area, so it can be concluded that they do not react every time after the police does, i.e. after a report has been made.⁶⁹

Experiences from the field, as well as a low number of detected victims of child marriage, show that the centers for social work, despite rising competencies in terms of prevention and protection, still do not have sufficient capacities to adequately cope with this phenomenon. Above all, there needs to be a rounded process of the protection of victims of various forms of exploitation, including victims of child marriage, but it seems that the social protection sector, in general, does not have the necessary capacities that would do that at the local level. This process should include “early detection, proper recording, rehabilitation, urgent care, short-term

⁶⁸ Child Marriage in Serbia, Summary., o.c.

⁶⁹ Moraca, T. et al., o.c., p. 90

reintegration and long-term programs of social inclusion".⁷⁰

In the last few years, numerous activities were carried out aimed at raising the capacities of local authorities in the field of social protection, however, the question is how successful they were. On the other hand, the strategy of development of the area did not follow a clearly defined policy, changing the responsibilities of individual services, etc. The cooperation between centers for social work and local organizations who assist and support victims of various forms of exploitation is also poor, although the synergy of all interested actors is a key element to combating the practice of child marriages. Also there was no practice where centers for social work would report cases of exploitation to the Center for Human Trafficking Victims Protection, so they can be identified.⁷¹ On the other hand, the centers for social work did not receive feedback from other organs, especially the judicial and prosecutorial, about the prosecution of cases on which the center submitted information.⁷² All this once again shows that the measures for combating the practice of child marriages in Serbia have, so far, been insufficient or not applied properly.

Although there are some shortcomings noted in all phases, one of the most problematic is the implementation of measures in the field of family law protection, where institutions respond inadequately or remain completely indifferent to cases in their jurisdiction. Thus, the focus is on preventive activities, however, they are mainly confined to individual information, and counseling beneficiaries who are at risk, or their family members.⁷³ Finally, poorly defined roles and procedures, and then the lack of resources as well, further complicate the situation and affect the solving of the problem.

⁷⁰ Ibid., p. 93

⁷¹ Ibid., p. 114

⁷² Ibid., p. 134

⁷³ Ibid., p. 119

4.5. Roma as a group at particular risk

We have repeatedly stressed that Roma girls are at particular risk from the practice of child marriages considering their way of life, traditions, vulnerability, and often legal invisibility. According to a study from 2011,⁷⁴ in the European Union (EU) countries there were about 2% of Roma girls from 10 to 15 years of age in a “traditional marriage”. The same study states that, at the EU level, about 16% of Roma children 16 and 17 years old were in some type of marriage union. The majority of them was recorded in the Southeastern Europe countries, Greece, Bulgaria and Romania, as well as in Portugal. Regardless of the fact these figures, when compared with other parts of the world, are not so high, as long as there is a risk that any (Roma) child will become a victim of exploitation or practice of child marriage, this problem must not be ignored. Therefore, it is necessary to pay special attention to this group.

According to the United Nations Population Fund (UNFPA) report for 2012 (*Child Marriage in Serbia*), although the rate of child marriages in the total population is not high (in 2010, less than 1% of women from 20 to 49 years old were married before the age of 15, and 8% before the age of 18 years), among the Roma population it is between 3,5% and 7%, which does not represent a negligible number. According to data from the report, almost half (44%) of Roma girls from 15 to 19 years old entered into some form of marriage/cohabitation, 14% of them were married before the age of 15 (many before the age of 12!) and one-third have become mothers before the age of 18 years. While certainly there are cases of child grooms in this community, estimates show that girls from 16 to 18 years of age are in the eight-times greater risk of entering into child marriage, and the vast majority of these marriages include Roma girls. Most of these “marriages” were arranged and included purchase, or sale, of the bride.⁷⁵ It is this “sale/

⁷⁵ Child Marriage in Serbia, Summary, o.c.

⁷⁴ 2011 FRA survey, in: *Making Early Marriages in Roma Communities...*, o.c., p. 3

purchase” element that indicates full objectification of the child within this practice. In addition to the psychological and physical characteristics of the girls, their qualities and education, as well as social status of the family they come from, their price is also determined by the assessment of “their cost” from birth to the moment of marriage, which should also be covered by the sum to be paid.

*While in Kosovo, for example, such cases where a dowry, or so-called *çeyiz*, is paid in the marriage ceremony are rare today, although it was quite widespread among the Albanians, including members of the Roma, Ashkali and Egyptian communities, so-called *baba haka* is still practiced, according to which the father of the groom pays the father of the future bride. The original purpose of this custom was to cover the expenses of wedding reception, given that the amount of money can vary up to ten times, but it is not certain that this is not a case of “bride-buying” i.e. disguised human trafficking. Such cases are usually not investigated, and even if there is suspicion of child marriage, prominent representatives of the community often react and “negotiate” between the parents and the institutions of the system, usually the police, and refer to the common law, due to which competent institutions give up further prosecution of the case.⁷⁶*

The fact that it is necessary to work with the entire Roma population in the prevention of this practice is eloquently shown through the survey data conducted among the members of this community: one third thought that the conclusion of early marriage is good, that it facilitates the birth of healthy children, while 60% believe that parents should have the final say in the marriage of their daughter.⁷⁷ On the other hand, despite the fact that during the field research, many girls from Roma communities, and their parents, pointed to the harmful effects of early marriage, their unwillingness to oppose such a custom is also quite evident.⁷⁸ Given these data, it is clear that this is the situation that requires a response of the system's institutions. Regardless of previous attempts to come to grips with this problem, the

⁷⁶ *Kosovo: Child marriage or early marriage*, UNFPA, 2012, p. 4

⁷⁷ *Ibid.*, p. 5

⁷⁸ Korac-Mandic, Danijela, ed., *o.c.*, p. 74

state has failed to develop adequate instruments and to offer programs that would successfully combat the practice of child marriage among the Roma population. The problem here primarily lies in the fact that competent authorities in such cases often refer to “Roma tradition”, that is their customary law, according to which a girl is to enter a marriage union before the age of 16,⁷⁹ and instead of applying the laws and sanctioning this phenomenon, they allow the Roma community “to resolve this inner issue on their own”. Although it is, therefore, the case of grave violation of human rights of the child who is married, the state's response is usually reduced to inaction! Such behavior is, however, problematic from another point of view: not responding to cases of child marriage in the Roma community could be regarded as another form of discrimination against this already multiple discriminated group. Moreover, there were reports of inaction to domestic violence, which was also justified by “Roma tradition”.⁸⁰

The police is often reproached for being too tolerant of “Roma customs”, even though these “customs” often hide abuse, coercion, violence, or other serious violations of basic human rights. For example, there was a case where the police did not respond to “traditional marriage” with a Roma girl, which later turned out to be a case of forced marriage, and she soon after got pregnant, at only 14 years old.⁸¹ When the first organ to come in contact with the practice of child marriage does not respond, it usually prevents other institutions of the system from responding, because the case ceases to exist. The problem is that experts in this field have difficulty in assessing the vulnerability of the child and its rights in these situations! Accordingly, centers for social work are not sure whether and how to react,⁸² the dilemma being whether their reaction to the phenomenon of child marriage and “pulling” the child out of it, would bring the child more good or harm! Further, even if the first institution to respond records a case of child marriage and informs other competent institutions, it still does not mean

⁷⁹ Moraca, T. et al., o.c., p. 113

⁸⁰ Kosovo., o.c., p. 4

⁸¹ Moraca, T. et al., o.c., p. 121

⁸² Ibid., p. 113

that the other institutions of the system, be it social welfare institutions, prosecutors or judges, shall act and prosecute the case to the end, or some of them will justify this practice and automatically close the case, which also often occurs.

It should, however, be emphasized that there are positive examples, when institutions recognize the violation of rights of the child as a result of this practice and act without delay. Representatives of the Center for Social Work in Kraljevo stated that each case of child marriage recorded among the Roma population is immediately reported to the relevant prosecutor, having in mind above all the protection of the interests of the child.

Unfortunately, no one knows what later happened with these reports, that is, whether and how the prosecution reacted, since the centers normally do not receive any feedback.⁸³

As stated above, no matter that the practice of child marriage can be deeply rooted in the tradition of certain communities, a specific reason can be found behind each individual case. In the case of the Roma population in Serbia, it most often lies in poor financial situation of the family who marries off their daughter, that is in their chronic poverty. According to UNICEF research,⁸⁴ almost 70% of Roma children in Serbia are poor, and more than 60% of Roma households with children live below the poverty line.

Furthermore, only 27,2% of the total Roma population is engaged in an economic activity, the unemployment rate among Roma is four times higher than in the general population.⁸⁵ Social assistance is not available to all the poor Roma families, and 16% of poor Roma families do not receive any assistance from the state.⁸⁶

Another major problem, and a generator of the practice of child marriages among Roma, but also among other communities in the world where this rate is high, is the low level of education. Symptomatic is the fact that in Serbia over 4/5 of Roma children live in families where other members have no primary education.⁸⁷ Although one of the goals of the National

⁸³ Ibid.

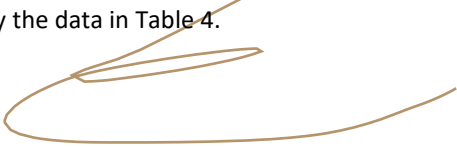
⁸⁴ Strategy for Improvement of the Status of Roma in the Republic of Serbia, p. 3

⁸⁵ Ibid., p. 37

⁸⁶ Ibid., p. 38

⁸⁷ Ibid., p. 3

Strategy for Education for the current decade is almost complete coverage of children of school age in primary education, and, in this regard, reduction of the outflow of Roma children from the education system, that is, their early drop out in primary school, the estimates are still very worrying. For example, there are no data showing that even a single child from the Roma community under the age of 3 years is included in preschool education.⁸⁸ Preschool education includes less than 4% of Roma children, and preparatory preschool program about 57% of them. Only half of Roma children who enroll in the first grade reach the fifth grade,⁸⁹ and 21% to 37% of Roma children enrolled in primary school actually finish it, while less than 8% enroll in secondary school.⁹⁰ Only about 1% of Roma in Serbia have completed higher education.⁹¹ A dismal state of education among the Roma population is best illustrated by the data in Table 4.



⁸⁸ Korac-Mandic, Danijela, ed. Situation Analysis of Education and Social Inclusion of Roma Girls in Serbia. CARE Serbia and Novi Sad Humanitarian Center, Novi Sad, 2011, p. 13

⁸⁹ Ibid., p. 14

⁹⁰ Strategy for Improvement of the Status of Roma in the Republic of Serbia, p. 3

⁹¹ Ibid., p. 4

	Roma population		total population
Inclusion in preschool education, age 3-5 (%)	6		50
Access to children's books up to the age of 5 (%)	12		72
Enroll into 1. grade at the appropriate age (%)	66		94
General average score (3. grade of primary school)	3,25		4,36
Repeat a school year (% for the first 3 grades)	11		1
Attends 8. grade (%)	28		98
Attends high school (%)	girls	boys	84
	6	14	
Average length of schooling (in years)	5,5		11

Table 4: The educational situation – Roma and total population;

Source: combined from Situation Analysis of Education and Social Inclusion of Roma Girls in Serbia and Multiple Indicator Cluster Surveys 2014 (MICS 5) for Serbia.

In addition to the low level of education, the great problem of the Roma population is also their legal invisibility, which, consequently, reduces the possibility that the state will timely and adequately respond in case of violation of human rights, i.e. the practice of child marriages. Many Roma still do not have identity documents, which means that they are practically non-existent to the state, and thus deprived of their right to education, social welfare, health care, etc. Particularly vulnerable subgroup are Roma displaced from Kosovo and Metohija whose status of displaced persons is not regulated, and that is a requirement to enjoy all other rights. Estimates show that about 40% of Roma have no valid ID cards, and that about 56% of Roma displaced from Kosovo do not possess the ID of internally displaced persons.⁹²

One of the most serious consequences of such situation is the inadequate health care for Roma. Future mother without a health card must pay for

⁹² Ibid., p. 31

delivery, if the hospital admits her at all. A child whose mother has no identity documents risks that it may not be entered into the registry of births, and thus become legally invisible immediately after birth. Lack of access to adequate health care adversely affects the health status of Roma children, and affects the increase of their mortality. As many as 20% of Roma children are of poor health, and the mortality rate is five times higher among the Roma than in the total population.⁹³ All this affects the shorter life expectancy of Roma, as well as a rapid pass through different life stages, due to which early marriages and early parenthood occur. The data indicate that only 45% of girls in Serbia from 15 to 19 years of age who are in some form of marriage union use contraceptives, unlike older women among whom the percentage is much higher.⁹⁴

Finally, although the entire Roma population in Serbia is facing these issues, the position of Roma women, and especially Roma girls, is even more complex and difficult. They are, as Roma, socially marginalized, and as women further marginalized within their community. The girls from 11 to 16 years of age are particularly vulnerable. Their autonomy within the community is largely limited, and given that they drop out of school early, marry early, and have children early, they remain subordinate to the community and practically do not lead their own lives. Given that the majority of Roma girls who are enrolled in primary school drop out after the fifth grade, it is not surprising that of illiterate in Roma population, 70% are women.⁹⁵ It is clear that these women later have difficulty finding employment, and are completely dependent on their husband or other family members. Assets in the name of women in Roma family on average is below 0,2% of the total assets of the family. Women in the Roma community in Serbia today are not in any position in the public or private sector where decisions are made.⁹⁶ The next picture shows the “range of risks” that lurk Roma girls and represent a reason why they have to leave the education system. Although only 11% dropped out of school because of early marriage, many of them will be married as soon as they leave school.

⁹³ Ibid.,p. 38

⁹⁴ *Child Marriage in Serbia, Summary*,o.c.

⁹⁵ Strategy for Improvement of the Status of Roma..., o.c.,p. 52

⁹⁶ Ibid.,p. 53

10 %
9 %
9 %
11 %
11 %
6 %
7 %
13 %
6 %
6 %
12 %












-  Non-Roma children behaved badly toward her
-  Does not speak Serbian language
-  Does not want to go to school
-  She got married
-  Even if she finishes school, she will not have a job
-  School is very far
-  She learned everything she needs at home
-  Teachers treated her poorly
-  She already learned everything she needs to know
-  Must help take care of younger siblings
-  Does not have decent clothes

Figure 1: Reasons why Roma girls drop out of school;

Source: author per Situation Analysis of Education and Social Inclusion of Roma girls in Serbia.

Bearing in mind all the above problems, and in order to reduce the scope of these problems, the state has issued the aforementioned Strategy for Improvement of the Status of Roma. The principles, and goals as well, based on which the strategy was created are as follows:

- *Respect, protection and fulfillment of legal rights of Roma;*
- *Full and effective inclusion of Roma in all areas of social life;*
- *Respect, recognition and promotion of diversity;*
- *Equal opportunities based on equal rights;*
- *Gender equality;*
- *Prevention and fight against all forms of discrimination;*
- *Implementation of affirmative action.*

As the Decade of Roma ends in 2015, which is when the Strategy expires as well, a legitimate question can be asked to which extent have the planned and/or implemented measures and activities been successful. First of all, there is no doubt that certain progress was made. For example, since 2008 the Ministry of Health employed 75 Roma women as health mediators in 59 municipalities in Serbia. All of them live in Roma settlements, have children, and have completed at least primary education. Their main role is to positively influence other women in the population to go to medical examinations, to provide information on the need for social assistance, to advocate the need to send children to school.⁹⁷ Inclusion of Roma mediators is an important and necessary step, especially in the establishment of trust between the Roma and the majority of population, and in the gradual improvement of living conditions and overcoming all the other problems Roma population is facing. The support that Roma girls and boys receive within their own community is vital for improving their health, education, economic, and social perspectives. It is also the first step in eradicating the tradition of child marriages.

There are other examples of positive changes in the status of Roma. More organizations that provide assistance to this population have been founded, and the state supported them in certain activities.

⁹⁷ *Child Marriage in Serbia, Summary, o.c.*

However, bearing in mind that Roma are still largely facing issues that should be significantly alleviated by the Strategy in question, a bitter conclusion that the state has not done enough must be made. There are no sustainable mechanisms to adequately monitor and possibly correct the proclaimed policies, not enough has been done to educate the bodies competent to resolve specific issues, nor have their capacities been improved in a way that would contribute to the declining of the trend of exploitation of Roma children, regardless of whether they are in child marriage or any other practice. Therefore, further steps of the country must be carefully considered, but, above all, current ways of fulfilling the objectives must be analyzed, along with the responsibility of all the actors who were involved in the implementation of the Strategy.

4.6. Case Study: A girl, victim of child marriage and human trafficking

Biography – causes of vulnerability

A girl was born prematurely in a small town in Serbia - everyone thought she would not survive because she was constantly ill. Only her father, and later twin brother, cared for her. Her mother never did, because allegedly she did not want to become attached to the girl thinking she would die soon.

The family, with nine children, was poor. Despite health issues, the girl's childhood was good, and she soon became stronger. She never attended school, although she always wanted to. Her family was a dysfunctional one, with physical abuse, alcoholism and neglect by the mother and older brother. Emotional attachment was present primarily in relation with her father and twin brother. When she was seven years old, her father died. That is when her problems began.

Manner of recruitment, form of exploitation and the way out of the trafficking situation

When the girl was 11 years old, her mother forcibly married her to a man who was ten years older than her, according to Roma customs. Without any discussion and explanation (“When a girl is promised, it is set in stone, there is no refusal”), the mother sent her underage daughter with a bag of clothes, stating that the young man was her husband (although their relationship was never legalized). The girl was too afraid to say anything, she just cried. In the house where she was married, or sold, she lived with this man and his family. On the same day when she came, she was forced to have her first sexual intercourse with her “husband”, after which she was beaten and threatened, which occurred on a daily basis.

Several days later, he forced her to start working as a prostitute (while she, in her own words, had no idea what she was to do). When he was not happy with her earnings, he would beat her severely, usually with thick electric cables. Her “husband” and his family were beating her often without any reason. Her “clients” abused her as well. She worked seven days a week, 10 hours each night. She was to give all the money to her “husband”. She was also forced to steal for him.

After that, she had to perform all the house chores. She had no access to doctors, no money to buy condoms or other protection and hygiene. All the clothes she had she would find in dumpsters. She was never alone. They constantly threatened that, if she tried to escape or report them to the police, they would abduct her younger sister and make her work on the streets. Her twin brother and one cousin were beaten “out of precaution” whenever they passed by the house where the girl lived, so they would not attempt to help her escape. Such life lasted for five years. While the police arrested her several times, she was afraid to report anything, because her “husband” blackmailed her and threatened to burn her family’s house.

The girl tried to escape repeatedly, but without success. On one occasion, she managed to run with a young man who offered her help, and went with him to her mother and sisters. Instead of the promised help, her “husband’s” cousin came to her mother's house and took her with him. Her “mother-in-law”, that is the mother of her “husband”, sold the girl to her cousin because of debt, and now the girl belonged to him. On that same night, and during the next two years she spent with him, she was forced to work on the streets. Every day, she was beaten by the man and forced to have sexual intercourse with him, after which she had to go out into the streets and provide sexual services to clients. Once she managed to escape from him, and sought protection with her mother and older brother, but they were already familiar with the situation and just informed the man where she was, and she was once again out in the street.

Finally, after several failed attempts, she managed to escape. In agreement with the two “clients”, although without any documents, she went to Montenegro. Just when she believed she was safe, she ended up locked in the house of one of her “rescuers”. When she refused to work in a strip club, he forced her to perform hard physical labor, and she was physically and mentally abused. The girl was once again sold to a third party, but after a couple of months she was “returned” to her seller, who continued to abuse her. When she tried to report it to the police, he threatened he would torture and kill her. That is when she dared to escape again.

The girl managed to escape from the apartment when she was sent to do some shopping. After two days, tired, chilled, starved, and thirsty she contacted the police. Her kidnapper reported her to be “lost”, and it took time until she convinced the police that she was in fact a victim of human trafficking. After she refused to return to her hometown for fear of once again being drawn into that circle, she was placed in a safe house.

Direct assistance

The girl was sent to Serbia, placed in NGO Atina's Temporary Home and, since she was a minor, a guardian from NGO Atina was assigned to her. An Identity card was acquired for her, but because her place of residence was another town in Serbia, it took a lot of time to provide conditions for her to be able to use health insurance and exercise her right to work.

In cooperation with the police and Center for Social Work, criminal charges were filed against the trafficker which resulted in a sentence of 10-year imprisonment. During the investigation, and later during the trial, NGO Atina provided continuous legal support in preparation for testimony and psychological support to help her be ready to confront the trafficker. Both coordinators who were involved in the assistance were also witnesses in the proceedings.

She was provided with medical assistance, and underwent several surgeries for gynecological problems which were the result of years of sexual exploitation. Medical assistance was provided with the support of NGO Atina and the Agency for Coordination of Human Trafficking Victims Protection. She still has chronic health problems for which she is provided regular treatment. She was provided with constant psychosocial support as well.

In NGO Atina, she learned to read and write, and was enrolled in primary school, which she completed. She was also assisted in finding employment. Several times, she found and lost jobs. For a longer period of time, she helped in the kitchen of a restaurant.

She was also involved in peer support activities in NGO Atina, and provided assistance to other girls. In conversations after leaving the program, she said, "I finally feel like a person, like a human being. Although, I know that the feeling of fear will never go away." She is currently in a stable marriage.

5.

How to
solve the
problem –
recommendations

The example above clearly shows all the brutality and severity of child marriage, and the negative consequences it can produce due to which this practice should be suppressed. We have already pointed out the steps to be taken to start the process of a successful eradication of child marriages. What is needed, first of all, is a joint, concerted and continuous action of state institutions, NGOs, minority groups and the communities, that is, the society as a whole. Despite the fact that such a deep-rooted problem cannot be solved in a year or two, or even a decade, the perspective of its suppression must be constantly maintained. It is necessary to look at the problem comprehensively, and diversify and localize activities. The problem should be solved where it arises, or where there is a possibility for it to occur. Most of the strategies we encounter in an attempt to eradicate the practice of child marriages indicate four directions: empowerment of girls; mobilizing families and communities; access to services; adoption and implementation of laws and policies.⁹⁸ Thus, the state, above all, must clearly identify child marriage as a totally unacceptable and harmful practice, act preventively, that is, keep a special account of the groups at risk, and finally, when it comes into contact with this practice,

⁹⁸ *A Theory of Change...* o. c., p. 7

immediately take measures to prevent further violations of children's rights. One of the key things is to assist and support the girls in puberty. Programs that are created, in this regard, should ensure:

- Assistance to girls, to stay in school in this critical period;
- Social and economic alternatives to child marriage and early parenthood;
- Support to girls who are already married;
- Special attention to the youngest mothers.⁹⁹

It also must be ensured that the practice of child marriage is separated from any ethnic/ religious tradition, that it is underlined as anachronistic, social, and not Roma practice, no matter that it is predominantly present within this community. Such an interpretation is not only desirable, it is actually essential for the eradication of this phenomenon. The need for it was best explained by a Romanian sociologist Nikolae George, who insists that child marriage is a part of the traditional model of understanding the family, and as such is not in any way specific to the Roma culture. In this regard, he said, “We cannot say child marriage is a Roma problem, when it has been practiced in other cultures for so long. That way, we risk to create a stereotype out of this phenomenon.”¹⁰⁰

⁹⁹ *Marrying Too Young*, o.c., p. 51

¹⁰⁰ *Submission to Support..*,o.c., p. 2

5.1. Specific recommendations for Serbia

Insist on the use of the term child marriage. It is this phrase that indicates the seriousness and gravity of the situation of a child in the best possible way. In this regard, and given that this is not the case now, all the future legal and political acts referring to this issue should explicitly mention child marriage.

Consolidate legal measures aimed at combating this phenomenon, **emphasize a clear link between child/ forced marriage and slavery**, and in this regard **determine clear competence of the institutions**. The success of the strategy of unified and synchronized operation, when properly and fully implemented, is shown in the fact that the number of child marriages in India, where the problem is extremely present, went from 54% at the beginning of the 1990s, to 47 % in 2008. To achieve this, it is necessary to continuously advocate for policies to eradicate child marriage.

National authorities must, without exception, react to every report or evidence of the existence of child marriage. Only if the state treats this practice indiscriminately, and if its representatives are primarily concerned with protection of human rights of the exploited children, and not traditions and customary rights, can sustainable results be achieved.

To achieve an indiscriminate response of competent institutions, it is necessary to **organize educational activities for representatives of state bodies in order to raise their awareness about the severe consequences of the current practice of selective response to child marriage.**

Carry out current Education Strategy in the part referring to the Roma population. Experience shows that education is one of the most powerful tools in combating the practice of child marriages. The longer Roma children, and especially girls, stay in the education system, the greater the possibility to change their attitudes, empower and protect them from child marriages.

In relation to the aforementioned, it is important to **find a way to adequately incorporate sex education into school curricula**, given that this is not the case now. As child marriage can be the result of juvenile pregnancy, realization of the importance of early prevention can certainly affect the reduction in the rate of child marriages.

Provide the conditions for every Roma child, and predominantly Roma girl, to finish the entire primary education, and possibly secondary education as well. These conditions should include **the provision of free textbooks, transportation where necessary, and the like.**

Develop requalification programs for the Roma population, especially women within this population, as well as programs of lifelong learning.

Achieve greater inclusion of Roma population in social protection programs. This should be achieved by creating special bodies which would be responsible for their implementation, both at local and national level. Roma would necessarily have to be involved in their work.

We have seen that the practice of child marriages is encountered in various parts of the world, and that it is not exclusively related to the Roma community. In this regard, we should **insist on the separation of the practice of child marriage from the Roma tradition, i.e. their identity.** Only when it is understood, both in the total and the Roma community, that this practice represents a violation of fundamental rights, and has nothing to do with the identity of any community, even Roma, can we hope for certain success.

In order to achieve the fulfillment of previous recommendation, it is necessary to **continuously work with the Roma community, with its prominent members, but also with the girls from 11 to 16 years old, who are in a group at risk.** In particular, therefore, it is important to work with this group; empowerment of these girls has positive effects on raising their awareness of this problematic practice, which can lead to an increased number of reports of this practice by the girls themselves, to which the state authorities must react.

Create protocols for cooperation between the competent institutions, above all centers for social work, police and schools, and develop mechanisms for monitoring each child from the risk group.

Finally, it is necessary to **design and implement continuous programs on gender equality, intended for all the women in Roma community**, with the aim of their sustainable empowerment and opening wider social perspectives. It is necessary, first of all, **through centers for social work, to provide encouragement to married underage girls, young mothers, and young Roma families in general.**

Organize trainings in the field of reproductive health care, risks, etc.

Continue with the collection of qualitative data on this subject and monitor the situation on the ground. Although this should, above all, be the task of centers for social work, other relevant institutions, such as police and schools, could make *their own records*.

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