

## Child, Early and Forced Marriages are Not a Private Family Matter



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# **CHILD, EARLY AND FORCED MARRIAGES ARE NOT A PRIVATE FAMILY MATTER**

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## **EXECUTIVE SUMMARY**

Child, early and forced marriages are a global phenomenon, most prevalent in the poorest countries in the world, but recorded also in our region, including Serbia.

Serbia has signed and ratified all major international treaties that are relevant to the prevention and suppression of child, early and forced marriages, and they are applied directly in accordance with Article 16 of the Constitution. In addition, although not being perfect and requiring improvement, the national legislative and strategic framework, along with the corresponding by-laws and protocols, is good enough to allow the competent authorities to deal with the problem of child, early and forced marriages.

However, the problem of child, early and forced marriages is not high on the public agenda and there is no awareness about the harmful effects of early marriages on the overall development of the child, although this phenomenon is a litmus test for establishing the violation of the four basic principles of the Convention on the Rights of the Child: protection from discrimination (Article 2), the best interests of the child (Article 3), the right to life and development (Article 6) and the child's right to express opinions on matters affecting the child. These principles are always violated in cases of child, early and forced marriages.

Child, early and forced marriages constitute a serious violation of child rights and gender-based discrimination and therefore they are not a private family matter.

Taking into account such a definition of the problem, in this paper we start from the fact that child, early and forced marriages are a global phenomenon faced particularly by populous and poor countries. The international community, embodied primarily in the United Nations system, but also in the Council of Europe (the Istanbul Convention), has recognised in the Universal Declaration of Human Rights (1948) that marriage should be entered into with the free will of adults. The international community has continued dealing with this issue to the present time and the UN Human Rights Council adopted a Resolution on Child, Early and Forced Marriages in November 2014 identifying such marriages as a violation of human rights. Serbia was among the 85 countries that co-sponsored the Resolution. Serbia is a party to all international instruments aimed at the elimination of this harmful traditional practice, which has a particular cultural stronghold also in some minority communities in Serbia. In addition, poverty is a reason why child, early and forced marriages occur most often in the Roma community in Serbia.

In this paper, we have listed the most important legal provisions, positions and measures included in the strategic documents adopted in recent years in our country, as well as the procedures envisaged under the general and special protocols on the protection of children from abuse and neglect and the protection of women from domestic violence because the child, early and forced marriage is certainly one form of abuse and neglect of children, and violence against these women does not end but continues in such marriages. We also discuss the available research data (UNICEF), which indicate that the phenomenon of child marriage is present in our country, especially among the Roma population. Through a brief overview of developments and efforts in the region, we have tried to look at the situation in our country.

In our critical approach we have not neglected some examples of good practice in Serbia, including those that may not have been aimed at the prevention of child, early and forced marriages, but certainly contributed to it. We have selected the examples of activities in Roma settlements performed by the *Society for the Improvement of Roma Settlements* - the construction of Roma educational centres, and by the Christian humanitarian organisation *Bread of Life*, which supported the education of Roma children to enable them to progress towards a better start in life and their overall development. In particular, we highlight the work of the NGO Bibija, Roma women's organisation, which has shown its unquestionable emancipatory potential in supporting Roma girls and women for many years.

The paper also contains the information on the workshops and community meetings, held by Praxis in 2016 in Novi Pazar, Leskovac, Požarevac and Kostolac. The participatory approach of young Roma and their parents in the workshops was particularly important for understanding the situation, as confirmed by their authentic statements about experiences and challenges. In addition, the community meetings held with the professionals from the competent institutions of education, health care, social welfare, police and justice, including the representatives of local self-government, have resulted in the formulation of a series of conclusions and recommendations related to the prevention and elimination of child, early and forced marriages. In this regard, we point out that the problem can be prevented only through the holistic approach by all relevant authorities, strict observance of regulations and fulfilment of strategic commitments and with a clear and unequivocal support from the Roma community, bearing in mind the fact that child, early and forced marriages are disproportionately represented in the Roma population.

At the end of the paper we give proposals and recommendations which, in our opinion, should prevent the occurrence of child marriage. Some recommendations should be implemented at the central government level, but it is quite clear that most of the recommendations can and should be implemented at the level of local self-government, through the independent work of the professionals in their respective fields. However, in order to achieve success, they need to cooperate, which involves also the conclusion of formal agreements on joint action. To this end, funds will need to be allocated from the budget of local self-governments, but the project activities of non-governmental organisations and donor support should also be used as done do far.

*For the purpose of clarity, it should be noted that child, early and forced marriages are not always synonymous, although they are often perceived as such. The most appropriate seems to be the definition from the Report of the UN Human Rights Council "Preventing and eliminating child, early and forced marriage."<sup>1</sup> According to this report, **child marriage** is a marriage in which at least one of the parties is a child, i.e. a person under the age of 18. **Early marriage** is often used interchangeably with child marriage. It refers to marriages involving a person aged below 18 in the countries that allow marriage with an underage person who has reached the physical and mental maturity needed for the fulfilment of marital duties. It refers also to marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person's life options. **Forced marriage** is defined as any marriage which occurs without the full and free consent of one or both of the parties and/or*

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<sup>1</sup> Report of 2 April 2014, available at: <http://www.refworld.org/docid/53999c1b4.html/>

*where one or both of the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure.*

## **Praxis Activities Aimed at Prevention and Elimination of Child, Early and Forced Marriages**

Since its establishment, Praxis has been involved in the protection of status and socio-economic rights of Roma and their protection from discrimination. Praxis has been implementing specific activities in the field of prevention and elimination of child, early and forced marriages since May 2015, when the two-day workshop for Roma women and men was held in Novi Pazar. The aim of the workshop was to open discussion among the Roma population about harmful traditional practices and to identify the mechanisms that would help in breaking the cycle of poverty.

In 2016, within the framework of the project *Legal Assistance to Persons at Risk of Statelessness in Serbia*, funded by UNHCR, Praxis continued to perform the activities in the field of prevention and elimination of child, early and forced marriages. Work on the prevention of child, early and forced marriages is particularly difficult in cases where girls and women are legally invisible or at risk of statelessness. Consequently, girls and women are exposed to a higher risk of violence and exploitation due to the impossibility of regulating their legal status, which further contributes to their marginalisation and uncertainty. The project activities were focused on education and awareness raising, targeting both the Roma community and the professional and general public, through workshops for Roma women and men, educational and advisory work at community meetings with representatives of relevant institutions/agencies at the local level.

***Workshops for Roma women and men.***<sup>2</sup> In 2016, five two-day workshops were held in Leskovac, Kostolac and Novi Pazar. Given the specific gender role of women in the Roma community, the workshops were organised in a way that Roma women participated the first day and Roma men participated the second day. The total number of female participants was 127 and the total number of male participants was 115.

The aim of the workshops was to have a two-day interactive discussion about the importance of the healthy development of children in early childhood, the respect of children's needs and wishes, the necessity of regular health care, sexual and reproductive health, the importance of timely and continuous education, and thus to empower the Roma population to talk openly about the causes and consequences of child, early and forced marriages, allowing us to jointly identify their occurrence in these communities and come up with the proposal of mechanisms that would contribute to the prevention and elimination of this harmful traditional practice. The discussion revealed that the age limit for marriage among Roma women was under the age of majority and ranged from 16 to 17, while that age limit was somewhat higher for Roma men - from 18 to 19. The minimum age of marriage among Roma women is as low as 11 years, which was the age of one participant who had been sold by her parents. It turned out that only 45 participants (40.2%), out of 112 married ones, entered into marriage after the age of majority,

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<sup>2</sup> For more information about the workshops, see more on Praxis website:

[Praxis Held Workshops on Prevention and Elimination of Child, Early and Forced Marriages](#)

[Praxis Held Follow-up Workshops on Prevention and Elimination of Child, Early and Forced Marriages](#)

i.e. the minimum legal age for marriage. The collected data reveal the following situation in different cities: in Leskovac, 17 out of 40 participants/married Roma women entered into marriage after the age of 18 (42.5%); in Kostolac, 17 out of 47 (36.1%) and in Novi Pazar 11 out of 25 (44%). Out of the total number of married male participants (95), 55 (57.9%) were of age at the time of entering into marriage: 15 out of 30 in Leskovac (50%), 30 out of 44 in Kostolac (68.2%) and 10 out of 21 in Novi Pazar (47.6%). The situation in these municipalities shows that marrying before the age of majority is more often among girls than among boys.

Talking about the age at which their children become adults, the parents said that children were only the boys and girls under 12 or 13 years of age – at the beginning of adolescence. Some of the statements were rather distressing:

- *“You are a child and then you are a woman. You are never a girl.”*
- *“She is a girl until she gets married.”*
- *“As soon as you get married, you are not a child any more.”*

The discussion about adolescence and challenges faced by parents and children focused on the effects of psychological and physical changes at this age. A special emphasis was given to the risks of early marriage for girls. We discussed the fact that girls were not ready for such a serious and demanding role, given that their reproductive organs were not sufficiently developed, and therefore girls were exposed to multiple risks of fatal outcome. The female participants talked about their experiences related to the risks of early pregnancy. One local midwife had her first pregnancy at the age of 13 and lost three children at birth, just because she was very young and her body was not ready for pregnancy.

- *“My sister gave birth at the age of 13 and her life was in danger.”*
- *“I got pregnant when I was 15-16 and I barely survived.”*
- *“I lost my baby when I was in the 8<sup>th</sup> month of pregnancy.”*
- *“My mother married at the age of 12 and I was born when she was 13. I barely survived.”*

When we asked the participants why they married early, they gave different answers.

- *“It is our tradition; it was decided by our ancestors.”*
- *“Some girls are married by their parents when they find rich husbands for them.”*
- *“Parents don’t allow her to date someone; they are hiding but they cannot stand it and escape.”*
- *“My daughter got married at the age of 13; she complained about not having this and that; she wanted a better life and I think this is why she did it.”*
- *“You know, there is a difference between Roma and Serbian girls. Serbian girls socialise, go out at midnight and return at 4 a.m., which we do not allow. They can also get enough sleep and they have what to eat.”*
- *“If the girls went to school regularly, they would do their homework and would not have time to think about marriage.”*
- *“Tradition. If she is not married by the age of 15, she is not a girl any more, she is old...”*

One of the key reasons for early marriage among the Roma population is certainly the *cult of virginity*. This traditional belief was mentioned as one of the reasons also by the workshop

participants. If there is a sexual relationship, the young man is obliged to marry the girl, according to the customs of the Roma community. Because of all that, through discussion and pointing to the detrimental aspects of early sexual relationships, we empowered them to move the virginity “keeping” limit at least up to the age of 18.

- *"It means a lot to us if you preserve virginity until marriage; when you keep your virginity, you have saved your face, and the family honour and honesty. It means a lot to us."*
- *"The girl's virginity is the mother's honesty."*
- *"Virginity is at the first place."*
- *"Girls must be virgins. They fall in love, we do not allow them to have sexual relationships before marriage, and then they run away."*
- *"If he has entered into a sexual relationship with her, he must marry her."*
- *"Roma women marry as girls, honourable and decent."*
- *"A girl must enter into marriage as a virgin, it is written in the Bible and it is our tradition."*

The films *Avoid My Destiny*<sup>3</sup> and *I am a Roma Woman*<sup>4</sup> were shown at the workshop. **The first film**, which presents the testimonies of Roma women victims of forced marriages and domestic violence, left a strong impression on the participants who generally felt compassion seeing the fates of Roma women in the film and by rule denied the existence of such practices in their communities. These are some impressions:

- *"I am very sorry. We never sell our children."*
- *"This is my story when I was 17, that's it, what can I do, my father sold me."*
- *"This is a true story. People live in poverty and that's why they accept, they throw money on the table. It's tradition."*
- *"Money is given so that the father can send his daughter off. One half is given to the daughter and son-in-law and the other half is spent on wedding."*
- *"My daughter married at the age of 15 and I took EUR 2,000, bought a ring, paid for the wedding, gave some to her and my son-in-law."*
- *"She got married young; she didn't know anything, then keep quiet and suffer violence. The parents won't have her back, she is silent and suffers. When the parents become aware, it is usually too late."*
- *"I told her: 'If you are not happy, throw yourself under the train.' What can I do, should I take care of and collect all her children from all her marriages?"*
- *"I was ashamed when my daughter married at the age of 13; I was hiding to avoid congratulations for the son-in-law."*

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<sup>3</sup> Documentary film about the activities of "Women Travel Caravan" conducted by the Centre for Roma Initiatives – Nikšić in the period 19 - 22 October 2012 in 17 Roma settlements in Nikšić, Podgorica, Berane and Ulcinj. It presents the lives of Roma and Egyptian women who have been the victims of early and arranged marriages. The film was created within the framework of the project *Action against Forced and Early Marriages in Roma and Egyptian Communities in Montenegro*, with the financial support of the US Embassy in Podgorica. It was filmed and prepared by Amra Prutina from the Centre for Drama Education Mostar. Praxis has obtained the approval from the Centre for Roma Initiatives to screen the film at its workshops: <https://www.youtube.com/watch?v=I6MzU33TrcQ>

<sup>4</sup> Film produced by the Romedia Foundation for Care International North West Balkans: <https://www.youtube.com/watch?v=OqI02tIJ17Y>



- *"We parents make mistakes sometimes and accept when we see that she is better off there where she went."*
- *"The parent who accepted her to the house should bear responsibility. What can I do when she ran away?"*  
*"We make mistakes too. When she gets married at the age of 13, it is a great shock. Should you go there or not? You go there and see and poverty forces you to leave your child. And it is a shame to return the child. It is a big mistake!"*

**The second film**, about the successful Roma women who have continued education and are professionally accomplished, inspired the participants with its affirmative concept and guided them once again to see education as a path to a better future for all girls and boys. We have recorded some of their statements:

- *"It's nice to finish school and get a job."*
- *"I like this film. Women are beginning to achieve their goal."*
- *"I would like for my children to become somebody in life."*
- *"This is beautiful. You see a woman who has a goal and who is successful."*

In the final part of the workshops, the participants were asked to summarise their impressions, to speak about what was useful for them, and whether and how they would be able to apply the acquired knowledge, and to say what age limit they considered adequate for marrying. In Leskovac, the female participants considered that a marriage should not be concluded before the age of 24 or 25, i.e. only after completed education. On the other hand, the male participants stated that the minimum age of marriage should be 21-22 for men and 19-20 for girls, which is significantly higher than the average age at which they married – 16.5 for women and 19 for men. In Kostolac, the minimum age of marriage was raised from 16.3 to 19, the former being the average age at which the female Roma participants entered into marriage, and they all agreed that men should marry at the age of 20-21. As regards the situation in Novi Pazar, the minimum age of marriage was raised by three years (from 17 to 20), and for men it remained at an average of 18 years.

At the end of each workshop, we appealed to the female participants to talk to their children, especially daughters, to share their experiences and feelings about early marriage. Thus, we empowered them to talk about this problem with their children and explain the consequences of early marriage using real-life examples.

The workshop findings indicate that the leading causes of child, early and forced marriages are poverty, low educational status of Roma families living in Roma settlements, high unemployment rate of Roma and patriarchal tradition. In addition, these findings show that one of the possible causes of child, early and forced marriages is the lack of support for Roma children in the education system in the form of monthly transport passes, free textbooks and scholarships for secondary education.

**These are the concluding statements of the workshop participants:**

- *"We would make a revolutionary shift by raising the minimum age of marriage to 18. We need as many positive examples as possible. The only way to prevent early marriage*

- is through education; parents will not be able to manipulate their children then. If a child leaves school at the age of 15, very strict penalties should be imposed.”*
- *“You should organise this kind of workshops more often, for 50-100 female participants.”*
  - *“It was good to hear all that and to be able to transfer it to others. I am glad that we talked about Roma culture.”*
  - *“Many more youth protection workshops for young men and women should be organised.”*
  - *“I didn’t want to come; I thought I was young and this topic was not for my ears but now I’m happy I have come.”*
  - *“I like it; it’s a good idea. I don’t support early marriages. We need public debates, advertising, public campaigns; more Roma communities should be included.”*

**Community meetings.**<sup>5</sup> In 2016, five community meetings were held in Leskovac, Požarevac and Novi Pazar. The goal of community meetings was to bring together local stakeholders to try to identify possible solutions for the prevention and elimination of child, early and forced marriages. The meetings were attended by a total of 126 representatives of social welfare centres, police, public prosecutor's offices, judiciary, educational and health care institutions, civil sector, as well as Roma mediators, pedagogical assistants and human rights activists. The purpose of the meetings was two-fold: 1) to provide an overview of the problems of child, early and forced marriages in Serbia, the region and the world, with special emphasis on national and international regulations governing the rights of the child, marriage and family relations, as well as the role and responsibility of competent authorities to prevent the neglect of children and violence against children and 2) to generate proposals, through an interactive approach to the topic and examples of good practice, which would lead to the prevention and resolution of problems related to child, early and forced marriages. The participants expressed a great interest in the topic, regardless of whether they had previously dealt with the issue or not. The interactive discussion resulted in a series of proposals that were translated into recommendations for further work on the prevention and elimination of child, early and forced marriages. They are presented at the end of this document.

In the second round of community meetings, in addition to a brief reminder of the responsibility of the institutions that could play a key role in the prevention and elimination of child, early and forced marriages, the proposed policies for the prevention and elimination of child, early and forced marriages, which were the result of the first round of workshops and community meetings, were presented. The discussion that followed further improved the existing proposals and gave ideas for additional recommendations.

One of the conclusions of community meetings and the common position of the participants is that although there are mechanisms in place for solving adequately the problem of child, early and forced marriages, we find ourselves in a situation where the activities of relevant

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<sup>5</sup> For more information about the community meetings, see more on Praxis website:  
[Praxis Held Community Meetings on Prevention and Elimination of Child, Early and Forced Marriages](#)  
[Praxis Held the Second Round of Community Meeting on Prevention and Elimination of Child, Early and Forced Meetings](#)

institutions are not coordinated, while the responsibility is often “ping-ponged” among institutions.

**Informative and educational campaign “Say NO – BECAUSE I am a CHILD”<sup>6</sup>** was conducted in August 2016 in order to raise awareness of professional and general public about the need for prevention and elimination of child, early and forced marriages. Praxis pointed to various aspects of this phenomenon, ranging from statistical data, through causes and consequences, to the main conclusions and recommendations for further activities, in a form of short messages and charts that were shared on social media and disseminated to professional and general public.

**Working Group for Prevention and Elimination of Child, Early and Forced Marriages** was set up in early 2016. In addition to Praxis, its members are child and women's rights experts, one Roma representative, as well as representatives of UNICEF and UNHCR. On several occasions during the year the Working Group had the opportunity to consider the findings and conclusions of workshops and community meetings, thus contributing to the development of policy proposal.

## Causes and Consequences of Child, Early and Forced Marriages

**Poverty** that prevails in certain countries, regions or communities, is a dominant cause of child, early and forced marriages. The data presented in this paper confirm that this practice is present mostly in poor countries and poor communities within other communities and even rich countries. Poverty is also the reason why in those countries and communities **education** is not highly valued and why it is considered unnecessary expense and luxury. Girls are particularly deprived of education because it is considered more appropriate for them to do the housework in their primary families and later in their husbands’ families. This is helped by the fact that education in these countries is of poor quality, with the insufficient number of qualified teachers and the presence of gender-based violence, which increases the possibility of early marriage being an alternative for a large number of girls. From their early childhood, girls are taught that marriage is a solution to the problem of poverty and all its consequences, and they are educated as less valuable than male children and as a family burden that has to be transferred to their husband's family.<sup>7</sup>

Thus, a child, early or forced marriage for the girl usually means leaving school and terminating education. This also means the inability to find work, which leads her to economic dependence on her husband, and later on society and the state. On the other hand, a longer retention in school gives a greater chance that the girl will not marry early and assume all of the obligations related to marriage. During education, girls acquire not only knowledge, but also a variety of skills needed for future job. Girls who complete only primary school are twice more at risk of marrying before the age of 18 than those who attend secondary and higher education.<sup>8</sup>

Along with poverty, there is **common law or cultural practices** that require the girl to marry immediately upon initial manifestation of female sexual attributes in order to prevent possible

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<sup>6</sup> See more on Praxis website: <http://praxis.org.rs/index.php/sr/praxis-in-action/child-rights/item/1066-say-no-%E2%80%93-because-i-am-a-child>

<sup>7</sup> <http://www.girlsnotbrides.org/why-does-it-happen/>

<sup>8</sup> <http://www.girlsnotbrides.org/wp-content/uploads/2016/03/2.-Addressing-child-marriage-Education.pdf>

loss of virginity before marriage, prevent pre-marital relationships, protect the girl's honour or prevent promiscuous behaviour, etc. In practice, in almost all the communities in which there are child marriages, the fathers or other male members of the family (grandfather, brother, uncle) are the ones who decide about the girl's destiny. The mother, although she would like to protect her daughter, has no power to do so.<sup>9</sup> This brings us to the field of **gender inequality**, which is why it happens that girls are predominantly victims of child marriage, while boys are only occasionally involved in such relations.<sup>10</sup> The common law is very tough and usually not challenged in the societies in which it survives, including Serbia.

**During conflicts and humanitarian crises**, child, early and forced marriages are practiced in poor countries around the world because of the increased risk of poverty and sexual violence against girls and women, which usually occur in these circumstances.

Not only are the causes identical in all the communities in which child, early and forced marriages occur more or less frequently. The consequences of child, early and forced marriages are also identical everywhere, regardless of whether they happen in a densely populated India or in Serbia.

**The most serious consequences that can be clearly identified are the following:**

Child marriage has devastating effects on the **health** of girls. Sexual activity begins at the age when a girl's body is still developing and when she does not know much about reproductive health. In addition, the first sexual intercourse is usually violent, which leaves lasting consequences. First pregnancies occur too early, when the girl is not mentally or emotionally ready for delivery. This is the reason for a higher risk of child death or complications during pregnancy and delivery. It is estimated that the risk of child death at birth in the mothers younger than 20 years is 50% higher than in older women. In addition, young girls are not able to decide on the number of children and time of pregnancy or the use of contraceptive methods, which puts them at increased risk of contracting sexually transmitted diseases and HIV. Alarming is the fact that young girls experience rates of maternal mortality that are significantly higher than among young women aged 20 to 24.<sup>11</sup>

In addition to health, we should not neglect the security aspect of girls in child, early and forced marriage. The fact is that early marriage puts a girl at risk of sexual violence, but also at risk of physical and psychological violence from her partner. By entering into marriage, many girls can find themselves in a position of servitude and be exposed to the most severe forms of child labour. If we carefully consider the nature of the relationship in such a marriage, we will find elements of forced labour, forced sexual intercourse, putting the girls in the position of domestic servants. The girl is subjected to such violence, which often takes the form of abuse, throughout her life because she enters into marriage insufficiently mature to protect her position and herself as a person, especially if she is married to an older man and lives in the household with his parents. This inferior position is later reflected in the inability to protect her own (female) children from the same or similar fate and the circle of force is perpetuated as

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<sup>9</sup> See Child marriage in Eastern Europe and Central Asia: regional overview, UNFPA, p. 6:

[http://eeca.unfpa.org/sites/default/files/pub-pdf/Child%20Marriage\\_27072015\\_web.pdf](http://eeca.unfpa.org/sites/default/files/pub-pdf/Child%20Marriage_27072015_web.pdf)

<sup>10</sup> <http://www.girlsnotbrides.org/what-is-the-impact/>

<sup>11</sup> <http://www.girlsnotbrides.org/wp-content/uploads/2016/03/1.-Addressing-child-marriage-Health.pdf>

something normal and usual although it is everything but a normal life situation. In fact, we can justifiably say that child, early and forced marriages constitute a violation of child rights, which will be further discussed in the section of this paper referring to the importance of observing the Convention on the Rights of the Child in the prevention of these marriages.

Everything that has been said about the impact of (low and poor quality) **education** on the incidence of child, early and forced marriages can be considered a consequence. Marriage usually means the end of education for girl and the end of her opportunities for personal and social emancipation. The girl who has become a wife will never find out about her possibilities and skills that she could have developed through the process of education if she had been given a chance.

## Global Responses and Experience

Child, early and forced marriages are a global phenomenon. Every year 15 million girls under the age of 18 get married. One third of this number refers to India because of the size of its population. Millions of girls marrying early provoked a global response, primarily by civil society, in over eighty countries. *Girls not Brides*<sup>12</sup> is a global partnership of more than 600 civil society organisations, which present rather shocking information, according to which every minute 28 girls, or one girl every two seconds, are married!<sup>13</sup> The goal of this global partnership is to use the laws, policies and support programmes in the countries where the phenomenon of child, early and forced marriages is present to bring changes in the lives of millions of girls. The partnership advocates establishing the minimum age for marriage at 18 years. It is interesting that only one organisation from our region - *Roma Destiny Association*<sup>14</sup> from Bulgaria is a member of the global partnership *Girls not Brides*. It should also be noted that there are boys in child marriages too, but their number is negligible compared to girls. In Niger, for example, 77% are girls, while boys make up only 5%. Therefore, we can say that child marriage is not only a violation of child rights, but also the manifestation of gender inequality that reflects social norms that lead to discrimination against girls.<sup>15</sup>

The countries with the highest percentage of child marriage (i.e. the percentage of women 20-24 years old who were first married or in union before they were 18 years old) are: Niger -76%, Central African Republic and Chad - 68%, Mali - 55%, Bangladesh, South Sudan, Burkina Faso, Guinea - 52%, Mozambique - 48%, India - 47%, Malawi - 46%, Somalia - 45%, Nigeria - 43%, Nicaragua, Madagascar, Eritrea, Ethiopia - 41%, Sierra Leone - 39%, Cameroon - 38%.<sup>16</sup>

There is no doubt that the global response of civil society has contributed to the trend of decline in the number of child, early and forced marriages over the last three decades, especially marriages involving girls under the age of 15. This has been achieved in Ethiopia, the Middle East and North Africa.<sup>17</sup>

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<sup>12</sup> [www.girlsnotbrides.org](http://www.girlsnotbrides.org)

<sup>13</sup> Ibid

<sup>14</sup> <http://www.girlsnotbrides.org/members/roma-destiny-association/>

<sup>15</sup> United Nations Children's Fund, Ending Child Marriages: Progress and Prospects, UNICEF, New York, 2014

<sup>16</sup> <http://www.girlsnotbrides.org/where-does-it-happen/>

<sup>17</sup> United Nations Children's Fund, Ending Child Marriages: Progress and Prospects, UNICEF, New York, 2014, p. 5

Europe is not immune to the phenomenon of child marriage either, but its incidence on the old continent is considerably less common, although there are countries with the significant number of child marriages. It is primarily Georgia, which is on the top of the list with 17%, followed by Turkey with 14% and Ukraine with 10%. The same percentage (10%) applies to France and the UK where child marriages can be found in some immigrant communities. It is interesting that the Government of the Republic of Ireland announced that it would adopt a regulation to exclude the possibility of allowing marriage in exceptional cases before the age of 18 through court proceedings.<sup>18</sup>

In addition to Turkey, other Balkan countries - Montenegro, Macedonia, Albania face with the issue of child, early and forced marriages, including two EU member states - Romania and Bulgaria.

In **Montenegro**, the biggest advocate of prevention of child marriage is the NGO Centre for Roma Initiative from Nikšić<sup>19</sup>, which has been dealing with this problem since 2012. In that period, 21 persons (mostly parents) were prosecuted in cases of child, early and forced marriages, but, unfortunately, none of them were punished because it was hard to prove this criminal offence before court. The practice is such that the parents of Roma girls aged 13 and 14, and even younger, promise their children to another family and then withdraw them from school. The family of the groom is obliged to pay the girl's family a certain amount of money. The figures range from EUR 200 to 20,000. The activists of the Centre believe that institutions are willing to assist in combating this harmful practice. However, a certain number of people who work in public institutions believe that this is part of customs. Some of them are openly saying that these are "Gypsy affairs."<sup>20</sup>

The willingness of Montenegro to combat child, early and forced marriages in a systemic way is encouraging. This willingness was expressed through the recently adopted Strategy for Social Inclusion of Roma and Egyptians in Montenegro for the period 2016-2020<sup>21</sup>. The part related to the social status and family protection includes also the goal of preventing illicit child marriages. There is also an interesting historical fact related to Montenegro and the phenomenon of child and arranged marriages. In fact, as early as in 1853 Prince Danilo issued an order on the prohibition of child marriages and the prohibition of engagement to be married without the consent of intending spouses. Strict penalties were prescribed for all offences of this kind.<sup>22</sup>

In February 2015, the Observatory for Children's Rights in **Albania**, published a study on child marriage in Albania in order to use it as a tool for advocating to decision makers at the national level.<sup>23</sup> Child marriages are most common among some Roma communities, but exist also among the majority Albanian population in rural, poor and isolated areas. Traditionally, girls drop out of school at the age 12 and 13 to be taught housework and prepare for marriage. It is usual to get engaged first, as a rule to an older man who works abroad and the bride stays in the

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<sup>18</sup> <http://www.girlsnotbrides.org/human-rights-council-adopts-resolution-to-end-child-early-and-forced-marriage/>

<sup>19</sup> <http://crink.me/>

<sup>20</sup> <http://www.cdm.me/drustvo/crna-gora/ugovoreni-brakovi-najveci-problem-roma-roditelji-djevojke-prodaju-i-za-20000-eura?comments=true>

<sup>21</sup> [www.gov.me/ResourceManager/FileDownload.aspx?rId](http://www.gov.me/ResourceManager/FileDownload.aspx?rId)

<sup>22</sup> <http://www.cdm.me/10-godina/zakonik-danila-prvog-uvodenje-obaveze-placanja-poreza?comments=true>

<sup>23</sup> Child Marriage in Albania: Specific view to Roma Community <http://www.observator.org.al/publications>

husband's family, where she takes over the household tasks, often in the form of domestic servant. In the village of Lak 90% of girls are engaged/promised.

Due to the dominant patriarchal model of family relations, the mother would be unable to protect her daughter from early marriage, even if she wanted to. From their early childhood, girls are taught that marriage is a solution to problems (poverty, pre-marital pregnancy) and that education is less important and unnecessary expense. Research shows that among children who were married at an early age, before 18 years, 93.5% are Roma children, primarily girls. Among the general population, 2.9% of girls are married. The percentage of married children has dropped over the last two decades among the Roma population and equals 9.1%. The highest percentage refers to the age of 17: 14.3% in general population and 60% in Roma population.<sup>24</sup>

However, the National Action Plan for the Integration of Roma and Egyptians in Albania - 2016 - 2020<sup>25</sup> does not explicitly include prevention and reduction of child marriages among the indicators that will be monitored. It is considered that the Albanian society will indirectly contribute to reducing the rate of early marriage, primarily among the Roma population, through indicators in the field of education (inclusion of Roma children - boys and girls - in pre-school, primary, secondary, and then tertiary education; drop-out prevention; scholarships and other incentive measures), health care and social protection.

For the time being, the Albanian criminal legislation does not explicitly penalise child marriage, while forced marriage is a criminal offence, as well as sexual intercourse with a child under 14, which is punished by imprisonment for a term of 15 years.<sup>26</sup>

The data for **Romania** and Bulgaria, two Balkan countries and EU member states, point to visible changes in awareness, especially among the Roma population, about the need to raise the minimum age limit for marriage. The most illustrative example is the self-proclaimed King of the Gypsies in Romania, Dorin Cioaba, who heads *Stabor*, the court of the Roma community. In fact, he has announced that *Stabor* decided that Roma children should not marry before the age of 16, i.e. before they finish secondary school. Those who do not comply with this decision risk exclusion from the community.<sup>27</sup> This statement is interesting from many aspects, primarily due to the fact that in 2003 Dorin's father organised a luxurious wedding for his then thirteen year old daughter and caused a great stir. The case was then dealt with by the European Commission, but, unfortunately, did not result in effective measures of the Romanian government aimed at preventing child, early and/or forced marriages.<sup>28</sup> Currently in Romania only 5-15% of the Roma population enter into early marriages. However, public policies for the prevention, detection and suppression of child marriages are very sporadic and incoherent, and the state does not deal with this problem institutionally.<sup>29</sup> It is also important to say that Romania is one of the

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<sup>24</sup> Ibid, p. 20

<sup>25</sup> <http://www.al.undp.org/content/albania/en/home/library/poverty/national-action-plan-for-integration-of-roma-and-egyptians-in-th.html>

<sup>26</sup> Child Marriage in Albania – Specific view to Roma Community, p. 20

<sup>27</sup> <http://www.balkaninsight.com/en/article/romania-s-roma-to-drop-early-marriage-tradition>

<sup>28</sup> Preventing Early Marriages, Amalipe Center for Interethnic Dialogue and Tolerance, 2011, <http://amalipe.com/index.php?nav=publications&lang=2>

<sup>29</sup> Ibid, p. 161

countries that have raised the minimum age limit for the criminalisation of sexual intercourse with a child under 15, prescribing a prison sentence of 3 to 10 years.

In **Bulgaria** there are already some tangible changes in that respect, and the minimum age limit for marriage has been raised to 18 years and 4 months. Now there are many more Roma who oppose their children's marriage before the age of 16 than those who support it. However, 13% of Roma still consider that child marriage is possible if a girl is 14 or younger.<sup>30</sup> It should be noted that education in Bulgaria is obligatory until the age of 16. Despite that, there is still a negative stereotype prevailing among the staff of competent authorities (in educational institutions, local administration and social welfare institutions) that child, early and forced marriages are part of Roma tradition, their internal matter, which unfortunately points to the still present discrimination of Roma in the Bulgarian society.<sup>31</sup> Due to such attitude of competent authorities, in certain Roma communities in Bulgaria some very problematic traditional practices persist, such as "bride market" in the Roma community Kalaidzhi (Orthodox Christians) in Stara Zagora, which is traditionally organised four times a year for the meeting of future spouses accompanied by their parents. This is a place where cost of bride is negotiated in the amount ranging from \$ 3 to 5.000.<sup>32</sup>

## International Legal Framework

The global problem of child, early and forced marriages came into the focus of attention of international organisations after the Second World War and the establishment of a new order based on respect for human rights enshrined in the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948. Although not legally binding, the Declaration was a milestone for the adoption of all subsequent documents legally binding on the signatory countries. It starts from the premise that all human beings are born free and equal in dignity and rights. Article 16 establishes the standard by which adult men and women, without any limitation due to race, nationality or religion, have the right to marry and to found a family; they are entitled to equal rights as to marriage, during marriage and at its dissolution. It is important that marriage is entered into only with the free and full consent of the intending spouses.

All the subsequent international documents within the United Nations system (*International Covenant on Civil and Political Rights*, 1966, Article 23, paragraph 3; *International Covenant on Economic, Social and Cultural Rights*, 1966, Article 10, paragraph 1; *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, 1962, Article 1, paragraph 1; *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)*, 1979, Articles 3 and 16) are based on the principle that every individual (man and woman) is entitled to marry with their own free will and full consent.

Two conventions have a special place in the protection of children from early marriage and the protection of women against forced marriage: *1990 UN Convention on the Rights of the Child*, including the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 2000, and the *Council of Europe Convention*

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<sup>30</sup> Ibid, p. 159

<sup>31</sup> Ibid, p. 160.

<sup>32</sup> <http://www.dailymail.co.uk/news/article-2973659/Inside-Roma-bride-market-Teenage-girls-matched-future-husbands-open-air-exchange-Bulgaria.html>



*on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*, 2011.

**The Convention on the Rights of the Child (CRC)** does not explicitly prohibit child marriage, but many of its articles guarantee the rights that strongly prevent (too) early marriages.<sup>33</sup> It is known that the CRC is an almost universally accepted international document, which has been ratified by all UN member states except the United States of America. By that logic, the problem of child marriage should be solved in the world to a large extent. Unfortunately, this is still not the case.

**The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography** does not explicitly prohibit child marriages either, but Article 2 of this Protocol defines the sale of children as any act or transaction whereby a child is transferred by any person or group of persons (including parents) to another for remuneration or any other consideration. The state is obliged to take all feasible measures with the aim of ensuring all appropriate assistance to children victims of such offences, including their full social reintegration and their full physical and psychological recovery (Article 9, point 3).

**The Istanbul Convention** more directly requires the states parties to commit themselves to the protection of women, but also expressly imposes an obligation on the states parties to criminalise the act of forcing an adult or a child to marry, in the country or abroad (Article 37 - Forced marriage), while Article 32 allows for the annulment or divorce of forced marriages without undue financial burden placed on the victim. Many other articles are important for the prevention and punishment concerning forced marriages.<sup>34</sup>

Serbia is a party to both of these conventions, including the aforementioned Optional Protocol to the CRC. The fact that according to the Constitution of the Republic of Serbia the generally accepted rules of international law and ratified international treaties are an integral part of the legal order and directly applicable (Article 16) means that the competent authorities in our country are obliged to fully harmonise the national legislation with the ratified documents, which will be further discussed in the section of this document that refers to recommendations.

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<sup>33</sup> A child means every human being below the age of eighteen years (Article 1); The right to non-discrimination (Article 2); The best interests of the child (Article 3); The right to life and development (Article 6); The right not to be separated from their parents against their will (Article 9); The right to seek, receive and impart information and ideas of all kinds (Article 13); The right to protection from all forms of physical or mental violence, injury or abuse, including sexual abuse (Article 19); The right to enjoyment of the highest attainable standard of health and abolishing traditional practices prejudicial to the health of children (Article 24); The right to education (Article 28); The right to rest and leisure and the right to participate in cultural life (Article 31); The right to protection from all forms of sexual exploitation (Article 34); The right to protection from all forms of exploitation prejudicial to the child's welfare (Article 36).

<sup>34</sup> Article 3 a) Definition of violence against women.... coercion or arbitrary deprivation of liberty, whether occurring in public or private life; Article 4, point 2 - Abolishing laws and practices that discriminate against women; Article 7 - Comprehensive and coordinated policies - necessary holistic response; Article 11 - Data collection and research on all forms of violence; Article 12, point 5 - Eradicating prejudices, customs, traditions and other practices and ensuring that the so-called "honour" shall not be considered as justification for any acts of violence; Article 13 – Awareness-raising; Article 14 - Education through introduction of educational content on the equality of men and women and non-stereotypical gender roles, the right to personal integrity; Article 18, point 4 - The provision of services shall not depend on the victim's willingness to press charges or testify against the perpetrator; Article 27 - Reporting violence; Article 55 - *Ex parte* and *ex officio* investigation and court proceedings may be continued even if the victim withdraws his or her statement or complaint; Article 58 – Statute of limitation – shall continue for a period of time that is sufficient and commensurate with the gravity of the offence in question, to allow for the efficient initiation of proceedings after the victim has reached the age of majority.

It is important to mention that the Republic of Serbia was one of the 85 countries that in November 2014, in the UN Human Rights Council, co-sponsored the Resolution on Child, Early and Forced Marriages, which recognised child marriages as a violation of human rights that prevents individuals from living their lives free from all forms of violence.<sup>35</sup> In March 2017, the Human Rights Council will review progress made in the past period. The general assessment is that the Resolution encourages the states to work with civil society organisations in order to ensure, at the national level, a comprehensive and holistic response to the practice of child marriages and provide all the necessary support to married girls. At the same time, this Resolution and the announced consideration of the same topics at the Council in early 2017 are good indicators that the international community has decided to put pressure to end the practice of child, early and forced marriages. Our country supported this document and now there is no reason for not presenting some tangible results before the Human Rights Council.

## National Legal Framework

The Constitution, laws, strategic documents, general and special protocols on the protection of children from abuse and neglect, and general and specific protocols on the protection of women from domestic violence constitute a complete regulatory framework, which, with some amendments and corrections, already provides sufficient tools for the elimination of child, early and forced marriages.

One of the basic principles of the *Constitution of the Republic of Serbia* is gender equality (*Article 15*) and a policy of equal opportunities. The Constitution is also clear about the right to marry (*Article 62*), because it guarantees that everyone has the right to decide freely on entering or dissolving a marriage, and that marriage is based on the **free** consent of man and woman before the state body. Extramarital community shall be equal with marriage, in accordance with the law. The 2006 Constitution introduced the entire article about the child rights (*Article 64*), which guarantees that children shall enjoy human rights suitable to their age and mental maturity and, in particular, that children shall be protected from psychological, physical, economic and any other forms of exploitation or abuse.

### ○ Legislative Framework

In the Republic of Serbia, there are several laws whose provisions guarantee that the authorities implementing them do not have the dilemma of how to act in cases of suspicion of child, early and forced marriage. *The Criminal Code*<sup>36</sup>, *for the time being*, recognises two major offences that may cover child marriage and penalties related to child marriage.

The first criminal offence is a sexual intercourse with a child (*Article 180*), and whoever has sexual intercourse or commits an equal act against a child shall be punished with imprisonment for a term from three to twelve years.

The second criminal offence is cohabiting with a minor (*Article 190*). An adult cohabiting with a minor shall be punished with imprisonment for a term up to three years. The same punishment

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<sup>35</sup> <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G15/139/78/PDF/G1513978.pdf?OpenElement>

<sup>36</sup> [http://www.paragraf.rs/propisi/krivicni\\_zakonik.html](http://www.paragraf.rs/propisi/krivicni_zakonik.html)

shall be imposed also on a parent, adoptive parent or guardian who enables or induces a minor to cohabit with another person. In case of perpetrating this offence for gain, the perpetrator shall be punished with imprisonment for a term of six months to five years. However, the Criminal Code provides that if a marriage is concluded, prosecution shall not be undertaken, and if undertaken it shall be discontinued.

For the purpose of harmonising the national criminal legislation with the Istanbul Convention, the Amendments to the Criminal Code<sup>37</sup>, adopted on 24 November 2016 and entering into force on 1 June 2017, introduce a new criminal offence – forced marriage. It provides that whoever by force or threats compels another person to enter into marriage shall be punished with imprisonment in a term between three months and three years. Also, whoever brings another person abroad or induces another person to go abroad for the purpose of perpetrating this offence shall be punished with imprisonment in a term of up to two years.

In addition to the punitive function, the Criminal Code has the preventive function, but all other laws are also important for the prevention of this harmful practice.

*The Law on Family*<sup>38</sup> develops the **child rights concept** by establishing the rights of the child as separate and independent personal rights of the child: Everyone shall be guided by **the best interests of the child** in all actions concerning the child (Article 6, paragraph 1); The state shall **take all necessary measures** to protect the child from neglect, physical, sexual and emotional abuse and any kind of exploitation (Article 6, paragraph 2); **The state shall** respect, protect and promote the rights of the child (Article 6, paragraph 3); The child shall be entitled to the provision of the best possible living and health conditions for his or her **proper and full** development (Article 62, paragraph 1); The child shall have the **right to education** in accordance with his or her abilities, wishes and preferences (Article 63, paragraph 1). The Law on Family also establishes that parents have the right and **duty** to care for the child; care includes: taking care, raising, upbringing, education, representation, subsistence, as well as the management and disposal of the child's property (Article 68, paragraph 1, points 1 and 2).

The Law on Family is very clear about marriage. It defines marriage as a regulated union of man and woman, which can be entered into only on the basis of the **free consent** of the intending spouses, who are equal (Article 3). Marriage cannot be concluded by a person below the age of 18 (Article 23, paragraph 1), but the court can, for justified reasons, allow the marriage of a minor who has attained the age of 16 and has reached physical and mental maturity necessary for exercising the rights and duties in marriage (Article 23, paragraph 2).

The Law on Family includes a provision on forced marriage since Article 38 defines that “coercion exists when the other spouse or a third person, by using force or threat, has caused the spouse to be justifiably frightened due to which that spouse has consented to marriage.” Since forced marriage has been recently introduced as a new criminal offence, i.e. in the Amendments to the Criminal Code of 25 November 2016, in practice it was sometimes treated as a form of human trafficking.<sup>39</sup>

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<sup>37</sup> <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2016/2769-16.pdf>

<sup>38</sup> [http://www.paragraf.rs/propisi/porodicni\\_zakon.html](http://www.paragraf.rs/propisi/porodicni_zakon.html)

<sup>39</sup> <http://www.paragraf.rs/dnevne-vesti/140916/140916-vest10.html>

*The Law on Non-Contentious Procedure*<sup>40</sup> regulates in detail a special non-contentious procedure for obtaining a permission to enter into marriage: 1) The procedure is initiated by a petition of a person who does not meet the legal condition for concluding a valid marriage (or by a joint petition), and if the petitioner is a minor, the petition must contain the information about his or her parents; 2) The court shall investigate to determine whether there is a free will and wish of the minor to conclude marriage and whether the minor has reached physical and mental maturity; 3) The court shall obtain the opinion of a health care institution, establish appropriate cooperation with the guardianship authority, hear the petitioner, his or her parents or guardians, except in cases where the parental rights have been terminated, but the consent of the underage person is not required; 4) The court shall, as a rule, hear the minor without the presence of other participants; 5) The court shall examine personal qualities, financial standing, and other relevant circumstances relating to the person whom the minor wishes to marry (Articles 79 – 86).

*The Law on the Foundations of the Education System*<sup>41</sup> provides that the first goal of education is the full intellectual, emotional, social, moral and physical development of each child, as well as enabling pupils to make adequate decisions about their future education and profession, their development and future life. The achievement of these goals would undoubtedly contribute to reducing the rate of drop-out because of marriage. According to the Law, some of the general principles of education are the equal right and access to education for all, without discrimination on any basis, and special focus on reducing the drop-out rates of pupils from vulnerable groups. The school is obliged to immediately file a report to the competent authority in case of observing the signs indicating that a pupil may have been a victim of violence, abuse or neglect.<sup>42</sup>

The role of educational institutions is most directly described in the *Rulebook of procedure in institutions in response to violence, abuse and neglect*. Educational institutions are obliged to respond to any suspicion or knowledge of the existence of violence against a child. It is important to mention also a very instructive document of the Ministry of Science, Education and Technological Development entitled *Handbook for the Prevention of Gender-based Violence*<sup>43</sup>, which is intended for employees of educational institutions, parents and pupils in primary and secondary schools.

*The Law on Primary Education*<sup>44</sup> provides (Article 5) that primary education is obligatory and free (except in private schools) and lasts eight years. The parent or guardian is obliged to ensure that his or her child is enrolled and attends primary school regularly. Children enter primary school at the age of six and a half to seven and a half. The obligation to attend primary school lasts until the end of the school year during which the pupil has attained the age of 15. If the pupil has not completed primary school within that period, the school can allow him or her to continue education until the age of 17 – upon request of pupil or his/her parents.

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<sup>40</sup> *Official Gazette of SRS*, nos. 25/82 and 48/88 and *Official Gazette of RS* nos. 46/95 – as amended, 18/2005 – as amended, 85/2012, 45/2013 – as amended, 55/2014, 6/2015 and 106/2015 – as amended

<sup>41</sup> *Official Gazette of RS*, nos. 72/2009, 52/2011, 55/2013, 35/2015, authentic interpretation, 68/2015 i 62/2016 – CC Decision

<sup>42</sup> Article 45

<sup>43</sup> [http://www.unicef.org/serbia/Prirucnik\\_za\\_preveniriju\\_RZN\\_za\\_web.pdf](http://www.unicef.org/serbia/Prirucnik_za_preveniriju_RZN_za_web.pdf)

<sup>44</sup> [http://www.paragraf.rs/propisi/zakon\\_o\\_osnovnom\\_obrazovanju\\_i\\_vaspitanju.html](http://www.paragraf.rs/propisi/zakon_o_osnovnom_obrazovanju_i_vaspitanju.html)

According to the *Law on Secondary Education*<sup>45</sup>, a regular pupil of the first grade of the school is a person who is enrolled in the first grade for acquiring secondary education or education for work and is younger than 17 years, and a non-attending pupil of the first grade of the school is a person who is enrolled in the first grade for acquiring secondary education or education for work and is older 17 years. Exceptionally, a person from a vulnerable social group and with extraordinary abilities, under the age of 17, can acquire secondary education or education for work as non-attending pupil, if he or she justifies the impossibility of regular school attendance, and with the Minister's approval.

Secondary education is free, but not compulsory, but it is certainly desirable because it gives the opportunity to a child for a dignified and productive life and work, as well as for vertical social mobility.

The Strategy for the Development of Education in Serbia until 2020<sup>46</sup> determines the urgent need to "conduct all necessary analyses to determine the feasibility and justifiability to make mandatory after 2020 (a) secondary education after primary school and (b) remaining in secondary school – in case it is not completed until the age of majority." There are four years until the expiry of the strategic plan, but there are no indications of action in that direction.

Article 22 of the *Law on the Prohibition of Discrimination*<sup>47</sup>, which relates to discrimination of children, guarantees that every child shall have equal rights and protection in the family, society and the state, regardless of their personal characteristics or those of their parents, guardians or family members. The law also stipulates that it is forbidden to prioritise children of one sex over the other, which is largely ignored in the practice of child marriage or common-law relationships where the girl is still a child, since girls are over-exposed to this type of violation of the right to normal development.

*The Law on Social Protection*<sup>48</sup>, among other things, guarantees to each individual and family in need of social assistance and support to overcome their social and existential difficulties and create conditions for the fulfilment of basic needs, the right to social security, through the provision of social services and financial support (Article 4). It should be noted that in the provision of social protection, the competent authorities are obliged to adhere to the principle of non-discrimination of beneficiaries (Article 25), the best interests of beneficiaries (Article 26), as well as the principle of timeliness of social protection, which implies the timely identification of the beneficiaries' needs and the provision of services in order to prevent the development of conditions that threaten security and fulfilment of existential needs and hinder social inclusion (Article 29).

*The Law on Health Care*<sup>49</sup> guarantees to every child under the age of 18 the right to the highest attainable standard of health and health care. At the primary level, health care activity, among other things, includes health education and counselling for health preservation and improvement. Health care institutions cooperate with other health care, social welfare,

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<sup>45</sup> [http://www.paragraf.rs/propisi/zakon\\_o\\_srednjem\\_obrazovanju\\_i\\_vaspitanju.html](http://www.paragraf.rs/propisi/zakon_o_srednjem_obrazovanju_i_vaspitanju.html)

<sup>46</sup> [http://www.mpn.gov.rs/wp-content/uploads/2015/08/strategija\\_obrazovanja\\_do\\_2020.pdf](http://www.mpn.gov.rs/wp-content/uploads/2015/08/strategija_obrazovanja_do_2020.pdf)

<sup>47</sup> [http://www.paragraf.rs/propisi/zakon\\_o\\_zabrani\\_diskriminacije.html](http://www.paragraf.rs/propisi/zakon_o_zabrani_diskriminacije.html)

<sup>48</sup> [http://paragraf.rs/propisi/zakon\\_o\\_socijalnoj\\_zastiti.html](http://paragraf.rs/propisi/zakon_o_socijalnoj_zastiti.html)

<sup>49</sup> [http://www.paragraf.rs/propisi/zakon\\_o\\_zdravstvenoj\\_zastiti.html](http://www.paragraf.rs/propisi/zakon_o_zdravstvenoj_zastiti.html)

educational and other institutions in implementing the programme for the preservation and improvement of health.

- **Strategic Framework**

There is a long list of strategic documents referring to children and young people, which have been adopted so far by the Government of the Republic of Serbia in various periods. Thus, the *National Youth Strategy*<sup>50</sup>, adopted in 2008, establish that early marriage is one of the problems related to the education of young Roma. The lengthy list of measures aimed at improving the situation of young people does not include a direct request for the elimination of child, early and forced marriages, although we can say that this phenomenon would be minimised if all the measures relating to particularly vulnerable groups of young people were implemented.

*The National Social Housing Strategy*<sup>51</sup> aims at improving the living conditions in informal substandard settlements and envisages measures to attain this goal: (1) planned regulation of substandard settlements; 2) improvement of infrastructure; 3) improvement of living conditions in substandard settlements), which, to the extent to which these measures are implemented, will help to improve the quality of life of residents, primarily Roma families, and consequently contribute to an increase in the number of children from these settlements included in education at all levels, as a prerequisite to prevent child marriage and also forced marriage.

Several strategic documents adopted in the past, directly or indirectly have paved the way for a better understanding of the problem of child, early and forced marriages. The action plans accompanying various strategies contain elaborated measures and activities and define further steps, implementers, expectations and planned funds, including even very clear tasks of individual actors to work on suppressing and eradicating this harmful practice.

There are three recent strategic documents. One is the *Strategy of Prevention and Protection against Discrimination for the period 2014-2018*, with the Action Plan for its implementation. One of the measures relating to women under Section 4.1. *Education and Professional Training* is the introduction of sexual education dealing with reproductive health, prevention of pregnancy at an early age and early marriage.<sup>52</sup>

Another document is the *National Strategy for Gender Equality for the period 2016-2020* with the *Action Plan for the period 2016-2018*, adopted by the Government of the Republic of Serbia on 14 January 2016. This Strategy recognises the problem of early marriages (unfortunately they are not identified as child marriages) and, within its goal related to the improvement of the situation of multiply discriminated and vulnerable groups of women, defines the measure of proactive prevention of early and forced marriages, particularly among Roma girls and young women, and support to young women and young mothers to continue their education.<sup>53</sup> This Strategy also focuses on the consequences and within the framework of the goal of equality between women and men in parenting and care economy, provides these measures: a) reduced

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<sup>50</sup> <http://www.mos.gov.rs/mladisuzakon/attachments/article/389/Nacionalna%20strategija%20za%20mlade-srb.pdf>, p. 14

<sup>51</sup> [http://www.mgsi.gov.rs/sites/default/files/NACIONALNA%20STRATEGIJA%20SOCIJALNOG%20STANOVANJA\\_0.pdf](http://www.mgsi.gov.rs/sites/default/files/NACIONALNA%20STRATEGIJA%20SOCIJALNOG%20STANOVANJA_0.pdf)

<sup>52</sup> [http://www.ljudskaprava.gov.rs/images/pdf/propisi\\_i\\_strategije/Akcioni\\_plan\\_-\\_srpski.pdf](http://www.ljudskaprava.gov.rs/images/pdf/propisi_i_strategije/Akcioni_plan_-_srpski.pdf)

<sup>53</sup> See p. 56 at: <http://www.mgsi.gov.rs/lat/dokumenti/nacionalna-strategija-za-rodnu-ravnopravnost-za-period-od-2016-do-2020-godine-sa-akcionim>

abortion rates, adolescent pregnancy and adolescent birth rates, especially among girls and young women in Roma settlements; b) providing support to young and underage mothers in continuing education and employment with special emphasis on vulnerable groups of women.<sup>54</sup> The Action Plan imposes an obligation on local self-governments to identify the number of underage mothers who have dropped out of the education system, in the period from June to December 2016. Rather modest funds in the amount of 70,000.00 dinars for each of the local self-government have been envisaged. However, it is very important that the Action Plan provides for coordination of activities related to: a) education of employees in the systems of social protection, education and health care about the detrimental effects of early and forced marriages and b) education of parents and young girls about the prohibition, sanctions and harms of early marriage, to be conducted by the teams of health mediators, pedagogical assistants and coordinators for Roma issues in local self-governments.<sup>55</sup> As one of the goals of gender sensitive formal education, the Strategy envisages a measure: introduction of education on sexual and reproductive health and rights in accordance with age, including the issues of gender relations, gender roles, communication between the sexes and responsible sexual behaviour, in the curricula of elementary and secondary schools<sup>56</sup>, which was one of the recommendations of the Committee on the Elimination of Discrimination against Women.

The third and probably the most important strategic document whose implementation will solve the problems that are the subject of this document is the *Strategy for Social Inclusion of Roma in the Republic of Serbia for the period 2016-2025*<sup>57</sup>, adopted by the Government of the Republic of Serbia on 3 March 2016. The Strategy points out that the proposed measures create a space for gradual but **sure and permanent elimination of social inequality and poverty** as a phenomenon that burdens the political, economic, social and financial system.<sup>58</sup>

The Strategy describes the situation in certain areas of importance for the improvement of the situation of Roma (education, employment, housing, health care and social protection) and justifiably focuses most on the measures to be taken in the field of education, starting from pre-school education, as the foundation of social inclusion, highlighting the importance of preventing early drop-out of Roma children from the education system, detecting risks – particularly for Roma girls in the transition from the fourth to the fifth grade, and then in the transition from primary to secondary school. The Strategy concludes that the practice in schools and social welfare centres is still insufficiently effective in stopping drop-outs, both in terms of prevention and intervention.<sup>59</sup>

In addition to the explicit goal to improve the system of prevention and support in order to reduce the number of child and forced marriages and adolescent pregnancies in the Roma community, it is necessary to develop local agreements on cooperation between social welfare centres, social care providers and schools, as well as agreements on supporting the families whose children do not attend school or are at risk of drop-out.<sup>60</sup>

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<sup>54</sup> Ibid, p. 46

<sup>55</sup> Ibid, pp. 97 and 98

<sup>56</sup> Ibid, p. 40

<sup>57</sup> <http://www.minrzs.gov.rs/lat/dokumenti/medjunarodna-saradnja/strategija-za-socijalno-uklju%C4%8Divanje-roma-i-romkinja-u-republici-srbiji-za-period-od-2016-do-2025-godine>

<sup>58</sup> Ibid, p. 4

<sup>59</sup> Ibid, p. 34

<sup>60</sup> Ibid, pp. 84 and 85

The Strategy envisages that the first Action Plan, covering the period from 2016 to 2017, will be adopted at the latest 90 days after the publication of the Strategy. In the meantime, the Government has formed the Coordination Body for the implementation of the Strategy, but the Action Plan for the first two years has not yet been adopted.

Please note that the *National Action Plan for Children (NPA)*<sup>61</sup>, which was adopted in February 2004 and expired at the beginning of 2015, was also a strategic document of the Government of the Republic of Serbia, which defined the country's general policy towards children.<sup>62</sup> It contained eight goals: 1) Reduction of child poverty; 2) Quality education for all children; 3) Better health for all children; 4) Improving the situation and rights of children with disabilities; 5) Protecting the rights of children without parental care; 6) Protection of children from abuse, neglect, exploitation and violence; 7) Strengthening the country's capacity to solve problems of children.

Although some of these goals implied the prevention of child marriages, they are not explicitly mentioned in the NPA, except that in the context of ensuring better health for all children, a specific goal is defined: reducing rates of adolescent pregnancies before the age of 18.<sup>63</sup>

There is no available information indicating the beginning of the development of the National Plan of Action for Children for the next ten-year period.

- **Protocols**

In addition to the aforementioned Constitution, laws and strategies, there are certain documents that are very important for operational actions at the local level and contribute to the protection of children from abuse and neglect and the protection of women from domestic violence. First of all, it is the *General Protocol for the Protection of Children from Abuse and Neglect*, adopted by the Government of the Republic of Serbia in 2005<sup>64</sup>, and there are also sector-specific protocols in the field of social protection, police, education, health care and justice. It should be noted that in Serbia there are only ten special protocols for the protection of children from violence regulating the implementation of the General Protocol for the Protection of Children from Abuse and Neglect, i.e. the protocols that primarily regulate cooperation of institutions in cases of abuse and neglect.<sup>65</sup> The General Protocol was adopted 11 years ago, but its importance is still the subject of doubts, although it is a very important tool that greatly facilitates the solution of the problem of violence against children in the broadest sense. Here we will point out only to the definition, according to which neglect is the caregiver's/parent's failure to ensure the child's development in all areas: health, education, emotional development, nutrition, housing and safe living conditions, within the resources reasonably available to a family or caregiver, which impairs or will very likely impair the child's health or physical, mental, spiritual, moral or social development.

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<sup>61</sup> <http://www.minrzs.gov.rs/files/doc/podrocna/strategije/Nacionalni%20plan%20akcije%20za%20decu.pdf>

<sup>62</sup> Ibid, p. 5

<sup>63</sup> Ibid, p. 46

<sup>64</sup> <http://www.minrzs.gov.rs/files/doc/podrocna/zlostavljanje/Opsti%20protokol%20zlostavljanje%20i%20zanemarivanje%20deca.pdf>

<sup>65</sup> 2016 National Survey conducted by MODS in partnership with UNICEF and in cooperation with SeConS. Information retrieved from: <http://www.zadecu.org/saopstenja.php?id=2808>.



*The Rulebook of procedure in institutions in response to violence, abuse and neglect* is also very instructive for educational institutions. Thus, the educational sector protocol has become legally binding, which is important because the employees of educational institutions work with a very vulnerable group - children who stay in these institution for up to eight hours a day and whose best interests they are obliged to respect. It is essential for our analysis that the Rulebook imposes an obligation on educational institutions to act whenever there is a suspicion or knowledge that a pupil suffers violence, abuse and neglect, regardless of who has committed it, where it happened, whether it is happening or being prepared to happen.

We will mention also the *General Protocol for Action and Cooperation of Institutions, Bodies and Organisations in the Situations of Violence against Women within the Family and in Intimate Partner Relationship*<sup>66</sup>, because the child, early and forced marriages can be recognised as forms of domestic violence. In fact, the General Protocol very clearly defines that "violence against women in intimate partner relationships is a result of an imbalance of power between women and men" and leads to discrimination against women. Discrimination includes gender-based violence or violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes any process that leads to harm or suffering of physical, mental or sexual nature, including threats of such acts, as well as "**coercion and other forms of restriction of freedom**".<sup>67</sup>

Identification of such violence by competent authorities and their actions are regulated by the special protocols of the Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health, the Ministry of Justice and the Ministry of Interior for responding to cases of violence against women in the family and intimate partner relationships.

### **Child, early and forced marriages in Serbia**

Although statistically speaking there is no alarmingly high percentage of child, early and forced marriages in Serbia, this phenomenon should not to be ignored and deserves serious attention and zero tolerance.

According to the demographic statistics in 2013, 2017 girls in the age group of 16 to 19 years were married. In 195 cases, the husband was also from the same age group.<sup>68</sup> According to data published by the Statistical Office of the Republic of Serbia, many more girls and women are in extra-marital unions than boys and young men. Specifically, the number of girls in the age group of 15 to 19 years is slightly below 5,000, while the number of boys is about 1,000.<sup>69</sup> In addition, in 2013 it was registered that mothers younger than 15 have 43 children born out of wedlock, but there is no data on children born to mothers under 15 years of age who are married. In the age group of 15 to 19 years, 1,065 children were born in marriage and 2,324 children were born out of wedlock.<sup>70</sup> On the occasion of the International Girls Day, in 2013 the Protector of Citizens

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<sup>66</sup> <http://www.minrzs.gov.rs/files/doc/porodica/nasilje/Opsti%20protokol%20nasilje%20u%20porodici.pdf>

<sup>67</sup> General Protocol, p. 5.

<sup>68</sup> Statistical Office of the Republic of Serbia: Demographic Yearbook in the Republic of Serbia, 2013, p. 226, <http://webzrs.stat.gov.rs/WebSite/repository/documents/00/01/63/42/Dem.pdf>

<sup>69</sup> Statistical Office of the Republic of Serbia: Women and Men in the Republic of Serbia, Belgrade, 2014, p. 20, [http://webzrs.stat.gov.rs/WebSite/repository/documents/00/01/61/09/ZiM\\_srpski\\_web.pdf](http://webzrs.stat.gov.rs/WebSite/repository/documents/00/01/61/09/ZiM_srpski_web.pdf)

<sup>70</sup> Ibid, p. 21

stated in a press release<sup>71</sup> that 420 extra-marital unions in which one partner is younger than 16 had been registered in Serbia, and that in 395 cases the partner under 16 was a girl. It is not easy to determine the number of child marriages or the number of extra-marital unions in which, as a rule, the bride's age is below the legal minimum. They are estimated at about 2,000 per year.<sup>72</sup> According to available data, 108 adults were reported in 2014 for the criminal offence of cohabiting with a minor. In 2014, 77 individuals were sentenced for this criminal offence: 13 were punished with imprisonment, 5 were fined, 56 were on a suspended sentence, 1 was punished with community service, while judicial admonition was pronounced to 2 perpetrators.<sup>73</sup>

According to data of the Statistical Office of the Republic of Serbia, a total of 36,949 marriages were concluded in 2015.<sup>74</sup> If the number of 2,000 child marriages is correct, then the annual percentage of these marriages is 5.4%, which confirms our assessment that this phenomenon should not be ignored and that this is not a statistical error, but the scale that deserves a whole series of well-designed activities.

The UNICEF 2014 Serbia Multiple Indicator Cluster Survey and Serbia Roma Settlements Multiple Indicator Cluster Survey provide a large amount of indicative data<sup>75</sup>. At the time of survey, 43% of young Roma girls aged 15 to 19 were married. That percentage is significantly higher in girls from the poorest households - 52%, which confirms that poverty is one of the key motives for early marriage. In addition, as many as 17% of women in Roma settlements aged 15 to 49 were married before the age of 15. These numbers are significantly lower in the general population and only 4% of women aged 15 to 19 were married or lived in extra-marital unions at the time of survey. The fact that the number of young married women from the general population is higher if they live in the poorest families and reaches 9% confirms that poverty pushes girls into marriage.<sup>76</sup>

The UNICEF survey provides also some other data about the factors that have an indirect impact on the incidence of child, early and forced marriages in Roma girls. While in the general population there are more girls than boys in secondary schools, in the Roma population it is the other way around.<sup>77</sup> Also, the education of Roma girls is at a lower level in non-urban areas and in the poorest households. UNICEF also presents the following data relating to the completion of primary education of different groups of children: the highest school completion percentage is in the general population (93%), significantly lower percentage refers to children living in poverty (66%) and lowest percentage refers to children from Roma settlements (64%).<sup>78</sup>

The Strategy for the Development of Education in Serbia until 2020 states that there are no data on the percentage of Roma children who enrol in high school, that this number is probably

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<sup>71</sup> <http://ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/3037-2013-10-11-12-22-37>

<sup>72</sup> VREME, 1323, 12 May 2016, <http://www.vreme.com/cms/view.php?id=1393681&print=yes>

<sup>73</sup> <http://www.bibija.org.rs/images/rani-brakovi.pdf>, p. 24

<sup>74</sup> [http://webzrzs.stat.gov.rs/WebSite/repository/documents/00/02/16/17/SN50\\_169\\_srb-2015.pdf](http://webzrzs.stat.gov.rs/WebSite/repository/documents/00/02/16/17/SN50_169_srb-2015.pdf)

<sup>75</sup> Statistical Office of the Republic of Serbia and UNICEF. 2014. Serbia Multiple Indicator Cluster Survey and Serbia Roma Settlements Multiple Indicator Cluster Survey, 2014, Final Reports. Belgrade, Serbia: Statistical Office of the Republic of Serbia and UNICEF. Available at:

[https://www.unicef.org/serbia/Serbia2014MICS\\_NationalandRomaSettlements\\_Eng\\_2015FINAL.pdf](https://www.unicef.org/serbia/Serbia2014MICS_NationalandRomaSettlements_Eng_2015FINAL.pdf)

<sup>76</sup> Ibid

<sup>77</sup> Gender Aspects of Life Course in Serbia Seen through MICS Data, Belgrade, September 2015, p. 7

<sup>78</sup> <http://www.unicef.rs/inkluzivno-obrazovanje-215.html>

negligible, since only 8.3% of Roma children enrol in some form of secondary education and only 6,2% of them complete it<sup>79</sup>. The Strategy for Social Inclusion of Roma in the Republic of Serbia for the period 2016-2025 points out that while in the general population the coverage of young people with secondary education is around 90%, this percentage among young Roma is about 22%. The coverage of boys is somewhat higher than the coverage of girls (28% and 15% respectively), which directly indicates the gender dimension of the problem.<sup>80</sup>

Some other data obtained from the UNICEF survey<sup>81</sup> indicate a discriminatory position of Roma girls and women in (extra-)marital unions. In fact, even 37% of Roma women from Roma settlements justify domestic violence, while that percentage is significantly lower in the general population and equals 3.8%. There are also some brave Roma women who have managed to terminate the forced marriage in which they suffered denigration from all members of the husband's family.

As for early marriage, the UNICEF survey has shown that 57% of women aged 20-49 were married before the age of 18, compared to 6.8% of women in the general public. The percentages are dramatically different in case of women aged 20 to 24 who gave birth before the age of 18: 38.3% for Roma woman or 377 girls and 1.4% for women in the general population. In addition, the percentage of Roma children who continue secondary education is 58.7 compared to 96.3% of children among the general population. The indicator of education by gender in Roma settlements shows that the percentage of boys who continue secondary education is 72%, compared to 39% among girls.

Unacceptably often for a democratic country, the problem of child, early and forced marriages is perceived among professionals as an exclusive problem of the Roma population or practice in accordance with the Roma customary law. Most cases of children, early and forced marriages are tacitly ignored by the state. Training is not organised for professionals in the key systems (education, social protection, health care, police, judiciary) to eliminate deeply ingrained stereotypes and prejudices towards Roma.

It was recognised by the **UN Committee on the Rights of the Child** at the time of considering the Initial Report of the Republic of Serbia for the period 1992-2005, and in its 2008 Concluding Observations the Committee recommended to Serbia to urgently and explicitly: *Raise awareness in the Roma communities of the value of the girl child, her right to access education without discrimination as well as her right to be protected from early marriage and its harmful impact.*<sup>82</sup>

**The Committee on the Elimination of Discrimination against Women**, another UN treaty monitoring body, in its 2013 Concluding observations on the combined second and third periodic report of the Republic of Serbia expresses concern that no progress has been achieved in preventing early and forced (arranged) marriages among the Roma population and other minority groups, but also about the amendments to the Criminal Code in 2009 that have

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<sup>79</sup> According to data of the Roma Education Fund, 2004, p. 48 of the Strategy.

<sup>80</sup> <http://www.slglasnik.info/sr/26-10-03-2016/33267-strategija-za-socijalno-ukljucivanje-roma-i-romkinja-u-republici-srbiji-za-period-od-2016-do-2025-godine.html>, p. 26

<sup>81</sup> [http://www.unicef.rs/files/MICS5\\_Srpski\\_web.pdf](http://www.unicef.rs/files/MICS5_Srpski_web.pdf)

<sup>82</sup> UN Committee on the Rights of the Child, Forty-eight session, Concluding observations: Republic of Serbia, CRC/C/SRB/CO/1, 20 June 2008.

abolished articles on “concluding a void marriage” and on “enabling to enter into unlawful marriage”. In addition, the Committee recommends to the Republic of Serbia to work on raising awareness among the Roma population and other minority groups. At the same time, the Committee considers that professionals, primarily social workers, should also be empowered.<sup>83</sup> Further, the Committee recommends to Serbia to promote enrolment and attendance of Roma children, particularly girls, at the primary and secondary levels of education in regular schools, and eliminate all barriers, including financial barriers, for their access to education; to revise textbooks used for secondary education to eliminate patriarchal gender stereotypes, and to introduce sexual and reproductive health education in the curriculum for all levels of education.<sup>84</sup>

As already mentioned in the section on strategic framework, following this last recommendation of the Committee on the Elimination of Discrimination against Women, the Action Plan for the implementation of the *Strategy of Prevention and Protection against Discrimination for the period 2014-2018*, in section 4.1 - Education and professional training, includes as one of the measures relating to women the introduction of sexual education and education on reproductive health, prevention of pregnancy at an early age and early marriages.<sup>85</sup> One of the goals is also the establishment of a mechanism for the implementation of all the recommendations from the Committee's Concluding observations<sup>86</sup>, which had to be completed by the end of 2015.

### Judicial Practice in Serbia

Unlike the executive branch at the national and local levels, which has the power to work on the prevention of child, early and forced marriages, but does very little about it, the courts impose sanctions in these cases in an encouraging way, demonstrating that it is possible to stop this harmful practice and that there are no grounds for believing that early marriage is a part of customary law of the Roma community.

During 2013 and 2014, two court proceedings were completed in which men were sentenced on the basis of Article 180 of the Criminal Code, which prescribes punishment for sexual intercourse with a child.

In one case a man was sentenced to three years of imprisonment, and after his appeal the Appellate Court in Kragujevac<sup>87</sup> unanimously upheld the first-instance decision of the Higher Court in Jagodina and also ordered the accused to pay court costs. In the appeal, the accused person's attorney stated, among other things, that both boy and girl were from Roma families, who usually got married and had sexual relations at an early age. In contrast to the attorney's opinion, the court found that this **fact was not of any importance** because the age difference between the men and the girl was significant, i.e. 10 years, and that the man was obviously aware of that difference.

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<sup>83</sup> Concluding observations on the combined second and third periodic report of the Republic of Serbia, UN CEDAW/C/SRB/CO/2-3, 25 July 2013, point 38

<sup>84</sup> Ibid, point 29 (a), (b) and (c)

<sup>85</sup> [http://www.ljudskaprava.gov.rs/images/pdf/propisi\\_i\\_strategije/Akcioni\\_plan\\_-\\_srpski.pdf](http://www.ljudskaprava.gov.rs/images/pdf/propisi_i_strategije/Akcioni_plan_-_srpski.pdf)

<sup>86</sup> Point 3.1.4, p. 14 of AP

<sup>87</sup> KŽ -772/14, of 12 May 2014

In the second case, the then Higher Court in Pirot rendered a judgment<sup>88</sup> very shortly after the prosecutor's indictment (within less than two months), sentencing the accused to one year of imprisonment for cohabiting with a girl who was only 13 years old at the time of establishing the extra-marital union. It is interesting that the court refused to hear the accused person's mother, who wanted to testify that the girl's mother had been at the wedding lunch and thus approved the extra-marital union, as documented by a photo. The court held that it was not relevant for deciding on the criminal responsibility of the accused, because in the period of one month he had a sexual intercourse with a child four times, which was unquestionably a continuing criminal offence. In this case, the court was informed that other administrative authorities had failed to act although they had been informed about the criminal offence. Specifically, the victim's mother stated that she had previously reported the incident to the school and the competent social welfare centre, but they did not react. The girl left the extra-marital union, returned to school and completed the eighth grade.

In addition to these two, there is an interesting decision of the Appellate Court in Kragujevac (Gž 2125/2013 of 9 September 2013), which established that the bride purchase case was an absolutely void legal transaction, although concluded in accordance with the customs of the Roma population to which the litigants belonged.

The first-instance court established that on the basis of an oral agreement concluded in 1998 on the so-called "purchase of the bride" the plaintiffs - parents of the groom paid the defendant - the father of an underage girl the amount of DM 27,000. Upon payment of that compensation, the underage girl entered into an extra-marital union with the plaintiffs' son, and the marriage was concluded upon obtaining the approval for marriage. The marriage lasted three months when the girl was returned to her parents.

The first-instance court found that the aforementioned agreement on the "purchase of the bride" was a null and void legal transaction within the meaning of Article 103 of the Law on Obligatory Relations because although concluded in accordance with the customs of the Roma population to which the litigants belonged, **it was contrary to the moral views of the wider community, imperative legal regulations, ratified Convention on the Rights of the Child and the European Convention on Human Rights.**

The court decision states that the appeals unfoundedly and arbitrarily point to incorrect application of substantive law, because the **court cannot give priority to the disappearing customs of the Roma population related to the "purchase of the bride" over the interests of the wider community**, particularly bearing in mind the fact that it is about a minor daughter of the defendant and that this legal transaction is contrary to Article 14 of the European Convention on Human Rights, which contains a prohibition of discrimination, and also taking into account the best interests of the child prescribed under Article 3 of the Convention on the Rights of the Child and incorporated into Article 6 of the Law on Family.

The court also ordered to the defendant to submit the amount of 13,805 euros in dinar equivalent to the municipality of his residence.

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<sup>88</sup> K.no. 36/13 of 13 December 2013

## Good Practices of Prevention and Elimination of Child, Early and Forced Marriages

Bangladesh is among the countries with the highest percentage of child, early and forced marriages. The data indicate that 52% of young women who are today between 20 and 24 years old were married before the age of 15, while the total percentage of girls who were married before the age of 18 is 74%<sup>89</sup>. However, the absolute number of women now aged 20 to 24 who were married before the age of 15 is even more disturbing - 2,359,000!<sup>90</sup> Only India, because of the size of its population, has a greater number of child marriages and it reaches over 10 million. Most of them become mothers while they are still children.

The authorities in Bangladesh saw the first step towards the emancipation of girls<sup>91</sup> in the possibilities provided by the education system and training for performing different jobs and acquiring skills, but also in raising awareness about gender equality. Thus, the probability of marrying as children decreased by 31% in girls who had educational support in mathematics and English language, computer science or finance. Another element that resulted in reducing the number of child marriages was the adoption of life values, including training on gender equality and decision making, which also decreased the percentage of girls who wanted to marry before the age of majority by 31%. The girls who were trained to work on computers, to engage in entrepreneurship, servicing of mobile phones, photographing, or who acquired basic first aid skills, showed 23% less interest in entering into child marriages.<sup>92</sup>

Unlike Bangladesh, the Republic of Serbia is still not engaged in specific activities that would lead to reduction in the rate of child, early and forced marriages, although it was "called upon" by the UN treaty monitoring bodies.

There are very few cases of good practice in institutions when it comes to the prevention and elimination of child, early and forced marriages. An example of institutional engagement is the work of one of the Belgrade Social Welfare Centres, which handled the case of the extra-marital union of minors by applying the institute of temporary guardianship of the girl, which allowed her to exit a situation in which she found herself as a result of her grandfather's decision. The girls aged 15 years reported her father for abuse and escaped from the house to her maternal grandfather's place. Her mother had died a year before, when her father took over care of five children. The girl was referred to the psychologist at the Institute for Mother and Child Health Care for the purpose of specialist diagnostics, but she did not go to the scheduled examination, because first she lost the referral, and later she refused to go. She also refused the offered accommodation in a home for children of secondary school age, with the excuse that she was fine at her grandfather's. After some time the girl moved to another city to live in a family with three minors including a boy aged 14. The girl denied that her maternal grandfather arranged the "marriage", stating that those were their long-time friends and that she felt well in that family and was satisfied with the way they treated her. The expert team of the Social Welfare Centre appointed a temporary guardian of the girl since she did not live in her biological family and given that the maternal grandfather abused the girl's trust. The appointed temporary guardian was a professional from the centre, who had a duty to protect the girl's interests and

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<sup>89</sup> United Nation Children's Fund, Ending Child Marriage: Progress and prospects, UNICEF, New York, 2014

<sup>90</sup> [www.girlsnotbrides.org](http://www.girlsnotbrides.org)

<sup>91</sup> The BALIKA project was initiated by the Population Council.

<sup>92</sup> [http://www.popcouncil.org/uploads/pdfs/2016PGY\\_BALIKA\\_EndlineResults.pdf](http://www.popcouncil.org/uploads/pdfs/2016PGY_BALIKA_EndlineResults.pdf)

rights until she attained the age of majority. The girl was informed that she could always opt for accommodation in the social protection institution and advised on how to protect herself from violence. Thus, she was given an alternative option if she faced problems in the "new family". The members of her "new family" were also informed about the role of temporary guardian; they were obliged to enable the girl to continue education and to make her available for contact with her temporary guardian any time she requested it. The expert team of the Social Welfare Centre in this case assessed that the girl's best interests were compromised, as well as her right to education and development and applied the available measure.

This, presently rare example of proactive action of the administrative body in case of learning about the extra-marital union between two children, has a potential to gather other institutions around the social welfare centre (school, police, health care institution, as well as the social welfare centre in the place of temporary residence) in a case conference where they will jointly find out a solution in the best interest of the girl.

As regards the work of the civil sector in the prevention and elimination of child, early and forced marriages, there are several significant initiatives.

The Roma Women's Center *Bibija*, founded in 1998, is without a doubt one of the civil society organisations in Serbia that has largely contributed to the visibility of the problems faced by Roma women and their emancipation in our society. It focuses particularly on the empowerment of Roma girls and young women. The goals of this organisation provide the framework for the prevention of child, early and forced marriages. Bibija's activities are manifold but the priority is given to psychosocial workshops in the field targeting Roma women. The central topics of these workshops are the rights to education, health care, employment, life free of violence, and the right to free choice of partner, all of which contributes to raising the awareness of Roma women that they are the ones who make the decisions relevant to their lives. Consequently, such work, in conjunction with other activities, contributes to changes among Roma girls and young women.<sup>93</sup> In early 2016, Bibija published the results of its project entitled *(Too) Early Marriages - Life Stories of Roma Women*.<sup>94</sup> One of these girls (Antigona, 18 years old) tells her story and says that she would adopt a law according to which girls should first finish school, get a job, and then marry, and that she certainly would not have married if she had had the opportunity to complete primary school.<sup>95</sup> The Bibija activists hope that this publication will contribute to raising awareness about the problem of early marriages in the Roma population and about the evident need to improve the situation of Roma women in the Republic of Serbia, who are often exposed to multiple discrimination.

We should also mention the recommendations<sup>96</sup> contained in this publication, which point to directions for future action of Bibija and other Roma organisations:

- Roma women's civil society organisations should take the lead in initiating and conducting research on the problem of child, early, adolescent and arranged marriages

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<sup>93</sup> <http://www.bibija.org.rs/o-nama/2-romski-zenski-centar-bibija>

<sup>94</sup> <http://www.bibija.org.rs/publikacije>

<sup>95</sup> Ibid, p. 42

<sup>96</sup> Ibid, p. 4

on a large sample in order to determine the causes of the prevalence and consequences of this phenomenon;

- A special part of research should be focused on identifying practices of relevant institutions, social welfare centres, courts and other competent institutions;
- Roma organisations and Roma leaders need to work together in the field with Roma women organisations to provide support to families, especially girls, and prevent early dropout and marriage.

We believe that the leadership of Roma organisations must insist on the responsibility of all competent public authorities at the national and local levels, which ought to work on the elimination of the harmful practices of child, early and forced marriages because it is a violation of child rights.

There are some examples of good practice in Serbia, including the activities of civil society organisations, which, though not focusing primarily on the reduction or elimination of child, early and forced marriages, certainly have impact on the emancipation of Roma girls.

*One of examples* relates to the activities of the Christian humanitarian organisation "Bread of Life"<sup>97</sup>, which began in 2004 with the implementation of the programme *Support to Education and Integration of Marginalised Children*. It was originally envisaged that the programme would last three years, but due to the needs of the target groups and achieved results, cooperation with the partners is still ongoing. During implementation, the programme has been adapted and developed in accordance with the conditions and needs. The project activities of this organisation are numerous: a) learning support for primary school first to fourth graders; organising classes to help pupils with homework in Serbian language and mathematics; helping primary school fifth to eighth graders to gain an understanding of teaching content and complete the assignments of curricular subjects; one day a week is dedicated to socialising, playing and creative work; b) organising kindergarten to prepare children to enter the education system; c) organising workshops on parenting, family, health, prejudice and diversity for socialising with mothers once a week; organising monthly parent meetings, home visits, humanitarian assistance for the most vulnerable, and organising counselling and assistance in the exercise of various social rights; d) organising excursions, camps, sports activities.

Other activities are organised within the framework of the project, such as basic education of adults/parents, as well as training and practical work for potential Roma leaders to provide them with the opportunity to gain experience.

*Another example* of good practice, which includes the goal of raising the minimum age for marriage of Roma children, is a project implemented by the NGO *Society for the Improvement of Roma Settlements* through setting up of Development and Education Centres in eight municipalities in south Serbia with a significant size of Roma population (Bojnik, Vladičin Han, Kruševac, Lebane, Niš, Pirot, Prokuplje and Surdulica).<sup>98</sup> The project implementation began in 2004 to support inclusion in education of children from marginalised groups.

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<sup>97</sup> <http://breadoflife.org.rs/obrazovanje-roma.php>

<sup>98</sup> <http://www.naslovi.net/2012-01-04/politika/podrska-romima-na-jugu-srbije/3078990>



The Development and Education Centres have become locally based centres whose purpose is to support inclusion, co-financed by municipalities and connected with the formal education system. The main programme activities in the previous period were focused on increasing the number of Roma children included in the education system, improving their educational level, improving the quality of education, longer retention of Roma within the education system and improving the education of the Roma population in south Serbia in general. The activities of these centres include also pre-school activities, work with parents to improve their capacity, remedial classes for children in primary schools and compensatory programme for children who have dropped out of school. Compensatory programme includes planned interventions aimed at preventing or at least mitigating the intellectual, social, emotional and physical developmental delay of children, but the programme targets also the adults from economically, culturally and educationally deprived environments. The Development and Education Centres focused also on working with the local community through the establishment of project teams, composed of representatives of the Roma community, non-governmental sector, municipal administration and professionals from public institutions.

The methodology, model and capacity developed during the implementation of the Development and Education Centres have created a strong foundation for the development of other projects and programmes aimed at Roma inclusion, supported also by the Ministry of Education, Science and Technological Development (DILS, DILS/REF<sup>99</sup>, IMPRES<sup>100</sup>, and Education for All<sup>101</sup>).

Bearing in mind the numerous positive experiences and success in the implementation of civil sector projects, it is important for the state to recognise the examples of good practice and support the implementation of certain activities as a good problem-solving model.

## PROPOSALS AND RECOMMENDATIONS

Prevention and elimination of child, early and forced marriages is **a duty of public authorities and professionals**, due to the fact that this phenomenon constitutes a violation of child rights and a form of gender-based violence, and has a number of adverse effects on the overall development of children, primarily girls and also women. These are the tasks for the authorities at the national level, but particularly for the authorities at the local level.

The experience gained during the implementation of the Praxis project confirmed our view that the activities on the prevention and elimination of child, early and forced marriages must be implemented simultaneously at multiple levels and in several fields: through working with the Roma community, sensitisation of professionals and strengthening their capacity and skills to work with vulnerable groups, cooperation of competent institution and their better coordination, as well as through raising awareness of the general public about the fact that child, early and forced marriages are a violation of children's and women's rights and obvious gender-based discrimination. Hence, we have grouped our proposals and recommendations as follows.

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<sup>99</sup> <http://www.vreme.com/cms/view.php?id=1143206&print=yes>

<sup>100</sup> <http://www.predskolci.rs/HTML/impres/www.impres.rs/home/index.html>

<sup>101</sup> <http://europa.rs/jednake-sanse-za-obrazovanje/>

## 1. Activities at the National Level

### 1.1. Legislation:

- Adhere to the Constitution of the Republic of Serbia, international treaties and legislation regulating children's rights to life and development, protection from psychological, physical, economic and any other exploitation and abuse, protection from discrimination, respect for equality between men and women and freedom of deciding about getting married;
- Align the Criminal Code with the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), i.e. re-introduce to the Criminal Code these previously deleted criminal offences: conclusion of a void marriage and enabling to enter into unlawful marriage;
- In the field of children's rights to an identity - Amend the by-law that regulates the way of registration into birth registry books to ensure the enrolment of children at birth, regardless of the status of parents. This would remove the current barriers preventing the registration of a child immediately after birth due to the lack of parents' personal documents.<sup>102</sup>
- Urgently adopt the Law on Free Legal Aid in order to provide legal protection to girls and young women victims of forced marriages;
- Amend the Law on Health Care in order to introduce the position of health mediator into job classification and make it sustainable in the health care system.

### 1.2. Gender equality policy:

- Monitor the implementation of the National Strategy for Gender Equality for the period 2016-2020 and the Action Plan for its implementation for the period 2016-2018, because of its explicit reference to the prevention of early child marriages.

### 1.3. Policy of child protection, in particular the protection of children from violence, abuse and neglect:

- Start drafting a new National Action Plan for Children for the following ten-year period, explicitly proposing the methods and measures for the prevention and elimination of child, early and forced marriages;
- Start drafting a new National Strategy for the Prevention of Children from Violence, Abuse and Neglect and the Action Plan for its implementation, including measures for the elimination of child, early and forced marriages;

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<sup>102</sup> CSO submission to the Committee on the Rights of the Child of 1 March 2016 available at: [http://praxis.org.rs/images/praxis\\_downloads/ISI\\_ENS\\_Praxis-Serbia\\_CRC-74th\\_Session\\_.pdf](http://praxis.org.rs/images/praxis_downloads/ISI_ENS_Praxis-Serbia_CRC-74th_Session_.pdf)

- Ensure implementation of the General Protocol for the Protection of Children from Abuse and Neglect and sector-specific protocols, by adopting by-laws that will guarantee the mandatory application, similar to the practice existing in the education system<sup>103</sup>;
- Advocate for signing the agreement on cross-sector cooperation at the local level in the implementation of the General Protocol for the Protection of Children from Abuse and Neglect, with the civil society organisations dealing with the protection of children's rights as signatories to the agreement;

#### 1.4. Education policy:

- The Ministry of Education, Science and Technological Development and the National Education Council should urgently revise textbooks at all levels of education in order to completely eliminate patriarchal gender stereotypes, which reflect prejudices about gender roles, as a rule, to the detriment of girls and women and have a clear impact on the scale of gender-based violence and the subordinate role of women in the family, especially in socially vulnerable population;
- Introduce in the curricula the contents about sexual<sup>104</sup> and reproductive health, prevention of pregnancy at an early age and early marriage at all levels of education, starting from pre-school education;

#### 1.5. Policy of support to national minorities:

- Provide professional and financial support to the activities of the Roma National Minority Council to raise awareness in the Roma community/parents about the importance of educating children, especially girls who drop out of school more often than Roma boys, with the aim to prevent and eliminate child, early and forced marriages. Empower the Roma National Minority Council, through providing support in mobilising relevant Roma civil society organisations to act as an extended arm of the Roma National Minority Council at the local level and monitor the implementation of the measures envisaged in the Strategy for Social Inclusion of Roma in the Republic of Serbia;<sup>105</sup>

#### 1.6. Media:

- Increase the number of media reports about the problem of child, early and forced marriages in the media with national coverage, **with the recommendation to encourage**

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<sup>103</sup> The Ministry of Education has issued a special by-law: *Rulebook of procedure in institutions in response to violence, abuse and neglect*, thus making the General and sector-specific protocols binding.

<sup>104</sup> At the time of finishing this paper, there was an announcement that the NGO Incest Trauma Centre, in cooperation with the Ministry of Education, Science and Technological Development, had prepared educational packages for kindergartens, pre-school institutions, primary and secondary schools. The curricular content was prepared for ten regular subjects in primary and secondary schools: Serbian Language; World around Us; Nature and Society; Physical Education and School Sports; Music Education; Civic Education; Biology; Sociology; Constitution and Civil Rights; and Psychology.

<sup>105</sup> See more details in the Strategy for Social Inclusion of Roma in the Republic of Serbia, p. 5.

**their journalists to analyse the issue of child, early and forced marriages as a problem of violation of child rights and violence against women, and not as acceptable Roma customs that should not be interfered with by the state.**

## **2. Activities and measures at the level of local self-government**

### **2.1. Preventive:**

#### 2.1.1. General measures:

- a) A person in charge of prevention and elimination of this problem should be appointed in each institution in the municipalities where the drop-out of girls from primary school was recorded<sup>106</sup> in the previous school year;
- b) Organise training courses for the employees of relevant institutions (SWC, schools, health care institutions, police, prosecutor's offices) for the purpose of their sensitisation to contribute to the timely identification of potential cases of child, early and forced marriages and their early prevention;
- c) After completed training, the relevant actors should enter into agreements on establishing teams/mechanisms at the local level, consisting of appointed officials from all competent institutions, coordinated by the social welfare centre;
- d) Ensure that civil society organisations dealing with the protection of child and/or women's rights, Roma (women's) organisations and local gender equality mechanisms participate in these teams. Civil society organisations would also monitor the work of teams/mechanisms and point to administrative authorities to omissions in the work on the elimination of child, early and forced marriages;
- e) Include in the local action plans (for youth, gender equality, social inclusion of Roma, etc.), if not already envisaged, the work on the prevention and elimination of child, early and forced marriages, and implement these plans consistently by using the funds provided.

2.1.2. In the field of education, implement all measures that enhance inclusive education and prevent discrimination, including segregation of Roma children, particularly girls<sup>107</sup>:

- a) Increase the coverage of children aged three to four years with quality pre-school education programmes and the coverage of children with preparatory pre-school programme (PPP);

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<sup>106</sup> Use data on the drop-out of girls from primary and secondary schools, collected by the local self-governments by the end of December 2016, as envisaged in the AP for the implementation of the National Strategy for Gender Equality for the period 2016–2020.

<sup>107</sup> At the time of finishing this paper, the *Handbook for the Prevention of Segregation, Development of Inclusive Enrolment Policy and Desegregation of Schools and Classes* will be published by UNICEF and the Commissioner for Protection of Equality. It will include a detailed description of the steps required to prevent segregation in education, and the steps of desegregation where segregation has already occurred, and the role of all stakeholders, primarily at the local level.

- b) Ensure universal primary education for all children;
- c) Monitor actively the enrolment of pupils and their transition to the fifth grade of primary school at the level of local self-government, monitor systematically out-of-school children and solve particular cases of drop-out;
- d) Encourage the enrolment of children from deprived communities, including Roma children, in three-year and four-year secondary schools, and provide financial support to secondary school children from socially disadvantaged families; monitor the effects of the implementation of the *Rulebook for enrolment of Roma pupils in secondary schools by applying affirmative measures*;<sup>108</sup>
- e) Organise support (educational, material, and psychological) to children who need it in order to stay in the education system;
- f) Organise training courses for strengthening the competencies of pedagogical assistants;
- g) Organise workshops for children with the aim of developing and/or increasing motivation for education, with active participation of pedagogical assistants.

Although these activities should take place at the level of local self-governments, these measures require the existence of a monitoring and reporting team in the Ministry of Education, Science and Technological Development, as envisaged by the Strategy for the Development of Education in Serbia until 2020.

#### 2.1.3. In the field of social protection and health care:

- a) Work preventively with parents by organising consultative meetings and workshops aimed at raising awareness about the importance of education, especially for girls, and about the harmful effects of child, early and forced marriages on the health and overall development (using examples of good practice);
- b) Develop programmes to combat gender-based, sexual and intimate partner violence against young women.

### **2.2. Intervention/Corrective Measures and Activities** (when there is knowledge about a case of child, early and forced marriage or extra-marital union with a minor):

#### 2.2.1. General measures:

- a) Apply with full responsibility the sector-specific protocols on the protection of children from violence, abuse and neglect in all sectors relevant to children;

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<sup>108</sup> <http://bazapropisa.net/sr/32-zakonodavstvo/pravilnici/9562-pravilnik-o-merilima-i-postupku-za-upis-ucenika-pripadnika-romske-nacionalne-manjine-u-srednju-skolu-pod-povoljnijim-uslovima-radi-postizanja-pune-ravnopravnosti.html>

b) Establish local teams consisting of appointed professionals from all competent institutions, coordinated by social welfare centres; include the Roma community representative in the work of the team, as well as civil society organisations dealing with the protection of child rights and civil society organisations dealing with the protection of women's rights;

#### 2.2.2. In the field of education:

a) Impose misdemeanour penalties on parents whose children drop-out of compulsory eight-year education;

b) Highlight the obligation of schools to "get out" of the classroom and provide necessary protection to pupils if they suspect domestic violence, child or forced marriage, by immediately informing the competent social welfare centre and the police.

#### 2.2.3. In the field of social protection:

a) If special teams for prevention and elimination of child, early and forced marriages are not established, case conferences should be regularly held as one of the activities of social welfare centres, in order to gather all relevant institutions in one place and obtain necessary information that will constitute a basis for risk assessment and development of activity plan for the protection of a particular child;

b) Use the possibility of assigning a temporary guardian to the child who is a victim of child, early or forced marriage as an interim solution or as an option of supervision and exit;

c) Social welfare centres are authorised to initiate court procedures for the protection of child rights, termination of parental rights, determination of protective measures against domestic violence, etc. or to file a criminal complaint with the competent prosecutor's office in case of learning about a criminal offence of sexual intercourse with a minor or extra-marital union with a minor;

d) In special cases, young brides can be provided with protection in safe houses.

2.2.4. The role of police and prosecutor's offices in filing charges and initiating court procedures must be visible to show the power of public authorities that will not tolerate the violation of children's rights to education, the highest level of health care and development, or the use of harmful traditional practices. These public authorities are expected in all these situations to prosecute parents and other persons who discriminate against children, compromise their best interests and do not respect the child's right to express views in all matters affecting the child, choosing or tolerating marriage for the child for which the child is neither physically nor mentally mature.