



## **Intersectional Discrimination Against Children**

### **Discrimination Against Romani Children And Anti-Discrimination Measures To Address Child Trafficking**

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**INTERSECTIONAL DISCRIMINATION  
AGAINST CHILDREN:  
DISCRIMINATION AGAINST ROMANI CHILDREN AND  
ANTI-DISCRIMINATION MEASURES  
TO ADDRESS CHILD TRAFFICKING**

**Camilla Ida Ravnbøl**

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This paper investigates the issue of intersectional discrimination and the complexities that arise when children experience discrimination on basis of multiple interrelated grounds, such as age, ethnic origin, disability and gender. It was developed as a contribution to the Centre's research on international standards and child protection, in follow-up to the Third World Congress on Sexual Exploitation of Children and Adolescents.

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# **Intersectional Discrimination against Children: Discrimination against Romani Children and Anti-Discrimination Measures to address Child Trafficking**

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**Summary:** This paper adds a perspective to existing research on child protection by engaging in a debate on intersectional discrimination and its relationship to child protection. The paper has a two-fold objective, (1) to further establish *intersectionality* as a concept to address discrimination against children, and (2) to illustrate the importance of addressing intersectionality within rights-based programmes of child protection.

First, the paper applies the concept of intersectionality within a children's context. Intersectionality and intersectional discrimination are concepts used to describe the situation where multiple grounds of discrimination operate at the same time, for example when Romani girls experience harassment and abuse on the basis of their gender and ethnic origin in combination. Using the example of Romani children, the paper sheds light on the complex ways in which children are denied the equal enjoyment of their rights and freedoms because of discrimination against them on the basis of their age in combination with gender, ethnicity, disability, national status, economic status and other grounds. The analysis illustrates how intersectional discrimination takes various forms, such as discrimination within laws and policies or by state authorities (structural intersectionality), and discrimination in political and public forums for participation (political and representational intersectionality). These forms of discrimination can be intentional or unintentional in character, the latter resulting when an apparently neutral provision or practice is discriminatory in its effects.

The analysis further distinguishes between the external sphere (state and society) and the internal sphere (family and community) where children experience interrelated forms of discrimination, and shows how this increases the disempowerment of the child. It is argued that in order to protect the human dignity of all children on an equal footing, existing human rights law must be interpreted and assessed in a way that cuts across traditionally separated legal categories. Furthermore, in order to fully address violations against the rights of the child, legal provisions are necessary that directly target intersectional discrimination.

Secondly, a concrete illustration is presented of addressing intersectionality within programmes for child protection, using the example of rights-based programming to prevent and respond to child trafficking. Through a focus on the impact that discrimination has on children's rights, the importance is underlined of giving systematic and comprehensive attention to children's vulnerability to intersectional discrimination within anti-trafficking programming. The analysis shows that Romani children, and many other children who experience discrimination on interrelated grounds, have difficulties in accessing their entitlements to a broad range of human rights. These include legal guarantees and procedural rights, information, education, participation, health and social assistance, and identity rights. Consequently these children's access to anti-trafficking measures is affected, since the prevention of child trafficking, and protection and empowerment of children, essentially depend upon the enacting of these key child rights.

Furthermore, when anti-trafficking measures do not take issues of intersectionality into account they may unintentionally reproduce the exclusion of those children who are vulnerable to intersectional discrimination. On this basis, the paper highlights areas where intersectional discrimination can be

addressed within programming against child-trafficking in order to ensure the full and equal protection of all children. The recommendations hold relevance for child protection programming more widely.

The main recommendation is to adopt holistic intersectional approaches within the international field of human rights. This requires comprehensive research and the systematic collection of data on which children are vulnerable to such forms of discrimination and in which sectors it occurs. Research should be conducted with children to get a nuanced insight into these issues, and to better understand children's reality. A holistic intersectional approach also includes identification of good practices and capacity building of professionals and institutions involved in child protection on diversity and discrimination issues. This includes establishing forums for dialogue to target discriminatory practices in society, including among children themselves, so that children do not reproduce discriminatory attitudes dominant in society. At the same time, children and adolescents who experience discrimination on interrelated grounds, namely intersectional discrimination, should be consulted and involved in developing policies and programmes that address discrimination

It is important to interpret traditionally separated areas of human rights law in closer relation to each other, as well as to develop new legal provisions and political commitments that directly target intersectional discrimination. The concepts of structural, political and representational intersectionality and internal/external intersectionalities serve in this paper to distinguish between the different forms of discrimination affecting children and thus to identify the particular measures needed to address these issues.

**Keywords:** intersectional discrimination and multiple discrimination, child protection, child trafficking, human rights law, implementation of the Convention on the Rights of the Child, Roma and Romani children

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## Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women. CEDAW Committee is used for the Committee on the Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination. CERD Committee is used for the Committee on the International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child. CRC Committee is used for the Committee on the Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ERRC	European Roma Rights Centre
EU	European Union
EUMC	European Monitoring Centre on Racism and Xenophobia
FCNM	European Framework Convention for the Protection of National Minorities
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IRWN	International Roma Women's Network
MRG	Minority Rights Group International
NGO	non-governmental organization
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDM	United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund

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# 1. INTRODUCTION

Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child...

Committee on the Rights of the Child, General Comment No. 1, 2001<sup>1</sup>

Non-discrimination is a fundamental principle in human rights law, recognized as key to the experience of human dignity of all human beings.<sup>2</sup> As implementing article to the Convention on the Rights of the Child (CRC, adopted 1989), article 2(1) states that:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

The Committee on the Rights of the Child (hereafter CRC Committee) notes with concern how discrimination interferes with the rights and fundamental freedoms of children worldwide.

Discrimination is broadly recognized as a contributing root cause in various child protection concerns. Together with other factors, such as poverty and conflict, discrimination causes the marginalization and exclusion of certain children in society and thus increases their vulnerability to rights violations. The CRC Committee in examinations of various countries highlights how, for example, girls, children in poverty, children belonging to minority groups, to indigenous communities, or to lower castes, children with disabilities, migrant children, street children, children in conflict with the law, etc., are vulnerable to abuse and exploitation because they occupy a marginal position in society. Thus there are strong indications showing that some children are more vulnerable to human rights violations because they are discriminated against not only on the basis of their age, but because this ground for discrimination interrelates with discrimination against them on other grounds, such as their ethnic origin, gender, disabilities, national status, economic status, etc.<sup>3</sup> This issue of discrimination on several interrelated grounds is termed “intersectional” discrimination by many scholars and institutions, for example by Kimberlé Crenshaw, Timo Makonnen, the European Commission and in various United Nations institutions, notably at the Durban Conference in 2000.<sup>4</sup>

However, apart from the generic international prohibition of discrimination, and broad recognition that discrimination increases the vulnerability of children, the complexities

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<sup>1</sup> CRC/GC/2001/1 para. 10.

<sup>2</sup> See definitions in chapter 2.

<sup>3</sup> For example, CRC/GC/2007/10; CRC Concluding Observations Sri Lanka CRC/C/15/ADD.207/2003 para. 25; CRC Concluding Observations Spain CRC/C/15/Add.185/2002 para. 27. See also Save the Children, ‘Demystifying Non-discrimination for Effective Child Rights Programming in South and Central Asia’, Discussion paper Save the Children Sweden – South and Central Asia Region, 2006, pp. 49, 53 and 55.

<sup>4</sup> See the elaboration on concepts in chapters 2 and 3. Intersectional discrimination describes a situation where several grounds of discrimination interrelate at the same time, such as gender, ethnic origin, disability, etc. Crenshaw, Kimberlé, ‘Mapping the Margins: Intersectionality, identity politics and violence against women of color’, *Stanford Law Review*, Vol. 43, No. 6, July 1991, pp. 1241–1245. Multiple discrimination describes a situation where grounds of discrimination operate separately, e.g. when a Roma woman is discriminated against on the basis of being a woman in one context and for being Roma in another. European Commission, ‘Tackling Multiple Discrimination: Practices, policies and laws’, Office for Official Publications of the European Communities, Luxembourg, p. 16.

surrounding the issue of intersectional discrimination have been granted little attention within existing human rights programming and research. Little knowledge exists on how intersectional discrimination affects children, on which children are vulnerable, and in which sectors interrelated forms of discrimination occur. Furthermore, when discrimination is approached in rights-based programming, and from a legal perspective, it is often on a single ground that separates issues of age, gender, disability, ethnicity, sexuality, etc.

As emphasized in a recent report by the European Commission, more attention needs to be given to intersectional discrimination at international, regional and national levels and to which people or groups of people are vulnerable to such rights violations because they cross-cut legal categories of protection: “Lack of data again adds to an incomplete picture of which intersectional groups are vulnerable and in which sectors Multiple Discrimination occurs... The report recommends action to increase both the capacity to recognize and identify occurrences of Multiple Discrimination and awareness of the need to combat them as such.”<sup>5</sup>

### **1.1. Research objectives and relevance**

This paper aims to engage in a debate on intersectional discrimination and how this relates to child protection. The paper has a two-fold objective: (1) to further establish intersectionality as a useful concept to address discrimination against children, and (2) to illustrate the importance of addressing intersectionality within rights-based programmes of child protection. In order to do so, the paper first applies the concept of intersectionality within a children’s context, using empirical examples of Romani children.<sup>6</sup> This analysis sheds light on the complexity of protecting the rights of children who experience discrimination on interrelated grounds. Secondly, the paper presents a concrete example of how to address intersectionality within programmes on child protection, through a focus on rights-based programming on child trafficking. This analysis sheds light on the various ways in which intersectional discrimination leads to the exclusion or inclusion of certain children and their concerns in anti-trafficking programming.

### **1.2. Analytical and methodological approaches**

The paper applies a rights-based framework of analysis. A rights-based approach can be defined as a framework that integrates the norms, principles, standards and goals of the international human rights system into the plans and processes surrounding a given issue.<sup>7</sup> A central dynamic of a rights-based approach to a given problem is about identifying the root causes of the rights violations, empowering rights-holders to claim their rights and enabling duty-bearers to meet their obligations. Within a children’s context, a rights-based approach means to place the child at the centre of all interventions concerning him or her. The best interest of the child needs to be given primary consideration in all actions concerning the child together with the right of the child to have his or her views heard and taken into

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<sup>5</sup> European Commission, ‘Tackling Multiple Discrimination’, op. cit., p. 5.

<sup>6</sup> Roma/Romani (adj., e.g. Romani women) and Roma (pl., e.g. European Roma) links to the language Romanés and is a self-ascribed political umbrella terminology that gathers all the many different Romani communities. Klímová-Alexander, Ilona, *The Romani Voice in World Politics: The United Nations and non-state actors*, Ashgate, Aldershot, 2005, p. 30.

<sup>7</sup> Definition inspired by Boesen, Jacob Kirkemann and Tomas Martin, *Applying a Rights-Based Approach: An inspirational guide for civil society to development*, Danish Institute for Human Rights, Copenhagen, 2007., p. 9.

account.<sup>8</sup> Focus is on respect for the views of the child by way of listening to children and creating possibilities for their participation in, and influence on, matters that concern them. This follows article 4 of the CRC which establishes that “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.” This approach acknowledges girls and boys as social agents with the rights and capabilities to be consulted on matters that affect them, to express their opinions freely and to seek, receive and impart information. Listening to children and learning from children’s experiences and recommendations are a key reference for the design and implementation of rights-based child protection programmes.

The rights-based approach is further elaborated and discussed in chapter 4, which concerns rights-based programming on child trafficking. Emphasis is placed on the obligation of the state to develop anti-trafficking measures that comprehensively ensure the protection of the rights and freedoms of the child. Recognizing that discrimination is one of the root causes of trafficking, this paper underlines the duty of the state to develop anti-trafficking measures that particularly ensure the non-discrimination and inclusion of particularly vulnerable persons, including those unable to claim their right for themselves.

The paper is based upon desk review of key documents within the field of non-discrimination and anti-trafficking. International human rights instruments and reports by relevant UN bodies and non-governmental organizations (NGOs) are analysed with a particular emphasis on the Convention on the Rights of the Child and CRC Committee General Comments and Concluding Observations. Examples from CRC Concluding Observations, UNICEF publications, Save the Children research and the European Roma Rights Centre publications form the empirical basis of an investigation of the various intersectionalities that children experience when grounds of discrimination against them interrelate. Human rights jurisprudence concerning Romani children and Romani women is also included to exemplify issues of intersectionality of relevance for children.

### **1.3. Empirical background**

Listening to children’s experiences gives insight into how intersectional discrimination affects many children worldwide. The empirical case of Romani children in Europe has been highlighted as a case study because evidence illustrates how these children frequently experience discrimination on the basis of their age, ethnicity and also gender and disability in combination. Furthermore, recent reports highlight the high vulnerability of Romani women and children to exploitation and abuse, including trafficking, and show that discrimination and inequality are major factors in this vulnerability. For example, UNICEF Kosovo has identified 46 per cent of Kosovo child victims of trafficking as having Romani origin.<sup>9</sup> Thus the empirical examples brought forward in this paper discuss intersectional discrimination against Roma children, the ways it is manifested, and how it can be approached within a child protection context of anti-trafficking.

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<sup>8</sup> A Child Rights Approach to Child Trafficking: Thematic preparations for the World Congress III against Sexual Exploitation of Children and Adolescents, Rio de Janeiro, 25–28 November 2008.

<sup>9</sup> Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), ‘Awareness Raising for Roma Activists on the Issue of Trafficking in Human Beings in South-Eastern Europe’, position paper, 2006, p. 2; UNICEF Kosovo, ‘Children in Kosovo: A study on protection and assistance provided to children victims of trafficking’, 2004, pp. 22–24 (statistics p. 25); Report of the Committee CEDAW 30th session (12–30 January 2004) 31st session (6–23 July 2004) General Assembly Official Records Fifty-Ninth Session Supplement No. 38 (A/59/38).

Being part of a broadly estimated number of 8–12 million Roma in Europe, Romani children have needs and concerns that vary according to the particular context in which they live. It is common for many children that they are among the most socially and economically marginalized and discriminated ethnic minorities in the region, increasing their risk of rights violations in various ways. However, it is important not to close Romani children in an isolated category, because they share experiences with many other children worldwide who are vulnerable to exploitation and abuse due to various factors, including interrelated forms of discrimination. The Romani examples shed light on areas where little knowledge exists on the ways that grounds of discrimination interrelate and increase the vulnerability and disempowerment of children. This means that no in-depth analysis is made in this paper of the particular situation of Romani children in Europe and of the various other causes that make them vulnerable to trafficking. It is shown that in order to ensure the full and equal inclusion of all children and their concerns in rights-based programming on child trafficking, intersectional discrimination requires comprehensive and systematic attention.

#### **1.4. Scope and limitations**

As emphasized by the European Commission, there are limited data available on intersectional discrimination: “Lack of data again adds to an incomplete picture of which intersectional groups are vulnerable and in which sectors Multiple Discrimination occurs. Lack of data also means insufficient knowledge about the extent of Multiple Discrimination.”<sup>10</sup> Most data on interrelated forms of discrimination concern adults in employment. This was an obvious limitation in the research, and is also the starting point of this paper. The aim is to provide insight into some of the complexities surrounding children who experience discrimination on several, often interrelated, grounds. The examples of Romani children’s experiences serve to illustrate this complexity. On this basis, the paper provides some suggestions on how to address intersectionality within child protection programming using the example of programming on child trafficking. Because Romani children in Europe are the empirical focus of this paper, most examples of intersectional discrimination will come from European countries and have ethnic origin as a common denominator that acts together with other grounds of discrimination against the children such as age, gender, disability, etc. This means that other groups of children who are significantly vulnerable to intersectional discrimination could not be given particular analytical attention in this paper, for instance Dalit children in India, who experience discrimination on basis of their caste in combination with other grounds.

This paper addresses intersectional discrimination issues of general concern for children and thus focuses primarily on aspects of the international and European legal frameworks. As a result, national laws and their inclusion or exclusion of intersectional discrimination issues are not included. This paper intends to open a debate which can give a basis for research in national contexts.

Discrimination is only one of the recognized causes of child trafficking, acting together with other factors such as economic marginalization (poverty). In this paper, poverty will be approached only from the perspective of being a ground for discrimination against children. Poverty is not only a significant factor in the marginalization and vulnerability of children, it is also a ground on which people are discriminated against or distinguished negatively in society. Furthermore, child trafficking is merely one of various child protection concerns

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<sup>10</sup> European Commission, ‘Tackling Multiple Discrimination’, op. cit., p. 5.

where discrimination plays a role, both as a root cause and as a consequence, following situations of exploitation and abuse.

Hence, the paper may serve as a basis for future in-depth research on particular experiences of intersectional discrimination of individual children and groups of children and how these relate to child protection. Furthermore, there is a need for more research on the interplay between root causes of child exploitation and abuse – between discrimination, poverty, domestic violence and abuse, etc. Much literature uses the terminology of ‘excluded or vulnerable groups’ to define children and groups of children who for several reasons, in particular discrimination and inequality, are at risk of missing out on an environment that protects them from violence, abuse and exploitation.<sup>11</sup> Although the concepts serve to frame significant human rights issues to be tackled in contemporary society, it is important not to group all children together in one single category of ‘vulnerability’, as the sources and the solutions to the problems they face are most often found in the differences between them.<sup>12</sup>

### 1.5. Outline of the paper

Following this introductory chapter, chapter 2 presents an overview of international approaches to discrimination. Particular focus is on the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1966) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979). A critical perspective is laid on the single ground approach to discrimination dominant in human rights instruments and jurisprudence. On this basis, *intersectional discrimination* and *multiple discrimination* are defined and discussed. Previous research on intersectional discrimination is discussed in this chapter 2, illustrating how the majority focus on adult concerns. Chapter 3 applies the concept of intersectionality in a children’s context through a focus on Romani children, distinguishing between structural, political and representational intersectionality, and between internal and external intersectionalities. Chapter 4 presents an example of how to address intersectional discrimination within a child protection context. Analytical focus is on rights-based programming against child trafficking and how intersectional discrimination relates to measures for prevention of trafficking, and protection and empowerment of children. Where anti-trafficking measures ultimately ensure the protection of all child rights, they also involve the enacting of particular rights. Some of these rights include legal guarantees and procedural rights, information, education, participation, health, social assistance, and identity rights. Through an empirical perspective on Romani children, a critical analysis is made of how intersectional discrimination influences children’s enjoyment of these fundamental human rights. Consequently, this has an impact on the inclusion of vulnerable children and their concerns into rights-based programming on child trafficking.

Chapter 5 presents suggestions for future research and interventions on intersectional discrimination. While rights-based programming on child trafficking is the example used, the recommendations are likely to be relevant for child protection programming in general.

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<sup>11</sup> UNICEF, *The State of the World’s Children 2006: Excluded and invisible*, New York, 2006, pp. 7 and 11.

<sup>12</sup> The concept of ‘vulnerability’ is often used within the human rights field to frame analysis of the ways in which social and economic factors interrelate and increase people’s disempowerment, such as for example poverty and low health status. This analysis of intersectional discrimination supports research on vulnerabilities by giving insight into the impact that discrimination has on protection of the rights of the child.

## 2. DISCRIMINATION

### 2.1 Non-discrimination in international human rights law

Non-discrimination is the operational principle in key instruments of general human rights law.<sup>13</sup> It follows the principle of equality of treatment, emphasizing the full enjoyment and equal access of all human beings to rights and fundamental freedoms, in particular equality before the law and equal protection of the law. The Human Rights Committee (HRC) has interpreted that discrimination to imply “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>14</sup>

History has shown that certain individuals and groups of individuals experience systematic discrimination on basis of their identity or status, as enumerated by the HRC. Age, ethnic origin, caste, disabilities, economic status, non-national status, sexual preferences, and displacement are other important grounds not explicitly mentioned in the HRC definition.<sup>15</sup> Experience shows that children who have been trafficked may be subjects of stigma and discrimination on the basis of their trafficking experience.<sup>16</sup>

A range of human rights instruments have been developed as complementary to general human rights law to specifically ensure the non-discrimination and de facto equality of particular individuals and groups of people. Each of these instruments focuses comprehensively on the elimination of discrimination on a certain ground. The most important international legal instruments against discrimination and inequality are the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).<sup>17</sup> Another important instrument against discrimination is the recent Convention on the Rights of Persons with Disabilities (CRPD, 2006). The various conventions essentially have a two-fold aim: (1) the non-discrimination and equal rights of particular individuals and groups, and (2) special measures to ensure de facto equality (affirmative action).

The most comprehensive approach to racial/ethnic discrimination is presented in the CERD. Focus is on the racial/ethnic discrimination that individuals and groups experience in public life, in other words in the *external sphere* constituted by state and society.<sup>18</sup> Article 5

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<sup>13</sup> Universal Declaration of Human Rights (UDHR), article 2; International Covenant on Civil and Political Rights (ICCPR), article 2, para. 1, and article 26; International Covenant on Economic, Social and Cultural Rights (ICESCR), article 2, para. 2; European Convention on Human Rights (ECHR), article 14.

<sup>14</sup> HRC General Comment 18, para. 7. See also UNICEF, ‘Implementation Handbook for the Convention on the Rights of the Child’, fully revised 3rd edn, Geneva, 2007, p. 17.

<sup>15</sup> UNICEF, ‘Implementation Handbook’, op. cit., provides a comprehensive list of grounds on which children and adults experience discrimination. See also Save the Children, ‘Demystifying Non-discrimination’, op. cit., ch. 6.

<sup>16</sup> UNICEF Kosovo, ‘Children in Kosovo’, op. cit.; ‘Young People’s Voices on Child Trafficking: Experiences from South Eastern Europe’, UNICEF Innocenti Research Centre, 2009.

<sup>17</sup> These judicial instruments are supplemented by a range of declarations, for example the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief (1981).

<sup>18</sup> CERD article 1 defines ‘racial discrimination’ as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing

provides a list of specified civil and political rights and economic, social and cultural rights where the State must ensure non-discrimination and equality for racial/ethnic groups. This includes the express right of access to public places and services, such as public transport, parks and restaurants (article 5(f)). The rights established in CERD address all forms of racial and ethnic discrimination, including special measures for inclusion, and also allow for group communications before the complaint mechanism. Thus CERD is an important instrument for the effective protection and advancement of ethnic/racial minorities and indigenous peoples, while not being confined specifically to minority or indigenous rights. CERD is often used to support the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM, 1992). This Declaration is commonly referred to as an authoritative interpretation of article 27 ICCPR and was the first international document to comprehensively address the rights of persons belonging to minorities.<sup>19</sup>

CEDAW aims at substantive equality between men and women and covers more comprehensively than other human rights law the issue of non-discrimination of women. It includes differences in treatment on the grounds of gender that intentionally, or unintentionally, put women in a disadvantaged position, that prevent society from recognizing women's rights in both the domestic and public spheres, and that prevent women from exercising the human rights and fundamental freedoms to which they are entitled.<sup>20</sup> Besides the prohibition of vertical discrimination, CEDAW targets horizontal discrimination (between private parties) such as personal status laws, norms of religious institutions, etc.<sup>21</sup> Thus CEDAW focus on discrimination both in the *external sphere* (public life) and in the *internal sphere* (family and affiliated community).<sup>22</sup> CEDAW is often referred to as mutually reinforcing with the CRC, especially in the promotion and protection of the human rights of girls and women and in the prevention of discrimination on the basis of gender: "the human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights; the eradication of all forms of gender discrimination are priority objectives for the international community and the equal status of women and their human rights should be integrated into the mainstream of the UN system-wide activity."<sup>23</sup> However, apart from a mention of rural women's advancement in article 14, no women-specific rights refer to

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the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

<sup>19</sup> Åkermark, Sia Spiliopoulou, *Human Rights of Minority Women: A manual of international law*, Åland Islands Peace Institute with Åbo Akademi University Institute for Human Rights, 2000, p. 52. At European level, minority rights are defined in the European Framework Convention for the Protection of National Minorities (FCNM, 1995) and the European Charter for Regional or Minority Languages (1992). FCNM is legally binding on ratifying states but not justiciable before the European Court of Human Rights (ECtHR). UNDM and the European Charter are politically binding.

<sup>20</sup> Article 1 CEDAW and Fact Sheet No. 22, 'Discrimination against Women, the Convention and the Committee', United Nations, 1995.

<sup>21</sup> CEDAW article 5(a) targets discrimination in the private sphere when read in conjunction with article 2, paras (e) and (f), that call on the State to eliminate discrimination against women by persons, organizations or enterprises and to modify and abolish existing law, regulations, customs and practices which constitute discrimination against women; Ravnbøl, Camilla Ida, *The Human Rights of Minority Women: Challenging international discourses with the case of Romani women*, European Inter-University Centre, Venice, 2008, p. 25 and Cook, Rebecca, 'State Accountability under the Convention on the Elimination of All Forms of Discrimination against Women', in Rebecca J. Cook, ed., *Human Rights of Women*, University of Pennsylvania Press, Philadelphia, 1994, p. 239.

<sup>22</sup> The terminology internal and external discrimination is inspired by Kymlicka's terminology on group rights in relation to external or internal restriction; Kymlicka, Will, *Multicultural Citizenship: A liberal theory of minority rights*, Oxford University Press, Oxford, 1995, p. 35.

<sup>23</sup> Quote from the Fourth World Conference on Women, Beijing, 1995, in 'A Human Rights Conceptual Framework for UNICEF' by Marta Santos Pais, Innocenti Essay No. 9, UNICEF Innocenti Research Centre, Florence, 1999, p. 3.

minorities, refugees, women with disabilities or any other status or identity that women may share. Although CEDAW Committee increasingly addresses these issues in its interpretation of the Convention, primary focus remains on the aspects relating to gender-based discrimination against women and girls.

Non-discrimination is also the implementing article of the CRC, with article 2 establishing that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”<sup>24</sup> The CRC targets both vertical and horizontal discrimination. CRC is notable for its focus on discrimination which addresses the broader social contexts of the child, in requiring the state to protect the child from discrimination on the basis of parents’, family members’ and guardian’s status, activities, opinion and beliefs.<sup>25</sup> This not only recognizes the influence on the child of the close social context, but also addresses the discrimination that children experience on the basis of their age when they are categorized automatically on the basis of the identity of family members. Notably, the CRC as the first international human rights instrument, expressly establishes disability as a prohibited ground of discrimination. The CRC provides a comprehensive list of the rights of the child in political and public life, as well as social, economic and cultural life. Particular emphasis is laid on the protection of children from all forms of violence, exploitation and abuse, including trafficking.<sup>26</sup> The general principles of the CRC, in addition to that of non-discrimination, is the best interest of the child, the survival and development of the child, and respect for the views of the child (child participation).<sup>27</sup> Article 5, together with article 18 in particular, provides a framework for the relationship between the child, his or her parents and family, and the State. Introducing the concept of the evolving capacities of the child, the CRC regards the child as an active holder of rights, with capabilities to exercise rights and make informed choices.<sup>28</sup> The CRC includes special provisions for children with disabilities and refugee children, who are considered particularly prone to discrimination. Article 30 establishes that all children who are minorities or indigenous “shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”

CERD, CEDAW and the CRC, together with all other areas of human rights law, constitute an international legal framework intended to protect the human dignity of all people on an equal footing. They constitute crucial tools to redress discrimination and inequality on the basis of particular grounds and call on special measures to ensure the full advancement and enjoyment of rights of all persons on an equal footing. Common to the majority of human rights instruments that comprehensively target discrimination is that they focus mainly on a single ground of discrimination, namely the ground of discrimination they were developed to confront. In practice the instruments are rarely used together by judicial or quasi-judicial bodies and consequently a single-ground approach to discrimination is dominant within

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<sup>24</sup> CRC article 2(1).

<sup>25</sup> CRC article 2(2).

<sup>26</sup> For example, CRC articles 32, 33, 34, 35, and 36.

<sup>27</sup> CRC articles 3, 6, and 12.

<sup>28</sup> It supports other provisions of the CRC that emphasize the primary responsibility of parents and place strict limits on state intervention and any separation of children from their parents. The Preamble underlines the family as “the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children.” CRC articles 3, 5, 7, 9, 10, 18, 27. UNICEF, ‘Implementation Handbook’, op. cit., p. 75.

international jurisprudence. Aspects other than the ground of discrimination focused on by the particular Convention are given secondary attention and often not included in the merits of the case. This is evident in case law from the related judicial bodies. One example is the recent case *Andrea Szijarto v. Hungary* under CEDAW's Optional Protocol.<sup>29</sup> The case concerned the sterilization of a Romani woman in a Hungarian hospital without her full and informed consent. The CEDAW Committee found a violation of the woman's human right to health information, non-discrimination in the health sector and her right to family planning.<sup>30</sup> The case is path-breaking since it indirectly functioned to target the systematic discrimination that many Romani women experience in society, including notably in the health sector. It also underscored the State's obligation to eliminate discrimination and provide accessible and understandable information for all, including in languages other than the majority language. However, the case also exemplifies the pitfalls of the CEDAW Committee's single-ground approach to discrimination. Only the gender aspects were approached in the merits, and the ethnicity/racial aspects were entirely neglected. Thus, the case failed to address the structural discrimination of Roma (in this case in Hungary) because of their ethnic origin, which is a key factor behind coercive sterilization of Romani women.<sup>31</sup>

A single-ground approach within the law forces people who experience intersectional discrimination to split their human rights concerns and prioritize certain aspects over others. This only partly addresses the causes for their particular disempowerment, as was seen in the case of the forced sterilization of Andrea Szijarto. In order to ensure the full and equal protection of the human dignity of all on an equal footing, more attention must be given to the particular forms of discrimination and human rights violations that are experienced.<sup>32</sup> The single-ground approach to discrimination has been widely criticized, particularly in recent years. There is a growing movement pushing for a focus on multiple grounds within the law, also called an intersectional approach to human rights protection.<sup>33</sup>

The CRC can be seen as an important instrument for addressing intersectional discrimination issues. The Convention and in particular its interpretation by the CRC Committee, largely drawing on CEDAW, illustrate a more holistic and cross-cutting approach to child protection. The application of the two conventions by the CRC Committee illustrates awareness of the interrelation of grounds of discrimination in children's realities. The CRC Committee gives significant attention to the situation of girls in particular (gender and child issues in combination) but also to minority and indigenous children, minority girls, children with HIV/AIDS, children with disabilities and many other children who are considered particularly vulnerable to rights violations. Even though the CRC Committee has no judicial mandate, its General Comments have a political influence and can draw attention to the topic of intersectional discrimination. In this context, it is strongly recommended that the CRC develops a General Comment on article 2 which comprehensively addresses the issue of

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<sup>29</sup> *A.S. v. Hungary*, Communication No. 4/2004, UN Doc CEDAW/C/36/D/4/2004.

<sup>30</sup> CEDAW articles 10(h), 12 and 16, para. 1(e).

<sup>31</sup> Section 4.5 below provides more information. See also Kopalová, Michaela, 'Coercive Sterilization in Czech Republic: Civil and criminal law aspects', *Roma Rights*, No. 4: Romani Women's Rights Movement, 2006, pp. 27–30.

<sup>32</sup> Ravnbøl, op. cit., pp. 67 and 72; European Parliament, 'Report on the Situation of Roma Women in the European Union', Explanatory statement by Rapporteur Livia Járóka, 2006, p. 10.

<sup>33</sup> European Commission, 'Tackling Multiple Discrimination', op. cit., p. 16; 'A Place at the Policy Table: Report on the Roma Women's Forum', Budapest, 29 June 2003; see also Zappone, Katherine, 'Conclusion: The challenge of diversity', in Katherine Zappone, ed., *Re-thinking Identity*, Equality Authority, Ireland, 2003, pp. 131–153.

intersectional discrimination, taking note in this way of the exigencies that many children face in everyday life.

The holistic approach to human rights protection needs further development within rights-based programming and research, with stronger linkages between traditionally separated categories of rights. Apart from linking CEDAW and the CRC, other legal frameworks can be used to comprehensively address the particular concerns of children who experience discrimination on several and often interrelated ground. One example is CERD's article 5(a) on the access of racial/ethnic groups to public spaces; this can be used in targeting the lack of access of Romani children to adequate education when they are placed in schools for children with mental disabilities because of ethnic biases in the responsible state institution. It can also be used to target the way Romani children are denied entry to restaurants and other public spaces. The CERD Committee has taken progressive steps towards the non-discrimination of Roma. CERD's General Comment No. 27 specifically concerns Roma, and several articles focus on children's education.<sup>34</sup> Another example is more significant use of CEDAW's article 5 provision that targets discrimination in the private sphere to ensure that girls are not disempowered by personal status laws or the norms of religious institutions or other communities they belong to. Linking the CRC and CEDAW, and learning from the way CEDAW addresses discrimination against girls, could also open up new possibilities for addressing situations where boys are discriminated against and experience human rights violations on the basis of their gender in combination with their age; for example, in those cases where young boys are primary targets of sexual abuse and exploitation.<sup>35</sup> In this way the CRC would supplement the CEDAW with a dimension on how boys also experience rights violations from discrimination on the basis of gender.

Positive linkages could also be made with the new Convention on the Rights of Persons with Disabilities (CRPD). Various provisions include children and it is a comprehensive tool to redress the inequality, discrimination and exclusion that children with disabilities often experience. The CRPD is noteworthy for being the first international instrument that directly refers to the issue of interrelated grounds of discrimination. It is concerned about the "difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status."<sup>36</sup> It also recognizes the higher risk to girls and women with disabilities of violence at home and in society. In addition to establishing comprehensive equality of persons with disabilities in all areas of public, political, social, economic and cultural life, the CRPD introduces the concepts of inclusion and accessibility. These concepts are new in international conventions and reflect the importance given to proactive measures to ensure equality and eliminate the barriers that persons with disabilities face, from physical inaccessibility to social exclusion. Thus important connections can be made with the CRC to address specifically the forms of discrimination that children with disabilities experience. However, since the Convention only entered into force in 2006, it remains to be seen whether

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<sup>34</sup> General Comment No. 27: Discrimination against Roma, 16 August 2000, reference to children paras 17, 19, 21, 24 and 34.

<sup>35</sup> Sexual exploitation of boys is a largely uncovered area of research. However, existing data indicate that this is a significant issue of concern. For example, the International Organization for Migration (IOM) highlights the issue of the sexual abuse of young boys who are abducted into armed forces. These cases do not fall under existing national laws that prohibit adultery or premarital sexual relations and thus these boys are left outside legal protection. IOM Afghanistan, 'Trafficking in Persons: An analysis of Afghanistan', 2003, pp. 37–38.

<sup>36</sup> CPRD, Preamble, para. Q.

the authorized Committee will address intersectional discrimination in its monitoring and handling of individual complaints.

One step in the direction of comprehensively addressing intersectional discrimination within the human rights field is to make *intersectionality* a useful concept to frame the different forms of discrimination in effect within a children's context.

## 2.2 Intersectional discrimination

The concepts of intersectional discrimination and multiple discrimination were already elaborated in the late 1980s, particularly by Kimberlé Crenshaw. This paper defines intersectionality as the meeting point and overlap of the roads of racial, gender, class and other forms of discrimination. These roads are mutually reinforcing and structure the social, economic and political terrains.<sup>37</sup> Thus intersectional discrimination and intersectionality are concepts that describe the situation where several grounds of discrimination operate at the same time, as for example when Romani women experience harassment and abuse on the basis of their gender and ethnicity in combination.<sup>38</sup> *Multiple* discrimination is often argued to be a slightly different term that describes a situation where discrimination takes place on the basis of several grounds operating separately. For example, can an ethnic minority woman experience only gender-based discrimination in one situation and only ethnic discrimination in another?<sup>39</sup> In his article 'Multiple, Compound and Intersectional Discrimination' (2002), Timo Makkonen discusses the development of the concept of intersectionality since Crenshaw.<sup>40</sup> He differentiates between three situations of discrimination. The first is 'multiple discrimination', which he describes as a situation where a person can experience discrimination on one ground in one situation and on another ground in another situation. The next is 'compound discrimination', which in contrast to multiple discrimination describes a situation where a person suffers discrimination on the basis of two or more grounds at the same time and where one ground adds to discrimination on another ground. He argues that intersectional discrimination refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable.

Other scholars and organizations have elaborated the concepts in various ways, and currently 'intersectionality' as a concept is gaining ground as it frames the inseparability of causes for discrimination that often places people in the most vulnerable position. At international level, the most significant appropriation was during the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in 2001. Here, intersectional discrimination was recognized by the international community and it was emphasized that action had to be taken against it: "We recognize that racism, racial discrimination, xenophobia and related intolerance occur on the grounds of race, colour, descent or national or ethnic origin and that victims can suffer multiple or aggravated forms

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<sup>37</sup> Crenshaw, op. cit., pp. 1241–1245 and Kimberlé Crenshaw (1993) in Minority Rights Group International (MRG), 'Gender, Minorities and Indigenous Peoples', 2004, pp. 11–33.

<sup>38</sup> Verbal assaults such as "Romani whores" and racially motivated sexual violence. Notably the cases of forced sterilization which will be discussed further in this paper constitute intersectional discrimination.

<sup>39</sup> European Commission, 'Tackling Multiple Discrimination', op. cit., p. 16.

<sup>40</sup> Makkonen, Timo, 'Multiple, Compound and Intersectional Discrimination: Bringing the experiences of the most marginalized to the fore', Institute for Human Rights, Åbo Akademi University, 2002, pp. 1–5.

of discrimination based on other related grounds such as sex, language, religion, political or other opinion, social origin, property, birth or other status.”<sup>41</sup>

As also argued by Makkonen, this event was a positive development towards addressing intersectional discrimination as a global phenomenon requiring international attention. However, since the conference little development has been made on the issue, either in regard to law and policy development, or in regard to programming, research and data collection. Furthermore, this conference and various other forums addressing intersectional discrimination focus primarily on adults. The Durban conference was not the first time that the issue of intersectional discrimination was brought up, however. Notably, the Beijing Declaration and Platform for Action (1995) states that governments should “Intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people” (article 32). This focus on the multiple barriers that women face is largely emphasized by feminist legal scholars and women’s organizations from Latin America and South-East Asia.<sup>42</sup> These activists criticize the global women’s movement and the international community for having a ‘single-issue approach’ to gender alone, neglecting other barriers to women’s advancement such as race, ethnicity and class, the cause of the problems that many women in these regions face.<sup>43</sup>

A recent report by the European Commission, ‘Tackling Multiple Discrimination’, emphasizes this lack of implementation of commitments to address multiple and intersectional discrimination in international settings and in the European Union member States.<sup>44</sup> It primarily uses the concept of multiple discrimination, with the consequence that it focuses more on how people can experience different forms of discrimination at different times, and downplays how often many people face rights violations because of the inseparability of grounds of discrimination. The report presents case histories from people who have experienced such discrimination, and calls for more law and policy development, research and data collection, awareness raising and training on the issue. Strong emphasis is laid on the need for more research on which groups are vulnerable to combined forms of discrimination and in which sectors it takes place: “The European Commission should encourage research into effective protection mechanisms and legal frameworks to handle cases of Multiple Discrimination. Research institutions should develop the conceptual tools to analyse the experience, situation and identity of intersectional groups and investigate how and where Institutional Multiple Discrimination manifests itself.”<sup>45</sup>

The European Commission’s report is notable for reintroducing the issues of multiple and intersectional discrimination into a current European setting. However, the report mainly

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<sup>41</sup> UN General Assembly Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related intolerance, Durban, 2001, Declaration No 2.

<sup>42</sup> Mohanty uses ‘Third World feminism’ as a common denominator for these activists; Mohanty, Chandra T., ‘Introduction: Cartographies of struggle: Third World women and the politics of feminism’, in C. Mohanty, A. Russo and L. Torres, *Third World Women and the Politics of Feminism*, Indiana University Press, Bloomington, 1991, pp. 5–7. See also Ravnbøl, op. cit.

<sup>43</sup> Antrobus, Peggy, *The Global Women’s Movement: Origins, issues and strategies*, Zed Books, London, 2004, p. 15, Mohanty, op. cit., pp. 10–15.

<sup>44</sup> The report notes: “Apart from the need to develop the intersectional approach and other legal mechanisms to tackle Multiple Discrimination there is a need to identify substantive practice to prevent and combat Multiple Discrimination. The literature makes references to the need for developing substantive measures and initiatives but fails to bring examples to light”; European Commission, ‘Tackling Multiple Discrimination’, op. cit., p. 19.

<sup>45</sup> *Ibid.*, p. 7, recommendation no. 1.

focuses on discrimination against adults, with a primary focus on labour and employment. Much attention is given to discrimination against Roma, but no case histories specifically concern Romani children. Discrimination against children is mostly referred to as a consequence of discrimination against the mother:

Renáta Sztojka, 44 years of age, a Romani woman and mother of six children was, by an official of the local city council, threatened with having the social benefits she was rightfully entitled to cut if she did not carry out difficult and degrading physical work for the council. According to a local NGO specialising in handling cases of discrimination against Roma people, the official of the local council intentionally picked Roma women for such work although there were other unemployed persons (Roma men and non-Roma women). Renáta Sztojka was successful in her complaint, however, on the grounds of race and ethnic origin.<sup>46</sup>

The impact that intersectional discrimination against the parents has on the child's well-being and development is a very important issue and it is noteworthy that the report presents this case history. It illustrates how discrimination against parents causes a circle of discrimination affecting the child. This issue is highlighted in a recent UNICEF report as being a "generational discrimination,"<sup>47</sup> and when discrimination is based on multiple grounds it can be called a *generational intersectionality*. This form of *generational intersectionality* requires significant attention in order to break the circle of discrimination against some persons and groups of people such as Roma that influence all family generations.<sup>48</sup> However, the case of Renata Sztojka was not explored further as being an issue of generational intersectionality in the report. In addition, stronger focus is needed on the various other forms of multiple and intersectional discrimination that children experience, much of which directly targets the child.<sup>49</sup>

This paper aims to shed light on the complexities surrounding children who experience discrimination on interrelated grounds by introducing the concept of intersectional discrimination into a child context. Empirical examples are given of Romani children.

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<sup>46</sup> Ibid., p. 41.

<sup>47</sup> UNICEF Serbia, 'Breaking the Cycle of Exclusion: Roma children in South East Europe', 2007, p. 63.

<sup>48</sup> Defined as intersectional discrimination affecting all family members and passed on through generations, inspired by the terminology of 'intergenerational exclusion' used in *ibid.*, p. 63.

<sup>49</sup> Save the Children, 'Demystifying Non-discrimination', *op. cit.*, ch. 6.

### 3. INTERSECTIONAL DISCRIMINATION AGAINST CHILDREN

In order to adequately address the human rights concerns of children who experience discrimination on multiple grounds, it is necessary to have a comprehensive understanding of the concept that covers the different forms of intersectionality in effect in a given context. These can be broadly categorized as structural intersectionality, political intersectionality and representational intersectionality.<sup>50</sup>

#### 3.1 Structural intersectionality

Structural intersectionality takes place when various discriminatory structures in society interrelate and cause a multifaceted disempowerment of the person in question. It refers to structures established by laws and policies, and practices of state institutions and authorities. Examples of structural intersectionalities are in Romani children's access to justice. The availability and accessibility of institutional mechanisms for redress are frequently seen to be affected by the interrelation of age, gender and race/ethnicity, for example in social service offices, justice institutions, education and in other state institutions that deal with Roma.<sup>51</sup> As noted by the European Parliament: "... whereas in a number of countries there exist clear indications that police forces and other organs of the criminal justice system are affected by anti-Romani bias, leading to systemic racial discrimination in the exercise of criminal justice."<sup>52</sup> Consequently, some states do not exercise due diligence in investigating and prosecuting crimes committed against Roma. One example is sexual violence against Romani girls and women that has been noted by some organizations to have impunity because of racial/ethnic biases in the justice institutions that combines with gender-based discrimination.<sup>53</sup> Age also has a major impact in this situation as most Romani children do not have the resources to claim their legal rights for themselves and children are often excluded from participation in legal and administrative proceedings. In these cases, disadvantages combine, those of ethnic discrimination, gender-based discrimination and discrimination on basis of the age, and cause a multiple violation of the rights of the child in question, in the form of sexual violence with no consequential access to justice.<sup>54</sup>

Structural intersectionality can be of both intentional and unintentional character. A clear example of intentional intersectional disempowerment is the coercive sterilization of Romani women that is still reported in the Czech Republic, Slovakia and Hungary, where omission and insufficient national laws within the area of criminal law and sterilization have many times allowed such cases impunity.<sup>55</sup> It is a gross violation of a broad range of human rights and in cases where coercive sterilization is carried out when the mother is below 18 years, it in addition directly affects the rights of the child.

Another child-specific example is the placing of Romani children with no disabilities in school classes for children with mental disabilities. This practice has been reported

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<sup>50</sup> Crenshaw, op. cit., p. 1244. Crenshaw applies these concepts to the case of black women in the United States. This working paper uses these analytical concepts within a child context.

<sup>51</sup> MRG, 'Gender, Minorities and Indigenous Peoples', op. cit., p. 13.

<sup>52</sup> PE 357.314, European Parliament, Resolution on the Situation of the Roma in the European Union, adopted 28 April 2005, p. 130.

<sup>53</sup> Asylum Aid, 'Romani Women from Central and Eastern Europe: A "Fourth World," or experience of multiple discrimination', Asylum Aid Refugee Women's Resource Project, 2002, p. 57.

<sup>54</sup> A third aspect of gender-based discrimination and discrimination against children in the justice system is non-investigation of domestic violence because these issues are regarded as private family matters.

<sup>55</sup> Kopalová, op. cit., pp. 27–30; *A.S. v. Hungary*, Communication, op. cit.

particularly across South-Eastern Europe and Central Europe.<sup>56</sup> According to research by the European Roma Rights Centre (ERRC), this categorization by authorities of Romani children as having mental disabilities is often based on ethnic biases or the use of inadequate measures for testing Romani children.<sup>57</sup>

A path-breaking case on the issue is the recent case before the European Court of Human Rights (ECtHR), *DH and Others v. Czech Republic* (2007). The case was launched eight years before the judgment was enacted, by 18 Romani children who sought legal redress for having been placed in a school for children with learning disabilities even though they had no such disabilities. Research by the ERRC showed that Roma students in the city of Ostrava, where the children came from, were 27 times more likely than similarly situated non-Roma to be placed in special schools. The ECtHR ruled that segregating Roma students into special schools is a form of unlawful discrimination in breach of article 14 of the European Convention on Human Rights (ECHR) (prohibiting discrimination), taken together with article 2 of Protocol No. 1 (securing the right to education). The case was revolutionary for various reasons. As noted by the ERRC

it was the first time, the European Court of Human Rights has found a violation of Article 14 in the ECHR in relation to a pattern of racial discrimination in a particular sphere of public life, in this case, public primary schools. As such, the Court has underscored that the Convention addresses not only specific acts of discrimination, but also systemic practices that deny the enjoyment of rights to racial or ethnic groups.

Furthermore, the ECtHR clarified that racial segregation amounts to discrimination in breach of article 14 and underlined that this practice is not particular to the Czech Republic but a discriminatory barrier to education for Roma children that exists in a number of European countries.<sup>58</sup> This case has inspired following cases on exclusion or unlawful segregation of Romani children in education, notably the recent *Sampanis and Others v. Greece* case from 5 June 2008. In this case, the ECtHR found a violation of Romani children's right to non-discrimination in conjunction with the right to education the right to effective remedy.<sup>59</sup>

Unintentional intersectional discrimination occurs when laws, policies or institutional rules which are apparently neutral come to have a discriminatory effect in practice. An example of this would be when care institutions and shelters for children who are victims of violence, exploitation and abuse do not have the resources, or do not allocate the resources, to accept children who speak only minority or indigenous languages, or children who have physical or mental disabilities, etc. These children are thereby left without the protection that the institutions are intended to provide. Crenshaw presents such examples of cases from the United States where shelters for women who are victims of domestic violence turn away

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<sup>56</sup> UNICEF Serbia, 'Breaking the Cycle of Exclusion', op. cit., p. 53; European Monitoring Centre on Racism and Xenophobia (EUMC), 'Roma and Travellers in Public Education', Vienna, 2006; ERRC 'Disinterest of the Child: Romani children in the Hungarian child protection system', Budapest, 2007.

<sup>57</sup> ERRC, 'Disinterest of the Child: Romani children in the Hungarian child protection system', Budapest, 2007, pp. 79–80.

<sup>58</sup> *D.H and Others v. the Czech Republic* Application No. 57325/00, Judgment 13 November 2007. See ERRC comments on the case at <[www.errc.org/cikk.php?cikk=2945](http://www.errc.org/cikk.php?cikk=2945)>, consulted 30 May 2008.

<sup>59</sup> Article 13 (effective remedy) and 14 (non-discrimination) ECHR in conjunction with article 2 of Protocol no. 1. *Sampanis v. Greece* app. 32526/05. Chamber Judgement ECHR 5th June 2008. However, none of these cases connected the Romani children's experiences with other cases of rights violations through segregation, such as children with disabilities. A stronger linkage between human rights instruments and the CRPD will serve to strengthen inclusive education rights for children with disabilities.

women speaking non-national languages for lack of bilingual personnel and resources.<sup>60</sup> Another example would be where lack of resources in schools means that they fail to provide opportunities for bilingual education or assistance in areas where this is needed, and thus unintentionally limit the learning possibilities for children speaking minority languages. More research is needed on the consequences of unintentional intersectionality for children worldwide.

Inaction also amounts to intersectional discrimination in cases where States or a particular institution does not allocate the budget to ensure adequate fulfilment of the rights of children with other backgrounds and status. In these cases, age can also interrelate with other grounds of discrimination. Children often do not have access to forums where they can push for budget allocations. This is even more the case for children with disabilities, children who are migrants, children from minorities, etc., because the groups to which these children belong, such as the Romani minority, generally experience exclusion from participation in public matters.

Importantly, intersectionality takes place not only at institutional levels but also within the broader contexts of society.<sup>61</sup> Here, the interrelation between child discrimination and other forms of discrimination causes the disempowerment of certain children in various ways. One example is Romani girls, who may be denied entry to public places such as restaurants and shops when they are wearing their traditional dress.<sup>62</sup> Romani girls can also experience being given less attention at school because authorities expect them not to finish their education, to leave school to be married at a young age, to have an early pregnancy, etc.<sup>63</sup> Romani boys and girls who are economically marginalized experience a similar interrelation of discrimination on the grounds of age, ethnicity and poverty when they are faced with harassment and negative comments accusing them of being thieves, lazy, dirty, etc.<sup>64</sup>

### **3.2 Political and representational intersectionality**

Political intersectionality is another important issue to address. Crenshaw uses this concept to highlight how minority women are often situated within two political groups that pursue separated or in some cases even conflicting agendas.<sup>65</sup> Women's issues and minority issues have traditionally been treated as separated fields in international law and politics, with focus limited to minority rights concerns or majority women's human rights concerns. This separation has often caused exclusion of intragroup differences and problems such as those experienced by ethnic minority women and ethnic minorities with disabilities.<sup>66</sup>

Children experience another form of political intersectionality compared with adults. Children's issues are addressed cross-cuttingly within women's organizations, minority organizations, and many other organizations. Although this has led to much cooperation on children's rights, very often children's concerns are treated as a subissue to adult concerns. In

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<sup>60</sup> Crenshaw, *op. cit.*, pp. 1249–1251.

<sup>61</sup> Although the concept of structural discrimination refers to discrimination within law and policies and in their the implementation by state institutions and authorities, it is important to recognize the linkages this has with broader discriminatory discourses in society (social structures).

<sup>62</sup> Ombudsman on Ethnic Discrimination, 'Discrimination against Roma in Sweden', 2004, p. 15.

<sup>63</sup> 'A Place at the Policy Table', *op. cit.*; EUMC 'Breaking the Barriers: Romani women's access to public health care', 2003.

<sup>64</sup> For example, see EUMC, 'Breaking the Barriers', *op. cit.*, pp. 43–45; EC, 'Segregation of Roma Children in Education: Addressing structural discrimination through the Race Equality Directive', 2007, p. 30.

<sup>65</sup> Crenshaw, *op. cit.*, p. 1252.

<sup>66</sup> Ravnblø, *op. cit.*

effect, inadequate attention is given to the particular complexities surrounding children. One example is anti-trafficking laws and policies that address trafficking in women and children together, thereby not distinguishing between women's needs and concerns and children's needs – those of girls as well as boys. There are many areas in which the distinction between women and children is particularly important, for example in counselling, legal assistance, participation in criminal investigations and trials, and reintegration initiatives.<sup>67</sup>

Within a children's context, political intersectionality is often combined with a representational intersectionality. Crenshaw uses this concept to highlight how women of colour have historically had limited influence on matters that concern them and little impact on their own representation in politics, literature, etc.<sup>68</sup> This is a particular concern for children worldwide. Children are often excluded from participation in matters that concern them and their interests are represented by adults. The evolving capacities of the child are often not recognized. Thus, instead of being included and heard as active rights holders, children are made passive recipients of assistance. For children who experience discrimination on interrelated grounds it can be even more complex. For example, in the call for participation of Romani minority representatives in national law and policy development, less attention is given to the participation of Romani children. This is evident when looking at existing initiatives for Romani political participation, which do not include children, and furthermore have predominantly male participants.<sup>69</sup> On the other hand, within the call for child participation, not enough measures may be established for the adequate participation of children who require special measures, such as children who do not speak the majority language, or who require translation into Braille or sign language, and easy access and support for wheelchairs, etc.

### 3.3 Internal and external intersectionality

A comprehensive approach to discrimination against children requires a stronger focus not only on the interrelation of different grounds of discrimination, but also on the different spheres where children experience such discrimination. Children experience discrimination in various ways from the State and the society they live in. This can be termed *external discrimination*, as it is discrimination from a party outside the child's private sphere.<sup>70</sup> Children can, however, also be subject to discrimination from family members, and from within their affiliated community if the child is also a member of an ethnic, racial, religious or linguistic minority. This can be termed *internal discrimination*, as it is discrimination from within a private sphere. Patriarchal customary laws and traditional practices within the family or community that subordinate women and girls to men and boys are examples of such internal discrimination. Other examples are discrimination against children with disabilities or against adolescents with other sexual preferences, etc., from family and close kin.

Applying the concepts of internal and external intersectionality to the empirical case of Romani children illustrates not only how Romani children may experience discrimination on several, often interrelated, grounds but also that this discrimination can take place in both internal and external spheres.

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<sup>67</sup> 'South Asia in Action: Preventing and responding to child trafficking: Summary report', UNICEF Innocenti Research Centre, Florence, 2008, pp. 11–12.

<sup>68</sup> Crenshaw, op. cit., p. 1282. The author presents a discussion on representational intersectionality as the cause for misleading cultural images of black women.

<sup>69</sup> See, for example, ODIHR initiatives for Romani political and public participation, <[www.osce.org/odihhr](http://www.osce.org/odihhr)>.

<sup>70</sup> Again, the terminology of internal and external discrimination is inspired by Kymlicka's terminology on group rights for external or internal restriction; Kymlicka, op. cit., p. 35. See Ravnbøl, op. cit.

External intersectionalities can have many forms. The previous section illustrated external intersectionalities in form of structural discrimination against Romani children within justice institutions and education. Romani children, particularly girls, are more prone to exclusion from public and political participation because of their age and ethnicity in combination, often reinforced by their poverty. They may also be easier targets of racial harassment, abuse and violence when they are children and perhaps having disabilities.

Internal intersectionalities also take various forms. One example is family discrimination against children with disabilities that is related to broader negative assumptions in society about persons with disabilities. This may particularly affect girls with disabilities as discrimination due to disability combines with gender-based discrimination and age-specific discrimination. As noted by Save the Children: “As for girls with disabilities, the most common attitude is that they are a lifelong burden to their parents since they cannot be married off. Therefore they are often neglected and become vulnerable and susceptible to abuse, exploitation and maltreatment.”<sup>71</sup>

Another example is gender-based discrimination within the family and community that interferes with the rights and freedoms of girls and women worldwide. It is also a concern in some patriarchal Romani families and communities that maintain traditions for early marriage and pregnancy, virginity cults, lower education for girls than boys and subordination of girls and women to the decision-making of male family members. ‘Silencing’ of sexuality in some Romani families and communities means that children receive little sexual education, including on HIV/AIDS, sexual abuse and exploitation and on the risks of being trafficked.<sup>72</sup>

Silencing of sexuality is also a root cause of discrimination against and harassment of Romani adults and adolescents who are sexual minorities. Internal discrimination against adolescents with other sexual preferences, due to family and community perceptions of sexuality, is a general area of concern that requires more research. Research indicates that adolescents who are sexual minorities face prejudice and discrimination in external as well as internal spheres and that these often interrelate. One area of concern is the violation of these young persons’ rights to confidentiality and privacy by state authorities who tell the family the private information that they were given by the child on his or her sexuality. Being under parental guardianship, the adolescents often find that decisions are made on their behalf by the doctor and family that are not always in their best interest.<sup>73</sup> A UNICEF study has also highlighted discrimination in the field of sports against young persons who are sexual minorities.<sup>74</sup> In general, this is an area of child discrimination that is highly sensitive because it involves the family and a community that may have a history of discrimination and unlawful interference by the State. Internal discriminatory practices are nevertheless a very important issue for research to shed light on the factors that violate the rights of the child and make children vulnerable to abuse, violence and exploitation.

The next chapter presents examples of Romani children’s external and internal intersectionalities in accessing the rights to legal guarantees and procedural rights, information, education, participation, health, social assistance and identity rights. The

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<sup>71</sup> Save the Children, ‘Demystifying Non-discrimination’, op. cit., p. 43.

<sup>72</sup> ‘A Place at the Policy Table’, op. cit., pp. 3, 11 and 29. See also information on <[advocacynet.org/resource/492](http://advocacynet.org/resource/492)>.

<sup>73</sup> Zappone, op. cit., p. 140.

<sup>74</sup> ‘Exercising Rights: Eliminating violence against children in sports’, UNICEF IRC, forthcoming 2009.

analysis also distinguishes between structural, political and representational intersectionalities. In general, these are areas of child protection from discrimination that need more systematic qualitative and quantitative research.

### **3.4 Closing the analysis: strengthening new approaches to discrimination**

Through examples of Romani children's experiences, the analysis has illustrated the need to develop a comprehensive awareness of intersectional discrimination that embraces the different forms of intersectionality present in the lives of many children. This will enhance the relevance of human rights as a legal and political framework that protects the life and human dignity of children who experience discrimination and human rights abuse on multiple grounds. The approach to intersectionality needs however to be comprehensive. It is insufficient to use the concept in a fragmented way as is done in some reports, often without any definition. This makes 'intersectionality' merely another theoretical concept with little effect to change practice.<sup>75</sup> This is a common issue in the adoption of new framing concepts, not only within the field of human rights, but also in the fields of development, peace and security and other international areas where ideals and realities (theory and practice) can be difficult to match. In order to enable actual changes, the approach to intersectionality must be practically and systematically implemented in the work of human rights bodies and organizations, and not remain primarily for theoretical discussion. There is a need to challenge traditional single-ground approaches to discrimination within international human rights law and politics to provide redress for human rights violations caused by the interrelation of multiple grounds of discrimination. Existing tendencies to interpret different areas of human rights law in this connection should be encouraged and strengthened. Further research is needed on how existing human rights law can be interpreted innovatively to provide redress for human rights violations that cross-cut traditional legal categories. This includes analysis on how to use the women's rights framework as a legal avenue to address minority concerns of ethnic minority women and girls, or address gender issues within the framework of anti-racial/minority rights, etc. Furthermore, as has also been argued by a range of international and regional institutions and organizations, new legal developments are required which include provisions that directly target intersectional discrimination.<sup>76</sup>

Developing an international approach to intersectionality is important to influence national legal, political and institutional settings to take particular action against intersectional discrimination and address the impact that such discrimination has on human rights protection. This includes adopting an intersectional approach to the protection of the child against all forms of discrimination in order to ensure all children protection and development on an equal footing. In the implementation of the CRC through its general measures of implementation, intersectional discrimination has to be given considerable attention, as should also the inclusion of children in the development of responses to these issues.

One step towards developing practical solutions is to systematically consider intersectional discrimination when developing and implementing rights-based programmes for child protection. The next chapter applies the conceptual framework to the concrete example of addressing intersectional discrimination within programming against child trafficking.

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<sup>75</sup> See for example the report of the Independent Expert on Minority Issues: Mission to Hungary, 26 June–3 July 2006, UN Doc. A/HRC/4/9/Add.2 4 January 2007.

<sup>76</sup> European Commission, 'Tackling Multiple Discrimination', op. cit., p. 7, recommendation no. 2.

#### 4. RIGHTS-BASED APPROACHES TO CHILD TRAFFICKING

Child trafficking is one area of concern within a broader framework of child protection. Child protection encompasses measures for preventing and responding to all forms of violence, exploitation and abuse of children as essential to ensuring children's rights to survival, development and well-being. UNICEF's Child Protection Strategy 2008 presents a comprehensive approach to child protection that encompasses the following:

...to create a protective environment, where girls and boys are free from violence, exploitation, and unnecessary separation from family; and where laws, services, behaviours and practices minimize children's vulnerability, address known risk factors, and strengthen children's own resilience. This approach is human rights-based, and emphasizes prevention as well as the accountability of governments. It enhances aid effectiveness by supporting sustained national capacity for child protection. Finally, it reflects children's own roles and resilience as agents of change and actors in strengthening the protective environment.<sup>77</sup>

International instruments on human trafficking focus mainly on trafficking in adults, and thus the particular rights and concerns of children are not automatically addressed. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) is the first legal instrument to provide an internationally agreed definition of trafficking in human beings and of child trafficking specifically (article 3(a)).<sup>78</sup>

In order to respond adequately to child trafficking it must be viewed as more than a subissue of trafficking in human beings. A comprehensive approach is needed to establish a framework that safeguards children's rights at all times and effectively addresses all forms of abuse and exploitation of children, including trafficking. Such a rights-based approach to child trafficking is built on human rights standards, in particular the rights and principles of the CRC and the two Optional Protocols to the CRC.<sup>79</sup> The Optional Protocols complement the CRC. A ratification of the CRC, its Optional Protocols, the Palermo Protocol and the International Labour Organization (ILO) Convention 182 concerning the prohibition and immediate action against the worst forms of child labour is essential to provide broad protection for children who have been trafficked or sold into exploitation.

A rights-based approach to child trafficking gives primary consideration to the best interest of the child in all actions, and due consideration to the views of the child. It acknowledges children as social agents with the rights and capabilities to be consulted on matters that affect them, to express their opinions freely and have these taken into account and to seek, receive and impart information. In addition to national implementation of international standards on

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<sup>77</sup> UNICEF Child Protection Strategy 20 May 2008, E/ICEF/2008/5/Rev.1.

<sup>78</sup> The Protocol supplements the UN Convention against Transnational Organized Crime. The Palermo Protocol defines trafficking as follows: "Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force, or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" (article 3(a)). Further in regard to children, article 3(c) states that "The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in sub-paragraph (a) of this article."

<sup>79</sup> The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) and Optional Protocol on the Involvement of Children in Armed Conflict (2000).

the rights of the child and laws targeting trafficking in human beings and child trafficking, it is essential that child-specific provisions are integrated into existing national initiatives against trafficking in human beings. This requires that all actors engaged in anti-trafficking initiatives are made aware of the specific rights, needs and vulnerabilities of children. It is important to have intersectoral cooperation and multi-stakeholder cooperation between professionals working with children in order to ensure a holistic approach to child protection.

A rights-based approach to child trafficking encompasses measures for prevention of trafficking and for the protection and empowerment of children who have been trafficked. Prevention, protection and empowerment are interrelated and mutually reinforcing basic dimensions of successful anti-exploitation initiatives that include measures for legal protection and policy initiatives, information on trafficking, education, health protection, care and social assistance, etc. Preventing children from being trafficked in the first place is the first step in any anti-trafficking process. This includes responding to discrimination and other social, economic and cultural structures in society that are root causes of child trafficking. Protection and empowerment of children who have been trafficked include the existence of an effective justice system to protect the child, rehabilitation and support for children who have experienced trafficking or other forms of abuse and exploitation, and measures to avoid re-trafficking. Some of the components of rights-based initiatives for prevention of trafficking and for the protection and empowerment of children will be discussed in the following sections.

Within the anti-trafficking context, discrimination is most often approached as a root cause of child trafficking. It is regarded as a contributing factor to the exclusion of certain children in society, thereby making them more vulnerable to exploitation and abuse. Discrimination is also emphasized as being a consequence of the trafficking situation, since many children experience discrimination and stigma when they return to their families and communities.<sup>80</sup>

However, existing considerations on the impact of discrimination have had low implementation in terms of in-depth research, systematic data collection and intervention in anti-trafficking programmes. Little record is made of good practices in local and national programmes that respond to such issues. More research and data collection are needed on which children are vulnerable to discrimination, and in particular intersectional discrimination, in which sectors this is more likely to occur, and how this relates to the implementation and development of anti-trafficking measures. It is also important to analyse whether anti-trafficking measures might unintentionally reinforce children's intersectionalities by failing to include these children and their concerns in anti-trafficking initiatives.

One way to gain this insight is through an analysis of the impact that intersectional discrimination has on the rights of the child enacted in the implementation of preventive, protective and empowering measures. Where anti-trafficking measures are ultimately to ensure the protection of all children's rights, they themselves involve the enacting of various child rights. Some of these are the rights of the child to legal guarantees and procedural rights, education, information, participation (respect for the views of the child), health, social assistance and care, and the rights to an identity. These rights are enacted in conjunction with the general principles of the CRC.

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<sup>80</sup> UNICEF Kosovo, 'Children in Kosovo', op. cit., pp. 50–51.

An analysis of children's intersectionalities in the enjoyment of these selected key rights can serve to shed new light on the importance of addressing intersectional discrimination within anti-trafficking programmes. It shows the difficulties that some children and groups of children have in claiming their rights and how this may influence their participation in anti-trafficking initiatives and limit attention to their particular concerns. On the basis of the analysis, the chapter will present suggestions on how to address intersectional discrimination within anti-trafficking programming in order to ensure the adequate inclusion of all children and their concerns in initiatives for preventing child trafficking, and protecting and empowering children who have been trafficked.

#### **4.1 Legal guarantees and procedural rights**

Legal guarantees and procedural rights are broadly established in general human rights law and in human rights law concerning the protection of specific individuals and groups.<sup>81</sup> These rights are founded upon the principles of non-discrimination and equality of treatment, in particular equality before the law and equal protection of the law.

The existence of an adequate legal framework that ensures all children equal protection through legal guarantees and procedural rights is fundamental when addressing child trafficking. It includes establishing legal measures that criminalize child trafficking and provide a definition of child trafficking that is in accordance with the Palermo Protocol. It entails that all legal institutions and actors involved in the legal and administrative dimensions of the anti-trafficking process have knowledge on the rights of the child and act according to such knowledge. Affirmative measures are often necessary to ensure the inclusion of particularly vulnerable children. Legal assistance is crucial for children who are victims of trafficking when they report crimes committed against them and take part in legal procedures against the perpetrators. There must be effective control of the legality of any measures taken in the course of the investigation proceedings and primary consideration given to the child's protection, best interest and evolving capacities. Reporting mechanisms and judicial procedures need to be child-friendly so that children understand and feel safe in the process. This includes giving particular consideration to children's needs according to their age and different backgrounds, ensuring child-friendly language, establishing in-camera hearings, protecting the identity of the child, ensuring effective compensation, etc.<sup>82</sup>

Access to adequate legal guarantees and procedural rights for victims of trafficking is only one aspect of child protection within the legal and judicial system. It is part of a broader framework of ensuring special legal and administrative protection for children who are victims of a crime, who are suspected of a crime, and who are in detention. The CRC comprehensively establishes the human rights of all children alleged to have, accused of having or recognized as having infringed the penal law and requires States to promote a distinctive system of juvenile justice for children.<sup>83</sup> The CRC Committee, although not using the exact terminology of intersectionality, takes particular note of the impact that discrimination has on violations committed against specific children and groups of children in detention facilities worldwide:

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<sup>81</sup> For example: UDHR articles 6–12 ; ICCPR articles 9, 10, 14 ; CRC articles 16, 37, 40; CERD articles 5, 6. Read in conjunction with the implementing principles of each convention.

<sup>82</sup> These issues are of major concern to the CRC Committee, which on several occasions has noted inadequate child protection in legal procedures, such as disclosure of the child's identity at court, lack of in-camera hearings to protect children from facing the perpetrator and the public, and the lack of effective compensation.

<sup>83</sup> CRC articles 40 and 37, to be read together with the general principles 2, 3, 6, 12. See also UNICEF, 'Implementation Handbook', op. cit., p. 602.

States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists). In this regard, training of all professionals involved in the administration of juvenile justice is important [...] as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation [...] Many children in conflict with the law are also victims of discrimination, e.g. when they try to get access to education or to the labour market. It is necessary that measures are taken to prevent such discrimination, inter alia, as by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society (art. 40 (1)).<sup>84</sup>

It is important that the impact of intersectional discrimination on children's access to legal guarantees and procedural rights for crimes of trafficking, exploitation and abuse is addressed in anti-trafficking initiatives. The availability of institutional mechanisms for redress of trafficking is frequently affected by discriminatory practices not only on grounds of the child's young age but additionally on the grounds of the child's gender, ethnicity, national status, social status, or disability. Romani children's access to justice is an example. Romani children may not be provided with effective legal assistance, including interpretation and translation, because of discrimination on the grounds of their age and their ethnic origin in combination. Ethnic biases within the justice system can result in ineffective investigation and prosecution of crimes committed against the Romani child, for example trafficking and other forms of exploitation and abuse. This was evident in a trafficking case concerning a young Romani girl in Kosovo where the legal prosecutor expressed the view that it is inherent to Roma to traffic their children:

A case of a 14-year-old Roma girl, who had been sold for marriage by her parents to a much older man, was investigated by TPIU [Trafficking and Prostitution Investigation Unit] and submitted to court. The girl had been raped and forced into prostitution and she was not welcome back to her home as her parents stated that they could not return the money to the 'husband'. During the investigative phase, the prosecutor expressed his view that "this is a Roma issue and this way of acting comes from their tradition."<sup>85</sup>

Unintentional intersectionality arises when justice institutions lack resources, or do not allocate the existing budget, to ensure translation and interpretation. Consequently, crimes committed against Romani children on the part of the state, individuals in society and the child's family members can be left in impunity.<sup>86</sup> Ensuring adequate access to justice includes translation into minority or indigenous languages, Braille or sign language, and the absence of this help means not granting the rights that Romani children and all children who have these requirements are entitled to. It also includes the rights of children who are illiterate to other measures to ensure that they are heard and supported in the legal process.

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<sup>84</sup> Paras 6 and 7 CRC General Comment No. 10 on children's rights in juvenile justice, 25 April 2007, CRC/GC/10/2007.

<sup>85</sup> UNICEF Kosovo, 'Children in Kosovo', op. cit., p. 11.

<sup>86</sup> This can also be argued to amount to intentional intersectionality, since there is inaction in allocating budget, and thus the minimum core obligations to protect the procedural rights of the child are not fulfilled. See also General Measures of Implementation to the CRC.

Although, intersectionality in legal guarantees and procedural rights is an external intersectionality, violations that are not effectively brought to justice are also committed in the internal sphere, namely in the home or the affiliated group (religious, ethnic, indigenous, national and linguistic community, etc.). This can take the form of domestic violence and abuse, or be caused by traditions and practices within the community that conflict with the individual rights of children and women. Examples come from UNICEF research on children who are victims of trafficking in South-Eastern Europe. Here, 22 out of 31 children interviewed reported coming from families affected by domestic violence and abuse.<sup>87</sup> The case above of the Romani girl in Kosovo exemplifies how family traditions of child marriage conflict with the rights of the child.

On the one hand States may show reluctance to interfere in such domestic issues, regarding them as part of private life outside state control (also referred to as the public/private dichotomy within international law).<sup>88</sup> On the other hand, prejudice and discriminatory attitudes within state institutions may cause illegitimate interference by state actors in the lives of certain individuals and communities, for example minorities and indigenous peoples. As an example, ERRC research highlights how ethnic biases within state institutions towards Roma cause the disproportionate placement of Romani children in state care institutions because they are expected to come from dysfunctional families, have lower capacities than other children, etc.

Anti-trafficking initiatives for research and programming need to respond to discriminatory structures that interrelate and interfere with some children's legal guarantees and procedural rights. In these cases disadvantages combine and cause a multiple disempowerment of the child. The CRC General Comment No. 10 on Children's Rights in Juvenile Justice can serve as inspiration in developing anti-trafficking measures for ensuring all children equal protection of the law and before the law. This General Comment lays out particular measures needed to protect and promote children's diversities. Preventive measures aimed at revising the national legal framework to protect children's rights, including protection from the abuse, exploitation and violence, need to give special attention to the inclusion of intersectional groups. This includes revising legislation to ensure that it protects all rights and does not unintentionally exclude certain children from protection. Initiatives to address intersectional discriminatory practices within justice institutions are needed to ensure that all crimes committed against children are effectively brought to justice, including child abuse and exploitation.

Considerations of children's intersectionalities in legal guarantees and procedural rights within anti-trafficking programming also need to include a stronger focus on juvenile justice for intersectional groups. In its Concluding Observations, the CRC Committee notes discrimination or potential discrimination in juvenile justice against indigenous and ethnic and national minority children, including specifically Romani children.<sup>89</sup> Not only may Romani adolescent suspects and offenders be treated in the same way as Romani adults (thus outside childhood protection), but they are also more liable to experience violence and abuse because their vulnerability is increased by their age and ethnic origin in combination. More

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<sup>87</sup> 'Young People's Voices on Child Trafficking', op. cit.

<sup>88</sup> This is largely connected to legal limitations in interfering with private life, since most human rights instruments lay primary focus on protecting the individual in public life, meaning from unlawful interference and lack of protection from the sphere of the State. The private sphere receives most attention in CRC and CEDAW (public/private dichotomy within the law).

<sup>89</sup> CRC Concluding Observations: Hungary CRC/C/HUN/CO/2, paras 60 and 61(d)), Australia CRC/C/15/Add.268, para. 74 (c).

research is needed on children's intersectionality within the justice system. This research should provide the basis for particular mention in trafficking guidelines of the justice concerns and needs of children who cross-cut legal categories.

Anti-trafficking programmes should also give specific attention to internal intersectionalities in children's legal guarantees and procedural rights. Families or communities may not report cases of child abuse and exploitation, including trafficking, out of fear, lack of awareness of where to report, or mistrust of the particular state institution. Thus anti-trafficking programmes need to focus more on family support and awareness-raising to ensure that they can adequately assist the child in legal processes. Furthermore, it is important to investigate the impact that informal systems of justice have on child protection and in providing justice to children who are victims of trafficking and other forms of exploitation and abuse. Community dispute settlement mechanisms can, on the one hand, withdraw children from the justice system, and where these are discriminatory towards children they can hinder their access to justice in cases of trafficking. One example is those Romani communities using traditional dispute settlement mechanisms that maintain family integrity above, and sometimes at the expense of, the rights and freedoms of individual community members.<sup>90</sup> On the other hand, local dispute settlement mechanisms can also assist and protect the child and bring pressure on the state to investigate cases of trafficking and the perpetrators.

## 4.2 Access to information

Article 17 is particularly focused on the role of the mass media in relation to children's rights but includes a general obligation on States Parties to ensure that the child has access to information and material from diverse sources – especially those aimed at promoting wellbeing and physical and mental health. This is closely linked to the child's right to freedom of expression (article 13), and to maximum development (article 6).<sup>91</sup>

Access to information is broadly established in human rights law.<sup>92</sup> The CRC Committee interprets article 17 as a civil right of the child, and has on many occasions expressed concerns over the violations of children's civil rights (articles 13–17), namely, freedom of expression, freedom of thought, conscience and religion, freedom of association, protection from arbitrary or unlawful interference on privacy and honour and, finally, access to information.<sup>93</sup>

Children's access to information is essential in preventing child trafficking and other forms of exploitation and abuse of children. Information needs to be in a child-friendly language, taking age differences into account. It should address all issues of relevance in preventing trafficking. This includes information on the issue of trafficking, on the risks of moving abroad, on where to seek assistance and report abuse, on children's rights, and on laws and policies on trafficking, on sexuality and risky relationships, etc. It also includes provision of information on norms and practices that may make children more prone to exploitation and abuse. Adequate information supports children in protecting themselves and making informed decisions about their own lives.

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<sup>90</sup> Some communities maintain the use of the traditional Romani internal dispute settlement institution termed the 'Criss'. This is a tribunal-based court system adjudicated by elders. See Cahn, Claude, 'Nexus: Domestic violence, Romani courts and recognition', *Roma Rights*, No. 1: Women's Rights, 2000, p. 42.

<sup>91</sup> UNICEF, 'Implementation Handbook', op. cit., p. 217.

<sup>92</sup> For example, UDHR article 19; ICCPR; ICESCR; CERD article 7; CEDAW article 10(h).

<sup>93</sup> UNICEF, 'Implementation Handbook', op. cit., p. 220.

Access to adequate information is a significant concern for many children worldwide, and particularly for children who experience discrimination on several interrelated grounds. There is a general concern about the lack in many countries of information available for children, that addresses their concerns in a child-friendly language. This information is even less accessible in minority and indigenous languages, in Braille, sign language, etc. It is not only a question of translation into the given language, but also of the way information material often targets the majority population. Thus the particular concerns that some children experience are often not taken into account. One example would be a Romani girl with disabilities who is marginalized and may face particular risks because of her ethnicity, age and disability in combination. If information material separates children's issues and minority and disability issues, the particular grounds for these girls' concerns are not adequately addressed.

Distribution of information material often does not reach out to children who experience intersectional discrimination. These children may have difficult access to schools or be in schools where this material is not distributed. As highlighted in a recent report on Romani children: "Schools in most of the countries studied have some orientation on sexuality and family planning but this is marginal. The poor, excluded and especially Roma children are again the most disadvantaged, since they have less access to school, and risk not getting any orientation and appropriate information about family planning."<sup>94</sup> There can be similar concerns for children with disabilities, who may not have access to schools or be in special classes.<sup>95</sup>

Internal and external intersectionalities are important issues to address when discussing children's access to information. Discrimination against children in public information sources (external spheres) is a significant concern for the CRC Committee. Examples are negative stereotypes of Roma as being lazy, dirty, school drop-outs, thieves and beggars, which are depicted in the media and sometimes also seen in school books. Another critical stereotype is that Roma traffic their own children because child labour is practised among many Romani communities and families.<sup>96</sup> This latter stereotype in some cases influences the responses of state representatives to trafficking in Romani children, as was illustrated in the case example described above concerning the court process on the trafficking of a 14-year-old Romani girl.<sup>97</sup>

Internal intersectionalities influence children's access to information. Some families may not grant all children equal opportunities to access information, for example girls in patriarchal families, or children with disabilities in families that do not recognize this child's capacity to receive information. In situations where both factors occur, gender and disability, the girl who has disabilities can experience even further disempowerment in regard to accessing information. Families who themselves do not read or receive information may also be more liable to limit their children's access to information. One example is within those Romani families that traditionally silence sexuality and thus do not give their children access to sexual educational information, including on sexual exploitation, trafficking and HIV/AIDS. Another important issue is when community leaders do not disseminate information to the community because of their own lack of awareness or political interest: "Another internal constraint that emerged from the ODIHR report on Albania is that community leaders, who often head community NGOs, lack knowledge or awareness about existing tools and

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<sup>94</sup> UNICEF Serbia, 'Breaking the Cycle of Exclusion', op. cit., p. 37.

<sup>95</sup> 'Promoting the Rights of Children with Disabilities', *Innocenti Digest* No. 13, 2007, pp. 16–18.

<sup>96</sup> ODIHR, 'Awareness Raising for Roma Activists', op. cit., p. 12.

<sup>97</sup> UNICEF Kosovo, 'Children in Kosovo', op. cit., p. 11.

initiatives to combat trafficking in human beings. These Roma representatives serve as a bridge between Roma and the outside community...”<sup>98</sup>

Inadequate distribution of information material and data collection on child trafficking can also be caused by a community’s definitions of the age limit of a ‘child’ that vary from the national definition: “Insufficient knowledge or awareness of the nature of trafficking is also demonstrated by the lack of distinction between trafficking of children and women. Because many Roma girls are married and begin having children around 13 years of age, there is, findings suggest, ‘a tendency for the Roma representatives to consider trafficking in older girl children as trafficking in adult women’.”<sup>99</sup>

Anti-trafficking initiatives that involve awareness raising and dialogue need to take these various forms of intersectionalities into account. Recognizing that intersectional groups of children are often at high risk, it is essential to distribute anti-trafficking information in languages they understand, such as in minority and indigenous languages, in Braille and sign languages. This includes particular pedagogical measures to ensure that children who are illiterate or have limited language capacities are given information that they understand. Special attention must be given to ensuring that the content of anti-trafficking information responds to the concerns of all children and not only the majority. This requires special consideration of the influence that gender, ethnic or national origin, migrant status, disabilities, sexual preferences, etc., have on children’s risk of exploitation and abuse, with particular emphasis on the consequences of the interrelation of these grounds. Anti-trafficking information material should also embrace children’s diversities within a given target ‘group’ and not isolate children in certain categories in the way often seen in ‘diversity friendly’ information material. As an example, Romani children should not only be classified within one common denominating ‘Roma’ category, but particular consideration should be given to other categories of rights to which the children belong, as girls (women’s rights), persons with disabilities, migrants, refugees, etc.

When possible, this information should be integrated into a large information package for all children, since it is important not to isolate children in different categories of identity that require separate programmes. Pointing them out as ‘different’ or excluding them from broader anti-trafficking programmes can make them more vulnerable to discrimination and also result in a failure to give all children information on these important issues. They are all children first and foremost, and diversities must be recognized not as a cause for separation but as a tool for understanding and responding to the different, often interrelated, grounds of discrimination that place some children at higher risk.

Anti-trafficking campaigns should grant particular consideration to disseminating information to vulnerable children where they are located, and not only in state institutions where awareness-raising campaigns for children are regularly held. This requires special information activities to target children outside the school system, such as in alternative schools, care institutions, private homes, public spaces, social service centres, and through social workers in contact with the child, etc. This requires capacity-building of key actors around these children, such as parents, community leaders and professional staff, to meet the particular information needs of these children.

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<sup>98</sup> ODIHR, ‘Awareness Raising for Roma Activists’, op. cit., pp. 13–14.

<sup>99</sup> Ibid.

Anti-trafficking measures based on information need to address external and internal intersectionalities to ensure that adequate information is accessible to all children. This requires further dialogue with the media and revision of school materials to change dominant negative stereotypes of certain groups of children in society, such as those in relation to Romani children. It also requires entering into dialogue with families and communities that withhold information from the children. Family support and awareness raising and dialogue with parents and community leaders on existing discriminatory practices are necessary to change internal discrimination on the basis of age, gender, disabilities and other grounds that cause internal constraints for some children in accessing information. At a regional round table meeting on trafficking at ODIHR, Romani activists emphasized this need for community dialogue on the impact of traditional practices, and further advocated that this should also include broader public dialogue on the issue.<sup>100</sup>

### 4.3 Education

Education is broadly established in international human rights law both as a general right of all persons and as a right requiring special measures for some individuals and groups in society.<sup>101</sup> For example, human rights law concerning minorities and indigenous peoples establishes mother tongue instruction on minority and indigenous languages both in the form of teaching the language to the children and providing classes in the given language. It also includes intercultural and multicultural education, where all children are taught about the history and traditions of the majority population and of ethnic and national minorities and indigenous peoples in the country.<sup>102</sup>

Article 28 of the CRC establishes the child's right to education. The right to education is to be achieved "on the basis of equal opportunity," reflecting the fact that huge numbers of children suffer discrimination in access to education, particularly girls, children with disabilities, street children, poor children, migrants, minorities and children from rural communities.<sup>103</sup> The CRC establishes the progressive realization of the rights of all children to free and accessible education in the form of compulsory primary education and different forms of secondary education and vocational education; and higher education must be accessible "on the basis of capacity." States are obliged to take measures to reduce school drop-out rates and to ensure that school discipline respects the child's rights.<sup>104</sup>

Education is a central component in anti-trafficking programming. Formal education and life skills education are preventive measures to decrease risks of trafficking by empowering children to make informed choices and protect themselves. As a protective and empowering measure, education gives children who have been trafficked awareness and better skills to avoid re-trafficking, find employment, access a new social environment, etc.

However, education is also a sector in which intersectional discrimination has a significant impact. The CRC Committee emphasizes the problem of discrimination within education, notably in its first General Comment on the Aims of Education (article 29 CRC).<sup>105</sup> Although not addressing it directly as intersectional discrimination, a broad range of international,

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<sup>100</sup> Ibid.

<sup>101</sup> For example, UDHR article 26; ICESCR articles 13 and 14; CEDAW article 10; CERD article 5(v).

<sup>102</sup> FCNM articles 12, 13 and 14.

<sup>103</sup> CRC article 28; UNICEF, 'Implementation Handbook', op. cit., p. 407.

<sup>104</sup> UNICEF, 'Implementation Handbook', op. cit., p. 408; CRC articles 28 and 29.

<sup>105</sup> CRC General Comment No. 1, para. 10, CRC/GC/2001/1.

regional and national bodies and organizations express concern about the exclusion of certain children from education, also with particular focus on Romani children:

Alarming, structural discrimination (segregation and institutional discrimination) against Roma children in education is widespread and unyielding to efforts made at dismantling it. The Roma Report found extreme levels of segregation in both old and new Member States. Many are concentrated in sub-standard schools or classes. Equally problematically, due to a lack of proficiency in the majority language or culturally biased psychological testing, disproportionate numbers of Romani children are placed in remedial ‘special’ schools for mentally disabled children. Residential patterns may also lead to a high concentration of Roma in certain schools, often preventing integration into mainstream classes. Whether living in old or new Member States, the path of Roma children through basic education is too often characterised by absenteeism, early drop out and underachievement. In some Member States girls may drop out even earlier than boys.<sup>106</sup>

This quotation reveals how Romani children experience various forms of intersectional discrimination in the external sphere (state and society) that influence their right to adequate levels of education. Some Romani children experience structural intersectionality in the form of segregation that is not made in the best interests of the child.<sup>107</sup> This takes the form of *intraschool* segregation through the organization of separate Roma classes, or *intraclass* segregation through offering Roma children in the class different standards of curricula. There can also be *interschool* segregation in the form of concentrating Roma children in certain schools and *individual* segregation, in the form of alleged home schooling.<sup>108</sup> In each of these three types, Romani children are provided with lower standards of curricula, and very often Romani children receive less attention than other children. The children, and very often their parents too, are not given adequate information on the consequences of such educational segregation and on other educational possibilities. This practice has been noted by the CRC Committee in various Concluding Observations.<sup>109</sup> Furthermore, as discussed earlier, Romani children are also seen to be placed in schools for children with mental disabilities even where they do not have such disabilities. According to the European Commission, a significant factor behind such segregation is institutional discrimination, with Romani children expected to have dysfunctional families, learning disabilities, and to be ‘school drop-outs’.<sup>110</sup> Other factors are regional or housing segregation between ethnic groups that cause Roma to be segregated in particular schools in those areas.<sup>111</sup> In these cases, ethnic biases and institutional discrimination against Roma in one sector (housing and the private sector) lead to intersectional discrimination in another sphere (Romani children in education).

Romani children seldom have access to instruction in their mother tongue, and are seldom taught about Romani history, culture and traditions at school.<sup>112</sup> Thus few curricula fulfil the principles of mother-tongue instruction and intercultural and multicultural education for

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<sup>106</sup> European Commission, ‘Segregation of Roma Children in Education’, op. cit., p. 6.

<sup>107</sup> Segregation should only be allowed if it genuinely serves the best interest of the child. Parental consent to segregation is often used as ground of permission. However, research shows that many Romani parents are not provided with information about the scope of segregation and so consent on uninformed grounds – thus it is not a justifiable ground for segregation of Romani children. In any case, the best interest of the child is the imperative above all other grounds for justification. See also *ibid.*, p. 27.

<sup>108</sup> *Ibid.*, p. 4.

<sup>109</sup> For example, in CRC Concluding Observation Czech Republic, CRC/C/15/Add.201, para. 54.

<sup>110</sup> European Commission, ‘Segregation of Roma Children in Education’, pp. 4 and 12.

<sup>111</sup> *Ibid.*, p. 4.

<sup>112</sup> Roma have national minority status in Sweden, and Sweden constitutes a good example of implementing special minority measures for Roma in various sectors.

Romani children as established in particular in minority and indigenous human rights frameworks. This causes the Romani children to have greater difficulties in terms of language from not being taught in (and about) their mother tongue in situations where this is in their best interest. This has a direct influence on the disproportionate placing of children in schools for children with mental disabilities. Many children fail the psychological tests because these are provided in a majority language that they do not fully understand.<sup>113</sup>

Intersectional discrimination in the form of inaction is also seen within the education sector, where States or the particular institution does not allocate sufficient resources to ensure adequate education for children with other backgrounds and status. Here, young age acts together with other grounds because these children often do not have access to forums where they can push for such resources.

Rarely accounted for in educational programmes and initiatives are the diversities among children from within a given 'social category'. This concerns lack of education on, for example, gender issues for children with disabilities, on disability issues for ethnic minority children, on migrant issues within girls' programmes. As highlighted very briefly in the European Commission report on Romani children in education, girls may end school even earlier than boys.<sup>114</sup> This is even more likely for a Romani girl with disabilities, who may not even start school. The causes for such intersectionalities are to be located in both the external and internal spheres.

External intersectionality is seen in cases where teachers and other relevant authorities neglect Romani girls at school because of ethnic and gender biases that expect these girls to drop out to be married at a young age. It may also be that negative perceptions of girls and of children with disabilities in combination lead to institutional neglect of girls with disabilities by comparison with adults and boys with disabilities.

Internal intersectionalities significantly influence children's right to education. Families and communities influence children's access to information in many ways. This is also the case for Romani children. Parents may not grant importance to education, because of their own lack of education and awareness, and poverty. Economic constraints and traditions of child labour or economic marginalization may also mean that some families use child labour. This child discrimination in some cases combines with other forms of internal discrimination, such as gender-based discrimination. A Romani girl, for example, may be kept at home to support the household whereas the boy is sent to school. Girl children with disabilities in families where such patriarchal structures exist will most likely have even greater difficulties.

Anti-trafficking programmes need to address these various ways in which intersectional discrimination influences children's access to education. Educational activities against trafficking are often conducted within a broader institutional framework and thus it is necessary to take steps towards addressing structural intersectionalities to ensure that all children have equal access to such institutions and formal educational programmes. This requires greater pressure against segregation and lower standards of curricula when these are not in the best interest of the child. It also requires challenging negative stereotypic assumptions in society that increase the marginalization of children.

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<sup>113</sup> ERRC, 'Disinterest of the Child', op. cit.; European Commission, 'Segregation of Roma Children in Education', op. cit.

<sup>114</sup> European Commission, 'Segregation of Roma Children in Education', op. cit., p. 6.

Particular considerations must be given to including all children equally in educational activities on trafficking. This requires the allocation of adequate resources within anti-trafficking educational programmes to ensure their availability to children who speak other languages than that of the majority, bearing in mind that some children may both be members of a minority group that speaks a different language and have special needs in terms of Braille and sign language. Information on trafficking should also be made available for children who are illiterate or have limited language capacities, using special pedagogical tools such as theatre, etc. Life skills education must also address the needs and concerns of intersectional groups where they differ from those of the majority. Life skills curricula most often focus on topics of communication, decision-making, peer pressure, anger management, dealing with negative emotions, awareness of support networks and on sexuality, including the risks of HIV/AIDS. Gender-based discrimination is likewise addressed.<sup>115</sup> However, some children may require life skills education on other issues, or need issues on the general curriculum to be addressed more in their direction. This is, for example, the case with Romani girls who may feel that their concerns (which interrelate age, gender and ethnicity) are not adequately addressed in the curriculum on gender. Likewise, the concerns shared by Romani adolescents who are sexual minorities are not only those of discrimination as an ethnic minority child in society, but also as a sexual minority within their own communities and families.

As emphasized in the discussion on information, these educational components should (apart from those in other languages) be an integral part of the broader educational programme provided to children. It is important not to isolate children in different groups and classes and thus unintentionally reproduce segregation.

It is essential that anti-trafficking measures address internal intersectionalities in children's access to education. This requires entering into dialogue with families and communities who deny or limit children's access to education. Awareness raising and dialogue with parents and community leaders on existing discriminatory practices, and on how these conflict with the rights of the child, are necessary to change internal discrimination on the basis of young age, gender, disabilities and other grounds that cause internal constraints for some children in accessing education

#### **4.4 Participation**

The right to public and political participation is a cross-cutting principle in international human rights law and acts together with a range of other civil and political rights, in particular freedom of expression, freedom of conscience, thought and belief, freedom of assembly and association, freedom of movement, and the right to information.<sup>116</sup>

Child participation is a general principle of the CRC, established in article 12 concerning respect for the views of the child.<sup>117</sup> Respect for the views of the child encompasses children's rights to access and participate in decision-making processes affecting their life

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<sup>115</sup> 'South Asia in Action: Preventing and responding to child trafficking: Child rights based programme practices', UNICEF Innocenti Research Centre, 2008, p. 16; 'Child Trafficking in Europe: A broad vision to put children first', UNICEF Innocenti Research Centre, 2008, p. 41.

<sup>116</sup> Specific to national minorities and indigenous peoples is the enjoyment of these rights individually and in community with others, and the exercise of this right in their own preferred language in private and for certain official purposes. Within European law on minority rights, this includes the express right to establish and maintain their own institutions. FCNM, articles 12, 13 and 14.

<sup>117</sup> CRC article 2 (non-discrimination), article 3 (best interest), article 12 (respect for the views of the child).

and to influence decisions taken on their behalf within the family, the community, state institutions, etc.<sup>118</sup> The CRC specifically provides the child with the right to be heard and have his or her views given due weight in any judicial and administrative proceedings affecting him or her. This covers a very wide range of court hearings and also formal decision-making affecting the child in, for example, education, health, and so on.<sup>119</sup> Participatory rights of the CRC reflect the underlying principle that recognizes children as active rights holders and as experts on their own situation.

Child participation is a central component of anti-trafficking programmes. It is necessary to involve children in the development and evaluation of anti-trafficking initiatives so that these respond to the exigencies faced by children in the particular context and are sustainable in the long term. Adults can best protect children who are at risk of trafficking or who have been trafficked when they are informed about the needs and concerns faced by children in their everyday life. Thus children's views are essential to any anti-trafficking programme. Meaningful participation raises children's self-esteem and makes them more confident to report abuse and engage in legal processes.

However, children are often not given adequate opportunities to participate in matters concerning them, or their views are not given due weight. They are often denied the opportunity to access legal and administrative procedures, or their participation is hindered by the lack of child-friendly measures to ensure that children feel safe and understand the process. Insufficient implementation of article 12 in both private and public life is a major concern of the CRC Committee: "The Committee notes with concern that, due to traditional and paternalistic attitudes still widespread in the country, children are not encouraged to express their views and that, in general, their views are not heard nor given due weight in decisions affecting them in the family, at school, in the community and in social life at large."<sup>120</sup>

Intersectional discrimination impacts on the implementation of children's right to participation worldwide. Many children experience exclusion from participation and influence on matters that concern them, not only because of their young age, but in addition because of their ethnic origin, disability, gender, etc. This is noted in Save the Children research: "Disabled children face a double burden of discrimination. They are excluded and marginalised as a result of their impairment, and are further denied a right to participation in decisions affecting them because of their age."<sup>121</sup>

Historical attitudes towards children as passive recipients of assistance and not as active subjects of rights are also dominant attitudes towards other groups considered vulnerable to rights violations.<sup>122</sup> These are, for example, ethnic minorities, indigenous peoples, and persons with disabilities, etc., who have historically had limited opportunities for participation in matters that concern them and have been subject to state decision-making. When such attitudes towards young age, gender, ethnicity, disability, etc., combine, it increases the disadvantages for the children in question in exercising their participatory rights.

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<sup>118</sup> 'A Human Rights Conceptual Framework for UNICEF', op. cit., p. 11.

<sup>119</sup> CRC article 12(2); UNICEF, 'Implementation Handbook', op. cit., p. 149.

<sup>120</sup> For example, Chile CRC/C/15/Add.173, para. 29. This is reported on a global scale and thus not specific to any country or region.

<sup>121</sup> Save the Children, 'Demystifying Non-discrimination', op. cit., p. 41.

<sup>122</sup> UNICEF, *State of the World's Children*, op. cit., pp. 22–31.

Structural intersectionality in participation can be both intentional and unintentional. An example of intentional intersectionality is the segregation of Romani children in special school classes or even in classes for children with mental disabilities when the Romani child has no disability. In most cases little consideration is given to the views of the child and the best interest of the child.<sup>123</sup>

Unintentional intersectionality arises where laws and policies, and their implementation by authorities, unintentionally exclude certain children. An example is where initiatives for child participation do not have resources allocated for translation into minority and indigenous languages or for assistance to children with mental or physical disabilities.

Children often experience representational and political intersectionality, meaning that they have limited influence on matters concerning them because these decisions are in the hands of adults, and their concerns are sometimes subsumed under adult concerns. In initiatives for increased participation of minorities, indigenous peoples, persons with disabilities, etc., in public and political matters, often less consideration is given to the adequate participation of children from within these groups. One example is Romani children, who are rarely given the chance to participate in political and public matters concerning the Roma minority. This means that children's concerns are represented by adults and are also often subsumed under the concerns of adult Roma.

Furthermore, because of single-issue approaches in law and politics, children's diversities may be given little attention in forums for participation. The result is that, for example, a Romani girl with disabilities may feel obliged to choose to press one area of concern over others, selecting either gender concerns, disability concerns or Roma concerns. When political attention is primarily focused on one ground, this girl is not given the opportunity and assistance to address all the aspects of her particular experience of disempowerment. This desire to address multiple issues of concern in organizations was evident in an interview with a person with disabilities belonging to a minority group: "I would love that. I would find information. I would see the problems with other people. I feel rejected sometimes. Because they give you disability allowance and that's it. I feel completely like somebody that nobody wants. It is a need for people to socialise together."<sup>124</sup>

Anti-trafficking measures need to take into consideration children's intersectionalities in participation. Historical attitudes discouraging children from expressing their views must also be approached within a broader framework of social and cultural attitudes that discourage or exclude other groups and individuals from participation. Intentional exclusion from participation due to discriminatory perceptions and practices in certain institutions must be confronted, such as segregation of Romani children that is not in the child's best interest. This also includes advocating for inclusion of all children in legal and administrative procedures under child-friendly procedures that take the diversities in needs and concerns among children into account. Thus anti-trafficking measures need to move beyond the trafficking context alone and address broader structures of institutional and structural discrimination against children and the child's affiliated minority or indigenous community.

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<sup>123</sup> CRC Concluding Observations Czech Republic CRC/C/15/Add.201, para. 54; European Commission, 'Segregation of Roma Children in Education', op. cit., pp. 26–27; EUMC, 'Roma and Travellers in Public Education', op. cit., pp. 9–10.

<sup>124</sup> Zappone, op. cit., p. 139.

Internal intersectionalities are important issues to address in regard to child participation. Some children may be prevented from participating in public matters, and in family decisions, due to discriminatory practices against the child. One example is Romani girls in some patriarchal families and communities who are given little voice in decision-making processes in the family and who are not permitted to engage in public participation. Another example is children with disabilities, who may be given no voice because family or community perceives these children as having limited capacities.<sup>125</sup> Adolescents with other sexual preferences may not be allowed to express their sexuality and can experience violence and exclusion from family and community members when they do so.<sup>126</sup> These are sensitive issues that anti-trafficking measures need to address to ensure that those children who are considered at high risk of trafficking have de facto opportunities to participate in programmes that are intended to enhance their protection.

Meaningful participation in anti-trafficking programming requires that due consideration is given to minority and indigenous languages, Braille and sign language, to children who are illiterate, etc. It also requires the establishment of a child-friendly forum for participation where all children feel safe and have physical access (e.g. for children in wheelchairs). It is important to address children's particular experiences of exploitation and abuse related to their experiences of intersectional discrimination. In this process it is necessary to give more consideration to the internal diversities of children. Whereas many Romani children may require translation into Romanés, others may require additional translation into Braille.<sup>127</sup> Some girls may have important concerns relating to experiences of discrimination and violence on the basis of their gender and ethnicity in combination, which put them at greater risk of sexual abuse and exploitation than other girls and than Romani boys and adults.<sup>128</sup> Furthermore, it is relevant to establish particular forums to discuss intersectional discrimination and how this relates to child protection. This includes further encouragement and inclusion of children's own actions to address trafficking and others forms of violence, abuse and exploitation of children. These initiatives will provide new knowledge on the impact that interrelated forms of discrimination have on children's lives.

#### **4.5 Health and social assistance**

The right to health and health services is provided under international law, most comprehensively in the International Covenant on Economic, Social and Cultural Rights (article 12, ICESCR). The ICESCR recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>129</sup> The ICESCR Committee interprets the child-specific paragraph of article 12 to require measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, prenatal and postnatal care and emergency obstetric services, and access to information, as well as to resources for children to respond to such information.<sup>130</sup>

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<sup>125</sup> 'Promoting the Rights of Children with Disabilities', op. cit., p. 22; Save the Children, 'Demystifying Non-discrimination', op. cit., pp. 40–43.

<sup>126</sup> Save the Children, 'Demystifying Non-discrimination', op. cit., pp. 47–48.

<sup>127</sup> Many Romani groups speak dialects of the language Romanés; Klímová-Alexander, op. cit., p. 30.

<sup>128</sup> 'On Improving the Living Conditions of the Roma Community', Progress Report on Implementation of the National Strategy, Ministry of Labour, Social Affairs and Equal Opportunities, Albania, 2007, p. 61. ODIHR, 'Awareness Raising for Roma Activists', op. cit., p. 2; UNICEF Kosovo, 'Children in Kosovo', op. cit., pp. 22–24 (statistics p. 25); Report of the Committee CEDAW, op. cit.

<sup>129</sup> Article 12 ICESCR establishes the steps necessary to achieve the full realization of this right, including for reduction of the stillbirth rate and of infant mortality and for the healthy development of the child (article 12.2).

<sup>130</sup> HRI/GEN/1/Rev.8, para. 14, p. 90. The General Comment refers to the health rights of adolescents.

Furthermore,

The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.<sup>131</sup>

Children's right to health (CRC article 24) is to be read in conjunction with the general principles of the CRC, particularly the right to non-discrimination and the right to life, survival and development.<sup>132</sup> The CRC Committee emphasizes the connection between the right to health and the child's right to an adequate standard of living, to education, and to protection from all forms of physical or mental violence (the child's integrity).<sup>133</sup> Respect for the views of the child, and the evolving capacities of the child, is essential to ensure adequate health care services.<sup>134</sup> Together these rights protect the mental and physical integrity of the child and are thus crucial to the experience of human dignity.

However, the right to health and access to health facilities is also connected to a broader framework of realizing the child's right to birth registration, right to periodic review of treatment and the right to benefit from social security.<sup>135</sup> This connection is particularly relevant when protecting children who are at risk of trafficking and who are victims of trafficking.

Birth registration plays a crucial role in children's access to health and health facilities, education and other essential services in society. As seen in the case of Romani children:

Many Roma lack identity cards, birth certificates and other official documentation of their legal status. Such documents are often required to access public services. Statelessness, and the lack of status within the State of residence, as well as problems with documentation impede access to a range of rights including access to health care [...] Access to social protection includes access to non-contributory health insurance and other health related benefits.<sup>136</sup>

Exclusion from health care is an even greater concern for Romani children whose parents and community follow nomadic lifestyles, since access to health facilities, education, payment for salaries, etc., is often dependent on permanent residence.<sup>137</sup> Consequently this causes a *generational* intersectionality, where children grow up outside the state structures with limited opportunities to claim their rights, and then give birth to children who will be constrained by similar conditions.

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<sup>131</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14, 2000, HRI/GEN/1/Rev.8, paras 8, 9 and 11, pp. 87 and 88. See also the recent Fact Sheet No. 31 – 2008 on the Right to Health, Joint publication by the UN Office of the High Commissioner for Human Rights (OHCHR) and the World Health Organization (WHO).

<sup>132</sup> CRC articles 6 and 2.

<sup>133</sup> CRC articles 27, 28, 19.

<sup>134</sup> CRC articles 5 and 12.

<sup>135</sup> CRC articles 7, 25 and 26.

<sup>136</sup> EUMC, 'Breaking the Barriers', op. cit., p. 7.

<sup>137</sup> Ibid., pp. 7–8.

This ‘invisibility’ of non-registered Romani children is of particular concern because the lack of an official identity can hinder them from receiving their other rights to protection, care and support from public authorities and services.<sup>138</sup> Empirical evidence on Romani children in Europe illustrates how the lack of birth registration places children at higher risk of trafficking and other forms of child exploitation and abuse, since they are invisible in the legal and social monitoring systems. Furthermore, unregistered children do not appear in national data systems, including on child trafficking, and thus their particular concerns risk being neglected in child protection initiatives.<sup>139</sup>

The right to periodic review and social security is particularly important to children who are placed in state care and children who depend upon state support to realize their rights. These children live outside a protective family environment and in the event that the given state institution does not provide for adequate care and protection, they may be more vulnerable to exploitation and abuse, including trafficking. The right to periodic review is relevant for those Romani children for whom data show disproportionate placement in state care institutions. Under international law the State is obliged to review the circumstances of these children’s placement, including the establishment of adequate measures for testing, and in particular eliminating cultural and ethnic biases that cause unwarranted placement of Romani children in state care. Periodic review is also essential for children who are victims of trafficking. Many spend periods of time in shelters and care institutions, either because they are awaiting identification of their family or for judicial processes, or because they have no family or cannot return to their original home. These children require periodic review to ensure they are adequately assisted and protected and that a possible return to the family is in the best interest of the child and does not place the child at any risk. Many children depend upon national social security for a certain period because they live detached from adults who have responsibility to provide for them, or because these adults are unable to do so for various reasons such as unemployment, illness, disability, etc. This obligation of social security is upheld in article 26 CRC.

Intersectional discrimination has a significant impact on the right to health and social assistance for some children. Research shows how structural discrimination, both intentional and unintentional in character, denies Romani children access to adequate health facilities and social assistance:

Roma may experience various kinds of direct and indirect discrimination in accessing health care. These include: refusal of assistance by general practitioners or health care institutions; segregation in health care facilities; inferior and degrading treatment; and difficulties in accessing emergency care imposed as a result of their ethnicity. The short and long term consequences of this discrimination include unattended health problems, decreased trust in public services, and heightened social exclusion.<sup>140</sup>

Intentional intersectionality, directly targeting Romani children’s enjoyment of the right to health and care, takes various forms. Discrimination against the child’s mother has an influence on the health of the children and on the unborn child. Research shows that Romani women experience significant discrimination in the health care sector, in particular in Central

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<sup>138</sup> UNICEF Serbia, ‘Breaking the Cycle of Exclusion’, op. cit., p. 39.

<sup>139</sup> States may fail to register Romani children because their parents are unaware of the need for documentation or mistrust the state system. Costly and complicated procedures that often require language skills and economic resources also cause lack of registration, and evidence shows that Roma are often given little assistance as a result of ethnic biases in individual authorities; *ibid.*, p. 29.

<sup>140</sup> EUMC, ‘Breaking the Barriers’, op. cit., pp. 6–7.

and Eastern European countries. This causes their exclusion from certain health facilities, refusal of medical assistance except in an emergency, or segregation in hospital wards such as in special maternity wards.<sup>141</sup> Lack of birth registration is another example of external intersectionality. Language barriers may result in neglect or exclusion of the child from health facilities and social service centres, as these may not provide translation and interpretation into minority, indigenous, Braille and sign languages.

Social categorization of children in state institutions may unintentionally lead to the neglect of the concerns shared by children who cross-cut such categories. For example, the needs that Romani girls have for psychological or physical assistance risk being overlooked when they are categorized either within a broader majority children's category, or together with adult Roma. Romani girls may face prejudice and stereotypes from health care providers and social workers, who suspect they will get married early, have an early pregnancy, etc. One presumed consequence of such discriminatory perceptions of the Roma is that these authorities would not identify a Romani girl who has experienced sexual abuse, who is living in an abusive environment, etc.<sup>142</sup>

Similar situations can arise for Romani and other minority children with disabilities who may experience more severe discrimination on the basis of their young age, ethnic origin and disability together. This has been reported from Ireland: "a health service worker pointed out that Traveller families may face particular obstacles to accessing residential or respite care for disabled children because of stereotypical views of Traveller behaviour."<sup>143</sup> Even when they are accorded assistance, this may not be adequate. For example, sexual violence against Romani girls with disabilities is rooted in an interrelation of ethnic discrimination and discrimination on the basis of age and gender that together increase the vulnerability of the child. More research is needed on the manifestations of intersectional discrimination and how it also influences the health protection of children within a context of trafficking.

Internal intersectionalities also have a significant impact on children's access to health. Some norms and practices may have a negative impact on children's health or withdraw children from the health sector. CRC article 24, paragraph 3, requires action to abolish traditional practices "prejudicial to the health of children." Examples from Romani children's lives show how norms and practices in some families and communities may in some cases conflict with the rights of the child, in particular of girls. As highlighted in a report prepared in consultation with Romani women:

greater attention is required in addressing the particular difficulties a Romani girl may confront, e.g. withdrawal from school by her parents to protect her virginity, prepare for marriage, or assume household duties. These girls may not acquire adequate literacy and critical thinking skills to care for themselves and their families, as well as to modify cultural practices that adversely impact on their health and well-being.<sup>144</sup>

In these families, patriarchal structures combined with traditions of silencing of sexuality prevent girls from receiving sexual education, accessing health facilities and seeking information about sexuality, HIV/AIDS, sexual abuse, trafficking and other related issues. In

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<sup>141</sup> Ibid., pp. 42–45.

<sup>142</sup> More research is needed to identify the influence that discriminatory practices and stereotypes have on the health protection of Romani children.

<sup>143</sup> Zappone, op. cit., p. 142.

<sup>144</sup> EUMC, 'Breaking the Barriers', op. cit., p. 8.

effect, the child becomes more vulnerable to external discrimination, and to abuse and exploitation.

Anti-trafficking initiatives on children's health and social assistance need to take intersectional discrimination further into consideration. Special attention needs to be given to ensure language interpretation and translation to include children who speak minority and indigenous languages and who use Braille or sign language systems. There should be particular targeting of discriminatory practices and negative stereotypes of certain groups in society within the social sector (health and social assistance) that consequently hinder some children's right to adequate assistance. More research is needed on this issue, to identify how intersectional discrimination influences the assistance provided to children who are victims of trafficking from the time of identification to final rehabilitation. Special attention needs to be given to unintentional intersectionalities that arise when several laws combine and lead to the exclusion of particular children, such as for example the exclusion from shelters of children who do not speak the majority language.

Minimum standards for assistance to victims and management of their individual cases that take into account children's diversities and particular concerns are important to ensure that services are appropriate and do not revictimize children who are victims of trafficking.<sup>145</sup> Initiatives for psychosocial support should likewise pay particular attention to needs for psychological assistance shared by children who face particular difficulties in the social context due to intersectional discrimination against them. This requires additional capacity-building of health professionals, social workers and other actors involved in providing care for children who are victims of trafficking. This capacity-building should include education on the consequences of intersectional discrimination, on the rights of the child, on how to assist children with mental or physical disabilities, on when to seek language assistance, language education, dialogue on cultural sensitivity, etc.

Dialogue and awareness raising that targets customary laws and practices that may place some children at risk of trafficking should be initiated. This includes addressing other rights in connection with children's right to health, such as information and education rights. Contact with children's families and support for them are important, taking into consideration the particular needs of each family. In many cases its members may themselves be subjects of intersectional discrimination.

#### **4.6 Identity**

The right to preserve one's identity and have this recognized and protected by the State is a cross-cutting principle in human rights law linked to the rights to non-discrimination and equality of treatment as means to protect the inherent dignity of all human beings. Protection of specific aspects of human identity is in general human rights law most often provided as the right to a nationality, to a name and to preserve family relations.<sup>146</sup>

Identity rights are emphasized in human rights law concerning the specific protection and equality of individuals and groups who have historically experienced discrimination on the

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<sup>145</sup> "Case management is a system by which an individual is provided *personalized* care and assistance under the guidance of a multi-disciplinary team, each member of which provides expertise and input regarding specific areas of intervention on behalf of the individual's well-being," John Frederick, UNICEF Technical Notes, 'Case Management for the RRI Process', from the 2nd Bilateral Meeting on Rescue, Rehabilitation, Repatriation and Integration of Bangladeshi Child Victims of Trafficking.

<sup>146</sup> See, for example, UDHR article 15, ICCPR article 24.

basis of aspects of their identity and status. CEDAW establishes non-discrimination and equality of the gendered identity (women and girls), and the case is similar for persons with disabilities in the CRPD. The CRC establishes the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law, and to receive appropriate assistance and protection if necessary to re-establish such identity.<sup>147</sup> This provision is to be read together with the CRC general principles, notably those of non-discrimination and respect for the views of the child, underlining the child as an active rights holder with capacities to make informed life choices. Identity preservation also links to the right to birth registration, name, nationality and the right to know and be cared for by parents (article 7). Furthermore, article 30 of the CRC establishes the specific right of children of minorities and indigenous peoples to enjoy their own culture, to profess and practise their own religions, or to use their own language.

Comprehensive elaboration of the identity rights of minorities and indigenous peoples is made in the human rights framework comprised of ICCPR article 27, CERD, minority and indigenous rights.<sup>148</sup> This framework includes state protection and promotion of the national, ethnic, cultural, linguistic and religious identity of minorities and indigenous peoples. It also includes the rights of minorities and indigenous peoples to the development and enjoyment of their own culture, to profess their own religion, and to use their own language, including traditional names.<sup>149</sup> These rights are to be enjoyed individually and in community with other members of the affiliated group.<sup>150</sup> Particularly important is the principle of self-identification, which gives persons belonging to national minorities and indigenous peoples the right to freely choose to be treated or not treated as such.<sup>151</sup> Identity is to be further empowered through intercultural dialogue, media and education that foster knowledge on the culture, history, language and religion of national minorities and indigenous peoples.<sup>152</sup>

This emphasis given to the protection and preservation of the identity of all human beings, including special measures and rights for specific groups, underlines how respect, tolerance and opportunities for expression of individual and group identity are integral to the experience of human dignity.

The building of the self-esteem of children who have been trafficked and who have experienced other forms of exploitation and abuse is an essential component in anti-trafficking programming. Research shows that many children experience discrimination and exclusion when they return to their families or neighbourhoods following a trafficking situation. They can be closed into a category as a 'trafficking victim' and on this basis may be excluded, harassed or maltreated. Interviews with children highlight this problem: "In the village where my parents and my siblings live, everybody talks and treats me very badly, including my mother."<sup>153</sup> Many children and adolescents see no future after the damaging experiences of rights violations and have difficulties in identifying with the social context they live in, or have returned home to: "I don't know what I am going to do, except being at

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<sup>147</sup> CRC article 8.

<sup>148</sup> CERD, UNDM, FCNM, Declaration on the Rights of Indigenous Peoples, ILO Convention 169 on Indigenous and Tribal Peoples.

<sup>149</sup> UNDM article 1; FCNM article 5.

<sup>150</sup> UNDM article 3.

<sup>151</sup> FCNM article 3; ILO Convention 169 on Indigenous and Tribal Peoples.

<sup>152</sup> FCNM article 12.

<sup>153</sup> Quote from a young girl interviewed for research on child trafficking by the UNICEF Innocenti Research Centre, 'Young People's Voices on Child Trafficking', op. cit.

home, helping my family. I know that it is too hard for me to get a new life, get married, who is going to marry me?"<sup>154</sup>

Empowerment measures to build the confidence and self-esteem of trafficking victims often include formal education and life skills education. Life skills education includes issues such as interaction and communication with other children and adults, decision-making, peer pressure, anger management, dealing with negative emotions, sexuality and the risks of HIV/AIDS. Gender-based discrimination is likewise addressed.<sup>155</sup> Empowerment measures also involve awareness raising and dialogue to combat stereotypes and discriminatory practice against victims of trafficking. However, anti-trafficking programmes need to further address the impact that intersectional discrimination has on children's self-esteem and confidence. Children do not merely share a common identity as children, but also identify and are identified by others on basis of a range of other factors. These aspects of children's multiple identities need to be given more attention. Being a victim of trafficking is sometimes a ground of discrimination that interrelates with other grounds, such as discrimination on the basis of the child's ethnic origin, disability, national status, etc., and thus it increases the disempowerment of these children.

Examples from Romani children's lives illustrate how intentional and unintentional discrimination in society deprives the children of their self-esteem when they experience degrading treatment, abusive name-calling, neglect and inadequate assistance as a result of negative perceptions of Roma.<sup>156</sup> Lack of intercultural education and dialogue on Romani culture in important spheres of public life (education, media, public debates) adds on to a situation of unawareness and stereotypes of Roma in majority society. It can also hinder Romani children from gaining the knowledge about their own culture, history and language that is necessary to build confidence and self-esteem. Few States grant Roma national minority status and the corresponding rights and measures of such categorization which are crucial to ensure the adequate promotion and protection of Romani children's ethnic, cultural and linguistic identity.<sup>157</sup> Lack of birth registration deprives these children of a legal identity necessary to receive adequate assistance and care and thus reinforces the experience of disempowerment. This is even more complex for those Romani children who are also girls, have disabilities, have migrant status, etc., as it combines with other disempowering structures in society that influence their self-esteem.

Low self-esteem and confidence is not only caused by external intersectionalities. On the contrary, listening to children's experiences illustrates how external intersectionalities often interrelate with internal intersectionalities. As an example, some Romani girls not only experience discrimination as a child, a girl, and as Roma in society, but in addition experience discrimination on the basis of their age and gender within their own families and/or community if these maintain practices and norms that discriminate against children and women.<sup>158</sup> These structures reinforce each other in cases where there are conflicting

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<sup>154</sup> Interview with girl who had been trafficked at age 16, in UNICEF Kosovo, 'Children in Kosovo', op. cit., p. 52.

<sup>155</sup> 'South Asia in Action', op. cit., p. 16.

<sup>156</sup> For example, see: UNICEF Serbia, 'Breaking the Cycle of Exclusion', op. cit., p. 6; EUMC, 'Breaking the Barriers', op. cit., pp. 43–45; European Commission, 'Segregation of Roma Children in Education', op. cit., p. 30.

<sup>157</sup> Sweden is a positive example in this regard and, although discrimination against Roma remains an issue of concern, the platform for addressing such discrimination and inequality is significantly stronger when Roma have status as a national minority with corresponding rights and measures for protection and empowerment.

<sup>158</sup> 'A Place at the Policy Table', op. cit.

expectations of the child from society, on the one hand, and the child's family, on the other. One example is the societal norm of education versus traditional practices of non-education of women. If a Romani girl follows societal expectations she risks entering into conflict with her family or community, and if she follows family or community norms she will be further discriminated against in society as an uneducated Romani woman. Research shows how children who experience diverging and often conflicting expectations from society and their family or affiliated group often express great confusion about their own identity and life expectations. They may feel they have to choose between their family and their own interests, or that they have to split their concerns and choose to address certain aspects over others, for example minority concerns over gender concerns.

Anti-trafficking initiatives for the empowerment of children to prevent trafficking and assist children who are victims of trafficking need to take into account intersectional discrimination both in external and internal spheres. Low self-esteem and confidence from the trafficking experience is in many cases reinforced by low self-esteem as girls, minorities and indigenous children, as children with disabilities, children who are migrants, etc. Whereas many programmes address gender issues systematically, these initiatives need include more positively other grounds of identity which these girls have and which often mean that there are significant differences in their concerns, some of which they might share more with boys than other girls. Taking intersectionality into account includes developing intercultural dialogue and education within existing life skills programmes. It also requires capacity-building of actors and institutions involved in the rehabilitation of children who have been exploited and abused. This capacity-building ranges from language training to education on children's diversities. Families and communities must be further approached and supported through dialogue and awareness raising on norms and practices that put some children at a disadvantage. Greater attention to the multiple identities of children will increase the relevance of initiatives for building children's self-esteem for all children, including those most vulnerable to exploitation and abuse. As noted by a boy with disabilities: "When I come out of my house, the people point at me and say, 'Why don't you stay in, look at you! You cannot walk properly!' But my problem is not my disability. It is the attitude of people who make fun of me."<sup>159</sup>

#### **4.7 Closing the analysis: approaching intersectional discrimination in anti-trafficking programmes**

The analysis of Romani children's intersectionalities in accessing key human rights has shed light on the importance of addressing intersectional discrimination within child protection programming. It was illustrated how legal guarantees and procedural rights, information, education, participation, health and social assistance and identity rights are essential rights for children to access in order also to be reached by anti-trafficking measures. In cases where such rights of the child are denied due to internal and external forms of intersectional discrimination, the child might fall outside the scope of protection initiatives. Furthermore, the analysis illustrated how anti-trafficking programmes can unintentionally reproduce the exclusion of intersectional groups of children when measures are not established that respond to the complex forms of discrimination that make children vulnerable to exploitation and abuse. These concerns reach beyond merely an anti-trafficking context and into a broader context of addressing internal and external forms of discrimination that cause the disempowerment of certain children in society.

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<sup>159</sup> Save the Children, 'Demystifying Non-discrimination', op. cit., p. 40.

On this basis the chapter has introduced some recommendations on how to address intersectional discrimination within anti-trafficking programming. These recommendations are elaborated in the following closing chapter, which summarizes the findings of the analysis and presents suggestions for future research and action on the issue of intersectional discrimination against children.

## **5. SUMMARY OF FINDINGS AND RECOMMENDATIONS**

This paper has aimed to add a perspective to existing research on discrimination against children by engaging in a debate on intersectional discrimination and how this relates to child protection. It first applied the concept of intersectionality within a Romani children's context to shed light on the complexities surrounding children who experience discrimination on several, often interrelated, grounds. Secondly, presenting a concrete example of addressing intersectional discrimination within child protection initiatives, the paper focused on rights-based programming on child trafficking. The findings are summarized in the closing of the respective analytical chapters. The paper now concludes with the following recommendations for future research and intervention on intersectional discrimination against children:

### **Holistic intersectional approaches**

Research and programming concerning protection of the rights of the child, including child protection against trafficking, should to the greatest extent possible include measures that respond to children's diversities and experience of different forms of intersectional discrimination. This includes opening up traditional social categories and taking children's diversities into account, as for example in the need to address disability concerns and questions of ethnicity within gender programmes, ethnicity and gender issues within disability programmes, etc. These measures should, however, be an integral part of the overall programme for child protection and development. It is important not to isolate children in different categories of identity that require separate projects. Pointing them out as 'different' or excluding them from broader programmes may make them more vulnerable to discrimination and could unintentionally reproduce their exclusion in society. It also fails to give awareness to all children on these important issues, which is crucial to targeting discriminatory attitudes among children themselves. Children are all children first and foremost, and diversities must be recognized not as a cause for separation but as a tool for understanding and responding to the different, often interrelated, grounds of discrimination that place some children at higher risk.

### **Research gaps in child protection and on intersectional discrimination**

Filling the knowledge gaps on intersectional discrimination is the first step towards developing comprehensive approaches to the issue. There is a pressing need for more research as to which children are vulnerable to intersectional discrimination (intersectional groups) and in which sectors it occurs. It is relevant to investigate the ways in which intersectional discrimination manifests itself in the sectors involved in trafficking prevention and in the protection and empowerment of children who have been trafficked. Research, together with children themselves, will also serve to provide new insights into these issues.

There is a need for a closer look at child protection programmes themselves, to evaluate whether the existing ones include all children or whether they in fact unintentionally reproduce the intersectionality for certain children. In anti-trafficking programming this requires more research on the impact that intersectional discrimination has on the vulnerability of children to trafficking, on the one hand, and how this can be addressed within the programmes, on the other. It also requires an evaluation of how existing initiatives to prevent trafficking, and protect and empower victims, include children who experience intersectional discrimination. This requires, for example, a critical focus on the availability of adequate linguistic assistance, physical accessibility for children with physical disabilities and for children who live in rural areas, assistance for children with mental disabilities, safety

conditions for all children, etc. Particular focus should be on the substantive content of the programmes, on whether they include not only the concerns shared by the majority but also the specific concerns of children who cross-cut legal categories. This research should form a planning base for adequately responding to diversities within social groups, where children share multiple concerns cross-cutting traditional categories of rights.

More research is also needed on the interplay between root causes for child exploitation and abuse, such as between discrimination, poverty, domestic violence, abuse and neglect. The concept of intersectionality serves as an analytical tool in such research by framing the various ways that grounds of discrimination combine and increase the disempowerment of certain children and groups of children.

It is relevant to use the concept of *intersectionality* to frame future research and intervention areas on child protection against trafficking.

### **Structural intersectionality**

*Guiding questions: How does structural discrimination increase the vulnerability of children to trafficking? How does structural discrimination influence children's access to anti-trafficking measures? Is there a risk that anti-trafficking measures reproduce children's structural intersectionalities?*

Anti-trafficking measures are implemented within a broader institutional framework, and thus it is important to challenge discriminatory practices or attitudes within laws and policies and implementing state institutions that may limit children's access to services and protection measures, including those for anti-trafficking. Most child protection programmes have robust approaches to gender-based discrimination, and these can be strengthened by also giving systematic consideration to other aspects of children's diversities which result in discrimination, such as the interrelation of gender and ethnicity, of disability, of poverty, etc. Targeting structural discrimination requires revision and reform of legislation and policies that discriminate against certain individuals or groups in society. Particular attention should be given to laws and policies that unintentionally discriminate against some children by excluding them from services because they cross-cut areas of child protection (as, for example, in the case of language barriers in care institutions). Lack of implementation of minimum core obligations can also amount to discrimination in practice.

Addressing structural intersectionalities requires research and monitoring on the particular ways in which discriminatory structures combine and interfere with children's access to entitlements that are fundamental to the prevention of their trafficking and to their protection and empowerment as victims of trafficking. These are particularly the rights to information, education, participation, legal guarantees and procedural rights, health, social assistance and to identity protection and promotion. Furthermore, research and action on anti-trafficking measures should address intersectional discrimination within a broader context of society. It is important to investigate the impact that the interrelation of discriminatory practices and attitudes in society and the media have on the child, for example for a Roma girl with disabilities. In these cases several disadvantages combine, and this is likely to increase the marginalization and vulnerability of the child in question to rights violations, including abuse and exploitation. The general measures of implementation of the CRC are important guidelines in the development of responses to structural intersectionalities

### **Political and representational intersectionality**

*Guiding questions: How does political and representational discrimination increase the vulnerability of children to trafficking? How does such discrimination influence children's access to anti-trafficking measures? Is there a risk that anti-trafficking measures reproduce children's political and representational intersectionalities?*

Political and representational intersectionality is an experience shared by many children, since they are often excluded from participation in matters that concern them and have their political interests represented by adults. Children who experience discrimination on several grounds may be even further disadvantaged in this regard, since their exclusion is not only based on their age, but in addition on their ethnicity, disability, etc. Anti-trafficking initiatives need to challenge historical attitudes towards certain groups of people as 'passive' recipients of assistance, which causes their exclusion from political participation and self-representation. This includes children, ethnic minorities, indigenous peoples, persons with disabilities, refugees and many others. It is important to investigate whether children who experience discrimination on interrelated grounds have adequate opportunities to participate in and influence decision-making on their own lives. This includes their health, education, access to information, and legal and administrative procedures. Meaningful participation is key to children's experience of self-esteem. Anti-trafficking programming must review whether intersectional groups have adequate possibilities to participate in the specific initiatives for prevention, protection and empowerment. These need to be accessible and understandable (language) for all children and also respond to the particular concerns of all children. This presents a challenge to existing life skills programmes in anti-trafficking programmes. Life skills programmes unintentionally reproduce multiple barriers to some children when the particular concerns and needs that they share are not granted adequate attention. Life skills programmes have to respond to children's multiple identities by taking further note of the broader contexts in which these children live their everyday lives. Particular forums for dialogue and education should be established on intersectional discrimination, to address discriminatory practices in society and build the capacities of children and professionals to understand and respond to the issue.

### **External/internal intersectionalities**

*Guiding questions: How do external and internal intersectionalities increase the vulnerability of children to trafficking? How does discrimination in these private and public spheres influence children's access to anti-trafficking measures? Is there a risk that anti-trafficking measures add on to children's experiences of external discrimination?*

Anti-trafficking measures need to address structures of discrimination in both the child's private and public spheres (external and internal intersectionalities). More research is needed on how these interfere with children's access to rights, including those fundamental to their inclusion in anti-trafficking measures. This includes research on how structural intersectionalities (as a clear issue of external intersectionality) interfere with certain children's access to services which are fundamental to their protection and development. Echoing the general principle of respect for the views of the child, children should not only have opportunities to access services, but also to have their concerns taken into consideration in the design of such services. Furthermore, it is necessary to investigate how interrelated forms of discrimination within the child's family and affiliated minority or indigenous community interfere with the rights of the child. These are sensitive issues that need to be addressed with great caution, always with the best interest of the child in mind, in order to protect the child against all forms of violence, abuse and exploitation. Within an anti-

trafficking context it is important to investigate the impact of internal discrimination on the inclusion of children in anti-trafficking programmes in terms of noting whether the family and community hinder children's access to the forums where anti-trafficking initiatives are implemented (health facilities, education institutions, care and social service centres, public information and debate forums, legal and administrative services, etc.). Structures should be designed to reach children outside the formal system, and support given to families who are often themselves outside the system and subjects of intersectional discrimination. Dialogue and awareness raising are needed with families and local communities on customary laws and practices that interfere with the rights of the child or place children at risk of exploitation and abuse.

More research is needed on how external intersectionalities interrelate with internal intersectionalities. The analysis presented the example of some Romani girls who not only experience discrimination as children, girls, and as Roma in society, but in addition experience discrimination on the basis of their age and gender within their own families and/or community where these maintain practices and norms that discriminate against children and women. These structures reinforce the disempowerment of the child, in particular in cases where there are conflicting expectations for the child from the two directions of society and the child's family. Diverging and in particular conflicting expectations from society and the family or affiliated group influence children's opportunities for action, well-being and self-esteem. It is important to research further the impact that internal and external forms of discrimination have on child protection. For example, more research is needed on the influence that discrimination within the family has on children who migrate together with their parents. It is often assumed that these children are better protected because they move together with their family. However, research shows that these children often fall out of the research of the child protection systems and, in cases where the parents abuse or neglect the child, this increases the disempowerment of the child.

## **Data collection**

As noted by the European Commission: "Lack of documentation and statistical data makes the phenomenon of Multiple Discrimination less visible and lowers incentives to recognise the phenomenon and to find effective mechanisms to combat it. Lack of data means that there is an unbalanced image of which intersectional groups are vulnerable, and in which sectors Multiple Discrimination occurs."<sup>160</sup>

Comprehensive approaches to intersectionality require broader knowledge of the issue of intersectionality through data collection and research. Existing data often separate grounds of discrimination in statistics and thus the issue is less visible. This hinders effective targeting of intersectional discrimination at national level. Data that combine grounds such as gender, disability and ethnicity are important sources to shed light on the situation of those persons and groups in society often considered to be most vulnerable to human rights violations.

Important in this regard is the challenge of ethical data collection. One example is ethnic data collection. Ethnic data collection is illegal under various areas of national and international law since it can be used against the persons or groups of people in question. Historical experiences with misuse of ethnic data have made it important to have measures to ensure personal protection for all persons in society. However, the lack of disaggregated data also creates inconsistent images of the situation of racial/ethnic groups and can have the

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<sup>160</sup> European Commission, 'Tackling Multiple Discrimination', op. cit., p. 48.

consequence that initiatives for their protection and development are not developed or are inadequate. Ethnic data collection will strengthen the perspective on the situation of such individuals and groups and underline States' responsibilities to establish measures for their equal protection and development. Ethnic data collection must be carried out with the full consent of the persons in question on well-informed grounds. This can be difficult to achieve with some groups in society, for various social and historical reasons of misuse of data by the State, etc. Ethnic data must be made impersonal in the analysis process to ensure the anonymity of the persons involved.

### **Good practices**

It is important to collect information on good practices in addressing intersectional discrimination in anti-trafficking programming. Whereas many countries in Europe have little experience in this regard, information on child protection projects in, for example, India illustrate that in these more consideration is given to the interrelation of issues of age, gender and social status (caste). These initiatives can serve as an inspiration in the development of intersectional approaches to child protection. It is important to evaluate the impact of such projects, in particular when these create separate programmes for intersectional groups, to ensure that they do not unintentionally reproduce children's intersectionalities by pointing the children out as 'different'.

### **Cross-cutting areas of human rights law**

Rights-based approaches to child protection should make further use of other areas of human rights law as complementary to the CRC and the CRC Optional Protocols. Provisions within human rights legislation concerning the protection and advancement of specific individuals and groups in society can be used to target the particular discrimination that some children experience in addition to the discrimination on basis of their age. CEDAW is the legal tool most often associated with CRC and this good practice of combining legal measures can be developed further by drawing on other areas of human rights law. Although CERD, minority and indigenous rights redress discrimination in public life on the basis of racial/ethnic origin, they may also indirectly serve to protect, for example, girls who experience discrimination on the basis of their dress in public spaces (CERD article 5(f)). Similarly, although not having particular minority provisions, CEDAW is a potential avenue that can be used further to target external discrimination against ethnic minority women in society. This was illustrated in the case of Andrea Szijjarto in Hungary. Although the case failed to address the issue of structural discrimination against the Roma, it indirectly redressed the significant discrimination that many Romani women experience in the health sector that violates their physical integrity. It furthermore targeted the lack of information that minority women often experience due to language barriers. It underscored the State's obligation to eliminate discrimination and provide accessible and understandable information for all. Furthermore, CEDAW's provisions against horizontal discrimination could be interpreted further to redress internal intersectional discrimination against girls rooted in personal status laws or norms of religious institutions or ethnic communities that conflict with the individual rights and freedoms of the girl.

Further research is needed on how human rights law can serve to redress the concerns of persons who belong to several legal categories. However, this strategy does not directly target the particular human rights concerns of the child who experiences discrimination on interrelated grounds. It only addresses aspects of the rights violation. Furthermore, this form

of strategic manoeuvring is difficult for children who do not have the same access to resources and assistance as adults.

In order to address the full aspects of the violations of the rights of children who experience intersectional discrimination, it is necessary to make it possible to address multiple concerns under international law and national law. More research is needed on the impact that legislation allowing for multiple ground approaches to discrimination would have on legal procedures on child exploitation and abuse, including trafficking. This includes exploring the full potential of article 6 concerning multiple discrimination against women and children in the recent Convention on the Rights of Persons with Disabilities.

Anti-trafficking programmes can find further inspiration on how to establish measures against intersectional discrimination in the General Comments of the UN Committees. These underline the particular implications that discrimination has for the implementation of a given human right. An example is the CRC General Comment No. 10 on children's rights in juvenile justice, elaborating measures to target the discrimination that particular children and groups of children experience within detention facilities. The CRC General Comment No. 1 on the aims of education establishes similar measures. These can serve to identify the particular steps needed to address intersectional discrimination within anti-trafficking programmes on legal assistance and protection and on education and life skills training.

Inspiration outside the CRC context can be found in CERD General Comment No. 27 on discrimination against Roma. This identifies sectors where Roma experience significant discrimination and highlights the problem of discriminatory attitudes, low standards of curricula, and segregation of Romani children in education.<sup>161</sup> CERD General Comment No. 25 on the gender-related dimension of racial discrimination presents a methodology for analysis of the gender-related dimensions of racial discrimination. This consists of a four-step inquiry that investigates the nature of the violation, the contexts in which it took place, the consequences, and the availability and accessibility of remedies and complaint mechanisms.<sup>162</sup> These measures can be used as an inspiration in anti-trafficking programming to acknowledge and respond adequately to children's multiple concerns that make them vulnerable to exploitation and abuse. Further cooperation is needed with other human rights bodies around the development of such cross-cutting methodologies to add a strong perspective on the rights of the child within human rights programming.

It is further recommended that the CRC Committee develops a General Comment to article 2 of the CRC to comprehensively target intersectional discrimination. This would strengthen the perspective on the particular situations that increase the vulnerability of children to rights violations, including trafficking, exploitation and abuse. A General Comment on the issue can give voice to concerns that have been increasingly raised over the past decade in relation to adults, and finally shed light on the impact on children's development and protection. In this way a General Comment can serve as an international political instrument to enhance attention to those persons who are often most at risk of rights violations.

## **Dialogue on discrimination and diversity**

Preventing discrimination from occurring in the first place is the first step in any holistic intersectional approach against intersectional discrimination. This includes establishing

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<sup>161</sup> General Comment No. 27: Discrimination against Roma, 16 August 2000, CERD/GC/27.

<sup>162</sup> General Comment No. 25: On Gender-Related Dimensions of Racial Discrimination, 20 March 2000.

forums for dialogue on intersectional discrimination, and also particularly on the forms of intersectional discrimination experienced by children. Such dialogue should take place at various levels, including between state actors and professionals working with children from various sectors. It is important to establish dialogue at the levels of civil society and the local community to reach all persons affected by, and involved in, discriminatory practices. It is essential to include children in dialogue processes to ensure adequate intersection between adults and children, since these children are experts on their own situation. Dialogue forums specifically for children to discuss experiences with and opinions about intersectional discrimination are important to generate a more nuanced insight into such issues and target discrimination among children. It is important to work together with children on diversity and equality issues to ensure that children are not socialized and influenced to reproduce discriminatory practices or attitudes dominant in the societies or families in which they live.

### **Capacity building on equality and diversity**

The State is the primary duty bearer in providing care, support and protection for children who are victims of trafficking. Prevention likewise depends upon state structures for education, health protection, information and in particular legal and political structures for protection. However, the analysis has shown that the institutional domain is also where intersectional discrimination often manifests itself and interferes with the rights of children, including those essential to ensure the prevention of trafficking and their protection and rehabilitation as victims of such crimes. Thus it is necessary not only to acknowledge children's diversities within existing programming, but also ensure that they are included in, and themselves have influence over, the design of institutional responses to child protection. Training for authorities and professionals working with children should be provided on diversities and equality, in order to create awareness of people's multiple identities. This includes training on how to ensure attention to other factors in, for example, gender programmes, disability programmes, etc., since the solution to the problems of, for instance, the minority girl with disabilities often has to be found in more than one of these respective areas of intervention. The first step in any training is to establish sensitivity in order to eliminate discriminatory practices and negative attitudes towards certain children and groups of children within particular institutions. This could lay the ground for developing a mainstreaming attitude around the issue of intersectionality, bearing in mind the methodological implications and difficulties of mainstreaming.<sup>163</sup> In order to ensure the inclusion of all children in rights-based programming against child trafficking, it is beneficial to have intersectoral cooperation and multi-stakeholder cooperation on the issue of intersectionality. This means that all sectors and institutions involved in child protection should have a clear understanding of intersectional issues and how to address them within the given area of work. This will enhance the validity of human rights for the children in question, as a framework that ensures their full and equal protection.

### **Empowerment and participation**

Children also have to be given the opportunity to influence social policies and measures addressing discrimination issues and trafficking. It is important to listen to children who experience intersectional discrimination and respond to their problem in the form of systematic attention to issues of intersectional discrimination in all areas of child protection and development. In developing child trafficking programmes, it is essential to include

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<sup>163</sup> In this context, mainstreaming refers to the inclusion of considerations and particular measures for action on the specific issue in all programmes and other activities where it is relevant.

children to make sure that these programmes do not unintentionally exclude children who experience discrimination on multiple grounds, and to reach out to those children who are often most at risk. Child-friendly and diversity-sensitive structures, including decision-making structures, also are needed to enable action based on what children say and recommend. Listening to children and learning from their experiences and recommendations are key to designing and implementing effective preventive and protective mechanisms. Adults also need to be sensitized on child participation and on how to consult with children from various backgrounds. Notably, acknowledging the agency and expertise of young people is not a substitute for, but is complementary to state action.

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