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## Editorial

# THE SILENCE OF THE MIGRANT CHILDREN FALLING PREY TO VIOLENCE, ABUSE AND EXPLOITATION

*by Jasmina Dimitrieva\**

SUMMARY: 1. Introduction. - 2. Defining the Problem Related to Detection of Crimes Against Migrant Children. - 3. Crossing to the Other Side. - 3.1. Migrant Children as Right Holders. - 3.2. States as Duty Bearers. - 3.3. Equality, Non-Discrimination and Gender. - 3.4 Transparency and Accountability. -3.5. Empowerment. - 4. Conclusion.

### 1. Introduction

In twenty-first century conflicts, climate change, pollution and organized crime have surfaced, causing suffering in many parts of the world. Millions of men, women and children are being forced to leave their homes to break away from the violence-poverty spiral and to seek a dignified life. According to the 2024 world migration report of the International Organization for Migration (IOM) there are nearly 281 million migrants in the world, amounting to 3.6% of the world population, with an upward trend<sup>1</sup>. According to the Organisation for Economic Co-operation and Development (OECD) 4.7 million Ukrainians migrated to the OECD countries in June 2023<sup>2</sup>.

But what about the most vulnerable, the migrant children? International statistics show unprecedented number of children on the move globally, with estimates as high as 35.5 million of migrant children<sup>3</sup>. The 2018 General Report of the Group of Experts against Trafficking in Human Beings (GRETA) notes a considerable increase of the influx of unaccompanied migrant children in the ratifying countries of the Council of Europe (CoE) Convention on action against trafficking in human beings<sup>4</sup>.

The essay looks at vulnerabilities of the migrant child victims to crimes during their travel or when arriving in the country of destination. It examines detection of such crimes as a precondition for an adequate criminal law response and deterrence of these crimes.

The methodology primarily encompasses desk research and review of the relevant legislation and policy documents of international organisations with a mandate to prevent and protect migrant children from abuses and exploitation. Analysis and argumentation in the essay are informed by experts' discussions in the period between 2017 and 2023.

Analysis of the relevant judgments of the European Court of Human Rights (ECtHR) contribute to better understanding of the European commitments to provide legal protection to migrant child victim.

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<sup>1</sup> M. MCAULIFFE, L.A. OUCHO (eds.), 2024. *World Migration Report 2024*, Geneva, p. XII.

<sup>2</sup> Organisation for Economic Cooperation and Development (OECD), *International Migration Outlook 2023*, Paris, p. 11.

<sup>3</sup> International Data Alliance for Children on the Move, *Data and Statistics for Children on the Move: Essential sources and good practices*, New York, 2023, p. 1.

<sup>4</sup> Council of Europe, *Trafficking in Children: Thematic chapter of the 6<sup>th</sup> general report on GRETA's activities*, Strasbourg, 2018, pp. 18-20.

First part of the essay exposes the need for and question of the research. Second part contains analysis based on the human rights-based approach. Conclusions and recommendations are provided at the end.

## 2. Defining the Problem Related to Detection of Crimes Against Migrant Children

The essay is focused on the legal protection of the child migrants, below the age of 18. It is a well-known fact that migrant children belong to the most vulnerable category. IOM identifies the vulnerabilities of the migrant children, which include their age, ethnic origin, education, health and physics, whether or not they are accompanied by adults<sup>5</sup>.

As the body of knowledge shows, these children are at a higher risk of becoming victims of violence and exploitation<sup>6</sup>. Migrant children are at risk of becoming victims of serious criminal offences, such as sexual and labour exploitation, trafficking in children, violence. It appears that above risks have been inferred from the high number of child migrants, of undocumented children, of children separated from their parents and unaccompanied children on the move. The above inference may also come from the high number of missing migrant children who are on the move or have gone missing from a refugee camp, a transit or an asylum centre<sup>7</sup>. Although approximately 1,600 children have been reported dead or missing between 2014 and 2019, the real number of the missing migrant children remains unknown<sup>8</sup>. There is a high probability that many migrant child victims of heinous crimes have not been detected and helped, and thus, they continue to suffer abuse and violence in silence<sup>9</sup>.

Migrant children may fall victims of various types of violent crimes. Collating data about a victimhood of migrant children and documenting these cases is a complex long-term process. Nonetheless, pieces of information can be retrieved from the reports and studies of international bodies, non-governmental organisations and academic research. Indeed, GRETA, as European anti-trafficking monitoring body, sheds light on child trafficking of migrant children in the CoE countries, which have ratified the Convention on action against trafficking in human beings<sup>10</sup>. The Lanzarote Committee of the parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse has issued the Special report on protecting children affected

<sup>5</sup> International Organization for Migration (IOM), *Chapter 2 excerpted from Fatal Journeys Volume 4 Missing Migrant Children*, Geneva, 2019, pp. 1, 54-55, 58.

<sup>6</sup> See among other, UNICEF, Office of research-Innocenti, *The sale and sexual exploitation of children: Migration*, Florence, 2019, p. 2; E. REJMAN, *Child migrant workers: the invisible children?*, in *Denver Journal of Law and International Policy*, Vol. 52(2), 2024, p. 257; European Parliament, *Briefing Vulnerability of unaccompanied and separated child migrants*, 2022.

<sup>7</sup> EU Agency for fundamental rights (FRA), *Asylum and migration progress achieved and remaining challenges Overview 2015-March 2023*, Luxembourg, 2023, p. 25.

<sup>8</sup> See, among other, Council of Europe Lanzarote Committee, *Special report Protecting children affected from the refugee crises from sexual exploitation and sexual abuse*, Strasbourg, 2017. pp. 3, 14; F. LACZKO, J. BLACK, A. SINGLETON (eds.), *Fatal Journeys. Volume 3. Part 1. Improving Data on Missing Migrants*, Geneva, 2019.

<sup>9</sup> See, among other, Council of Europe Lanzarote Committee, *op. cit.*, 2017. p. 17; S. MULLALLY ET AL., *A Child Rights Response to Child Migration and Migrant Children at Risk Report Commissioned under the IBA Special Projects Fund Presidential Task Force Team*, London, 2019, pp. 8, 16; IOM/UNICEF, *Harrowing journeys, Children and youth on the move across the Mediterranean Sea, at risk of trafficking and exploitation*, New York-Geneva, 2017, pp. 24-26; V. DIGIDIKI ET AL., *Emergency within an emergency The growing epidemic of sexual exploitation and abuse of migrant children in Greece*, FXB centre for health and human rights, Cambridge, 2017.

<sup>10</sup> Group of Experts on Action against Trafficking in Human Beings (GRETA). V. <https://www.coe.int/en/web/anti-human-trafficking/greta>.

by the refugee crises from sexual exploitation and sexual abuse, due to a heightened risk of sexual exploitation and abuse of migrant children<sup>11</sup>. In 2017, academic research has documented cases of sexual exploitation and physical abuse of children during humanitarian crises<sup>12</sup>. The same year UNICEF and IOM issued a report on the perils of exploitation, abuse and hate crime for migrant children taking the Mediterranean migration route<sup>13</sup>. Recent study alerts about possible labour exploitation of migrant children<sup>14</sup>. Migrant children may also become victims of other crimes such as physical violence, kidnapping, thefts, officials overstepping their authority, unlawful deprivation of liberty. The above underscores the need to ensure safety and security of migrant children, while on move, or upon arrival on their destination<sup>15</sup>.

There has been an extensive literature on the protection and enjoyment of the fundamental rights by migrant children. The fundamental rights of the migrant child are being denied based on policy considerations<sup>16</sup>. Although unaccompanied and separated children's vulnerability has been recognized the states have many ways and justifications to deny their rights<sup>17</sup>. The 2017 survey in Sweden showed a significantly higher number of suicides among asylum-seeking unaccompanied minors in comparison to the same age group in general population<sup>18</sup>.

A lot has been written on the rights of the migrant children by and for regional and international organisations, especially during and after humanitarian crises, several years ago. Briefs and reports have been provided to the policy decision-makers containing information on the international protective framework for the migrant children<sup>19</sup>.

To identify crimes that were committed against migrant children is a precondition for their legal protection and prevention of their secondary victimisation and re-victimisation. Consequently, law enforcement officials must be proactive in finding indices and clues regarding these crimes, while victims or/and an observer must report these crimes to the police.

Identification of child victims of child trafficking and of sexual abuse and exploitation have been monitored and explored by several international bodies, such as GRETA and Lanzarote Committee from the perspective of identification of child victims of trafficking, sexual abuse and exploitation. While identification of the victims is extremely important for protection of migrant children, it does not automatically mean that the authorities will conduct an effective investigation, ask for international legal assistance when needed and indict the defendants. It follows that the body of knowledge on detection of crimes against migrant children needs further development and broadening to cover other crimes, which migrant children may suffer, beyond child trafficking and sexual abuse and exploitation.

The essay is making a contribution in the direction of shedding light to the needs of more effective, adequate and proactive detection of the crimes against migrant children. They deserve justice.

A question arises as to effective identification of the crimes against migrant children in the countries of their transit, or destination. In particular, what are the obstacles to

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<sup>11</sup> Council of Europe Lanzarote Committee, *op. cit.*, p. 19.

<sup>12</sup> V. DIGIDIKI *ET AL.*, *op. cit.*, p. 3.

<sup>13</sup> IOM and UNICEF, *op. cit.* p. 6.

<sup>14</sup> E. REJMAN, *op. cit.*, pp. 261-264, 275-276.

<sup>15</sup> EU Agency for fundamental rights (FRA), *op. cit.*, p.10.

<sup>16</sup> *Id.*, p. 36.

<sup>17</sup> M. CROCK (ed.), *Migrants and Rights*, London, 2016, p. XVI.

<sup>18</sup> M. HERZ *ET AL.*, *Social work, young migrants and the art of listening; Becoming an unaccompanied child*, London, 2021, p. 7

<sup>19</sup> See for example IOM/UNICEF, *op.cit.*; European Parliament Briefing, *op. cit.*

effective detection of crimes suffered by the migrant children? What is needed to improve detection of the crimes against migrant children and provide justice to the child victims among migrant children?

The above questions have been examined through the lens of the human rights-based approach. The essay looks at the duty-bearers and the right holders in the context of detection of crimes against migrant children. It also looks at the participation, transparency, equality and non-discrimination, empowerment, gender and accountability in the context of children on move.

Answers to the questions defined in the essay are significant not only for putting in place effective transnational legal protection for the migrant children, but also for preventing crime and combating organised crime.

### 3. Crossing to the Other Side

The analysis is based on the human rights' approach. Protection of the rights of the victims and their free enjoyment by migrant children lie at the heart of the analysis.

#### 3.1 Migrant Children as Right Holders

It is well established that migrant children are right holders under the international human rights' regimes. Human rights and children's rights under general international regimes are also guaranteed to migrant children. In particular, they enjoy the right to life, freedom of movement and prohibition of ill-treatment set out in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and 1966 International Covenant on Civil and Political Rights (ICCPR)<sup>20</sup>.

The Convention on the Rights of the Child (CRC) applies to migrant children<sup>21</sup>. Under this Convention, they are entitled to have the best interest as primary consideration for all decisions affecting them (art. 3), the right to life, survival, development (art. 6), the right their views to be heard in proceedings affecting them (art. 12), the right to protection and humanitarian assistance (art. 22)<sup>22</sup>. In 2005, the Committee on the rights of the child published a general comment no. 6 on treatment of unaccompanied and separated children outside their country of origin, clarifying the application of the above articles in the situations of migrant children without adult's protection<sup>23</sup>. It, among other, envisages priority procedures for child trafficking victims, an obligation to inform children about risks they may be subjected to during their dangerous journey, a follow-up to particularly vulnerable children and an appointment of an adviser/guardian.

Migrant children are specifically protected from injustice caused by child trafficking under the 2000 UN Protocol to prevent, suppress, and punish trafficking in persons, especially women and children of the UN Convention against Transnational Organized Crime<sup>24</sup>. This protocol made trafficking in children visible at international level, so that

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<sup>20</sup> CETS no. 214, Strasbourg; Resolution of the General Assembly 2200A (XXI), *International Covenant of civil and political rights*, of 16 December 1966.

<sup>21</sup> S. MULLALLY ET AL., *op. cit.*, p. 7.

<sup>22</sup> See also, Committee of the Right of the Child, General Comment No. 6 (2005), *Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, Geneva, 2005.

<sup>23</sup> CRC/GC/2005/6, Geneva, 1 September 2005.

<sup>24</sup> UN General Assembly, New York, 15 November 2000.



## THE SILENCE OF THE MIGRANT CHILDREN FALLING PREY TO VIOLENCE, ABUSE AND EXPLOITATION

Governments around the world became more aware of the existence of such crimes, and thus, could improve their preparedness at national and transnational levels.

CoE Convention on action against trafficking in human beings stresses the importance of identification of child trafficking victims, as well as of representation of unaccompanied minors (art. 10)<sup>25</sup>. It guarantees, among other the rights to translation and interpretation, to legal representation and to information about the rights guaranteed to trafficking victims (arts. 12 and 15). Similar rights are guaranteed to child victims of sexual abuse and exploitation under the CoE Convention on protection of children against sexual exploitation and sexual abuse<sup>26</sup>.

The EU Framework applicable to migrant children encompasses art. 3 of the Treaty on European Union - promoting the protection of the rights of the child, and art. 24 of the Charter of Fundamental Rights of the EU. The latter sets out the best interest of the child and envisages the right to protection and care that is necessary for their well-being. It also contains other important rights, that is the right of the child to express its views freely, which should be considered in matters concerning the child, while considering its age and maturity.

The EU Directive on the rights of the victims is based on the Convention on the rights of the child and envisages a child-sensitive approach (art. 1, para. 2)<sup>27</sup>. The most important rights for migrant children stemming from this Directive in the context of the essay refer to a communication adjusted to the maturity and age of the victim (art. 3); providing information about the rights based on the needs and specific circumstances of the victim (art. 4, para. 2), provision of confidential and free of charge support services (arts. 5-9) and the right to be heard (art. 10). Whereas this Directive should be interpreted in light of its applicability to migrant children on move or stationed in the EU region, civil society organisations have expressed a concern about limited mention of the migrant children in the directive. They highlight the need for safe reporting environments free of fears from deportation<sup>28</sup>.

Protection of all children from trafficking in children and from sexual abuse and sexual exploitation in the EU region is set out in the EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and in the EU Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

Migrant children must be free to enjoy human and children's rights guaranteed by the above international and regional instruments. In the context of the essay's topic, the following rights are significant:

- the right to life and protection from ill treatment;
- the right to be protected from crimes, in particular, from child trafficking and sexual abuse and exploitation;
- the right to be informed about their rights as migrant children, and warned about the risks they may encounter during their journey;
- the right to be heard;
- the right to interpretation and translation, as necessary;

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<sup>25</sup> CETS No. 197, Strasbourg.

<sup>26</sup> CETS 201, Strasbourg.

<sup>27</sup> Directive 2012/29/EU of the European Parliament and the Council, *establishing minimum standards on the rights, support and protection of victims of crime replacing Council Framework Decision 2001/220/JHA*, of 25 October 2012, in OJ L 315, of 14 November 2012, p. 57.

<sup>28</sup> F. PISANU, *The revision of the EU Victims' Rights Directive: an opportunity to strengthen the rights of child victims*, in *Eurochild*, 5 June 2024, available at <https://www.eurochild.org/news/the-revision-of-the-eu-victims-rights-directive-an-opportunity-to-strengthen-the-rights-of-child-victims/>.

- the right to counseling, guardianship, legal representation, free of charge;
- their best interest as children to be the basis for making decisions affecting migrant children.

Migrant children can only enjoy their rights when they are left in peace and protected from criminals. However, serious challenges have been detecting in the protection system for children on the move<sup>29</sup>.

For sure, migrant children find it difficult to report and/or give a statement regarding crimes they experienced. These challenges relate to their age, maturity, inability to speak the language, different cultural background, a lack of information about their human rights, a lack of identification papers. Children might feel threatened, afraid to speak-up, or may lack trust in the border or other officials out of fear from deportation. While migrant children may open-up to a CSO representative, they may decide not to give a statement for the purpose of criminal proceedings. Even if migrant children give a statement to a police officer or a prosecutor, they might retrieve it or change it during trial, especially if appropriate procedural guarantees are not in place.

State officials should bear in mind that above challenges operate as barriers with respect to detecting crimes against migrant children and taking their statements, so appropriate counter measures must be put in place. Such measures may enclose readily available psychological assistance and free legal aid. In addition, police officers dealing with migrant children must be sensitised and trained to communicate with children in a trauma-informed way.

### 3.2 *Duty bearers*

States are responsible for protecting human rights. Police officers, social workers, child protection specialists, as agents of the states, must act in accordance with the international and regional human rights regimes. They are under a duty to uphold human rights of migrant children. As duty bearers, their actions must be aligned with the above international instruments.

At the global level, the Joint general comment no. 3 of the Committee of the rights of the child and the Committee on the protection of the rights of all migrant workers and members of their families and former's General comment no. 22 require state actors to commit to: “(...) *developing bilateral, regional and global cooperation in order to ensure the rights of all children in the context of international migration(...)*”<sup>30</sup>. The Committees highlight a need for coordination among the countries of origin, transit, destination and return in view of protecting migrant children and attending to their needs, based on the assessment of the best interest of the child<sup>31</sup>.

The ECtHR case-law on the right to life (art. 2) of ECHR has defined well state responsibilities vis-à-vis migrant children. In the case *M.H. and Others v. Croatia*, ECtHR formulated the positive obligation of the state to conduct effective investigations in order

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<sup>29</sup> UNICEF, *A child is a child Protecting children on the move from violence, abuse and exploitation*, New York, 2017, pp. 41-44.

<sup>30</sup> Committee on the Protection of the rights of all migrant workers and members of their families and Committee on the Rights of the Child, *Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration*, CMW/C/GC/3-CRC/C/GC/22, 2017, Geneva, p. 12.

<sup>31</sup> *Ibid.*

to satisfy the procedural requirement of art. 2<sup>32</sup>. The applicants are a family that fled Afghanistan in 2016. Their six years' old child was hit by a train and died, after being allegedly denied to lodge an asylum application and being ordered to go back in Serbia by following the train track. ECtHR established a violation of the right to life on the account of a failure to collect sufficient evidence, to check various allegations (such as broken video-surveillance cameras) and to collect and examine evidence proposed by the applicants, which could contribute to the outcome of the investigation. Furthermore, in paragraph 162 of the Judgment ECtHR states: "*Having regard to the fact that the applicants are an Afghan family with no knowledge of the Croatian language or legal system and no contacts in Croatia, it is hard to imagine how they could have effectively participated in the investigation without the assistance of a lawyer... the investigative authorities failed to ensure that the applicants, as ... next of kin, were involved in the procedure to the extent necessary to safeguard their legitimate interests*". ECtHR considers the investigation effective when it is prompt, expeditious and capable of leading to the identification and punishment of those responsible<sup>33</sup>.

In the recent case of *O.R. v. Greece*, ECtHR established a violation of art. 3, which prohibits torture, inhuman and denigrating treatment<sup>34</sup>. The applicant fled Afghanistan and arrived in Greece in 2018 as unaccompanied minor. Despite his application for humanitarian protection, the applicant spent 6 months homeless without access to basic necessities for life. He was placed in a refugee camp with adult men and was sexually assaulted, what he complained of to the authorities, as confirmed by a psychosocial report. ECtHR reiterates the positive state obligation to ensure healthy living conditions for unaccompanied minors in extremely vulnerable situation and prevent any outrage to their dignity.

The case of *M. and others v. Italy and Bulgaria* concerns a minor of Roma origin who migrated from Bulgaria to Italy<sup>35</sup>. She was kidnapped, forced to commit crimes, beaten and repeatedly raped. Her parents reported the case to the Italian police that finally rescued her. ECtHR established that the Italian authorities fulfilled their positive obligation to protect the minor. The investigation into the crimes against the minor was rapidly concluded and her parents were charged. ECtHR found many flaws in the investigation, including a failure to take statements from witnesses, and obtain medical forensics. It also opined that effective investigation should have been carried out in view of possible case of child trafficking. ECtHR concluded that the authorities did not conduct effective investigation as required by art. 3 of ECHR.

Regarding investigation into child trafficking, art. 27 of the CoE Convention on action against trafficking in human beings stipulates that: "*Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory. Each Party shall ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority of*

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<sup>32</sup> European Court of Human Rights, Judgment of 18 November 2021, Application no. 15670/18, *M.H. and Others v. Croatia*.

<sup>33</sup> European Court of Human Rights, Grand Chamber, Judgment of 30 March 2016, Application no. 5878/08, *Armani da Silva v. the United Kingdom*, paras. 229-239.

<sup>34</sup> European Court of Human Rights, Judgment of 23 January 2024, Application no. 24650/19, *O.R. v. Greece*.

<sup>35</sup> European Court of Human Rights, Judgment of 31 July 2012, Application no. 40020/03, *M. and others v. Italy and Bulgaria*.

*the Party in the territory in which the offence was committed (...)*". Its art. 28 prescribes protection measures for trafficking victims, which are applicable to migrant children, victims of child trafficking. Chapter VI of the above Convention sets out international cooperation and cooperation with civil society in view of its importance for protecting endangered or missing persons and combating human trafficking.

Reporting suspicions about and carrying out effective investigations into sexual exploitation and abuse of children have been underscored in arts. 12-13, 30 and 32 of the CoE Convention on protection of children against sexual exploitation and sexual abuse. The Convention explicitly mentions hotlines to facilitate reporting of these crimes.

In short, the states and their agents are under a duty to conduct effective investigations in line with human rights requirements, protect dignity of migrant children and collaborate in view of extending legal protection from abuse and exploitation to migrant children. In the context of detecting crimes against migrant children, even if the state obligation to facilitate reporting of the crimes against migrant children is not explicitly spelt out, there is undoubtedly a moral obligation to do so, in order to protect this extremely vulnerable group.

The real numbers of unreported and reported incidents and cases against migrant children along migration routes are difficult to access. What is known so far, is that they are extremely vulnerable to crime, that they are subjected to different crimes and that states encounter difficulties in detecting and countering crimes against migrant children. FRA highlights the small number of national judicial cases in this regard, despite continuous reports about large-scale violations. It locates the problem in: "*(...) the limited interest on the part of victims in filing a case, difficulties in producing evidence of events occurring during the hours of darkness in forests or at sea (...)*". It also mentions other unknown factors that warrant further examination<sup>36</sup>.

Indeed, large-scale empirical comparative research on the crimes against migrant children along migration routes is missing. The above research should be based on the reported and recorded incidents, investigations, indictments and final judgments in the cases when migrant children experienced crimes in the countries of transit and destination. The research should also collect and collate data about identified victims among migrant children and about international legal cooperation in this regard. It should not rely solely on information and statistics provided by the states. Interviewing migrant children must be done with extreme caution by persons trained to interview children in a trauma-informed way.

Law enforcement and child protection specialists have highlighted difficulties with respect to detection of crimes against migrant children in view of ensuring an appropriate criminal law response. Such difficulties encompass, among other, a lack of training about the rights of the child and victims' rights, a lack of skills to carry out interviews with children, language and cultural barriers, difficulties in internal coordination among different police units with different competencies, difficulties with international cooperation and coordination, establishing a state jurisdiction with respect to the crime investigation, difficulties with obtaining and securing evidence, differences in national laws resulting in different qualifications of the crime. Nowadays, the abuse of new technologies by criminals is wide-spread, also in the context of migration. So, states must keep up with technological development and new *modus operandi* used by criminal. State actors must develop considerable capacities to collect, store and secure evidence from smart phones of the victims and perpetrators. Since criminal law response to crimes against migrant children involves international cooperation, international and regional

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<sup>36</sup> EU Agency for fundamental rights (FRA), *op. cit.*, p. 11.

organisations are also called upon to foster exchange and knowledge transfer among states and facilitate their international cooperation.

### 3.3 *Equality, non-discrimination and gender*

Equality before the law and the principle of non-discrimination have been enunciated in the most significant international and regional human rights treaties, such as ICCPR (art. 2), ECHR (arts. 1 and 14, Protocol 12) and the European Charter of Fundamental Rights (art. 21). These principles are part of the fundamental values of democracy, and thus, as a rule they are part of national legal systems.

In a specific context of child sexual abuse and exploitation, CoE Convention on protection of children against sexual exploitation and sexual abuse incorporates the principle of non-discrimination based, *inter alia*, on other status *vis-à-vis* facilitation of reporting of these crimes and undertaking appropriate measures to protect and help victims (art. 2). In a specific context of child trafficking, CoE Convention on action against trafficking in human beings prohibits discrimination in the implementation of the Convention on multiple ground (art. 3).

From the above, it follows that migrant children attract protection of the aforementioned human rights and children's rights instruments, even in absence of a specific reference to migrant children. These rights are not only guaranteed to the unaccompanied and separated migrant children, but to all migrant children.

The aforementioned instruments also prohibit gender discrimination. The CoE Convention on action against trafficking in human beings takes a step forward in this respect. Specifically, art. 5 para. 3, requires state parties to: "(...) *use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes (...)*". Art. 17 of the Convention, entitled '*Gender equality*' sets out promotion of gender equality and use of gender mainstreaming when ratifying states implement anti-trafficking measures.

Gender plays a role with respect to the type of exploitation. In particular, identified underaged girls are mostly sexually exploited, while identified underaged boys are mostly exploited for their labour and forced to commit crimes<sup>37</sup>. Gender plays a role also when approaching a migrant child, who may have suffered injustice. As a rule, the official interviewing a child should be the same sex as that child. Furthermore, boys and girls have different needs based on their gender, which should be borne in mind when they are provided with assistance and support.

### 3.4 *Transparency and Accountability*

Transparency in the human rights context has several layers. Above international instruments prescribe several forms of transparency. Access to information for migrant children on their rights and relevant procedures is an important element of transparency. Involvement of next-of-kin in the context of crime investigation secures access to important procedural rights to the child victims. Statistics about crimes against migrant children and about identified child victims are also important for transparency, as they contribute towards seeing the whole picture in this respect and towards designing better criminal law responses. Including civil society representatives in detecting crimes against migrant children and in the follow-up proceedings adds to transparency. Public reports

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<sup>37</sup> See, among other, S. MULLALLY *ET AL.*, *op. cit.*, pp. 8, 16.

produced by the civil society organisations and international organisations are indispensable to inform general public and raise awareness about the risks these children are facing during their dangerous journeys. Transparency is also contributing to receiving explanation, and thus, understand better what is going on in the context of detecting and combating crimes against migrant children.

It would be difficult to hold accountable the duty bearers for their actions and omission regarding migrant children's protection without transparency. Accountability of the states and state agents for their actions and omissions regarding protection of the migrant child is set out in the human rights and children's rights treaties, in addition to national systems of accountability, that is, disciplinary and criminal proceedings.

### *3.5 Empowerment*

Migrant children must be empowered to break the silence and speak-up about crimes committed against them along the migration route and in the destination country. For this to happen, migrant children must be assured that they will be fully protected when speaking-up about the crimes, and that there will be an adequate criminal-law follow-up. Without a proper criminal law response, why would a migrant child, or any other observer risk his or her peace and report crimes?

Without migrant children's empowerment, it will be difficult not only to detect crime, but also to prosecute and punish perpetrators. Although national and transnational systems for combating crimes against migrant children are not perfect, it is never too late to review the state responses to crimes against migrant children.

States, international and regional organisations should also start diving deeper into the ways and measures that can be undertaken to empower migrant children to break their silence. For example, using Barnahus model for forensic child interviewing and the NICHD Protocol may represent steps in the right direction<sup>38</sup>.

## **4. Conclusion**

Protecting migrant children from violence, exploitation and abuse should not be a topical issue only in the context of huge humanitarian crises, like 2015-2017. This issue must remain high on the agenda of the Governments and international organisations, due to continuous migrations flows in the 21<sup>st</sup> century.

Despite legally-binding international and regional treaties protecting life, integrity and dignity of migrant children, they are exposed to a higher risk of becoming victims of crime, due to their intrinsic vulnerabilities. Adequate and comprehensive protection of migrant children from crime requires states to invest considerable financial and human resources. While states are putting efforts to address the risks affecting migrant children, their efforts remain limited. There is an impression that putting efforts into detection of and fight against crimes, without taking into account the transnational perspective, gives a raise to a fragmented and insufficiently effective protection of the rights of the migrant children, which are guaranteed under the international human rights regimes.

A functional transnational human rights-based system to detect and fight crime against migrant children will not only benefit the children, but the society as a whole. Not only migrant children will have better chances to remain unharmed, but the destination

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<sup>38</sup> S. JOHANSSON *ET AL.* (ed.), *Collaborating Against Child Abuse Exploring the Nordic Barnahus Model*, Cham, 2018.

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countries will also benefit from children's social integration and contribution to their labour markets.

Preventing and combating crime brings more benefits than turning a blind eye, and thus, enabling transnational organized crime gangs to gain funds and influence unlawfully, by exploiting and abusing migrant children. Such crimes should not and must not pay off to their perpetrators.