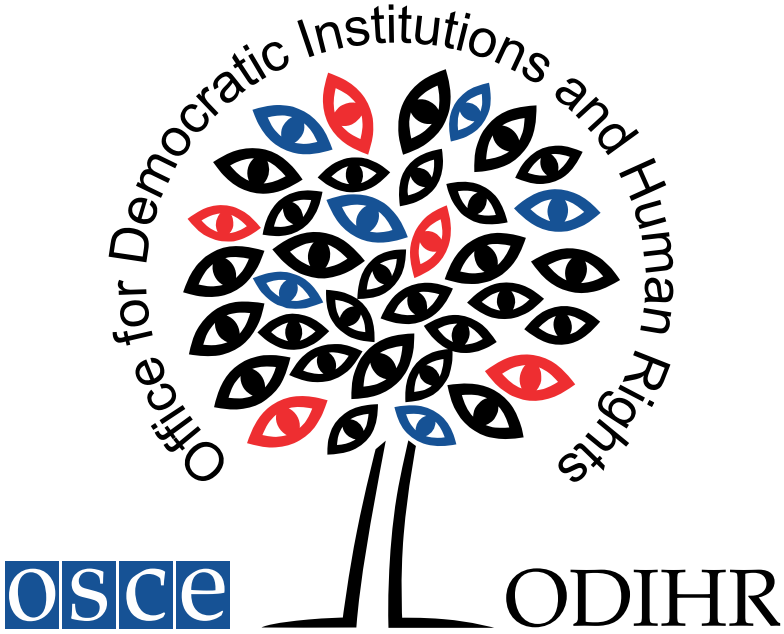
Office for Democratic Institutions and Human Rights

MIGRANT CHILDREN'S RIGHTS IN REGIONAL PROCESSES: WHAT NEXT AFTER THE CHISINAU AGREEMENT?

Online Meeting
7-8 December 2020

OSCE/ODIHR Meeting Report



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This report should not be interpreted as comprising official OSCE recommendations based on a consensus decision, an opinion of the OSCE Office for Democratic Institutions and Human Rights or of any particular OSCE participating State. The content of this report reflects opinions expressed by participants which took place online on 7-8 December 2020.

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Online Meeting
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The meeting was organized with the aim of supporting OSCE participating States to meet OSCE commitments on human rights, in particular the human rights of migrant children. Organized by the OSCE Office on Democratic Institutions and Human Rights (ODIHR), this online event brought together 40 participants (31 women and 9 men), including experts and representatives from national authorities, human rights bodies, international organizations and civil society from 10 OSCE participating States (Austria, Belarus, Belgium, Kyrgyzstan, Moldova, the Russian Federation, Switzerland, Tajikistan, Ukraine and Uzbekistan) and Japan. (Annex 2 provides a full list of participants.)

BACKGROUND TO THE MEETING

The context for this meeting, with its focus on the former Soviet space, is the increased migration in the region over the past two decades due to conflict, political and economic crises and an increased demand for labour. While official statistics are scarce, it is estimated that tens of thousands of migrant children currently reside in the region. These children have migrated either as part of families, with non-legal custodians and in certain cases, unaccompanied. Due to outdated legislation and state policies, migrant children often faced barriers in accessing their rights, resulting in risks to their wellbeing and personal development. A number of countries have recognised these problems and reformed their social protection systems to address them; these examples show that when appropriately conducted, policy and legislative reforms can bring improvements in access to rights.

At a regional level, the 2002 Chisinau Agreement on the Return of Minor Children to Their Country of Origin regulates the return and repatriation of migrant children. Under this agreement, migrant children are returned to their countries of origin through "transit institutions" which result in family separations and children being placed in institutional settings, often in the penitentiary system, unsuitable for their wellbeing, the protection of their rights and at odds with the administrative nature of immigration enforcement.

Certain countries in the region, such as Armenia, Georgia, Kazakhstan and Moldova, have already taken steps to reform their systems and this has included the closing down of police-run reception centres and the placement of migrant children under more appropriate institutions such as the Ministry of Education or other social services. Other countries, such as Kyrgyzstan, Ukraine and the Russian Federation, are currently in the process of enacting or considering reforms.

Civil society organizations have also recognised the need for reform and launched active campaigns to lobby for improved regulations to protect migrant children's rights. In 2019, the NGO ADC Memorial started a campaign #CrossBorderChildhood to promote bilateral treaties between countries based on the recommendation of the UN Committee on the Rights of the Child and the UN Committee on the Rights of all Migrant Workers and Members of Their Families. The campaign has brought together several actors in the region and resulted in the

elaboration of a rights-based Model Agreement for the Return of Children, an initiative which has prompted action from Moldova and Ukraine on such a bilateral agreement and which has potential relevance for other countries in the region.

AIMS OF THE MEETING

The meeting was organised for three main purposes:

i. to create an opportunity for national authorities to discuss and develop a shared understanding of the human rights principles underpinning the return of migrant children;
ii. to share learning and to identify positive measures taken in the former Soviet Union region over the past two decades; and,
iii. to promote the use of bilateral agreements as a means to ensure the protection of the rights of migrant children in return procedures.

More specifically, the objectives of the meeting were to:

- Discuss the principles underpinning the return of migrant children, gather and share positive precedents and challenges.
- Increase government officials' and other statutory bodies' sense of ownership of their positive practices in order to promote their role as 'champions' of good practice.
- Provide participants with a safe space to discuss challenges, exchange learning and obtain advice from peers and experts. This will also contribute to identifying support needed by governmental authorities and the extent to which the OSCE, international organizations and civil society can assist.
- Build closer working relationships among actors, which can lead to more collaboration and increase willingness to mobilise resources for the development of bilateral agreements and other alternatives to the immigration detention of children.
- Increase awareness of ODIHR's role and the assistance it can offer to OSCE participating States in the field of migration policy, including the protection of the human rights of migrants in areas such as detention, border management and return.

The rationale behind this online meeting is that when positive measures are 'owned' by national authorities (i.e. when they champion and promote such positive measures), there is an increased opportunity for them to become long-term and permanent features of migration policy. Such meetings also provide for exchanges of experience and practice which contribute to relationship-building among OSCE participating States.

MEETING SUMMARY

The meeting was structured over two days, each day opening with a key-note speech followed by presentations from non-governmental (NGO) and governmental experts exchanging lessons learned from recent practice, sharing updates on national developments and proposing recommendations for future reforms and strengthening of international co-operation. (The agenda is provided in Annex 1).

Day 1

The meeting was opened by **Meaghan Fitzgerald, Deputy Head of the Democratization Department, ODIHR**, who welcomed participants and briefly presented the ODIHR's work on democratization and on Migration and freedom of movement. She explained the objectives of the meeting and its focus on children's rights in return policies and alternatives to detention. She looked forward to the exchange of regional developments concerning the repatriation of children, whether unaccompanied, separated or accompanied by family members. She highlighted that the placement of migrant children in institutional settings, particularly in the penitentiary system, has serious and detrimental effects on the children. She recognised that some countries have already implemented significant reforms in this area from which lessons can be learned and shared. These include the elaboration of specific bilateral agreements promoting respect for children's rights in return procedures, as well as the benefits of multi-stakeholder collaboration among government agencies and NGOs. In this regard, she underlined the important contribution of NGOs specialised in case management and shared her hope that the meeting would offer an opportunity to explore further collaboration in this field.

Professor Manfred Nowak, Independent Expert for the United Nations Global Study on Children Deprived of Liberty, gave the opening key-note speech - *The UN Global Study on Children Deprived of Liberty: Conclusions and Recommendations*.[1] Emphasizing that deprivation of liberty is deprivation of childhood, he explained that the core objectives of the *Global Study* were to: assess the magnitude of the phenomenon of children being deprived of liberty; document promising practices and capture the views and experiences of children to inform recommendations; promote a change in stigmatising attitudes and behaviour towards children at risk of being, or who are, deprived of liberty; and, to provide recommendations for law, policy and practice to safeguard the human rights of the children concerned, and significantly reduce the number of children deprived of liberty. Complemented by cross-cutting consideration of gender, health and disability, the *Global Study* explored the situation of children deprived of liberty in six different categories, including for migration-related reasons, and gathered data indicating that globally at least 330,000 children are detained for migration-related purposes per year.

Prof. Nowak stressed that States should explicitly prohibit migration-related detention of children in law as this violates children's rights as enshrined in the UN Convention on the Rights of the Child (UNCRC), in particular, Articles 3 and 37. When deprived of their liberty, children should have the right to prompt legal assistance to challenge the legality of their detention. Migrant children and their families should be identified and immediately released from detention, and children should be allowed to stay with their families in non-custodial settings in the community under a case management system with access to information, legal assistance, healthcare, housing and education. Unaccompanied and separated children should be referred to the child protection system for appropriate protection and care, and return should only take place when it has been decided to be in the child's best interests following a formal 'best interests' determination with appropriate safeguards and supports.

Roos-Marie van den Bogaard, Junior Advocacy Officer, Platform for international Co-operation on Undocumented Migrants (PICUM), presented PICUM's work with partners to

[1] *Independent Expert's Report on the Global Study presented to the UNGA* and *The United Nations Study on Children Deprived of Liberty*, October 2019, available at: https://www.refworld.org/docid/5ee761384.html.

develop and promote guidance on durable solutions[2] and the best interests of the child. She stressed that 'best interests' procedures are necessary to ensure respect for children's rights as well as the principle of non-refoulement. She showed part of a PICUM animation video[3] on best interests' procedures that illustrates how to assess and act on the best interests of the child in migration procedures, including returns. In line with UNCRC Article 3, a 'best interests' procedure should be carried out to identify a durable solution for a migrant child before a return decision is taken. Return should take place only when it is found to be in the best interests of the child and non-voluntary return should be a measure of last resort, and preparations for return should include the development of an individual re-integration plan for the child. She highlighted a number of good practices, including references to the best interests of the child in European Union (EU) law and the national legislation of many countries, as well as the procedures in a number of EU Member States and Norway which determine the best interest of the child concerned before taking a return decision.

During the **question and answer session** that followed, an expert raised concerns about the current situation in the Russian Federation where migrant children may be separated from their parents and detained in so-called "social transit shelters." It was argued that while this is not considered detention by the authorities, such placements of children across Russia is a deprivation of liberty. Children under 16 are placed in social institutions, which are not closed, while those over 16 are placed in closed institutions, which have bars and are penitentiary-like institutions. Concern was also raised that some governments impose alternative forms of detention rather than alternatives to detention. The placement of children in such "grey areas," which are not defined as detention, but which do limit the child's liberty and may not be subject to judicial review, raises serious concerns.

The child's right to be heard and to have their views given weight was also raised as an issue during the discussion, as were efforts made by the authorities from the child's country of origin to facilitate their return. Participants noted that transnational case management may require time and involve special courts; it is important that the child is heard in procedures and that they have a safe placement, for example, with a foster family, while decisions are pending. Speakers observed that common tools and approaches are needed to make cross-border work more child-centred and efficient: procedural steps should be clear and ensure respect for the best interests of the child and there should be child protection safeguards which also support their active participation.

Participants also discussed the definition of "deprivation of liberty" as well as the different law enforcement and social protection regimes in place in different countries. The *Global Study* defined the term "deprivation of liberty" as any form of detention or imprisonment or the placement of a child in a public or private custodial setting, which that child is not permitted to leave at will, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. Participants noted that some States use euphemistic terms such as "temporary stay centre" or "transit centre" which cause confusion but which should be recognised as detention when such a facility is a closed centre from which the child is not allowed to leave at will.

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[2] This includes two publications: *Guidance to Respect Children's Rights in Return Policies and Practices: Focus on the EU legal framework* and *Durable Solutions and the Best Interests of the Child in the Context of Return Processes*; Doing What's Best for Children • PICUM.

[3] Best Interest Procedures - YouTube

Participants noted that Ireland is the only European country to explicitly prohibit the immigration detention of children in law and this led to the question, *how can we promote a wider understanding that child immigration detention is a child rights violation?* Discussion responses suggested that the UN *Global Study* could be used to raise awareness, both of international human rights law obligations (the UNCRC is binding on all OSCE participating States, except for the USA) and of the serious negative impact of detention. Participants highlighted the value of demonstrating that there are alternatives to detention which are more humane and also more cost effective, and that lessons can be drawn from deinstitutionalisation with the involvement of advocates from the wider field of child protection. All welcomed the reiteration in the EU Pact on Migration and Asylum that all procedures that concern children should be based on a 'best interests' assessment. However, participants warned that future negotiations will need to address the proposal for *de facto* detention of families with children over 12 years old in border procedures and PICUM shared their recent critique of these proposals[4].

The next session focused on the exchange of national developments and practices in the region. **Maia Banarescu, Children's Rights Ombudsperson of Moldova**, presented the situation of migrant children's rights in Moldova as well as the situation of Moldovan repatriated children. She underlined the importance of international co-operation and explained how reforms following independence and the ratification of the UNCRC led to changes in the Moldovan child protection system – meaning that today there should be equal rights and no difference in the treatment of migrant children or national children. She noted that Moldovan legislation is now in line with international law, but there are challenges in implementation, including a lack of effective co-ordination mechanisms. She shared her view that the 2002 Chisinau Agreement does not address today's challenges, calling for new bilateral agreements and better co-operation between countries, and highlighting that Moldova is currently negotiating a bilateral agreement with Ukraine and agreeing common definitions, clearly set rules and well-defined procedures. She pointed to the *2008 Moldovan Regulation on the Procedure for Repatriation of Children and Adults*[5], which includes key principles such as listening to the child, taking their opinion into account and respecting their best interests. She concluded by recommending that all countries in the region should consider signing a new and up-to-date regional agreement on this issue.

The **Deputy Ombudsperson and Children's Ombudsperson of the Kyrgyz Republic, Gulnara Zhamgyrchieva**, then described developments and practices in Kyrgyzstan. She explained that many Kyrgyz labour migrants go abroad and that there are agreements in place regulating the return of migrants including children. The responsibility for repatriation and reintegration of children lies with the Ministry of Labour and Social Protection, which receives assistance from embassies abroad and the Ministry of Internal Affairs. Most children are returned from the Russian Federation and Kazakhstan, accompanied by authorities from those countries and placed in transit centres upon return: in 2019, 27 children passed through such centres and ten children have been returned in 2020 in this manner. She noted that even if the stay in a transit centre is a short stay, it can still negatively impact the child's physical and mental health for a longer time. In the Deputy Ombudsperson's view, the Chisinau Agreement needs to be re-evaluated and rewritten taking into account children's rights and the best interests of the child. The placement of children in closed institutions only for migration-related reasons

[4] More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations • PICUM.
[5] TABLE OF CONTENTS (legislationline.org)

should be stopped and all future agreements rewritten in line with international standards including the UNCRC.

During the **plenary discussion** that followed, Kyrgyzstan was recognised as a leader in Central Asia for its legislative reform efforts on children's rights. Recognising the challenges of regional co-operation, participants agreed on the need to reform the Chisinau Agreement and on the proposal for Ombudspersons' offices to jointly promote this. Participants also underlined that international co-operation is important, not only within the region, but also with other countries and with the EU, as an increasing number of children are being repatriated from EU Member States. Noting that the COVID pandemic has created additional repatriation challenges, they also suggested that a new international agreement should contain provisions covering potential changes to procedures during crisis situations such as a pandemic.

Judge Renate Winter, Vice Chairperson of the Committee on the Rights of the Child, briefly presented state obligations under the UNCRC in relation to migrant children and highlighted key provisions from the two joint General Comments on human rights of children in the context of international migration adopted by the Committee on the Rights of the Child and the Committee on the Rights of Migrant Workers and their Families. In presenting the *Joint General Comment No. 3 of the CMW* and *No. 22 of the CRC in the context of International Migration: General principles*[6], she explained how the guiding principles of the UNCRC should be applied for children in the context of migration. The non-discrimination principle (UNCRC Art 2) prohibits any discrimination regardless of immigration or other status of the child or their parents. The best interest principle (UNCRC Art 3) requires that the best interest of the child be taken as a primary consideration in any decision or action that may affect the child. Immigration detention is never in the best interests of the child and may violate many rights of the child. Migrant children should be protected from refoulement and their right to development should be secured (UNCRC Art 6). Every child has the right to be heard and to have their views given due weight in line with their age and maturity (UNCRC Art 12).

Judge Winter also outlined the main procedural safeguards and state obligations to fulfil the rights of the child as elaborated in *Joint General Comment No. 4 of the CMW* and *No. 23 of the CRC in the context of International Migration: States parties' obligations in particular with respect to countries of transit and destination*.[7] In this regard, she highlighted the importance of firewalls and data protection measures to ensure that children could access services and reaffirmed that migrant children have the right to health services and education. In the context of migration, she noted it is also important to ensure the child's right to identity and to acquire a nationality: children born on the territory, who would otherwise be stateless, should be granted nationality. She highlighted that migrant children also have the right to be protected from violence and exploitation, their right of access to justice should be guaranteed and they should be able to appeal decisions and to make complaints, the child's right to family life should be respected and states should not separate children from their families. In closing, Judge Winter reiterated some key recommendations, including the definition of a child as anyone under 18 years of age who should be the responsibility of the ministry dealing with child protection and their arrangements made in line with their best interests. She also underlined the importance of

[6] Joint General Comment No. 3 of the CMW and No. 22 of the CRC in the context of International Migration: General principles; Treaty bodies Download (ohchr.org).
[7] Joint General Comment No. 4 of the CMW and No. 23 of the CRC in the context of International Migration: States parties' obligations in particular with respect to countries of transit and destination; Treaty bodies Download (ohchr.org).

preventing any deprivation of liberty on migration-related grounds for unaccompanied children and children in families, and of keeping families together and using alternatives to detention.

In the following **plenary discussion**, participants exchanged further perspectives on progress and persisting gaps between the UNCRC and current State practices. Kyrgyzstan was recognised as a pioneer in deinstitutionalisation in Central Asia and in its efforts to reduce migration-related detention, and participants noted the positive development that children repatriated to Moldova and Kyrgyzstan do not stay long in institutions upon arrival, while in other countries in Central Asia children are often kept behind bars in closed education facilities awaiting family tracing and decision-making on their return. Participants highlighted concerns around criminalisation of children (often 16-18 year olds) for administrative offences such as irregular entry or stay: administrative offences should not lead to criminalisation and detention of children, and non-custodial care arrangements should be made available in the future.

The day ended with the moderator, **Dr Pablo Rojas Coppari, Migration & Freedom of Movement Adviser with ODIHR**, pulling out highlights from the presentations and noting developments and challenges. While progress has been made at the national level in some countries, there was consensus that the Chisinau Agreement is outdated and that there is a need to improve measures and to place the best interests of the child at the centre of decision making and procedures. Immigration detention is never in the child's best interests and should be ended. New bilateral agreements are under development, which will hopefully be more child rights compliant, and ombudspersons could play an important role in advocating for reforms and in strengthening international co-operation in this area.

Day 2

Dr Pablo Rojas Coppari opened the second day of the meeting by presenting a brief summary of the previous day's presentations and discussions. He repeated some key recommendations made by the expert speakers, including the need to take a child rights-based approach and to reform current practices to eliminate child and family immigration detention, prevent family separation and strengthen cross-border case management and repatriation procedures in line with the best interests of the child.

Professor Tineke Strik, Member of the European Parliament, Greens/European Free Alliance Group, gave the key-note speech on *Children's rights in the New EU Pact and readmission agreements with countries in the former Soviet Union*. She began by appreciating that children are both resilient and vulnerable, dependent on decisions from their parents and the authorities in the country where they reside. Noting the importance of respecting children's right to be heard and to self-determination, Prof. Strik argued that the UNCRC should be the basis for work to provide children with more stability, security, special assistance and care as well as procedural safeguards. She noted that there is often a tension in migration law between the need to provide care and safeguards for children and migration policy itself, which often prevails and leads to the application of different standards to migrant children than to national children. She underlined that this situation must be addressed to ensure special standards and protection for all children, and that although the European Charter on Fundamental Rights (Art 24 on the rights of the child) is legally binding and being implemented, there remains a need to continue raising awareness and strengthening children's rights in practice.

Commenting on the EU Pact on Migration and Asylum, Prof. Strik noted the proposal for families with children under 12 to be transferred to normal procedures away from the border, arguing that this is an arbitrary age and that all children should be protected and immigration detention of children avoided. Turning to the post-Dublin mechanism in the asylum and migration management regulation, she highlighted that there are provisions for special care and a wider definition of family which would increase the possibilities for reunion with other family members. However, she also highlighted regression where – despite the European Court of Justice's judgement[8] that the Member State where the child is present after having lodged an application should take on their claim – the Pact's legislative proposal is that the Member State where the child first applied (rather than where they may be currently present) should be responsible unless this is against the best interest of the child, a reversal of the burden of proof which should be changed when negotiations move forward. Prof. Strik also shared her analysis of the Recast Return Directive which provides for the best interest of the child to be taken into account in return decisions, where, for example, the decision may be suspended to allow a child to finish the school year. She noted that entry bans can be detrimental, especially when a parent has a child residing in the EU, and spoke about her advocacy for a principled prohibition of detention, more use of alternatives to detention and parliamentary divisions on this issue.

Finally, Prof. Strik spoke of her concerns regarding readmission agreements with third countries. Noting the increasing number of readmission agreements, including with both origin and transit countries, including Eastern European countries, she highlighted that migrants often face barriers to exercising their rights in transit countries and have no guarantee of return to their country of origin. Referring to the 2010 *Report on Readmission Agreements*[9] she prepared for the Parliamentary Assembly of the Council of Europe, she pointed out the risks associated with return to transit countries and advocated that instead return to country of origin should be prioritised. Noting that in the EU context Member States sometimes seek readmission agreements with transit countries as a measure to pressure those countries to increase border control, she observed that readmission agreements do not preclude informal practices and in many cases migrants may lack access to justice and remedies. Prof. Strik also commented on the lack of proper return monitoring and recommended that a human rights impact assessment should take place before return and that assistance and monitoring afterwards should be increased, concluding with a reiteration that the best interest of the child should always guide policy and practice.

The following **question and answer session** saw more discussion about the current lack of respect for children's rights in readmission agreements. Participants observed that there are more children travelling from the wider OSCE region to the EU and there is a need for better responses as the EU and its Member States raise the issue of establishing new readmission agreements. Bilateral agreements should include and respect children's rights. Noting that children may not only be detained before return, but also upon return in transit or countries of origin, participants underlined the need for the EU to be aware of these risks and aim to address them in future bilateral agreements. These agreements are currently negotiated by the European Commission and Council and subsequently approved by the European Parliament, which should arguably have a much stronger role earlier in the negotiations.

Participants also voiced concerns that children may get stuck abroad and not be heard in lengthy legal procedures when the child, the family and the authorities in the country of origin are in

[8] CURIA - List of results (europa.eu)
[9] https://pace.coe.int/en/files/12439/html

favour of repatriation. The importance of the child having both a guardian and free legal assistance in such circumstances was underlined. Speakers also observed that 'best interest' arguments should not be used to artificially impose restrictive measures when these are really not in the child's best interests, and underlined the importance of the UNCRC Article 37 regarding access to legal assistance and the right to challenge any deprivation of their liberty.

The next presentation was made by **Eugenia Andreyuk from the NGO ADC Memorial** on incorporating child rights standards into regional return procedures. She presented the findings from ADC Memorial's monitoring and casework,[10] outlining why the law enforcement approach of the Chisinau Agreement is outdated and often leads to child rights violations such as immigration detention. She described how migrant children are not heard in procedures and can be placed waiting for months, or even years, in institutions alongside criminal offenders, and that they may again be placed in detention on repatriation. She also recognised the positive national reforms in some countries in the region, including Georgia and Moldova which have closed their detention centres entirely, and reforms of institutions for migrant children which have seen them moved from a law enforcement to a social welfare responsibility, although these can still remain places of detention. She described the *#CrossborderChildhood*[11] campaign which ADC Memorial is leading and which promotes key principles for a readmission agreement.[12] She highlighted the need for states to acknowledge that return is not always in the best interests of the child (e.g. in situations of conflict), and argued that child rights-based agreements should be developed in the region and the EU, recommending that ODIHR support this process. She also referred to the monitoring undertaken by the UN Committee on the Rights of the Child and the resulting recommendations issued to a number of participating States, underlining the need to ensure any new regional or bilateral agreements are developed in line with these recommendations, and highlighting the ongoing work on a new Moldova-Ukraine agreement which Memorial is supporting based on a model agreement they have developed.[13]

The next presentation by **Ruslan Kolbasa, General Director of the Directorate of Development of Social Services and Protection of Children's Rights, Ministry of Social Policy of Ukraine**, traced developments in the region and showcased lessons learned from this co-operation between Ukraine and Moldova. He agreed that the repatriation of children is an important issue, acknowledging that there are still many challenges to address. He described the ongoing close co-operation with Moldova, including mutual visits to the centres in each country to become better acquainted with each other's systems in practice and to discuss

[10] These are also described in their 2018 report entitled *Migrant Children in CIS Countries: Lack of Adequate Legal Norms Regulating Cooperation Between the Countries Involved*, Migrant Children in CIS Countries: Lack of Adequate Legal Norms Regulating Cooperation Between the Countries Involved | ADC "Memorial".
[11] #CrossborderChildhood - modern forms for regulating the return of children to their countries of origin must be created (adcmemorial.org).
[12] These principles include: i. Prohibition of detention: Migrant children should not be deprived of their liberty, but rather placed in alternative care. Temporary shelter may be needed upon arrival or in urgent situations. ii. Non-discrimination: Migrant children should be provided with equitable treatment and care as explained in the UN Guidelines on Alternative Care. iii. Prohibition of separation of child from family: Separation may only occur if a child is in danger. There should be alternatives to detention for families. The definition of family needs to be broader than parents and child; it should include grandparents, siblings and other people, who are significant for the child. iv. Procedural safeguards should be in place including a guardian, legal assistance and best interests procedure as well as the right to appeal and ability to access legal remedies. v. Humanisation of return procedures: Return should not be carried out by law enforcement, but supported by child protection officials when in the best interests of the child. We need to stop practices such as the handing over of children at the border. Repatriation should only take place with voluntary consent. vi. Access to education and healthcare: Every child must be provided with an education and medical care while return is pending. There is good practice in Kazakhstan where children are able to visit school in the centre, but they should also be able to attend mainstream schools. More information on the campaign is available at International Child Repatriation Guidelines (adcmemorial.org).
[13] https://adcmemorial.org/wp-content/uploads/model-agreement-children_en.pdf

possible improvements, highlighting that Ukraine is now developing a new bilateral agreement with Moldova and negotiating agreements with other countries such as France and Germany. He outlined an ordinance of the Ukrainian government that regulates the procedure when a migrant child is returned, including safeguards and a mechanism to establish the child's status (e.g. if the social services determine the child is an orphan then they can be referred to a foster family). He also noted that the Ministry for Social Protection have approached the Ministry of Internal Affairs as they would like to develop new procedures and find financing for readmission of children. In closing, General Director Kolbasa emphasized that the Ukrainian authorities are seeking solutions by amending national legislation, taking steps to prioritise foster care over institutional care, making reception centres the responsibility of the Ministry of Social Protection, sending Ukrainian authorities to accompany children during the repatriation process and seeking new bilateral agreements.

During the following **question and answer session**, General Director Kolbasa responded to enquiries regarding the closure of centres where children are detained, noting that this has begun and that there has been inter-ministerial discussion on next steps – while there are very few cases now, the centres may still play a specific role in the mechanism of readmission, including co-ordination, financing and staffing of repatriation. Memorial congratulated the Ukrainian authorities and expressed their willingness to support future work in this area.

The next presentation was in video format from **Mikiko Otani, Member of the UN Committee on the Rights of the Child**, in which she reinforced the messages and recommendations made by Judge Renate Winter the previous day. She briefly explained the mandate and composition of the Committee on the Rights of the Child and how State Parties engage with the reporting process. The Committee issues concluding observations and recommendations to State Parties as part of the review cycle, additionally publishing General Comments on thematic priorities that provide authoritative guidance to State Parties on the implementation of the UNCRC. Ms Otani underlined several aspects of the recent joint General Comments, emphasizing the importance of non-discrimination and that all children are entitled to the enjoyment of their rights, the importance of treating children as children and that the authority responsible for child protection should have a leading role in their care and in decision making based on child rights impact assessments. She underlined that immigration detention of children and families should be prohibited, children should not be separated from parents and states should implement non-custodial solutions alternatives to detention. Children should have access to administrative and judicial remedies, as well as the right to be heard in such procedures. Children's rights should also be protected in the context of return and return decisions should be based on a 'best interests' determination. She concluded by noting that international and regional co-operation is crucial to foster and strengthen cross-border case management, and that child protection actors should be involved in the negotiation of agreements and in related procedures in order to ensure the participation of children and civil society actors.

Interventions by government representatives from the region continued with **Ecaterina Mihailas from the Bureau of Asylum and Migration of Moldova**. She briefly explained the national legislation and practice concerning migrant children in Moldova. Following detection, the child's identity, legal status and parents' identity are verified. Contact will also then be made with the consulate or embassy. If the child's parents are not residing in Moldova, the child will be appointed a guardian from the local authorities and efforts will be made to reunite the child with their family. The decision to return a child will only be taken if the family or foreign

authority guarantee to care for the child, and must be approved by the Central Authority. If the parents are not identified or return is not possible, the child will be granted a tolerated stay.

The procedures for the repatriation of Moldovan children were then explained by **Igor Chișcă from the Health and Social Policy Ministry of Moldova**. He outlined Moldova's experience with readmission of children, noting that any child identified will be provided with protection and assistance in line with the principles of the 2008 Regulation on Repatriation, including listening to the child's views, assessing the best interests of the child and reuniting the family where possible. He highlighted that consulates and embassies play an important role in providing assistance and that there is also post-return monitoring by the protection authorities after repatriation as well as support for rehabilitation and reintegration (currently paused due to the COVID pandemic). Mr Chișcă explained that Moldova is no longer part of the Chisinau Agreement and is therefore negotiating new bilateral agreements with countries in the region and EU Member States. In closing, Mr Chișcă drew attention to the recently published OSCE guidance on *Establishing National Focal Points to Protect Child Victims of Trafficking in Human Beings*[14] and recommended all OSCE participating States establish centres to combat child trafficking. He suggested that the OSCE could build on this work to develop a toolkit on how to respond to identified cases and to share good practices including examples of bilateral agreements.

The subsequent **question and answer session** saw further discussion of the anticipated new bilateral agreement between Moldova and Ukraine, with participants recommending the acceleration of this process to see the agreement finalised and Mr Chișcă sharing that special attention was being given by drafters to the readmission of children. Participants also highlighted concerns around the many Kyrgyz children resident in Russia who are now unable to return home due to pandemic restrictions, despite the existence of systems to readmit unaccompanied children.

In closing remarks, **Dr Pablo Rojas Coppari, ODIHR**, expressed ODIHR's commitment to supporting the improvement of current legislation and practice. He confirmed that the following topics will remain priorities for ODIHR in the future: promoting alternatives to immigration detention, including activities to promote the case management model; promoting 'best interests' procedures in the context of return; promoting durable solutions that lead to reintegration; and, regularisation when return is not possible. ODIHR is currently finalising research on regularisation as a policy measure across the OSCE region which is expected to be published in 2021 along with guidance for governments. In its role as a regional institution promoting human rights, the ODIHR provides the following assistance:

- Review and commenting on draft legislation on request, making recommendations regarding compliance with international human rights law;
- Capacity building on human rights and migration including migrant integration;
- Facilitating regional co-operation, bilateral agreements, peer learning and exchange.

[14] Establishing National Focal Points to Protect Child Victims of Trafficking in Human Beings | OSCE.

MEETING CONCLUSIONS AND RECOMMENDATIONS

This expert exchange highlighted that not only is the Chisinau Agreement outdated, it is no longer being applied by some of the original signatories because they have left the CIS or have reformed their national laws and practices to be more child rights compliant. The Chisinau Agreement is therefore not only in need of reform, but should be replaced by bilateral or regional agreements on the readmission of children that take into account the best interests of the child and human rights standards.

The ratification and implementation of the UNCRC has led to many positive developments in the region, and following the recent guidance provided in the joint General Comments, more progress should now be made to implement the UNCRC principles and to respect the rights of children in the context of international migration. In particular, decision making concerning the potential return of a child should be based on a 'best interests' determination with appropriate support and procedural safeguards.

With that aim in mind, the presentations and plenary discussion during this meeting generated for the following recommended actions:

1. Respect and fulfil the guiding principles of the UN Convention on the Rights of the Child

In all their policy and practice in this area, states should ensure the immediate implementation of the guidance provided by the UN Committees in their *Joint General Comment No. 3 of the CMW and No. 22 of the CRC in the context of International Migration: General principles*,[15] including the following guiding principles:

- Non-discrimination - as all children are entitled to the enjoyment of their rights, regardless of the child's or their parents' age, gender, migration/documentation status, statelessness or any other status. Unaccompanied children should be provided with equitable treatment and care.

- Best interests of the child - which should be assessed and taken as a primary consideration in all decisions and actions that may affect the child. In some potential actions, such as whether to separate a child from her/his parents, it should be taken as the primary consideration (UNCRC Art 9). Considerations such as those relating to general migration control cannot override 'best interests' considerations.

- Right to life, survival and development - with procedures and decisions respecting the principle of non-refoulement and the child's rights to survival in a safe environment.

- Right to be heard – ensuring that decision-makers listen and give weight to the child's views in line with their age and maturity as well as ensuring access to complaints mechanisms and legal remedies such as the right to appeal administrative and judicial decisions.

[15] Treaty bodies Download (ohchr.org).

2. Establish and carry out individual 'best interests' procedures to identify and apply a comprehensive, secure and sustainable solution for every child

In line with the guidance provided by the Committees in their *Joint General Comment No. 4 of the CMW and No. 23 of the CRC in the context of International Migration: States parties' obligations in particular with respect to countries of transit and destination*[16], States should:

"Develop and put into practice, with regard to unaccompanied children and children with families, a best-interests determination procedure aimed at identifying and applying comprehensive, secure and sustainable solutions, including further integration and settlement in the country of current residence, repatriation to the country of origin or resettlement in a third country.

A comprehensive, secure and sustainable solution is one that, to the greatest extent possible, caters to the long-term best interests and welfare of the child and is sustainable and secure from that perspective. The outcome should aim to ensure that the child is able to develop into adulthood, in an environment that will meet his or her needs and fulfil his or her rights as defined by the Convention on the Rights of the Child."

- In implementing this guidance states should ensure medium-term options and include options for children and families to regularize their status to avoid the precarity of residence status damaging children's well-being.

- States should ensure that 'best interests' determination procedures are guided by child protection authorities, and options and plans should be discussed with the child in an appropriate manner.

- States should ensure that in those cases when it is in the child's best interests to be returned, an individual plan with appropriate support for travel and sustainable reintegration is prepared and resourced, and that it is supported by inter-institutional and international co-ordination involving the countries of origin, transit and destination. Independent monitoring and evaluation should be put in place and quality, rights-based follow up support provided.

3. Foster and further develop interagency and multidisciplinary cross-border approaches led by child protection authorities to provide protection and implement solutions

- States should make provisions to ensure the fulfilment of unaccompanied children's right to special protection and assistance (UNCRC Art 20). Unaccompanied children should be appointed a guardian and provided with free legal assistance to support their co-operation with the authorities and their involvement in procedures, with decisions concerning care arrangements (e.g. foster family or independent living with support) based on a 'best interests' assessment.

- States should ensure they apply a child rights-based approach led by child protection authorities. Children should not be the responsibility of law enforcement agencies, but

[16] Treaty bodies Download (ohchr.org).

should rather be under the care of child protection and child welfare authorities, who should lead multi-agency approaches and also bring their expert perspectives to the development of policies and legislation.

4. End child and family immigration detention and the criminalization of child migrants

- States should: clearly define deprivation of liberty in line with international standards; prohibit child and family immigration detention in law; decriminalize irregular entry, stay and exit; adopt child-sensitive identification and referral procedures in the context of migration; dedicate sufficient resources to appropriate non-custodial solutions for children and their families; and, develop national action plans aimed at an overall reduction in the numbers of children in detention and the elimination of detention for children.

- States should provide unaccompanied children with alternative care and accommodation, in line with the *United Nations Guidelines for the Alternative Care of Children*.[17]

- States should not separate children from their families. The need to keep the family together is not a valid basis for deprivation of liberty of the child; instead, the State should provide community-based, non-custodial solutions for the entire family.

- States should ensure that when deprived of their liberty children should have the right to prompt legal and other assistance to challenge the legality of their detention.

- States should ensure that any children have the right to effective remedies, including the ability to lodge complaints with an independent and impartial authority on any grievances and human rights violations experienced during detention.

5. Promote and contribute to regular regional exchanges of good practices to raise awareness and encourage progress

- ODIHR should facilitate follow-up expert roundtables on how best to operationalize migrant children's rights and child protection measures in decision making on durable solutions and repatriation procedures.

- ODIHR should facilitate more exchange across the OSCE region, in partnership with the Council of Europe, European Union institutions, national authorities and civil society organizations to raise awareness of the need to better protect children's rights in the context of migration and good practices in this regard.

- States should contribute to such exchanges and ensure learning is incorporated into national policies and programmes.

[17] Guidelines on Alternative Care | Better Care Network.

6. Advance legislative and policy reform efforts at the national level to protect children's rights and engage in international co-operation to develop bilateral and regional agreements to protect children's rights in return decisions and readmission procedures

As stressed by the Committees in their *Joint General Comment No 4 of the CMW/23 of the CRC*[18], "*The Committees reaffirm the need to address international migration through international, regional or bilateral cooperation and dialogue …In particular, cross-border case management procedures should be established in an expeditious manner in conformity… with international human rights and refugee law obligations. States should develop child rights based bilateral agreements and involve child protection actors including NGOs providing case management expertise in these processes."*

- Ombudspersons in the region should promote reform of the Chisinau Agreement to ensure respect for children's rights in decision making on durable solutions and during readmission procedures.

- ODIHR could develop a toolkit to showcase good practices, model legislation and model bilateral agreements.

- States should consider using the opportunity to request a review of proposed legislation in this area by ODIHR to inform greater compliance with international human rights standards.

[18] Treaty bodies Download (ohchr.org).

ANNEX 1: AGENDA

Day One		
Time	**Topic**	**Speaker**
10:00-10:05	Housekeeping, a brief introduction	Pablo Rojas Coppari, ODIHR
10:05-10:15	Introduction by ODIHR – setting the scene, objectives of the roundtable	Meaghan Fitzgerald, ODIHR
10:15–10:30	Introducing the participants	
10:30-10:45	Opening Key-note Speech: *UN Global Study on Children Deprived of Liberty: Conclusions and Recommendations*	Prof Manfred Nowak Independent Expert for the United Nations Global Study on Children Deprived of Liberty
10:45-11:00	*Best interests of the child in return procedures: a necessary step forward*	Roos-Marie van den Bogaard Junior Advocacy Officer PICUM
11:00-11:30	Moderator-led Q&A with questions taken from the floor	Pablo Rojas Coppari Migration and Freedom of Movement Adviser OSCE/ODIHR
11:30-11:45	*Migrant Children's rights in Moldova*	Maia Banarescu, Children's Rights Ombudsperson, Moldova
11:45-12:00	Break	
12:00-12:15	*Migrant Children's rights in Kyrgyzstan*	Ms Gulnara Zhamgyrchieva Deputy Ombudsperson for Child Rights of the Kyrgyz Republic
12:15-12:45	Moderator-led Q&A with questions taken from the floor	Pablo Rojas Coppari Migration and Freedom of Movement Adviser OSCE/ODIHR
12:45-13:00	*State obligations under the CRC in relation to migrant children*	Ms. Renate Winter – Vice-President UN Committee on the Rights of the Child
13:00-13:15	Summary of Discussion and Preliminary Recommendations Final Comments and Clarifications from the floor Wrap up and Next Steps	
Day Two		
Time	**Topic**	**Speaker**
10:00-10:10	Housekeeping, a brief introduction, setting the scene, objectives of the roundtable	Pablo Rojas Coppari Migration and Freedom of Movement Afviser

		OSCE/ODIHR
10:10-10:25	Opening Key-note Speech: *Children's rights in the New EU Pact and readmission agreements with countries in the former Soviet Union region*	Tineke Strik Member of the European Parliament Greens/EFA Group
10:25-10:40	*Incorporating children rights standards in regional return procedures*	Eugenia Andreyuk ADC Memorial
10:40-10:55	*Moldovan – Ukrainian Cooperation: Lessons Learnt*	Ruslan Kolbasa General Director, Directorate of Development of Social Services and Protection of Children's Rights Ministry of Social Policy of Ukraine
10:55-11:25	Moderator-led Q&A, with questions taken from the floor	Pablo Rojas Coppari, ODIHR
11:25-11:40	Break	
11:40-11:50	*UN CRC recommendations on migrant children and their applications in former Soviet Union countries* (Video Recording)	Mikiko Otani, Member UN Commitee on the Rights of the Child
11:50-12:05	*Current Situation of Children Migrants in the Kyrgyz Republic*	Aliza Soltonbekova Minister of Labour and Social Development Kyrgyz Republic
12:05-12:30	Interventions by Government Representatives from the region	Ecaterina Milailas – Bureau of Asylum and Migration Moldova Igor Chișcă - Health and Social Policy ministry
12:30-13:00	Moderator-led Q&A, with questions taken from the floor	Pablo Rojas Coppari, ODIHR
13:10-13:15	*How can ODIHR provide assistance to the improvement of current legislation and practice?* Reflections, Final Comments and Clarifications from the floor. Wrap up and Next Steps	Pablo Rojas Coppari, ODIHR

ANNEX 2: LIST OF PARTICIPANTS

Participant	Organization
Ms. Olga Abramenko	Anti-Discrimination Centre (ADC) Memorial
Ms. Khadicha Abysheva	Chairwoman at the Board of NGO "Sana Sezim"
Ms. Julia Alimova	Children of St. Petersburg
Ms. Eugenia Andreyuk	Anti-Discrimination Centre (ADC) Memorial
Ms. Aigerim Arzymatova	Office of the Ombudsman of the Kyrgyz Republic
Ms. Maia Banarescu	Children's Rights Ombudsperson, Moldova
Ms. Sofia Botzios	Office for Democratic Institutions and Human Rights OSCE (ODIHR)
Ms. Alena Chekhovich	Human Rights Organisation "Human Constanta"
Mr. Igor Chișcă	Health and Social Policy Ministry of the Republic of Moldova
Ms. Antonina Comerzan	The Association for Child and Family Empowerment "AVE Copiii"
Ms. Enikeeva Elina	NGO Sana Sezim
Ms. Meaghan Fitzgerald	Office for Democratic Institutions and Human Rights OSCE (ODIHR)
Ms. Mariana Ianachevici	The Association for Child and Family Empowerment "AVE Copiii"
Ms. Lira Ismailova	Center Alternativa of the Human rights movement Bir Duino Kyrgyzstan
Ms. Laura Jaffrey	Office for Democratic Institutions and Human Rights OSCE (ODIHR)
Ms. Jyothi Kanics	Office for Democratic Institutions and Human Rights OSCE (ODIHR) Consultant
Mr. Kirill Kofanov	Human Rights Organisation "Human Constanta"
Mr. Ruslan Kolbasa	Directorate of Development of Social Services and Protection of Children's Rights Ministry of Social Policy of Ukraine
Ms. Stefania Kulanova	Anti-Discrimination Centre (ADC) Memorial
Ms. Anne-Katrin Lother	Office for Democratic Institutions and Human Rights OSCE (ODIHR)
Dr. Yevheniia Lutsenko	Director of the Centre for Social and Gender Research "New Life"
Ms. Ecaterina Mihailas	Bureau of Migration and Asylum, Moldova
Mr. Mukaramov Muzaffar	2nd Secretary of the Department for Co-operation with the UN and Other International Organizations of the Ministry of Foreign Affairs of Uzbekistan
Prof. Manfred Nowak	Independent Expert for the United Nations Global Study on Children Deprived of Liberty
Ms. Mikiko Otani	UN Commitee on the Rights of the Child
Ms. Gulchehra Rakhmanova	Director of the Public Foundation "Tashabbusi hukuki"
Ms. Jennifer Roberts	Office for Democratic Institutions and Human Rights OSCE (ODIHR)
Dr. Pablo Rojas Coppari	Office for Democratic Institutions and Human Rights OSCE (ODIHR)
Mr. Alimjanov Rustam	Chief Specialist of the Agency for External Labor Migration under the Ministry of Employment and Labor Relations of the Republic of Uzbekistan
Ms. Natalya Seitmuratova	Office of the United Nations High Commissioner for Human Rights (OHCHR)
Ms. Tatiana Semikop	
Mr. Alexandru Simionov	Permanent Representation of the Republic of Moldova
Ms. Rita Stafejeva	Office for Democratic Institutions and Human Rights OSCE (ODIHR)
Mr. Drahoslav Stefanek	Council of Europe
Ms. Imke Steimann	Global Campus of Human Rights
Ms. Tineke Strik	Member of the European Parliament Greens/EFA Group
Ms. Aliza Soltonbekova	Kyrgyz Minister of Labour
Ms. Roos-Marie van den Bogaard	PICUM - the Platform for International Co-operation on Undocumented Migrants
Ms. Renate Winter	UN Committee on the Rights of the Child
Ms. Gulnara Zhamgyrchieva	Deputy Ombudsperson for Child Rights of the Kyrgyz Republic

ANNEX 3: SELECTED OSCE COMMITMENTS IN THE AREA OF THE PROTECTION OF THE HUMAN RIGHTS OF MIGRANTS AND MIGRANT INTEGRATION

Since the 1975 Helsinki process OSCE participating States realized that increasing legal migration in the OSCE region has not only been beneficial both for host countries and migrants themselves, but has also given rise to a number of economic, social, human and other challenges[19]. Gradually the OSCE participating States acknowledged that some of those challenges should be addressed by means of special migrant integration policies.

Therefore, over more than 40 years, the OSCE participating States have agreed to a number of commitments in the field of migrant integration. These commitments relating to the so-called human dimension of the OSCE are contained in an ever-growing set of documents adopted by CSCE/ OSCE Summits and other political forums.

The OSCE commitments form the basis of the work of the Organization and were developed jointly and adopted unanimously by all participating States. They establish clear standards for the participating States in their treatment of each other and of all individuals within their territories.

Helsinki 1975 (Co-operation in the Field of Economics, of Science and Technology and of the Environment)
The participating States,
Considering that the movements of migrant workers in Europe have reached substantial proportions, and that they constitute an important economic, social and human factor for host countries as well as for countries of origin,
Recognizing that workers' migrations have also given rise to a number of economic, social, human and other problems in both the receiving countries and the countries of origin,
Taking due account of the activities of the competent international organizations, more particularly the International Labour Organisation, in this area, are of the opinion that the problems arising bilaterally from the migration of workers in Europe as well as between the participating States should be dealt with by the parties directly concerned, in order to resolve these problems in their mutual interest, in the light of the concern of each State involved to take due account of the requirements resulting from its socio-economic situation, having regard to the obligation of each State to comply with the bilateral and multilateral agreements to which it is party, and with the following aims in view:
• to encourage the efforts of the countries of origin directed towards increasing the possibilities of employment for their nationals in their own territories, in particular by developing economic co-operation appropriate for this purpose and suitable for the host countries and the countries of origin concerned;
• to ensure, through collaboration between the host country and the country of origin, the conditions under which the orderly movement of workers might take place, while at the same time protecting their personal and social welfare and, if appropriate, to organize the recruitment of migrant workers and the provision of elementary language and vocational training;
• to ensure equality of rights between migrant workers and nationals of the host countries with regard to conditions of employment and work and to social security, and to endeavour to ensure that migrant workers may enjoy satisfactory living conditions, especially housing conditions;
• to endeavour to ensure, as far as possible, that migrant workers may enjoy the same opportunities as nationals of the host countries of finding other suitable employment in the event of unemployment;
• to regard with favour the provision of vocational training to migrant workers and, as far as possible, free instruction in the language of the host country, in the framework of their employment;
• to confirm the right of migrant workers to receive, as far as possible, regular information in their own language, covering both their country of origin and the host country;
• to ensure that the children of migrant workers established in the host country have access to the education usually given there, under the same conditions as the children of that country and, furthermore, to permit them to receive supplementary education in their own language, national culture, history and geography;
• to bear in mind that migrant workers, particularly those who have acquired qualifications, can by returning to their countries after a certain period of time help to remedy any deficiency of skilled labour in their country of origin;
• to facilitate, as far as possible, the reuniting of migrant workers with their families.

[19] Section "Economic and social aspects of migrant legal" of the Final Act of the Conference on Security and Co-operation in Europe (Helsinki 1975).

Madrid 2007 (Decisions: Decision No. 10/07 on Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding)
The Ministerial Council,
(…)
Recognizing that manifestations of intolerance and discrimination can undermine the efforts to protect the rights of individuals, including migrants, refugees and persons belonging to national minorities and stateless persons,
(…)
7. Calls on participating States to protect migrants legally residing in host countries and persons belonging to national minorities, stateless persons and refugees from racism, xenophobia, discrimination and violent acts of intolerance and to elaborate or strengthen national strategies and programmes for the integration of regular migrants, which also requires active engagement of the latter;
(…)

Vienna 1989 (Co-operation in the Field of Economics, of Science and Technology and of the Environment)
(40) The participating States emphasize the need for effective implementation of the provisions of the Final Act and the Madrid Concluding Document relating to migrant workers and their families in Europe. They invite host countries and countries of origin to make efforts to improve further the economic, social, cultural and other conditions of life for migrant workers and their families legally residing in the host countries. They recommend that host countries and countries of origin should promote their bilateral co-operation in relevant fields with a view to facilitating the reintegration of migrant workers and their families returning to their country of origin.
(41) The participating States will (…) consider favourably applications for family reunification as well as family contacts and visits involving migrant workers from other participating States legally residing in the host countries.
(42) The participating States will ensure that migrant workers from other participating States, and their families, can freely enjoy and maintain their national culture and have access to the culture of the host country.
(43) Aiming at ensuring effective equality of opportunity between the children of migrant workers and the children of their own nationals regarding access to all forms and levels of education, the participating States affirm their readiness to take measures needed for the better use and improvement of educational opportunities. Furthermore, they will encourage or facilitate, where reasonable demand exists, supplementary teaching in their mother tongue for the children of migrant workers.
(44) The participating States recognize that issues of migrant workers have their human dimension.

Copenhagen 1990
(22) The participating States reaffirm that the protection and promotion of the rights of migrant workers have their human dimension. In this context, they
(22.1) - agree that the protection and promotion of the rights of migrant workers are the concern of all participating States and that as such they should be addressed within the CSCE
process;
(22.2) - reaffirm their commitment to implement fully in their domestic legislation the rights
of migrant workers provided for in international agreements to which they are parties;
(22.3) - consider that, in future international instruments concerning the rights of migrant workers, they should take into account the fact that this issue is of importance for all of them;
(…)

Paris 1990 (A New Era of Democracy, Peace and Unity)
We recognize that the issues of migrant workers and their families legally residing in host countries have economic, cultural and social aspects as well as their human dimension. We reaffirm that the protection and promotion of their rights, as well as the implementation of relevant international obligations, is our common concern.

Moscow 1991
(38) The participating States recognize the need to ensure that the rights of migrant workers and their families lawfully residing in the participating States are respected and underline their right to express freely their ethnic, cultural, religious and linguistic characteristics. The exercise of such rights may be subject to such restrictions as are prescribed by law and are consistent with international standards.
(38.1) They condemn all acts of discrimination on the ground of race, colour and ethnic origin, intolerance and xenophobia against migrant workers. They will, in conformity with domestic law and international obligations, take effective measures to promote tolerance, understanding, equality of opportunity and respect for the fundamental human rights of migrant workers and adopt, if they have not already done so, measures that would prohibit acts that constitute incitement to violence based on national, racial, ethnic or religious discrimination, hostility or hatred.

(38.2) They will adopt appropriate measures that would enable migrant workers to participate in the life of the society of the participating States.
(38.3) They note that issues which concern the human dimension of migrant workers residing on their territory could, as any other issue of the human dimension, be raised under the human dimension mechanism.

Helsinki 1992 (Decisions: VI. The Human Dimension)
The participating States:
(…)
(36) Restate that human rights and fundamental freedoms are universal, that they are also enjoyed by migrant workers wherever they live and stress the importance of implementing all CSCE commitments on migrant workers and their families lawfully residing in the participating States;
(37) Will encourage the creation of conditions to foster greater harmony in relations between migrant workers and the rest of the society of the participating State in which they lawfully reside. To this end, they will seek to offer, *inter alia*, measures to facilitate the familiarization of migrant workers and their families with the languages and social life of the respective participating State in which they lawfully reside so as to enable them to participate in the life of the society of the host country;
(38) Will, in accordance with their domestic policies, laws and international obligations seek, as appropriate, to create the conditions for promoting equality of opportunity in respect of working conditions, education, social security and health services, housing, access to trade unions as well as cultural rights for lawfully residing and working migrant workers.

Budapest 1994 (Decisions: VIII. The Human Dimension)
31. They [*OSCE participating States*] will continue to promote the integration of migrant workers in the societies in which they are lawfully residing. They recognize that a successful process of integration also depends on its active pursuit by the migrants themselves and decided therefore to encourage them in this regard.

Maastricht 2003 (Decisions: Decision No. 4/03 on Tolerance and Non-discrimination)
The Ministerial Council
(…)
11. Undertakes to combat discrimination against migrant workers. Further undertakes to facilitate the integration of migrant workers into the societies in which they are legally residing
(…)

Sofia 2004 (Decisions: Annex to Decision No. 12/04 on Tolerance and Non-discrimination;
Permanent Council Decision No. 621: Tolerance and the Fight against Racism, Xenophobia and Discrimination)
The participating States commit to:
(…)
• Take steps, in conformity with their domestic law and international obligations, against discrimination, intolerance and xenophobia against migrants and migrant workers;
• Consider undertaking activities to raise public awareness of the enriching contribution of migrants and migrant workers to society;
(…)

Ljubljana 2005 (Decisions: Decision No. 2/05 on Migration)
The Ministerial Council,
Reaffirming the commitments related to migration, and in particular regarding migrant workers, and other relevant commitments (…),
Recognizing the increasing importance of migration, as well as the challenges and opportunities that it presents to participating States,
Further recognizing that migration is becoming a more diverse and complex phenomenon, which needs to be addressed in a comprehensive manner and therefore requires a cross-dimensional approach at the national, regional and international levels,
Recognizing that all States should adopt effective national frameworks in order to manage migration,
Underlining that migration is inherently a transnational issue requiring co-operation between States,
Acknowledging that migration constitutes an important economic, social and human factor for host countries as well as for countries of origin,
Acknowledging also that successful integration policies that include respect for cultural and religious diversity and promotion and protection of human rights and fundamental freedoms are a factor in promoting stability and cohesion within our societies,

(…)
Considering that the OSCE, within its comprehensive approach to security, could contribute, *inter alia*, by:
• Working in synergy and developing a stronger partnership with international bodies having a specific focus on migration,
• Facilitating dialogue and co-operation between participating States, including countries of origin, transit and destination in the OSCE area, as well as the OSCE Partners for Cooperation and Mediterranean Partners for Co-operation,
• Assisting the participating States, upon their request, to develop effective migration policies and to implement their relevant OSCE commitments,
• Inviting participating States to consider becoming parties to relevant international Instruments.

Athens 2009 (Decisions: Decision No. 5/09 on Migration Management)
The Ministerial Council,
Acknowledging the increasing importance of and the benefits stemming from effective migration management for the socio-economic development, social cohesion, security and stability in all countries including those of origin, transit and destination, and fully recognizing the human rights of migrants and their family members,
Underscoring the importance of mainstreaming migration policies into economic, social, environmental, development and security strategies and addressing migration management through co-operative, comprehensive and cross-dimensional approaches,
Underlining the need to facilitate legal migration and fight illegal migration,
Bearing in mind the different approaches to migration issues by the OSCE participating States, and drawing on their experiences and best practices,
Stressing the need to deepen dialogue and co-operation at all levels within and between all States, as well as with all relevant stakeholders, including social partners, business community, civil society and academia, to effectively address the opportunities and challenges related to comprehensive migration management,
Confirming that co-operation, dialogue and exchange of good practices and information on migration management issues remain an important component of the OSCE's comprehensive concept of security, supported as appropriate and within the respective mandates, capacities
and resources in all three dimensions,
1. Encourages the participating States to continue to work on migration management by:
• Paying particular attention to addressing the root causes of migration;
• Ensuring that their national migration practices comply with their respective international obligations and OSCE commitments;
• Further elaborating and enhancing implementation of comprehensive and effective national migration policies and action plans as appropriate;
• Improving the collection of comparable data on migration, in order to facilitate dialogue and exchange of best practices at the OSCE level;
(…)
• Respecting the human rights of migrants and increasing efforts to combat discrimination, intolerance and xenophobia towards migrants and their families;
(…)
5. Tasks the Permanent Council, its informal subsidiary bodies and the OSCE executive structures, in accordance with their respective mandates across all dimensions, within the Organization's comprehensive concept of security and within existing resources to *inter alia*:
• Provide a broad regional platform for dialogue on migration and security issues, both among OSCE participating States and between participating States and Partners for Cooperation, with the involvement of other relevant stakeholders in full conformity with the OSCE Rules of Procedure;
• Continue working on gender aspects of migration;
• Assist participating States, upon their request, to improve migration legislation and to elaborate and implement effective national policy frameworks, by providing advice and training, in co-operation with relevant international and regional organizations;
(…)
• Continue to assist the participating States, upon their request, to promote effective migration management, including exchange of best practices, and to facilitate legal migration and fight illegal migration, while paying particular attention to bilateral and multilateral co-operation in this field.

Hamburg 2016 (Decisions: Decision No. 3/16 on OSCE's role in the governance of large movements of migrants and refugees)
The Ministerial Council,

Recognizing that the benefits and opportunities of safe, orderly and regular migration are substantial and often underestimated, whilst noting that irregular migration in large movements often presents complex challenges, and recognizing the substantial economic and social contribution that migrants and refugees can make for inclusive growth and sustainable development,

Recognizing the leading role of the United Nations, Commending efforts made since 2015 by the Serbian and German OSCE Chairmanships to address issues related to the governance of these movements more effectively in the OSCE, Acknowledging the many specific activities linked to migration and refugees already undertaken by OSCE executive structures, within existing mandates, as well as by participating States, based on existing OSCE commitments, relevant United Nations documents and national policies,

Building on in-depth discussions conducted at the OSCE, especially during the hearings of the Informal Working Group Focusing on the Issue of Migration and Refugee Flows in spring 2016 and during a special meeting of the OSCE Permanent Council held on 20 July 2016,

1. Acknowledges the work of the Informal Working Group Focusing on the Issue of Migration and Refugee Flows and the output discussed at the special meeting of the OSCE Permanent Council of 20 July 2016;
2. Encourages the OSCE executive structures, within existing mandates and available resources, to continue their work on the issue of migration, including by reinforcing activities leading to the exchange of best practices and enhancing dialogue and co-operation with Partners for Co-operation, in a manner that complements the activities undertaken by other relevant international organizations and agencies;
3. Encourages participating States also to use the OSCE platform, including appropriate OSCE working bodies, to continue addressing migration-related issues where the OSCE has developed its expertise, and improve dialogue on migration-related matters with regard to developing possible effective measures and common approaches to address them.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation.** Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination,** the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti.** It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).