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Human rights of migrants

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of migrants, Gehad Madi, in accordance with Human Rights Council resolution [53/14](#).

* [A/80/150](#).



Report of the Special Rapporteur on the human rights of migrants, Gehad Madi

Externalization of migration governance and its effect on the human rights of migrants

Summary

In the present report, the Special Rapporteur on the human rights of migrants, Gehad Madi, examines the phenomenon of externalization of migration, which is understood as forms of international cooperation aimed at shifting responsibility for migration governance from destination States to other States. Recognizing that externalization measures entail a risk of human rights violations, the Special Rapporteur identifies the rights most at risk. The lack of transparency and accountability surrounding many externalization arrangements compounds the risk of such violations. The Special Rapporteur underscores the critical importance of human rights impact assessments, independent human rights monitoring and accessible complaint mechanisms. He concludes by addressing the question of responsibility for human rights violations in the context of externalization and explores two principal legal challenges associated with externalization practices.

I. Introduction

1. In recent years, externalization has become a defining feature of migration, asylum and border governance. While externalization is not a new phenomenon, it is on the rise. Externalization is often implemented in combination with other measures, such as securitization and criminalization of migration, thereby increasing constraints on civil society actors, in particular non-governmental organizations (NGOs) involved in protecting the human rights of migrants, and the militarization of borders.¹ While externalization appears to be a global phenomenon, it is most widely practised by high-income destination countries. Although the focus of the present report is the externalization of migration, many of the measures referred to herein also have the potential to affect asylum-seekers and refugees and are inextricably linked with risks of the externalization of asylum and refugee protection obligations. All policies or practices that affect migrants, asylum-seekers and refugees must be in compliance with both international human rights law and international refugee law.²

2. For the purpose of the present report, “externalization” is understood as “the process of shifting functions that are normally undertaken by a State within its own territory so that they take place, in part or in whole, outside its territory”.³ It is an umbrella term, referring to cooperation designed to prevent migration, carry out administrative processes beyond national borders and facilitate the return of migrants to third countries.⁴ In the present report, Member States that externalize migration processes are referred to as “externalizing States,” and those that cooperate with externalizing States are referred to as “third States.” To elicit agreement to cooperate, externalizing States tend to leverage a mixture of positive and negative incentives.⁵ Although externalization measures are labelled as cooperation or partnerships, they should be distinguished from international cooperation, which facilitates migration and access to protection and enhances joint responses to displacement and

¹ [A/72/335](#), paras. 10–12; and [A/HRC/37/50](#), paras. 7 and 16, [A/HRC/44/42](#), paras. 66–85, and [A/HRC/59/49](#), paras. 4, 30 and 34.

² Office of the United Nations High Commissioner for Refugees (UNHCR), “Note on the ‘externalization’ of international protection”, 2021. The Office’s definition of externalization can be found in paragraph 5 of the note.

³ See Refugee Law Initiative, “Refugee law initiative declaration on externalisation and asylum”, *International Journal of Refugee Law*, vol. 34, No. 1 (March 2022), pp. 114–119.

⁴ The understanding of externalization as being premised on collaboration between States is shared by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment ([A/HRC/37/50](#), para. 7). That understanding is also supported by a briefing document on the extraterritorial processing of asylum claims prepared for the European Parliament (available at [www.europarl.europa.eu/RegData/etudes/BRIE/2024/757609/EPRS_BRI\(2024\)757609_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757609/EPRS_BRI(2024)757609_EN.pdf)). Accordingly, unilateral returns or pushbacks in which the other country does not cooperate or acquiesce, although they have extraterritorial reach, are not covered by the understanding of externalization set out in the present report. The Special Rapporteur on the human rights of migrants has addressed those measures in reports submitted to the Human Rights Council (see [A/HRC/38/41](#) and [A/HRC/47/30](#)).

⁵ For example, see the conclusions of the European Council meeting held on 22 and 23 June 2017 (EUCO 8/17), para. 22. Although externalization cooperation yields benefits, most typically in the form of financial support, visa liberalization, preferential trade or diplomatic support, it tends to lead to increased border restrictions and surveillance, and those in turn disrupt daily cross-border movement, trade and local economies (see submission by Brot für die Welt).

responsibility-sharing, as supported by various international instruments.⁶ The primary aim of externalization is to shift responsibility for migrants and refugees to other States and is at variance with the principle of good faith.⁷

3. The Special Rapporteur on the human rights of migrants has addressed specific externalization measures in his public communications.⁸ In the present report, he seeks to build on the existing body of recommendations and offer a comprehensive assessment of externalization practices through the lens of human rights protection, transparency and accountability. By discussing risks to the human rights of migrants associated with externalization practices, the Special Rapporteur aims to clarify key questions related to State extraterritorial jurisdiction and responsibility under international law.

4. The Special Rapporteur welcomes the written submissions received that informed the content of the present report.⁹ In addition, the Special Rapporteur organized several informal consultations with academics and NGOs and consulted publicly available reports and academic research.

5. In the thematic part of the report, he describes externalization policies and measures, identifies the human rights of migrants that are at greatest risk of being violated in the context of externalization, addresses transparency and accountability in the context of externalization and examines the issue of legal responsibility for human rights violations associated with externalization measures. The final section contains conclusions and recommendations.

II. Externalization policies and measures

6. In the present report, the Special Rapporteur provides a non-exhaustive overview of externalization policies and measures, grouping them into three categories: (a) prevention of arrival; (b) extraterritorial asylum processing; and (c) readmission or expulsion to third States.¹⁰ Although they are addressed as separate categories, in practice, they may be used in combination with additional measures. The Special Rapporteur will continue to monitor and report on such practices.

A. Prevention of arrival

7. This form of externalization involves a policy under which “border control no longer takes place at the physical borders.”¹¹ Externalizing States employ a range of measures to prevent migrants from arriving in their territory, including preventing departure from and transit through third States and entry into their territories. These

⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 64–65 and 67; Global Compact for Safe, Orderly and Regular Migration and Global Compact on Refugees; and A/HRC/50/31, para. 47. Although UNHCR has expressed its concern at externalization practices, specifically highlighting their potential to violate international law, it notes that States can cooperate in ways that are consistent with their international legal obligations, including through lawful transfer arrangements that guarantee access to international protection and responsibility-sharing (see submission by UNHCR).

⁷ Emilie McDonnell, “Externalisation as a breach of the good faith principle”, Externalizing Asylum, June 2024.

⁸ See <https://spcommreports.ohchr.org/TmSearch/Mandates?m=33>.

⁹ The submissions received are available at www.ohchr.org/en/calls-for-input/2025/call-inputs-externalization-migration-and-impact-human-rights-migrants.

¹⁰ For related categories, see Council of Europe, Commissioner for Human Rights, “Externalised asylum and migration policies and their human rights impact”, 2025.

¹¹ A/HRC/23/46, 2013, para. 55

measures take various forms, including pullbacks¹² and pushbacks.¹³ Less visible measures involve funding and strengthening the capacity of third States to control their borders, thereby preventing migrants from entering or leaving their territory.¹⁴

8. While agreements regarding the interception and containment of migrants en route to externalizing States have been implemented in various regions (for example, between Australia and Indonesia and between the United States of America and Mexico), the European Union appears to offer the most examples. The European Union has signed a range of migration agreements aimed at reducing migration to the European Union, with these agreements serving to create a sort of “buffer zone.” Although many of the arrangements pursuant to those agreements are not public, the European Union provides funds, capacity-building and equipment, as well as broader benefits, to third States. The European Border and Coast Guard Agency (Frontex) plays an important role in supporting third States in preventing migrants from arriving in the European Union.¹⁵

9. The European Union engages in multifaceted cooperation with Western Balkan countries (Albania, Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia, as well as Kosovo)¹⁶ in the context of the process of those countries’ accession to the Union. That cooperation involves strengthening and funding border management by these countries, in order to align their border management practices with European Union integrated border management standards.¹⁷ The broad range of support provided includes capacity-building, technical support and border surveillance equipment. Frontex has concluded so-called status agreements with most of those countries that allow the agency, in practice, to exercise executive powers, ranging from involvement in border patrols and joint operations to border control powers.¹⁸ There have been reported cases of pushbacks across this region, including in Frontex operational areas.¹⁹

10. While cooperation between the European Union and the countries of the Middle East and North Africa region is long-standing, there have been multiple additional initiatives in the region in recent years. The Union agreed to enter into cooperation

¹² Pullbacks are understood as operations designed to physically prevent migrants from leaving the territory of their State of origin or a transit State or to forcibly return them to that territory before they can reach the jurisdiction of their destination State. Pullbacks are carried out by retaining States or local armed groups, at the instigation and on behalf of destination States (A/HRC/37/50, para. 54).

¹³ Pushbacks are understood as various measures taken by States that result in migrants being summarily forced back, without an individual assessment of their human rights protection needs, to the country or territory, or to sea, from where they attempted to cross or crossed an international border (A/HRC/47/30, paras. 34–37).

¹⁴ A/72/335, paras. 11 and 36; and A/HRC/37/50, para. 7, and A/HRC/23/46, paras. 55–61.

¹⁵ European Union member States also have bilateral arrangements with third States that are frequently supported by the European Union, for example the agreements signed by Cyprus and Lebanon and by Morocco and Spain (A/HRC/50/31, paras. 50 and 55), and the memorandum of understanding signed by Italy and Libya (available at www.asgi.it/wp-content/uploads/2017/02/ITALY-LIBYA-MEMORANDUM-02.02.2017.pdf).

¹⁶ References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

¹⁷ The European Union, through its Eastern Partnership initiative, also cooperates on border management with Armenia, Azerbaijan, Georgia, Moldova and Ukraine (available at https://home-affairs.ec.europa.eu/policies/international-affairs/collaboration-countries/eastern-partnership_en).

¹⁸ See submissions by AccessNow and Border Violence Monitoring Network; see also www.consilium.europa.eu/en/policies/western-balkans-route/#frontex.

¹⁹ See submission by Médecins sans frontières; see also European Union Agency for Asylum, “Input by civil society organisations to the Asylum Report 2023”.

arrangements with Morocco (2023),²⁰ Tunisia (2023),²¹ Egypt (2024),²² Lebanon (2024)²³ and Jordan (2025),²⁴ while cooperation with Libya is based on the memorandum of understanding concluded by Italy and Libya.²⁵ All these cooperation schemes include policies that cover matters beyond migration. Nonetheless, considerable funds are earmarked for migration management, most frequently under the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa and under the Neighbourhood, Development and International Cooperation Instrument – Global Europe. Pursuant to those arrangements, the European Union provides funds, equipment, including surveillance tools, and training to strengthen countries' border management. The International Organization for Migration (IOM) supports some of those countries in organizing assisted voluntary returns (and voluntary humanitarian returns in the case of Libya), mainly for migrants intercepted by those countries.²⁶ Serious concerns have been expressed about the treatment of migrants and refugees in the context of the implementation of measures under those arrangements. The alleged violations include the use of force during interceptions, arbitrary detention, ill-treatment, sexual harassment of women and onward expulsion.²⁷

11. In sub-Saharan Africa, building on ongoing cooperation between the European Union and its member States, on the one hand, and Mauritania, on the other, a new initiative was launched in early 2024 that is aimed at preventing irregular migration and strengthening border management, including through the provision by Frontex of training support and equipment.²⁸ In parallel, Frontex has expanded its engagement in Mali, Mauritania, the Niger and Senegal, focusing on capacity-building, information exchange and potential support for border surveillance.²⁹ In the Niger, the Joint Initiative for Migrant Protection and Reintegration of the European Union and IOM, which is funded by the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa, supports assisted voluntary return operations. Most individuals returning to their countries of origin through assisted voluntary return had been deported or had fled

²⁰ Available at https://enlargement.ec.europa.eu/news/eu-launches-new-cooperation-programmes-morocco-worth-eu624-million-green-transition-migration-and-2023-03-02_en.

²¹ The original French text is available at https://ec.europa.eu/commission/presscorner/api/files/attachment/875834/Memorandum_d. An English translation is available at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3887.

²² Available at https://enlargement.ec.europa.eu/news/joint-declaration-strategic-and-comprehensive-partnership-between-arab-republic-egypt-and-european-2024-03-17_en.

²³ Available at https://enlargement.ec.europa.eu/news/president-von-der-leyen-reaffirms-eus-strong-support-lebanon-and-its-people-and-announces-eu1-2024-05-02_en.

²⁴ Available at <https://ec.europa.eu/commission/presscorner/api/files/attachment/880349/EuropeanUnion-JordanSCP.pdf>.

²⁵ A/HRC/50/31, para. 53; see also www.asgi.it/wp-content/uploads/2017/02/ITALY-LIBYA-MEMORANDUM-02.02.2017.pdf.

²⁶ A/HRC/50/31, para. 53; see also submission by Associazione per gli Studi Giuridici sull'Immigrazione.

²⁷ See communication TUN 6/2024 and the reply thereto and communication OTH 114/2024. All communications, and replies thereto, mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. See also submissions by Refugees Platform in Egypt and the Lebanese Centre for Human Rights.

²⁸ Available at https://home-affairs.ec.europa.eu/document/download/24425c1c-dd34-4c71-8f9e-77ecbac22305_en?filename=De%CC%81claration-conjointe-Mauritanie-EuropeanUnion_en.pdf.

²⁹ Transnational Institute, "Exporting borders: Frontex and the expansion of fortress Europe in West Africa", July 2025, pp. 1–2.

from neighbouring countries, or had become stranded in the Niger because of restrictions on onward movement.³⁰

B. Extraterritorial processing of asylum claims

12. Some States outsource or relocate elements of the processing of asylum claims to a third State, including, in particular, Australia, the United Kingdom of Great Britain and Northern Ireland, Italy and the United States, which have arrangements with Nauru, Rwanda, Albania and Mexico, respectively.

13. Since 2001, Australia has operated various iterations of a system for offshore processing of asylum claims made by persons arriving by sea without a valid visa.³¹ Under the current arrangement, which started in 2012, Australia transfers asylum-seekers to Nauru. A similar arrangement with Papua New Guinea was in place between 2012 and 2021.³² Formally, asylum procedures are carried out by local authorities under the law of the receiving country. However, Australian officials have played a significant role in the processing of asylum claims. During the asylum procedure, and, in some cases, after recognition of refugee status, individuals have been detained in regional processing centres, which are closed detention facilities established and run by Australia in Nauru and Papua New Guinea. Following detention and recognition of status, some refugees have been released into the community in Nauru and Papua New Guinea on temporary visas, with “settlement” services funded by Australia. Most do not have travel documents, meaning that they are unable to leave Nauru and Papua New Guinea without the support of Australia. Reports indicate that many are suffering from serious health conditions that cannot be adequately treated in those countries. Health consequences can be gendered, because access to some essential reproductive healthcare is illegal in both countries.³³ More broadly, there have been reported cases of women being subjected to sexual harassment and abuse both at the detention centre and following release as refugees into the community in Nauru.³⁴ Offshore processing of asylum has been found to cause severe mental suffering, in particular among children.³⁵

³⁰ See submission by Oxfam; see also www.brot-fuer-die-welt.de/fileadmin/mediapool/downloads/fachpublikationen/sonstige/Country_Brief_Migration_Partnership_Niger_040523.pdf.

³¹ Madeline Gleeson and Natasha Yacoub, “‘Offshore processing’ in Australia”, Externalizing Asylum.

³² In 2016, the Supreme Court of Papua New Guinea found that the detention of asylum-seekers sent to Papua New Guinea by Australia was unconstitutional (Supreme Court of Justice of Papua New Guinea, *Namah v. Pato*, SC 1497, 26 April 2016). The arrangements with Papua New Guinea continued until the end of 2021. While no additional asylum-seekers are to be transferred to Papua New Guinea, some refugees remain there without access to a durable solution.

³³ Federal Court of Australia, *Plaintiff S99/2016 v Minister for Immigration and Border Protection* [2016] FCA 483, File No. VID 305 of 2016, Judgment, 6 May 2016.

³⁴ Australian Women in Support of Women on Nauru, *Protection Denied, Abuse Condoned: Women on Nauru at Risk* (2016).

³⁵ Letter from the Office of the Prosecutor of the International Criminal Court to Andrew Wilkie, MP, available at <https://andrewwilkie.org/wp-content/uploads/2022/12/200213-Andrew-Wilkie-Response-from-International-Criminal-Court-Australian-Government-treatment-of-asylum-seekers.pdf>; submission by Australian Human Rights Commission; submission by Anna Talbot; and submission by Madeline Gleeson and Natasha Yacoub. For medical research findings on the predictable mental health decline, see UNHCR, “Submission of the Office of the United Nations High Commissioner for Refugees on the Inquiry into the Serious Allegations of Abuse, Self-harm and Neglect of Asylum-seekers in Relation to the Nauru Regional Processing Centre, and any like Allegations in Relation to the Manus Regional Processing Centre Referred to the Senate Legal and Constitutional Affairs Committee”, 12 November 2016.

14. Another example of an offshore processing regime is the arrangement that was agreed upon by the United Kingdom and Rwanda. Under the terms of the deal between the countries, asylum-seekers arriving in the United Kingdom by irregular routes, in particular those arriving on so-called small boats across the English Channel, were to be relocated to Rwanda for processing of their asylum claims. In accordance with the memorandum of understanding that was concluded by the United Kingdom and Rwanda in 2022, successful applicants would be required to remain in Rwanda, while those whose applications had been rejected would be required to leave the country.³⁶ In 2023, the Supreme Court of the United Kingdom held that Rwanda was not a safe country, because there was a possibility that people could face a “real risk of ill-treatment as a consequence of refoulement to another country.” In response, the Government of the United Kingdom signed a treaty with Rwanda in which it is stipulated that people would not be sent onward to a third country,³⁷ and the Parliament of the United Kingdom passed an act in 2024 in which Rwanda is declared a “safe” country.³⁸ However, the deal was abandoned after the change of government in the United Kingdom in 2024. The arrangement raised concerns about the risk of indirect refoulement and the lack of individualized and fair assessment.³⁹

15. In November 2023, under a bilateral protocol, Italy was granted use of facilities in Albanian territory for the establishment of two migrant processing centres.⁴⁰ In accordance with the terms of the protocol, migrants rescued or intercepted on the high seas by the Italian authorities, in particular adult men from countries that are deemed “safe,” were to be transferred to those centres for a fast-track asylum procedure on the basis of the safe country of origin concept. Asylum procedures would be carried out under Italian law and the centres would be controlled by Italian personnel. In case of a successful application, the person was to be transferred to Italy. In late 2024, however, Italian courts ruled that it was illegal to channel migrants of certain nationalities into accelerated procedures and, as a consequence, detain them on the basis of the “safe country of origin” concept. Accordingly, the plans to use the centres for the originally intended purpose have been put on hold (see para. 21). These arrangement raises concerns about delayed disembarkation, unclear screening for vulnerability, risk of automatic detention and limited access to legal assistance. Indeed, although operating under Italian law, the arrangement would effectively restrict asylum-seekers’ access to the safeguards that they would otherwise enjoy in European Union territory.⁴¹

16. In the United States, the Migrant Protection Protocols (also known as the “Remain in Mexico” policy), which were in effect from 2019 to 2022, represented a form of the externalization of asylum-claim processing. On the basis of the United

³⁶ Available at <https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda>. Unsuccessful applicants, however, would have been allowed to apply for permission to remain on other grounds.

³⁷ United Kingdom of Great Britain and Northern Ireland, Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants”, available at https://assets.publishing.service.gov.uk/media/656f51d30f12ef07a53e0295/UK-Rwanda_MEDP_-_English_-_Formatted__5_Dec_23_-_UK_VERSION.pdf.

³⁸ United Kingdom, Safety of Rwanda (Asylum and Immigration) Act 2024, available at www.legislation.gov.uk/ukpga/2024/8/contents.

³⁹ See communication GBR 9/2022 and the reply thereto.

⁴⁰ Available at <https://odysseus-network.eu/wp-content/uploads/2023/11/Protocol-between-the-Government-of-the-Italian-Republic-and-the-Council-of-Minister-of-the-Albanian-Republic-1-1.pdf>.

⁴¹ See communication ITA 3/2024 and the reply thereto, and communication ALB 1/2024. See also submission by Associazione per gli Studi Giuridici sull’Immigrazione; and Kristina Millona, “What awaits for Italy-Albania migrant deal?”, Heinrich Böll Stiftung (20 February 2025).

States-Mexico Joint Declaration on migration cooperation, some non-Mexican asylum-seekers arriving at the southern border of the United States were required to remain in Mexico while their asylum applications were processed in the United States. They would be admitted to the United States on the dates of their asylum court hearings. In practice, it was almost impossible to have access to legal counsel and only a small percentage of the approximately 80,000 asylum-seekers subjected to this measure saw their asylum claim succeed. Asylum-seekers frequently lacked access to basic services and employment and many were victims of violence in Mexico.⁴²

C. Readmission or expulsion to a third State

17. Under some agreements, externalizing States will return or expel a person to a third State that is not the person's country of nationality.⁴³ Most often, this arrangement has permitted returning persons to transit countries that are considered safe. Recently, some States have contemplated proposals to transfer people to places to which they have never been, or so-called return hubs.

18. Notable examples of this practice are all 18 formal readmission agreements that the European Union signed with other States between 2004 and 2014. Those agreements, which were concluded pursuant to the founding treaties of the European Union, contain a so-called third-country national clause.⁴⁴ Under such a clause, European Union member States are allowed to return a person in an irregular situation to another State that is party to the readmission agreement when it is considered that the person has some connection to that State, such as having at least transited its territory before reaching the European Union.⁴⁵

19. More recently, cooperation on readmission with non-European Union countries has become increasingly informal. This shift allows for more flexibility in negotiations, caters to the reluctance of non-European Union States to cooperate on migration management and fundamentally reduces transparency and oversight (see para. 44).⁴⁶ A prime example of an informal readmission arrangement that covers third-country nationals is the 2016 European Union-Türkiye statement.⁴⁷ In accordance with that statement, all persons crossing irregularly from Türkiye into the Greek Aegean islands since 20 March 2016 have been returned to Türkiye, which was declared a "safe third country" or "first country of asylum" in order to consider the asylum applications of people reaching Greece through Türkiye as being inadmissible. Pending the determination of admissibility, applicants are detained or contained on the Greek islands, often in substandard conditions.⁴⁸ The detention centres on the islands have so-called safe areas for unaccompanied children that are meant to provide a protective environment, where they receive primary support and

⁴² See communication USA 4/2019; and submissions by Programa de Asuntos Migratorios and Centro de Estudios Legales y Sociales.

⁴³ A/HRC/23/46, para. 62.

⁴⁴ Available at https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return/effective-firm-and-fair-eu-return-and-readmission-policy_en.

⁴⁵ In addition to the readmission agreements of the European Union, the States members of the Union have concluded bilateral readmission agreements with non-European Union countries, but it is unclear how many of them include a third-country national clause (see <https://www.jeanpierrecassarino.com/datasets/ra/?utm>).

⁴⁶ Jean-Pierre Cassarino and Mariagiulia Giuffré, "Finding its place in Africa: why has the EU opted for flexible arrangements on readmission?", Human Rights Law Centre, University of Nottingham (1 December 2017).

⁴⁷ Available at <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.

⁴⁸ ASILE Project, "Country report: Turkey" (2022).

assistance upon arrival. In practice, however, children are effectively detained in precarious conditions in those so-called safe areas.⁴⁹

20. In 2025, the European Commission put forward a proposal for a European Union regulation on a common system for the return of third-country nationals. The proposed regulation, which would replace the European Union Return Directive, would expand the possibility under European Union law of sending persons in an irregular situation to third countries.⁵⁰ If adopted, member States would be allowed to send persons who have received return decisions, except unaccompanied children and families with children, to a third country that is not necessarily a transit country. Under the proposed regulation, States would be required to have an agreement with the third country and the third country would be required to respect international human rights standards and principles, including the principle of non-refoulement.⁵¹ Return hubs raise concerns regarding detention and onward return.

21. When Italian courts blocked the implementation of the protocol concluded by Italy and Albania (see para. 15), Italy approved a decree in March 2025 to repurpose one of the two migrant processing centres into a repatriation hub. Under the new framework, the centre is designated to hold migrants whose asylum requests have been rejected or declared inadmissible in Italy and who are awaiting deportation. Although Italian law formally applies to the asylum procedure, in practice, the application of the right to legal defence raises concerns because of the distance of the centre from Italy. Other concerns include uncertainty about the applicability of return standards stipulated by Italian and European Union law and the implementation of detention safeguards.⁵²

22. In another example of a State returning or expelling persons to a third State, the United States entered into bilateral agreements in early 2025 with Costa Rica, El Salvador, Guatemala, Honduras and Panama to allow the transfer of refugees and migrants. At the time of writing, 299 persons of various nationalities had been sent to Panama and 200 to Costa Rica, including 81 children. Some 252 Venezuelans, including asylum-seekers purportedly with criminal convictions, were deported to El Salvador to be detained in its maximum-security Centro de Confinamiento del Terrorismo (known as CECOT).⁵³ More recently, the United States signed agreements for “third country deportations” with Eswatini and South Sudan, as confirmed by official statements issued by the Governments of those countries.⁵⁴ On the basis of those agreements, the United States has carried out removal flights to those countries and is seeking to sign additional agreements with other countries.⁵⁵ While the aforementioned agreements appear to differ in terms of procedure and have thus far affected individuals with different legal status, including stateless persons, all of these

⁴⁹ Submission by Asylex.

⁵⁰ European Commission, “Proposal for a regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union” (2025).

⁵¹ Izabella Majcher, “The New EU ‘Common System for Returns’ under the Return Regulation: evidence-lacking lawmaking and human rights concerns”, EU Law Analysis (2025).

⁵² Submission by Associazione per gli Studi Giuridici sull’Immigrazione; and European Parliament, “Returns of migrants from detention centres in Albania and breach of Directive 2008/115/EC by the Italian Government”, Parliamentary question (1 July 2025).

⁵³ Communications USA 14/2025 and SLV 1/2025.

⁵⁴ See <https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/>; and <https://x.com/EswatiniGovern1/status/1945482350567055605>.

⁵⁵ See <https://www.ohchr.org/en/press-releases/2025/07/un-experts-alarmed-resumption-us-deportations-third-countries-warn>.

arrangements raise serious issues with regard to the principle of non-refoulement, the prohibition of arbitrary detention and due process guarantees.

III. Human rights of migrants and refugees affected by externalization

23. Externalization measures carry a high risk of human rights violations, because the primary aim of externalizing States is to shift responsibility for migrants and refugees to other States. At the same time, third States often lack the capacity or the political will to ensure the protection and well-being of migrants and refugees subjected to externalization. Violations of migrants' and refugees' human rights, in particular migrants and refugees subjected to externalization measures, are sometimes overlooked or tolerated by the externalizing States.⁵⁶ The overall lack of transparency and independent oversight further compounds the risk of abuse. Externalization measures often create or exacerbate situations of vulnerability for migrants. In the present section, the Special Rapporteur identifies the human rights most at risk of violation in the context of externalization measures.⁵⁷

A. Right to leave any country, including one's own

24. Article 12 (2) of the International Covenant on Civil and Political Rights guarantees the right of everyone to leave any country, including their own. Pullbacks, by their very nature, prevent migrants and refugees from exercising their right to leave any country or territory.⁵⁸ In addition to pullbacks, any measure that prevents departure from the third State, including of the third State's nationals, interferes with that right. Those measures include interceptions, criminalization of exit from the country or detention to prevent emigration.⁵⁹

B. Prohibition of refoulement

25. Under international human rights law, the principle of non-refoulement is the absolute and non-derogable prohibition of returning any person to a situation in which they face a real risk of irreparable harm, including death, torture, ill-treatment and persecution. Refoulement is explicitly prohibited in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3) and the International Convention for the Protection of All Persons from Enforced Disappearance (art. 16), and it is inferred under several human rights conventions, including the International Covenant on Civil and Political Rights. It has also attained the status of customary international law. The principle of non-refoulement also prohibits indirect (chain) refoulement, whereby a third State further returns a person to a situation of risk, whether in the person's country of origin or another country.

26. Externalization measures create an ample risk of direct and chain refoulement.⁶⁰ In the absence of an individualized risk assessment for each person, return decisions taken on the basis of readmission agreements can amount to collective expulsion,

⁵⁶ Communication OTH 129/2024 and the reply thereto.

⁵⁷ Other rights include the right to seek and enjoy asylum from persecution, the right to family and private life, privacy and data protection, and the best interests of the child.

⁵⁸ [A/HRC/37/50](#), para. 55.

⁵⁹ Submission by Emilie McDonnell.

⁶⁰ [A/HRC/37/50](#), para. 41. With regard to the risk of onward removal, see communication ITA 4/2025 and the reply thereto.

which is incompatible with the prohibition of refoulement.⁶¹ Both pushbacks and pullbacks are at variance with the prohibition of refoulement, because they are not based on an individual due process assessment. Pullbacks sometimes involve “fast track” screenings that are conducted on board vessels by non-specialist border officials at the point of interception and without the presence of legal counsel or the possibility of an effective legal appeal.⁶² The circumstances in which they occur – at sea, potentially by teleconference and while the person is detained on board a vessel – make it nearly impossible to thoroughly assess protection claims.⁶³ There have been reports of cases of further expulsions of intercepted migrants without any individual risk assessment.⁶⁴

C. Prohibition of collective expulsion

27. Collective expulsion refers to the expulsion of individuals without an individual assessment of each person’s case before their return. Collective expulsions are explicitly prohibited under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 22) and regional human rights instruments. The prohibition is inferred under the International Covenant on Civil and Political Rights (art. 13) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3 (1)) and is considered a norm of customary international law.

28. Externalization arrangements create circumstances allowing for collective expulsion. In the absence of an individualized risk assessment for each migrant, return decisions taken on the basis of readmission agreements may amount to collective expulsion.⁶⁵ In addition to readmission agreements, agreements allowing pullbacks also create a risk of collective expulsion. Collective expulsions have allegedly been carried out by third States after readmitting or taking back the migrant, whereby they further expel the person without proper screening and individual assessment.⁶⁶

D. Due process and effective remedy

29. In addition to the risk of refoulement and collective expulsion, externalization arrangements may lead to violations of procedural rights, including the right to be informed of the reasons for being subject to a procedure that may lead to a decision of return,⁶⁷ individualized due process proceedings and access to lawyer or legal aid, as well as the right to an effective remedy under the International Covenant on Civil and Political Rights (art. 2 (3)).

30. Some readmission agreements establish, in advance, a procedure that allows for the expulsion of migrants without an individualized risk assessment based on the circumstances prevailing at the time. Readmission agreements that do not contain a provision for an individual assessment or other essential safeguards may not be compliant with due process rights. The same holds for pushbacks and pullbacks, because they are not based on individualized assessments.⁶⁸ Extraterritorial processing of asylum claims, even if, in theory, it is carried out with guarantees of

⁶¹ [A/HRC/37/50](#), paras. 44 and 52.

⁶² [A/HRC/37/50](#), para. 38; and Committee against Torture, general comment No. 4 (2018), para. 1.

⁶³ Submission by Australian Human Rights Commission.

⁶⁴ Communications OTH 129/2024 and TUN 6/2024 and the replies thereto.

⁶⁵ [A/HRC/37/50](#), para. 44.

⁶⁶ *Ibid.*, para. 63.

⁶⁷ Committee against Torture, general comment No. 4 (2018), para. 18 (a).

⁶⁸ [A/HRC/37/50](#), paras. 44 and 55; and submission by Mexico.

adherence to procedural standards or under the law of the externalizing State, may in practice be substandard and unfair, and lack adequate procedural guarantees and remedies.⁶⁹

E. Prohibition of arbitrary detention

31. The implementation of externalization arrangements leads to multiple circumstances of deprivation of liberty that could amount to arbitrary detention. Detention can be imposed in third States to prevent migrants from transiting their territories, including on the basis of legal provisions criminalizing irregular stay, and during pullback measures, before and after readmission or expulsion and during offshore processing of asylum applications.⁷⁰ Arguably, such detention is often arbitrary, imposed automatically, without review and carried out in inadequate conditions.

32. Under the International Covenant on Civil and Political Rights, everyone has the right to liberty and no one can be subjected to arbitrary arrest or detention (art. 9 (1)). In order not to amount to arbitrary detention, any deprivation of liberty must be in accordance with the law, be necessary in the individual case and proportionate to a legitimate purpose. It must be imposed only as a measure of last resort, following consideration of less coercive alternatives, be based on an individual assessment of the need to detain and be subject to independent judicial review.⁷¹

F. Prohibition of torture and ill-treatment

33. In the context of externalization arrangements, there have been multiple reported cases of torture and ill-treatment. This risk arises during pushbacks, pullbacks and other border control measures and during detention. Also, delayed disembarkation may amount to torture or ill-treatment. Likewise, after a pullback, interception or return, migrants may be at risk of torture or ill-treatment in the third State.⁷² There are concerns that persons in vulnerable situations, such as women, children and lesbian, gay, bisexual and transgender persons, might face heightened risks of violence, exploitation, or discrimination during pushbacks.⁷³

34. Torture and ill-treatment are prohibited in absolute terms under, inter alia, the International Covenant on Civil and Political Rights (art. 7) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (arts. 2 and 16). In addition to having negative obligations to refrain from torture and ill-treatment, States also have positive obligations to take all effective measures to prevent acts of torture and ill-treatment, including by State officials and, in accordance with the due diligence obligation, by private actors or other States' organs operating within their jurisdiction. Under the good faith principle, States cannot

⁶⁹ [A/HRC/47/30](#), para. 67; communication ITA 3/2024 and the reply thereto; and communication USA 4/2019.

⁷⁰ [A/HRC/37/50](#), para. 55; communications USA 14/2025 and SLV 1/2025; and communications MRT 1/2025 and ITA 3/2024 and the replies thereto.

⁷¹ [A/HRC/39/45](#), annex, para. 19.

⁷² [A/HRC/37/50](#), para. 53; communications OTH 129/2024 and TUN 6/2024 and the replies thereto; communication ALB 1/2024; and Office of the United Nations High Commissioner for Human Rights (OHCHR), "Nowhere but back: assisted return, reintegration and the human rights protection of migrants in Libya" (2022), pp. 7–8.

⁷³ Protecting Rights at Borders, "The pushback – disconnect: current and anticipated practice", 2025, p. 6.

lawfully conclude any agreement the foreseeable consequences of which would undermine the right of migrants not to be subjected to torture and ill-treatment.⁷⁴

G. Right to life

35. Externalization measures risk violating the right to life, which is protected in article 6 (1) of the International Covenant on Civil and Political Rights. The obligation to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States may violate the right to life even if such threats and situations do not result in loss of life. Specifically, States are also required to respect and protect the lives of all individuals on marine vessels and aircraft registered by them or flying their flag, as well as those individuals who find themselves in a situation of distress at sea, in accordance with their international obligations regarding rescue at sea.⁷⁵

36. Most frequently, arbitrary deprivation of life can arise as a result of excessive use of force in the context of border control measures, including pushbacks, pullbacks and interceptions. Leaving boats in distress, delayed search and rescue, pushbacks to the high seas without water or food and expecting that another State will bring assistance are tantamount to a life-threatening situation, violating the right to life.⁷⁶ Even when a situation does not result in loss of life, States can be in violation article 6 of the Covenant. There have also been cases of unlawful death in the third State after transfer or return.⁷⁷

H. Prohibition of enforced disappearance

37. The Special Rapporteur has already observed that the growing externalization of migration governance is one of the reasons for the increase in the risk of being subjected to enforced disappearance. Enforced disappearance constitutes multiple human rights violations, including of the rights to life and security of the person, to be protected from torture and ill-treatment, to receive information, to be recognized as a person before the law and to an effective remedy.⁷⁸ Enforced disappearance is prohibited in absolute terms under article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance. Under article 2 of the Convention, enforced disappearance is considered to involve arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons acting with the acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person.

38. Pushback policies may lead to the disappearance of migrants owing to delayed search and rescue, criminalization of other actors providing emergency rescue, failure to register incoming migrants and removal of communication channels.⁷⁹ Specifically, when pushbacks involve the deprivation of liberty of migrants and the concealment of their fate or whereabouts, they amount to enforced disappearance regardless of the duration of the deprivation of liberty.⁸⁰ Deportations carried out

⁷⁴ [A/HRC/37/50](#), paras. 11 and 14.

⁷⁵ Human Rights Committee, general comment No. 36 (2019), paras. 7, 13 and 63.

⁷⁶ [A/72/335](#), paras. 23, 25 and 33; and United Nations Support Mission in Libya and OHCHR, “Detained and dehumanized”, 2016.

⁷⁷ OHCHR, “Nowhere but back”, pp. 7–8.

⁷⁸ [A/HRC/59/49](#), para. 20.

⁷⁹ [A/HRC/59/49](#), paras. 6, 29, 32, 43–46 and 49.

⁸⁰ Committee on Enforced Disappearances, general comment No. 1 (2023), paras. 35–36.

under agreements with third States also carry a risk of migrants being subjected to enforced disappearance. Migrants are often untraceable because their whereabouts are not registered or communicated to relatives and legal representatives.⁸¹

I. Socioeconomic rights

39. Individuals subject to externalization measures may risk facing poverty and destitution in the third State.⁸² There have been reported cases of a lack of access to necessities, such as drinking water, a sufficient food supply and sanitary facilities.⁸³ In addition, people whose asylum claims have been processed in offshore locations and who are awaiting resettlement in a third State might face obstacles when attempting to enjoy basic socioeconomic rights, including the right to adequate healthcare.

40. Under the International Covenant on Economic, Social and Cultural Rights, States are required to ensure a basic level of the rights enshrined therein for everyone under their jurisdiction, including non-nationals, regardless of their legal status.⁸⁴ Key rights include the right to enjoy the highest attainable standard of physical and mental health (art. 12 (1)), the right to education (art. 13 (1)) and the right to an adequate standard of living (art. 11 (1)), which includes sufficient food, clothing and housing. In addition, the right to social security (art. 9) gives rise to a minimum core obligation to guarantee every person within a State's jurisdiction, in particular disadvantaged and marginalized individuals and groups, access to a minimum level of social assistance that would enable them to acquire at least essential healthcare, basic shelter and housing, water and sanitation, foodstuff and the most basic forms of education.⁸⁵

J. Racial discrimination

41. Migrants risk suffering from racial discrimination as a result of externalization measures. There have been reported cases of racist hate speech in third States targeting migrants and acts of racial discrimination.⁸⁶ Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is prohibited by the International Covenant on Civil and Political Rights (art. 20 (2)). The International Convention on the Elimination of All Forms of Racial Discrimination prohibits racial discrimination (art. 1 (1)) and propaganda based on ideas of superiority of one group of persons of one colour or ethnic origin that promote racial hatred and discrimination (art. 4).

IV. Transparency and accountability

42. Human rights violations may be enabled by the opaque manner in which externalization agreements are negotiated and the lack of independent oversight mechanisms and accountability. Transparency and accountability in public action are crucial elements of the rule of law and good governance; they serve as a framework

⁸¹ See [A/HRC/59/49](#), para. 23; and communications USA 14/2025 and SLV 1/2025.

⁸² Annick Pijnenburg, "Migration deals seen through the lens of the ICESCR", *International Journal of Refugee Law*, vol. 35, No. 2 (June 2023), pp. 151–170.

⁸³ Communications OTH 129/2024 and TUN 6/2024 and the replies thereto.

⁸⁴ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 30.

⁸⁵ Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), para. 59 (a).

⁸⁶ Communications TUN 3/2003, OTH 129/2024 and TUN 6/2024 and the replies thereto.

that fosters the protection of human rights. In the present section, the Special Rapporteur discusses good practices and challenges related to the transparency and accountability of externalization measures.

43. Some externalization agreements are publicly available. For instance, some of the arrangements underpinning the offshore processing regime established by Australia with Nauru and Papua New Guinea, as well as the formal readmission agreements concluded by the European Union, are publicly accessible. Public availability of such agreements enables the public and civil society to better understand how public funds are spent and to monitor the actions of national authorities. The formal readmission agreements of the European Union are subject to democratic oversight. Under the Treaty on the Functioning of the European Union, the European Parliament must give its consent before the European Union can conclude readmission agreements with third countries. Oversight by national parliaments and accountability bodies of agreements concluded by executive branches of government is an important ingredient of the rule of law.

44. A significant proportion of the externalization measures discussed in the present report are based on arrangements that are not publicly disclosed. In the European Union, there is a noticeable trend towards informal migration-related arrangements. In contrast to formal readmission agreements, informal arrangements do not require the consent of the European Parliament. Both the European Parliament and the national parliaments of European countries have been denied the ability to exercise adequate scrutiny over the development, ratification, implementation and monitoring of key agreements. They are not systematically published. When the text of an agreement is publicly available, it will often contain vague language that is frequently used in political declarations. These arrangements tend to provide a broad framework for cooperation, with implementation carried out through European Union-funded projects. The implementation of such projects, however, is often characterized by lack of transparency and accountability, in particular with regard to funding disbursement and programme oversight.⁸⁷ In Australia, requests for access to information regarding externalization arrangements are regularly rejected on the basis that releasing information could damage international relations.⁸⁸

45. A common feature of externalization, which diminishes transparency and hinders accountability, is the involvement of multiple State and non-State actors. These include NGOs and international organizations, such as the European Union and Frontex, as well as entities implementing European Union-funded projects, including the Office of the United Nations High Commissioner for Refugees, IOM and the International Centre for Migration Policy Development.⁸⁹ In some cases, externalization arrangements also involve private companies. For instance, the offshore processing operations of Australia in Nauru rely on private companies for the provision of multiple services both within the detention centre and in the

⁸⁷ European Court of Auditors, *EU readmission cooperation with third countries: relevant actions yielded limited results* (Publications Office of the European Union, 2021), paras. 9 and 12; and submissions by EuroMed Rights and Amnesty International.

⁸⁸ See, for example, documents released pursuant to freedom of information requests FA 16/08/00942 and FA 19/10/00616, available at www.homeaffairs.gov.au/access-and-accountability/freedom-of-information/disclosure-logs/2019. Those requests were partially rejected under the Freedom of Information Act 1982 (Cth).

⁸⁹ European Ombudsman decision in case OI/2/2024/MHZ, para. 18; and submission by Brot für die Welt.

community,⁹⁰ and deportation flights from the United States are carried out by charter carriers.⁹¹

46. In the light of the potential human rights implications of externalization measures, the obligation to comply with human rights standards and the principle of due diligence require that an ex ante human rights impact assessment be conducted before engaging with other countries. An ex ante evaluation of the human rights situation in the third country is essential to assessing whether the proposed cooperation can be implemented in a human rights-compliant manner. Such assessments play a crucial preventive role by identifying reasonably foreseeable human rights risks.⁹² Once these human rights risks are identified, appropriate mitigation measures, including legally enforceable and available rights for migrants and refugees, can be incorporated into agreements. Where human rights risks cannot be mitigated, compliance with human rights obligations may require suspending or terminating externalization arrangements until mitigation becomes possible.⁹³ Periodic human rights impact assessments are necessary to continually evaluate the human rights impact of externalization measures on migrants and refugees throughout the implementation of the agreement.⁹⁴ In order to be effective, human rights impact assessments should be conducted by independent actors.

47. Human rights monitoring enhances the protection of human rights, as well as transparency and accountability. Ideally, the national statutory human rights bodies of the externalizing and third countries would be jointly involved in monitoring.⁹⁵ The formal readmission agreements of the European Union are subject to monitoring by joint readmission committees, which are composed of experts and representatives from European Union member States and the third country and co-chaired by the European Commission and the third country.⁹⁶ The focus of Joint readmission committees, however, is on practical readmission cooperation rather than the respect of the human rights of concerned migrants. In an example of monitoring informal (non-binding) agreements, the European Commission piloted third-party monitoring of projects implemented in Libya and Tunisia under the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa. Concerns remain, however, at the narrow scope of monitoring, which is focused mainly on project implementation, the lack of clarity regarding follow-up, including mitigation measures, and the limited transparency that characterizes the monitoring itself.⁹⁷

⁹⁰ Human Rights Committee, *M.I. et al. v. Australia* (CCPR/C/142/D/2749/2016), para. 9.8; and Australian National Audit Office, “Offshore Processing Centres in Nauru and Papua New Guinea: Contract Management of Garrison Support and Welfare Services”, Auditor-General report No. 32 of 2016-2017, 2017.

⁹¹ Indy Scholtens, “Which air carriers are positioned to benefit from increased deportations?”, Open Secrets, 12 May 2025.

⁹² See Anna Talbot and others, “The gender- and sexuality-based harms of refugee externalization: a role for human rights due diligence”, *International Journal of Refugee Law*, vol. 36, Nos. 1 and 2 (March/June 2024), p. 67.

⁹³ See, for example, High Court of Australia, *Plaintiff M70/2011 v Minister for Immigration and Citizenship* [2011] FCA 32, Order, 31 August 2011, para. 135.

⁹⁴ European Ombudsman decision in case OI/2/2024/MHZ, paras. 28–29, 34, 39 and 41; European Ombudsman decision in case 1904/2021/MHZ, paras. 22, 26, 30 and 35; and European Union Agency for Fundamental Rights, “Planned return hubs in third countries: EU fundamental rights law issues”, 6 February 2025, para. 69.

⁹⁵ *Ibid.*, para. 124.

⁹⁶ European Parliamentary Research Service, “EU Readmission Agreements”, briefing, 2015.

⁹⁷ European Court of Auditors, *The EU trust fund for Africa: Despite new approaches, support remained unfocused* (Publications Office of the European Union, 2024), paras. 48–60.

48. Human rights monitoring is effective when it includes complaint mechanisms that allow individuals to report alleged breaches of their human rights in the context of externalization measures and to access justice. The inclusion of complaint mechanisms facilitates monitoring the human rights impact of the measures and enables follow-up on breaches.⁹⁸

V. Responsibility for violations of human rights of migrants in the context of externalization

49. While externalization policies and measures may lead to or facilitate human rights violations (see sect. III above), establishing legal responsibility for such violations and ensuring remedies for victims are challenging owing to the core features of externalization, namely, lack of transparency and democratic oversight, the frequently informal character of the arrangements and the involvement of multiple States and non-State actors (see sect. IV). In the present section, the Special Rapporteur discusses how responsibility for violations in the context of externalization can be established by addressing two key challenges: the extraterritorial element of externalization and the involvement of multiple actors.⁹⁹

A. Extraterritorial jurisdiction

50. Under international human rights law, States' obligations to respect and ensure human rights can extend beyond their territory. Under the International Covenant on Civil and Political Rights (art. 2 (1)), States undertake to respect and ensure rights to all individuals within their territory and subject to their jurisdiction. This provision is interpreted disjunctively to require that States protect the rights of people subject to their jurisdiction even if they are not situated within their territory.¹⁰⁰

51. States exercise extraterritorial jurisdiction whenever they exercise power or "effective control" over people or places outside their territories.¹⁰¹ In *J.H.A. v. Spain*, for example, the Committee against Torture concluded that Spain exercised jurisdiction over migrants and asylum-seekers on a cargo vessel that it had rescued in international waters and then towed to Mauritania, including throughout their initial screening in Mauritania and the subsequent repatriation process.¹⁰²

52. Extraterritorial jurisdiction can be established on the basis of cumulative factors showing control and influence over people and places. In *M.I. et al v. Australia* and *Nabhari v. Australia*, the Human Rights Committee considered the issue of extraterritorial jurisdiction in the context of the offshore detention of migrants by Australia in a regional processing centre in Nauru (see para. 13 above). The Committee concluded that the authors were under the jurisdiction of Australia while in Nauru, because Australia exercised various elements of effective control over the detention operations. In particular, Australia had arranged for the construction and

⁹⁸ European Ombudsman decision in case OI/2/2024/MHZ, para. 42.

⁹⁹ Submission by Madeline Gleeson.

¹⁰⁰ Human Rights Committee, general comment No. 31 (2004), para. 10.

¹⁰¹ Ibid.

¹⁰² Committee against Torture, *J.H.A. v. Spain* (CAT/C/41/D/323/2007), para. 8.2 and *Fatou Sonko v. Spain* (CAT/C/47/D/368/2008) para. 10.3. The case of *Hirsi Jamaa and Others v. Italy* (European Court of Human Rights, Application No. 27765/09, Judgment, 23 February 2012) is another example where the respondent State exercised extraterritorial jurisdiction based on "control over people", in this instance a group of migrants who were subject to a pushback operation on the high seas to Libya.

establishment of the centre in Nauru and directed or oversaw its operations, including security, cleaning, catering, recreational and educational services.¹⁰³

53. States may also exercise extraterritorial jurisdiction where they exercise control over situations or operations such as to affect an individual's enjoyment of a right, such as the right to life, in a direct and reasonably foreseeable manner.¹⁰⁴ In *A.S. et al. v. Italy*, concerning a shipwreck that caused the death of around 200 persons, the Human Rights Committee found that Italy exercised extraterritorial jurisdiction over the individuals on the vessel in distress because of a special relationship of dependency established between the individuals on the vessel in distress and Italy. This relationship comprised factual elements, such as the initial contact made by the vessel in distress with the Italian rescue centre, the proximity of an Italian vessel to the vessel in distress and the legal obligations of Italy under the international law of the sea. As a result, the individuals were directly affected by the decisions made by the Italian authorities in a manner that was reasonably foreseeable in the light of the relevant legal obligations of Italy.¹⁰⁵

B. Responsibility for human rights violations

54. Given the multitude of actors involved in externalization measures, the question arises as to who bears responsibility when a human rights violation occurs. In the present section, the Special Rapporteur outlines the basic rules under the law of international responsibility governing how a human rights violation can be attributed to States or international organizations.¹⁰⁶ These rules are enshrined principally in the articles on responsibility of States for internationally wrongful acts¹⁰⁷ (chap. II) and the articles on the responsibility of international organizations¹⁰⁸ (chap. II), elaborated by the International Law Commission.

1. Attribution of conduct

55. Human rights violations occurring in the context of externalization measures can be attributed, in some instances, to a State or an international organization. In the case of States, attribution is most straightforward when the conduct in question is carried out by State organs exercising legislative, executive, judicial or other governmental functions. Under the articles on responsibility of States for internationally wrongful acts, however, a broader range of conduct can be attributed to a State. This includes conduct of persons or entities empowered to exercise elements of governmental authority; organs placed at a State's disposal by another State, provided that they exercise governmental authority; individuals or groups acting under the direction or control of a State; or individuals or groups exercising elements of governmental authority in the absence of official authorities. Similarly, under the articles on the responsibility of international organizations, the conduct that is primarily attributable to an international organization is that of its organs or agents when acting in the performance of their functions. Attribution also extends to the conduct of State organs or the organs or agents of another international organization placed at its disposal, provided that the organization exercises effective control over the conduct in question.

¹⁰³ Human Rights Committee, *M.I. et al. v. Australia*, para. 9.9, and Human Rights Committee, *Nabhari v. Australia* (CCPR/C/142/D/3663/2019) para. 7.15.

¹⁰⁴ Human Rights Committee, general comment No. 36 (2019), para. 63.

¹⁰⁵ Human Rights Committee, *A.S. et al. v. Italy* (CCPR/C/130/D/3042/2017), para. 7.8.

¹⁰⁶ A/HRC/37/50, para. 56.

¹⁰⁷ See General Assembly resolution 58/63, annex; A/74/83; and A/HRC/37/50, para. 56.

¹⁰⁸ See General Assembly resolution 66/100, annex.

2. Derivative responsibility (complicity)

56. In the context of externalization arrangements where the involvement of the externalizing State is less direct (for example, provision of training and equipment), such State can still incur responsibility for human rights violations committed by third States if it is complicit in these violations under the articles on responsibility of States for internationally wrongful acts (chap. IV) and the articles on the responsibility of international organizations (chap. IV). This form of derivative responsibility (complicity) arises when a State or international organization aids, assists, directs or controls another State or organization in the commission of a violation or coerces another State or organization to commit a violation, provided that it does so with knowledge of the circumstances of the act. For this threshold to be met, it must be shown that the assistance contributed significantly, though not decisively, to the commission of the violation.

57. Such assistance as funding or the provision of equipment, surveillance technology or training for border management that results in human rights violations may, under certain conditions, amount to “aid or assistance” under the law of international responsibility. As noted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, States that knowingly provide instructions, directions, equipment, training, personnel, financial assistance or intelligence information in support of unlawful prevention operations conducted by third States incur legal responsibility for those violations.¹⁰⁹ According to the Special Rapporteur on extrajudicial, summary or arbitrary executions, funding States, by financing and training the very agencies that commit abuses, are potentially aiding and assisting in the loss of life.¹¹⁰

3. Joint and shared responsibility

58. When externalization measures are implemented by multiple States and international organizations, any resulting human rights violations could be attributed to several actors. In both the articles on responsibility of States for internationally wrongful acts (art. 47) and the articles on the responsibility of international organizations (art. 48) and the related commentaries, it is acknowledged that multiple States or international organizations can be responsible for the same violation. “Joint responsibility” of this kind may arise, for example, where the act is attributable to two or more States or international organizations.

59. “Shared responsibility,” which is grounded in the articles on responsibility of States for internationally wrongful acts and the articles on the responsibility of international organizations, is a related concept that has been further developed in the guiding principles on shared responsibility in international law.¹¹¹ Under those principles, shared responsibility arises when two or more States or international organizations share responsibility for the same violation or multiple violations if they contribute to a single indivisible injury suffered by another actor. The concept of shared responsibility is particularly relevant in multi-actor contexts where more than one State or international organization contributes to a single violation (such as loss of life, refoulement or other human rights violations) but it is not possible to determine each actor’s contribution.

¹⁰⁹ A/HRC/37/50, para. 56.

¹¹⁰ A/72/335, para. 37.

¹¹¹ André Nollkaemper and others, “Guiding principles on shared responsibility in international law”, *European Journal of International Law*, vol. 31, No. 1 (February 2020), pp. 15–72.

VI. Conclusions and recommendations

60. The Special Rapporteur expresses concern regarding the growing use of externalization measures by States in the governance of migration and responses to refugees and mixed movements. Rather than upholding their international human rights obligations and recognizing the positive contributions of migrants and refugees to their societies, many States continue to allocate substantial resources to shifting responsibility for migration and asylum management to third States. This outsourcing often occurs without adequate safeguards, in particular when third States lack the capacity or political will to ensure protection of rights. As a result, the rights of migrants and refugees are placed at serious risk.

61. In this context, the Special Rapporteur identifies several human rights as being particularly vulnerable to violation, including the right to leave any country, including one's own; the principle of non-refoulement; the prohibition of collective expulsion; the right to due process and an effective remedy; the prohibition of arbitrary detention, torture and ill-treatment; the right to life; the prohibition of enforced disappearance; economic, social and cultural rights; and prohibition of racial discrimination.

62. Externalization arrangements are often characterized by a lack of transparency and limited accountability mechanisms. While certain practices and procedures aimed at ensuring democratic oversight and human rights monitoring have shown promise, they remain the exception rather than the norm. The extraterritorial nature of externalization measures, coupled with the involvement of multiple actors, presents significant challenges in establishing legal responsibility for human rights violations. Nonetheless, States cannot circumvent their international obligations by delegating their migration control practices to other States or non-State actors beyond their territory. Depending on the involvement of externalizing and third States, violations may be attributed to both the externalizing State and the third State or non-State actor, or one party may be complicit in violations attributed to another.

63. In order to ensure that States uphold their obligations under the human rights treaties, the Special Rapporteur calls upon States to end arrangements that prevent arrival, outsource asylum processing or allow for readmission or expulsion to countries different from the country of nationality, which effectively shift responsibility for migrants and refugees to third States and, in practice, lead to violations of their human rights. Until such arrangements have been ended, in order to ensure respect for the human rights of migrants and refugees in the context of migration cooperation, the Special Rapporteur recommends that States:

- (a) Ensure that migration governance measures respect, protect and fulfil human rights, are gender-responsive and do not create new situations of vulnerability or exacerbate existing ones;

- (b) Comply with international human rights norms and standards and the principle of good faith when engaging in migration and asylum-related cooperation;

- (c) Encourage and strengthen the participation of civil society in developing and implementing policies and projects related to migration and asylum, acknowledge their role in addressing and monitoring border control and surveillance measures and ensure that civil society organizations do not face legal and practical obstacles in carrying out their work;

- (d) **Discontinue existing externalization agreements with countries that unable or unwilling to uphold their human rights obligations;**
- (e) **Abide at all times with the principles of non-refoulement and prohibition of collective expulsion, including at borders and on the high seas;**
- (f) **Refrain from any measure that would amount to or lead to arbitrary detention, torture and ill-treatment, arbitrary deprivation of life, enforced disappearance and racial discrimination, and ensure that people are able to enjoy socioeconomic rights and the right to leave any country, including one's own;**
- (g) **Refrain from the transfer, including through pullbacks, or readmission of migrants to third States without individualized assessment;**
- (h) **Ensure that any arrangement for the transfer of migrants, refugees or asylum-seekers contains legally binding guarantees of adequate treatment, a fair and effective asylum procedure and international protection and solutions, where relevant, as well as safeguards to ensure dignity and sustainability in line with international human rights and refugee law;**
- (i) **Uphold due process guarantees, including by ensuring access to an individualized examination and the right to an effective remedy with suspensive effect ensuring protection from removal during the time when the appeal body considers the case;**
- (j) **Ensure that all cooperation arrangements uphold and strengthen the effectiveness of the search and rescue regime, including with respect to disembarkation in a place of safety, in accordance with international human rights and refugee law and the international law of the sea;**
- (k) **Stop all forms of support, in particular financial and technical support, including the provision of equipment and surveillance and other technology, to States and other actors engaging in human rights violations;**
- (l) **Suspend all cooperation arrangements facilitating technology transfer and technical assistance for digital border governance purposes in which human rights are not explicitly guaranteed;**
- (m) **Ensure that all agreements include provisions for effective human-rights-based support for migrants and refugees in third States, including integration assistance, as well as resettlement opportunities and access to legal pathways from third States;**
- (n) **Assess systematically whether project activities implemented by international organizations and NGOs comply with human rights standards;**
- (o) **Before entering into agreements, ensure that partners, including non-State actors, such as international organizations, NGOs and private actors, have a demonstrated human rights record and a commitment to due diligence and the "do no harm" principle, and systematically assess compliance with these principles throughout contract implementation by exercising adequate oversight;**
- (p) **Enter only into agreements that are made publicly available and subject to parliamentary scrutiny, and publish all agreements that are currently in effect, including informal ones;**
- (q) **Ensure that human rights impact assessments are conducted in advance and in systematic manner, including the identification of mitigating measures, and make such assessments public;**

(r) Ensure that agreements provide for independent human rights monitoring, including at the border, that involve national human rights bodies and NGOs from both countries involved;

(s) Ensure that the independent human rights monitoring mechanism includes accessible and adequate complaint mechanisms that are accessible from abroad and open to any person alleging violations of their rights in the context of externalization;

(t) Conduct prompt, impartial and effective investigations into allegations of human rights violations committed by their law enforcement bodies, sanction perpetrators and offer redress to victims or their relatives;

(u) Admit to their territory migrants and refugees affected by externalization arrangements where credible allegations indicate that they have been subjected to human rights violations in the third State.

64. The Special Rapporteur urges international organizations and NGOs that implement projects in the framework of externalization arrangements to comply with the due diligence principle and codes of conduct and to fulfil their human rights commitments.
