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Call for input: Externalization of migration governance – new trends and specific aspects

Human Rights Council,
the Special Rapporteur
on the human rights of migrants

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Post-Protection Externalization

Transnational cooperation, data processing and automated control as emerging vectors of rights restriction after recognition of international protection

I. EXECUTIVE THESIS

Externalization of migration governance has traditionally been understood as a set of practices operating at or beyond territorial borders, primarily aimed at preventing entry, outsourcing asylum procedures, or transferring migration control to third States. This submission argues that such an understanding is no longer sufficient. Externalization does not end at the border, nor does it conclude with the formal recognition of international protection. A new and underexamined phase has emerged: externalization after protection.

This emerging trend consists of States maintaining migration-related control and enforcement capacity over migrants who have already been granted international protection through indirect and transnational means. These include intensified transnational cooperation, continued cross-border data-sharing, the circulation of automated alerts, and operational arrangements that function without systematic, ex ante human rights review. While formally detached from asylum or admission procedures, these mechanisms operate as tools of migration governance beyond the asylum phase and can generate concrete legal and factual consequences for protected persons.

The effect of such practices is the indirect restriction of rights of migrants who are, in principle, beneficiaries of international protection. Restrictions on mobility, exposure to automated enforcement measures, heightened risk of detention, or the absence of effective

remedies may arise not from a new protection decision, but from the functioning of transnational cooperation systems themselves. This produces a systemic protection gap that is not explicitly addressed in existing analyses of migration externalization, including the Special Rapporteur's previous report (A/80/302).

Human rights defenders often bring this gap into sharper focus due to their visibility and engagement with international mechanisms. However, they function primarily as a signal group revealing a broader structural failure. The underlying mechanism affects all beneficiaries of international protection whose rights may be constrained through post-recognition externalized controls.
Externalization has entered a post-protection phase, requiring explicit recognition and safeguards under international human rights law.

I. WHY THIS CONSTITUTES "EXTERNALIZATION" – EXTENDING THE DEFINITION

Externalization, as defined in A/80/302, is not determined by geography but by the exercise of control combined with the displacement of responsibility. In its contemporary form, States externalize functions of control and rights limitation after protection has been granted, through transnational cooperation, data-sharing, and automated systems. Control persists while accountability is diffused. Externalization today operates through systems, not borders.

III. A NEW TREND: POST-PROTECTION EXTERNALIZATION

Post-Protection Externalization refers to a mode of migration governance in which States rely on transnational cooperation mechanisms, cross-border data processing, and automated operational tools to indirectly restrict the rights of persons who have already been granted international protection. In this model, protection status remains formally intact but is functionally undermined through systems that continue to exert control beyond the asylum phase.

The mechanism follows a recurring and identifiable structure. First, an individual is recognized as a refugee or beneficiary of international protection, thereby triggering the State's obligations under international law. Subsequently, personal data relating to that individual continue to be processed, shared, or circulated across transnational cooperation frameworks. Alerts, information exchanges, or automated signals are generated within these systems, frequently without a renewed or individualized human rights assessment. These signals may then activate automated or semi-automated consequences, including restrictions on mobility, exposure to detention measures, or other coercive actions.

Crucially, these consequences occur in the absence of an effective ex ante human rights test and without access to a hard procedural stop capable of interrupting the process. The lack of a meaningful remedy is not incidental, but a constitutive feature of the mechanism itself. Decisions producing restrictive effects are generated through system design rather than through individualized legal determinations.

This phenomenon qualifies as a *new trend* for both temporal and structural reasons. It is not explicitly addressed in the Special Rapporteur's prior analysis of externalization (A/80/302), which focuses primarily on pre-entry controls and the outsourcing of asylum or return procedures. Post-protection externalization operates in a different temporal space, where protection exists formally but is eroded operationally.

The expansion of this trend is being driven by accelerated digitalization, growing interoperability of migration- and security-related systems, and increased reliance on automated decision-making and triggers within transnational cooperation frameworks. Available evidence suggests that these dynamics have intensified since 2024–2025, marking a qualitative evolution in externalization practices that warrants explicit recognition and targeted safeguards.

IV. ANALYTICAL MODEL: THE POST-PROTECTION CHAIN OF EXTERNALIZATION

This submission identifies a recurring and reproducible post-protection chain of externalization, which operates as a structural mode of migration governance rather than as a series of isolated incidents. The model captures how control over migrants continues after recognition of international protection through interconnected systems of cooperation and data processing.

The chain begins with the recognition of international protection, which formally activates the State's obligations under refugee and human rights law. Despite this recognition, transnational data processing continues, often across law enforcement, migration management, and security cooperation frameworks. Within these systems, automated or semi-automated cooperation triggers—such as alerts, signals, or information exchanges—are generated and circulated.

Crucially, these triggers operate without a renewed or individualized human rights screening, even though they may activate measures with coercive or restrictive effects. As a result, protected persons may face indirect restrictions of rights, including limitations on mobility, exposure to detention, or other forms of administrative constraint, without a fresh legal assessment of risk or necessity.

The chain is completed by a lack of effective remedy, as affected individuals are often unable to identify, challenge, or suspend the underlying decision-making process. Responsibility becomes diffused across multiple actors and systems, producing a persistent attribution and accountability gap.

This model demonstrates that post-protection externalization is not accidental. It is structurally generated by the design of transnational cooperation systems, which allow restrictive effects to occur while responsibility remains fragmented. It therefore constitutes a governance architecture that requires explicit recognition and targeted safeguards.

V. COMPATIBILITY WITH THE MANDATE OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS

Post-protection externalization falls squarely within the mandate of the Special Rapporteur on the human rights of migrants. Refugees and other beneficiaries of international protection remain migrants whose legal position continues to be shaped by migration governance and transnational control mechanisms.

Formal recognition of protection does not remove individuals from migration governance but places them in a subsequent phase in which cooperation frameworks may indirectly restrict mobility, trigger detention, or produce coercive effects. Human rights defenders appear as a high-visibility subset exposing this structural risk, not as an exception. The resulting chilling effects and arbitrariness therefore constitute direct impacts on the human rights of migrants and warrant examination under the mandate.

VI. HUMAN RIGHTS AT RISK IN THE POST-PROTECTION CONTEXT

Post-protection externalization exposes a distinct set of human rights risks that do not arise from asylum or protection decisions themselves, but from transnational cooperation practices operating after protection has been recognized. In this context, violations occur indirectly, through automated systems, data circulation, and cooperation mechanisms rather than through formal determinations.

Article 12 of the International Covenant on Civil and Political Rights (ICCPR), guaranteeing freedom of movement, is affected where automated alerts or cooperation triggers indirectly restrict mobility without a new legal basis or individualized assessment. Although no formal travel ban may be imposed, the practical ability to move is curtailed through system-generated constraints.

Article 9 ICCPR is engaged where automated or semi-automated cooperation leads to detention or detention-like effects without individualized judicial scrutiny. Arbitrariness arises not from a single decision, but from reliance on automated signals lacking human rights screening.

Article 2(3) ICCPR is undermined by the absence of an effective remedy. Individuals subjected to restrictive effects often cannot identify the decision-maker, access the underlying information, or obtain timely review capable of suspending the effects.

Under Article 3 of the Convention against Torture, post-protection externalization creates indirect or chain non-refoulement risks, where cooperation mechanisms expose individuals to foreseeable harm without any removal decision being taken.

Finally, Article 17 ICCPR is implicated where personal data function as a vector of harm. Continued processing and circulation of data after protection recognition enable restrictive outcomes while responsibility remains diffused.

The novelty lies in the source of these risks: not asylum governance, but post-protection cooperation design, which requires explicit safeguards under international human rights law.

VII. TECHNOLOGY, DATA, AND AUTOMATION AS VECTORS OF POST-PROTECTION EXTERNALIZATION

Technology enables post-protection externalization by turning migration control into a low-visibility, high-impact system. Data collected for asylum purposes continue to circulate without post-protection safeguards, leading to purpose drift, unchecked retention, and transnational reuse. Automation replaces individualized assessment with system-generated triggers, producing restrictive effects without proportionality review. These processes obscure responsibility across States, international actors, and systems, creating a structural accountability gap that requires explicit regulatory attention.

VIII. ACCOUNTABILITY GAP AND REMEDY DEFICIT

Post-protection externalization generates a persistent accountability gap in which responsibility for rights-restricting outcomes becomes structurally diffused. The State that recognized international protection retains formal obligations, yet operational control is exercised through transnational cooperation frameworks. States of origin may remain indirect beneficiaries of cooperation effects, while international organizations and technical systems facilitate data circulation and automated triggers. No single actor fully controls the process, yet each contributes to its operation.

This diffusion of responsibility is compounded by a pronounced remedy deficit. Individuals affected by post-protection externalization typically lack access to a hard procedural stop capable of suspending restrictive effects. There is no systematic ex ante human rights review adapted to post-recognition contexts, and effective avenues for challenge are often unavailable. The absence of remedies is not accidental; it is a foreseeable outcome of system design, in which decision-making is distributed across multiple layers and jurisdictions.

Automation plays a decisive role in this dynamic. Automated cooperation mechanisms replace legal safeguards with system logic, activating consequences without individualized reasoning or proportionality assessment. As a result, guarantees traditionally associated with migration and human rights law are displaced rather than merely weakened.

Taken together, these features satisfy the criteria of a systemic practice. The accountability gap and remedy deficit are embedded in the architecture of post-protection cooperation, producing recurring rights-restricting effects that cannot be effectively attributed, challenged, or remedied under existing frameworks.

IX. RECOMMENDATIONS

In light of the emerging risks identified above, the Special Rapporteur may wish to consider the following targeted and actionable recommendations, aimed specifically at the post-protection phase of migration governance.

First, post-protection externalization should be formally recognized as an emerging trend within contemporary externalization practices. Explicit recognition would enable States and international actors to address the phenomenon as a distinct governance challenge rather than as an incidental effect of cooperation.

Second, States should require mandatory human rights screening following the recognition of international protection, whenever transnational cooperation mechanisms continue to operate. Such screening should assess foreseeable risks arising from data circulation, automated alerts, or cooperation triggers.

Third, purpose limitation and retention controls must be enforced in post-protection contexts. Data collected prior to or during asylum procedures should not continue to circulate indefinitely without periodic review adapted to the individual's protected status.
Fourth, automatic or semi-automatic restrictive effects should be prohibited in the absence of individualized human rights assessment and judicial oversight. No alert or cooperation trigger should result in detention, mobility restrictions, or comparable measures without a proportionality test.

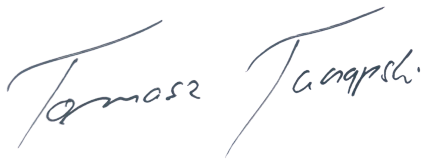
Fifth, States and international actors should clarify attribution of responsibility by mapping which authorities are accountable for specific cooperation-related outcomes.
Finally, individuals affected by post-protection cooperation must have access to effective remedies, including timely procedures capable of suspending restrictive effects pending review.

These safeguards represent minimum requirements necessary to ensure that externalization practices do not continue to undermine rights after protection has been granted.

X. CONCLUSION

Externalization has entered a post-protection phase, where control operates through transnational cooperation, data processing, and automation. Without targeted safeguards, formal protection no longer guarantees real protection, risking systemic erosion of migrants' rights. This submission introduces a new analytical category aligned with the Special Rapporteur's mandate.

Respectfully,



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Annex 1

A Structural Protection Gap Affecting Human Rights Defenders in Transnational Automated Cooperation Frameworks

Post-Protection Automation Gap

The present description concerns a recurring, system-generated pattern of human rights harm arising not from isolated administrative error or individual misconduct, but from the design and operation of transnational legal and administrative cooperation mechanisms which, by default and through the absence of required safeguards, function automatically and predictably. The core of the problem lies in the fact that following a lawful "protection event"—through which competent authorities formally acknowledge a real and foreseeable risk of serious harm—the system fails to ensure continuity of protection across subsequent status transitions. As a result, the effects of data processing and enforcement signals remain active across borders, without any built-in mechanism for suspension, interruption, or human-rights-based review.

The starting point is the formal recognition of a need for protection under international law, typically within the framework of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, whose central purpose is to prevent return to a risk of persecution and to ensure the safety of the individual concerned. In parallel, and independently of refugee status, States remain bound by their obligations under the International Covenant on Civil and Political Rights—particularly article 2 (the obligation to ensure effective remedies and respect for rights), article 7 (the prohibition of torture and other cruel, inhuman or degrading treatment), article 9 (the right to liberty and security of person), and article 17 (the right to privacy)—as well as under the Convention against Torture, notably article 3 (the prohibition of exposure to a real risk of torture). At this stage, there is no formal "conflict of norms" in the legal sense. What exists instead is a more serious structural continuity gap between the refugee protection regime, which is status-based, and the human rights protection regime, which is continuous in principle but lacks automatic safeguards within transnational enforcement and data-processing systems.

This gap materializes at the moment of a so-called "protection exit," namely the termination of status-based protection. A paradigmatic example is the acquisition of a new nationality, which in practice triggers the application of cessation clauses within the logic of refugee law (commonly referred to in doctrine as article 1C of the Refugee Convention). The status-based mechanism operates in binary terms: refugee protection either exists or it does not. By contrast, the risk that justified protection may remain unchanged, while transnational cooperation mechanisms continue to generate coercive consequences. It is precisely at this juncture that a functional collision arises: refugee law may terminate protection as a matter of status, while human rights law continues to impose preventive obligations under the ICCPR

and CAT, yet without any procedural transfer of safeguards into enforcement architectures or data-circulation systems.

Following a protection exit, automatic legal and administrative effects are activated within interconnected national and transnational systems. Data entries, enforcement signals, or procedural statuses may continue to circulate and generate consequences without renewed individualized assessment, without a decision subject to effective judicial review, and without integration of the prior recognition of risk. In practical terms, this means that protection once formally acknowledged becomes detached from the infrastructure of coercion. The system remains capable of producing a foreseeable risk of arbitrary deprivation of liberty (ICCPR, art. 9), exposure to torture or other prohibited treatment (ICCPR, art. 7; CAT, art. 3), and interference with privacy through deficiently designed data processing and circulation (ICCPR, art. 17). These are not hypothetical effects; they are logically and institutionally foreseeable within architectures of interoperability and automated cross-border cooperation.

A central element of this configuration is that harm is generated without the need to establish bad faith on the part of any particular State. Design alone is sufficient. Specifically, the absence of "anti-automaticity safeguards" allows harmful effects to arise by default. The materials referenced demonstrate that no globally articulated and operational standard currently requires: (i) the mandatory suspension of automated effects following a protection event; (ii) renewed individualized risk assessment prior to the activation of coercive consequences; (iii) the suspensive effect of remedies; or (iv) binding safeguards across the entire data lifecycle, including purpose limitation, retention control, and demonstrable accountability (accountability by design). This absence enables protection to be formally granted at one level of the system while being materially neutralized at another.

Within this model, the so-called "collision of norms" manifests as three parallel forms of inconsistency. First, a status inconsistency: refugee protection is treated as a condition that may be automatically terminated, even where the underlying risk remains real. Second, an enforcement inconsistency: transnational cooperation mechanisms trigger coercive consequences without verification against ICCPR and CAT obligations. Third, a remedial inconsistency: even where all reasonably available domestic remedies are pursued, courts and authorities remain territorially confined and structurally incapable of suspending transnational consequences or intervening in the automated effects of interoperable systems. As a result, the right to an effective remedy under article 2(3) of the ICCPR becomes illusory: access to procedures exists, but no tool is capable of interrupting the mechanism itself.

The referenced annexes reinforce the credibility of this pattern across three dimensions that are central to systemic assessment. First, they demonstrate that the configuration described is capable of repetition and may affect an indeterminate number of persons undergoing analogous status transitions. Second, they show that despite sustained engagement with domestic and international procedures, the harm persists, confirming that the issue is one of system design rather than an unsuccessful individual claim. Third, they establish institutional awareness: international actors have been formally apprised of the risk configuration, yet no

mandate-equipped mechanism exists to deliver immediate, preventive correction within automated enforcement and data-processing environments.

Under the most rigorous analytical standard, this constitutes a model of gross violations due to the irreversible, transnational, and potentially indefinite nature of the risks involved, including arbitrary deprivation of liberty, exposure to prohibited treatment, and a sustained chilling effect on individuals engaged in cross-border activities, notably human rights defenders. This analysis aligns directly with the logic of positive obligations under international human rights law: where a State knows or ought to know of a real and foreseeable risk, it is required to design systems in a manner that prevents automatic materialization of that risk. The absence of anti-automaticity safeguards therefore reflects a failure to operationalize, in preventive terms, the prohibition of torture and ill-treatment and the protection of personal liberty within transnational architectures of coercion.

In strictly normative terms, the issue is not that refugee law and ICCPR/CAT articulate divergent standards. On the contrary, they speak coherently: serious harm must be prevented, and protection must be effective in practice. The collision arises because the practical interface between these instruments is absent. The status-based system produces automatic legal effects, while the human rights system, though continuous, lacks embedded safeguards within transnational enforcement and data-processing mechanisms. This gap—most visible at the point of protection exit—allows data processing and circulation to function as vectors of transnational coercion even in the absence of physical transfer, rendering violations foreseeable and repeatable.

Accordingly, what is presented is not a challenge to an individual decision or an allegation of misapplication of the Convention. It is a challenge to a systemic configuration in which the absence of purpose limitation, retention control, and demonstrable accountability throughout the data lifecycle, combined with automated transnational cooperation, neutralizes in practice the protection previously granted under refugee law and undermines the preventive function of the ICCPR and CAT. For this reason, the material meets the threshold of a systemic protection assessment: it describes a repeatable pattern of serious harm, credibly attested by the lack of effective corrective mechanisms despite the activation of available procedural pathways, and reveals a structural protection gap requiring examination at the system level.