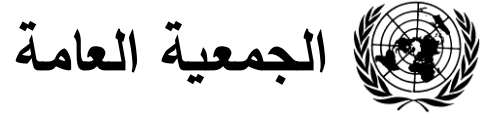


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مجلس حقوق الإنسان

اللجنة الاستشارية

الدورة السادسة والعشرون

16-20 آب/أغسطس 2021

البند 4 من جدول الأعمال

تقرير اللجنة الاستشارية عن دورتها السادسة والعشرين

## تقرير اللجنة الاستشارية عن دورتها السادسة والعشرين\*

المقرر: خافيير بالومو

\* يُعمَّم مرفق هذا التقرير كما ورد وباللغة التي قدم بها فقط.



الرجاء إعادة الاستعمال

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## أولاً- الإجراءات التي اتخذتها اللجنة الاستشارية في دورتها السادسة والعشرين

### 1/26 مقترحات بشأن البحوث وورقات تفكير

إن اللجنة الاستشارية لمجلس حقوق الإنسان،

إذ تحيط علماً مع الارتياح بالتقارير المقدمة سنة 2021 إلى مجلس حقوق الإنسان خلال دورتيه السابعة والأربعين والثامنة والأربعين<sup>(1)</sup>،

وإن تعرب عن ارتياحها بوجه خاص لموافاتها مجلس حقوق الإنسان، في الوقت المحدد، بالدراسة التي أجرتها بشأن الطرائق والسبل المناسبة لتقييم حالة المساواة العرقية في العالم<sup>(2)</sup>، واضعة في اعتبارها أن عام 2021 يصادف الذكرى السنوية العشرين لاعتماد إعلان وخطة عمل ديربان، وإن تتطلع إلى تقديم التقرير إلى الدورة السادسة والسبعين للجمعية العامة، عملاً بالفقرة 23 من قرار الجمعية العامة 157/72 المؤرخ 19 كانون الأول/ديسمبر 2017،

وإن تشير إلى إنجازها عملها بشأن جميع الولايات التي أكلها لها مجلس حقوق الإنسان حتى الآن، وإلى عدم ورود أي طلب من المجلس منذ عام 2020 أن تجري اللجنة دراسات جديدة أو تقدم مشورة مستندة إلى بحوث،

وإن تشير إلى الفقرة 77 من مرفق قرار مجلس حقوق الإنسان 1/5 المؤرخ 18 حزيران/يونيه 2007، فضلاً عن القرار 21/16 المؤرخ 25 آذار/مارس 2011،

وإن تشير أيضاً إلى الرسالة التي وجهتها إلى رئيس مجلس حقوق الإنسان في 8 آذار/مارس 2021، التي تحدد المواضيع ذات الأولوية والمقترحات البحثية لينظر فيها المجلس<sup>(3)</sup>،

وإن نظرت في مقترحات البحوث وورقات التفكير التي قدمها أعضاء اللجنة الاستشارية في دورتها الحالية في سياق مناقشاتها الأولويات الجديدة والمقترحات البحثية المحتمل تقديمها إلى مجلس حقوق الإنسان للنظر فيها، وإن ترحب بالإسهامات الواردة من الدول الأعضاء والمنظمات غير الحكومية خلال المناقشات الأنف ذكرها،

1- تقدم المقترحات البحثية التالية إلى مجلس حقوق الإنسان للنظر فيها والموافقة عليها:

(أ) الجوائح وحقوق الإنسان: دروس للمستقبل؛

(ب) حماية الحرية الأكاديمية وحرية تدفق البحوث: الدروس المستفادة من الجائحة؛

(ج) التكنولوجيات المتعلقة بحماية المناخ وحقوق الإنسان؛

(د) الممارسات التي تؤثر سلباً في حقوق الإنسان للمهاجرين<sup>(4)</sup>؛

2- تقرر، عملاً بالمادة 17 من نظامها الداخلي، أن تدرج الورقات المفاهيمية الخاصة

بالمقترحات البحثية السالفة الذكر في مرفق تقريرها عن دورتها السادسة والعشرين؛

(1) انظر A/HRC/47/51، A/HRC/47/52، A/HRC/48/66 وA/HRC/48/72.

(2) A/HRC/48/72.

(3) انظر A/HRC/AC/25/2، الفقرة 21.

(4) قدمت اللجنة الاستشارية، في دورتها الرابعة والعشرين، إلى مجلس حقوق الإنسان اقتراحاً بحثياً بعنوان "دراسة بشأن الممارسات التي تؤثر سلباً في حقوق الإنسان للمهاجرين"؛ انظر A/HRC/AC/24/2، المرفق الثالث.

- 3- توجه انتباه مجلس حقوق الإنسان إلى المواضيع التالية التي شجع عدد من الدول الأعضاء والمنظمات غير الحكومية للجنة على تركيز دراساتهما المقبلة وتقريرها البحثية عليها:
- (أ) التكنولوجيات الرقمية الجديدة والناشئة في المجال العسكري وحقوق الإنسان؛
- (ب) الحقوق الاقتصادية والاجتماعية والثقافية المدرجة في جدول أعمال الولاية القضائية الدولية؛
- (ج) وسائل تعزيز حقوق كبار السن.

#### الجلسة الخامسة

20 آب/أغسطس 2021

[اعتُمد بصيغته المنقحة شفويًا دون تصويت].

## ثانياً - إقرار جدول الأعمال وتنظيم العمل

### ألف - افتتاح الدورة ومدتها

- 1- عقدت اللجنة الاستشارية لمجلس حقوق الإنسان، المنشأة عملاً بقرار مجلس حقوق الإنسان 1/5 الصادر في 18 حزيران/يونيه 2007، دورتها السادسة والعشرين في الفترة من 16 إلى 20 آب/أغسطس 2021 في مكتب الأمم المتحدة في جنيف وعبر منصة "زوم". وافتتح الدورة آجاي مالهوترا، رئيس الدورة الخامسة والعشرين.
- 2- وفي الجلسة الأولى، المعقودة في 16 آب/أغسطس 2021، أدلت رئيسة مجلس حقوق الإنسان، نزهة شميم خان، ببيان افتتاحي.
- 3- وفي الجلسة ذاتها، أدلى رئيس فرع مجلس حقوق الإنسان في مفوضية الأمم المتحدة لحقوق الإنسان ببيان نيابة عن الأمين العام.
- 4- وفي الجلسة نفسها أيضاً، التزم المشاركون دقيقة صمت حداداً على العضو الراحل في اللجنة الاستشارية الشيخ تيديان ثيام وعلى ضحايا انتهاكات حقوق الإنسان في جميع أنحاء العالم.

### باء - تركيبة اللجنة الاستشارية

- 5- تتألف اللجنة الاستشارية من الأعضاء التالية أسماؤهم<sup>(5)</sup>: إبراهيم عبد العزيز الشدي (المملكة العربية السعودية، 2021)؛ بوهم سوك بايك (جمهورية كوريا، 2023)؛ نادية أمل برنوصي (المغرب، 2023)؛ الأزهرى بوزيد (الجزائر، 2022)؛ أليسيو بروني (إيطاليا، 2021)؛ ميلينا كوستاس تراسكاساس (إسبانيا، 2022)؛ يوري ألكسندروفيتش كوليسنيكوف (الاتحاد الروسي، 2022)؛ خوسيه أوغوستو ليندغرين ألفيس (البرازيل، 2021)؛ شينشنغ ليو (الصين، 2022)؛ آجاي مالهوترا (الهند، 2023)؛ إيتسوكو ناكاي (اليابان، 2022)؛ منى عمر (مصر، 2022)؛ خافيير بالومو (أوروغواي، 2022)؛ إليزابيث سالمون (بيرو، 2023)؛ باتريكا ساسنال (بولندا، 2023)؛ ديروجلال سيتولسينغ (موريشيوس، 2023)؛ وكاثرين فان دي هينينغ (بلجيكا، 2023).

(5) تنتهي مدة شغل المنصب في 30 أيلول/سبتمبر من السنة المنكورة بين قوسين.

**جيم - الحضور**

- 6- حضر الدورة أعضاء اللجنة الاستشارية ومراقبون عن الدول الأعضاء في الأمم المتحدة وعن منظمات حكومية دولية ومنظمات غير حكومية.
- 7- وشارك في أعمال الدورة جميع أعضاء اللجنة الاستشارية.

**دال - الاجتماعات**

- 8- عقدت اللجنة الاستشارية، في دورتها السادسة والعشرين، خمس جلسات عامة و11 جلسة مغلقة. وتبادلت اللجنة أيضاً وجهات النظر مع منسقي المجموعات الإقليمية والسياسية. وبالإضافة إلى ذلك، عقدت اللجنة اجتماعاً خاصاً مع ممثلي منظمات غير حكومية.

**هاء - إقرار جدول الأعمال**

- 9- اعتمدت اللجنة الاستشارية جدول أعمالها (A/HRC/AC/26/1) في جلستها الأولى المعقودة في 16 آب/أغسطس 2021<sup>(6)</sup>.

**واو - تنظيم الأعمال**

- 10- اعتمدت اللجنة الاستشارية أيضاً، في جلستها الأولى، مشروع برنامج العمل الذي أعدته الأمانة.

**ثالثاً - الطلبات الموجهة إلى اللجنة الاستشارية، المنبثقة عن قرارات مجلس حقوق الإنسان****ألف - التقارير المقدمة إلى مجلس حقوق الإنسان في دورته السابعة والأربعين**

- 11- في الجلسة الأولى المعقودة في 16 آب/أغسطس 2021، قدم السيد بايك، بصفته مقرر فريق الصياغة، تقرير اللجنة الاستشارية عن الآثار المحتملة للتكنولوجيات الرقمية الجديدة والناشئة والفرص المتاحة لها والتحديات التي تواجهها فيما يتعلق بتعزيز حقوق الإنسان وحمايتها، الذي قُدّم إلى مجلس حقوق الإنسان للنظر فيه في دورته السابعة والأربعين (A/HRC/47/52). وخلال المناقشة التي أعقبت ذلك، أدلى ببيانات أعضاء في اللجنة الاستشارية وممثلون عن دول مراقبة، وممثلون عن منظمات غير حكومية (انظر المرفق الثاني).

- 12- وفي الجلسة الأولى أيضاً، قدمت السيدة سالمون، بصفتها مقررة فريق الصياغة، التقرير عن المستويات الحالية لتمثيل المرأة في أجهزة وآليات حقوق الإنسان: كفاءة التوازن بين الجنسين، الذي قُدّم إلى مجلس حقوق الإنسان للنظر فيه في دورته السابعة والأربعين (A/HRC/47/51). وخلال المناقشة التي أعقبت ذلك، أدلى ببيانات أعضاء في اللجنة الاستشارية وممثلون عن دول مراقبة وممثلون عن منظمات غير حكومية (انظر المرفق الثاني).

(6) للاطلاع على قائمة الوثائق الصادرة في إطار الدورة السادسة والعشرين، انظر المرفق الأول.

## باء - التقارير المقدمة إلى مجلس حقوق الإنسان في دورته الثامنة والأربعين

13- في الجلسة الثانية المعقودة في 17 آب/أغسطس 2021، قدمت السيدة كوستاس تراسكاس، بصفتها مقرر فريق الصياغة، تقرير اللجنة الاستشارية عن الطرائق والوسيل المناسبة لتقييم حالة المساواة العرقية، الذي قُدم إلى مجلس حقوق الإنسان للنظر فيه في دورته الثامنة والأربعين (A/HRC/48/72). وخلال المناقشة التي أعقبت ذلك، أدلى ببيانات أعضاء في اللجنة الاستشارية وممثلون عن دول مراقبة وممثلون عن منظمات غير حكومية (انظر المرفق الثاني).

14- وفي الجلسة نفسها، عرضت السيدة عمر، بصفتها مقرر فريق الصياغة، التقرير عن الآثار السلبية للإرهاب على التمتع بحقوق الإنسان (A/HRC/48/66)، الذي قدم إلى مجلس حقوق الإنسان للنظر فيه في دورته الثامنة والأربعين. وخلال المناقشة التي أعقبت ذلك، أدلى ببيانات أعضاء في اللجنة الاستشارية وممثلون عن دول مراقبة وممثلون عن منظمات غير حكومية (انظر المرفق الثاني).

## جيم - متابعة التوصيات الواردة في تقارير اللجنة الاستشارية المقدمة إلى مجلس حقوق الإنسان

15- عقدت اللجنة الاستشارية، في جلستها الثالثة المعقودة في 19 آب/أغسطس 2021، مناقشة متابعة التوصيات الواردة في تقريرها عن المستويات الحالية لتمثيل المرأة في أجهزة وآليات حقوق الإنسان: كفالة التوازن بين الجنسين (A/HRC/47/51). وفي ذلك السياق، شاركت في حلقة النقاش مارغريدا روزا دا سيلفا إيزاتا، الممثلة الدائمة لأنغولا ومنسقة الشؤون الجنسانية في مجلس حقوق الإنسان، وممثلة عن قسم حقوق الإنسان للمرأة والشؤون الجنسانية في المفوضية. وخلال المناقشة التي أعقبت ذلك، أدلى ببيانات أعضاء في اللجنة الاستشارية وممثلون عن دول مراقبة وممثل عن منظمات غير حكومية (انظر المرفق الثاني).

## رابعاً - تنفيذ الفرعين الثالث والرابع من مرفق قرار مجلس حقوق الإنسان 1/5 الصادر في 18 حزيران/يونيه 2007، والفرع الثالث من مرفق قرار المجلس 21/16 الصادر في 25 آذار/مارس 2011

### ألف - استعراض أساليب العمل

16- في 17 و19 آب/أغسطس 2021، عقدت اللجنة الاستشارية، في جلسات مغلقة، مناقشات تناولت فيها أساليب عملها. فناقشت اللجنة مسائل التوعية بعملها وزيادة إبرازها، وتعاطيتها مع المنظمات غير الحكومية والمؤسسات الوطنية لحقوق الإنسان وأصدقاء اللجنة من الأكاديميين.

17- وأجرت اللجنة الاستشارية، في جلستها الخامسة المعقودة في 20 آب/أغسطس 2021، مناقشة تناولت أساليب عملها. وخلال المناقشة، أدلى أعضاء في اللجنة ببيانات (انظر المرفق الثاني).

### باء - جدول الأعمال وبرنامج العمل السنوي، بما في ذلك الأولويات الجديدة

18- في 16 و18 و19 آب/أغسطس 2021، عقدت اللجنة الاستشارية، في جلسات مغلقة، مناقشات بشأن الأولويات الجديدة وورقات التفكير والمقترحات البحثية المحتملة التي يمكن أن تعرضها على مجلس حقوق الإنسان.

19- وعقدت اللجنة الاستشارية، في جلستها الثالثة المعقودة في 18 آب/أغسطس 2021، مناقشة تناولت فيها مقترحات البحث التالية التي قدمها أعضاؤها وقررت تقديمها إلى مجلس حقوق الإنسان للنظر فيها والموافقة عليها (انظر المرفق الثالث):

- الجوائح وحقوق الإنسان: دروس للمستقبل (السيد بالومو)
  - حماية الحرية الأكاديمية وحرية تدفق البحوث: الدروس المستفادة من الجائحة (السيدة فان دي هينينغ)
  - تكنولوجيات حماية المناخ وحقوق الإنسان (السيدة ساسنال)
  - الممارسات التي تؤثر سلباً على حقوق الإنسان للمهاجرين (السيدة كوستاس تراسكاس)
- 20- وفي الجلسة نفسها، قدم أعضاء اللجنة ورقات التفكير التالية:
- التكنولوجيات الرقمية الجديدة والناشئة في المجال العسكري وحقوق الإنسان (السيد مالهورترا)
  - الحق في الانتصاف والجبر لضحايا الانتهاكات الجسيمة للقانون الدولي لحقوق الإنسان والانتهاكات الخطيرة للقانون الدولي الإنساني (السيد بايك)
- 21- وفي الجلسة نفسها أيضاً، أدلى ببيانات أعضاء في اللجنة الاستشارية وممثلون عن دول مراقبة وممثل عن منظمة غير حكومية (انظر المرفق الثاني).
- 22- وفي الجلسة الخامسة المعقودة في 20 آب/أغسطس 2021، قدمت الرئيسة مشروع نص (A/HRC/AC/26/L.1)، برعاية جميع أعضاء اللجنة الاستشارية، ونقحته شفويًا. واعتمد مشروع النص بصيغته المنقحة شفويًا دون تصويت (للاطلاع على النص بصيغته المعتمدة، انظر الفرع الأول أعلاه).

## جيم - تعيين أعضاء الفريق العامل المعني بالبلاغات

- 23- وفقاً للقرارات من 91 إلى 93 من مرفق قرار مجلس حقوق الإنسان 1/5، تعين اللجنة الاستشارية خمسة من أعضائها، واحد من كل مجموعة إقليمية، مع إيلاء الاعتبار الواجب للتوازن بين الجنسين، كي يشكلوا الفريق العامل المعني بالبلاغات. وفي حالة وجود شاغر، تعين اللجنة الاستشارية خبيراً مستقلاً ومؤهلاً تأهيلاً عالياً من المجموعة الإقليمية نفسها. ونظراً لوجود حاجة إلى الخبرة المستقلة وإلى الاستمرارية فيما يتعلق بدراسة البلاغات الواردة وتقييمها، يعيّن خبراء الفريق العامل المستقلون والمؤهلون تأهيلاً عالياً لمدة ثلاث سنوات. ولا تجدد ولايتهم سوى مرة واحدة.
- 24- وقد عيّنت اللجنة الاستشارية أعضاء الفريق العامل المعني بالبلاغات آخر مرة في دوراتها السابعة عشرة والحادية والعشرين والثالثة والعشرين، وفي الفترة ما بين دورتين في عام 2020<sup>(7)</sup>.
- 25- وبالنظر إلى أنه سيكون لدى الفريق العامل وظيفتان شاغرتان، حيث كان مقرراً أن تنتهي مدة ولاية العضوين - السيد الشدي (مجموعة آسيا والمحيط الهادئ) والسيد بروني (مجموعة دول أوروبا الغربية ودول أخرى) في 30 أيلول/سبتمبر 2021، قررت اللجنة الاستشارية، في جلستها الخامسة المعقودة في 20 آب/أغسطس 2021، تعيين السيد ليو والسيدة كوستاس تراسكاس في الفريق العامل اعتباراً من 1 تشرين الأول/أكتوبر 2021.
- 26- وفي الجلسة نفسها أيضاً، أدلى أعضاء اللجنة ببيانات (انظر المرفق الثاني).

(7) انظر A/HRC/AC/17/2، الفقرة 26؛ وA/HRC/AC/21/2، الفقرات 22-24؛ وA/HRC/AC/23/2، الفقرات 25-27؛ وA/HRC/AC/25/2، الفقرات 22-24.

## خامساً- تقرير اللجنة الاستشارية عن دورتها السادسة والعشرين

- 27- في الجلسة الخامسة، المعقودة في 20 آب/أغسطس 2021، قدم مقرر اللجنة الاستشارية مشروع التقرير عن الدورة السادسة والعشرين. واعتمدت اللجنة الاستشارية مشروع التقرير بشرط الاستشارة وكلفت المقرر بوضعه في صيغته النهائية.
- 28- وفي الجلسة نفسها، أدلى المقرر بملاحظات ختامية. وأدلى ببيانات أيضاً أعضاء اللجنة وممثل عن منظمة غير حكومية (انظر المرفق الثاني).
- 29- وفي الجلسة نفسها أيضاً، أدلى الرئيس بملاحظات ختامية وأعلن اختتام الدورة السادسة والعشرين من دورات اللجنة الاستشارية.



## Annex I

### Documents issued for the twenty-sixth session of the Advisory Committee

#### Documents issued in the general series

<i>Symbol</i>	<i>Agenda item</i>	
A/HRC/AC/26/1	2	Provisional agenda and annotations
A/HRC/AC/26/2	4	Report of the Advisory Committee on its twenty-sixth session

#### Documents issued in the limited series (actions)

<i>Symbol</i>	<i>Agenda item</i>	
A/HRC/AC/26/L.1	3 (b)	Research proposals and reflection papers

#### Documents issued in the non-governmental organizations series

<i>Symbol</i>	<i>Agenda item</i>	
A/HRC/AC/26/NGO/1	3 (g)	Written statement submitted by the Organization for Defending Victims of Violence (ODVV), a non-governmental organization with special consultative status
A/HRC/AC/26/NGO/2	3 (g)	Written statement submitted by the Maat for Peace, Development and Human Rights Association, a non-governmental organization with special consultative status

## Annex II

### List of speakers

<i>Agenda item</i>	<i>Meeting and date</i>	<i>Speakers</i>
1. Adoption of the agenda and organization of work	1st meeting 16 August 2021	Observer States: Cameroon (on behalf of the African Group), Cuba, Venezuela (Bolivarian Republic of), Indonesia  Non-governmental organizations: International Human Rights Council, Associazione Comunità Papa Giovanni XXIII
2. Requests addressed to the Advisory Committee stemming from Human Rights Council resolutions		
(a) Requests currently under consideration by the Committee		
New and emerging digital technologies and human rights	1st meeting 16 August 2021	Members: Buhm-Suk Baek (Rapporteur), Lazhari Bouzid, Nadia Amal Bernoussi  Observer States: Cameroon (on behalf of the African Group), Cuba, India (video statement), China (video statement), Russian Federation (video statement)  Non-governmental organizations: International Commission of Jurists, Institute for NGO Research, Maat for Peace, Development and Human Rights Association
Current levels of representation of women in human rights organs and mechanisms	1st meeting 16 August 2021	Members: Elizabeth Salmón (Rapporteur), Nadia Amal Bernoussi, Lazhari Bouzid, Dheerujlall Seetulsingh  Observer States: Cameroon (on behalf of the African Group), Peru (video statement), Mexico, Russian Federation (video statement)  Non-governmental organization: Maat for Peace, Development and Human Rights Association

<i>Agenda item</i>	<i>Meeting and date</i>	<i>Speakers</i>
Situation regarding racial equality in the world	2nd meeting 17 August 2021	Members: Milena Costas Trascasas (Rapporteur), Dheerujlall Seetulsingh, Nadia Amal Bernoussi, José Augusto Lindgren Alves, Elizabeth Salmón  Observer States: Cameroon (on behalf of the African Group), Cuba, China, Venezuela (Bolivarian Republic of), Indonesia, India (video statement), Russian Federation (video statement)  Non-governmental organizations: Organization for Defending Victims of Violence, Institute for NGO Research, Maat for Peace, Development and Human Rights Association
Negative effects of terrorism on the enjoyment of human rights	2nd meeting 17 August 2021	Members: Mona Omar (Rapporteur), Alessio Bruni, Lazhari Bouzid, Catherine Van de Heyning, Nadia Amal Bernoussi, José Augusto Lindgren Alves  Observer States: Cameroon (on behalf of the African Group), Libya, Cuba, India (video statement), China, Venezuela (Bolivarian Republic of), Mexico, Russian Federation (video statement), Egypt  Non-governmental organizations: International Human Rights Council, International Commission of Jurists, Institute for NGO Research, Maat for Peace, Development and Human Rights Association
(b) Recommendations contained in the reports of the Committee submitted to the Council: current levels of representation of women in human rights organs and mechanisms.	4th meeting 19 August 2021	Panellists: Margarida Rosa da Silva Izata (Ambassador of Angola and gender focal point of the Human Rights Council), a representative from the Women's Human Rights and Gender Section of OHCHR  Members: Elizabeth Salmón (Rapporteur), Nadia Amal Bernoussi, Mona Omar, Milena Costas Trascasas, Javier Palummo, Catherine Van de Heyning  Observer States: Peru, Mexico  Non-governmental organization: International Human Rights Council
3. Implementation of sections III and IV of the annex to Human Rights Council resolution 5/1 and of section III of the annex to Council resolution 16/21		

<i>Agenda item</i>	<i>Meeting and date</i>	<i>Speakers</i>
(b) Agenda and annual programme of work, including new priorities	3rd meeting 18 August 2021	Members: Javier Palummo, Catherine Van de Heyning, Patrycja Sasnal, Milena Costas Trascasas, Buhm-Suk Baek, José Augusto Lindgren Alves, Lazhari Bouzid, Nadia Amal Bernoussi, Dheerujall Seetulsingh, Xinsheng Liu  Observer States: Panama, Sri Lanka (video statement)  Non-governmental organization: International Human Rights Council
(a) Review of methods of work	5th meeting 20 August 2021	Members: Milena Costas Trascasas, Buhm-Suk Baek
(c) Appointment of members of the Working Group on Communications	5th meeting 20 August 2021	Members: Ibrahim Abdulaziz Alsheddi, Catherine Van de Heyning, Alessio Bruni, Patrycja Sasnal, Elizabeth Salmón, Lazhari Bouzid, Xinsheng Liu, Mona Omar, Nadia Amal Bernoussi, Milena Costas Trascasas, José Augusto Lindgren Alves
4. Report of the Advisory Committee on its twenty-sixth session	5th meeting 20 August 2021	Members: Javier Palummo (Rapporteur), Lazhari Bouzid, José Augusto Lindgren Alves, Mona Omar, Buhm-Suk Baek, Alessio Bruni, Catherine Van de Heyning  Non-governmental organization: International Human Rights Council

## **Annex III**

### **Research proposals**

#### **I. Pandemics and human rights: lessons for the future**

##### **A. General approach**

1. The coronavirus disease (COVID-19) pandemic has had a significant impact not only on access to economic, social and cultural rights, but also to justice for violations of those rights.

2. In the context of the pandemic, the possibility of disease transmission was found to be much higher in areas with poor sanitation and lack of essential public services. On the other hand, various measures have also been taken in different countries by judicial bodies, ostensibly to reduce the spread of COVID-19, that have had a major impact on the functioning of these bodies and, therefore, on access to justice as a whole. Measures taken include the suspension of jurisdictional and prosecutorial activity, measures that obstruct or prevent access to legal advice or judicial files, and the suspension of deadlines and procedural acts in extraordinary cases (except for certain cases considered urgent). Such measures may also affect judicial oversight of the implementation of emergency measures, which is essential to avoid the excessive use of emergency powers. In many cases, remote work, the use of digital platforms and the holding of hearings by videoconference, *inter alia*, have been imposed. According to some reports, these innovations have sometimes had a negative impact on access to justice for some sectors of the population as a result of the existing digital gap. The most vulnerable groups should therefore be given special protection.

3. Given the disproportionate negative impact that pandemics have proven to have on the poor and less privileged, and the possibility of other pandemics in the future, the Advisory Committee might conduct a broader and more comprehensive examination of this issue, while referring to, but going beyond, the studies conducted by thematic special procedures and by the Office of the United Nations High Commissioner for Human Rights (OHCHR) itself.

##### **B. Purpose of the study**

4. The Advisory Committee proposes to carry out an exploratory study to identify the main effects of the measures taken by the States to address the COVID-19 pandemic with respect to access to economic, social and cultural rights and to justice. This study will identify lessons learned and good practices in the management of the pandemic from a human rights perspective, while taking into account the challenges posed by the 2030 Agenda for Sustainable Development.

##### **C. Timeline**

5. In order to give effect to this proposal, the Human Rights Council could consider adopting a resolution thereon at its forty-eighth session. The study itself could be submitted to the Council for consideration at its fifty-fourth session. Such a timeline would enable the Advisory Committee to discuss the topic and to work on the content of the report at its twenty-seventh, twenty-eighth and twenty-ninth thirtieth sessions.

## **II. Protection of academic freedom and free flow of research: lessons learned from the pandemic**

### **A. The challenge: transparent, trustworthy, and high-level research**

1. The coronavirus disease (COVID-19) pandemic has reminded the world of the importance of research and scientific progress. Public policies, health services, industry, civil society and the general public have depended directly on the advice of researchers to quell the pandemic, to prevent its spread, and to treat patients. Policymakers have relied on the advice of medical scholars, virologists, behavioural scientists and other experts to develop guidelines, formulate measures and take action. We have witnessed the triumph of our scientific knowledge in vaccines that have been developed, tested and begun to be widely used in less than a year since the beginning of the outbreak. Information on breakthroughs in medicines and therapies to treat those affected by the virus has in the meantime been published.

2. Despite the many lives lost and the impact on our daily lives, the pandemic has highlighted the importance of high-level, trustworthy and transparent academic research, and how fundamental human rights, in particular the right to life, are better served when societies invest in it. The pandemic might be at the top of our minds, but future challenges such as climate change will depend on humankind's ability to overcome current crises through behavioural change and technological solutions founded on evidence-based science.

3. High-level research does not come about by accident; it requires certain prerequisites, such as high-quality, open-access education, an environment that fosters research, transparency to allow the sharing of findings, the freedom to publish results from research without fear of being silenced or persecuted, a global community where knowledge can be shared freely, and policymakers open to evidence-based advice. While the pandemic has encouraged academic cooperation among researchers globally and interaction with countries, industry and civil society, researchers have also been silenced, undermined and threatened, or results have been held back from the general public and the research community at large.

4. In addition, tackling the pandemic has been further complicated by deliberate misinformation about the virus, its spread and remedies. Evidence-based science findings and researchers have been openly attacked. Conspiracy theories undermine the global effort to save lives and restore the normal functioning of society and, therefore, the full enjoyment of human rights. Cooperation among researchers has often encountered obstacles. Important advice, remedies and information has been withheld from the public because of censorship, restrictive national rules on the exchange of information (such as the sharing of scientific information, biological data or data on genetic sequences relating to the virus) or certain patent regulations. Lastly, budget shortages and underfunding in research and higher education have also limited scientific progress.

### **B. Human rights framework**

5. Academic freedom is protected under article 19 of the International Covenant on Civil and Political Rights, namely, under the right to freedom to seek, receive and impart information and ideas of all kinds. Academic freedom thus entails an individual right not only for researchers (i.e., to express their ideas and share results) but also for the general public (the right to be informed of the current state of research). Such rights can, however, be limited to protect national security, public order, public health or morals (if based on a legal norm), for a legitimate reason or if proportionate. The question therefore concerns the extent to which academic freedom can or may be limited for the sake of public order or health reasons in times of crisis, so as to prevent conflicting advice being provided to the general public, misinformation based on botched science, financial limitations, intellectual property and patents.

6. Some regional and national courts and scholars have identified three levels of academic freedom: (a) the protection of the individual researcher to research and impart

information and to associate with other researchers; (b) the autonomy and protection of academic and other research institutions as a safe haven for academic research; and (c) positive obligations of authorities to enable and encourage education and research, thereby enabling a vibrant research community. In her most recent report to the General Assembly (A/75/261), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression highlighted certain threats to the freedom of academic expression.

7. In addition to academic freedom based on the freedom of expression and information, other rights are relevant, such as the right to association, the right to education, the protection of health and the right to life, and the right to development. These rights, including the right to academic freedom, are further protected under other international treaties, such as the Universal Declaration of Human Rights, regional human rights documents and constitutions.

8. No special procedure currently addresses the issue of academic research from this broader perspective. Given the looming challenges to humankind (such as climate change), where research will be a vital element to their solution, and in the light of the lessons learned from the pandemic, the topic is highly relevant and urgent.

### **C. Purpose of the study**

9. The present research proposal has the objective of scrutinizing the current state of the protection of academic freedom in the context of the COVID-19 pandemic, and suggests how to ensure high-level, transparent and trustworthy science in the future. The proposal is therefore not limited to the strict boundaries of academic freedom as a specific manifestation of the freedom of expression. It approaches academic freedom from a holistic perspective of human rights, considering also what is needed to ensure that academic freedom in practice results in qualitative research and deals with new threats, such as deliberate misinformation.

10. The study will culminate in practical recommendations for the Human Rights Council and Member States on addressing gaps in protection of academic freedom, and how to strengthen academic research from a human rights perspective. It will examine the prerequisites for autonomous and independent research, the institutional autonomy of research institutions and the free flow of research results. It will also consider the challenge that deliberate misinformation with regard to science poses to human rights, and make recommendations on potential action to counter it.

### **D. Timeline**

11. The Human Rights Council could consider adopting a relevant resolution at its forty-eighth session, and the report could be submitted to the Council for consideration at its session fifty-fourth session. Such a timeline would allow the Advisory Committee to discuss the topic and to work on the report during its twenty-seventh, twenty-eighth and twenty-ninth sessions.

### III. Climate protection technologies and human rights

1. The goal of the proposed study is to examine the extent to which and how current or developing technologies for climate protection can affect human rights. These technologies have not been extensively examined from the perspective of human rights; the study could therefore provide the Human Rights Council with an insight into an underresearched issue of great importance to societies and States.

#### A. New technologies for climate protection

2. The solutions to climate change currently under discussion include geoengineering, which comprises a set of deliberate, large-scale interventions in the Earth's climate system in order to prevent further climate change or even to reverse it. They aim either to reduce the amount of sunlight reaching the Earth's atmosphere and becoming trapped by greenhouse gases (solar radiation management) or to remove the greenhouse gases already released into the atmosphere by human activities. Such techniques may target either the atmosphere itself, the terrestrial ecosystems or marine ecosystems. The most commonly advocated ones are listed below.

##### 1. Interventions in the atmosphere

- Stratospheric aerosol injection: releasing inorganic particles (e.g. sulfur dioxide) into the upper layer of the atmosphere to create a reflexive barrier that would reduce the amount of sunlight reaching the Earth
- Cloud seeding: spraying chemicals (such as silver iodide) into clouds to increase precipitation and cloud cover, which would reflect sunlight back into space
- Marine cloud brightening: spraying sea water droplets into marine clouds to make them whiter and thus able to reflect more sunlight
- Space mirrors: positioning man-made orbital mirror satellites on the outer layer of Earth's atmosphere to deflect sunlight

##### 2. Land-based interventions

- Carbon capture technologies: capturing CO<sub>2</sub> from fossil power generation and industrial processes, and either transforming it into liquid and storing (e.g., in depleted oil and gas reservoirs) or using it in other industrial processes, such as for the production of concrete for construction through the reaction of CO<sub>2</sub> with calcifying minerals
- Direct air capture: capturing CO<sub>2</sub> directly from the ambient air (not in industrial processes), as in the case of carbon capture technologies, for storage or use
- Photosynthesis enhancement: genetic engineering of popular plants or crops, such as rice, to strengthen photosynthetic performance, increasing their yield and carbon sequestration effectiveness
- Enhanced terrestrial weathering: mining and spreading crushed silicate minerals able to naturally sequester atmospheric CO<sub>2</sub> (such as olivine) on the land surface
- Ground-based albedo modification: various means, such as painting rooftops white, covering part of deserts with white polyethylene film to better reflect sunlight, coating Arctic ice with small glass beads to insulate melting snowpack and glaciers, clearing remaining areas of boreal forests to boost reflectivity due to their snow cover



### **3. Interventions in the oceans**

- Ocean fertilization: fertilising the ocean with for example iron or nutrients to increase growth of phytoplankton and algae, which would absorb and draw down atmospheric CO<sub>2</sub>, acting as a carbon sink
- Artificial upwelling: pumping up cooler, nutrient-rich water from the sea depths to the surface to stimulate phytoplankton growth and carbon sink potential
- Enhanced marine weathering: adding carbonate minerals to ocean waters on a large scale to increase their alkalinity and carbon sequestration
- Sea foam enhancing: pumping chemical foaming agents or tiny microbubbles into the oceans to increase ocean surface reflectivity by thickening natural sea foams
- Ocean sequestration of crop residues: sinking biomass, such as crop waste, into the ocean, where it remains on the seabed, its carbon content sequestered
- Engineering oceanic heat flows: downwelling ocean currents, thereby carrying carbon to the ocean depths, to increase their carbon concentration or volume

## **B. Applicable international human rights norms**

3. There are no treaties imposing specific binding obligations with respect to the use of new technologies for climate protection that would safeguard the human rights of those possibly affected. Nonetheless, some international instruments do recognize the need to take into account human rights in climate action in general. The most important instrument is the Paris Agreement of the United Nations Framework Convention on Climate Change. According to the preamble in the Agreement, States, when taking action on climate change, should “respect, promote and consider their respective obligations on human rights”, particularly of the groups most affected, such as indigenous peoples and local communities. There are also non-binding instruments, such as the Malé Declaration on the Human Dimension of Global Climate Change, adopted by the representatives of small island developing States in 2007, in which they called upon other States and organizations to take into account the effects of climate change on human rights. Arguably, such effects also encompass the human rights implications of actions taken to prevent or mitigate this process. Also pertinent is the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), according to which everyone has a fundamental right to live in an environment that permits a life of dignity and well-being. Although not explicitly mentioning climate, it draws a connection between the realization of human rights and the environment, of which climate is an integral part.

4. On the other hand, several treaties that are unrelated to human rights may be regarded as partly limiting geoengineering activities due to environmental considerations. One example is the United Nations Convention on the Law of the Sea, which requires parties to the Convention to protect and preserve the marine environment, control pollution and minimize the release of toxic and harmful substances. The Vienna Convention for the Protection of the Ozone Layer requires parties to the Convention to prevent adverse effects on human health and the environment caused by activities in the ozone layer, including the injection of substances into the atmosphere that might damage it. Lastly, the Convention on Biological Diversity is widely regarded as prohibiting climate-related geoengineering activities that may affect biodiversity when they are conducted without adequate science-based evidence. This is a direct consequence of the precautionary principle provided for in the Convention, which is based on the presumption that the use of new technologies comes with more risks than the maintenance of the status quo, and calls for adequate scientific justification for all actions.

## **C. Human rights potentially affected by the use of technologies**

5. The impact of new technologies for climate protection on human rights varies, depending on the exact technology used. In general, however, the use of most technologies

may have potentially serious or even a grave impact on terrestrial and maritime ecosystems. The consequences most frequently cited are the reduction in biodiversity, disruptions to food chains and biogeochemical cycling, possible habitat destruction, the negative impact on soil caused by chemical agents, and drastic local changes in weather patterns that can result in natural disasters, such as flooding or droughts. In the case of maritime geoengineering, ocean acidification and localized excess alkalinity may well be relevant, as also the risk of eutrophication and anoxia, which are lethal to marine life.

6. Such consequences carry massive direct and indirect risks for the enjoyment of a number of human rights. Among those most likely to be affected is the right to life, interpreted in a holistic manner as including the rights to health, adequate nutrition, safe drinking water and a decent standard of living, as well as to a healthy and safe environment. This is due to the fact that the implementation of at least a number of indicated technologies may affect the availability of food and water, limit housing opportunities in certain areas or cause negative effects for people's health. The possible changes of weather patterns and the reduction in biodiversity can also negatively affect the human rights of certain vulnerable groups, such as peasant and local communities, or indigenous peoples. The latter may run the risk of being deprived of their territories or sources of livelihood, which would undermine their right to self-determination and other rights, such as those to their traditional lands and culture. Even the technologies considered to be the safest and already implemented by some countries or within the European Union (such as carbon capture schemes) pose risks for enjoyment of some rights, for example those to life and health, due to possible safety incidents.

7. Mention might also be made of the impact of new technologies for climate protection on environmental procedural rights, which are often perceived as falling within the human rights obligations of States. Geoengineering solutions are very technical and scientific, and may be pursued by some groups for commercial interest. There is therefore a need for meaningful public participation in the debate over their use and consequences, and their influence on decision-making processes, in order to satisfy the requirements of the rights to information, participation and access to environmental justice.

#### **D. Conclusion: why a study on climate protection technologies has value**

8. Regardless of their ownership (State or private), technologies for climate protection can work either way: they can both harm and strengthen human rights. The study could help to identify when and how rights may be violated and/or strengthened.

9. The study would be breaking new ground, given that little research has been conducted on these issues to date, as also reflected in scholarly literature. The Human Rights Council would therefore benefit from receiving expert information, particular in view of its discussions on establishing a special procedure mandate on the adverse impact of climate change on the full and effective enjoyment of human rights. Furthermore, the research is interdisciplinary: it requires advanced technical knowledge, legal expertise and a good level of imagination. By crosscutting various spheres of life, its added value is undeniable.

10. Climate protection technologies are a crucial part of mitigating the climate crisis, the most pertinent global threat today, regardless of national interests or geographical location. They are therefore of vital importance to all States Members of the United Nations.

11. The topic is of utmost interest to communities everywhere. Work on the report would entail several online seminars and panel discussions organized to obtain expert insights into the issue and to promote awareness-raising in the general public.

## IV. Practices negatively affecting the human rights of migrants

### A. Introduction

1. The situation of human rights of persons fleeing their country of origin constitutes one of the most pressing human rights issues today. Large movements of forced and irregular migrants in recent years have highlighted the precarious and vulnerable situation of those seeking shelter abroad, and the inadequacy of responses given to this challenge.<sup>8</sup> The numbers reveal the magnitude of the problem. According to the Department of Economic and Social Affairs, forced international migration is growing faster than voluntary migration. In the period 2010–2017, the number of refugees and asylum seekers increased at an annual average rate of more than 8 per cent (13 million people) compared with less than 2 per cent for those who migrate voluntarily. As at 2017, more than 83 per cent of refugees and asylum seekers lived in the less developed regions of the Global South.<sup>9</sup>

2. In recent years, increasing numbers of people have sought to reach Europe through two main routes: the Eastern Mediterranean and Balkan land route, mainly used by migrants from Afghanistan, the Islamic Republic of Iran, Iraq, Pakistan and the Syrian Arab Republic; and the Central Mediterranean route, which reaches Europe by sea, crossing from Libya and mainly used by migrants from West Africa and the Horn of Africa. It is estimated that, of the 1.6 million people who have tried to cross the Mediterranean since 2015, some 16,000 have perished along the way. In 2015 and 2016 alone, 9,000 people died.<sup>10</sup> In the same period, one million migrants arrived in Europe.

3. The sudden massive influx of irregular migrants clearly poses a challenge to States. The lack of a satisfactory solution to this tragedy, however, continues to shake the human conscience and the values upon which international human rights protection is built. Humanitarian organizations present in the field insist that the current set of policies implemented are wholly inadequate. They blame political leaders for turning a blind eye to such a dramatic situation while sending the message that the drowning of people is “an acceptable price to pay in order to stem the flow in the Central Mediterranean”.<sup>11</sup> The excessive securitization of borders has led to the normalization of restrictive measures and practices that are at best questionable from a human rights perspective. Likewise, the criminalization of irregular migration has had a profound impact on the work of humanitarian organizations, which find themselves unable to play their role as providers of assistance and monitors of public policies.

4. In fact, the critical situation in the Mediterranean Sea has brought to light existing protection gaps, not only in relation to people seeking asylum but most importantly in cases where migrants fall outside the specific legal category of “refugee”. Not in vain, human rights experts and monitoring bodies have repeatedly drawn attention to the serious concerns posed by the policies and practices that States are deploying on the ground.

5. In 2016, the Office of the United Nations High Commissioner for Human Rights (OHCHR) carried out a series of field missions to assess the policies followed by some States in response to the increasing migratory pressure on their borders. In its report on the global issue of unaccompanied migrant children and human rights (A/HRC/36/51), the Advisory

<sup>8</sup> For the purposes of the present report, the term “migrant” includes refugees and asylum seekers, international migrants in an irregular situation, trafficked persons, smuggled migrants, and other categories of non-citizens, including stateless persons. It does not cover regular flows of migrants from one country to another.

<sup>9</sup> A total of 3.5 per cent of the global population (more than 272 million people) are migrants. This number includes regular and irregular migration. See United Nations Department of Economic and Social Affairs, Population Facts, No. 2019/4, September 2019.

<sup>10</sup> For more information, see International Organization for Migration (IOM), *Fatal Journeys: Missing Migrant Children*, Vol. 4, 2019, pp. vii and 10. IOM reports that more than 32,000 migrants around the world have lost their lives since 2014, while stressing that the true number of fatalities is unknown, since some bodies may never be found and many migrants may be never identified.

<sup>11</sup> Joanne Liu, “Europe must act now to end preventable deaths in Libya and at sea”, Médecins Sans Frontières, 6 August 2019.

Committee found important shortcomings in the assistance and protection provided to migrants, particularly the most vulnerable ones, namely, unaccompanied minors.<sup>12</sup> It shows how migration policies are mainly oriented to respond to the increasing migratory pressure from a security-oriented approach. States have implemented different measures, such as deterring the entry of migrants into their territory by the use of force and other dangerous border control practices, which implies reinforcing police and military powers in the context of migration; the criminalization of irregular entry or stay; arbitrary and prolonged immigration detention, in contravention of national and international law; and favouring the expulsion of those who have managed to enter the country (swift return proceedings). The joint application of these measures, particularly in border areas, exacerbates the already vulnerable situation of migrants, who are ultimately deprived of their rights and too often left with no meaningful means to claim them.

6. Particularly worrying is the extensive use by States of detention in border management as a deterrent against migrants, too often as a means of preventing their access to justice.<sup>13</sup> The European Union, for example, is pursuing the policy of establishing reception and identification centres (“hotspots”) to assist Member States confronted by large numbers of irregular migrants.<sup>14</sup> Human rights organizations and experts claim that the facilities, particularly those established on five Greek Aegean islands, are de facto detention centres, where people are basically kept in violation of their most fundamental right to liberty and deprived of a number of other human rights, including the rights to health, housing, and family, the prohibition of torture and ill-treatment, and the right to asylum or any other protection under international human rights law.<sup>15</sup>

7. Such measures constitute a barrier to the full enjoyment of human rights and hinder the access of migrants to protection, in blatant disregard of international human rights obligations and commitments.<sup>16</sup> In the long run, ignoring the human rights approach to forced and irregular migration will further erode the sense of humanity and the systems of protection. Marginalization, unattended basic needs and a lack of accountability for human rights violations may also trigger a great sense of injustice and frustration: a fertile breeding ground for radicalization and terrorism.

## B. Proposed study

8. Even if the causes of mass migrant movements (whether of refugees or migrant workers in regular or irregular situations) fall outside the scope of the study proposed, the main drivers pushing people to leave their home countries today have an impact on their protection and, therefore, cannot be completely ignored. International refugee law has traditionally provided protection to people fleeing from persecution and armed conflict (States have shown, however, a worrying trend towards the erosion of the fundamental principles underlying international refugee law). However, such protection cannot be extended to most present-day cases, which are the result of poverty and increasing economic inequalities. Human rights are at the core of such movements: people on the move are seeking a safe and dignified life, which also comprises

<sup>12</sup> OHCHR has identified a number of human rights concerns: (1) criminalization of irregular entry or stay; (2) procedures related to the prohibition of arbitrary or collective expulsion and non-refoulement; (3) identification of vulnerabilities; (4) access to services; (5) the right to information; (6) the rights to liberty, due process and a fair trial; (7) conditions in detention; (8) conditions in settlements, camps or other locations; (9) the protection of children; (10) xenophobia, incitement to hatred and violence against migrants; and (11) human rights monitoring. See “In Search of Dignity: Report on the human rights of migrants at Europe’s borders”, 2017.

<sup>13</sup> See A/HRC/23/46, paras. 47–54 and 77, and A/HRC/35/25, para. 58.

<sup>14</sup> The European Union “hotspot” approach was conceptualized in the European Agenda on Migration in April 2015 to assist frontline Member States confronted with large numbers of migrants in registering those who come, addressing initial reception needs, identifying vulnerabilities and undertaking security checks. It applies to all disembarkations of persons rescued at sea and to non-authorized landings in the eastern Aegean islands (Lesbos, Kios, Samos, Kos and Leros) and in certain areas of southern Italy. Asylum and return procedures are also implemented in hotspots.

<sup>15</sup> OHCHR, “In Search of Dignity”, pp. 11–13.

<sup>16</sup> *Ibid.*, p. 41.

at least minimum protection for their economic, social and cultural rights and greater respect for their most fundamental civil and political rights.

9. International standards aimed at strengthening the protection of the most vulnerable migrants, namely those who do not have the status of refugees, are still to be developed.<sup>17</sup> The Special Rapporteur on the human rights of migrants is contributing to shape the scope of State obligations. In addition, OHCHR has drafted a series of principles and guidelines on the treatment of migrants aimed at fostering human rights-compliant practices.<sup>18</sup> The situation on the ground reveals, however, the absence of a right-based approach in the implementation of national migration policies.<sup>19</sup>

10. The issue of the human rights of migrants has been on the agenda of the Human Rights Council for a number of years.<sup>20</sup> In this connection, the United Nations High Commissioner for Human Rights, during the Human Rights Council retreat on 21 October 2019, suggested that the Council should undertake a more systematic and proactive approach on this topic by, inter alia, requesting the Advisory Committee to undertake a global investigation of practices that cause or exacerbate violations and abuses against migrants.

11. The proposed study could therefore analyse, from a human rights perspective, some of the most worrying contemporary trends in order to assess the extent to which current laws, policies and practices may lead to or facilitate human rights violations. Some examples include:

(a) The criminalization of solidarity: some countries have introduced the offence of “solidarity” by means of which they seek to dissuade their nationals from helping irregular migrants by imposing fines in the event of the provision of any kind of help.<sup>21</sup> The penalization of civil society organizations deploying rescue vessels in the central Mediterranean is an example of this.<sup>22</sup>

(b) Pushback policies: measures used to force refugees and migrants back over a border, generally immediately after they have crossed it. This includes incidents of dangerous interception practices at sea.

(c) Collective expulsions: measures that ignore the prohibition of collective expulsions, since they do not take into account the individual circumstances of migrants left without any possibility of applying for asylum or putting forward their case against expulsion. The prospect of indefinite detention or detention in deplorable conditions may lead to coercive return processes that disregard any meaningful consent given.

(d) Bilateral agreements: agreements that undermine the principle of non-refoulement, allowing for the return of anyone to a country where they could be at risk of torture, cruel, inhuman and degrading treatment.<sup>23</sup>

30. Given the importance of mixed migratory movements within and around the European Mediterranean region, it is important to examine the complex issues of border control and management within the European Union, as implemented by its Member States, from a global perspective. The study would therefore address the implications of European Union policies and practices in countries of transit of migrants en route to European Union countries, and more specifically the policy of setting up “hotspots” (see para. 24 above), even though such

<sup>17</sup> See for example E/C.12/2017/1; Committee against Torture general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 18 (g); OHCHR and Global Migration Group, *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations* (2014); and A/HRC/33/67.

<sup>18</sup> See A/HRC/36/42; the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders (2018); the Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations; and A/HRC/33/67 and A/69/277.

<sup>19</sup> See OHCHR, “In Search of Dignity”, and the Recommended Principles and Guidelines on Human Rights at International Borders.

<sup>20</sup> See Human Rights Council resolutions 32/14, 35/17 and 41/7.

<sup>21</sup> Paul Hockenos, “Europe has criminalized humanitarianism”, *Foreign Policy*, 1 August 2018.

<sup>22</sup> See Caritas Europa, “The ‘criminalisation’ of solidarity towards migrants”, 20 June 2019; and Solidar, “Italy is now formally criminalizing solidarity”, 6 August 2019.

<sup>23</sup> See A/HRC/29/36, para. 39.

reception centres inside external border Member States have led to criticism due to the legal vacuum in which migrants are left.

12. Organizations present in the field consider unacceptable the generalization of situations of deprivation of freedom without a clear and precise legal basis, particularly when asylum procedures are extremely slow; migrants are often held against their will for months in hotspots while awaiting a decision from appeal committees.<sup>24</sup> The European Union Agency for Fundamental Rights recently concluded that the hotspot approach did not conform to the Charter of Fundamental Rights of the European Union. It found that shortcomings in the realization of human rights were not being addressed through concerted legislative, policy or operational responses at either the European Union or national level.<sup>25</sup>

13. The progressive normalization of the above-mentioned measures leaves aside human rights considerations from legislative and policymaking processes. As a result, laws and policies instead prioritize security and other aspects, such as efficiency and fast-track returns.<sup>26</sup> In this regard, the Special Rapporteur on the human rights of migrants has called attention to the current difficulties to develop more efficient evidence- and human rights-based policies in a context where negative perceptions of migrants are prompted by a rise in nationalist populist parties and tragic terrorist attacks around the world (A/HRC/35/25, para. 22).

### C. Methodology

14. The aim of the study is to identify policies, practices and national legislation of concern, as well as possible avenues to adequately address protection gaps. Host States must, by default, ensure that human rights are respected, protected and fulfilled; however, the capacity of receiving States to do so may be overstretched, particularly in cases of sudden or prolonged movements. With this view in mind, the question is how human rights-based approaches can be effectively promoted in emerging global migration governance policies, and the extent to which existing frameworks and mechanisms allow for a meaningful protection of migrants' rights.

15. In this regard, the study must address the question of the effective access of migrants to justice. This requires an assessment of existing national mechanism and procedures in providing meaningful redress and remedies to migrants for violations, together with an analysis of the role and decisions of relevant human rights-monitoring bodies.<sup>27</sup>

16. As a first step, it is envisaged to undertake a review of all the relevant reports published on the subject in recent years, including the work of the treaty bodies. Contact would be established with the Special Rapporteur on the human rights of migrants and OHCHR staff advising on this theme. Other relevant information would be systematically gathered from international organizations, including OHCHR, IOM, the African Union, the Organization of American States and the European Union, as well as from States, non-governmental organizations and other stakeholders.

<sup>24</sup> Non-governmental organizations in the field, international bodies (including OHCHR), the Special Rapporteur on the human rights of migrants and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment have often denounced human rights violations, overcrowding in reception centres, insecurity, insalubrity and lack of hygiene, sexual violence, repeated abuses of children's rights, failure to take into account situations of vulnerability, limited or non-existent access to information and rights, and the denial of the right of asylum.

<sup>25</sup> In 2019, the Agency concluded that the situation in the hotspots set up in Greece and Italy had little improved, since most of the 21 recommendations made in 2016 had not been implemented. See European Union Agency for Fundamental Rights, "Update of the 2016 FRA Opinion on fundamental rights in the 'hotspots' set up in Greece and Italy", 11 March 2019; and its Opinion 5/2016 of 29 November 2016.

<sup>26</sup> Allegedly, the fight against human smuggling and trafficking is used as a migration management tool for stricter migration regimes, the protection of victims often being only a secondary concern. See Caritas Europa, "The 'criminalisation' of solidarity".

<sup>27</sup> In a recent case, for example, the European Court of Human Rights concluded that remedies proposed to detained migrants in emergency reception centres in Greece were neither accessible nor sufficient. See European Database of Asylum Law, "Kaak and others v Greece: lack of an effective remedy constitutes a violation under Article 5 § 4", 3 October 2019.

17. The applicable human rights framework must be read in line with the political commitments undertaken by States under the Global Compact for Safe, Orderly and Regular Migration, the first multilateral and non-legally binding cooperative framework on migration.<sup>28</sup> In the New York Declaration for Refugees and Migrants, adopted by the General Assembly in its resolution 71/1 on 19 September 2016, States reaffirmed their commitment to protect the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times. They would consider reviewing policies that criminalized cross-border movements, and would pursue alternatives to detention while assessing the legal status of the migrant. They also recalled that any type of return must be conducted in keeping with the best interests of children and with the right to a due process of law. More generally, States agreed to consider reviewing migration policies with a view to examining their possible unintended negative consequences.

18. The study will also foster interlinkages and synergies with the objectives of the Global Compact for Safe, Orderly and Regular Migration and targets 8.8 and 10.7 of the Sustainable Development Goals. Development strategies must ensure that migrants are not further marginalized, disempowered, excluded or left behind. They cannot be seen merely as commodities or instruments for the economic development of others (A/HRC/36/42, para. 23). This requires a reflection on ways to enhance international cooperation to ensure non-discriminatory access to economic, social and cultural rights and associated services (in particular education and health). It also requires regular pathways for safe and orderly migration and the protection of the labour rights of migrants, as well as support for reintegration policies and programmes, among other things. In this connection, the Special Rapporteur on the human rights of migrants has proposed the development of a human rights- and evidence-based governance framework for international migration and mobility (the “2035 agenda for facilitating human mobility”) that deserves to be analysed (see A/HRC/35/25).<sup>29</sup>

#### **D. Way forward and challenges**

19. The Human Rights Council could give the Advisory Committee a mandate to draft a report on the above topic in the operative part of either a specific resolution on the protection of the human rights of migrants (or any other draft resolution connected with this topic), or its annual resolution renewing the mandate of the Special Rapporteur on the human rights of migrants.

20. The study will show how the integration of a human rights perspective is an essential aspect in the process towards achieving a sustainable global migration governance system. It will support States in shaping their migration policies in accordance with human rights standards, bearing in mind the difficulties they face in confronting an increasing influx of migrants. The aim is to provide a broader overview of shortcomings in protection and worrying trends, without overlooking the concerns of States hosting or having received the largest numbers of forced and irregular migrants in recent years.

#### **E. Timeline**

21. The Human Rights Council could consider giving the aforementioned mandate for a study in a resolution at its forty-eighth session. The Advisory Committee could then submit the study to the Council for consideration at its fifty-fourth session, in September 2023. In this way, the Committee could discuss the topic and work on the report during its twenty-seventh, twenty-eighth and twenty-ninth sessions.

<sup>28</sup> The compact was adopted at an intergovernmental conference in Marrakech on 11 December 2018 and adopted by the General Assembly on 19 December 2018 in its resolution 73/195. The United Nations High Commissioner for Refugees presented the global compact on refugees as part of his 2018 annual report to the General Assembly (A/73/12 (Part II)).

<sup>29</sup> The agenda would translate the 2030 Agenda for Sustainable Development into eight achievable human mobility goals, together with targets and indicators, aimed at facilitating human mobility over the next 15 years.