WRITTEN SUBMISSION TO SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS

Dr Jędrzej Niklas, *Visiting Fellow, Department of Media and Communications, LSE*
Dr Seeta Peña Gangadharan, *Assistant Professor Department of Media and Communications, LSE*

We write as researchers in the area of technology, social justice and human rights. Over the last years, we have been involved in different research and policy projects housed by academic and civil society organisations that focus on the impact of data and data-driven technologies on marginalised communities, including in sensitive policy contexts such as welfare and criminal justice. Following those different experiences, we are responding to the Special Rapporteur call for submissions related to the thematic report to the UN General Assembly on digital technology, social protection and human rights. Below we outline evidence and concerns over automated systems used by welfare agencies and the role of civil society in addressing this issue. Additionally, we enclosed two research reports that contain more detailed and in-depth description of our primary concerns.

1. Introduction

Public administration and other providers of welfare services have been using digital innovations intending to improve accelerate and standardise their procedures and organisational activities. The most recent trends include advanced tools such as sophisticated data analytics, automated decision-making systems, machine learning systems, and artificial intelligence.

In the context of welfare administration, we focus on two common purposes for the use of such automated tools. First, we refer to digital tools that practitioners use to shape social policies, such as the generation of evidence and conducting risk assessments, cost-benefit analyses, and other tailored policy formation-related tasks. The second type of tool pertains to service delivery, such as verifying eligibility, predicting welfare fraud, or tailoring public assistance according to individuals' specific needs.

Regardless of their role or level of technological sophistication, automated systems have a profoundly transformative impact on the operations of welfare agencies. Critical scholars and advocates expressed concerns over transparency, accountability and new forms of algorithmic discrimination created by those systems. More specific, some studies link the deployment of automated systems to austerity policy and privatization of public services and show evidence of harmful effects on marginalised communities. We will illustrate those problems with

1

summarising case study conducted in 2015 over a system used by Polish public employment services.[1]

2. The Polish case of profiling assistance of unemployed

In May 2014 the Polish Ministry of Labour and Social Policy (MLSP), which is responsible for shaping the policy in the area of unemployment, introduced a scoring system that allowed categorisation of unemployed people and allocation of different types of assistance (so-called profiling tool). The motivation behind the systems was to rationalise expenditures and improve the quality of public services by tailoring them to individual needs. Additionally, MLSP stressed the need for innovative solutions to minimise the harmful effects of the world financial crisis and adjust public service to standards provided in Western and better-developed countries.

The profiling tool is a scoring system aiming to divide unemployed people into three categories. The system is based on processing personal data - a total of 24 data points. Each of them is assigned with a specific volume of scores (0-8). Data are collected during the registration process (demographics like gender, age) and computer-based interview. The questions are constructed in a way that suggests that they are open-ended. However, in reality, the scope of the answers is closed. Based on the final score an algorithm decides which category should be given to the unemployed. (e.g. job placement, vocational training, apprenticeship, activation allowance). The final calculation determines the scope of assistance that a person can apply for. Each of the three profiles contains groups with different demographics and problems. Introduction of those profiles changed the nature of eligibility criteria dramatically. In the previous scheme, the law used simple, single categories like women or people 50+ to assigned people to specific programmes. The new system by relying on intensive data processing used a combination of different categories and fill into each profile. However, in contrast to previous solutions, laws did not contain a specific description of those profiles.

Form early stages, profiling tool caused much confusion among clerks and unemployed people. The system has been initially intended to be an advisory, with staff retaining the final say about which group to put someone in. After a person's profile is calculated, the system allows clerks to accept or refuse the decision made by the computer. However, some early statistics indicate that clerks were deciding to override the result in just 0,01% of cases. Mostly, staff lacked time to consider decisions in detail, but they also feared repercussions from supervisors if a decision was later called into question. These conflicting aims and expectations of the profiling mechanism create a situation where the staff is using the system in very different ways depending on the local organisational culture.

In many cases, the computer is the ultimate decision-maker. In others, it is just part of the broader diagnosis process. Moreover, in some cases, decisions might be adjusted to meet the expectations of the unemployed person. It is also worth to stress that job centres staff are also unhappy with the profiling system. According to official evaluation by the government, 44% of local job centres confirm that profiling

---

[1] Jędrzej Niklas, Karolina Sztandar, and Katarzyna Szymielewicz, 'Profiling the Unemployed in Poland: Social and Political Implications of Algorithmic Decision Making' (Warszawa: Panoptykon Foundation, 2015), https://panoptykon.org/sites/default/files/leadimage-biblioteka/panoptykon_profiling_report_final.pdf.

is useless in their day-to-day work. Furthermore, 80% conclude that the system should be changed.

The process of profiling plays a crucial role in shaping the situation of the unemployed. However, the logic behind the profiling and the algorithm itself are considered confidential. As a result, the unemployed person does not know how certain individual features or life circumstances affect her chance of being assigned to a given category. The rules used by the computer system and its operation is described only in the internal guidelines of the MLSP.

Additionally, very often assigned profiles are treated as blockades for receiving specific types of assistance. For example, a significant number of local job centres do not provide any assistance to the unemployed categorised in profile III (due to organisational problems and lack of resources). Accordingly, the very people who need job centre services the most are deprived of it. This situation may affect persons belonging to vulnerable groups like people with disabilities, women (especially single mothers) and people from rural areas.

In our research, we identified that profiling tool might leads to violation of several fundamental rights and freedoms, like the principle of non-discrimination, the right to social security and the right to privacy and data protection. Because of those different risk institutions (like Data Protection Office and Human Rights Commissioner) and civil society organisations articulated their reservations and criticism toward the profiling mechanism during the legislative process and thereafter. For example, the Panoptykon Foundation, a leading digital rights organisation in Poland, used successfully freedom of information provisions to request some essential details of the profiling mechanism. Additionally, the Human Rights Commissioner decided to refer the profiling case to the Constitutional Court with the argument that the scope of data used by the profiling tool should have been set out in the legal act adopted by parliament, not decided by the government. In 2018, the Court ruled that this was a breach of the Polish Constitution.[2] Thereafter profiling tool will be abolished by December 2019.

3. Civil society: A lack of preparedness for dealing with the impacts of automated technologies

As it was illustrated above, civil society organisations (CSO) can play a crucial role in addressing challenges that automated systems create for social justice and human rights. In interviews with nearly 30 representatives of antipoverty, human rights, consumer rights, digital rights, and other groups, we discovered that few organisations had experience of working on the issue of algorithmic systems.[3] Many civil society organisations feel disquieted by and ill-equipped to intervene on behalf of affected populations when automated systems lead to injustices. A handful of civil society organisations highlighted the potential harms for specific vulnerable populations, while others focused on the broader problem of transparency in automated systems. Some interviewees pointed to problems like the possibility of

---

[2] Trybunał Konstytucyjny, K 53/16, 6 June 2018, http://trybunal.gov.pl/postepowanie-i-orzeczenia/komunikaty-prasowe/komunikaty-po/art/10168-zarzadzanie-pomoca-kierowana-do-osob-bezrobotnych.

[3] Seeta Peña Gangadharan and Jędrzej Niklas, 'Between Antidiscrimination and Data: Understanding Human Rights Discourse on Automated Discrimination in Europe' (London: London School of Economics and Political Science, 2018), http://eprints.lse.ac.uk/id/eprint/88053.

errors creeping in, and the dehumanisation of the decision-making process. Overall many CSO stressed that data-driven technologies are too advanced, opaque and complex to follow. Activists complain that when working on sociotechnical issues, they face pressures to keep up with new skills and expertise. They struggle to realise the role of technology in a particular problem, understand how the technology works and detect actual or potential consequences.

Those civil society organisations that engaged in advocacy related to data-driven technologies (also deployed in welfare) use a variety of strategies and tactics in confronting injustices. Depending on the context, groups rely on different rubrics or legal frameworks to accomplish their aims: antidiscrimination, immigration, and data protection frameworks to advance their work. This work is, however, affected by the complexities of specific data processes and technologies. That is why many Civil society organisations stress the need for additional sociotechnical expertise, by training, hiring new staff or external collaboration. Advocates also showed interest in the dialogue between different communities of practice, such as digital rights, antidiscrimination, and antipoverty advocates. They also identified the need to collaborate with other sectors, including working with investigative journalists, researchers and companies developing specific systems.

Additionally, when sociotechnical impacts arose as a topic of discussion, we also found two quite distinct kinds of groups: organisations that position themselves as experts in data, privacy and technical matters, and others that do not (with different experiences and expertise on technical related stuff). This division relates to different values, strategies and tactics, networks, language and can contribute to the formation of silo-structures in the field and to friction between potential and actual collaborators that have a real impact on policies.

4. Reflections and recommendations

Findings from our research projects allow us to outline the following recommendations for the broader debate about automated systems used by public welfare agencies:

- **Democratic control over automated systems.** The decision to use automated systems by public agencies should be subject to democratic control mechanisms that engage national parliaments, human rights institutions, courts and civil society organisations. Policymakers should pay attention to how system developers are translating legal provision into the code to avoid any inaccuracies and errors. Public agencies that want to introduce automated systems should present detailed, evidence-based impact assessment, including human rights-related risks and expected social benefits, as well as justification of its adequacy and proportionality as a tool of achieving particular policy goals. Democratic control over technology also requires intensive cooperation and knowledge exchange between different institutions that have different expertise (e.g. Data Protection Authority in the technical aspects of data processing, and the Ombudsman in the context of discrimination and social rights). We also have to consider whether algorithms used in the process of decision-making by public administration should not be subjected to prior approval of independent bodies capable of evaluating human rights-related risks.

- **A unique role for diverse civil society organisations.** Civil society organisations play a special role in exposing harmful technologies and formulating relevant policies. However, organisations often work in a siloed environment, making it difficult for them to identify problems and challenges that go beyond their own missions and interest. A regular space for communication and information exchange could inspire groups to benefit from the diversity of the field fully and better align themselves, even in the absence of shared value sets and priorities. To fully understand different human rights implications of automated systems organisations need a unique set of skills and expertise. Those organisations wishing to work on such issues would benefit from new staff, training, coalitions, and new methods of work to link technically sophisticated automation to processes of social marginalisation, exclusion or exploitation.

- **Need for the conceptualisation of social, economic and cultural rights in the discussion on automated systems.** The framework for socio-economic rights is currently missing in public and policy discourse on automated systems that demand some greater conceptualisation by those involved in the discussion. This framework involves both procedural elements (participation in creating policies, transparency and accountability) and substantive considerations (access to a certain level of social services). By using this lens, we could ask questions such as: how effective are automated systems in meeting people's basic human needs? How do automated systems affect the distribution of public services? In what ways are these systems discriminatory? How fair are procedures for applying to benefits? Was the decision on the use of AI in specific organisational context transparent and done in a participatory way? Moreover, to what extent automated systems influence the situation of marginalised groups?

- **Link data protection and socio-economic rights.** There is also a great need to find connections between socio-economic rights and data protection frameworks. Those two legal frames are very distinctive in terms of goals, concepts and methodologies. However, it might be useful to understand how those two areas might serve common purposes. GDPR set procedural rules for collection, analysis and sharing data – this will without any doubts apply to systems that, i.e. verify the eligibility of welfare benefits. New obligatory data protection impact assessment may bring more depth in assessing fundamental rights' consequences of data driven-technologies. There are also some detailed requirements on administration and access to benefits. For example, eligibility criteria for welfare benefits should be transparent and clear for individuals that apply for them. Socio-economic rights also tend to prefer universal social security schemes rather than targeted programmes. This requirement may be in contradiction to use of some data-driven systems, especially when they allow sophisticated individualisation of specific forms of assistance and benefits.

- **Need of empirical insights.** A range of academic and civil society organisations researchers now investigate automated technologies. However, most of them focus on fairness, accountability and transparency, with a few notable exceptions that involve effects on vulnerable populations. There is still a great need for qualitative and quantitative evidence of the nature of automated injustices and its specific impacts. The Polish case also proves that

there is a great need to examine street-level and everyday practices of organisations that use such systems.

- **Reframing discussion about technologies.** It is essential to look at sociotechnical problems from the perspective of social justice and inequalities and address the needs and struggles of marginalised communities. The debate around automated systems should start with the consequences and not processes, people instead of cables and algorithms. In this perspective, the use and design of automated systems is a result of human choices about policies, priorities and cultural norms. Here human rights can play a unique role to connect social status, discrimination and inequity and link them with the specific use of technology and its outcomes. Thanks to this approach we can position automated systems as a political and social justice issue.

- **Not all decisions should be automated.** In the pursuit of increasing the efficiency of public administration through automatization, one should ask which processes can be automated and which should not. We believe that the principle of reasonableness (and its conceptualisation by UN ESCR Committee) can constitute a good example of a legitimate map to address those doubts. This process involved consideration on the issues on, e.g. non-arbitrariness, non-discrimination, resources allocation and protection from further marginalisation of vulnerable groups.

17 May 2019

This submission represents the views of the authors, and not the position of the London School of Economics and Political Science