Federative Republic of Brazil, September 12th, 2022.

United Nations High Commissioner for Human Rights

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

**Subject: Artificial Intelligence and migration - Input on the basis of a draft outline for the general comment No. 6**

1. The Ethics, Law, Artificial Intelligence, and Human Rights study group (EDHIA), of the National School of the Federal Public Defender's Office of the Federative Republic of Brazil, in response to the call to provide inputs to this initiative on the basis of a **draft outline for general comment No. 6**, hereby presents a contribution on the topic of artificial intelligence and migration.
2. This contribution embraces the **draft outline for general comment No. 6´s** specifically as regards artificial intelligence and migration. First, it offers an overview of the EDHIA, Ethics, Law, Artificial Intelligence, and Human Rights study group. Next, it addresses artificial intelligence and migration.

1. **Ethics, Law, Artificial Intelligence, and Human Rights study group (EDHIA).**

Ethics, Law, Artificial Intelligence, and Human Rights study group (EDHIA) is established under the auspices of the National School of the Federal Public Defender's Office of the Federative Republic of Brazil. The study group started its discussions by debating artificial intelligence and migration and, through time, expanded the range to ethics, law, and artificial intelligence. The research group has been discussing AI and its ethical and legal implications for the public interest and focused on the Brazilian reality. The group recognizes the benefits of AI, but at the same time, is concerned that AI could be deployed with xenophobic, racist, sexist, and discriminatory results, among others. As the group belongs to the National School of the Federal Public Defender's Office of the Federative Republic of Brazil, which is, in Brazil, the institution with the mission to provide juridical assistance free of charge to the most needed ones in Brazil, it is concerned about AI's impact on the vulnerable people in Brazil, which may be the most affected by these new technologies. The Federal Public Defender's Office also has human rights education as its mission, and one of the group's intended future outcomes is to provide human rights education in this regard. The group sent a contribution to the Brazilian National Congress, which is discussing the regulation of AI, which, among other issues, makes considerations on migration and AI. The group also published a book entitled Contributions of Artificial Intelligence and Human Rights to a regulatory framework in Brazil which also deals with AI in the migratory context.

**B. Artificial intelligence and migration: a topic that must be embraced by Commentary 6**

1. **Concrete examples of uses of AI in migration.**

To provide context of the use of AI in the migratory context, we will transcribe a passage of a text written by two of EDHIA´s members:

“The use of AI in migration is an increasingly frequent and all-encompassing reality. In the United States, [the Extreme Vetting Initiative](https://www.brennancenter.org/our-work/research-reports/ice-extreme-vetting-initiative-resource-page) was a project that monitored the social media activities of visa applicants and visa holders to assess whether they would contribute positively to society. The U.S. [discontinued](https://www.hrw.org/news/2018/05/18/us-immigration-officials-pull-plug-high-tech-extreme-vetting) the machine learning aspect of this project after criticism that the program could present unreliable information and violate the right to free speech online. In [New Zealand](https://www.nzherald.co.nz/nz/immigration-nzs-data-profiling-illegal-critics-say/P5QDBGVDGFSI6I3NV4UHPOSBRA/?c_id=1&objectid=12026585), algorithms detect probable unwanted people based on age, gender, and ethnicity in the migratory context. In the European Union, the [lie detector](https://edition.cnn.com/travel/article/ai-lie-detector-eu-airports-scli-intl/index.html) iBorderCtrl, which operates by utilizing AI technologies, has already been used to screen passengers at airports. Greece is testing the [Centaur system](https://algorithmwatch.org/en/greek-camps-surveillance/) for monitoring refugee camps, which, based on algorithms, predicts and reports potential security threats. InMalaysia, verification of compliance with entry restriction measures was done by drones. Monitoring technologies used at the U.S.-Mexico border have been associated with [an increase in migrant deaths](https://www.tandfonline.com/doi/abs/10.1080/08865655.2019.1570861?journalCode=rjbs20), as migrants try to evade surveillance and end up traveling more dangerous routes. In 2020, the European Union's Horizon 2020 research and innovation program funded the [Roborder](https://roborder.eu/the-project/aims-objectives/) project. The project is not functional yet, but it aims to develop a completely autonomous border monitoring system that has the ability to identify criminal activities at the border.” ( Lutiana Barbosa and Gustavo Macedo, Ethics & Artificial Intelligence: Migration

Model International Mobility Convention <https://www.carnegiecouncil.org/media/article/ethics-artificial-intelligence-migration>)

1. **Risks of AI in migration.**

The use of AI in the migratory context might aid more expedited and data-based processes. However, it presents risks to freedom of movement, freedom of association, and freedom of religion, privacy, among others. It might result in discrimination and xenophobia.

“Even if well-intentioned, the use of AI can become an instrument of surveillance and oppression. Its use may lead to discriminatory practices and violate the rights to privacy, mobility, and association. Since technology often [**replicates databases’ biases**](https://sitn.hms.harvard.edu/flash/2020/racial-discrimination-in-face-recognition-technology/) that reflect unfair social practices such as racism and xenophobia, these and other forms of discrimination are likely to be reproduced by AI systems. Thus, people could be categorized in a [**Lombrosian**](https://science.thewire.in/science/facial-recognition-algorithm-appearance/) perspective as having a delinquent personality.”(<https://www.carnegiecouncil.org/media/article/ethics-artificial-intelligence-migration>)

EDHIA claims that the use of AI in the migratory context must be in accordance and limited by the principle of human dignity.

1. **The need for a section in Commentary 6 on migration and AI.**

Draft Commentary 6 does not refer to the relation between migration and technology, especially regarding the use of artificial intelligence (AI) and the risks AI technology might pose to migrants, and the safeguards against that. The EDHIA group **claims for a section on Commentary 6 on Migration and AI**. The section shall expose risks the use of technology, especially AI might pose to migration and provide for safeguards against them. The section must be in line with [Unesco´s Recommendation on the Ethics of Artificial Intelligence](https://en.unesco.org/artificial-intelligence/ethics), and [UNICEF Policy guidance on AI for children](https://www.unicef.org/globalinsight/media/1171/file/UNICEF-Global-Insight-policy-guidance-AI-children-draft-1.0-2020.pdf).

1. **Suggestions of 5 pillars for Commentary 6 section on AI and migration**

EDHIA claims for five pillars of AI´s use in a migratory context

1. The right not to be subjected solely to AI decision-making;
2. The right to know when decisions are taken by AI and individual access to motives;
3. Diversity of gender, age, class, ethnicity, cultural systems, national origin and language groups of teams that develop AI for migration (In line with paragraph 28 of [Unesco´s Recommendation on the Ethics of Artificial Intelligence](https://en.unesco.org/artificial-intelligence/ethics));
4. Mechanisms for evaluating and reviewing algorithms before and during their use, as well as social feedback;
5. Accountability and right to reparation when migrants are negatively impacted by AI decision–making.
6. In line with [Unesco´s Recommendation on the Ethics of Artificial Intelligence](https://en.unesco.org/artificial-intelligence/ethics), paragraph 62, States acquiring Al systems for human rights-sensitive use cases, such as migratory context, “should provide mechanisms to monitor the social and economic impact of such systems by appropriate oversight authorities, including independent data protection authorities, sectoral oversight and public bodies responsible for oversight”, such as Public Defender Offices, Ombudsman or Prosecutor Offices.
7. **The Existing Normative Framework and initial specific suggestions for Commentary 6**

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families does not refer to technology nor to AI. The Global Compact does not mention AI and refers to technology on objectives 4, 8, 11, 12, 18, and 20. We will transcribe each of the paragraphs of the Global Compact and then make initial suggestions as to how Commentary 6 shall address each of them.

1.1 Objective 4: Ensure that all migrants have proof of legal identity and adequate documentation

(a) Improve civil registry systems, with a particular focus on reaching unregistered persons and our nationals residing in other countries, including by providing relevant identity and civil registry documents, strengthening capacities, and investing in information and communications technology solutions, while upholding the right to privacy and protecting personal data;

**We suggest that commentary 6 states that objective 4 (a) shall be interpreted as ensuring that all migrants are fairly treated by transparent systems of AI that come to the use by each State.**

(c) Ensure adequate, timely, reliable and accessible consular documentation to our nationals residing in other countries, including identity and travel documents, making use of information and communications technology, as well as community outreach, particularly in remote areas;

**We suggest that commentary 6 states that objective 4 (c) shall be interpreted as ensuring that all migrants have the right to appeal to a human centered-decision process in case their request for visa is denied by an AI system.**

Objective 11: Manage borders in an integrated, secure and coordinated manner

(b) Establish appropriate structures and mechanisms for effective integrated border management by ensuring comprehensive and efficient border crossing procedures, including through pre-screening of arriving persons, pre-reporting by carriers of passengers, and use of information and communications technology, while upholding the principle of non-discrimination, respecting the right to privacy and protecting personal data;

**We suggest that commentary 6 states that objective 11 (b) shall be interpreted as ensuring that no biased face-recognition and lie detector system is applied to select and label migrants**

Objective 12: Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral

(a) Increase transparency and accessibility of migration procedures by communicating the requirements for entry, admission, stay, work, study or other activities, and introducing technology to simplify application procedures, in order to avoid unnecessary delays and expenses for States and migrants;

Objective 18: Invest in skills development and facilitate mutual recognition of skills, qualifications and competences

(d) Use technology and digitalization to evaluate and mutually recognize skills more comprehensively on the basis of formal credentials as well as non-formally acquired competences and professional experience at all skills levels;

Objective 20: Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants

(e) Develop innovative technological solutions for remittance transfer, such as mobile payments, digital tools or e-banking, to reduce costs, improve speed, enhance security, increase transfer through regular channels and open up gender responsive distribution channels to underserved populations, including persons in rural areas, persons with low levels of literacy and persons with disabilities;

**We suggest that commentary 6 states that objective 11 (b) shall be interpreted as ensuring that any AI system used in the process is accessible to all migrants in terms of language and procedures.**

**Ana Luisa Zago de Moraes**

Federal Public Defender

Member of EDHIA

**Gustavo Macedo**

Professor

Member of EDHIA

**Lutiana Valadares Fernandes Barbosa**

Federal Public Defender

Member of EDHIA

**Viviane Ceolin Dallasta Del Grossi**

Federal Public Defender

Member of EDHIA