



## EXECUTIVE SUMMARY: RACE, TECH AND BORDERS

XENOPHOBIC DISCRIMINATION AND THE USE OF DIGITAL TECHNOLOGIES IN BORDER AND IMMIGRATION ENFORCEMENT  
SPECIAL RAPPORTEUR E. TENDAYI ACHIUME'S REPORT TO THE HUMAN RIGHTS COUNCIL, SEPTEMBER 2021 (A/HRC/48/76)

### WHAT IS THIS REPORT ABOUT?

Building on the Special Rapporteur's report on Racial Discrimination and Emerging Digital Technologies (EDTs) (A/HRC/44/57), this report focuses specifically on how EDTs are being used by governments and non-State actors in the border and immigration context. This report analyzes "the xenophobic and racially discriminatory impacts of [EDTs] on migrants, stateless persons, refugees and other non-citizens, as well as on nomadic and other peoples for whom migratory traditions are central" (A/HRC/48/76, para. 1). The Special Rapporteur notes that "race, ethnicity, national origin and citizenship status shape access to and enjoyment of human rights in all of the fields in which these technologies are now pervasive" (para. 6). Under international human rights law, "States have obligations to prevent, combat and remediate this racial discrimination, and private actors, such as corporations, have related responsibilities to do the same" (para. 6).

### DEFINING RACIAL DISCRIMINATION:

International human rights law prohibits discrimination by States, including on the basis of race, and provides that all persons are equal under the law and entitled to equal protection of the law without discrimination (UDHR, Art. 2; ICCPR, Art. 2(1) and 26; ICESCR, Art. 2(2)). Racial discrimination means "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (ICERD, Art. 1(1)).

### DEFINING EDTS:

**EDTs** are new and fast-growing technologies, which often incorporate big data and artificial intelligence (AI). **Big data** is a form of technology that collects, stores, analyzes, and applies data, which usually comes from the Internet. **AI** is a form of classification technology that can "differentiate, rank, and categorize" this data (A/HRC/44/57, para. 7). AI systems behave intelligently, allowing them to think, predict, and act with some degree of autonomy. EDTs are increasingly being used by States and private corporations in ways that significantly impact people's lives. For example, EDTs are being used to automate how people apply to jobs or even to identify possible suspects in criminal investigations.

### THE INCREASING USE OF DIGITAL BORDERS

The term **digital borders** refers to "borders whose infrastructure and processes increasingly rely on machine learning, automatic algorithmic decision-making systems, predictive analytics and related digital technologies" (A/HRC/48/76, para. 2). States are using these technologies in "identification documents and systems, facial recognition systems, ground sensors, aerial video surveillance drones, biometric databases and even vis and asylum decision-making processes and many other facets of border and immigration enforcement" (para. 2). One example of digital border technology is **biometrics**, which refers to a person's biological or behavioral information, like fingerprint data or retinal scans. Biometrics are increasingly being used to verify and track the movement of migrants, sometimes with humanitarian intentions.

### UNDERSTANDING WHO IS MIGRATING

**Migrant**, as its used in this factsheet, can be understood as an "umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from [their] place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons" (IOM definition). Migrants may arrive to a country in a **regular** manner, which means they are formally admitted to the country with valid documentation. A migrant may arrive or fall into an **irregular** situation when they arrive or stay in a country without valid documentation, including when they overstay the authorized period in the country.

Under international law, a **refugee** refers to a person who has been forced to flee their country because of persecution, war or violence. A refugee has "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" (Refugee Convention, Art. 1). Increasingly, the Convention definition of refugee is being critiqued for excluding migrants who are seeking safety and security for reasons not foreseen in the Refugee Convention, including the human and environmental impacts of climate change and a lack of economic opportunity resulting from global inequality.

A stateless person refers to a person who is "not considered as a national by any State under the operation of its law," which means that they are not a citizen of any country (Convention Relating to the Status of Stateless Persons, Art. 1(1)).

### DIGITAL BORDER AND IMMIGRATION ENFORCEMENT ARE GIVING PRIVATE ACTORS AN OUTSIZED ROLE IN MIGRATION MANAGEMENT

The report outlines the rise of the **border industrial complex**, which describes the convergence of the militarization of the border, criminalization of migration, and profit motives of private companies. States are increasingly turning to private companies to manage migration with the use of technologies, which results in governments "[abdicate] responsibility for violations that may result from the use of these technologies" (A/HRC/48/76, para 18).

One facet of the border industrial complex is the use of **autonomous technologies** that collect data and make decisions using AI, sensors, and analytical capabilities, which are "increasingly [being] used in monitoring and securing border spaces" (para. 14). In many cases, States are using **military or quasi-military technologies** to intercept and block migrants from crossing borders. Increasingly, governments are situating migrants as criminals and threats to national security, rather than people seeking safety and security. This perceived threat provides justification for "increasingly hard-line and intrusive technologies such as drones and various border enforcement mechanisms like remote sensors and integrated fixed-towers with infra-red cameras (so-called autonomous surveillance towers)" (para. 15). For example, the European Border and Coast Guard Agency (Frontex) uses military-grade drones to monitor and intercept vessels carrying migrants, often from Africa or the Middle East, on the Mediterranean and Aegean Seas. There is evidence that Frontex has been involved in pushbacks, which means the forcible return of migrants across a border without considering their individual circumstances or allowing them to claim asylum or appeal, in violation of international law.



## THE USE OF EDTS CAN LEAD TO RACIALLY DISCRIMINATORY IMPACTS ON MIGRANTS

In some cases, EDTs facilitate intentional discrimination:

- **Social media** platforms are being used to spread xenophobic or racist messages, in some cases targeting migrant populations ([A/HRC/48/76](#), paras. 22-23).
- Immigration officials in some States collect migrants' **biometric data** and use it to prevent certain racial or ethnic migrant groups from crossing borders. Some States are even implementing **mandatory biometric data collection**, and using this data in discriminatory ways such as the targeted detention and deportation of certain racial or ethnic migrant groups ([paras. 26-27](#)).

In other cases, the racially discriminatory impacts of EDTs are indirect:

- Even when there is no discriminatory intent, **biometric technologies** can lead to differential outcomes on the basis of race, ethnicity, or gender. For example, evidence shows that algorithms misrecognize Black women 20 times more often than white men. When this technology is used to serve a "gate-keeping function" at borders, this can lead to the discriminatory exclusion of racially marginalized or gendered migrants ([para. 11](#)). Similarly, as States expand the use of **digital ID systems**, which rely on biometric data, this can exclude stateless persons (who are predominantly racial or ethnic minorities) from accessing basic services ([para. 27](#)).
- When national immigration officials use **automatic registration systems** to increase efficiency in the review of immigration claims, this can produce discriminatory outcomes. For example, German immigration officials "uses a software to analyse the applicant's spoken language sample to determine the plausibility of the stated national origin" ([para. 28](#)). This technology is less accurate when used to evaluate Arabic dialects, which means that those migrants might be disproportionately excluded from legal and other protections on faulty grounds.
- Increasingly, national immigration officials are using data extracted from migrants' electronic devices and their social media accounts in order to verify their immigration claims. In some cases, when data privacy and security protections exist for nationals, States are failing to apply those same protections to migrants ([paras. 29-34](#)).

### THE USE OF EDTS IN BORDER AND IMMIGRATION ENFORCEMENT IS PRODUCING RACIALLY DISCRIMINATORY STRUCTURES

The Special Rapporteur underscores that EDTs are "capable of creating and sustaining racial and ethnic exclusion in systemic or structural terms" including:

- The rise of **surveillance humanitarianism**, which refers to how humanitarian organizations are increasingly using technologies like biometric data collection and surveillance tools. For example, in its work with migrants fleeing conflict or seeking humanitarian assistance, the United Nations has collected biometric data of upwards of 8 million people as part of its service provision processes. In migration contexts, it may be difficult to obtain informed consent, and there are often minimal data protections or accountability mechanisms, so the collection of biometrics raises serious concerns about migrants' privacy and security and the potential for data leaks that lead to more human rights violations ([paras. 11, 36-41](#)).
- There are concerns around **technological experimentation**, where State or non-State actors use new or untested technologies on migrants, often without their consent or any recourse. For example, some States are using automatic or algorithmic decision-making to determine outcomes in immigration claims, despite concerns that this violates principles at the core of administrative decision-making. These practices are racially discriminatory as their use targets migrants, who are often racial or ethnic minorities ([paras. 42-48](#)).
- Many States are adopting measures of **border externalization**, or "the extraterritorialization of national and regional borders to other geographic regions in order to prevent migrant and refugee arrivals," including by using EDTs like surveillance drones or unpiloted mobile robots to patrol borders and prevent migrants from crossing them ([paras. 49-53](#)).
- States are relying on **immigration surveillance**. This includes "smart border" technologies, which describes the integration of forms of technology into national borders to autonomously surveil unauthorized crossings. These technologies do not stop migrants, but instead force them to make more dangerous border crossings to avoid detection. ([paras. 54-60](#)).

### THE SPECIAL RAPPORTEUR'S RECOMMENDATIONS WITH RESPECT TO DIGITAL BORDER AND IMMIGRATION ENFORCEMENT

- States must address the "racist, xenophobic, anti-migrant, anti-stateless and anti-refugee political approaches to border governance" and comply with their international human rights obligations to prevent racial discrimination. (See the Special Rapporteur's report on Racial Discrimination and Emerging Digital Technologies ([A/HRC/44/57](#)) for additional analysis.)
- States must adopt legal and policy measures on the use of digital technologies in border and immigration enforcement and migration administration, which uphold human rights principles including non-discrimination and racial equality.
- States, at domestic and international levels, must ensure that there are "binding legal obligations to prevent, combat and remedy racial and xenophobic discrimination in the design and use of digital border technologies" by State and non-State actors. These measures include: requiring human rights impact assessments and human rights due diligence; ensuring transparency, accountability, and independent oversight; and requiring by law that private companies prevent, combat, and remedy discrimination caused by the use of digital border technologies.
- The UNHCR and IOM should "adopt and implement mechanisms for sustained and meaningful participation and decision-making by migrants, refugees and stateless persons in the adoption, use and review of digital border technologies."
- The IOM should ensure that non-discrimination, racial equality, and other human rights principles are mainstreamed and strengthened within its own use and oversight of how its operations are using digital border technologies.
- The UNHCR should build on its existing guidance frameworks relating to digital border technologies, including by making them more clear and ensuring more robust implementation.

(See full list of recommendations: [A/HRC/48/76](#), paras. 61-69)