



# EXECUTIVE SUMMARY: RACIAL DISCRIMINATION AND EMERGING DIGITAL TECHNOLOGIES

## SPECIAL RAPPORTEUR E. TENDAYI ACHIUME'S REPORT TO THE HUMAN RIGHTS COUNCIL, JUNE 2020 ([A/HRC/44/57](#))

### DEFINING RACIAL DISCRIMINATION

#### WHAT IS THIS REPORT ABOUT?

This report analyzes different forms of racial discrimination in the design and use of emerging digital technologies (EDTs) and outlines States' obligations and the responsibility of private corporations to address this discrimination. The Special Rapporteur finds that EDTs "exacerbate and compound existing inequities, many of which exist along racial, ethnic and national origin grounds" ([A/HRC/44/57](#), para. 4). She also recognizes that EDTs "pose a mammoth regulatory and governance challenge from a human rights perspective ([para. 44](#)).

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 in job recruitment processes or even to identify possible suspects in criminal investigations.

#### CONTRARY TO WIDESPREAD PUBLIC PERCEPTION, EDTs ARE NOT NEUTRAL AND OBJECTIVE

Humans design and use EDTs, and generate the data they rely on, so this technology is "fundamentally shaped by the same structures of inequality that operate in society" ([A/HRC/44/57](#), para. 12). AI relies on machine-learning algorithms, which are precise rule-based procedures set up by humans that computers use to process data and make decisions. These machine-learning systems rely on human-generated big data sets, which reflect the same social patterns, stereotypes, and biases that exist in society. In particular, when AI uses historical data sets in order to predict future events and outcomes, this further entrenches patterns of historical discrimination.

#### THERE IS A "DIVERSITY CRISIS" IN BIG TECH

Big Tech is a term that describes the main information technology companies in the United States such as Alphabet (Google), Amazon, Apple, Meta (Facebook) and Microsoft. These companies disproportionately employ people who are "white, affluent, technically oriented, and male," and some of these companies have histories of discriminatory conduct, including sexual harassment ([para. 17](#)). These patterns of exclusion of women and racially marginalized people are often reproduced in the design and use of AI. Further, Big Tech companies often serve as key intermediaries between governments and their citizens when it comes to EDTs. These companies, and the "specific cultural, economic and political values of Silicon Valley" greatly influence the design and use of EDTs around the world ([para. 15](#)).

#### NOT EVERYONE CAN ACCESS, USE, OR ENJOY EDTS EQUALLY

Internet access in the Global South is less than half that in the Global North. The social and economic impact of this digital divide has been exacerbated by the COVID-19 pandemic, with people in the Global South having less access to public health information or other resources online.

Women, racial minorities, and other marginalized groups often have less access to or enjoyment of the benefits of EDTs than dominant groups. For example, in the United States, Black and Latino Americans have disproportionately less access to Internet at home. Yet, they can be more susceptible to the harmful impacts of EDTs, for example due to racial profiling in the context of surveillance.

#### THE DESIGN AND USE OF EDTS CAN CAUSE STRUCTURAL RACIAL DISCRIMINATION

The report describes how EDTs not only impede access to and enjoyment of discrete human rights, but also are also "capable of creating and sustaining racial and ethnic exclusion in systemic or structural terms" ([para. 38](#)). In particular, the use of biometric data for IDs in some States has resulted in the exclusion of racial and ethnic minority groups, including those with precarious immigration status, from accessing public services. Biometric data and facial recognition software has also been used by some States for surveillance of persecuted racial and ethnic minority groups, facilitating the restriction of their movement. These forms of societal exclusion lead to the further marginalization of groups that are already living at the margins of society.

#### EDTs CAN BE USED AS TOOLS OF EXPLICIT INTOLERANCE AND RACISM

There are many cases of social media platforms being used to spread racist speech and incite discrimination and violence. This is particularly prevalent among neo-Nazi and other white supremacist groups, which rely on social media platforms to "recruit, raise funds and coordinate" activities ([para. 24](#)). Similarly, social media bots or automated accounts are used to manipulate political discourse and misrepresent public opinion, including to disseminate and promote racist speech and disinformation online. For example, leading up to the 2018 elections in the United States, "28 per cent of Twitter accounts posting antisemitic tweets were bots, which posted 42 per cent of all antisemitic tweets" ([para. 25](#)).

## THE DESIGN AND USE OF EDTS DIRECTLY OR INDIRECTLY DISCRIMINATES IN ACCESS TO A RANGE OF HUMAN RIGHTS

The increasing use of EDTs by States and private corporations in different social settings can lead to discrimination on the basis of race, including as it intersects with gender and other grounds of discrimination. Here are some examples:

- In the context of the right to work, some countries use digital employment systems and algorithms to sort and filter prospective employees by various categories—“some of which serve as proxies for race”—which can have directly discriminatory effects ([para. 27](#)). In other cases, when certain work is automated by EDTs, this can indirectly discriminate against the marginalized people who would otherwise hold those jobs.
- In the context of access to housing, targeted advertising on Facebook and other platforms allows landlords to share posts to a “narrow audience” that excludes users with specific “ethnic affinities,” which leads to the exclusion of some renters on the basis of their race ([para. 32](#)). The report describes these practices as “a form of digital redlining” ([para. 32](#)).
- EDTs can impact the right to health. In the United States, algorithms have been used to predict patients’ future costs, as a proxy for their healthcare needs. Although the algorithms are deemed “color-blind”—because they do not explicitly consider the patient’s race—they have resulted in white Americans receiving needed medical intervention at a higher rate than Black Americans ([paras. 30-31](#)).
- EDTs are used for surveillance and predictive policing in the criminal justice context. Given that these AI systems often rely on data sets from criminal records or crime statistics, which reflect the racial and ethnic biases within society, the outputs of these systems disproportionately impact racially marginalized people and other minority groups ([paras. 35-37](#)).
- In some judicial bodies in Latin America, AI systems are being used for decision-making, impacting the right to a fair trial. Judges and other judicial actors are unable to assess “bias in design, input, or output” in these systems, and there is a high risk that they “reinforce or exacerbate existing racial and ethnic disparities in the justice systems” where they are used ([para. 34](#)).

## INTERNATIONAL HUMAN RIGHTS LAWS CREATE STATE OBLIGATIONS IN THE DESIGN AND USE OF EDTS

International human rights law obliges States to “address not only explicit racism and intolerance in the use and design of [EDTs], but also, and just as seriously, indirect and structural forms of racial discrimination that result from the design and use of such technologies” ([A/HRC/44/57](#), para. 48).

It is insufficient for States to take a “color-blind” approach and merely avoid intentional or explicit racial discrimination. Instead, States must account for how—due to structural racism and inequality—marginalized groups can be negatively impacted by technologies that appear, on their face, to be neutral. States must also employ an intersectional analysis, which accounts for how race and ethnicity intersect with other forms of discrimination (such as gender or disability status) to further disempower people and groups.

The [UN Guiding Principles on Business and Human Rights](#) affirm States’ existing obligations under international human rights law to protect people from human rights abuses committed by private actors, including private corporations ([UNGPs](#), Arts. 1-10). States must also ensure that people who suffer human rights abuses have access to effective remedies which, as outlined in the [UN Basic Principles and Guidelines on the Right to a Remedy and Reparation](#), include “access to justice, protection against possible violations, and guarantees of cessation and non-recurrence of violations, while also combating impunity” (para. 65; [UNGPs](#), Arts. 25-31).

## CORPORATIONS ALSO HAVE A RESPONSIBILITY TO RESPECT HUMAN RIGHTS IN THE DESIGN AND USE OF EDTS

In addition to affirming States’ obligations under international human rights law, the [UN Guiding Principles on Business and Human Rights](#) provide that businesses have a responsibility to respect human rights. This means that they must avoid infringing on human rights through their activities, address any adverse human rights impacts that do occur as a result, and implement human rights policies, including requiring human rights due diligence and providing for remedies ([UNGPs](#), Arts. 11-24).

## THE SPECIAL RAPPORTEUR’S RECOMMENDATIONS WITH RESPECT TO THE DESIGN AND USE OF EDTS

- States and public authorities must cease racial discrimination and must adopt immediate and effective measures to combat the prejudices that lead to racial discrimination.
- States must collect and keep racially disaggregated statistical data on EDTs, in accordance with human rights principles.
- States must work with private corporations to address the diversity crisis in Big Tech, shifting power to racial and ethnic minorities and women in all aspects of decision-making about the design and use of EDTs.
- States must require public authorities to adopt racial equality and non-discrimination human rights impact assessments before they can use EDTs and must ensure that there are independent oversight and regulatory frameworks that monitor their use.
- States must ensure that binding international human rights obligations, including non-discrimination and equality, are a core part of any ethical frameworks adopted by corporations. Corporations cannot regulate themselves, and States must require them to meaningfully protect human rights.
- In line with the [UN Guiding Principles on Business and Human Rights](#), States must ensure that corporations conduct human rights due diligence, which involves “assessing actual and potential human rights impacts; integrating and acting upon the findings; tracking responses; and communicating how these impacts are addressed.”

(See full list of recommendations: [A/HRC/44/57](#), paras. 44-68)