

Submission by A/Prof Rita Matulionyte
to the UN Special Rapporteur on the right to development
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Thank you for the opportunity to contribute to the reports to be produced by the Special Rapporteur on the right to development in 2024. The call for submissions asks important questions and the reports are intended to target stakeholder groups/organizations that have a capacity to address the identified challenges.

This submission will focus on the right to development of children and future generations, and provides input on one selected question:

How are the human rights of children and future generations impacted by development-related decisions (e.g., related to economic development or new technologies) made by the present adult generation? Please provide examples from your country or area of work.

The below insights are based on the outcomes of the research project ‘Government Use of Facial Recognition Technologies: Legal Challenges and Possible Solutions’, conducted by R Matulionyte, M Zalnieriute, A Limante, E Kavoliunaite-Ragauskiene, and funded by the Lithuanian Research Council 2021-2023. Many of the project conclusions can be found in a book *Cambridge Handbook on Facial Recognition in the Modern State*, edited by R Matulionyte and M Zalnieriute, published by Cambridge University Press 2024 (forthcoming), which will be available as open access from April 2024.

Our research project has shown that human rights of children and future generations will be significantly impacted by how new technologies, especially AI, are regulated and implemented. Facial recognition technologies (FRT) are an example demonstrating that the decisions of government and private sector organizations on how to implement these technologies will significantly affect current children and future generations, by either improving their lives and possibilities to enjoy their human rights, or by further limiting such possibilities and hampering an effective implementation of human rights and developmental goals.

Different types of facial recognition technologies (identification, verification, categorization, emotion recognition etc.) are currently being trialed and implemented in different countries in different ways. These technologies have a potential, for instance, to make consumer transactions easier, help governments ensure safety or make the investigation of crime and

enforcement of law more efficient.¹ At the same time, facial recognition technologies raise numerous ethical and legal challenges well documented in the literature, such as disregard to privacy, public surveillance, bias and discrimination risks, lack of transparency, risks to political freedoms such as freedom of speech and others.²

The ways how these technologies are regulated by governments and are being implemented *today* will determine whether children and future generations will benefit from them or will be harmed by them in the *future*.

Some governments, often in the Global North, have considered the risks these technologies pose to human rights and have adopted a careful approach in their regulation and adoption. The EU, in addition to already strict privacy protections, have recently prohibited some highest-risk uses of facial recognition technologies by government authorities, and regulated other lower risk FRT uses.³ Temporary bans on FRT uses have been previously imposed in different states in the US, with various regulatory and governance solutions currently being discussed in that jurisdiction.⁴ In Australia, facial recognition technologies that were developed by scrapping millions of images from social media (Clearview AI) was found in violation of privacy laws, and trials of such technologies by Australian Federal Police were found illegal too.⁵ The UK courts have found that the UK Metropolitan Police trials of certain FRT systems in public spaces did not meet the legal requirements and demanded for further legal governance frameworks around the use of these technologies by police.⁶

¹ R Matulionyte and M Zalnieriute, 'Introduction: Facial Recognition in the Modern State', in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 1-10 (Cambridge University Press 2024)

² See e.g., J Goldenfein, 'Privacy's Loose Grip on Facial Recognition: Law and the Operational Image', in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 73-85 (Cambridge University Press 2024); R Matulionyte, Transparency of Facial Recognition Technology and Trade Secrets in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 59-72 (Cambridge University Press 2024); M Smith, M Mann, 'Facial Recognition Technology and Potential for Bias and Discrimination', in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 86-95 (Cambridge University Press 2024)

³ See EU AI Act, approved by European Parliament on 13 March 2024 (official publication pending).

⁴ See M Fidler, J Hurwiz, 'An Overview of Facial Recognition Technology Regulation in the United States', in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 214-227 (Cambridge University Press 2024)

⁵ See N Lynch, L Campbell, 'Principled Regulation of Facial Recognition Technology: A View from Australia and New Zealand' in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 253-266 (Cambridge University Press 2024)

⁶ See G Gentile 'Does Big Brother Exist? Facial Recognition Technology in the United Kingdom', in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 253-266 (Cambridge University Press 2024)

These examples demonstrate how some governments try to balance the potentials and risks posed by facial recognition technologies, including those related to human rights, which in turn will have effects on today's children and future generations. If these technologies are implemented in the way that indeed help increase safety, improve access to essential services, without unnecessary intrusion into privacy, and if the law ensures that they are not used to restrict human rights (such as a right to participate in political protests), future generations will be able to benefit from these new technologies without experiencing unreasonable negative effects that they may pose on their rights and interests.

On the other hand, our research has shown that governments in some other countries, especially in the Global South, appear to be less concerned about the risks posed by facial recognition technologies and allow or even themselves initiate their widespread and unrestricted implementation for various purposes. China is notoriously known for the widespread use of FRT both by government and private sectors, including for purposes that undermine human rights (e.g. to limit public protests).⁷ While there have been recent legal decisions that limited FRT use by private sector in China, its use by government has been left intact.⁸ The Morocco government's increasing attempts to implement facial recognition systems raise concerns about government's use of AI to strengthen their powers to the detriment of human rights of their citizens.⁹ In Brazil, while FRT is being increasingly implemented for various purposes (public security, identification, transportation), its legal framework has not been adjusted to meet the new challenges posed by these technologies.¹⁰

The decisions of these and other governments in the Global South to widely implement FRT and allow its use for various purposes, without sufficient regulation around legitimate uses or safeguards against future misuse, will have immense consequences on future generations living in these countries. On the one hand, it is still to be seen whether these technologies will provide benefits to future generations, such as increased safety, as often promised by governments that

⁷ See M Zalnieriute, 'Power and Protest: Facial Recognition and Public Space Surveillance', in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 96-111 (Cambridge University Press 2024)

⁸ J-A Lee, P Zhou, 'FRT Regulation in China', in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 242-252 (Cambridge University Press 2024)

⁹ See e.g. S I Bergh et al, 'Morocco's Governance of Cities and Borders: AI-Enhanced Surveillance, Facial Recognition, and Human Rights', in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 267 (Cambridge University Press 2024)

¹⁰ L Belli et al, 'Regulating Facial Recognition in Brazil: Legal and Policy Perspectives', in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 228 (Cambridge University Press 2024)

implement these technologies. It is however clear that the widespread implementation of FRT systems will create further risks to human rights in countries which are already facing significant challenges in the field. When FRT infrastructure becomes widespread, it will make it even easier for governments to establish systematic surveillance of entire populations, without regard to privacy of individuals. FRT systems, in the hands of non-democratic governments, have a potential to further facilitate discriminatory practices against racial, ethical, sexual and other minorities.¹¹ They are likely to increase the efficiency of identifying and prosecuting protesters, and thus further undermine the freedom of speech and pro-democratic movements.¹²

Thus, there is a significant risk that new technologies, such as FRT, will further increase the gap between the developed North and the developing South. The future generations are the ones who risk to directly experience the results of the technology which is still fighting for its widespread acceptance. On the one hand, as a result of careful and cautious regulation and implementation of FRT use in the Global North, these technologies have a potential to help ensure safety of citizens, and in other ways contribute to the development of already relatively well-off communities. In developing countries, where the risks of FRT to human rights are not well understood or ignored by local governments, the technology might lead to further decrease the respect to human rights rather than contributing to the development goals. As stated by Bergh et al, “AI surveillance is not a stand-alone instrument of repression, but complements existing forms of repression”.¹³

We therefore call for actions from governments around the world, especially in countries that lead the development of FRT and AI more broadly, as well as financial institutions that fund FRT projects in the developing countries, to take into account these risks and address them to ensure that these technologies benefit future generations in all countries, rather than creating

¹¹ Note that even if FRT technology is itself not bias, it can be used in practices that exacerbate biases – see M Smith, M Mann, ‘Facial Recognition Technology and Potential for Bias and Discrimination’, in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 86-95 (Cambridge University Press 2024)

¹² See M Zalnieriute, ‘Power and Protest: Facial Recognition and Public Space Surveillance’, in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 96-111 (Cambridge University Press 2024).

¹³ S I Bergh et al, ‘Morocco’s Governance of Cities and Borders: AI-Enhanced Surveillance, Facial Recognition, and Human Rights’, in R Matulionyte, M Zalnieriute (eds) *Cambridge Handbook on Facial Recognition in the Modern State* 267, 269 (Cambridge University Press 2024)

further barriers to fostering human rights and achieving developmental goals in regions that are already disadvantaged.