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Five thematic policy briefs in the field of migration

POLICY BRIEF #5

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POLICY BRIEF #5

Migration Flows Prediction Tools and Asylum Policy

Commitments in Alignment with Human Rights

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1. Introduction

This policy brief is based on the findings of the ITFLOWS project regarding human rights implications of migration flow prediction tools used for humanitarian purposes. The well-documented problems relating to the inflows of migrants, including refugees (recognised and not)¹, into the EU, especially since 2015, have highlighted the need for reliable and timely statistical data. The reliable prediction of refugees and migrants could improve (a) the allocation of necessary resources; (b) the up-to-date information sharing among civil society; (c) the transparency over the arrival of migrants, including refugees (recognised and not); (d) the avoidance of excessive burden for Member States at the frontline; (e) the relocation and fair distribution at national and European levels; and (f) the boosting social integration of migrants, including refugees (recognised and not). Technological tools can help in providing reliable and accurate predictions. At the same time, migration movements and border crossing predictions can also jeopardize migrants', including recognised and unrecognised refugees, guarantees to access their fundamental rights, notably their rights to free movement, non-discrimination, protection of private life and personal data, international protection, and good administration. This is a particularly difficult balance in view of current cases where States and FRONTEX are accused of falling short of fully implementing migrant and refugee rights as prescribed under international and EU law.

On June 14, 2023, European lawmakers at the European Commission took an important step forward towards passing a landmark human right focused Artificial

¹ For the purposes of the ITFLOWS the definition of migrants is in a wider sense which includes refugees (recognised and unrecognised).

Intelligence Act. Taking a risk-based approach, the European Parliament introduces restrictions through the Act to AI technology that could enhance surveillance, algorithmically driven discrimination, and propel misinformation that could destabilise political systems and strip individuals off their human rights. More specifically, the currently proposed AI Act prohibits “real time” biometric identification systems, emotion recognition systems also in the context of border management, and biometric categorization systems using sensitive categorisations (e.g. race, gender, ethnicity, migration and citizenship status, sexual orientation and gender identity, religion, disability status), amongst others. It further stipulates that “the use of AI systems in migration, asylum and border control management should in no circumstances be used by Member States or Union institutions, agencies or bodies as a means to circumvent their international obligations under the Convention of 28 July 1951 relating to the Status of Refugees [...] nor should they be used to in any way infringe on the principle of non-refoulement, or deny safe and effective legal avenues into the territory of the Union, including the right to international protection”. Finally, the AI Act states that all AI technologies that are classified as ‘high-risk’, including technologies that predict migration movements and border crossings – as listed in Annex III – must submit a written note to the Commission specifying the intended purpose and why it would not constitute a significant risk to the health, safety, fundamental rights, or the environment. The EU AI Act is currently scheduled for the trilogue, a tripartite meeting between the Council of the European Union, the European Parliament, and the European Commission.

However, and despite these important human rights protection measures, the EU AI Act fails to include the prohibition of surveillance technology for migration and asylum by border security forces. This gap opens room for the misuse of prediction technology and the violation of the rights of migrants and refugees – even when intended to benefit them. Consequently, the use of AI and agent-based migration prediction tools must therefore be carefully regulated within and beyond the remit of the EU AI Act. While agent-based and AI migration flow prediction tools are becoming increasingly more relevant for humanitarian purposes, their unfettered application can lead to violations of the important human rights guarantees of

migrants, including refugees (recognised and not), and facilitate pushbacks. Therefore, the use of all migration prediction tools must adhere to specific human rights conditions and guarantees. The recommendations made are designed to support policy makers, NGOs, and civil society to prepare humanitarian aid with the help of migration flow prediction tools while ensuring relevant human rights guarantees for migrants and especially refugees (recognised and not).

2. Methodology

The findings presented in this policy brief derive from the legal and ethical monitoring strategy designed for the project, with particular emphasis on the design, development, and deployment of the EUMigraTool ([EMT](#)). The EMT has been developed in the context of the 3-year (2020-2023) EU-funded research project ITFLOWS, composed of 14 different research institutions and NGOs from all over Europe. The EMT particularly makes predictions on unrecognised refugees (incl. asylum claimants). The goal of ITFLOWS has been to provide predictions and adequate management solutions of migration flows in the European Union in the phases of reception, relocation, settlement, and integration of migration. For this purpose, ITFLOWS developed the EMT, a decision support system, that aims to (1) predict arrivals of unrecognised refugees (incl. asylum claimants) and (2) detect attitudes and potential tensions related to migration and asylum in Europe. The tool consists of a small-scale agent-based and a large-scale AI-based model.

The legal framing of this policy brief has its foundations in the [human rights and ethical risk assessments](#) conducted by ITFLOWS and the discussions of the consortium on them as well as the continuous [compliance and monitoring framework](#) designed for and implemented on the EMT creation. It relies heavily on the [Report on the ITFLOWS Legal and Ethical Framework](#), developed further [during the life of the project](#). All findings presented in this brief have been validated against current research on human rights and migration prediction (see section 9). A draft of this policy brief has further been shared with human rights and migration prediction experts, including presenters and participants at the [“Migration Prediction, Policy and Human Rights”](#) workshop that took place at Brunel University London on 28th April 2023. This report was finalized taking into

account the valuable expert feedback received by many participants.

3. Key Findings

Finding #1: If used for national security purposes, all AI and agent-based migration flows prediction tools, can lead to serious human risks for migrants, including refugees (recognised and not).

The use of migration flows prediction data when used for the purpose of border securitization, immigration control, and surveillance **can result in violations of:**

- the right to asylum, as protected in 1951 Refugee Convention and Article 18 of the EU Charter of Fundamental Rights;
- the principle of non-refoulement, as protected by Article 33(1) of the Refugee Convention, Article 3(1) Convention against Torture and Other Cruel, Degrading and Inhuman Forms of Punishment;
- the rights protection of specific groups of non-recognised refugees, such as LGBTQ refugees and victims of gender-based violence whose asylum claims and human rights protections might not be given adequate attention.

The use of data regarding the prediction of migration flows for security reasons **could further lead to the facilitation of pushbacks, curtail migration by means of externalisation policies, and deflect asylum responsibilities,** resulting in:

- measures leading to the selection of migrants, including refugees (recognised and not), by states (e.g. based on their skills or religion or gender) which would violate the right to asylum and lead to the exacerbation of structural discrimination against them;
- the potential exacerbation of slavery/trafficking practices, particularly where there is restricted ability to enter a country legally and where there are no or insufficient safe routes due to increased border securitisation;
- the creation of a 'hostile environment' after such predictions that often involves:
 - the increase of surveillance of migrants, including refugees (recognised and not), and increased immigration detention;

- the increase of the risk of abuse of power by the police, border protection, and immigration officials through pushbacks at the borders and/or the externalization of borders;
- the promotion of stereotypes and hate speech in the media and politics regarding gender, sexuality, race, ethnicity, age, class, and education;
- the increase of stereotypes of vulnerable and marginalized members in migrants, including refugees (recognised and not), causing the increase of violence against women and LGBTQI+ persons and minors;
- the restriction or even cutting off funding in health, education, or housing for migrants, including refugees (recognised and not);
- an increased risk for the creation and maintenance of immigrant ghettos that lack adequate health, accommodation, and education services, contributing to segregation.

Finding #2: Not all migration prediction tools pose the same human rights risks. AI-based modelling tends to be riskier than ABM.

The prediction of mixed migration flows is based on predictions generated by either agent-based or Artificial Intelligence (AI)-based prediction tools. These tools generate different kinds of data and pose different human rights risks regarding bias, inaccuracy, transparency, and data protection. The specific elements of each model (whether it uses open data or not; and whether such data is gathered through machine-based learning or human-based learning) are important as they pose different levels of human rights risks for migrants including refugees (recognised and not).

An ***agent-based model (ABM)*** is a manually operated tool that does not classify as AI because it is not self-learning but its learning is overseen by humans. ABM allows for the simulation of peoples' decisions and how these decisions impact migration flows. These models allow for the consideration of each user as an individual or agent and of each agent's characteristics, goals and other factors that influence their mobility behaviour. ABMs of migration flows are particularly useful

when covering very specific and smaller geographical areas. An ABM relies on humans to seek out data and develop rule sets based on which predictions are made. As ABM rules are explicitly defined, they allow for tracing the specific assumptions based on which the models have been constructed and the potential bias on the predictions based on these assumptions. Generally, **agent-based modelling tends to carry fewer risks of bias than AI-based modelling because it is not self-learning and there is consistent human oversight over the data used to train the model.** Moreover, in the case of ABM, the implementation relies on datasets that are publicly available and has a public source code that allows its (explicitly defined) rules and algorithms are assessed regularly by humans. Nevertheless, it is important to note that publicly available data can also be biased and inaccurate, resulting in human rights risks as defined in *Finding #4* below.

AI-based modelling is a machine-based self-learning system that allows for making large-scale simulations of migration flows. Drawing on historical data, machine learning algorithms can build mathematical models to make predictions about migration without having been explicitly programmed to perform this task. In line with the proposed [EU AI Act](#), the ITFLOWS findings show that **AI-based migration flows modelling is more likely to be assessed as high-risk** because it is prone to:

- **algorithmic bias and stereotyping** in terms of gender, sexuality, race, ethnicity etc. that is difficult to detect and mitigate and that poses human rights risks to migrants, including refugees (recognised and not);
- **the violation of data protection and confidentiality**, for example, in cases where Twitter and Facebook data are used to trace people and/or extract their attitudes, potentially jeopardising the principles of lawfulness, fairness, and transparency as set by the [GDPR](#). Data protection risks can arise during collection of data as well as in subsequent use (e.g. linking the outcomes to an asylum application of an individual person);
- **the lack of transparency in the use and operation of AI systems** could make it very difficult to launch a complaint under the existing EU and antidiscrimination laws due to the potential lack of traceability and the lack

of appropriate technical capabilities and expertise to inspect AI systems (see [Accompanying Impact Assessment](#) to the EU AI Act, p. 16-22).

Finding #3: Data inaccuracy, bias, and the potential misunderstanding of context of use seriously affects the efficiency of humanitarian support.

Migration flow predictions are currently based on imperfect and inaccurate data. The absence of historical data and accurate and infrequently updated national datasets for mixed migration in combination with the many unpredictable drivers of migration (e.g. Ukraine, see also [ITFLOWS analysis of migration drivers](#)), renders an accurate prediction difficult. Moreover, missing data on a particular group of marginalised people (e.g. children or LGBTQI+ people). For instance, asylum data that show the number of claims granted/dismissed on grounds of gender- and sexuality-based persecution are by and large absent, further contributing to the invisibility of women in data. Consequently, women and LGBTQI+ are inaccurately reflected in data predicting movements and in data determining reception, humanitarian, and integration policies.

There is often bias induced in the datasets that contributes to unreliable predictions of mixed migration. Depending on the availability and access, data sets generated by agent-based and AI prediction technology might be biased in terms of gender, sexuality, race, ethnicity, language, education, and age, reinforcing gender stereotyping and/or contributing to unreliable predictions of the arrival of vulnerable groups such as women, girls and LGBTQI+ persons. For instance, in data terms, women are often invisible and this, as a result, creates data bias in policy decisions and outcomes across a whole spectrum of civil, social, and economic rights. This bias could further result in inadequate emergency preparedness for all forcefully displaced people but particularly for already vulnerable groups such as women, LGBTQI+ persons and minors.

Migration flow prediction data sets produced by agent-based and AI tools have a certain context of use that might be misunderstood by the end-user. For instance, if a model is trained to detect intra-state movement in a civil conflict situation, it cannot be used to make predictions about cross-border movements.

So, should the end user attempt to answer questions for which the agent-based or AI prediction tool is not trained for, the quality and efficiency of humanitarian support might be jeopardized. The end users' overestimation of agent-based and AI migration flow prediction tools combined with the potential misinterpretation of the context of use constitutes a major risk.

The inaccurate migration flow predictions due to incomplete and/or inaccurate data, bias, and misinterpretation of the context of use by the end-user risk **resulting in migrants', including refugees' (recognised and not), human rights violations of:**

- **International Covenant on Civil and Political Rights** (Article 2: Prohibition of Discrimination; Article 6: Right to life; Article 7: Freedom from torture and inhuman or degrading treatment; Article 9: Right to liberty and security; Article 17: Right to Privacy); Convention against Torture and Other Cruel and Degrading Treatment; 1951 Convention relating to the Status of Refugees)
- **European Convention on Human Rights (ECHR)** (Article 2: Right to life; Article 3: Freedom from torture and inhuman or degrading treatment; Article 5: Right to liberty and security; Article 8: Right to Privacy; Article 14: Prohibition of Discrimination)
- **EU Charter of Fundamental Rights** (Article 6: Right to liberty and security; Article 18: Right to Asylum, Title 3; Article 21: Non-discrimination; Article 23: Equality between men and women; Article 24: The rights of the child; Article 34: Social security and social assistance; and Article 35: Health care)

Finding #4: Definitional inaccuracies can lead to a distorted data set resulting in the misuse of allocation of resources.

Inconsistencies in the use of legal terms when training the tool can lead to the production of data that is completely inaccurate, confuses and ultimately hampers the humanitarian efforts. The different terminology that various international bodies (e.g. UNHCR and EUROSTAT) use for migrants, including refugees (recognised and not); the confusion on whether non-recognised refugees

and/or undocumented migrants fall within the category of migrants in data; and the lack of a uniform understanding of the definitions, in particular recent interpretations by international bodies (e.g. ECtHR in Hirsi Jamaa case); all lead to data used for ‘refugees’ or ‘migrants’ defining them differently, which leads to grossly inaccurate and unreliable results (Carling 2023). This is exacerbated by the fragmentation that often exists between computing experts working on creating such technological tools and social scientists working on the definitional differences. Using the terms asylum seekers, refugees, and migrants interchangeably can lead to a distortion of the data and, as a result, gross inaccuracies on the actual humanitarian situation on the ground.

4. Policy Recommendations

Recommendations #1: Ensure that migration flow prediction data generated by agent-based and AI prediction tools are not used for purposes of securitisation, externalization of borders, and surveillance of migrant purposes.

The authorisation of the use of AI and agent-based prediction tools can only be granted if assurances are offered that there is no substantial risk of misuse, including the facilitation border violence, surveillance, and policies of externalisation. To prevent and monitor misuse, we recommend the following:

- **Conduct a thorough legal, ethical, and societal impact assessment of the use of the tool in question.**
- **Access and monitoring:** An independent monitoring committee shall be put in place and be given access to the migration flows prediction tool and the data for them to decide whether the end user shall be granted permission to use the tool and for how long they can access the data. These data access policies must also follow existing EU-level data protection laws, such as the GDPR and the Data Governance Act. Moreover, the nature, quality and type of data must be monitored by impartial external experts of an inter-disciplinary nature so as not to feed into stereotyping and bias.
- **The use of prediction tools for humanitarian purposes shall be restricted to end users within civil society** and must not be extended to state authorities, including enforcement agencies. In view of the high risks

of such tools for the situation of refugees and migrants, States and FRONTEX must not have direct access to the data or the outcomes and predictions of the technological tools.

- All parties with access to or who are involved in monitoring or other data processing activities relating to the prediction tools must **sign a strict non-disclosure agreement**.
- **Legitimate aims:** Predictive tools may only be used for the legitimate aim to facilitate the reception and integration of migrants, including refugees (recognised and not), and never for security purposes.
- **Proportionality:** End-users' roles and privileges must be clearly defined for authorisation purposes. Applying the principle of proportionality, end-users shall only have access to the data as far as and to the extent to which the data is necessary for the specific humanitarian purposes.
- **Prohibit the use of all AI and agent-based prediction technologies** in case where the data:
 - Jeopardises migrants, including refugees (particularly non-recognised refugees) right to not be sent back to a country where their safety is at risk (non-refoulement)
 - Serves conservative migration policies and politics geared towards the criminalisation of all migrants through border monitoring and surveillance.
 - Enables border management agencies to [facilitate pushbacks](#).
 - Promotes hate speech and stereotypes that are detrimental to the safety of migrants, including recognised and unrecognised refugees, and racialised people already living within the EU.

Recommendation #2: Regulate the use and compliance of migration prediction tools in accordance with human rights.

Migration prediction technology (ABM and AI) can be used only if they meet **the following requirements for the safe use of migration prediction tools as in accordance with human rights:**

- **Human rights impact assessment:** End-users should devise an external human rights impact assessment from the inception of the activity and

during all its phases to identify and address potential security risks, including intended (Finding # 1) and unintended (Finding # 2, 3, 4) misuse. The use of data produced by migration flow prediction tools must never be prioritized over human rights. Human rights risks must be constantly monitored.

- **Human rights impact assessment from a gender and child-rights perspective:** End users should ensure that a human rights impact assessment, with a gender equality and child rights perspective, is conducted before the introduction of artificial intelligence and automated decision-making systems in the field of migration and asylum.
- **Human rights compliance framework:** A compliance framework and a compliance tool shall be designed. Their aim will be to assist providers and end users in complying with the requirements laid down by the human rights impact assessment.
 - **Training sessions** and materials must be delivered to end-users to help develop liability, compliance, and oversight mechanisms.
 - Authorised end-users, shall make the agent-based and AI migration flow prediction tools, data, and models **public and shall explain them in plain manner** to ensure human rights compliance. For these purposes, regard may be had to the proposed and amended [EU Artificial Intelligence Act](#) and the [Council of Europe Draft \(Zero\) Framework Convention on Artificial Intelligence, Human Rights, Democracy, and the Rule of Law](#).
 - To strengthen the compliance framework, **monitoring mechanisms** where an independent monitoring committee oversees and records when, where, how, by whom and for what purpose the migration prediction data was accessed shall be put into place.
- **A call for the halt of any specific migration flow prediction tool:** This is essential in cases where the tool poses serious risks to human and fundamental rights and no measures to mitigate effectively such serious risks can be devised. The effectiveness of any such mitigating measure must be judged externally by independent experts. The migration flows

prediction tool shall not be used until adequate safeguards, including legislative protections, are in place.

- **Data Protection:** Adequate measures and safeguards must be developed in particular regarding protecting vulnerable migrant groups. Prevention of harm to privacy necessitates adequate data governance that covers the quality and integrity of the data used, its relevance considering the domain in which the prediction tool will be deployed, its access protocols, and the capability to process data in a manner that protects privacy. The collection and subsequent processing of personal data from different sources shall never entail intrusive overreach against privacy standards, especially when several databases become interlinked in terms of interoperability. Moreover, the purpose for the collection and use of data subjects whose personal data is processed must be specified, explicit, and legitimate; and the data must be erased once its purpose is fulfilled. Strict safeguard measures to ensure the anonymity and safety of the data subjects whose data is processed must be put into place. For these purposes, regard must be had to the [GDPR](#), [Data Governance Act](#), and any other various directives relating to the processing and handling of any kind of personal data.
- **Training on the human rights of migrants, including refugees (recognised and not), and issues of data bias, and inaccuracy and dangers of misinterpretation and misuse, etc.** for anyone involved in the production and use of migration prediction tools (ABM and AI). This includes a clear line of communication between computer, human rights experts, and end-users before and during the inception of such technological tools.

Recommendation #3: Create Guidelines to Minimize *Data Inaccuracy and Bias of Migration Prediction Tools*.

Whenever possible, opt for the less risky agent-based modelling (ABM) tool which allows for better oversight and monitoring than AI. While bias and data inaccuracy also occurs with ABM migration tools due to human bias and inaccuracy, machine learning AI tools, with its self-learning capacity and where human oversight is by and large absent, bear an even higher risk of data error and

bias and thus human rights violations. The following guidelines to minimize data inaccuracy and bias must be established for all migration prediction tools as follows:

- **Establish accuracy benchmarks and oversight mechanisms:** The accuracy and quality of the data is important and should comply with the proposed EU AI Act and accuracy thresholds or benchmarks must be determined. The data must be drawn from reliable sources and reflect the targeted population in an accurate way. While it is impossible to eliminate uncertainties from the predictions, monitoring and evaluation mechanisms must be established and the algorithms, where possible, must be subject to regular risk assessment, third party audits, and independent oversight.
- **Flag limitations in the data to the end-user:** End-users must be made aware of the bias, limitations, and potential shortcomings of the data sets generated by agent-based and AI migration flow prediction tools as part of an extensive training on the tool. Moreover, end-users should not base their decisions solely on data produced by agent-based or AI migration flow prediction tools but should always evaluate the data in close consultation with independent experts. A lot of emphasis must be placed on ensuring that the creators of such predictive tools have a deep understanding of migration issues and are familiar with the different bias and risks. It is thus important to ensure that the agent-based and AI models are fully trained in and based on the specific intersectionality requirements of different refugee/migrant groups in order to limit as much as possible bias influencing the outcome.
- **Clearly define the context of use:** End-users should ensure they understand the context for which the predictions made by agent-based and AI tools are meant for. Clear instructions on how to interpret the outcomes/predictions shall be formulated by the developers of the tool and provided to the end-users. And for the sake of transparency, technical mechanisms to inform end-users of the reasons and criteria behind the prediction's outcomes/results should be implemented. This is particularly relevant for the self-learning AI tools.

- **Establish clear lines of effective communication among the experts** to understand each other's elements of work before and during the inception of such technological tools is of paramount importance and must not be pushed aside.
- **Create an AI regulatory sandbox:** End-users should establish a controlled environment for the development, testing, validation, and deployment of innovative AI systems.

Recommendation #4: Address definitional inconsistencies for training the tool.

- **Definitions of crucial terms used to train the migration flow prediction tool should be streamlined. EUROSTAT and other data handling staff must be trained urgently** to start following the same interpretations of the terms 'migrant' and 'refugee' in accordance with current law.
- **All creators of migration predicting technology must be trained** on the current legal interpretations of each category and the definitional gaps.
- Any technological tool must come with an **explanation of terms** and the categories they include as well as to how the gaps in the meanings in data used have been bridged to achieve accuracy.
- Greater attention should be given to where the categories of **undocumented migrants and non-recognised refugees** are included. Creators of the tool must ensure that the data put together refers to the same people. Erroneous terminology that maintains stereotypes, such as "illegal migrants", must be avoided.
- **Some other terminology may be acceptable** even if not favoured, but consistency on which terminology is used and attention to whether it is used in the same way is paramount. In general:
 - **Migrant:** A migrant is anyone who moves from their country to another, whatever the reasons, hence it includes refugees recognised and non-recognised, unless stated otherwise.
 - **Regular/irregular migrant:** 'Regular migrants' refers to those who have legal permission, usually either a visa or a residence permit within the EU. This is juxtaposed by 'irregular migrants' that often includes

‘illegally staying third-country nationals’ and ‘asylum seekers’, but it must be further looked into when data is collected. This terminology, although widely used within the EU context, should be urgently replaced by ‘undocumented’ and ‘documented migrants’.

- **Refugee:** According to Article 1.A(2) of the Refugee Convention, a refugee is a person who: “owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”. The EU Qualification Directive (2011/95/EU), Article 2(d) has reproduced this definition. The EU law definition does not include EU nationals as all EU Member States are considered safe countries. It is important to keep in mind that the recognition of a refugee by a state is merely declaratory and not substantial (ECtHR, Al Jamaa case; UNHCR).

- It is essential that the gathering of data investigates which kind of understanding data uses in each case so that inaccuracies are avoided.

Advisable language:

- **Migrants in the wider sense and migrants stricto sensu:** in the wide sense, the category of migrants includes all persons who have left their states irrespective of the reason. This includes refugees. At times though, it is important to talk only about migrants and exclude refugees. ‘Migrants stricto sensu’ can be used then.
- **Documented and undocumented migrants:** This terminology avoids current populist links of migrants with criminality.
- **Recognised and non-recognised refugees:** Followed by the UNHCR and in line with the ECtHR case-law, it denotes that individuals formally granted refugee status are “recognised refugees.” The important point here is that any person who meets the eligibility criteria but have not applied or applied and have not yet been granted asylum by a state fall

into the category of “non-recognised refugee”. This use of terminology considers the solely declaratory nature of the state recognition of a refugee.

5. Further Resources

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