A Human Rights Analysis of Automated Decision Making in Canada’s Immigration and Refugee System
The IHRP advocates for the most disenfranchised, both in Canada and abroad. The Program has established an impressive track record for advocating for the rights of migrants, refugees, women, children, sexual minorities, Indigenous Peoples, ethnic minorities, immigration and criminal detainees, journalists, human rights activists, and individuals with mental health issues.

PETRA MOLNAR

The Citizen Lab is an interdisciplinary laboratory based at the Munk School of Global Affairs and Public Policy at the University of Toronto focusing on research, development, and high-level strategic policy and legal engagement at the intersection of information technologies, human rights, and global security.

LEX GILL
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5. A legal and practical nexus with national security law means even weaker oversight.

6. "A.I. hype" and technosolutionism can’t fix a global humanitarian crisis.
HUMAN RIGHTS IMPACTS

ASSOCIATION, RELIGION, EXPRESSION

FREEDOM OF MOVEMENT

LIFE, LIBERTY, AND SECURITY OF THE PERSON
HUMAN RIGHTS IMPACTS

- Direct versus indirect discrimination
- Risk of creating feedback loops and exacerbating existing patterns of bias in a highly discretionary system
- AI and machine learning already have a problematic track record – especially with race and gender
Privacy rights in both “inputs” and “outputs”

Accuracy obligation may be case and applicant specific (see Ewert)

Tensions between need to minimize and maximize data in order to prevent harms
(in practice, they all intersect)
ADMINISTRATIVE LAW ISSUES

PROCEDURAL FAIRNESS

STANDARD OF REVIEW
OTHER SYSTEMIC CHALLENGES

**LACK OF TECHNICAL CAPACITY**
A lack of technical capacity within government can lead to a potentially inappropriate reliance on the private sector. Adopting emerging and complex tools at the bleeding edge of scientific development without in-house talent capable of understanding, evaluating, and managing these technologies is not responsible from an engineering perspective (as well as a legal and ethical one).

**PRIVATE SECTOR ACCOUNTABILITY**
Private sector businesses have an independent responsibility to ensure that the technologies they develop do not violate international human rights. They also have clear legal obligations to comply with Canadian law, including privacy and human rights legislation, in the development of their products and services.
**ACCESS TO JUSTICE**
Automated systems may streamline services, increase accessibility, and shorten delay. However, they may also **exacerbate existing barriers** to access and **create new ones**.

**PUBLIC CONFIDENCE**
Automated systems may strengthen the transparency, regularity, and explainability of administrative decision-making in some cases. Yet if the public believes that these technologies are **coloured by bias or operate arbitrarily**, the impact on public confidence in the administration of justice will be difficult to repair.

**GLOBAL IMPACTS**
Canada has a unique opportunity to develop international standards that regulate these technologies in accordance with **domestic and international human rights obligations**. It is essential to set a clear example for countries with more problematic human rights records and weaker rule of law.
1. Automated decision systems adopted by government must respect international human rights law and the Charter.

2. Immigration and refugee law is a particularly high-risk laboratory for experiments with these technologies.

3. Transparency regarding current practices, independent oversight, and new, binding standards are urgently needed.
QUESTIONS?