



# PRINCIPLES ON FACIAL RECOGNITION TECHNOLOGIES

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A RESPONSE BY  
LABORATORY OF PUBLIC POLICY  
AND INTERNET

TO  
GLOBAL PRIVACY ASSEMBLY

BRASÍLIA, BRAZIL  
JUNE, 2022

# LABORATORY OF PUBLIC POLICY AND INTERNET

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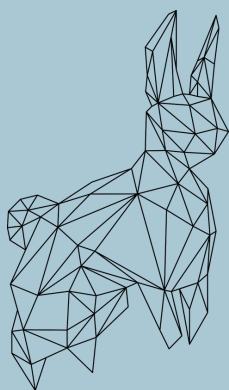
## REALIZATION

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# LAPIN

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# ABOUT US

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Based in the capital of Brazil, the Laboratory of Public Policy and Internet (LAPIN) is an independent, non-profit research-and-action center with a multidisciplinary composition. Its objective is to support the development of public policies and regulation of digital technologies through research, articulation, and awareness-raising

Our work consists in:

1

**investigating, analyzing and understanding**  
the social, economic, ethical and legal  
impacts caused by technologies

2

**informing, including and educating**  
people

3

**proposing innovative solutions**  
to the challenges and opportunities

## WE DO THIS THROUGH

interdisciplinary research  
project development  
education  
accessible information  
independent advocacy



Dear Global Privacy Assembly (GPA) members,

LAPIN wishes to express its opinion regarding the 42nd and 43rd Closed Sessions of the Global Privacy Assembly that took place in October 2020 and 2021. GPA's members adopted a Resolution on Facial Recognition Technologies resolving to work on a set of agreed principles and expectations for the appropriate use of personal information in facial recognition technology.

There are numerous particularities that place facial recognition as a dangerous tool given the high potential of violating individual rights and freedoms. In this sense, and taking into consideration that LAPIN,

**ADVOCATES** for the ban on the use of FRT in public spaces, especially for law enforcement and public security purposes, whether in live, near-live or retrospective applications;

**SUPPORTS** entities calling for a ban on the use of facial recognition in public spaces;

**DEFENDS** that safeguards to protect rights and mechanisms to oppose surveillance operations must be implemented. Any supposedly legitimate use of biometric data must be preceded by data protection and human rights impact assessments. Findings from impact assessments must be weighted against the principles of necessity and proportionality; and

**BELIEVES** that impacted groups and populations, particularly those who have been historically marginalized and disadvantaged, must be included in this debate,

Hereunder we present facts and motivations that support our position in order to subsidize future discussions:

1. Regarding the hypothesis that FRT applications could potentially provide benefits to law enforcement and public security, the Brazilian reality has shown the opposite. For instance, there are several **cases of false positives leading to arrests**.<sup>1</sup> This fact is extremely critical considering Brazil is in the third position in terms of racialized mass incarceration, largely based on poverty criminalization. Furthermore, the management of inaccurate results produced by systems with FRT actually end up **burdening the agents** that use them, causing a reverse effect on efficiency. Among paradigmatic cases and facts, LAPIN highlights:

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<sup>1</sup> See, for example, Panóptico's survey 'A Rio of cameras with selective eyes: The use of facial recognition by the Rio de Janeiro State' (2022). Available at: <https://opanoptico.com.br/Caso/a-rio-of-cameras-with-selective-eyes-the-use-of-facial-recognition-by-the-rio-de-janeiro-state-english-version/>.



**1.1.** In 2019, in Rio de Janeiro City (Rio de Janeiro), a resident of Copacabana neighborhood was **mistakenly identified** as a wanted person and taken to the police station. The cameras were supposedly able to identify suspects based on analyzing the distance between the eyes and the size of the skull;<sup>2</sup>

**1.2.** In 2020, in Feira de Santana City (Bahia), in addition to previous false positives, an emblematic case affected both mother and son: **a 25-year-old young man with special needs was mistaken for a person wanted for robbery**. His mother wrote a public letter about the violence suffered in the truculent episode, condemning it;<sup>3</sup>

**1.3.** In 2020, a man from Ilha Grande (Piauí) was arrested by police officers of the Federal District (Brasília) after a facial recognition program wrongly identified him as the author of a crime. **He was woken up in the middle of the night and transported in an aircraft to the police station, where he was detained for 3 days;**<sup>4</sup>

**1.4.** Regardless of the quality of the technology, facial recognition is even more problematic in countries with a history of slavery, persecution and exclusion of marginalized groups. As such, databases of wanted people are already built to target these individuals. The use of this technology, therefore, further **increases the mass incarceration of the black population**. There have been robust studies since at least 2018 on the effects of the use of FRT by police forces. In 2019 a comprehensive survey revealed that about **90%** of people arrested using this technology were **black**.<sup>5</sup>

**2.** In light of the context provided by the topics above, LAPIN is taking part in the proposal of an initiative that advocates for the ban of facial recognition in public security. An open letter exposing our reasons is available at <https://tiremeurostodasuamira.org.br/open-letter-en/>.

We would highlight that the "constant, massive, indiscriminate surveillance is – in itself – **a violation of people's rights and freedoms**. As we are discussing mechanisms applied in a manner incompatible with human rights, we call for a ban, not just a moratorium, on facial recognition in the context of public security". Moreover, understanding that,

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<sup>2</sup> Olhar Digital. **Mulher é detida no Rio por erro em câmera de reconhecimento facial** (2019). Available at: <https://olhardigital.com.br/2019/07/10/seguranca/mulher-e-detida-no-rio-por-erro-em-camera-de-reconhecimento-facial/>.

<sup>3</sup> Metro 1. **'O policial já foi com a arma na cabeça dele', diz mãe de jovem confundido por reconhecimento facial** (2020). Available at: <https://www.metro1.com.br/noticias/cidade/85609,o-policial-ja-foi-com-a-arma-na-cabeca-dele-diz-mae-de-jovem-confundido-por-reconhecimento-facial>.

<sup>4</sup> R7 Brasília. **'Disseram que eu era traficante', diz pedreiro preso injustamente** (2021). Available at: <https://noticias.r7.com/brasilia/disseram-que-eu-era-trafficante-diz-pedreiro-preso-injustamente-16122021>.

<sup>5</sup> O Panóptico. **Levantamento revela que 90,5% dos presos por monitoramento facial no Brasil são negros** (2019). Available at: <https://opanoptico.com.br/exclusivo-levantamento-revela-que-905-dos-presos-por-monitoramento-facial-no-brasil-sao-negros/>.



"the problems caused by facial recognition have no solution – that is, they are inseparable from the very use of these mechanisms, algorithms do not work in a neutral way and can reproduce discriminations related to the environment and the people who formulated them, and furthermore, their operating logic is not easily explainable to the public. [...]. **Even if these mechanisms were improved – a need that is frequently pointed out by the narratives advocating their implementation – this would not circumvent their negative impacts.** Trying to reduce these errors and programming the technology according to the diversity of the target populations would make these groups more easily mapped, identified, surveilled, and tracked, which means that this use would still be disproportionate. This is also because there is a constant risk that this kind of technology can be used by governments to persecute certain groups and people".

3. In addition to illegal arrests and discriminatory practices, LAPIN's research '**Automated Surveillance: the use of facial recognition by Public Administration in Brazil**'<sup>6</sup> also evinced issues related to transparency and the alleged efficiency. The study was based on information from public authorities responding to our inquiries under the Brazilian Law on Access to Information.

Although these elements do not eliminate the problems already addressed, findings show there has been a **massive implementation of FRT by Brazilian public authorities**, associated with private initiative, without (i) uniform criteria regarding the procedures for acquiring systems; (ii) impact and risk assessment reports; (iii) clear safeguards to mitigate risks; (iv) training of professionals and (v) forms of accountability.

On efficiency, it was mentioned, for example, a **problem of resource management in police forces**. The numerous "identifications" of the system in a context of high rate of false positives cause, in fact, confusion when responding to them. The technical particularities of the technology also play a role in inefficiency. It was noted that because FRT relies on too many critical and specific conditions to work such as lighting, distance, image capture angle, implementation in large scale is not feasible.<sup>7</sup>

4. In March 2022, civil society entities, together with public defenders, filed a **Public Civil Action seeking to ban the use of facial recognition in São Paulo Metro**, where about 4 million people commute every day.

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<sup>6</sup> LAPIN. **Automated Surveillance: the use of facial recognition by Public Administration in Brazil** (2021). Available at: <https://lapin.org.br/2021/07/07/vigilancia-automatizada-uso-de-reconhecimento-facial-pela-administracao-publica-no-brasil/>.

<sup>7</sup> *idem*. Secretary of Public Security of Campinas city (São Paulo) on the failed implementation of facial recognition systems produced by Huawei.





Not only problems related to the lack of transparency in purchasing systems with FRT and their use in disagreement with several laws were pointed out.<sup>8</sup>

The action also details how FRT has exponentially increased the risk of discrimination against black, non-binary and trans people, especially because of the structural racism embedded in Brazilian society. **The court has recently granted an injunction ordering the Metro to interrupt the use of facial recognition.** The case is still ongoing.<sup>9</sup>

5. The Brazilian Federal Senate has recently established a **Commission of Jurists** to work on an alternative bill that aims to regulate the development and use of artificial intelligence in the country. During the public hearings organized by the Commission in April-May 2022, several **calls on the banning of facial recognition** were made by academics, researchers and civil society, further fuelling the debate and concern around it.<sup>10</sup>

6. Some **contradictory aspects can be identified in the 42nd Closed Session's Resolution.** On the one hand, several negative aspects related to this technology are laid down. Mentions to serious risks that may arise from its use. On the other hand, the GPA's members intend to guide the use of the very same technology. This appears to be a confusion in terms of acceptance of the use of FRT among the members, showing that perhaps **this debate still needs to be matured.**

7. Considering the above, the questions that come up are:

*Why should a technology with high damage potential be adopted?  
Which groups have their rights violated at the expense of an  
experiment whose rhetoric is protection and efficiency?*

<sup>8</sup> Such as the Brazilian General Personal Data Protection Law (LGPD), Consumer Defense Code (CDC), Child and Adolescent Statute (ECA).

<sup>9</sup> São Paulo Court of Justice. **Case n. 1010667-97.2022.8.26.0053.** Available at: [https://esaj.tjsp.jus.br/cpopg/show.do?processo.codigo=1H000LRDS0000&processo.foro=53&processo.numero=1010667-97.2022.8.26.0053&uuidCaptcha=sajcaptcha\\_0a5c42ba73b54e3e8cf8a438b202ef06](https://esaj.tjsp.jus.br/cpopg/show.do?processo.codigo=1H000LRDS0000&processo.foro=53&processo.numero=1010667-97.2022.8.26.0053&uuidCaptcha=sajcaptcha_0a5c42ba73b54e3e8cf8a438b202ef06). Also: UOL. **Metrô de SP é alvo de ação inédita que pede fim do reconhecimento facial** (2022). Available at: <https://noticias.uol.com.br/colunas/leonardo-sakamoto/2022/03/03/metro-de-sp-e-alvo-de-acao-inedita-que-pede-fim-do-reconhecimento-facial.htm>; IDEC. **Justiça suspende sistema de reconhecimento facial no Metrô de SP** (2022). Available at: <https://idec.org.br/noticia/justica-determina-suspensao-de-sistema-de-reconhecimento-facial-no-metro-de-sp>.

<sup>10</sup> Teletime. **Racismo no reconhecimento facial preocupa comissão da regulação de IA no Senado** (2022). Available at: <https://teletime.com.br/18/05/2022/racismo-no-reconhecimento-facial-preocupa-comissao-da-regulacao-de-ia-no-senado/>.



When answering those questions, LAPIN understood the **ban on facial recognition** for public spaces, especially for law enforcement and public security purposes, should be advocated whether **in live, near-live or retrospective applications**.

Particularity regarding retrospective applications, LAPIN understands it still represents a tool that **deepens racism and discriminatory practices**. This is due to the fact that even though the collection of biometric data in this case is not directly massive, retrospective databases are integrated into the historic bases of public security agencies. The limitations in the field of public security are too generic, leading likewise to abuses and violations concerning the use of biometric data.

Also, **LAPIN considers FRT use in other fields should be strictly evaluated before general principles are conceived** - especially in light of the increasing market demand FRT is fuelling<sup>11</sup> in the context of a technological boost after 2008 crisis<sup>12</sup> and the risk of economical reasons preceding other social aspects.

8. Finally, it would be useful to understand whether there is any regulatory restriction regarding the public access to GPA's work. **We suggest that other resolutions and drafts are made publicly available**, once we are sure important discussions are being brought to the table. Clarity on the specific actors and their positions in the debate would greatly benefit the discussions worldwide, especially in terms of **transparency**.

Trusting that our opinion will be taken into account, we remain available for further discussions and for specific updates on the Brazilian scenario.

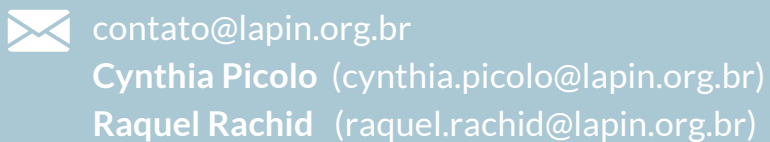
Respectfully,  
**Laboratory of Public Policy and Internet (LAPIN)**

<sup>11</sup> Cision PR Newswire. **Facial Recognition Market size worth \$ 10.2 Billion, Globally, by 2028 at 15.92% CAGR: Verified Market Research** (2021). Available at: <https://www.prnewswire.com/news-releases/facial-recognition-market-size-worth-10-2-billion-globally-by-2028-at-15-92-cagr-verified-market-research-301400457.html>.

<sup>12</sup> International Monetary Fund. **Acting Now, Acting Together** (2016). Available at: <https://www.imf.org/en/Publications/FM/Issues/2016/12/31/Acting-Now-Acting-Together>.



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