



LEGAL CHALLENGES OF BIOMETRIC IMMIGRATION CONTROL SYSTEMS*

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ABSTRACT. This article analyzes the deployment of biometric systems in immigration control. It argues that public policy for biometric data collection and processing must be based on legal principles and involve the participation of diverse actors, including civil society organizations, industry associations, special privacy advocates and government officials. Such deployments must also involve control mechanisms that help ensure transparency and accountability. Based on a comparative study of biometric immigration control system deployment in four countries (Australia, Mexico, New Zealand and Spain), two types of asymmetries stand out: first, notable differences in the types of information collected, stored, processed, retrieved, updated, analyzed and exchanged; Second, the purposes for which biometric systems are currently used. In the latter case, wide divergence exists in areas for which these systems are employed, such as border control strategies and the use of travel documents, revealing that each nation chooses to use these systems at different points in the immigration process. These asymmetries pose both short and long-term challenges for international cooperation.

KEY WORDS: *Biometrics, biometric systems, border controls, ePassports.*

RESUMEN. A través de un estudio comparado se analiza la implementación de sistemas biométricos como política migratoria. Resalta la importancia de incluir no sólo la participación activa de diferentes actores, tales como la industria, la sociedad civil, juristas especializados y funcionarios públicos en todas las políticas públicas de implementación de tecnología biométrica, sino también establecer criterios de transparencia y rendición de cuentas como mecanismos de control en dicho despliegue de sistemas biométricos. Revela dos tipos de asimetrías en la implementación de este tipo de tecnología en materia migratoria. Por un lado, existen diferencias entre la información recogida, almacenada, recuperada, ac-

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tualizada, analizada e intercambiada en los cuatro países analizados, lo que lleva a suponer que el despliegue de los sistemas biométricos no es homogéneo. Mientras que, por el otro, en cada uno de los países examinados los sistemas biométricos se despliegan en diferentes áreas de migración, como estrategias de control transfronterizo y documentos de viaje. Por lo que los países no están implementando esta tecnología al mismo ritmo, lo que supone el planteamiento de controversias a corto y largo plazo para la cooperación internacional.

PALABRAS CLAVE: *Biometría, sistemas biométricos, controles fronterizos, ePasaportes.*

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I. BIOMETRICS USED IN IMMIGRATION CONTROL: INFORMATION FLOW

This article analyzes Transborder Biometric Information Flow¹ (TBIF) in the wider context of immigration control. Four countries, two from the Civil Law tradition (Mexico and Spain) and two from Common Law (Australia and New Zealand), are compared to help identify several noteworthy TBIF-related challenges.

This article provides insights into (a) the interaction between biometric systems deployed to enhance border control; and (b) ways in which these systems are currently used in four different countries to collect, store, process and exchange immigration-related data. It also emphasizes the lack of public debate about responsible deployment of these systems within the TBIF framework, and analyzes the diverse types of immigration data utilized by these four nations. It concludes by arguing that integration of these systems in a comprehensive legal framework requires greater transparency, accountability and supervision.

¹ The term Transborder Biometric Information Flow (TBIF) refers to the biometric data collected by governments through the deployment of biometric systems with the intention to exchange biometric information nationally or internationally.

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