

OneGoal Initiative for Governance
Input on neurotechnology and human rights¹
by Alève Mine
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Dear Committee member:

The theme is alarming. With neurotechnologies, not only transgressions of human rights of individuals could take place, but also, for example, a swarm-like behavior may become inducible, be it centrally or communicated from person to person like self-driving cars or unmanned aerial vehicles would do. The individual or society may not be aware that their rights were being transgressed or their actions were misguided. Today's marketing and PR may become insignificant tools next to (such delivered via) neurotech. If AI is allowed, in a way, to give death sentences (typical keywords: triage and LAWS) then letting an implant or other technology execute on that decision is only a small step away. And so on. We are heading toward a perfect storm for any able actors who would want to commit atrocities - and to thereby instrumentalize governments, which raises new questions for the HRC that will not be discussed here.

Monitoring human rights in the future, in the light of new technologies such as this one, will require an absolutely *benevolent* entity with:

1. *Sovereign* quantum, AI and other capabilities: The typology and activity of potential perpetrators and of able actors in relation to human rights are changing: on the one hand, technological superiority being in many cases in the hands of the private sector, potentially even where a state is given access to technologies, many if not all states may become unable to, in a sovereign manner, find out, to identify the source of or to prosecute the source of human rights infringements involving technologies such as neurotechnologies, and on the other hand, as inclusion is being applied while exploitation still is an issue and recent and upcoming technologies offer opportunities, individuals may perceive an incentive to ally with past exploiters of themselves and turn against their own and transgressions may become transnational where they weren't before. Meanwhile, teams looking after human rights issues are overloaded, respectively too small, and NGOs and Agencies in the area of human rights depend, in their research or knowledge, on the very platforms they are supposed to monitor. I have already raised the issue of technological asymmetry at multiple conferences in relation to journalists, their informants, and environmental defenders, including peasants.
2. Speed: As transgressions via this technology can take place very rapidly, so should human rights processes. Firstly, automating the input² without the need for anyone to

¹ Following the call for contributions on <https://www.ohchr.org/en/hr-bodies/hrc/advisory-committee/neurotechnologies-and-human-rights>

² The question we must ask ourselves is: when there is a transgression, how could we see it in the data that we could collect? For instance, if the advance directives or decisions of a patient are not respected, or a needed treatment is not, or not fully, given, or a damaging treatment is given, and the patient dies or

actively provide information, automation which would be invasive, thus the benevolence of such automation must be established and maintained beyond a doubt, whereby cybersecurity, extensive disclosures and where possible processes decoupling the dependencies of collaborators from their actions become paramount (securing such benevolence is not trivial and a strategy should be developed to that end); Secondly, treating each input without any delay, working against the issues themselves *instead of* gathering multiple issues against one country: indeed, delay allows for that which the information was about to continue and create more *avoidable* damage and casualties; Thirdly, actively analyzing structural and normative patterns, and outcomes, and intervening in rectifying structures, trends and norms that tend to facilitate moral disengagement (such as those that are dehumanizing some persons), as well as taking necessary actions to reverse established deleterious norms; Lastly, proactively analyzing how structures and norms may change in possibly upcoming situations and preventing their becoming prone to facilitating moral disengagement. Insights about such structures are found for instance in the studies of torture and doping. Incidentally, such structures are the direction recently taken by new regulations in the field of healthcare.

3. Accessibility: Firstly, having a very simple and extremely easy way for anyone to input information and making sure everyone knows about it and facilitates such inputs for all. Just as we want every driver to take a first aid class, we want everyone to know how to recognize a human rights issue that is recognizable, how to approach it and how to report it.
4. Vigilance: Firstly, the rights of workers like engineers to get organized may be more at risk than before; Secondly, prohibited grounds of segregation should be extended to include opinions and prospective or actual (work- or social) productivity respectively -load, old age, health history or status, or healthcare requirements; Thirdly, if an actor may see an opportunity to exploit, exclude, and, where this “other” cannot be exploited and is perceived as using resources, spreading misinformation or disinformation, or as a person/group onto whom one’s own responsibilities or accountability, or those of another entity on which the actor believes to depend or for which the actor cares, can be transferred in the eyes of the public or of adjudicating entities, sacrifice or get rid of that “other”, that actor can be assumed to be taking such opportunity, therefore *proactive* research should include this.
5. Information about sets of actions, their aggregated impact and their relationships: an outcome transgressing human rights may be the result of numerous partial actions distributed in time or territories and/or across actors or functions, which would make the transgression hard to adjudicate upon with the current human rights- or legal structures. To this end, the data used should, to any extent possible, not be aggregated, for aggregation deletes information, including on causalities.

It should be noted that:

1. A single transgression of a right of a person should suffice to trigger countermeasures, because transgressions may become more surgical in that sense with neurotech.

is unable to raise the issue with any mechanism, how would the HRC ever know about that? In which case would the patient themselves know about that?

2. In the BHR business and human rights area, B-Tech Pillar 2 should include the responsibility to report human rights infringements the business would have suspicion or information about, here in relation to neurotech.
3. Whichever definition of “human” stakeholders will want to use, the Human Rights Council must be ready to act in a way to prevent atrocities toward actual humans.
4. The list above cannot be achieved through localization or worker-led human rights processes whereby such workers may also not be able to sue and win against perpetrators that they could identify, having themselves failed in their timely monitoring as a transgression will already have unfolded.
5. The ownership of the fruits of thought processes may end up being denied in some cases in relation to neurotech.
6. The idea of “rights” and “consciousness” of AI is being propagated, and, if it becomes mainstream in public or expert opinions, it would provide power to producers of, strategic beneficiaries via and investors in AI. To fathom the significance of this, please allow me to suggest that you’d imagine being able to produce your own power at will - within the boundaries of accessible resources. In the context of neurotechnologies, any such rights that would be provided to AI or machines may also work against or be used against the rights of humans. I note that a case where an implant was removed against the will of a person is being presented these days as a reason to introduce a right to keep an implant, whereby such a right can work against human rights, for instance if the device or equivalent treatment was initially not necessary but its use rendered the person dependent, thus encouraging the starts of interventions, and/or the device or treatment is linked to human rights concerns. In relation to that, an easily, passively exercisable right *not* to be subjected to neurotechnologies is needed.
7. Consent, as the concept is applied today, from my empirical knowledge, is not real consent. We give consent because the UX design favors it, because we don’t have a viable alternative, or without realizing that we do, or because we have inadvertently given it and undoing the action is difficult, or we don’t give consent but the system acts as if we did. Sometimes the reverse also happens, typically for non-exploitative types of items. In neurorights (but also in everything else), consent should have a tremendously higher standard. Prior law cannot be relied upon in your positions on this subject, considering that, for example, the Oviedo convention on Human Rights and Biomedicine foresees that a person without the capacity to consent would have to opt out in order not to be seen as consenting, whereby if the person is unable to consent, they cannot be seen as able to object. This could also make some interventions possibly opportunistic, moving forward at a time where a patient has become unable to consent. Furthermore, the interpretation of professionals is insufficient and an indubitable proof should be required when it comes to consent. In addition, consent for an AI to learn from one’s neural activity is uniquely problematic: current lawsuits around AI and creative industries are likely to adversely impact rights in the creative industries but also, by analogy, rights involved in neurotech. Action should be taken now in the framework of those lawsuits to prevent this.

I trust that other participants to this consultation will provide the plethora of other items that also come with this theme, if not the above points, too.

Let me leave you with the question(s): How would human rights processes get the military or other actors that would want to use this and other tech in certain ways and to certain ends not to do so, and how would we know if any entity nevertheless did so?

Sincerely yours,
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