Ad Hoc Committee on Artificial Intelligence ('CAHAI'): contributions to the multi-stakeholder consultation on 'Human Rights Due Diligence for Artificial Intelligence'
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Working Group Members

Anurag Bana
Senior Project Lawyer, IBA Legal Policy & Research Unit

Dr Theodora Christou
Queen Mary University School of Law

Lisandro Frene
Chair, IBA Technology Law Committee Artificial Intelligence and Robotics Subcommittee

Maria Pia Sacco
Senior Project Lawyer, IBA Legal Policy & Research Unit

Prof Martijn Scheltema
Member of the Advisory Panel, IBA Business Human Rights Committee

Sajai Singh
Chair, IBA Technology Law Committee

Pre-screening question of the survey

1. Do you answer
   Required to answer. Single choice.
   - (•) As representative of an institution
   - ( ) In your personal capacity

2. Your family name and first name (e.g. SMITH John)
   Required to answer. Single line text.

3. State (where your institution is based)
   Required to answer. Single line text.

4. Institution: Name of the institution/body/company
   Required to answer. Single line text.

   International Bar Association (Business Human Rights Committee; Technology Law Committee; Legal Policy and Research Unit; Working Group on Human Rights and Artificial Intelligence

5. Personal capacity: Your socio-professional category
   Required to answer. Single choice.
   Three class version of the categories from National Statistics Socio-economic Classification (NS-SEC), United Kingdom
   - (•) Higher occupations
   - ( ) Intermediate occupations
   - ( ) Lower occupations

6. Your stakeholder group
   Required to answer. Single choice.
   - ( ) Government & public administration
   - ( ) Private business sector
   - (•) Civil society
   - ( ) Academic and scientific community
   - ( ) Internet technical community

Section 1: Definition of AI Systems

7. In view of the elaboration of a legal framework on the design, development and application of AI, based on the standards of the Council of Europe on human rights, democracy and the rule of law, what kind of definition of artificial intelligence (AI) should be considered by the CAHAI
   Required to answer. Single choice.
   Select one

- ○ No definition, with a legal instrument focused on the effect of AI systems on human rights, democracy and the rule of law
- ◉ A technologically-neutral and simplified definition, such as “a set of sciences, theories and techniques whose purpose is to reproduce by a machine the cognitive abilities of a human being” (See the CAHAI feasibility study, §5)
- ○ A definition focusing on machine learning systems
- ○ A definition focusing on automated decision-making
- ○ Other
- ○ No opinion

   If other, please explain below.
   Multi Line Text.
   Do not exceed **500 words**

8. What are the reasons for your preference?
   Required to answer. Multi Line Text.
   Do not exceed **500 words**

The IBA Working Group wishes to state that there is no single universally accepted definition of the term Artificial Intelligence (AI). However, the Working Group believes that to regulate AI and address its effects, there should be a definition of AI. A definition is also required for reasons of legal certainty about the applicable scope of a legal framework and should be simple and inclusive to encompass evolving innovative AI developments and overcome technological advancements.

The IBA Working Group’s contribution in 2020 to the CAHAI Draft Feasibility refers to the definition provided by the European Commission High-Level Expert Group on Artificial Intelligence in 2019 which states as follows:

‘Artificial intelligence (AI) systems are software (and possibly also hardware) systems designed by humans that, given a complex goal, act in the physical or digital dimension by perceiving their environment through data acquisition, interpreting the collected structured or unstructured data, reasoning on the knowledge, or processing the information, derived from this data and deciding the best action(s) to take to achieve the given goal. AI systems can either use symbolic rules or learn a numeric model, and they can also adapt their behaviour by analysing how the environment is affected by their previous actions.’

Therefore, we believe that a technologically neutral and a broad definition will be consistent and in alignment with the definitions provided by the European Commission publications including by the recent European Commission Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) of 2021.

Section 2.1: Opportunities and Risks arising from AI Systems

9. Please select the areas in which AI systems offer the most promising opportunities for the protection of human rights, democracy and the rule of law
   Required to answer. Multiple choice.
   Select 3 maximum

- [x] Banking, finance and insurance
- [ ] Justice
- [ ] Law enforcement
- [ ] Customs and border control
- [ ] Welfare
- [ ] Education
- [x] Healthcare
- [ ] Environment and climate
- [ ] Election monitoring
- [ ] National security and counter-terrorism
- [ ] Public administration
- [x] Employment
- [ ] Social networks/media, internet intermediaries
- [ ] Other
- [ ] No opinion

10. If other, which areas and why?.
    Multi Line Text, no word indication

11. Please indicate which of the following AI system applications in your view have the greatest potential to enhance/protect human rights, democracy and the rule of law?
    Required to answer. Multiple choice.
    Select 5 maximum

- [ ] Facial recognition supporting law enforcement
- [ ] Emotional analysis in the workplace to measure employees' level of engagement
- [ ] Smart personal assistants (connected devices)
- [ ] Scoring of individuals by public and private entities
- [x] Medical applications for faster and more accurate diagnoses
- [x] Automated fraud detection (banking, insurance)
- [x] AI applications to predict the possible evolution of climate change and/or natural disasters
- [ ] AI applications for personalised media content (recommender systems)
- [ ] Deep fakes and cheap fakes
- [ ] Recruiting software/ AI applications used for assessing work performance

☐ AI applications to prevent the commission of a criminal offence (e.g. anti-money laundry AI applications)

☐ AI applications aimed at predicting recidivism

☑ AI applications providing support to the healthcare system (triage, treatment delivery)

☐ AI applications determining the allocation of educational services

☐ AI applications determining the allocation of social services

☐ AI applications in the field of banking and insurance

☐ AI applications to promote gender equality (e.g. analytical tools)

☐ AI applications used for analysing the performance of pupils/students in educational institutions such as schools and universities

12. Please briefly explain how such applications would benefit human rights, democracy and the rule of law
Required to answer. Multi Line Text.
Do not exceed **750 words**

The IBA Working Group considers that in most circumstances AI can achieve positive social and economic objectives and there is a well-established link between digital technologies and the achievement of Sustainable Developments Goals (SDGs). AI applications may also lead to faster and more objective decisions, both in private and public sector, by providing more accurate and processed information.

However, the Working Group believes that technology is dynamic and therefore, the assessment of the impact of technology has to also take a dynamic approach and perspective. In the health and environment sectors, it can certainly have a very positive impact as highlighted in the current EU Commission legislation. But it can still be challenging to identify categories to comparatively assess other potential positive impact areas since AI is still new and evolving. It is essential to have a risk assessment perspective on a continuous basis for an effective due diligence of the AI applications.

There are certain areas where AI system applications have the greatest potential to enhance and protect human rights. A key area is that of healthcare diagnostics where the use of AI has the potential to improve living standards and quality of life, by detecting diseases earlier and more accurately. To elaborate further on this, we would like to refer to the Harvard University research study. Please feel free to go through the following publication:

Raso, Filippo, Hannah Hilligoss, Vivek Krishnamurthy, Christopher Bavitz, and Kim Levin. 2018. Artificial Intelligence & Human Rights: Opportunities & Risks. Berkman Klein Center for Internet & Society Research Publication, available at: https://dash.harvard.edu/bitstream/handle/1/38021439/2018-09_AIHumanRights.pdf?sequence=1&isAllowed=y

Use of AI in Healthcare Diagnostics (Pages 32-36):

- Right to Life, Liberty, and Security of Person:
  AI-based diagnostic systems enhance the enjoyment of the right to life by making accurate, high-quality diagnostic services more widely available.

- Right to Desirable Work:
  The improved health outcomes that AI-based diagnostic systems are likely to produce will reduce the number of people who are excluded from the dignity of work for medical reasons.
- Right to Adequate Standard of Living:
  By detecting diseases earlier and more accurately, AI-based diagnostic systems will improve living standards and quality of life.
- Right to Education:
  Should AI-based diagnostic systems deliver on their promise, fewer people will be excluded from the enjoyment of the right to the education for reasons of ill-health.

13. What other applications might contribute significantly to strengthening human rights, democracy and the rule of law?
    Required to answer. No word count indication

AI applications for election monitoring;
AI in food and farming industry; and
AI in commercial transportation and logistics for the facilitation of digital trade.

The EU Proposal for a Regulation on Artificial Intelligence also lists the following areas as potentially benefiting from the use of artificial intelligence:

Healthcare, farming, education and training, infrastructure management, energy, transport and logistics, public services, security, justice, resource and energy efficiency and climate change mitigation and adaptation.

Section 2.2: Impact on human rights, democracy and the rule of law

14. Please select the areas in which the deployment of AI systems poses the highest risk of violating human rights, democracy and the rule of law
Required to answer. Multiple choice.
Select 3 maximum

- [ ] Banking, finance and insurance
- [x] Justice
- [x] Law enforcement
- [ ] Customs and border control
- [ ] Welfare
- [ ] Education
- [ ] Healthcare
- [ ] Environment and climate
- [ ] Election monitoring
- [ ] National security and counter-terrorism
- [ ] Public administration
- [x] Employment
- [ ] Social networks/media, internet intermediaries
- [ ] No opinion
- [x] Other (no word count indication)

Consistently with a risk-based approach, we would prefer not to identify specific areas in which the deployment of AI may pose the highest risks of violating human rights, democracy and the rule of law. But, we have still selected some areas to answer this question. AI may, in fact, be associated with positive and negative consequences in nearly all the areas listed above. However, the severity of these impacts and the net effect on society may depend on endogenous (eg, types of data used/processed, type of technology, level of autonomy, transparency/opacity), as well as exogenous factors (eg, the context in which AI is being deployed, end users). These factors need to be assessed on a continuous basis. Since the nature of these risks may change over time, we believe that a static, prescriptive, approach should be avoided. For this reason, this list should not be regarded as exhaustive and should not become the basis of a hard law framework.

15. Please briefly explain how such applications might violate human rights, democracy and the rule of law
Required to answer. Multi Line Text.
Do not exceed **750 words**

As discussed above, AI may have a negative and positive impact on nearly all areas listed under question 14. The ambivalent effect of AI on human rights has also been recently discussed by the UN OHCHR, in the context of their UN B-Tech project (www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx).

For example, the use of AI in the administration of justice may have a significant impact on the rule of law, individual freedoms, the right to an effective remedy and to a fair trial, when considering potential biases, errors and opacity. However, positive effects may also be associated with the use of AI as a professional tool by the legal profession, as highlighted in the report *Guidelines and Regulations to Provide Insights on Public Policies to Ensure AI's Beneficial Use as a Professional Tool*, recently published by the IBA (available at: www.ibanet.org/PPID/Constituent/Multi-displry_Pract/anlbs-ai-report).

In addition, the use of AI in the healthcare sector may also be associated with risks for privacy and other fundamental rights. An example is represented by the use of contact tracing apps in the context of the Covid-19 pandemic, whose implications for human rights are explored in a paper published by the Working Group and available online at: www.ibanet.org/Article/NewDetail.aspx?ArticleUid=4b11819d-c580-47fe-b680-19bdbc201328.

16. Please indicate the types of AI systems that represent the greatest risk to human rights, democracy and the rule of law
Required to answer. Multiple choice.
5 maximum

- [x] Facial recognition supporting law enforcement
- [x] Emotional analysis in the workplace to measure employees' level of engagement.
- [ ] Smart personal assistants (connected devices)
- [x] Scoring / scoring of individuals by public entities
- [ ] Medical applications for faster and more accurate diagnoses
- [ ] Automated fraud detection (banking, insurance)
- [ ] AI applications to predict the possible evolution of climate change and/or natural disasters;
- [ ] AI applications for personalised media content (recommender systems)
- [ ] Deep fakes and cheap fakes
- [x] Recruiting software/ AI applications used for assessing work performance
- [ ] AI applications to prevent the commission of a criminal offence
- [ ] AI applications aimed at predicting recidivism
- [ ] AI applications providing support to the healthcare system (triage, treatment delivery)
- [ ] AI applications determining the allocation of educational services
- [x] AI applications determining the allocation of social services
- [ ] AI applications in the field of banking and insurance
- [ ] AI applications to promote gender equality (e.g. analytical tools)
- [ ] AI applications used for analysing the performance of pupils/students in educational institutions such as schools and universities

17. Please briefly explain how such applications might violate human rights, democracy and the rule of law
Required to answer. Multi Line Text.
Do not exceed **750 words**

Consistently with what is discussed in our answers to questions 14 and 15 above, it is difficult to identify the specific types of AI systems that represent the greatest risks to human rights, democracy and the rule of law. This assessment may depend on endogeneous as well as exogenous factors, which may vary over time, depending on specific circumstances.

AI systems for **facial recognition** in publicly accessible spaces for the purpose of **law enforcement** may be associated with the risks of biases and discrimination. Moreover, when these tools are adopted by repressive governments in an effort to silence dissidents, freedom of association and freedom of expression may be unduly restricted. Such applications may, even be deployed to identify and repress minorities (see the use of AI for the Uyghurs – AI analyses images with facial recognition and marks the faces as non-Chinese, or Uyghurs: Asher-Schapiro, A., Chinese tech patents tools that can detect, track Uyghurs, Reuters January 12, 2021, available at: www.reuters.com/article/us-china-tech-uighurs-idUSKBN29I300)

AI systems used for the **emotional analysis in the workplace** may significantly impact future career prospects and livelihoods of affected persons, and evoke a feeling of constant surveillance. For instance, an algorithm that identifies a person as expressing constantly negative emotions may negatively impact this person's career progress, while disregarding cultural differences of facial expressions and discriminating persons with a different cultural background (https://hbr.org/2019/11/the-risks-of-using-ai-to-interpret-human-emotions).

AI systems providing **social scoring** of natural persons may lead to discriminatory outcomes and the exclusion of certain groups. Particularly with regard to 'Digital Welfare States', the District Court of the Hague ordered the immediate halt of the Dutch government's risk indication system (SyRI) whose aim was to predict the likelihood of a person committing benefit or tax fraud, or violating labour laws. The court criticised that the SyRI legislation demonstrated a 'serious lack of transparency' about how it worked. In the absence of more information, the system may, in targeting poor neighbourhoods, have led to discrimination on the basis of socioeconomic or migrant status. (https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2020:1878; www.theguardian.com/technology/2020/feb/05/welfare-surveillance-system-violates-human-rights-dutch-court-rules)

18. What other applications might represent a significant risk to human rights, democracy and the rule of law?
Required to answer. No word count indication

As highlighted by the OHCR (www.ohchr.org/Documents/Issues/Business/B-Tech/B_Tech_Project_revised_scoping_final.pdf), the following activities may be regarded as presenting higher risks of having adverse impacts on human rights:

- Gathering of large volumes of data (either to train algorithms or to sell insights to third parties);
- Selling products to, or partnering with, governments seeking to use new technologies for State functions or public service delivery that could disproportionately put vulnerable populations at risks;
- The promise of hyper-personalisation in human resources or marketing decisions, which could lead to discrimination;

- Using ‘algorithmic bosses’ to mediate the relationship between workers and firms that generate business value from the offline work being done, while limiting labour protections for those workers; and
- Models that are informed by, or inform, the personal choices and behaviours of populations without their knowledge and consent.

Generally, it may not be the specific application which creates the risks, but rather the absence of proper legal frameworks for the protection of human rights, democracy and respect for the rule of law.

19. In your opinion, should the development, deployment and use of AI systems that have been proven to violate human rights or undermine democracy or the rule of law be
Required to answer. Single choice.

- ○ Banned
- ○ Not banned
- ○ No opinion
- ◉ Other (no word count indicated)

It depends on the nature of these violations. As discussed above, with few exceptions (eg, autonomous weapons), most uses of AI cannot be identified as inherently bad or good for human rights. For this reason, we believe that technology should be regulated rather than banned. See on this, IBA response on CAHAI Draft Feasibility Study: www.ibanet.org/MediaHandler?id=A1BDEB6E-6E38-4156-8416-E71A1ABF038D.

20. In your opinion, should the development, deployment and use of AI systems that pose high risks* with high probability** to human rights, democracy and the rule of law be
Required to answer. Single choice.
** High negative impact on human rights, democracy and rule of law*
*** High probability of occurrence of these risks*

- ○ Banned
- ○ Subject to moratorium
- ◉ Regulated (binding law)
- ○ Self-regulated (ethics guidelines, voluntary certification)
- ○ None of the above
- ○ No opinion

21. In your opinion, should the development, deployment and use of AI systems that pose low risks* with high probability** to human rights, democracy and the rule of law be
Required to answer. Single choice.
** Low negative impact on human rights, democracy and rule of law*
*** High probability of occurrence of these risks*

- ○ Banned
- ○ Subject to moratorium
- ◉ Regulated (binding law)

- ○ Self-regulated (ethics guidelines, voluntary certification)
- ○ None of the above
- ○ No opinion

22. In your opinion, should the development, deployment and use of AI systems that pose high risks* with low probability** to human rights, democracy and the rule of law be
Required to answer. Single choice.
** High negative impact on human rights, democracy and rule of law*
*** Low probability of occurrence of these risks*
    - ○ Banned
    - ○ Subject to moratorium
    - ◉ Regulated (binding law)
    - ○ Self-regulated (ethics guidelines, voluntary certification)
    - ○ None of the above
    - ○ No opinion

23. What are the most important legal principles, rights and interests that need to be addressed and therefore justify regulating the development, deployment and use of AI systems?
Required to answer. Multiple choice.
Select 5 maximum
    - ☑ Respect for human dignity
    - ☐ Political pluralism
    - ☐ Equality
    - ☐ Social security
    - ☐ Freedom of expression, assembly and association
    - ☐ Non-discrimination
    - ☑ Privacy and data protection
    - ☐ Personal integrity
    - ☑ Legal certainty
    - ☑ Transparency
    - ☐ Explainability
    - ☑ Possibility to challenge a decision made by an AI system and access to an effective remedy

24. In your opinion, in what sectors/areas is a binding legal instrument needed to protect human rights, democracy and the rule of law?
Required to answer. Multiple choice.
Select 3 maximum
    - ☐ Banking, finance and insurance
    - ☐ Justice
    - ☐ Law enforcement
    - ☐ Customs and border control

- [ ] Welfare
- [ ] Education
- [ ] Healthcare
- [ ] Social networks/media, internet intermediaries
- [ ] Environment and climate
- [ ] Election monitoring
- [ ] Public administration
- [ ] No opinion
- [x] Other (no word count indicated)

Considering that the positive and negative impact associated with AI may change depending on different factors (eg, the context in which the technology is deployed, its purpose, nature of end users), we believe that AI should be regulated with a binding legal instrument, irrespective of the sectors in which a specific technology is being deployed. See also our responses to questions 14 and 15 above.

Section 3: Potential Gaps in Existing Binding Legal Instruments Applicable to AI

In the following section, please indicate to what extent you agree or disagree with the following statements or if you have no opinion on a given issue.

25. Self-regulation by companies is more efficient than government regulation to prevent and mitigate the risk of violations of human rights, democracy and the rule of law
Required to answer. Rating.
1=I completely disagree;
2=I rather disagree;
3=Indifferent/no opinion;
4=I rather agree;
5=I fully agree;

1 ○
2 ◉ (I rather disagree)
3 ○
4 ○
5 ○

26. Self-regulation by companies is sufficient to prevent and mitigate the risk of violations of human rights, democracy and the rule of law
Required to answer. Rating.
1=I completely disagree;
2=I rather disagree;
3=Indifferent/no opinion;
4=I rather agree;
5=I fully agree;

1 ○
2 ◉ (I rather disagree)
3 ○
4 ○
5 ○

27. Which of the following instruments of self-regulation do you consider to be the most efficient?
Required to answer. Single choice.

○ Ethics guidelines
○ Voluntary certification
○ No opinion
◉ Other (no word count indicated)

We believe that the most efficient instrument of self-regulation is represented by human rights due diligence. This instrument is described in the UN Guiding Principles on Business and Human Rights ('UNGPs'), the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and the OECD Due Diligence Guidelines for Responsible Business Conduct (OECD Due Diligence Guidelines). Even though these standards are non-binding for the private sector, they clarify steps companies should take

in order to prevent, mitigate and address the risks of adverse human rights impacts associated with their activities. This activity should focus on the risks to human rights, rather than to business activities and should be conducted on an ongoing basis, since 'the human rights risks may change over time as the business enterprise's operations and operating context evolve' (UNGP 17 c). Risk management and remedial processes (judicial and non-judicial complaint mechanisms) are relevant to AI as well.

28. Existing international, regional and/or national binding and/or non-binding legal instruments are sufficient to regulate AI systems in order to ensure the protection of human rights, democracy and the rule of law
Required to answer. Rating.
1=I completely disagree;
2=I rather disagree;
3=Indifferent/no opinion;
4=I rather agree;
5=I fully agree;

1 (I completely disagree)
2
3
4
5

29. If you responded disagree/completely disagree to previous question, please indicate why existing international, regional and/or national (binding and/or non-binding) legal instruments are not sufficient to regulate AI systems. Multiple choice.
Select all you agree with

- [x] There are too many and they are difficult to interpret and apply in the context of AI
- [x] They provide a basis but fail to provide an effective substantive protection of human rights, democracy and the rule of law against the risks posed by AI systems
- [x] They lack specific principles for the design, development and application of AI systems
- [x] They do not provide enough guidance to the designers, developers and deployers of AI systems
- [x] They do not provide for specific rights (e.g. transparency requirements, redress mechanisms) for persons affected by AI
- [ ] They create barriers to the design, development and application of AI systems

30. Please provide examples of existing international, regional and/or national (binding and/or non-binding) instruments that in your view are effective in guiding and regulating the design, development and use of AI systems to ensure compatibility with the standards for human rights, democracy and the rule of law
Required to answer. Multi Line Text.
Do not exceed **750 words**

The European Union's General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) has proven to be a useful tool to align data protection policies with the online transition of our lives and work. However, while the regulation follows clear principles ('lawfulness, fairness and transparency', 'purpose limitation', 'data minimisation', 'accuracy', 'storage limitation' and 'integrity and confidentiality'), coupled with the risk-

based decision making (supported by the accountability requirement), its scope is limited to privacy and data protection.

The EU Cybersecurity Act (Regulation (EU) 2019/881) sets out a voluntary cybersecurity certification framework (based on assurance levels) aiming to increase trust and security for ICT products, services and processes. Managing threats and containing risks requires a comprehensively evolved framework to shape policies that can broadly secure the interface of AI products, services and processes with best practices of conformance. Establishing cybersecurity standards is crucial for any enterprise to thrive.

Drawing parallel comparison to the legal sector, the International Bar Association (IBA), for instance, has recommended a list of best practices to help law firms safeguard against cybersecurity threats and secure access to legal services by establishing dialogue between multiple stakeholders in the legal profession. Practitioners, legal experts, IT professionals and cybersecurity consultants were all engaged to craft the cybersecurity guidelines on strengthening the law firms' technology infrastructure, organisational processes and policies on staff training. The IBA Cybersecurity Guidelines are available here: www.ibanet.org/MediaHandler?id=C7F100DC-04F5-46ED-84B7-649C19E30B5E.

The UN Guiding Principles on Business and Human Rights ('UNGPs'), the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and the OECD Due Diligence Guidelines for Responsible Business Conduct (OECD Due Diligence Guidelines) (see our response to question 28 above).

The EU Commission's 'Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain union legislative acts as of 21/04/2021.

31. Please indicate other specific legal gaps that in your view need to be addressed at the level of the Council of Europe. Multi Line Text.
Do not exceed **750 words**

There is still a lack of regulation on the certification process which may lead to a race to the bottom in the provision of social auditing services. This situation has been exacerbated by the fact that certification bodies are often remunerated by the same entities subject to verification, with clear consequences for the independence of this process. Further guidance on the independence of certification bodies and social auditors would be desirable. See on this, IBA response on CAHAI Draft Feasibility Study: www.ibanet.org/MediaHandler?id=A1BDEB6E-6E38-4156-8416-E71A1ABF038D.

Section 4: Elements of a Legal Framework on AI Systems

In relation to some AI systems, we can reasonably foresee a significant risk to human rights, democracy and the rule of law. Bearing this in mind, in the following section, please indicate to what extent you agree or disagree with the following statements or if you have no opinion on a given issue.

32. Please indicate to what extent you agree or disagree with the following statements or if you have no opinion on a given issue.
Required to answer.

Individuals should always be informed when they interact with an AI system in any circumstances

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ◉ I rather agree
- ○ I fully agree

Individuals should always be informed when a decision which affects them personally is made by an AI system

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

Individuals should always be informed when an AI system is used in a decision-making process which affects them personally

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

Individuals should have a right to a meaningful explanation of algorithmic based decisions, in particular how the algorithm reached its output

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ◉ I rather agree
- ○ I fully agree

Individuals should always have the right that any decision taken by an AI system in the framework of judicial proceedings are reviewed by a “human” judge

- ○ I completely disagree

- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

Individuals should have a right to demand the review of an algorithmic based decision by a human being

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

There should always be a person responsible for reviewing algorithmic based decisions in the public sector and private companies

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

Public institutions should not use AI systems to promote or discredit a particular way of life or opinion (e.g. “social scoring”)

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

States should be obliged to design, develop and apply sustainable AI systems that respect applicable environmental protection standards

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

The code behind AI systems used in the public and private sectors should always be accessible to the competent public authorities for the purposes of external audit

- ○ I completely disagree

- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

There should be higher transparency standards for public entities using AI than for private entities

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

There should be higher standards for access to an effective remedy for individuals in relation to decisions informed and made by an AI system in the field of justice than in the field of consumer protection

- ○ I completely disagree
- ○ I rather disagree
- ◉ Indifferent/no opinion
- ○ I rather agree
- ○ I fully agree

Member States should establish public oversight mechanisms for AI systems that may breach legally binding norms in the sphere of human rights, democracy and the rule of law

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

Errors and flaws discovered in AI systems which have led or could lead to the violation of human rights, democracy and the rule of law must be reported to the competent authorities

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

The use of facial recognition in public spaces should be prohibited

- ○ I completely disagree
- ◉ I rather disagree

- ○ Indifferent/no opinion
- ○ I rather agree
- ○ I fully agree

The information obtained through the use of facial recognition systems should always be reviewed by a human being before being used for purposes that have an impact on individual freedom, such as in relation to a person boarding an airplane, upon police arrest or in the framework of judicial proceedings

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

The use of AI systems in democratic processes (e.g. elections) should be strictly regulated

- ○ I completely disagree
- ○ I rather disagree
- ○ Indifferent/no opinion
- ○ I rather agree
- ◉ I fully agree

33. Should a future legal framework at Council of Europe level include a specific liability regime in relation to AI applications?
Required to answer. Single choice.

- ◉ Yes
- ○ No
- ○ No opinion

Section 5: Policies and Measures for Development

34. In your opinion, how useful would the following compliance mechanisms be in preventing and mitigating the risks to human rights, democracy and the rule of law arising from the design, development and application of AI?
Required to answer.
** Intersectional audits consider intersection of multiple sensitive attributes (race, gender, etc) jointly instead of attributes alone - for an example of such audits with machine learning, see for instance: Morina, Giulio & Oliinyk, Viktoriia & Waton, Julian & Marusic, Ines & Georgatzis, Konstantinos. (2019). Auditing and Achieving Intersectional Fairness in Classification Problems*

Human rights, democracy and rule of law impact assessments

- ○ Not useful
- ○ Rather not useful
- ○ Indifferent/no opinion
- ○ Rather useful
- ◉ Highly useful

Certification and quality labelling

- ○ Not useful
- ○ Rather not useful
- ○ Indifferent/no opinion
- ◉ Rather useful
- ○ Highly useful

Audits and intersectional audits*

- ○ Not useful
- ○ Rather not useful
- ○ Indifferent/no opinion
- ◉ Rather useful
- ○ Highly useful

Regulatory sandboxes

- ○ Not useful
- ○ Rather not useful
- ○ Indifferent/no opinion
- ○ Rather useful
- ◉ Highly useful

Continuous automated monitoring

- ○ Not useful
- ○ Rather not useful
- ○ Indifferent/no opinion
- ◉ Rather useful
- ○ Highly useful

35. Please indicate what combination of mechanisms should be preferred to efficiently protect human rights, democracy and the rule of law
Required to answer. Multiple choice.
Select 3 maximum

- ☑ Human rights, democracy and rule of law impact assessments
- ☑ Certification and quality labelling
- ☐ Audits and intersectional audits
- ☑ Regulatory sandboxes
- ☐ Continuous automated monitoring
- ☐ Other (no word count indicated)

36. Please select which mechanism(s) should be part of either a binding instrument or a non-binding instrument to best protect human rights, democracy and the rule of law
Required to answer.

Human rights, democracy and rule of law impact assessments

- ◉ Binding instrument
- ○ Non-binding instrument
- ○ No opinion

Certification and quality labelling

- ○ Binding instrument
- ◉ Non-binding instrument
- ○ No opinion

Audits and intersectional audits*

- ◉ Binding instrument
- ○ Non-binding instrument
- ○ No opinion

Regulatory sandboxes

- ○ Binding instrument
- ◉ Non-binding instrument
- ○ No opinion

Continuous automated monitoring

- (•) Binding instrument
- ( ) Non-binding instrument
- ( ) No opinion

37. If any other mechanism(s) should be considered, please list them and mention if they should be part of either a binding or non-binding instrument. Multi Line Text.
Do not exceed **500 words**

As a general principles, we consider there should be binding legal instruments and/or mechanisms, integrated by non binding measures. Non binding instruments are, in fact, often insufficient to take care of all the challenges associated with digital technologies. In addition, these instruments should, not only, provide for due diligence obligations but should also include judicial and non-judicial grievance mechanisms. It is important that remedy ecosystems provide a solution for the regularly opaque nature of technology in the sense that it may be unclear who has played which role in a human rights harm. Therefore, it is necessary to establish remedy ecosystems (either consisting of a combination of mechanisms or a single mechanism) which are able to involve all relevant actors and to provide solutions which may include all relevant actors. Ideally, such mechanism includes an external and independent dialogue-based mechanism with an option of a binding escalation mechanism. It also requires expertise of those managing and facilitating such ecosystems. For example, the current systems such as the OECD National Contact Points (NCPs) may not have sufficient knowledge to deal with these issues. When designing company-based grievance mechanisms companies should engage with civil society organisations and with public regulatory bodies to explore ways in which they can embed human rights in the technology they are developing. It is also important to clarify that company-based grievance mechanisms should complement State-based judicial and non-judicial mechanisms. It is necessary that companies adopt the contractual and technical features required to identify a cohesive remedy ecosystem in which access to company-based grievance mechanisms does not preclude access to other remedies, especially for more severe harms.

38. In your opinion, how useful would the following follow-up activities be if implemented by the Council of Europe?
Required to answer.

Monitoring of AI legislation and policies in member States

- ( ) Not useful
- ( ) Rather not useful
- ( ) Indifferent/no opinion
- ( ) Rather useful
- (•) Highly useful

Capacity building on Council of Europe instruments, including assistance to facilitate ratification and implementation of relevant Council of Europe instruments

- ( ) Not useful
- ( ) Rather not useful

- ○ Indifferent/no opinion
- ○ Rather useful
- ◉ Highly useful

AI Observatory for sharing good practices and exchanging information on legal, policy and technological developments related to AI systems

- ○ Not useful
- ○ Rather not useful
- ○ Indifferent/no opinion
- ○ Rather useful
- ◉ Highly useful

Establishing a centre of expertise on AI and human rights

- ○ Not useful
- ○ Rather not useful
- ○ Indifferent/no opinion
- ○ Rather useful
- ◉ Highly useful

39. What other mechanisms, if any, should be considered?
Multi Line Text.
Do not exceed **500 words**

Additional mechanisms have been listed by the High-Level Expert Group on Artificial Intelligence (European Commission), Ethics Guidelines for Trustworthy AI: Technical methods for Trustworthy AI (https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=60419):

- Resilience mechanisms against hacking and data poisoning (robust AI security) including periodic reviews of resilience against attacks throughout entire lifecycle of the product;
- A fallback plan in case of problems: AI systems can switch from a statistical to rule-based procedure, or that they ask for a human operator before continuing their action;
- (AI results are reproducible: produces same results over and over during experiments to ensure reliability of data;
- AI should have an ingrained ‘white list’ of procedures it should always follow, and ‘black list’ of restrictions on behaviours; and
- Companies should implement a mechanism for fail-safe shutdown and enable resumed operation after a forced shut-down)

40. Are there any other issues with respect to the design, development and application of AI systems in the context of human rights, democracy and the rule of law that you wish to bring to the attention of the CAHAI?.
Multi Line Text.
Do not exceed **750 words**

Developers should have the competencies and professional qualifications to effectiveness of AI systems with respect to human rights, democracy and rule of law.

41. Please could you provide your e-mail address in case we need to contact your regarding the questionnaire you have just completed. Thank you

anurag.bana@int-bar.org; mariapia.sacco@int-bar.org