

# Council of Europe Ad Hoc Committee on Artificial Intelligence (CAHAI): Public consultation (survey) March 30-April 29, 2021



European Center for  
Not-for-Profit Law

## ECNL Answering Guide

### Introduction

In 2020, the [Council of Europe CAHAI](#) conducted a [feasibility study](#) and made the case for a regulatory framework on artificial intelligence (AI) based on Council of Europe's standards on human rights, rule of law, and democracy. The CAHAI is now in the process of drafting key potential elements of a future framework and is carrying out a [multi-stakeholder consultation](#) process to seek input. Our guide raises important issues that should be considered when answering the survey and proposes model answers to the questions therein in a way that best upholds and promotes human rights.

As noted by European Digital Rights (EDRI) in their [Answering Guide for the EU White Paper on Artificial Intelligence](#), "AI is a very broad term including a range of processes and technologies which enable computers to complement or replace specific tasks otherwise performed by humans, such as making decisions and solving problems, or to do them at a scale that humans cannot. As it functions today, AI involves the computerised analysis of large data sets to analyse, model, and predict an issue or scenario – although experts can disagree on what exactly would be considered "AI".

This guide is designed to support civil society organisations (especially those that do not generally focus on digital rights) in answering the survey. Preceding each question, you'll see in **blue** our comments and suggestions to contextualize and reply to the question, whereas following each question, you will see **highlighted** in yellow our recommended answer/s (both multiple choice and drafted text are available). To be as concise as possible, we merely identified key issues and considerations in our draft responses. It's important to note that these are by no means exhaustive or comprehensive, and nearly always call for deeper analysis. We've also included a few quotes in our explanations and invite you to read more of the authors' important work.

Responding to the survey should take 30-40 minutes. When in doubt on how to answer a specific question, we encourage you to leave the answer blank or select "no opinion". The deadline to submit responses is April 29, 2021. Please note that each organisation is limited to one submission, and you must respond on behalf of your institution.

**Finally – please share this guide and public consultation survey with other groups and organisations and encourage them to reply – every civic voice is important in this effort!**

## Section 1: Definition of AI Systems

Defining artificial intelligence is incredibly tricky. For the purpose of a regulatory instrument, we need to strike the right balance between a term that is broad enough to include many AI systems, while being specific enough to provide for effective remedy when those who are subjected to the AI system want to contest it. Option 1 has the advantage of being widely applicable and focusing on the human rights impacts of AI systems rather than the technology itself, but also risks diluting the impact of the convention as it fails to consider the intricate features of AI systems and the need for adequate safeguards, measures and remedy. Option 2 has a similar large scope but is also excessively vague and imprecise. Conversely, Option 3 is excessively narrow and includes machine learning systems only, which are one subset of AI categories.

ECNL recommends selecting Option 4, i.e. “a definition focusing on automated decision-making”, to bring home the specific human rights risks of AI systems and steer away from more misleading or vague terms. While this definition has the downside of being quite narrow and thus risks excluding other harmful technologies, it would provide much-needed regulation for the AI systems that have the most significant human rights impacts today. Civil society organisation [AlgorithmWatch](#) defines automated decision-making systems (“ADM”) as “a socio-technological framework that encompasses a decision-making model, an algorithm that translates this model into computable code, the data this code uses as an input—either to ‘learn’ from it or to analyse it by applying the model—and the entire political and economic environment surrounding its use. This means that the decision itself to apply an ADM system for a certain purpose—as well as the way it is developed (i.e. by a public sector entity or a commercial company), procured and finally deployed—are parts of this framework.”

1. 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 (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”<sup>4</sup>.
  - A definition focusing on machine learning systems.
  - **A definition focusing on automated decision-making.**
  - Other (Please explain below)

Limited characters
  - No opinion

## Section 2: Opportunities and Risks arising from AI Systems

### Opportunities arising from AI systems

There is a strong imbalance of power between those that develop and deploy AI systems and the communities that are subjected to them, especially historically marginalised and under-represented groups. When considering potential opportunities that can arise from AI systems, it's therefore important to begin with a power analysis and focus on the needs of the most at-risk communities. Any AI systems should seek to increase economic and social equality for all, strengthen the human rights of all and provide for a democratic system and rule of law that is beneficial to everyone, not only to a few privileged individuals or groups.

With this in mind, it's important to consider the following elements:

- First, who will benefit from these systems (specifically, which demographic groups and/or sectors) and who will be harmed?
- Second, is the root cause of a (social, economic, political or other) issue effectively being addressed by deploying the AI system, or are we merely offering performative and superficial solutions?

In reality, there are no systems that only present opportunities or risks from a binary perspective, but instead systems that provide different opportunities or risks depending on the targeted population, context and situation in which they are deployed.

- Excerpt from "Automating Society" (AlgorithmWatch): "When an [automated decision-making system is deployed] we not only need to ask what data it uses, but whether the use of this data is legal. We also need to ask what decision-making model is applied and whether it has a certain problematic bias, i.e. because it used a biased data set or was developed by people with underlying prejudices that were not controlled for. Other questions then arise: why did the government come up with the idea to use it in the first place? Is it because there is a problem that cannot be addressed in any other way, maybe due to its inherent complexity? Is it because austerity measures led to a situation where there are no longer enough case workers, so automation is used as an option to save money? Or is it because of a political decision to increase pressure on poor people to take on low-paying jobs?"
- Excerpt from The Relay (Alix Dunn): One of the frustrating things about technology built and deployed in capitalist systems is that any technology built in the public interest is gets called #TechforGood. (...) There are 'Tech for Good' debates and conversations happening all the time, but these are often wholly separate from policy conversations: things like governance and questions of rights, as well as debates over who should have power to build for whom, and how we should manage all of our digital systems in pro-social, anti-racist, and net beneficial ways. But 'tech for good' implies that positive intent drives good technology. That's not true. (...) By focusing too much on the 'what', we miss the challenging and hugely consequential details of the 'how'."

That being said, and assuming that safeguards are put in place to prevent adverse impacts of AI, ECNL sees the most promising applications of AI in the following sectors:

1. Healthcare: Healthcare is already a much more regulated sector with a strong history of harm reduction and prevention, thus making it a safer environment to deploy AI systems. Assuming safeguards are put in place (e.g. ensuring diverse datasets, working with local communities and public health experts to ensure quality deployment and access to healthcare, etc.), the use of AI can lead to positive advancements in healthcare (e.g. diagnosis, preventive care, etc.).
2. Environment and climate: There are promising applications of AI systems to predict which geographical areas or ecosystems will be most impacted by upcoming ecological catastrophes or climate crisis. Any implementation, however, must include issues around environmental justice and how marginalised groups are the most at-risk of harm.

3. Other: Searching and sorting through information (e.g., search engines that use automation to suggest the most relevant information to users). Unfortunately, most search engines today are optimised for targeted advertising and advertising revenue, as opposed to prioritising the most relevant or valuable information. Any algorithmic-driven search engine should therefore prioritise news worthiness, elevate minority and marginalised voices, downgrade mis/disinformation and take measures to mitigate bias in algorithms. As with all AI systems, algorithmic-driven search engines often perpetuate biases and stereotypes (“garbage in, garbage out”), disproportionately impacting minority and marginalised groups.

2. 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 (select 3 maximum):

- Banking, finance and insurance
- Justice
- Law enforcement
- Customs and border control
- Welfare
- Education
- **Healthcare**
- **Environment and climate**
- Election monitoring
- National security and counter-terrorism
- Public administration
- Employment
- **Social networks/media, internet intermediaries**

Searching and sorting through information (e.g., search engines that use automation to suggest the most relevant information), provided that they prioritise news worthiness, elevate minority and marginalised voices, downgrade mis/disinformation and take measures to mitigate bias in algorithms. As with all AI systems, algorithmic-driven search engines often perpetuate biases and stereotypes (“garbage in, garbage out”), disproportionately impacting minority and marginalised groups.

- **Other (which areas and why)**
- No opinion

3. 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? (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
- **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
- Recruiting software/ AI applications used for assessing work performance
- AI applications aimed at predicting recidivism
- AI applications to prevent the commission of a criminal offence (e.g. anti-money laundry AI applications)
- 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

4. Please briefly explain how such applications would benefit human rights, democracy and the rule of law.

Provided that additional safeguards are taken, and that these systems are developed by putting human rights above profit (which is rarely the case today), the three areas selected appear to have a lower risk of exacerbating existing power imbalances in our societies that result in, among others, growing economic and social inequalities. The use of AI systems in a few limited sectors can arguably contribute to closing or limiting these imbalances. That being said, there are no systems that only present opportunities or risks from a binary perspective, but instead systems that provide different opportunities or risks depending on the targeted population, context and situation in which they are deployed. As such, it's important to consider first who will benefit from these systems (specifically, which demographic groups and/or sectors) and who will be harmed? Second, is the root cause of a (social, economic, political or other) issue effectively being addressed by deploying the AI system, or are we merely offering performative and superficial solutions?

In reality,

- 1) Medical applications for faster and more accurate diagnoses: Provided that the datasets on which these are based include sufficient relevant information on vulnerable and marginalised groups and are not based on a homogeneous group, AI systems can potentially enable faster and more accurate diagnoses. This could in turn allow for more timely and cost-effective access and possible remedy for a wider group of people, thereby increasing access to healthcare. This would not only strengthen the right to health(care) but also democracy, as it could allow for broader access in society. Keeping in mind that those who have the least access to healthcare today are the communities that are already most vulnerable and marginalised, it is important to ensure that these systems equally benefit everyone. Effective public health policies must be implemented alongside any deployment of AI systems in healthcare must not unduly remove funding and resources from other health-related budgets.
- 2) AI applications to predict the possible evolution of climate change and/or natural disasters: AI systems could potentially help better understand the effects of current policies on the climate and/or ecosystem. As such, they could potentially contribute to better decision-making related to protecting the climate and mitigating the effects of natural disasters. Keeping in mind that those affected mostly today are the communities that are already most vulnerable and marginalised, it is important to

ensure that these systems equally benefit everyone and do not perpetuate or exacerbate inequality.

- 3) AI applications for personalised media content (recommender systems): AI-driven systems have the potential to promote human rights by moderating and curating incredibly large amounts of content that is posted daily. Algorithmic content moderation and curation can make the experience more enjoyable for users by dealing with harmful or problematic content that human moderators cannot manage at such a large scale. Unfortunately, the way that AI-driven content moderation is done today often harms users (especially the most vulnerable ones) instead of benefiting them. Indeed, most algorithmic content curation systems are optimised for prolonging online engagement (with the end goal of increasing revenue from targeted advertising), thereby prioritising sensational (and often harmful) content and amplifying powerful voices. Other troubling concerns relate to the limited accuracy of these systems, unjustified impacts on freedom of expression through overly broad content take-downs and silencing minority voices, as well as perpetuating biases and stereotypes (“garbage in, garbage out”). It is extremely difficult (if not impossible) to rightfully grasp and interpret local contexts in which online content is being generated at such large scale. For these systems to be truly beneficial, they must instead be optimised for promoting human rights, rule of law, and democracy (e.g. by amplifying human rights campaigns, minority and marginalised voices, press and media, plurality of views, etc.). Social media platforms must urgently provide meaningful transparency into how these systems operate and make decisions. Among other things, social media platforms must reduce data collection and processing, invest in better training content moderators and data labellers, improve the efficiency of these systems for non-dominant Western languages and contexts, and take measures to reduce bias and discriminatory outcomes which perpetuate stereotypes (e.g. by improving the diversity of datasets on which models are trained, among other measures).
- 4) AI applications to promote gender equality (e.g. analytical tools): Provided that safeguards are taken to prevent discriminatory outcomes and that gender is seen as non-binary to include transpersons and gender non-conforming persons, AI applications could potentially promote gender equality via affirmative action in a few narrowly-scoped situations. Data is rarely collected about women and gender non-conforming persons – especially women who are BIPOC (black, indigenous and people of colour), migrants or refugees, members of religious minorities, LGBTQ, disabled, or of lower socioeconomic class, among others – yet disaggregated data can be helpful in promoting gender equality. That being said, any use of an AI-driven tool for affirmative action must also be accompanied with other non-technical strategies to raise awareness against gender inequality and gender-based violence and promote women’s empowerment. As with all AI systems, existing social inequalities get coded into the technology (“garbage in, garbage out”) and any use of these systems must be handled with extreme care and scrutiny.

5. What other applications might contribute significantly to strengthening human rights, democracy and the rule of law?

#### **Impact on human rights, democracy and the rule of law**

For the purpose of this survey, ECNL focused on the most severe and salient human rights impacts and identified the areas that can lead to greatest physical harm, arbitrary detention,

and potentially torture or death, as well as those that can prevent people from accessing life-saving opportunities: justice; law enforcement and customs and border control. As explained above, there is a strong imbalance of power between those that develop and deploy these systems and the communities that are subjected to them, especially already vulnerable groups and marginalised groups. When considering potential risks that can arise from AI systems, it is important to begin with a power analysis and focus on the risks of AI systems to the most marginalised communities, as they are often disproportionately harmed. AI-driven surveillance technologies in the hands of powerful actors such as judicial bodies or law enforcement officials have the potential to do great harm, with minorities and marginalised groups, human rights defenders, activists and journalists bearing the most significant risk.

Excerpts from [Politico](#) (Melissa Heikkila): “In recent years, there have been high-profile examples of AI systems discriminating against racial minorities, including facial recognition systems that don’t recognize women or black and brown faces; opaque, unenforceable and discriminatory hiring algorithms; or applications that predict disproportionate criminality and offer worse legal outcomes.”; “A coalition of civil society groups, led by EDRI, has campaigned for red lines in the upcoming AI laws that would ban technologies such as live facial recognition, which they warn would discriminate against people of color.”; “Conversations about race are often had at national level rather than in Brussels, and “a lot of efforts to deal with systemic racism are not always connected with the conversations about technology,” Jansen Reventlow said. This can lead to these groups being excluded from technical discussions that shape AI policy, said Vanja Skoric, program director at the European Center for Not-For-Profit Law. “Often they themselves don’t feel good enough or ‘expert enough’ to participate, which leads to a lack of critical important voices in discussions,” she said.”

Besides justice, law enforcement, and border control, there are many more than the three areas prioritised below that can adversely impact human rights, democracy and rule of law. The use of AI systems in welfare systems, for example, is particularly problematic as it can lock out the most vulnerable people from accessing social care. These systems have often been used to criminalise poor et lower socio-economic people (disproportionately impacting BIPOC and other minorities), by surveilling, targeting, harassing and punishing beneficiaries. Promoted as tools to fight against fraud detesting or to optimise distribution, there are many examples where AI systems have actually exacerbated socio-economic inequalities and impacted people’s right to housing, food, employment, education, social assistance, and even life.

## 1. Justice

Excerpt from the [Leadership Conference on Civil and Human Rights](#): “[On the] concerns with the adoption of algorithmic-based decision-making tools (also known as risk assessment instruments) as a substitution for ending money bail. These tools use data to forecast an individual’s likelihood of appearance at future court dates and/or risk of re-arrest. While many jurisdictions claim that these tools are a necessary part of an effort to end money bail and create a fairer pretrial system, the signers, representing millions of people impacted by mass incarceration, urge jurisdictions to reconsider their use of these tools, and to center transparency and accountability to the communities judged by the tools... [R]isk assessment tools are not a panacea to reforming our unjust and broken bail systems, and that, in fact, these tools can worsen racial disparities and allow further incarceration. [Jurisdictions should] not embed risk assessment tools in pretrial decision-making, but instead reform their systems to significantly reduce arrests, end money bail, severely restrict pretrial detention, implement robust due process protections, preserve the presumption of innocence, and eliminate racial inequity.”

## 2. Law enforcement

Excerpt from [Reclaim Your Face campaign \(EDRI\)](#): Regulators should “prohibit, in law and in practice, indiscriminate or arbitrarily-targeted uses of biometrics which can lead to unlawful mass surveillance. These intrusive systems must not be developed, deployed (even on a trial basis) or used by public or private entities insofar as they can lead to unnecessary or disproportionate interference with people’s fundamental rights. Evidence shows that uses of biometric mass surveillance in Member States and by EU agencies have resulted in violations of EU data protection law, and unduly restricted people’s rights including their privacy, right to free speech, right to protest and not to be discriminated against. The widespread use of biometric surveillance, profiling and prediction is a threat to the rule of law and our most basic freedoms.

3. Customs and border control

Excerpt from [Mijente](#): “The data-mining firm Palantir played a key role in federal immigration efforts to target and arrest family members of children crossing the border alone, a [new document](#) released this week shows. The document, which details the efforts of Immigration and Customs Enforcement agents to prosecute and arrest parents and sponsors of immigrant children, contradicts claims by the software company that its software is not used in deportations.”

Excerpt from [AlJazeera](#) (Achiame, Chander, Molnar): “From drones patrolling the Mediterranean Sea to Big Data projects predicting people’s movement to automated decision-making in immigration applications, governments are justifying these innovations as necessary to maintain border security. However, what they often omit to acknowledge is that these high-risk technological experiments exacerbate systemic racism and discrimination.”

6. 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 (select 3 maximum)

- Banking, finance and insurance
- Justice
- Law enforcement
- Customs and border control
- Welfare
- Education
- Healthcare
- Environment and climate
- Election monitoring
- National security and counter-terrorism
- Public administration
- Employment
- Social networks/media, internet intermediaries

Limited characters

- Other
- No opinion

7. Please briefly explain how such applications might violate human rights, democracy and the rule of law.

The use of AI systems risks further exacerbate existing racial and ethnic, gender, and social and economic inequalities (among others). Given the severe impacts that judicial systems, law enforcement (including national security and counter-terrorism) and customs and border control have on human



rights institutional discrimination, any AI systems deployed in these sectors have the potential to cause great harm. This is especially worrisome given the institutional racism and other forms of discrimination that shape our social and political systems. Many of the policies and practices that are already entrenched with racial biases and often target already vulnerable and marginalised groups, especially black, indigenous and people of color (BIPOC), will be coded into AI systems. This will make processes and the outcomes even more opaque, while falsely appearing to be 'objective'.

Mass surveillance systems, such as facial recognition and other indiscriminate biometric surveillance tools, are fundamentally incompatible with human rights. These symptoms severely impact people's right to privacy, non-discrimination, freedom of expression, assembly and association, human dignity and life, liberty and security, among others. Human rights defenders, activists, journalists and political dissidents are particularly at risk. AI-driven surveillance technologies have also been used to track, surveil and at times arrest, detain and deport refugees and migrants. Algorithmic risk assessment tools or predictive policing, which are also biased against racial and ethnic minorities, lead to increased incarceration of BIPOC.

Having no red lines and/or binding regulation and meaningful oversight of these applications will most likely result in further deterioration of human rights, putting individuals (especially BIPOC) at risk of significant harm thus eroding the core principles of democracy and rule of law. Yet these systems are often developed and deployed without including BIPOC and other marginalised groups in the process.

8. Please indicate the types of AI systems that represent the greatest risk to human rights, democracy and the rule of law (select 5 maximum):

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

9. Please briefly explain how such applications might violate human rights, democracy and the rule of law.

As mentioned under question 7, the use of AI systems risks further exacerbate existing racial and ethnic, gender, and social and economic inequalities (among others). When considering potential risks that can arise from AI systems, it is important to begin with a power analysis and focus the risks of AI systems to the most marginalised communities, as they are often disproportionately harmed. AI-driven surveillance technologies in the hands of powerful actors such as judicial bodies or law enforcement officials have the potential to do great harm, with minorities and marginalised groups, human rights defenders, activists and journalists bearing the most significant risk.

Besides justice, law enforcement, and border control, there are many more than the three areas prioritized below by can adversely impact human rights, democracy and rule of law. The use of AI systems in welfare systems, for examples, is particularly problematic as it can lock out the most vulnerable people from accessing social care. These systems have often been used to criminalize poor et lower socio-economic people (disproportionately impacting BIPOC and other minorities), by surveilling, targeting, harassing, and punishing beneficiaries. Promoted as tools to fight against fraud testing or to optimise distribution, there are many examples where AI systems have instead exacerbated socio-economic inequalities and impacted people's right to housing, food, employment, education, social security and even life.

1. Facial recognition supporting law enforcement – Allows for mass surveillance, has highly discriminatory outcomes (especially for women and gender non-conforming persons and BIPOC) and is fundamentally incompatible with human rights. Evidence shows that uses of biometric mass surveillance in Europe have resulted in violations of EU data protection law and unduly restricted people's rights including their privacy, right to free speech, right to protest and not to be discriminated against. The widespread use of biometric surveillance, profiling and prediction is a threat to the rule of law and our most basic freedoms.
2. Scoring / scoring of individuals by public entities – Can increase inequality in access to and enjoyment of basic social and economic rights. Persons from lower socioeconomic classes and/or marginalised groups are disproportionately at risk, as AI-driven scoring systems impact their right to education (e.g. AI applications determining the allocation of educational services; AI applications used for analysing the performance of pupils/students in educational institutions such as schools and universities), right to work (e.g. algorithmic-driven hiring tools or performance assessment tools; emotional analysis in the workplace to measure employees' level of engagement, etc.), and right to social security, among others.
3. AI applications to prevent the commission of a criminal offence and AI applications aimed at predicting recidivism can lead to incarceration and limit people's freedom. Given institutional racism and biased AI systems, the use of algorithmic tools in the context of criminal justice risks perpetuating disproportionate harm to BIPOC and other vulnerable groups.
4. AI applications determining the allocation of social services – Allocating social services without proper human oversight that looks at particular circumstances of each case can lead to misjudge a person's situation. Such error disproportionately impacts already marginalised persons, especially those of lower socioeconomic class, as access to social services is often necessary for their survival.

10. What other applications might represent a significant risk to human rights, democracy and the rule of law?

Autonomous weapons; algorithmic-driven risk assessment tools for criminal justice

11. 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:

- Banned
- Not banned
- Other

Limited characters

- No opinion

12. 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:

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

13. 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:

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

14. 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:

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

15. 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? (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 (note that this requires equality, legal certainty, transparency and explainability)

16. In your opinion, in what sectors/areas is a binding legal instrument needed to protect human rights, democracy and the rule of law? (select 3 maximum):

The replies highlighted below match the risks that we identified as most serious above, given the severe human rights impacts that they have on people, especially on marginalised groups.

- Banking, finance and insurance
- **Justice**
- **Law enforcement – this includes customs and border controls**
- Customs and border control
- Welfare
- Education
- Healthcare
- Social networks/media, internet intermediaries
- Environment and climate
- Election monitoring
- **Public administration – this includes welfare, education, healthcare, among others**
- Employment
- No opinion
- Other

### 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.

17. 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.

Self-regulation has not worked in other sectors and is not protecting people from adverse impacts of technology today. Big Tech companies, all AI-based, have fought relentlessly and deployed lots of money to stall, block or shape laws around the world. Any self-regulatory efforts that they made have failed to tackle the most serious adverse impacts of their products or services, especially when doing so would limit profit maximisation.

1 I <b>completely disagree</b>	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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18. Self-regulation by companies is sufficient to prevent and mitigate the risk of violations of human rights, democracy and the rule of law

1 I <b>completely</b>	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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disagree					
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As consistent with the [United Nations Guiding Principles on Business and Human Rights](#), companies can – and should – take actions to mitigate adverse impacts on human rights of their products and services. This includes implementing internal policies, conducting human rights due diligence, and establishing internal grievance mechanisms. However, such measures are rarely taken (especially by smaller and less visible technology companies), and in any case, these measures are not sufficient on their own to prevent harm.

19. Which of the following instruments of self-regulation do you consider to be the most efficient?

- o Ethics guidelines
- o Voluntary certification
- o Other

Continuous, inclusive, and transparent human rights due diligence

- o No opinion

20. 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.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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21. If you responded agree/fully agree to the previous question, 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:

Limited characters

22. If you responded disagree/completely disagree to question 23, please indicate why existing international, regional and/or national (binding and/or non-binding) legal instruments are not sufficient to regulate AI systems (select all you agree with):

While existing international human rights law provides us with a legal framework to promote and seek remedy for violations of our fundamental rights, the intricate features of algorithmic systems (especially lack of transparency and accountability, large scale, etc.) require a new legal instrument.

- There are too many and they are difficult to interpret and apply in the context of AI.
- 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.
- They lack specific principles for the design, development and application of AI systems.

- They do not provide enough guidance to the designers, developers and deployers of AI systems.
- 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.

23. Please indicate other specific legal gaps that in your view need to be addressed at the level of the Council of Europe

- Requiring public registers documenting the use of AI systems in public spaces and/or by public authorities.
- Establishing rigorous transparency requirements for AI designers, developers and end-users.
- Banning facial recognition and other indiscriminate or arbitrarily-targeted uses of biometrics, which can lead to unlawful mass surveillance; risk assessment tools for criminal justice and autonomous weapons.
- Providing a right to refusal of being subjected to an AI system (including the right to opt-out and to have alternative means to access or achieve a given objective).
- Requiring that private sector companies take measures to respect human rights (e.g. mandatory human rights due diligence laws). This is especially important for AI systems as they are mainly designed, developed (and often deployed by private sector companies).

## 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.

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

The right to human dignity entails the right to know when we are interacting with an AI-driven system as opposed to a human-based one.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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25. Individuals should always be informed when a decision which affects them personally is made by an AI system.

The exercise of our right to an effective remedy for any harm caused by an AI system requires that we know when a decision is being made partially or wholly by an AI system.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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26. Individuals should always be informed when an AI system is used in a decision-making process which affects them personally.

To exercise our right to an effective remedy for any harm caused by an AI system, we need to know when a decision is being made partially or wholly by an AI system.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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27. Individuals should have a right to a meaningful explanation of algorithmic based decisions, in particular how the algorithm reached its output.

The right to human dignity entails the right to know when we are interacting with an AI-driven system as opposed to a human-based one. To exercise our right to an effective remedy for any harm caused by an AI system, we need to know how a decision has been made so that we can contest it. This is a critical part of the fundamental guarantees of due process, fair trial, equality of arms and prohibition of discrimination, among others.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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28. 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.

The right to an effective remedy implies that we have the right to be part of judicial proceedings reviewed by human judges. This is a critical part of the fundamental guarantees of due process, fair trial, equality of arms and prohibition of discrimination, among others.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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29. Individuals should have a right to demand the review of an algorithmic based decision by a human being.

Effective human oversight is a critical part of the fundamental guarantees of due process, fair trial, equality of arms and prohibition of discrimination, among others.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion



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

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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**31.** Public institutions should not use AI systems to promote or discredit a particular way of life or opinion (e.g. "social scoring").

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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**32.** States should be obliged to design, develop and apply sustainable AI systems that respect applicable environmental protection standards.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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**33.** 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.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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**34.** There should be higher transparency standards for public entities using AI than for private entities.

**While this is appropriate, ideally, both public and private entities should provide the highest level of transparency, in a way that is accessible and meaningful for all stakeholders (especially for marginalised groups).**

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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**35.** 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.

While this is appropriate, ideally, both justice and consumer sectors should ensure that the highest standards for access to remedy is met, in a way that is accessible and effective for all stakeholders (especially for marginalised groups).

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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36. 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.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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37. 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.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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38. The use of facial recognition in public spaces should be prohibited.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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39. 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.

Facial recognition should be banned. However, given that there is no such option here, the second best options appears to be the requirement for human oversight, which is why we suggest answering “I fully agree”.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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40. The use of AI systems in democratic processes (e.g. elections) should be strictly regulated.

1 I completely disagree	2 I rather disagree	3 Indifferent	4 I rather agree	5 I fully agree	No opinion
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41. Should a future legal framework at Council of Europe level include a specific liability regime in relation to AI applications?

- Yes
- No
- No opinion

42. If yes, what aspects should be covered?

- a) To the extent possible, restore the victim's situation to the situation preceding any intervention of/by an AI system.
- b) Provide monetary compensation to victims harmed by AI systems.
- c) Establish sanctions of AI designers/developers/deployers for the harm caused by using the AI system. Sanctions should include the prohibition of further deploying the AI system unless significant changes are made to ensure that the design and/or use of the AI system is rights-respecting.
- d) Establish sanctions of AI designers/developers/deployers for the failure to conduct thorough human rights due diligence before and during the use of an AI system, or for failure to effectively monitor the use of the AI system.
- e) Sanctions of AI designers/developers/deployers for deploying an AI system that has been banned.

## Section 5: Policies and Measures for Development

43. 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?

	1 Not useful	2 Rather not useful	3 Indifferent	4 Rather useful	5 Highly useful	No opinion
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Human rights, democracy and rule of law impact assessments					X	
Certification and quality labelling				X		
Audits and intersectional audits <sup>11</sup>					X	
Regulatory sandboxes					X	
Continuous automated monitoring					X	

44. Please indicate what combination of mechanisms should be preferred to efficiently protect human rights, democracy and the rule of law (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

Limited characters

45. 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.

	Binding instrument	Non-binding instrument	No opinion
Human rights, democracy and rule of law impact assessments	X		
Certification and quality labelling			X
Audits and intersectional audits	X		
Regulatory sandboxes	X		
Continuous automated monitoring	X		
Other [limited characters]			

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

	1 Not useful	2 Rather not useful	3 Indifferent	4 Rather useful	5 Highly useful	No opinion
Monitoring of AI legislation and policies in member States					X	
Capacity building on Council of Europe instruments, including assistance to facilitate ratification and implementation of relevant Council of Europe instruments					X	
AI Observatory for sharing good practices and exchanging information on legal, policy and technological developments related to AI systems This is useful, but there are already other initiatives in place so we shouldn't duplicate efforts (deploy resources to effectively engage civil society, especially marginalized groups)				X		
Establishing a centre of expertise on AI and human rights					X	

47. What other mechanisms, if any, should be considered?

Create a platform or forum providing the opportunity to effectively engage external stakeholders, especially civil society organisations and marginalised groups. Importantly, provide them with the tools, training, resources, and information necessary to meaningfully participate in AI governance and AI accountability.

48. 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?

Proactively ensure inclusion of civil society (especially under-represented groups) throughout the process cycle. Establish feedback mechanisms and shared decision-making processes to ensure participatory mechanisms. This should be a (binding) legal obligation.