Response to Call for Inputs: The Use of Artificial Intelligence and the UN Guiding Principles on Business and Human Rights[1]

In response to the call for inputs by the OHCHR, we, the undersigned civil society organizations (who are part of the [Global Digital Justice Forum](#)) welcome the opportunity to contribute to the thematic report on, 'The Use of Artificial Intelligence and the UNGPs'.

Our response highlights the key human rights risks linked to AI procurement and deployment by States and businesses across various sectors, including law enforcement, welfare, health, education, agriculture, etc. By providing examples of some regulatory frameworks, policies, and promising practices, we call on States to regulate the AI ecosystem not only to mitigate harm but also to enable public value creation and equitable innovation and safeguard the public commons from corporate capture.

We also advocate for governments to devise stronger accountability frameworks for AI developers and deployers, whether in the public or private sectors. States should also take measures to ensure meaningful and inclusive public participation in decision-making processes related to AI procurement and deployment, and institute effective mechanisms for grievance redressal. A crucial factor in enabling this is enhanced algorithmic transparency and the right to information in AI-related systems and processes, particularly in high-risk AI cases impinging on fundamental human rights. Mechanisms such as public repositories of algorithms to enhance transparency should be explored. Additional priorities for governments include - capacity building of public sector officials to conduct due diligence and risk assessments, ensuring compliance with fundamental labor rights in the AI value chain, public investments in open compute paradigms, and addressing the ecological impact of AI technologies.

Responses to 'Questions for Other Stakeholders'

1. **What do you consider are the main human rights risks linked to the procurement and deployment of AI systems by States and in which area?**

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[1] This submission is prepared by IT for Change with inputs from Derechos Digitales, Latin American Campaign for the Right to Education (CLADE), Article 19 Mexico and Central America Office, and Research ICT Africa.

The procurement and deployment of AI systems by States present significant human rights risks across various domains, with profound implications for privacy, equality, democratic accountability, and public participation in digital innovation systems.

(i) Law enforcement: The use of AI in law enforcement, such as predictive policing and facial recognition technology, raises significant human rights concerns, including biased outcomes that disproportionately harm marginalized communities, lead to wrongful incarcerations, and erode people's privacy through extensive data collection.[2] While technologies like facial recognition may exhibit a low error rate in absolute terms, their deployment still results in a large number of individuals being wrongly tracked, amplifying surveillance of people's movements and lives.[3] These practices threaten individual autonomy, stifle freedom of expression, and risk creating a surveillance state.[4] The opacity of these AI systems further hinders the accountability of law enforcement agencies.

(ii) Welfare delivery: AI-driven welfare delivery systems risk unjust exclusions, surveillance, and lack of accountability.[5] Arbitrary and unjust denial of welfare[6] deprives individuals of right to life, equality, adequate living standards, and livelihood.[7] Where public services such as resource allocation are not transparent, it limits the opportunities for public participation in policy development and evaluation, also hindering the ability of subjects to seek redress in case of bias or other harms. This is particularly the case when private actors are involved in performing public service functions.

(iii) Education: AI in education poses risks such as pervasive surveillance, behavior-based rewards or punishments, and stifling critical thinking.[8] It may exacerbate violence, bullying, and cyberbullying.[9] A UN Special Rapporteur highlights risks in using AI for admissions, student allocation, outcome assessments, and behavioral monitoring during tests.[10] AI could also amplify educational inequalities, widening gaps between privileged and underprivileged students, as AI tools often favor dominant cultures and languages.[11] Concerns also arise over reduced human interaction, the

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2 https://link.springer.com/article/10.1007/s13347-021-00478-z

3 https://policyreview.info/articles/analysis/data-governance-risks-facial-recognition; https://dl.acm.org/doi/10.1145/3351095.3372865

4 https://articulo19.org/continua-impune-el-uso-de-pegasus-a-un-ano-de-las-nuevas-denuncias/

5 https://www.amnesty.org/en/latest/news/2024/11/denmark-ai-powered-welfare-system-fuels-mass-surveillance-and-risks-discriminating-against-marginalized-groups-report/

6 https://www.amnesty.org/en/latest/research/2024/04/entity-resolution-in-indias-welfare-digitalization/

7 https://ohrh.law.ox.ac.uk/the-human-rights-implications-of-chinas-social-credit-system/

8 https://www.mdpi.com/2071-1050/15/16/12451

9 https://slejournal.springeropen.com/articles/10.1186/s40561-024-00316-7

10 https://documents.un.org/doc/undoc/gen/n24/298/43/pdf/n2429843.pdf

11 https://www.researchgate.net/publication/351119867_Equity_and_Artificial_Intelligence_in_Education_Will_AIEd_Amplify_or_Alleviate_Inequities_in_Education

decline of teachers' roles, technocratic approaches, and the exploitation of student data for non-consensual/socially inimical purposes.[12]

(iv) Child protection services: States are increasingly automating the processes of predicting the risk of violations of the rights of children and adolescents. The growing use of AI to predict risks to children's rights enables private sector actors to access and exploit highly sensitive data without adequate privacy protections or safeguards against abuse and exploitation.[13]

(v) Judiciary: Since AI tends to reinforce structural biases, its use in the judiciary, especially for risk assessment in sentencing, can produce discriminatory outcomes,[14] undermining the right to a fair trial and treatment, as well as compromising judicial discretion.[15] A recent ruling issued by a judge in Colombia to protect the right to health of a minor with autism, where the legal reasoning was entirely written by ChatGPT raises concerns regarding judicial independence and the duty to provide reasoned judgments.[16]

(vi) Migration and border management: AI technologies in migration systems increasingly threaten migrants' human rights and access to asylum.[17] A 2024 Electronic Frontier Foundation report highlights how layered surveillance technologies, automated by AI, monitor border communities and make decisions on the return of migrants.[18] The Sentinel Platform in Chihuahua demonstrates how opaque systems, including biometric identification and behavioral prediction, are used under the pretext of public safety and immigration control, raising concerns about transparency, accountability, and human rights impacts.

(vii) War and conflict: AI in military applications poses grave risks to civilian life and accountability. Autonomous weapons and AI-driven surveillance systems reduce human oversight and blur accountability.[19] In 2024, UN experts condemned the use of AI in "domicide"[20] and called for reparative measures, highlighting the ethical and humanitarian implications of such technologies.[21]

The above examples demonstrate how critical functions of the State, such as welfare, education, justice, and the maintenance of the public commons are under threat of

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12 https://documents.un.org/doc/undoc/gen/n24/298/43/pdf/n2429843.pdf
13 https://www.mdpi.com/2071-1050/15/16/12451
14 https://researchoutreach.org/articles/justice-served-discrimination-in-algorithmic-risk-assessment/
15 https://www.unodc.org/dohadeclaration/en/news/2021/30/judge-dread_ai-and-judicial-integrity.html
16 https://www.theguardian.com/technology/2023/feb/03/colombia-judge-chatgpt-ruling
17 https://www.amnesty.org/en/latest/news/2024/05/global-new-technology-and-ai-used-at-borders-increases-inequalities-and-undermines-human-rights-of-migrants/
18 https://www.eff.org/files/2024/05/06/borderzine-2024-5-6-es.pdf
19 https://hms.harvard.edu/news/risks-artificial-intelligence-weapons-design
20 Domicide refers to the the systematic or widespread violation of the right to adequate housing; See, https://documents.un.org/doc/undoc/gen/n22/431/55/pdf/n2243155.pdf
21 https://ainowinstitute.org/publication/the-algorithmically-accelerated-killing-machine

erosion by the slow creep of private, non-accountable interests into the public realm.[22] The flight of data value from the public sphere into captive ecosystems of the private sector points to the need to democratize data and AI dividends to serve the collective good.

2. What do you consider are the main human rights risks linked to the procurement and deployment of AI systems by business enterprises outside the technology sector in their operations, products and services and in which area?

The following areas highlight key human rights risks posed by the procurement and deployment of AI systems by business enterprises outside the technology sector. Robust regulatory measures are essential to mitigate these risks, ensure AI systems align with human rights principles, and safeguard the public value of data and innovations from corporate enclosure through opaque AI systems.

(i) Labor: AI-driven surveillance and algorithmic management in workplaces harm workers' economic, physical, and mental well-being.[23] There is growing concern about AI-driven automation replacing jobs in low-skill sectors such as manufacturing and logistics, with such displacement disproportionately affecting vulnerable populations, including women and workers in developing countries.[24] Further, the AI industry relies on underpaid, precarious labor, primarily in the Global South, where workers lack redress mechanisms due to the opacity of supply chains and the systemic invisibility of their contributions.[25]

(ii) Customer engagement: AI used for consumer engagement exploits behavioral data to manipulate purchasing decisions.[26] This raises concerns about the right to freedom of thought and opinion and privacy and autonomy, as consumers may be subtly coerced into making choices that do not align with their genuine preferences.[27] This raises ethical concerns with broader societal implications.

(iii) Healthcare: While AI could improve diagnostics and personalized medicine, it poses risks to access, equity, and psychological well-being.[28] A lack of transparency, explainability, and patient involvement in AI-driven healthcare decisions threatens physical and mental integrity, infringing on the right to health.[29]

22https://itforchange.net/sites/default/files/2647/Recovering%20the%20Public%20in%20India%E2%80%99s%20Digital%20Public%20Infrastructure%20Strategy.pdf
23 https://clje.law.harvard.edu/worker-power-and-voice-in-the-ai-response/
24 https://www.oecd.org/en/publications/the-effects-of-ai-on-the-working-lives-of-women_14e9b92c-en.html
25 https://www.noemamag.com/the-exploited-labor-behind-artificial-intelligence/
26https://www.undp.org/sites/g/files/zskgke326/files/2022-07/Report_Artificial%20Intelligence%20%26%20Potential%20Impacts%20on%20Human%20Rights%20in%20India%20%282%29%20%281%29_0.pdf
27https://www.forbes.com/sites/elijahclark/2023/11/28/how-retailers-are-using-ai-to-manipulate-consumer-shopping/
28 https://www.bsr.org/reports/BSR-AI-Human-Rights-Healthcare.pdf

(iv) Financial services: AI-based credit scoring and financial services risk violating rights to non-discrimination, privacy, and access to financial resources. These systems often lack sufficient grievance redress mechanisms, disproportionately affecting marginalized groups.[30]

(v) Agriculture: Corporations collect indigenous knowledge, weather patterns, and soil data through AI, often locking it into proprietary systems that exclude public and community use. These practices exploit farmers and lock them into AI-assisted agricultural practices to the detriment of local needs and sustainability.[31]

(vi) Education: AI in education commercializes learning, threatening the right to education and undermining it as a public good. UNESCO warns that ed-tech may enrich private actors, enable invasive surveillance, and neglect environmental impacts.[32] It can promote competition over collaboration, increase segregation, and individualize learning, negatively impacting students' well-being.[33]

3. **Are there any policies, regulations or frameworks taken at the national, regional and international levels to address the human rights risks linked to the procurement and/or deployment of AI by States? Please provide examples. What are the main opportunities to adopt and/or strengthen these frameworks?**

Effective public sector procurement frameworks are vital for ensuring responsible AI use, fostering trust, shaping AI's ethical development, and ensuring net public value is increased.

Examples at the international level:

At the international level, the UN Resolution A/HRC/50/56 provides guidelines for the acquisition, purchase, and licensing of AI for the provision of public services.[34] UNESCO's 2021 Recommendations on the Ethics of Artificial Intelligence represent the first-ever global agreement outlining shared values and principles to guide the development of legal frameworks for the ethical and sustainable advancement of AI that aligns with human rights and the SDGs.[35] The World Economic Forum's AI Procurement in a Box outlines fundamental considerations for governments before acquiring and deploying AI solutions, including the importance of initial AI impact

29 https://www.undp.org/sites/g/files/zskgke326/files/2022-07/Report_Artificial%20Intelligence%20%26%20Potential%20Impacts%20on%20Human%20Rights%20in%20India%20%282%29%20%281%29_0.pdf
30 https://www.bsr.org/reports/BSR-AI-HuRi-Financial-Services-Report.pdf
31 https://projects.itforchange.net/state-of-big-tech/big-tech-and-the-smartification-of-agriculture-a-critical-perspective/#:~:text=For%20instance%2C%20based%20on%20the,diagnose%20specific%20pests%20and%20diseases
32 https://www.unesco.org/en/digital-education/ed-tech-tragedy
33 https://www.mdpi.com/2071-1050/16/2/781
34 https://documents.un.org/doc/undoc/gen/g22/323/96/pdf/g2232396.pdf
35 https://www.unesco.org/en/artificial-intelligence/recommendation-ethics

assessments, data sensitivity, data quality, and consent. It also considers the socio-economic impact, particularly on vulnerable populations.[36] The UNGA Report of the Special Rapporteur (A/79/520) on the right to education highlights how AI challenges the foundational pillars of education—curriculum, pedagogy, and assessment—and proposes a human rights-based approach emphasizing participation, accountability, non-discrimination, and transparency to guide AI integration in education.[37]

It is also important to refer to existing sector-specific principles and frameworks such as those related to environment and health standards to uphold established governing principles on different aspects which are now affected by AI. For example, the UNECE Aarhus Convention[38] grants citizens rights to information and participation in environmental matters, while the Nagoya Protocol ensures equitable access and benefit-sharing from the utilization of genetic resources, which becomes relevant given increasing AI integration in agriculture, food systems, and gene sequencing.[39]

Examples at the national level:

The EU AI Act is landmark legislation that adopts a risk-based approach, banning high-risk AI applications such as manipulative or exploitative systems while imposing stringent governance, risk management, and transparency requirements.[40] The US Blueprint for an AI Bill of Rights provides an important framework for how the government, technology companies, and citizens can work together to ensure more accountable AI.[41] In October 2024, the White House released a memorandum on advancing the responsible acquisition of AI in government, outlining new procurement requirements for federal agencies.[42] In New Zealand, the Minister of Statistics launched the Algorithm Charter, committing government agencies to improve transparency and accountability in their use of algorithms.[43] Brazil's AI law provides individuals and groups affected by high-risk AI systems key rights, including the right to an explanation of system decisions, the right to contest and request reviews, and the right to human oversight of decisions.

4. **How can businesses and States meaningfully engage with relevant stakeholders, including potentially affected rights holders and workers, to**

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36 https://www3.weforum.org/docs/WEF_AI_Procurement_in_a_Box_AI_Government_Procurement_Guidelines_2020.pdf
37 https://www.ohchr.org/en/documents/thematic-reports/a79520-artificial-intelligence-education-report-special-rapporteur-right
38 https://unece.org/environment-policy/public-participation/aarhus-convention/introduction
39 https://www.cbd.int/abs/default.shtml
40 https://artificialintelligenceact.eu/the-act/
41 https://www.whitehouse.gov/ostp/ai-bill-of-rights/
42 https://www.cov.com/en/news-and-insights/insights/2024/10/omb-releases-requirements-for-responsible-ai-procurement-by-federal-agencies
43 https://data.govt.nz/assets/data-ethics/algorithm/Algorithm-Charter-2020_Final-English-1.pdf

identify and address adverse human rights impacts related to the procurement and deployment of AI? Please provide examples.

Civic participation and public engagement are essential for designing and implementing algorithmic accountability policies. To ensure meaningful public participation, the following recommendations may be considered

- Conduct effective public interest consultations involving multiple constituencies. To foster equity and inclusivity, consider employing methods such as deliberative polling, citizens' reference panels, citizens' juries, and participatory budgeting.[44] A notable example is Oakland's Surveillance and Community Safety Ordinance, which mandates extensive public hearings through established forums like council meetings.[45]

- Engage with marginalized communities and organizations representing marginalized groups to understand and eliminate specific barriers they face. Equity and accessibility should be ensured by removing barriers to their participation, providing reasonable accommodations (e.g. sign language interpreters, Indigenous language interpreters), compensating representatives, using accessible communication formats and channels, and funding and supporting capacity building programs.[46]

- Ground AI-related decision-making processes in established ex-ante participation rights frameworks like the UNECE Aarhus Convention.[47]

- Mandate transparency of AI systems and their procurement and deployment processes.[48] Many countries lack transparency in acquiring and deploying AI technologies, with opaque procurement processes fueling corruption and limiting competition.[49] Government agencies must be mindful of the types of information they share and how specific audiences access, rely on, or utilize it. For example, algorithm registers in Amsterdam and Helsinki, were specifically designed for critical audiences such as civil society, while France employs plain-language audiovisual explanations to inform impacted communities and the public.[50]

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44 https://www.oecd.org/gov/open-government/eight-ways-to-institutionalise-deliberative-democracy.htm
45 https://www.opengovpartnership.org/wp-content/uploads/2021/08/algorithmic-accountability-public-sector.pdf
46https://gpai.ai/projects/responsible-ai/towardsrealdiversityandgenderequalityinai/towards-substantive-equality%20in-artificial-intelligence_Transformative-AI-policy-for-gender-equality-and-diversity.pdf
47 https://unece.org/environment-policy/public-participation/aarhus-convention/introduction .
48 https://ia.derechosdigitales.org/wp-content/uploads/2024/12/2024-LATAM-IA_en_el-Estado-ES.pdf
49 https://ia.derechosdigitales.org/wp-content/uploads/2024/12/2024-LATAM-IA_en_el-Estado-ES.pdf ; https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/07/public-procurement-in-the-state-of-mexico_df343ad7/cc1da607-en.pdf
50https://www.opengovpartnership.org/wp-content/uploads/2021/08/executive-summary-algorithmic-accountability.pdf

5. **Are there any positive practices related to State-based remedy mechanisms in relation to human rights impacts linked to the procurement and deployment of AI? Please provide examples.**

6. **What State-based remedy mechanisms are available to victims in case of adverse human rights impact linked to the procurement and deployment of AI systems by businesses and State entities? Are there any court cases or judgments that you are aware of related to the procurement or deployment of AI by the State or businesses and human rights implications? Please provide examples.**

Answering questions 5 and 6 together

State-based mechanisms addressing adverse human rights impacts of AI generally fall into three categories:

(i) Human Rights Impact Assessments (HRIA):
HRIA by States and businesses can serve as an empowering tool, equipping affected individuals with information to challenge AI system design, deployment, and operation. For instance, Article 72 of the EU AI Act mandates Fundamental Rights Impact Assessments for high-risk AI systems, enabling transparency and accountability.

(ii) Notice and fair hearing before adverse decisions:
Individuals must be informed when an automated system is used in decisions affecting them. The Blueprint for the AI Bill of Rights of the US emphasizes timely and comprehensible notice, opt-out options, and explanations of key functionality changes.[51] People should also have access to human oversight and appeal mechanisms before adverse decisions are finalized. These mechanisms should be accessible, equitable, effective, and timely and should not impose an unreasonable burden on the affected person. Other examples include New Zealand's Algorithm Charter, which mandates appeals for automated decisions,[52] and the US ballot curing laws in 24 States, which provide fallback systems for voters flagged by signature-matching algorithms.[53]

(iii) Repositories of public algorithms: Within the public sector, building repositories of public algorithms can enhance explainability and accountability by opening up the black box of AI development and deployment. Even when full transparency of algorithms may not be desirable, the repositories can contain use cases where the algorithms are used, along with explanations of their role in the decision-making

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51 https://www.whitehouse.gov/ostp/ai-bill-of-rights/
52 http://data.govt.nz/assets/data-ethics/algorithm/Algorithm-Charter-2020_Final-English-1.pdf
53 https://www.lawfareblog.com/mail-voting-litigation-2020-part-iv-verifying-mail-ballots

process, ensuring transparency and enabling redress for adverse impacts.[54] These repositories can also be part of a broader algorithmic transparency strategy, extending to the private sector and integrating HRIA, grievance redress, and reporting requirements.

(iv) Judicial remedies: Courts can play a critical role in addressing AI-related injustices. To enhance access to justice, equality bodies and public interest organizations should be empowered to file complaints, even without identifiable complainants, as AI-driven rights violations often go unnoticed by victims. Revising evidence rules is also crucial to ease the burden of proof for claimants given the complexity and opacity of AI systems. The EU AI Liability Directive proposes a presumption of causality between non-compliance and harm.[55]

Examples of court cases:

- **The Dutch SyRI Case (2020)**: The District Court of The Hague ruled that the System Risk Indication (SyRI) algorithm system, a legal instrument that the Dutch government uses to detect fraud in areas such as benefits, allowances, and taxes, violates right to privacy under the European Convention on Human Rights.[56]
- **Mobley v. Workday (2023)**: A US court allowed a lawsuit against Workday's AI-powered hiring tools, which allegedly discriminated based on race, age, and disability. The ruling highlighted that AI vendors could be held liable under anti-discrimination laws when acting as agents for employers.[57]

7. **Please provide any comments, suggestions or additional information that you consider relevant to this thematic report.**

We recommend States take the following measures to safeguard individual and collective human rights and the rights of nature in the context of procurement and deployment of AI:

- Strong accountability framework: States should provide a legally mandated accountability framework for AI developers and deployers, clearly defining responsibilities along the AI value chain. To enforce this accountability framework, capacity-building of policymakers and public sector officers is crucial so that AI procurement and deployment align with human rights

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54https://wp.oecd.ai/app/uploads/2024/12/16-Algorithmic-Transparency-in-the-Public-Sector-Recommendations-for-Governments-to-Enhance-the-Transparency-of-Public-Algorithms.pdf
55 https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739342/EPRS_BRI(2023)739342_EN.pdf
56https://www.loc.gov/item/global-legal-monitor/2020-03-13/netherlands-court-prohibits-governments-use-of-ai-software-to-detect-welfare-fraud/
57https://www.seyfarth.com/news-insights/mobley-v-workday-court-holds-ai-service-providers-could-be-directly-liable-for-employment-discrimination-under-agent-theory.html

principles and societal and ecological well-being, addressing the complex technical, legal, and ethical challenges of AI systems.

- Fair distribution of data dividends: Data is the indispensable resource at the heart of our emerging AI economies and societies. It is therefore imperative for States to move beyond individualistic privacy and security frameworks, and promote data and AI governance regimes that enable the redistribution and socialization of data value. Centering public value creation and preventing the exodus of data and AI value to private ecosystems is a key responsibility of a digital developmental state.[58]

- Rights to information in AI systems: States should establish the right to information as central to AI procurement and deployment, prioritizing algorithmic transparency over intellectual property or trade secrets claims,[59] including in trade and digital trade/e-commerce treaties. Explainability and interpretability of AI models, especially in high-risk cases affecting fundamental human rights, should be legally mandated.

- Develop and invest in open compute paradigms: To address the concentration of AI compute power in a few hands and the human rights challenges presented by the growing entanglement of private vendors and public actors, governments should invest in open-source compute software, experiment in building digital public infrastructure for AI compute, and encourage the development of open protocols for cloud computing. Further, developing public AI repositories can create public value by aggregating and providing access to algorithms used in the public sector.

- Address the ecological impact of AI: Ecological effects of AI should be prevented and mitigated by prioritizing AI models that consume less data, energy, and resources.

Signatories:

1. IT for Change
2. Derechos Digitales
3. Latin American Campaign for the Right to Education (CLADE)
4. Article 19 Mexico and Central America Office
5. Research ICT Africa
6. Transnational Institute

7. Development Alternatives with Women for a New Era (DAWN)

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58 https://itforchange.net/sites/default/files/2647/Recovering%20the%20Public%20in%20India%E2%80%99s%20Digital%20Public%20Infrastructure%20Strategy.pdf
59 https://www.cigionline.org/static/documents/no.295.pdf; https://www.twn.my/MC11/briefings/BP4.pdf.