

**SAFEGUARDING HUMAN RIGHTS IN THE AGE OF ARTIFICIAL INTELLIGENCE:  
THE LEGAL PERSPECTIVE\***

**Abstract**

*Artificial intelligence is everywhere today. Its development, deployment and use is growing rapidly, not only contributing to the global economy but also raising some legal and human rights issues. The paper argues that, while some artificial intelligent robots such as autonomous vehicles are already available, their intelligence, through constant advancement in technology, will skyrocket in the near future. This, in line with scientific prediction, might eventually reach and even surpass human intelligence. The era of artificial intelligence is enabling symbiotic relationship between humans and artificial agents like robots and will ultimately lead to a civilizational change fomenting legal questions on citizenship, consciousness, rights and legal entity of these agents. This work concludes that as artificial intelligence continues to increase as part of our daily lives, its propensity to interfere with human rights gets more severe. The paper recommends proactive action in adopting necessary safeguards through policy initiation, political and legal frameworks to regulate the development, use and application of artificial intelligence in ways to guarantee continued protection of human rights in artificial intelligence-driven society.*

**Keywords:** Artificial Intelligence, Human Rights, Legal Entity, Legal Framework

**1. Introduction**

In our contemporary world, man is increasingly becoming more reliant on machines to make processes faster, more efficient and inform their decisions. This development creates environments laden with conflicts between artificial intelligence and human rights. Artificial intelligence as a concept has recently been elevated from the domain of science fiction to debates in the hallowed circles of academia, industry and government.<sup>1</sup> Meanwhile, relevant stakeholders and experts have just begun to appreciate the potential adverse impact of artificial intelligence on human rights and so, no definite conclusion has been drawn in relation to what the term implies. The use and application of artificial intelligence can affect a range of sectors and areas of human life, especially as it relates to education, work, social care, health and law enforcement. In fact, artificial intelligence poses a threat to the rights to equality, non-discrimination and the right to privacy. The implication of artificial intelligence on human rights is one of the fundamental factors in the definition and determination of human existence in the period in which we live. Artificial intelligence-powered technology is fast entering virtually every aspect of human life, from smart home appliances to social media applications, even public authorities are increasingly using it to evaluate individuals' personality or skills, allocate resources, and make decisions that can seriously impact on the human rights of the people.<sup>2</sup> It is an urgent matter and the time is apt to find the balance between new technologies including artificial intelligence and human rights protection through some legal instrument. The technological development should be designed and applied in a way to safeguard, enhance, strengthen and protect human rights and not to undermine them. This is achievable through policy initiation establishing legal frameworks that would regulate the opportunities artificial intelligence provides, so that, while leveraging these opportunities, the possibilities of human rights violations will be prevented or minimized. Relevant authorities, nationally and internationally including experts in the field must join hands to maximise the potentials artificial intelligence systems hold for humanity, and prevent or mitigate the negative impact they may wield on human rights and autonomy.

**2. Meaning and Functionality of Artificial Intelligence**

There is as yet no universally agreed definition of 'artificial intelligence'. However, in line with the opinion of the Commissioner for Human Rights, Council of Europe, the term 'artificial intelligence' could mean an umbrella term used generally to describe a set of sciences, theories and techniques dedicated to improving the ability of machines to behave or do things requiring human intelligence. It is an intelligence displayed by machines, other than the natural intelligence demonstrated by humans and animals, which always involves consciousness and emotions. The term is used to describe machines that mimic *cognitive* functions that man

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<sup>1</sup>Lindsey Andersen, 'Human Rights in the Age of Artificial Intelligence' available at:

<https://www.accessnow.org/cms/assets/uploads/2018/11/AI-and-Human-Rights.pdf>. Accessed on 11th June, 2021.

<sup>2</sup>'Unboxing Artificial Intelligence: 10 Steps to Protect Human Rights', (2019) *the Council of Europe Commissioner for Human Rights*. Available at: <https://www.google.com/search?client=firefox-b-d&q=Unboxing+Artificial+Intelligence%3A+10+steps+to+protect+Human+Rights>

associates with the human mind, such as *learning* and *problem solving*.<sup>3</sup> It is ‘an agent created by humans that decides and performs actions based on its perception.’<sup>4</sup> Artificial intelligence usually abbreviated as ‘AI’, refers to the ability of a digital computer or computer-controlled robot to take up tasks ordinarily associated with intelligent beings. The term widely applies to the project of developing systems endowed with the intellectual processes attributes of humans, such as the ability to reason, discover meaning, generalize, or learn from past experiences and solve problems. To a computer scientist, artificial intelligence would mean the study of ‘intelligent agents’, any device that perceives its environment and takes actions that maximize its chance of successfully achieving its goals. It is a system's ability to accurately interpret external data, learn from such data, and use those learnings to achieve specific goals and tasks through flexible adaptation<sup>5</sup>. Simply put, artificial intelligence refers to the ability of machines to exhibit traits and perform tasks associated with a human mind including learning and problem-solving. It is an intelligent entity built or created by humans capable of thinking and acting rationally as humans and performing human-like tasks intelligently without human instructions or interventions

An artificial intelligence system is ‘a machine-based system that makes recommendations, predictions or decisions for a given set of objectives’.<sup>6</sup> Artificial intelligence system utilizes machine and/or human-based inputs to perceive real and/or virtual environments, conceptualize such perceptions into models manually or automatically and from these models, derive outcomes either by human or automated means, in the form of recommendations, predictions or decisions.<sup>7</sup> The systems demonstrate the capacity to achieve forms of tertiary consciousness such as self-recognition, cognitive feedback, as well as components of self-concept. In fact, experts have argued that the functional capabilities of artificial intelligence systems extend even far beyond human capacities.<sup>8</sup> Accordingly, sensors perceptually, utilize input from well outside the human biological range to access visual, auditory, positional, and tactile data.<sup>9</sup> Artificial intelligence enables machines to learn from experience, adjust to new inputs and perform those tasks ordinarily associated with human mind. How and to what extent artificial intelligence will be used in the future is still a grey area. However, from the field of expertise regarding its functionality, artificial intelligence is predominantly used today in an industrial or applied context, primarily to solve a predefined problem<sup>10</sup>. It is believed that in the future, artificial intelligence will improve to be able to deal with complex situations and take into account contextual factors far beyond the predefined problem.<sup>11</sup> Through natural intelligence, humans communicate with each other with full cognition of contextual and situational factors. The intention is to make artificial intelligence work this way; otherwise, we will know that we are not after all dealing with another human being. When humans communicate with a machine without being aware that it is a machine, that is when we are dealing with artificial intelligence<sup>12</sup> in the real sense of it. Before this time, use of artificial intelligence would have impacted greatly on human rights and autonomy.

### 3. The Legal Entity of Artificial Intelligence

The increase in the use of artificial intelligence in various spheres of life will certainly affect the functioning of the society. Actions of artificial intelligence like self-driven cars may cause harm through traffic accidents<sup>13</sup>. Ever before the invention, development and use of artificial intelligence, there had been rules of civil law, relating to liability for damage resulting from individuals’ actions and/or inactions. Various national laws address the issues associated with liability whenever there are actions or negligence, occasioning harm. However, there are no legal frameworks anywhere yet specifically on artificial intelligence and legal consequences of its actions<sup>14</sup>. This raises a concern on whether existing regulations may be applied in the case of artificial intelligence or, should be appropriately adjusted to deal with the changes the new technology is bringing along. Before this, the question of the possibility of conferring upon artificial intelligence the status of an entity under the law, so that it can independently bear the liability for the damage it might cause must be

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<sup>3</sup>‘Artificial Intelligence Open Access’ (2021) *Journal of Information Technology & Software Engineering*. Available at: <https://www.longdom.org/peer-reviewed-journals/artificialintelligenceopenaccess-36559.html>. Accessed on 16<sup>th</sup> June, 2021.

<sup>4</sup>S. J. Russell, P. Norvig & E. Davis, ‘Artificial intelligence: A modern approach’ (3rd ed) (2010) *Prentice Hall*.

<sup>5</sup>K., Andreas and H., Michael ‘Siri, Siri, in my hand: Who's the fairest in the land? On the interpretations, illustrations, and implications of artificial intelligence’ (2019). *Business Horizons*. **62** (1): 15–25

<sup>6</sup>*Ibid.*

<sup>7</sup>*Ibid.*

<sup>8</sup>J. F. Pagel, ‘Artificial Consciousness’, (2014) *Dream Science I*.

<sup>9</sup>*Ibid.*

<sup>10</sup>R. Hagbartsen, ‘The Role and Function of Artificial Intelligence’ available at: <https://computas.com/en/article/the-role-and-function-of-artificial-intelligence/>. Accessed on 11<sup>th</sup> June, 2021

<sup>11</sup>*Ibid.*

<sup>12</sup>*Ibid.*

<sup>13</sup>K. Ziemianin, ‘Civil Legal Personality of Artificial Intelligence. Future or Utopia?’ (2021) *Internet Policy Review*, **2**.

<sup>14</sup>*Ibid.*

addressed. Putting the legal status of artificial intelligence in the definite path will clear doubts on the liability for damages resulting from its actions now that we presently live with autonomous vehicles and in the future when we will be interacting with fully independent robots that can deal with every aspect of life. A legal entity means an entity capable of participating in legal relations having rights and obligations under a given legal system with respect to other entities and tangible or intangible objects<sup>15</sup>. Presently, there are no bases for granting legal personality to artificial intelligence. Consequently, liability for damages caused by artificial intelligence must be borne by concerned natural persons, legal persons or organisational units with legal capacity<sup>16</sup>. The principles of responsibility or tort liability in this case must depend on the type of artificial intelligence and its technological advancement. Today, liability for damage resulting from artificial intelligence can only be made on the basis of regulations on dangerous products<sup>17</sup>. This is however not applicable to artificial intelligence which cannot be classified as a product. It is hoped that in the future, the compensatory function of tort liability may justify granting legal personality to artificial intelligence<sup>18</sup>. This would require a set of rules of liability for artificial intelligence whose operation are completely independent and unpredictable. It may transpire that only in such way will an injured party seek and get redress for damages. But the way actions can be maintained against artificial intelligence is still not known.

#### 4. Artificial Intelligence and Human Rights

The development, use and application of artificial intelligence has raised serious concerns in relation to the concept of human rights. It is useful to state here that human rights as a concept considers and addresses power differentials and enables individuals, and the organizations that represent them, through the language and procedures to protest the actions of more powerful actors, such as States and corporations<sup>19</sup>. Generally, they are the basic rights and freedoms to which every person in the world is entitled from cradle to grave and that preserve and safeguard the inviolable dignity of every individual regardless of their ethnicity, gender, age, race, religion, class, language, nationality, or any other ascribed characteristic<sup>20</sup>. These fundamental rights and freedoms create duties that bind States to respecting, protecting, and fulfilling human rights and in a failure to fulfil these obligations, individuals are entitled to legal remedies that allow for the redress of any human rights violations<sup>21</sup>.

The concept of human rights is a universal phenomenon, binding and codified in a body of international law. Therefore, upholding and respecting human rights is a requirement for individuals, governments and other concerned bodies, although governments have additional duty and commitments to protecting and fulfilling human rights<sup>22</sup>. There is an entire system of domestic, regional and international institutions and organizations that provide well-developed frameworks for remedy and articulate the application of human rights law to changing circumstances, including the emergence of new technology such as artificial intelligence<sup>23</sup>. Respect for human rights is a global concept and therefore, violation of human rights goes with international reputational and political costs. Naming and shaming human rights abusers is often an effective tool on this respect. Human rights laws are designed to protect individual human rights in both national and international plane. These laws can address some of the most societal injuries the use of artificial intelligence may cause particularly to human rights and prevent such from occurring in the future. It is trite already that, the rapid advancements in artificial intelligence and data-driven technologies in recent years have placed the contemporary society at a very serious task in deciding what shape the future of humanity will take<sup>24</sup>. The proliferation of irresponsible artificial intelligence innovations portends sheer danger to fundamental human rights and freedom if the advancement of these technologies continues unregulated. There is therefore, the urgent need for the examination of the practicable and potential elements of legal frameworks for the design, development, deployment and use of artificial intelligence systems that accord with international human rights standards.<sup>25</sup>

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<sup>15</sup>A. Wolter, J. Ignatowicz & K. Stefaniuk, 'Prawo cywilne. Zarys części ogólnej' (2001). *Lexis Nexis*.

<sup>16</sup>K. Ziemiński, (n13)

<sup>17</sup>*Ibid.*

<sup>18</sup>*Ibid.*

<sup>19</sup> C. V. Veen, Artificial Intelligence: What's Human Rights got to do with it? (2018) <https://points.datasociety.net/artificial-intelligence-whats-human-rights-got-to-do-with-it-4622ec1566d5>. Accessed on 4<sup>th</sup> June, 2020.

<sup>20</sup>D. Leslie, *et al*, 'Artificial intelligence, human rights, democracy, and the rule of law: a primer', (2021) *The Council of Europe 12*

<sup>21</sup>*Ibid.*

<sup>22</sup> Pursuant to the UN Principles on Business and Human Rights, States must protect against human rights abuse by businesses within their jurisdiction, businesses are responsible for respecting human rights wherever they operate, victims must have access to judicial and non-judicial remedy. Read more on:

[https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>23</sup>Lindsey Andersen, (n1)

<sup>24</sup>D. Leslie, *et al*, (n12) 5.

<sup>25</sup>*Ibid.*

## 5. Impacts of Artificial Intelligence on Human Rights

There is no gainsaying the fact that the development and use of artificial intelligence provide humans with risks and opportunities. For instance, the use of the new technology has the potential to improve human lives and functioning of governments. The power and speed of artificial intelligence systems can improve efficiency and effectiveness in various realms including healthcare, education, transport, and public administration<sup>26</sup>. They can perform tedious, dangerous, unpleasant, and complicated tasks faster than man. On the contrary however, use of artificial intelligence-driven technology has serious negative implications for human rights. The immediate effect of artificial intelligence on human rights stems from the fact that it facilitates discrimination against some vulnerable or targeted groups, in violation of individuals' rights to non-discrimination. This does not however mean that the right against discrimination is the only human right affected by the use of artificial intelligence. Since human rights are interdependent and interrelated, artificial intelligence impacts virtually every internationally recognized human right. Most of the rights<sup>27</sup> discussed here had been enshrined in the three documents that constitute the foundation of international human rights law, commonly referred to as 'International Bill of Human Rights.' These include the *Universal Declaration of Human Rights (UDHR)*, the *International Covenant on Civil and Political Rights (ICCPR)*, and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. As identified in this paper, the right to data protection as defined by the *EU Charter of Fundamental Rights* is also one of those falling of the use of artificial intelligence. Artificial intelligence in its present uses affects each of these classes of human rights and there are as well, the risks posed by prospective future developments in these new technologies. Although the human rights issues as discussed in this paper are not necessarily peculiar to artificial intelligence as they already exist within the digital rights space<sup>28</sup>, the propensity of artificial intelligence to identify, classify, and discriminate has intensified the potential for human rights violations in terms of scale and scope. As the use of artificial intelligence in various sectors continues to increase, many questions have arisen in relation to their adverse implications on human rights. Several scandals, that accompanied Cambridge *Analytica* or *FaceApp* and China's use of artificial intelligence for mass surveillance, repression and social scoring, reveal that the use of artificial intelligence has potential negative implications for human rights. With constant advancement in artificial intelligence technology, there is understandable need to safeguard and preserve human rights through legislative processes setting up political and legal frameworks that steer towards a society where humans can benefit from artificial intelligence without unnecessary infringements on their rights.

### 5.1 The Legal Overview of the Impacts of Artificial Intelligence on Human Rights

The use of artificial intelligence affects a range of sectors and areas of human life, including education, health, work, social care, and law enforcement. This has reverberating effects on various classes of human rights as recognized under international human rights laws. The use and application of artificial intelligence threatens human rights in many sphere, although this work chooses to discuss it only under four headings:

#### Rights to Privacy and Data Protection

Privacy is one of the fundamental rights that is so essential to human safety and dignity. This right further reinforces other rights, like the rights to freedom of expression and association. The right to data protection is akin to that of privacy and today, many governments and regions give recognition to it. Data protection focuses primarily on the protection of any personal data related to individuals<sup>29</sup>. Right to data protection can even be considered a part of the right to privacy within the purview of UN human rights system. These rights are provided for by international and regional laws. For instance, the *International Covenant on Civil and Political Rights (ICCPR)* provides to the effect that, 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks'.<sup>30</sup>

*Article 8* stipulates that:

Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

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<sup>26</sup>*Ibid.*

<sup>27</sup> With the exception of the right to data protection as defined by the EU Charter of Fundamental Rights

<sup>28</sup> Lindsey Andersen, (n12)

<sup>29</sup> E Masse, 'Data Protection: why it matters and how to protect it,' Access Now, (January 25, 2018), <https://www.accessnow.org/data-protection-matters-protect/>. Accessed 4<sup>th</sup> June, 2021.

<sup>30</sup>Art. 17, UN International Covenant on Civil and Political Rights, 1976.

In a similar tone, *Article 7 of the EU Charter of Fundamental Rights*<sup>31</sup> provides that, ‘Everyone has the right to respect for his or her private and family life, home and communications’. Also in 1981, Council of Europe established a Treaty/Convention<sup>32</sup> that sought to protect the right to privacy of individuals, taking into account the increasing flow across frontiers of personal data undergoing automatic processing. Artificial intelligence systems are trained through access to and analysis of big data sets with the ability to gather massive amounts of information, including streams of data from mobile devices and other electronics. Such information extrapolated to enable professionals make data-driven decisions based on unique perceptions. Such data collection can interfere with individuals’ rights to privacy and data protection. This is because, the use of artificial intelligence to analyse data may reveal private information about individuals. But, information that qualifies as protected information should be considered and treated as sensitive even if derived from big data sets fed from publicly available information<sup>33</sup>. Today, with the use of artificial intelligence through Machine Learning<sup>34</sup> model, persons’ age, occupation, gender as well as marital status can be accurately estimated just from their cell phone location data<sup>35</sup>. In order to safeguard individuals’ human right therefore, the development, training, testing and use of artificial intelligence that depend on the processing of personal data must guarantee a person’s right to respect for privacy and family life in accordance with the relevant provisions of the regional and international human rights laws<sup>36</sup>. Additionally, with the increase in government surveillance following the growth of the internet and the development of new technologies like artificial intelligence, the use of more invasive surveillance tools is becoming the order of the day. Such include Government Facial Recognition System already in use in America<sup>37</sup> and probably China. The use of the system is a great threat to anonymity. The fear by people, of being watched can prevent them from exercising other related rights such as the freedom of expression and assembly. The adverse effect artificial intelligence- powered surveillance would be heavier on the marginalized populations or group who form the primary target of the security forces. Also, since 24/7 monitoring of the general population is neither essential nor proportionate to the need of public safety or crime prevention, it would certainly result in violation of the fundamental right to privacy.

#### **Rights to freedom of expression, thought, religion, assembly, and association**

Totalitarian regimes can use new technology like artificial intelligence to increase censorship. For instance, the Chinese government is currently replacing some of its human censors with artificial intelligence using *Machine Learning* (ML) to identify pornographic and violent content, including content considered to be politically sensitive. However, because ML cannot deal with every situation, the human resources are still required for review in those areas artificial intelligence cannot effectively handle. Use of artificial intelligence can assist government officials in monitoring and targeting members of persecuted religious groups in those countries where freedom of worship is not fully guaranteed. This would lead to suppression, physical abuse and probably death constituting a sheer violation of the people’s fundamental rights of freedom of religion.<sup>38</sup> There is also the fear that censorship enabled by artificial intelligence can be used in restricting ‘the freedom of association by removing groups, pages, and content that facilitate organization of in-person gatherings and collaboration.’<sup>39</sup> Considering the important role of social media in organizing protest movements globally, use of artificial intelligence could have the widespread and overwhelming effect of hindering assembly globally.<sup>40</sup> Also, the use of artificial intelligence-powered surveillance such as facial recognition system impinges on the rights to

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<sup>31</sup>2009

<sup>32</sup>*The Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, 1981*. The Convention has also been modernized recently in 2018 in order to address the challenges of privacy resulting from the development and use of new technologies; and to strengthen the convention’s follow-up mechanism.

<sup>33</sup>Lindsey Andersen, (n16)

<sup>34</sup> Machine Learning is a branch of artificial intelligence based on the concept that systems can learn from data, identify patterns and make decisions on their own with minimal human intervention.

<sup>35</sup>S. M. Bellovin, *et. al.*, ‘When enough is enough: Location tracking, mosaic theory, and machine learning,’ (2014) *NYU Journal of Law and Liberty*, 8 (2) 555—628.

<sup>36</sup>*Art. 8 of the European Convention on Human Rights (ECHR)* with full title as the *Convention for the Protection of Human Rights and Fundamental Freedoms*. 19 Apr 1977. See also *Art. 8 of the International Covenant on Civil and Political Rights (ICCPR)*, 1976.

<sup>37</sup>J. G. Telcher, ‘What Do Facial Recognition Technologies Mean for Our Privacy?’ (2018) *The New York Times*

<sup>38</sup>For instance, *Article 18 of the International Covenant on Civil and Political Rights* provides that, ‘Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice’.

<sup>39</sup>A. Comminos, ‘Freedom of Peaceful Assembly and Freedom of Association and the Internet,’ (2012) APC, [https://www.apc.org/sites/default/files/cyr\\_english\\_alex\\_comminos\\_pdf.pdf](https://www.apc.org/sites/default/files/cyr_english_alex_comminos_pdf.pdf). Accessed on 7th June, 2021.

<sup>40</sup>*Ibid*

freedom of expression. This can be used in public spaces for the purpose of recognition and identification of individuals during protests with reverberating chilling effect on assembly. The adoption and application of such a system in countries where freedom of assembly is restricted would effectively prevent enjoyment of right to freedom of expression in contravention of the law<sup>41</sup>. This is because, many people usually rely on the level of protection anonymity offers to congregate in public and express their views.

### **Rights to equality and non-discrimination**

The rights to equality and non-discrimination are seriously threatened by artificial intelligence which can be used to perpetrate discrimination among members of different classes. Artificial intelligence models are designed to sort and filter, either by ranking search results or categorizing people into buckets<sup>42</sup>. This discrimination interferes with human rights when it treats people in different groups differently. Sometimes such discrimination has positive social aims, for example, when it is used in programmes to promote diversity. However, discrimination is often the result of forms of bias in cases of dispensing criminal justice. Use of artificial intelligence in some systems can perpetuate injustice almost in everything ranging from prison sentencing to loan applications.<sup>43</sup> Also, artificial intelligence-powered surveillance system can be used for the purpose of discrimination, enabling governments to identify, target, and deny services to people from groups discriminated against<sup>44</sup>. *Article 26 of the International Covenant on Civil and Political Rights (ICCPR)* provides that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*Article 27 stipulates* that, ‘in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’. All these can only be realized if the development and use of artificial intelligence are regulated through legal frameworks consciously enacted to safeguard human rights in this new technology age.

### **Rights to Life, Personal Liberty, Fair Trial and Equality before the Courts**

With the development and increase in the use of artificial intelligence in criminal justice system, there are fears of serious interference with people’s rights to life, personal liberty and fair trials. In America for instance, criminal justice system has begun already to apply *recidivism risk-scoring software* to reach detainment decisions at virtually every stage, ranging from assigning bail to criminal sentencing<sup>45</sup>. Use of the *recidivism risk-scoring software* has resulted in falsely categorizing more black defendants as high risk and given more stringent bail conditions, kept in pre-trial detention, and sentenced to longer prison terms<sup>46</sup>. More so, since risk-scoring systems are not stipulated by law and may be arbitrary in the use of inputs, any sentencing or detention decisions reached based on these systems can be considered unlawful or arbitrary contrary to international human rights law<sup>47</sup>. Criminal risk assessment software is designed merely to assist judges in their sentencing decisions. However, by classifying a defendant as high or low risk of recidivism, they attribute a kind of future guilt, which will likely interfere with the presumption of innocence required in fair trials. This offends Article 14 of the International Covenant on Civil and Political Rights which has provided *inter alia* that, ‘Everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law’. Regarding the right to life, there is new concern with the development of ‘*Lethal Autonomous Weapons*

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<sup>41</sup>*Article 19 of the International Covenant on Civil and Political Rights* stipulates that, ‘Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice’. *Articles 21 and 22* provide for The right of peaceful assembly and freedom of association. These rights are in danger due to the use of artificial intelligence.

<sup>42</sup>Lindsey Andersen, (n20)

<sup>43</sup>*Ibid*

<sup>44</sup>For instance, governments can use such systems to target and discriminate against LGBT persons in countries where homosexuality and gender identity is either criminalized or social unacceptable.

<sup>45</sup>Angwin *et. el*, ‘ False positives, false negatives, and false analyses: A rejoinder to machine bias’ (2016)

<https://heionline.org/HOL/LandingPage?handle=hein.journals/fedpro80&div=21&id=&page=>. Accessed on 8<sup>th</sup> June, 2021.

<sup>46</sup>*Ibid*

<sup>47</sup>For instance, *Article 9 of the International Covenant on Civil and Political Rights* states that, ‘Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law’

Systems' (LAWS)<sup>48</sup> by many countries<sup>49</sup> currently. The increase in the use of drones and similar weaponry suggests that in the near future, autonomous weapons are likely to be accessible to both State and non-state actors that do not even show any respect to traditional laws of armed conflict. Autonomous weapons will be powered and operated by artificial intelligence. Human rights issues arise from artificial intelligence's inability to deal with nuance or unforeseen events. Artificial intelligence's inability to deal with nuance may, in a conflict situation, result in the injury or death of innocent civilians that a human operator may have been able to circumvent.

## 6. States' Obligations on Human Rights Protection in the Age of Artificial Intelligence

Protection and safeguarding of the human rights of the citizens which has wide range of applications forms one of the primary responsibilities of the State. In their bid to fulfill this obligation, States must ensure the respect, protection and fulfilment of every person's human rights and fundamental freedoms particularly in this era of new technologies. States should pay attention to the full spectrum of international human rights standards that may be affected by the development and use of artificial intelligence within their jurisdiction. For instance, in the area of freedom of expression, bearing in mind the adverse effect artificial intelligence-powered content moderation and curation can have on the enjoyment of this right, States should create a diverse and pluralistic information environment for easy access to information, and freedom of opinion<sup>50</sup>. With respect to freedom of assembly and association, State should take into account the impact the use of artificial intelligence systems in content moderation may have on these rights, more particularly where these freedoms cannot easily be exercised offline. Consequently, the use of facial recognition technology should be carefully applied by governments while also strictly regulating through legislation its use, by non-state entities in order to protect the effective exercise of the right to freedom of assembly.<sup>51</sup>

States should at this early stage of artificial intelligence assume the role of creating legislative framework for independent and effective supervision of both public authorities and private entities regarding their compliance in upholding human rights standards in the development and use of artificial intelligence. Such legislative frameworks may include mechanisms that comprises of a combination of judicial, quasi-judicial, administrative and/or parliamentary supervisory bodies effectively collaborating with each other. The supervisory bodies should be neutral and independent of the States and private entities developing, deploying and using artificial intelligence. Members of the body should be equipped with the required and appropriate inter-disciplinary skill, competencies and resources to perform the supervisory function which must proactively investigate and monitor the human rights compliance of all artificial intelligence actors within jurisdiction.

More so, in pursuant and fulfilment of their obligations to the citizens, States should adopt any such measures necessary to protect the human rights of the people against violations by use of artificial intelligence. Governments should put in place, legislation that would not only encourage but ensure respect for human rights by all artificial intelligence actors. Also, bearing in mind the tendency of the use of artificial intelligence to foster discrimination, States can prevent this by applying the highest level of scrutiny when using artificial intelligence systems in the context of law enforcement, especially when adopting methods of predictive or preventive policing<sup>52</sup>. There must be need for independently auditing of such system before their deployment and use, to check any discriminatory effect that could indicate *de facto* profiling of targeted groups.<sup>53</sup>

## 7. Conclusion and Recommendation

Artificial intelligence is no longer confined to television shows and digital assistants on our smartphone or in homes. The application of artificial intelligence is increasingly affecting every field including law enforcement and judicial processes nowadays. No doubts, the use of artificial intelligence-driven technologies is providing humans with new and invaluable solutions to tackle needs and address challenges in various fields as indicated in this work. Its applications may be so useful in the area of decision making in particular for supporting evidence-based and inclusive policies. Artificial intelligence therefore, possesses the potential to help humans maximise their time, freedom and happiness. However, in line with the findings of this paper, the use of artificial intelligence has serious negative implications on individuals' human rights which might ultimately lead us towards a dystopian society if not addressed timely. Consequently, decisions regarding the regulation of

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<sup>48</sup>These include robotic weapons, killer robots or slaughterbots. LAWS may operate in the air, on land, on water, under water, or in space.

<sup>49</sup>China, Israel, Russia, South Korea, the United Kingdom, and the United States are seriously investing in the development of different kind of autonomous weapons systems

<sup>50</sup>Unboxing Artificial Intelligence: 10 Steps to Protect Human Rights' (n2).

<sup>51</sup>*Ibid.*

<sup>52</sup>*Ibid.*

<sup>53</sup>*Ibid.*

artificial intelligence and its impact on human rights must be made today since the negative effects of not acting immediately will certainly reverberate long into the future. Governments and concerned stakeholders must therefore, undertake their due diligence across all artificial intelligence industries with haste. Finding the right balance between the use of artificial intelligence and human rights protection is an urgent matter; one on which the future of the society we want to live in depends. Governments, relevant authorities and concerned stakeholders must ensure at this early stage, that the development, deployment and use of artificial intelligence are fashioned to respect and enhance human rights and fundamental freedoms in accordance with recognised international human rights standards.

Some regulations and standards mostly regional, already exist and should serve as a starting point for a universally adoptable legal framework for the protection of human rights in the age of artificial intelligence. The European Court of Human Rights for instance, sets definite frontiers for the respect for private life, liberty and security. It also emphasizes on States' obligations to provide an effective remedy to challenge intrusions into private life and to protect individuals from unlawful surveillance. On equal note, the modernised Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data was adopted in 2018 to address the challenges of rights to privacy resulting from the development and use of new technologies like artificial intelligence.

In general, however, the existing legal regimes on human rights cannot sufficiently safeguard fundamental human rights and freedom against intrusion by artificial intelligence. The present international legal regimes, in and of themselves, are not adequately suitable for creating an artificial intelligence innovation environment that can be deemed sufficiently trustworthy for steering artificial intelligence and data-intensive technologies in the right direction without undue interference with human rights and freedoms. Against this backdrop, this paper recommends national and international legal frameworks for proper regulation of the application of artificial intelligence to ensure that both public and private sectors which bear the responsibility for the design, development, and use of artificial intelligence respect and uphold human rights standards. Recommendation by The Council of Europe on the roles and responsibilities of internet intermediaries especially those relating to 'Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies', 'Protection of freedom of expression and freedom of assembly and association with regard to privately operated internet platforms and online service providers' and 'protection of freedom of expression and information and freedom of assembly and association with regard to internet domain names and name strings' are apt. The UN guiding principles on business and human rights and the report on content regulation by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, also presents invaluable base on initiation of policies for the development and use of artificial intelligence technology that would improve rather than violate human rights.

Another field of action should be to increase people's literacy level regarding artificial intelligence. Authorities should invest more in public awareness and education programmes to ensure the competencies of all citizens, particularly the younger generations, to engage positively with artificial intelligence technologies and better appreciate their implications for human lives. Finally, national human rights structures should be developed and equipped to take care of new types of discriminations and other forms of human rights violations resulting from the use of artificial intelligence. This should aim at ensuring accountability on the part of artificial intelligence actors and provide individuals whose rights have been violated with legal mechanisms to effectively challenge such violations and get redress.