



Section1: Introduction to human rights

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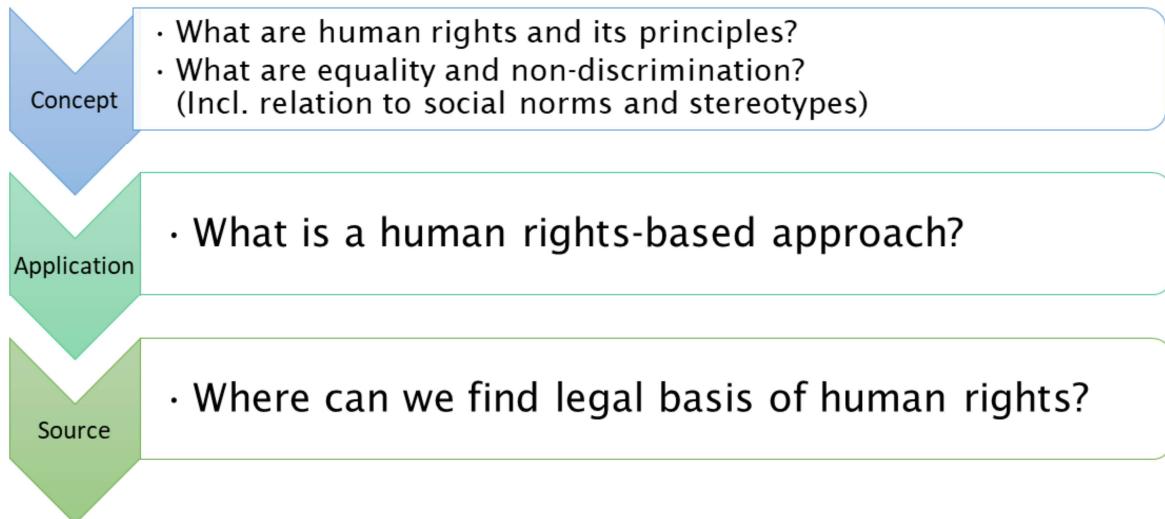
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Objectives

By the end of this module, you will be able to:

1. Understand **key concepts of human rights**, including equality and non-discrimination, under international law
2. Understand why **social norms and stereotypes can cause discrimination** and how this is relevant to the function of algorithms
3. Relate **key elements of a human rights based approach** to algorithms

Roadmap



Human rights in the digital age

"At its best, the digital revolution will empower, connect, inform and save lives. At its worst, it will disempower, disconnect, misinform and cost lives.

Human rights will make all the difference to that equation."

Michelle Bachelet, UN High Commissioner for Human Rights
Human Rights in the digital age - Can they make a difference, 17 October 2019



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Human Rights in the digital age - Can they make a difference?, Keynote speech by Michelle Bachelet, UN High Commissioner for Human Rights, Japan Society, New York, 17 October 2019

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25158&LangID=E>

Photo taken from:

<https://www.ohchr.org/EN/NewsEvents/Pages/DigitalMisogyny.aspx>

What are human rights?

- Human rights are relevant to everyone, every where – to all products you make.
- Human rights are indivisible and inter-related.
- Human rights are, in most cases, guaranteed by law.



OHCHR, #StandWithHer 2021

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Human rights are universal, indivisible, inter-dependent and inter-related.

- *Universality* means that human rights, such as those defined in the Universal Declaration of Human Rights, should be guaranteed to everyone everywhere in the world. This in turn, means that all of us are also responsible to respect other people's rights.

For example, you have to pay due attention to what you produce would not breach human rights of others, and if possible, should contribute to the protection and promotion of human rights.

- *Indivisibility and inter-relatedness* means that you cannot separate various types of human rights are all related to each other.

For example, in 2019 in New York, USA; claims were made that an algorithm used by a credit company for evaluating credit limits of customers granted lower credit limits to women than men. In 2021, the regulator found that there was no intentional discrimination in the practice, but noted that "While we found no fair lending violations, our inquiry stands as a reminder of disparities in access to credit that continue nearly 50 years after

the passage of the Equal Credit Opportunity Act".

Inequality in access to financial resource may be a reflection of long-term structural gender inequality, e.g. women may have had less access to higher education, less represented in formal labour market (less entry and more drop outs, including due to unequal care responsibilities) and payed less salary (gender pay gap). Their unpaid domestic work may have not counted in economic/financial valuation. In another words, equality in access to financial resources (which is a recognized human right) is linked with equality in the enjoyment of the rights to education, to work, at work, equality in family life, etc.

Goldman Cleared of Bias in New York Review of Apple Card,
Bloomberg, 23 March 2021
<https://www.bloomberg.com/news/articles/2021-03-23/goldman-didn-t-discriminate-with-apple-card-n-y-regulator-says>

About the Apple Card, By Jamie Heinemeier Hansson on
November 11, 2019
<https://dhh.dk/2019/about-the-apple-card.html>

- Human rights are codified by international and national law, and further elaborated by other standards (e.g. declarations, guiding principles, guidelines, quasi-judicial and judicial interpretations). This allows normative approach and stronger accountability and provisions of remedies in case of human rights violations.

For basic understanding on human rights, also see: UN Human Rights Office: "What are human rights?"
(<https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>)

Human rights principles

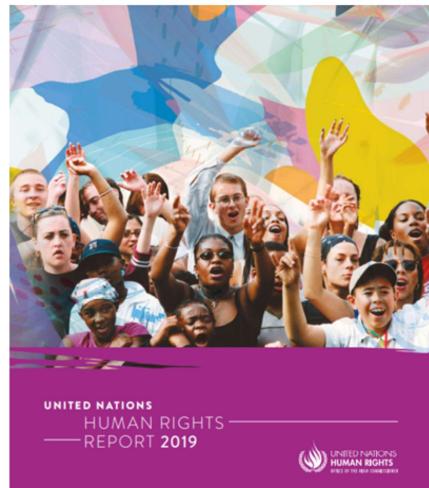
- Non discrimination & equality



- Participation



- Accountability



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Human Rights principles under the UN Common Understanding on a Human Rights-based approach (the first three principles are explained in the previous slide):

- Universality and inalienability: Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her. As stated in Article 1 of the UDHR, “All human beings are born free and equal in dignity and rights”.
- Indivisibility: Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.
- Inter-dependence and Inter-relatedness. The realization of one right often depends, wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on realization of the right to education or of the right to information.

- **Equality and Non-discrimination:** All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.
- **Participation and Inclusion:** Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.
- **Accountability and Rule of Law:** States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law

(https://unsdg.un.org/sites/default/files/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf)

Equality and non-discrimination

Under international human rights law...

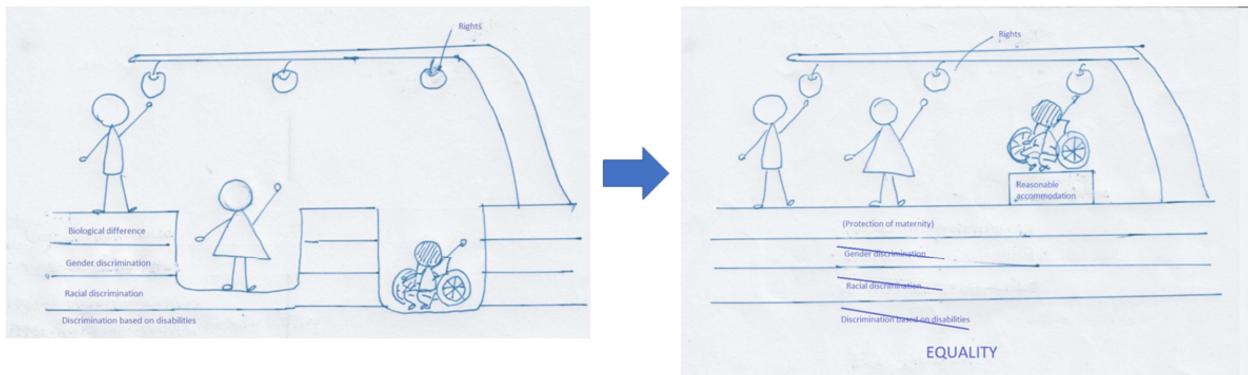


Illustration created by OHCHR, Women's Rights and Gender Section

Under international human rights law:

- Equality means “equal enjoyment of human rights”
 - Not only about guaranteeing everyone the same treatment
 - But also about guaranteeing that everyone can enjoy their rights equally
 - Equality includes gender equality. Gender equality is NOT a separate issue from human rights and equality. - International Bill of Human Rights guarantees the equal right of men and women to the enjoyment of all human rights. (Article 3 of both International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights).
- Discrimination is a cause of inequality
 - Differential treatments based on the prohibited grounds of discrimination which undermines equal enjoyment of human rights.

To know more about relevant issues...

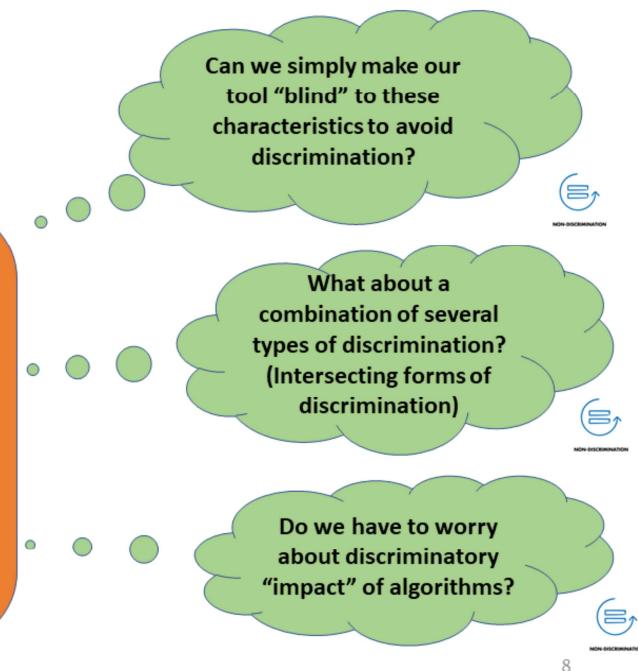
Misunderstanding around “equality” and “equity”

- Typical misunderstanding: “Equality” is about treating everybody in the same way, and “equity” means treating each individual taking into account different situation of each one. But both concepts require taking into consideration different situations each person is in, e.g. biological and physical condition, economic situation, social status, etc.
- The principle of equality under international human rights law requires specific efforts to ensure de facto equality, or substantive equality. For example, to reverse the perpetuation of historic and institutionalized discrimination, active use of temporary special measures, sometimes also called “affirmative actions”, may be required.
- The concept of equality and equity are complementary and both discourses should be informed of thinking of each other.
- Caution: The term “gender equity” has sometimes been used in a way that perpetuates stereotypes about women’s role in society, suggesting that women should be treated “fairly” in accordance with the roles that they carry out.¹⁸ This understanding risks perpetuating unequal gender relations and solidifying gender stereotypes that are detrimental to women. (Women’s Rights are Human Rights, UN Human Rights Office: <https://www.ohchr.org/documents/events/whrd/womenrightsarehr.pdf>)

Discrimination

is prohibited based on...

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence and economic and social situation



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International Bill of Human Rights prohibits discrimination based on: “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2 of each instrument)

The prohibited grounds of discrimination under international human rights law have been further elaborated over the years, and now considered to include: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth; disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence and economic and social situation.

(E.g. see: General Comment No. 20 on non-discrimination in economic, social and cultural rights (E/C.12/GC/20), Committee on Economic, Social and Cultural Rights, <https://undocs.org/E/C.12/GC/20>)

One person could face multiple layers of discrimination, e.g. based on gender, race, age, disability, economic status, etc, so called “**intersecting forms of discrimination**”. In such case, the negative impact of discrimination could amplify.

Examples:

- In Honduras, illiteracy rates and secondary school drop-out rates for girls of African descent in rural contexts are disproportionately high, often due to poverty, early pregnancy, early marriage and child labour.[CEDAW/C/HND/CO/7-8, para. 32, <https://undocs.org/CEDAW/C/HND/CO/7-8>] .
- African American youth in the United States have an 83% higher risk of homelessness as compared to their white peers, and lesbian, gay, bi, trans and queer youth who are part of a racial or ethnic minority are disproportionately affected by homelessness. [UN Free & Equal campaign factsheet on LGBTIQ+ Youth Homelessness, <https://www.unfe.org/wp-content/uploads/2020/12/ENGLISH-Youth-Homelessness-FINAL-V2.pdf>]

Social norms and stereotypes



The screenshot shows the UN Women homepage with a navigation bar at the top. Below the navigation, there is a section titled "UN Women ad series reveals widespread sexism". It includes a date, "Monday, October 21, 2013", and a small image of four women's faces with their mouths covered by white bars. A caption below the image reads: "A series of ads, developed as a creative idea for UN Women by Memac Ogilvy & Mather Dubai, uses genuine Google searches to reveal the widespread prevalence of sexism and discrimination against women. Based on searches dated 9 March, 2013 the ads expose negative sentiments ranging from stereotyping as well as outright denial of women's rights." At the bottom of the screenshot, there is a link: "UN Women "The Autocomplete Truth"".

Discriminatory social norms and stereotypes are causes of discrimination and inequality.

States have an obligation to modify such norms and stereotypes.

[Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 5]

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Discriminatory social norms and stereotypes are causes of discrimination and inequality.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) recognized in its preamble that “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women”.

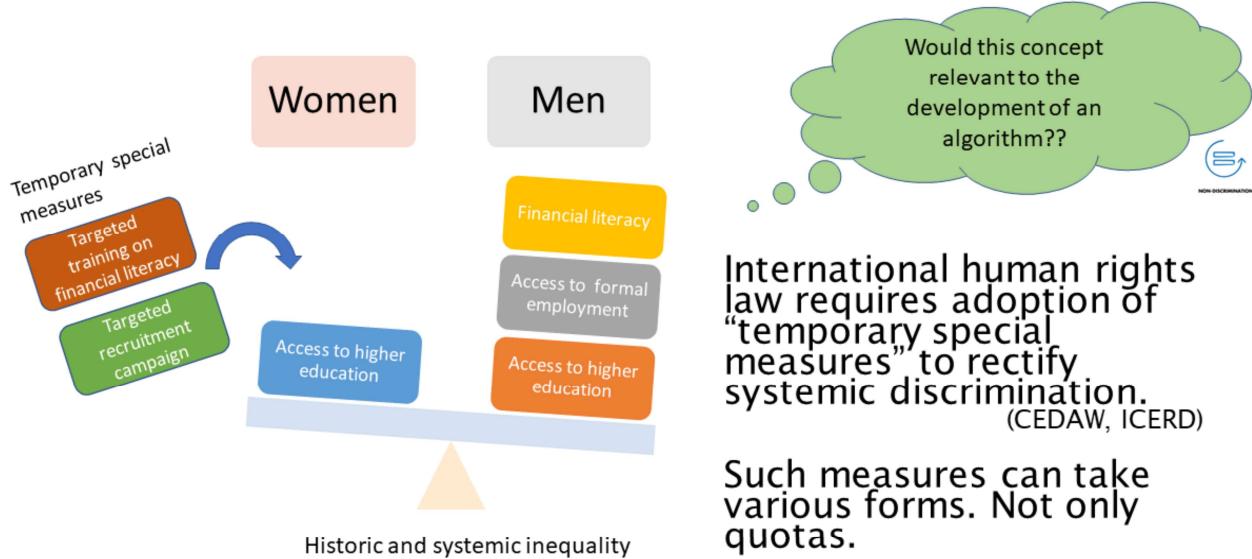
Article 5 of the Convention sets out:

“States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; “
<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>)

In 2013, UN Women conducted an advertisement campaign “The Autocomplete Truth”, highlighting how deep-rooted gender stereotypes

are reflected in the algorithm used in the Google search. (UN Women ad series reveals widespread sexism,
<https://www.unwomen.org/en/news/stories/2013/10/women-should-ads>)

Temporary special measures



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Brainstorming...

Women are entitled to equal access to financial resources, such as bank loans (CEDAW Art. 13). But in reality, men may be considered more eligible to bank loans than women. The data used for the evaluation of eligibility may reflect historic and systemic inequality, such as less use of formal banking system by women due to less access to higher education and formal employment as well as the lack of financial literacy.

In such case, what does international human rights law demand to realize women's equal access to financial resources?

Temporary special measures, sometimes called as “affirmative action” or “positive discrimination”, are not considered as a form of discrimination.

On the contrary, **they are required to eliminate systemic discrimination** which tends to perpetuate itself in the absence of an effort to break the cycle of exclusion. Temporary special measures should be used towards greater inclusiveness and against different forms of systemic exclusion, based on gender, race, ethnicity, age, disability and other status. They should be discontinued

when the objectives of equality of opportunity and treatment have been achieved (thus, they are “temporary” measures)

Quotas introduced in electoral or education systems are typical examples, but **temporary special measures are not limited to quotas. They can take other forms**, including targeted campaigns or capacity-building, budget and other resource allocation, etc.

Adoption of temporary special measures are recognized by international treaties. For example:

Convention on the Elimination of All Forms of Discrimination against Women, Article 4:

“1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

International Convention on the Elimination of Racial Discrimination (ICERD), Article 1:

“4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”

Further reading on temporary special measures under CEDAW: Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 on temporary special measures (https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3733_E.pdf)

To know more about relevant issues...

Also be aware that to ensure equality, some **permanent measures** may also be required. These include the protection of maternity (CEDAW Art. 5 (2)) or provision of reasonable accommodation (e.g. provision of education material in brail for persons with visual impairment) (Convention on the

Rights of Persons with Disabilities, Arts. 2 and 5). These are not "temporary special measures". These permanent measures, mostly measures to ensure equal enjoyment of human rights by persons with different biological conditions or with different impairments, neither be considered as discrimination. On the contrary, denial of such measures could constitute discrimination.

For example:

Convention on the Rights of Persons with Disabilities provides:

Art. 2

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;" and

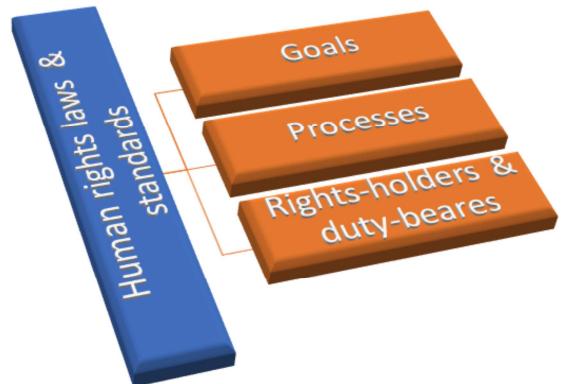
Art. 5:

"3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided."

(<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>)

What is a human rights-based approach?

1. Comply with human rights law
2. Goals should contribute to the realization of human rights
3. Processes are guided by human rights principles
4. Empower both rights-holders and duty-bearers



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There is no universal definition of “a human rights-based approach”, but there are some common structures and elements.

Example of a human rights-based approach:

UN Sustainable Development Group : Human Rights-Based Approach - Understanding on a human rights-based approach in the UN context (with focus on sustainable development):
<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach> also see:
https://unsdg.un.org/sites/default/files/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf

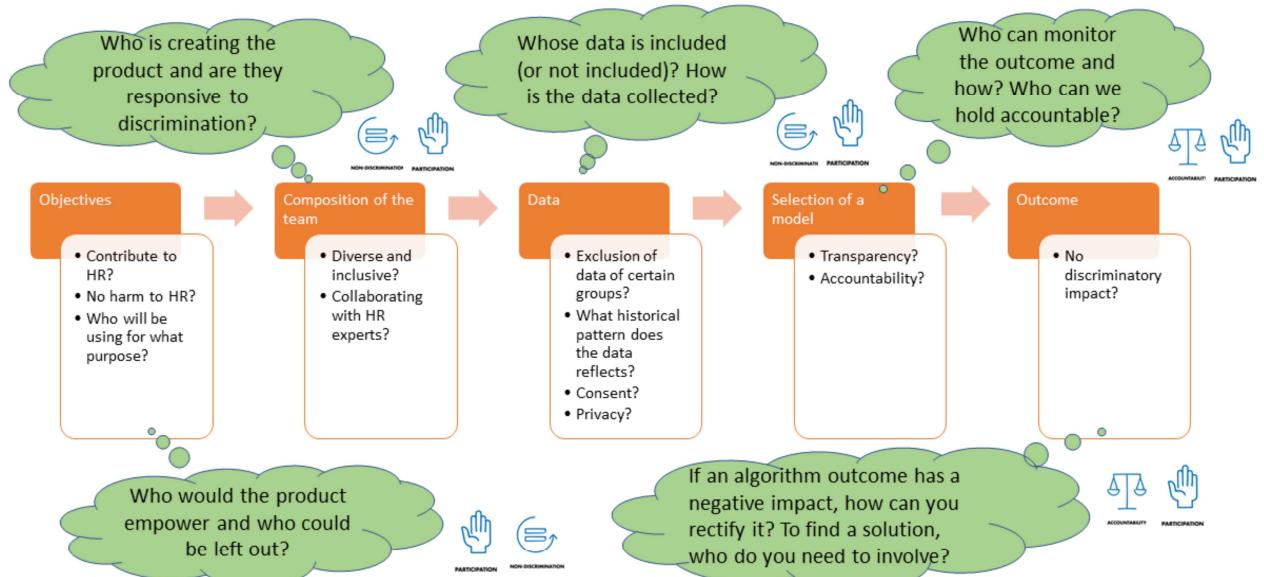
Glossary:

- Rights-holders: individuals and groups (e.g. indigenous people as collective) with valid human rights claims.
- Duty-bearers: States and non-state actors (incl. business enterprises) with corresponding obligations towards human rights.

Example:

- Racial criminal profiling: The police is duty-bearer and individuals who belong to certain race/ethnic groups who are targeted by such profiling are rights-holders.
- Gender discrimination in recruitment: The employer is a duty-bearer and women or LGBTI persons who are discriminated against in the recruitment are rights-holders. The Government is also a duty-bearer who has responsibility to develop laws and policies and implement programmes to eliminate gender discrimination in recruitment.

A human rights-based approach: example



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Ask key questions relevant to human rights principles at each stage of production!

Where can we find human rights?



UN Photo

[Universal Declaration of Human Rights](#) (UDHR)

Also...

- A set of international treaties on human rights
- National laws on human rights

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Most universal set of human rights are included in the [Universal Declaration of Human Rights](#) (<https://www.un.org/en/about-us/universal-declaration-of-human-rights>)

It is a good starting point to take a look at the Declaration and what are in it.

While the Universal Declaration itself is not a legally binding law, now it's considered that the main part of it forms customary international law which binds all States.

Universal Declaration of Human Rights and two treaties, which codified the Universal Declaration into legally binding treaties, are so called "**International Bill of Human Rights**" (<https://www.ohchr.org/documents/publications/factsheet2rev.1en.pdf>).

They are:

- [Universal Declaration of Human Rights](#)
- [International Covenant on Economic, Social and Cultural Rights](#) (<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.asp>)

- x)
● [International Covenant on Civil and Political Rights](https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx)
(<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>)

Also, there are a set of international treaties and national laws that are coded the contents of the Declaration as legally binding norms. The interpretation of these laws and methodologies to apply them have been elaborated by authoritative interpretation by judicial and quasi-judicial mechanisms, non-legally binding standards (declarations, principles, guidelines, code of conducts, etc). Those are called as “human rights standards” or “human rights instruments”.

A list of universal human rights instruments can be found here:
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>

Key treaties on equality and non-discrimination

- [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#)
- [International Convention on the Elimination of Racial Discrimination \(ICERD\)](#)



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Convention on the Elimination of All Forms of Discrimination against Women

<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

International Convention on the Elimination of All Forms of Racial Discrimination

<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

Thank you!

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RIGHTS**
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