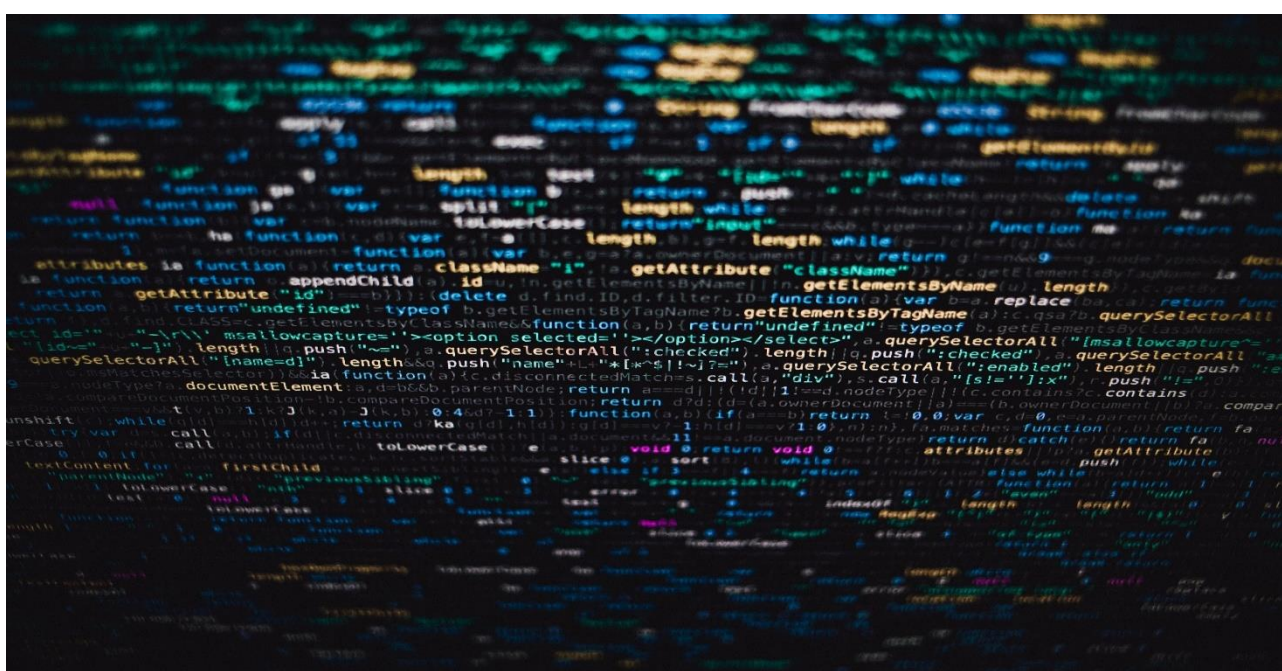


**HUMAN RIGHTS INTERNATIONAL CORNER (HRIC) POSITION PAPER
ON ARTIFICIAL INTELLIGENCE (AI) AND THE UNITED NATIONS GUIDING PRINCIPLES
ON BUSINESS AND HUMAN RIGHTS (UNGPs)
SHAPING THE DEBATE AT EU LEVEL**





HRIC POSITION PAPER, MAY 2020

ARTIFICIAL INTELLIGENCE (AI) AND UNGPs

Human Rights International Corner (HRIC) positively welcomes the European Commission consideration that international cooperation on AI matters must be based on an approach that promotes the respect of fundamental rights, and in particular the protection of privacy and personal data. HRIC fully shares the human-centric approach that the European Commission intends to adopt.

HRIC believes that United Nations Guiding Principles on Business and Human Rights (UNGPs), and in particular the Human Rights Due Diligence (HRDD) process described in the UNGPs 2nd Pillar, should be the basis and the benchmark for the development of an AI that is respectful of all internationally recognized human rights.

The future EU legislation on Mandatory Human Rights and Environmental Due Diligence that the European Commission has committed to propose in 2021 must include the peculiarities and challenges of AI in order to keep up with the transformations and changes introduced by the latter.¹

Our Position and Recommendations:

I. UNGPs should be the basis and the benchmark for the development of a lawful and ethical artificial intelligence that is respectful of all internationally recognized human rights.

- ✓ The UNGPs are the global standard for States and companies in order to prevent and address the risk of adverse impact linked to business activities. The EU should provide a clear reference to UNGPs and Human Rights Due Diligence in the forthcoming legislative framework relating to artificial intelligence.²
- ✓ The added value of the approach embraced under the UNGPs for business lies in the creation of a more determinable and inclusionary framework that would give relevant stakeholders greater opportunities to participate in shaping decisions and/or processes that impact on their rights³.

II. Mandatory Human Rights Due Diligence should be carried out by companies developing AI solutions.

- ✓ Through an accountable process of mandatory Human Rights Due Diligence tech companies must ensure that respect for the all international human rights is incorporated into the design, operation, evaluation and regulation of automated decision-making and machine-learning technologies. Human Rights Due Diligence will contribute to direct tech companies to increase the *explainability* of their AI solutions.

¹ In this regard, please see the transcription of EU Justice Commissioner Reynders on April 29, 2020, during which he has publicly committed to bring forward an EU legislation on mandatory human rights and environmental due diligence for companies as part of the Commission's 2021 work plan: <https://responsiblebusinessconduct.eu/wp/2020/04/30/speech-by-commissioner-reynders-in-rbc-webinar-on-due-diligence/>

² We welcome the Ethics Guidelines for Trustworthy Artificial Intelligence prepared by the High-Level Group on Artificial Intelligence published on 8 April 2019. The document mentions 12 times the word human rights and 36 times the word stakeholders. However, it is alarming that there is not even a single mention of the UN GUIDING PRINCIPLES or reference to Human Rights Due Diligence.

³ Human rights due diligence and Artificial Intelligence, Cigdem CIMRIN.



- ✓ The consultations of relevant stakeholders required by the process of Human Rights Due Diligence described in the UNGPs will help technology companies understand how and to what degree their products, applications, solutions or algorithms in general affect people's lives.
- ✓ AI also brings challenges similar to those previously experienced in other industries embedding process of HRDD and we can learn from them⁴. Since the adoption of the UNGPs, corporations operating in different sectors are familiar with embedding policies, processes, management systems, and stakeholder engagement to identify, prevent, mitigate and account for how they address their impacts on human rights.

III. Access to remedy should be ensured for all victims whose human rights have been violated by the deployment of AI solutions, irrespectively of their location.

- ✓ In accordance with the 3rd Pillar of the UNGPs any grievance mechanism for victims should be legitimate, accessible, predictable, equitable, transparent, rights compatible, a source of continuous learning and based on engagement and dialogue.
- ✓ Access to remedy should be ensured for those whose human rights have been violated by the deployment of AI solutions.
- ✓ Access to justice in the Member States should be ensured also for victims based outside the EU.
- ✓ Access to justice should be guaranteed in the "home state" where the company has its Headquarter, in the state where the damage occurred, and in the state where the event giving rise to damage occurred. The concept of "host state" may become outdated considering that companies may not need any legal/physical entity to operate their AI solutions abroad.
- ✓ Applicable law should be law of the country where damage occurred, unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred⁵.

IV. The European Commission should consider the challenges posed by AI when drafting its future legislation on Mandatory Human Rights and Environmental Due Diligence

- ✓ In 2021 the European Commission will hopefully draft a legislation that embeds elements of Human Rights Due Diligence into law. This is a unique opportunity to consider also the peculiarities and challenges of AI in the future legislation on human rights and environmental due diligence.
- ✓ The new legislation will focus on HRDD in the supply chain and therefore can be crafted as a powerful tool to allocate responsibility in the supply chain overcoming challenges posed by AI in that respect.
- ✓ AI solutions, just as any other product that can have a significant impact on human rights, require a mandatory process of Human Rights Due Diligence (mHRDD). Such process of mHRDD will ensure socially, environmentally and economically optimal outcomes and compliance with EU legislation, principles and values.

V. We recommend the EU to strengthen the human rights due diligence processes provided by the General Data Protection Regulation (GDPR) to fully cover the challenges posed by AI to data subjects

- ✓ AI applications can raise new ethical and legal questions, related to liability or fairness of decision-making. GDPR should be considered a major step for building trust and the Commission should move a step forward on ensuring legal clarity in AI-based applications.

⁴ Artificial Intelligence: A Rights-Based Blueprint for Business, BSR.

⁵ See Rome II art. 7 for Environmental damages.



- ✓ Right to object to automated individual decision-making as regulated by section 22 of GDPR should be strengthened considering the peculiarities of AI and should always be guaranteed.
- ✓ GDPR Data Privacy Impact Assessment is already to certain extent a useful process of HRDD and should be mandatory for all AI solutions processing personal data in particular to those dealing with healthcare, rural administrations and public services.

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Human Rights International Corner (HRIC)

HRIC has been founded out of the idea of a group of professionals, researchers and experts in Human Rights, engaged in supporting and promoting the respect of fundamental rights and principles, not only by States but also by the private sector. Since its foundation in May 2018, HRIC has been devoted to promote corporate accountability and raising the awareness of public and private entities and civil society regarding the UN Guiding Principles on Business and Human Rights, even by the means of publishing reports, organizing workshops and conferences, as well as by lobbying activities.

This document was written by Giacomo Maria Cremonesi with the precious contribution of Maria Francesca Cucchiara, Beatrice Pesce and Marta Bordinon.

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