



CDDH-IA(2025)5
03/02/2025

STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

DRAFTING GROUP ON HUMAN RIGHTS AND ARTIFICIAL INTELLIGENCE

(CDDH-IA)

**Compilation of comments received on the [DRAFT] Handbook on human rights and
artificial intelligence**

Chapters I and III

TABLE OF CONTENTS / *TABLE DES MATIÈRES*

MEMBERS	3
CZECHIA / <i>TCHÉQUIE</i>	3
GERMANY / <i>ALLEMAGNE</i>	3
GREECE / <i>GRÈCE</i>	5
SWITZERLAND / <i>SUISSE</i>	5
TÜRKIYE	8
UNITED KINGDOM / <i>ROYAUME-UNI</i>	10
PARTICIPANTS	18
CONFERENCE OF INGOS OF THE COUNCIL OF EUROPE (CINGO) / <i>CONFÉRENCE DES OING DU CONSEIL DE L'EUROPE</i>	18
OBSERVERS	25
ENNHRI	25

MEMBERS

CZECHIA / TCHÉQUIE

3.1.3 The Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law

10. (Exempted areas): The draft states that three areas are exempted from the scope of the Framework Convention, including activities related to “national security”. This seems to suggest that national security area could be treated the same way as other two, i.e. national defence and research. However, the Framework Convention and its explanatory report underline that public authorities must follow their human rights obligations in relation to national security activities. Considering that public authorities are typically responsible for human rights violations; the draft should not give a false impression that public authorities have a free hand in this field. Therefore, we suggest adding one more line to the draft after the current version of the text: “However, national security activities must be aligned with the applicable international law obligations, particularly those stemming from the ECHR, ESC and the relevant case-law of the ECtHR and ECSR.”

3.1.4 ECHR and ESC General Principles in the Context of AI

In relation to certain rights (for example access to court, right to free elections etc.) the ECtHR applies the concept of “essence”. According to this concept, any limitations of the rights in question must not negate the (procedural) protection by impairing the very essence of the safeguards (see, for example, *Regner v. the Czech Republic* ([GC], no. [35289/11](#), § 148, 19 September 2017). The draft version of the Handbook does not include this concept. The CDDH-IA members could discuss whether it is necessary to mention it in the Handbook.

3.1.5 Core human rights issues across public governance sectors

28. (Core human rights issues): As the protection of human rights online is a (general) matter of growing concern and the line between regulating online and offline lives has become distorted, a line could be added stating that the same human rights people have offline must also be preserved online. AI seems to be one part of this major shift. However, the message should remain.

GERMANY / ALLEMAGNE

1. INTRODUCTION

5. This Handbook on Human Rights and Artificial Intelligence (Handbook) has been designed as an accessible tool primarily to support government officials and policymakers in Council of Europe member States in applying ECHR and ESC standards to AI-related challenges. Given the diverse audience of policymakers and government officials working across various areas of public governance, this Handbook does not assume extensive prior knowledge of human rights law or AI-related issues. Nor does it aim to provide an exhaustive analysis of every topic addressed. As a practical resource, it provides insights into how these standards, along with instruments like the Framework Convention, apply to activities in AI systems' lifecycle. Focusing on key AI use cases in public governance, both current and reasonably foreseeable, it offers a framework to assess AI's human rights impacts considering ECHR and ESC standards, without predicting specific outcomes of future cases.¹

3. HUMAN RIGHTS AND ARTIFICIAL INTELLIGENCE

¹ Those will be based on their specific factual circumstances, in the light of the relevant domestic legislation and practice of the member State concerned, and within the scope of the relevant European standards that will exist at the time when the case is examined, see *Zavodnik v. Slovenia*, no. 53723/13, 21 May 2015, § 74.

Commented [PL1]: General comment (to be kept in mind especially for the sectoral analysis): when mentioning the FW-Convention it should be avoided to give the impression that the FW-Convention lags behind the ECHR in terms of its substantive provisions (the scope of application is of course different).

3.1.3 The Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law

10. The Framework Convention complements existing international standards (such as the ECHR and the ESC). It adopts a technology-neutral approach, focusing on principles rather than regulating specific technologies. It applies to AI systems used by public authorities (including private actors acting on their behalf). ~~but it does not automatically apply to~~ ~~With regard to~~ private actors. ~~Instead~~, State Parties may choose to ~~extend apply~~ its rules and principles to private entities or implement “other appropriate measures” ~~in a manner conforming with the object and purpose of the Framework Convention~~.² In addition, three areas are exempted from the scope of the treaty: (i) activities related to “national security”³; (ii) research and development activities⁴; and (iii) activities related to “national defence”.⁵

Commented [FJ2]: It is preferable that the CDDH merely describes the scope of application of the Framework Convention in a neutral way without using normative language

12. Key requirements include the provision of remedies⁶, conducting risk and impact assessments⁷ on human rights, democracy, and the rule of law; ensuring procedural safeguards for affected persons, including providing notice when interacting with AI systems;⁸ and enabling the possibility of bans or moratoria on ~~high-risk~~ AI applications.⁹ It also provides for follow-up mechanisms and cooperation and introduces an obligatory monitoring mechanism.¹⁰

Commented [PL3]: The category “high-risk” originates from the AI-Act, but is not used in the FW-Convention, not even in Art. 16 (4). For this reason, it should not be used in the Handbook either, as many negotiating parties in the CAI that are not EU MS reject the specific categorization of the AI-Act.

3.1.4 ECHR and ESC General Principles in the Context of AI

Positive Obligations

3.2.3 Key Non-Binding Frameworks on Business, Human Rights and AI

56. The following section therefore will focus on businesses responsibilities to ~~respect protect~~ human rights in the of AI through the framework of the UNGPs.

Commented [PL4]:
In this Section (“Positive obligations”) we suggest to have a short explanation on the concept of negative and positive obligations. We would also mention the general concept of procedural duties as a subcategory of positive obligations here.
Section 3.2 (BHR) could then concentrate on the horizontal aspect.

In our view the Section on positive obligations could – due to its relevance in the context of human rights and AI – also be moved up in the structure a bit.

Commented [PL5]: UNGP language (cf. also next heading)

Corporate Responsibility to Respect Human Rights

59. ~~To date, no AI-specific guidance on corporate responsibility for human rights has been developed. The UNGPs, however, provide a framework for addressing human rights impacts across the AI value chain. Businesses should assess and mitigate human rights risks throughout the AI lifecycle, from design to deployment, with transparency and accountability as central principles. Human rights due diligence should evaluate direct and indirect impacts, focusing on risks to individuals, and should be adapted dynamically to the evolving nature of AI technologies. Arguably, AI-specific human rights impact assessments to identify human rights risks, including those arising from third-party uses of AI systems, should be developed and applied.~~

² Article 3 subparagraph 1 (b).

³ Article 3.2

⁴ Article 3 subparagraph (3).

⁵ Article 3.4

⁶ Chapter IV (Article 14).

⁷ Chapter V (Article 16).

⁸ Article 15.

⁹ Article 16 (4).

¹⁰ Chapter VII (Articles 23-26).

60. In line with Recommendation CM/Rec(2016)3 on human rights and business, States should apply such measures as may be necessary to encourage or, where appropriate, require that businesses domiciled within their jurisdiction with activities within the AI lifecycle apply human rights due diligence throughout their operations and carry out human rights due diligence in respect of such activities; including project-specific human rights impact assessments, as appropriate to the size of the business and the nature and context of the operation.¹¹ States should encourage and, where appropriate, require such businesses to display greater transparency in order to enable them better to “know and show” their corporate responsibility to respect human rights and, where appropriate, require such businesses to provide regularly, or as needed, information on their efforts on corporate responsibility to respect human rights in the context of AI.¹²

GREECE / GRÈCE

iii) Equality of arms and adversarial proceedings

1. Equality of arms requires that each party be given a reasonable opportunity to present a case on conditions that do not place him or her at a disadvantage vis-à-vis the opponent and applies to criminal and civil cases.¹³ The right to adversarial proceedings means that the accused have the opportunity to familiarise themselves with and to comment on all evidence adduced or observations filed with a view to influencing the court’s decision, its existence, contents and authenticity in an appropriate form and within an appropriate time.¹⁴ Failure to disclose to the defence material evidence which could enable the accused to exonerate themselves or have their sentence reduced would constitute a refusal of facilities necessary for the preparation of the defence, and therefore a violation of Article 6.¹⁵ The right to adversarial proceedings may not be disregarded to save time and expedite the proceedings.¹⁶

SWITZERLAND / SUISSE

2. INTRODUCTION

6. Artificial intelligence (AI) is increasingly influencing various aspects of society, unlocking new opportunities for innovation and progress. This includes the potential to advance human rights, for example, by expediting judicial proceedings, enhancing healthcare through predictive diagnostics, and personalising education to meet individual learning needs. Yet alongside these opportunities come significant risks that have been recognised by the international community.

7. AI’s potential to threaten human rights has driven global efforts to regulate this set of technologies. The Council of Europe’s Framework Convention on Artificial Intelligence and, Human Rights, Democracy and the Rule of Law is the first international treaty on AI and human rights.¹⁷ It establishes principles and obligations to ensure that AI systems are fully consistent with human rights, democracy, and the rule of law throughout their lifecycle

Commented [PL6]: In our view Sections 59 and 60 have to be revised. In particular, the HUDERIA methodology and the work on the HUDERIA model should be primarily mentioned here, as it explicitly addresses private actors.

In addition, it should also be pointed out that, under the AI-Act, risk management systems for high-risk AI systems must also address risks to fundamental rights (Art. 9 (2) AI-Act).

It could be considered, to also mention the fundamental rights impact assessment pursuant to Art. 27 of the AI-Act (even if it largely only applies to state actors).

Commented [A7]: Diagnosis?

¹¹ CM/Rec(2016)3, para 20.

¹² *Idem*, para 20.

¹³ *Öcalan v. Turkey* [GC], no. 46221/99, 12 May 2005, § 140; *Foucher v. France*, no. 22209/93, 18 March 1997, § 34; *Bulut v. Austria*, no. 17358/90, 22 February 1996; *Faig Mammadov v. Azerbaijan*, no. 60802/09, 26 January 2017, § 19.

¹⁴ *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, 16 February 2000, § 60; *Kress v. France* [GC], no. 39594/98, 7 June 2001, § 74; *Křemář and Others v. the Czech Republic*, no. 35376/97, 3 March 2000, § 42.

¹⁵ *Natunen v. Finland*, no. 21022/04, 31 March 2009, § 43.

¹⁶ *Nideröst-Huber v. Switzerland*, no. 18990/91, 18 February 1997, § 30.

¹⁷ Status signatures and ratifications as of 16/01/2025 - <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty-num=225>

while being conducive to technological progress and innovation.¹⁸ Implementation of the Framework Convention will be facilitated by the [HUDERIA Methodology](#), a structured tool designed to assess and mitigate risks posed by AI systems to human rights, democracy, and the rule of law. The Council of Europe [has also developed] specific instruments on the implications of generative artificial intelligence for freedom of expression and AI's impact on equality and non-discrimination, including gender equality.¹⁹ Another important development regionally is the "[AI Act](#)" of the European Union.²⁰ As the first comprehensive horizontal legal framework for AI regulation in the EU, it aims to ensure that AI systems operating in the EU are safe and adhere to fundamental rights and EU values, incorporating measures for risk assessment, accountability, and oversight. The EU AI Act complements existing EU laws, such as the General Data Protection Regulation (GDPR).

8. The OECD adopted the first "[Recommendation on Artificial Intelligence](#)" in 2019. [UNESCO's "Recommendation on the Ethics of Artificial Intelligence"](#), adopted in 2021 provides voluntary guidelines for ethical AI governance, encouraging stakeholder collaboration for implementation. The United Nations General Assembly has also adopted two resolutions on AI which emphasise international cooperation for safety and development.²¹

9. Existing human rights instruments such as the European Convention on Human Rights and its Protocols (ECHR) and the European Social Charter (ESC), remain fully applicable in the context of AI. These instruments, interpreted by the European Court of Human Rights (ECtHR or the Court) and the European Committee on Social Rights (ECSR) respectively, establish basic standards for the protection of human rights for Council of Europe member States. While neither the Court nor the ESCR has yet addressed AI's impact on human rights, States must align their legal frameworks on AI with the requirements of the ECHR and ESC.

10. This Handbook on Human Rights and Artificial Intelligence (Handbook) has been designed as an accessible tool primarily to support government officials and policymakers in Council of Europe member States in applying ECHR and ESC standards to AI-related challenges. Given the diverse audience of policymakers and government officials working across various areas of public governance, this Handbook does not assume extensive prior knowledge of human rights law or AI-related issues. Nor does it aim to provide an exhaustive analysis of every topic addressed. As a practical resource, it provides insights into how these standards, along with instruments like the Framework Convention, apply to activities in AI systems' lifecycle. Focusing on key AI use cases in public governance, both current and reasonably foreseeable, it offers a framework to assess AI's human rights impacts considering ECHR and ESC standards, without predicting specific outcomes of future cases.²²

11. Chapter 2 of the Handbook introduces key technical concepts linking [AI's](#) technological aspects [of AI](#) to human rights implications. Chapter 3 outlines general human rights principles under the ECHR and ESC relevant to AI across public sectors. It addresses first cross-cutting issues relevant to all sectors. Then it provides a sectoral analysis of AI use cases in public governance, examining human rights impacts, relevant legal principles, and good practices from Council of Europe member States. The Handbook also considers the role of businesses in AI governance and explores how policymakers can address public-private intersections using the

Commented [A8]: We kindly ask to add a footnote precisising that not all Council of Europe member States have signed the ESC.
Alternatively, we kindly ask to delete the passage "for Council of Europe member State", as it suggests that all CoE member State ratified these treaties.

¹⁸ Article 1 – Object and purpose, § 1.

¹⁹ Appendix [x] of the Handbook provides further information on concluded, ongoing, or forthcoming initiatives [to be completed].

²⁰ Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence.

²¹ Resolution A/RES/78/265 "Seizing the opportunities of safe, secure and trustworthy artificial intelligence systems for sustainable development" (21 March 2024) emphasises respect, protection, and promotion of human rights in the design, development, deployment, and use of AI, and calls on stakeholders to "refrain from or cease the use of artificial intelligence systems that are impossible to operate in compliance with international human rights law or that pose undue risks to the enjoyment of human rights" and reinforces the need for "regulatory and governance approaches and frameworks related to safe, secure and trustworthy use of AI"; and Resolution A/RES/78/311 on "Enhancing International Cooperation on Capacity-building of Artificial Intelligence" (1 July 2024).

²² Those will be based on their specific factual circumstances, in the light of the relevant domestic legislation and practice of the member State concerned, and within the scope of the relevant European standards that will exist at the time when the case is examined, see *Zavodnik v. Slovenia*, no. 53723/13, 21 May 2015, § 74.

standards of the ECHR and the ESC, as well as other international norms. It concludes in Chapter IV with reflections on emerging challenges in AI governance, ensuring a dynamic and forward-looking approach.

3. HUMAN RIGHTS AND ARTIFICIAL INTELLIGENCE

The European Convention on Human Rights (ECHR)

8. The ECHR is the core human rights instrument of the Council of Europe. It sets binding standards for public authorities in member States. The European Court of Human Rights (ECtHR or the Court) [ensures the observance of the engagements undertaken by the Contracting Parties under](#) ~~monitors the implementation of~~ companies, and non-governmental organizations (NGOs) can bring complaints of alleged human rights violations before the Court once all domestic remedies have been exhausted. The rights and freedoms protected in the ECHR are listed in appendix [x].

Commented [A9]: Monitoring suggests that the Court carries out surveillance, including through evaluations and reports. We suggest to reformulate the sentence.

3.1.3 The Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law

12. Key requirements include the provision of remedies²³, [ensuring procedural safeguards for affected persons, including providing notice when interacting with AI systems](#);²⁴ conducting risk and impact assessments²⁵ on human rights, democracy, and the rule of law; ~~ensuring procedural safeguards for affected persons, including~~

²³ Chapter IV (Article 14).

²⁴ [Article 15](#).

²⁵ Chapter V (Article 16).

~~providing notice when interacting with AI systems;~~²⁶ and enabling the possibility of bans or moratoria on high-risk AI applications.²⁷ It also provides for follow-up mechanisms and cooperation and introduces an obligatory monitoring mechanism.²⁸

3.1.4 ECHR and ESC General Principles in the Context of AI

Positive Obligations

25. States' positive obligations require them ~~proactively~~ to assess ~~proactively~~ whether AI systems might harm human rights and enact legislation; and/or implement measures to mitigate risks.

3.1.5 Core human rights issues across public governance sectors

Non-Discrimination and Equality

The Prohibition of Discrimination in the ECHR and the ESC

29. The ECHR²⁹ and the ESC³⁰ prohibits discrimination but only in relation to the enjoyment of rights and freedoms set out in the ECHR/ESC, serving as a complement to their substantive provisions. Article 1 of Protocol No. 12 ECHR introduces a broader prohibition against discrimination covering "any right set forth by law".³¹ The grounds for discrimination explicitly mentioned in these instruments are "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". The notion 'other status' means that the grounds listed are not exhaustive and, for example, cover also disability³² or age.³³ ~~The prohibition of discrimination applies in vertical and horizontal relations.~~ Discrimination can be direct or indirect.³⁴ Direct discrimination arises from "a difference in the treatment of persons in analogous, or relevantly similar, situations"³⁵ and where this difference is "based on an identifiable characteristic".³⁶ Indirect discrimination occurs when seemingly neutral legislation disproportionately and unjustifiably affects a particular group of persons.³⁷

Commented [A10]: The question regarding positive obligations is addressed in paragraph 23, so there is no need here to return to the question of horizontal and vertical effect. We propose deleting the sentence. Moreover, the sentence is imprecise, as the prohibition of discrimination is not directly applicable between private parties. It only applies to States.

Key AI use cases

64. Key high-risk AI use cases in this context include:

- *AI-facilitated search, review, analysis and Large-Scale Discovery:* AI systems that create a searchable collection of case-law descriptions, legal text and other insights to be shared with legal experts for further analysis and large-scale discovery on high volumes of electronic documents. Examples include search engines with interfaces applied to case law and judicial files.
- *Decision support / automated decision-making:* Systems that facilitate or automate stages in the decision-making processes. Examples include summarising texts, extracting specific information in application, providing guidelines and benchmark and calculating scales for sentencing and compensation. Fully automated decision-making processes without any human supervision have not been reported in Europe so far.
- *Prediction of judicial outcomes:* Systems that learn from large datasets to identify patterns in the data that are consequently used to visualize, simulate or predict new litigation outcomes.
- *Online dispute resolution (ODR):* These cover technologies used for the resolution of disputes between parties with limited human intervention. It concerns mainly alternative dispute resolution, but also dispute resolution in the context of courts.

Commented [A11]: We would kindly suggest clarifying to what extent ODR platforms relate to AI systems.

- *AI based judge appointments and case allocation*: Systems used to complete or facilitate tasks such as allocating cases to courts and judges and attaching levels of priority.

TÜRKIYE

3. INTRODUCTION

9. Artificial intelligence (AI) is increasingly influencing various aspects of society, unlocking new opportunities for innovation and progress. This includes the potential to advance human rights, for example, by expediting judicial proceedings, enhancing healthcare through predictive diagnostics, and personalising education to meet individual learning needs. Yet alongside these opportunities come significant risks that have been recognised by the international community.

10. AI's potential to threaten human rights and fundamental freedoms has driven global efforts to regulate this set of technologies. The Council of Europe's Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law is the first international treaty on AI and human rights.³⁸ It establishes principles and obligations to ensure that AI systems are fully consistent with human rights, democracy, and the rule of law throughout their lifecycle while being conducive to technological progress and innovation.³⁹ Implementation of the Framework Convention will be facilitated by the [HUDERIA Methodology](#), a structured tool designed to assess and mitigate risks posed by AI systems to human rights, democracy, and the rule of law. Furthermore, HUDERIA Methodology is set to be enhanced with the introduction of the HUDERIA Model, which will offer supporting materials and resources, including adaptable tools and scalable recommendations.⁴⁰ The Council of Europe [has also developed] specific instruments on the implications of generative artificial intelligence for freedom of expression and AI's impact on equality and non-discrimination, including gender equality.⁴¹ Another important development regionally is the "[AI Act](#)" of the European Union.⁴² As the first comprehensive horizontal legal framework for AI regulation in the EU, it aims to ensure that AI systems operating in the EU are safe and adhere to fundamental rights and EU values, incorporating various measures, including therisk assessment, accountability, data governance and oversight, tailored to the level of risk posed by the AI systems. Furthermore,

Commented [İlayda12]: As the HUDERIA Methodology is planned to be complemented by the HUDERIA Model, it is crucial to include it here.

Commented [İlayda13]: Since the measures are not applicable to all AI systems, it is important to emphasize that they are allocated based on the level of risk AI system poses.

²⁶ Article 15.

²⁷ Article 16 (4).

²⁸ Chapter VII (Articles 23-26).

²⁹ ECHR Article 14.

³⁰ RESC Article E.

³¹ This Protocol has been ratified by 20 member States of the Council of Europe.

³² *Glor v. Switzerland*, no. 13444/04, 30 April 2009, § 80.; *G.N. and Others v. Italy*, no. 43134/05, 1 December 2009, § 126.; *Kiyutin v. Russia*, no. 2700/10, 10 March 2011, § 57.; *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51.

³³ *British Gurkha Welfare Society and Others v. the United Kingdom*, no. 44818/11, 15 September 2016, § 88; *Šaltinytė v. Lithuania*, no. 32934/19, 26 October 2021, § 63.

³⁴ *D.H. and Others v. The Czech Republic* [GC], no. 57325/00, § 184.

³⁵ *Burden v. the United Kingdom* [GC], no. 13378/05, 29 April 2008, § 60.

³⁶ *Biao v. Denmark* [GC], no. 38590/10, § 89.

³⁷ *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, 13 November 2007.

³⁸ Status signatures and ratifications as of 16/01/2025 - <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty-num=225>

³⁹ Article 1 – Object and purpose, § 1.

⁴⁰ HUDERIA: New tool to assess the impact of AI systems on human rights - <https://www.coe.int/en/web/portal/-/huderia-new-tool-to-assess-the-impact-of-ai-systems-on-human-rights>

⁴¹ Appendix [x] of the Handbook provides further information on concluded, ongoing, or forthcoming initiatives [to be completed].

⁴² Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence.

the AI Act distinguishes between AI models and systems and also prescribes obligations for general-purpose AI models. The EU AI Act complements existing EU laws, such as the General Data Protection Regulation (GDPR).

Commented [ĭlayda14]: While this handbook focuses on AI systems, it is important to highlight that general-purpose AI models are also subject to the AI Act.

3.1.3 The Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law

10. The Framework Convention complements existing international standards (such as the ECHR and the ESC). It adopts a technology-neutral approach, focusing on principles rather than regulating specific technologies. It applies to AI systems used by public authorities (including private actors acting on their behalf) but it does not automatically apply to private actors. Instead, State Parties may choose to extend its rules and principles to private entities or implement “other appropriate measures”.⁴³ In addition, matters related to national defence are exempted from the scope of the treaty. The following two areas: (i) activities related to “national security”⁴⁴ and (ii) research and development activities⁴⁵ are also exempted from the scope of the Framework Convention, provided that certain conditions are met.⁴⁶

Commented [ĭlayda15]: While matters related to national defense are exempted from the scope without any additional conditions, the other areas are excluded from the scope only when certain conditions are met.

ii. Risks to the Right to an Effective Remedy

39. Exercise of the right to an effective remedy may be hindered in relation to alleged violations caused by AI systems due to their technical complexity, opacity, and reliance on vast datasets and various upstream actors in the supply chain. Individuals may lack the knowledge or access to information necessary to identify violations and the responsible person or entity. Individuals may remain unaware of the extent of interference with their rights or struggle to understand the underlying decision-making processes. Consequently, remedies should be **accessible** - available and comprehensible to individuals - and **effective**, meaning they can adequately address and rectify the harm caused by AI systems.

Commented [ĭlayda16]: One of the hindrances to exercising the right to an effective remedy can be identified as the dependency on various upstream actors.

Corporate Responsibility to Respect Human Rights

60. In line with Recommendation CM/Rec(2016)3 on human rights and business, States should apply such measures as may be necessary to encourage or, where appropriate, require that businesses domiciled within their jurisdiction with activities within the AI lifecycle apply human rights due diligence throughout their operations and carry out human rights due diligence in respect of such activities; including project-specific human rights impact assessments, as appropriate to the size of the business and the nature and context of the operation.⁴⁷ States should encourage and, where appropriate, require such businesses to display greater transparency in order to enable them better to “know and show” their corporate responsibility to respect human rights [and fundamental freedoms and](#), where appropriate, require such businesses to provide regularly, or as needed, information on their efforts on corporate responsibility to respect human rights [and fundamental freedoms](#) in the context of AI.⁴⁸

Privacy and data protection in the context of administration of justice

⁴³ Article 3 subparagraph 1 (b).

⁴⁴ Article 3.2

⁴⁵ Article 3 subparagraph (3).

⁴⁶ Article 3.4

⁴⁷ CM/Rec(2016)3, para 20.

⁴⁸ Idem, para 20.

80. Courts and authorities involved in the administration of justice handle and retain personal data, including sensitive data whose misuse could lead to data and privacy breaches and discrimination.⁴⁹ Article 8 is violated when sensitive data is retained without adequate safeguards such as time-limits or a real possibility of review by the data subject.⁵⁰ To strike a fair balance between the need to make judicial decisions public and respect for the fundamental rights of parties or witnesses, information on their identity should not appear in published decisions.⁵¹

Commented [A17]: Ms SUËR deleted an extra space before the footnote.

UNITED KINGDOM / ROYAUME-UNI

1. INTRODUCTION

12. Artificial intelligence (AI) is increasingly influencing various aspects of society, unlocking new opportunities for innovation and progress. This includes the potential to advance human rights, for example, by expediting judicial proceedings, enhancing healthcare through predictive diagnostics, and personalising education to meet individual learning needs. Yet alongside these opportunities come significant risks that have been recognised by the international community.

13. AI's potential to threaten human rights has driven global efforts to regulate this set of technologies. The Council of Europe's Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law is the first international treaty on AI and human rights.⁵² It establishes principles and obligations to ensure that AI systems are fully consistent with human rights, democracy, and the rule of law throughout their lifecycle while being conducive to technological progress and innovation.⁵³ Implementation of the Framework Convention will can be facilitated by the [HUDERIA Methodology](#), a structured tool designed to assess and mitigate risks posed by AI systems to human rights, democracy, and the rule of law. The Council of Europe [has also developed] specific instruments on the implications of generative artificial intelligence for freedom of expression and AI's impact on equality and non-discrimination, including gender equality.⁵⁴ Another important development regionally is the "AI Act" of the European Union.⁵⁵ As the first comprehensive horizontal legal framework for AI regulation in the EU, it aims to ensure that AI systems operating in the EU are safe and adhere to fundamental rights and EU values, incorporating measures for risk assessment, accountability, and oversight. The EU AI Act complements existing EU laws, such as the General Data Protection Regulation (GDPR).

Commented [FA18]: It is not AI itself which can infringe upon human rights, but the way in which it is designed/used. Misuse is one factor, but intended use can still pose risks (e.g facilitating bias). CAI sets out principles that recognise both misuse and inherent risks require management. Language here should reflect this. For example:

"The potential for human rights to be threatened by the use of AI systems..."

Commented [FA19]: The AI Act will likely impact beyond the EU

14. The OECD adopted the first "[Recommendation on Artificial Intelligence](#)" in 2019. [UNESCO's "Recommendation on the Ethics of Artificial Intelligence"](#), adopted in 2021 provides voluntary guidelines for ethical AI governance, encouraging stakeholder collaboration for implementation. The United Nations General Assembly has also adopted two resolutions on AI which emphasise international cooperation for safety and development.⁵⁶

⁴⁹ Convention 108(+), Article 6.

⁵⁰ *S. and Marper v. the United Kingdom* [GC], 4 December 2008, nos. 30562 and 30566/2004, §103; *M.M. v. the United Kingdom*, 13 November 2012, no 24029/2007, §195

⁵¹ Except in cases where the necessity of protecting the confidentiality of certain types of personal data is outweighed by the interest in the investigation and prosecution of crime and in the publicity of court proceedings. *Avilkina and Others v. Russia*, 2013, § 45; *Z v. Finland*, 1997, § 97

⁵² Status signatures and ratifications as of 16/01/2025 - <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=225>

⁵³ Article 1 – Object and purpose, § 1.

⁵⁴ Appendix [x] of the Handbook provides further information on concluded, ongoing, or forthcoming initiatives [to be completed].

⁵⁵ Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence.

⁵⁶ Resolution A/RES/78/265 "Seizing the opportunities of safe, secure and trustworthy artificial intelligence systems for sustainable development" (21 March 2024) emphasises respect, protection, and promotion of human rights in the design, development, deployment, and use of AI, and calls on stakeholders to "refrain from or cease the use of artificial intelligence systems that are impossible to operate in compliance with international human rights law or that pose undue risks to the enjoyment of human rights" and reinforces the need for "regulatory and governance approaches and frameworks related to

15. Existing human rights instruments such as the European Convention on Human Rights and its Protocols (ECHR) and the European Social Charter (ESC), remain fully applicable in the context of AI. These instruments, interpreted by the European Court of Human Rights (ECtHR or the Court) and the European Committee on Social Rights (ECSR) respectively, establish basic standards for the protection of human rights for Council of Europe member States. While neither the Court nor the ECSR has yet addressed AI's impact on human rights, Member States must align their legal frameworks on AI with their obligations requirements of the ECHR and ESC.

16. This Handbook on Human Rights and Artificial Intelligence (Handbook) has been designed as an accessible tool primarily to support government officials and policymakers in Council of Europe member States in applying ECHR and ESC standards to AI-related challenges. Given the diverse audience of policymakers and government officials working across various areas of public governance, this Handbook does not assume extensive prior knowledge of human rights law or AI-related issues. Nor does it aim to provide an exhaustive analysis of every topic addressed. As a practical resource, it provides insights into how these standards, along with instruments like the Framework Convention, may apply to activities in AI systems' lifecycle. Focusing on key AI use cases in public governance, both current and reasonably foreseeable, it offers a framework to assess AI's human rights impacts considering ECHR and ESC standards, without predicting specific outcomes of future cases.⁵⁷

17. Chapter 2 of the Handbook introduces key technical concepts linking AI's technological aspects to human rights implications. Chapter 3 outlines general human rights principles under the ECHR and ESC relevant to AI across public sectors. It addresses first cross-cutting issues relevant to all sectors. Then it provides a sectoral analysis of AI use cases in public governance, examining human rights impacts, relevant legal principles, and good practices from Council of Europe member States. The Handbook also considers the role of businesses in AI governance and explores how policymakers can address-consider public-private intersections using the standards ECHR and the ESC, as well as other international norms. It concludes in Chapter IV with reflections on emerging challenges in AI governance, ensuring a dynamic and forward-looking approach.

Commented [FA20]: This statement doesn't reflect the nuanced way in which these instruments might have been implemented in individual member states. They also won't apply to States not Party to the CoE (though we appreciate the Handbook is aimed at CoE Member States). Could we perhaps change to "remain relevant in the context of AI"?

Commented [FA21]: UK courts interpret and apply rights set out in the ECHR routinely. Could we add "as" before "interpreted by..."

Commented [FA22]: Language change to reflect only Member States need align their frameworks, and that there may be instances where other bodies of law apply, such as IHL

Commented [FA23]: Can we make it clearer it's designed as one of the ways to meet obligations? Rather than it being definitive guidance

Commented [FA24]: Again, can we add clarity here that the handbook does not prescribe policy but offers factual account of where AI and human rights interact through the specific prism of ECHR and ESC

Commented [FA25]: "address" feels too prescriptive

safe, secure and trustworthy use of AI"; and Resolution A/RES/78/311 on "Enhancing International Cooperation on Capacity-building of Artificial Intelligence" (1 July 2024).

⁵⁷ Those will be based on their specific factual circumstances, in the light of the relevant domestic legislation and practice of the member State concerned, and within the scope of the relevant European standards that will exist at the time when the case is examined, see *Zavodnik v. Slovenia*, no. 53723/13, 21 May 2015, § 74.

3. HUMAN RIGHTS AND ARTIFICIAL INTELLIGENCE

3.1 General Issues

7. This section introduces the ECHR, the ESC, and the Framework Convention. It outlines the general principles of the ECHR and the ESC that can guide the protection of rights in the context of AI and refers to the Framework Convention where its principles may provide useful guidance in the context of the ECHR and the ESC. Recurring human rights challenges are also examined.

Commented [FA26]: To avoid sounding too prescriptive

3.1.3 The Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law

10. The Framework Convention complements reinforces existing international standards (such as the ECHR and adopts a technology-neutral approach, focusing on principles rather than regulating specific technologies. It applies to AI systems used by public authorities (including private actors acting on their behalf) but it does not automatically apply to private actors. Instead, State Parties may choose to extend its rules and principles to private entities or implement “other appropriate measures”.⁵⁸ In addition, three areas are exempted from the scope of the treaty: (i) activities related to “national security”⁵⁹; (ii) research and development activities⁶⁰; and (iii) activities related to “national defence”.⁶¹

Commented [FA27]: CAI reminds parties that existing human rights also need to apply to AI

Commented [FA28]: It applies to ‘activities within the lifecycle of AI systems’, not ‘systems’ [Art 1.1 of the Convention]

Commented [FA29]: More could be added here to reflect Art 3 subpara 1(b) where State Parties “shall” address risks and impacts related to private actors

11. Activities within the lifecycle of AI systems must comply with the following principles.⁶²

Commented [FA30]: Not sure this accurately captures the way the Convention is drafted. The principles are to adopt or maintain measures with regard to each of these headline objectives [“...general common principles each Party shall implement...in a manner appropriate...”]

Propose we leave these as “respect for human rights, democracy and the rule of law” or reword the sentence

- Human dignity and individual autonomy
- Equality and non-discrimination
- Respect for privacy and personal data protection
- Transparency and oversight
- Accountability and responsibility
- Reliability
- Safe innovation

12. Key requirements include ensuring existing remedies are available for AI related breaches of human rights~~the provision of remedies~~⁶³, conducting risk and impact assessments⁶⁴ on human rights, democracy, and the rule of law; ensuring procedural safeguards for affected persons, including providing notice when interacting with AI systems;⁶⁵ and enabling the possibility of bans or moratoria on high-risk AI applications.⁶⁶ It also provides for follow-up mechanisms and cooperation and introduces an obligatory monitoring mechanism.⁶⁷

Commented [FA31]: It’s more about ensuring existing remedies are available for AI-related breaches of human rights. “Provision” of remedies reads like it is an active thing we must do to provide remedies, whereas it is more passive

[“Each Party shall, to the extent remedies are required by its international obligations and consistent with its domestic legal system, adopt or maintain measures to ensure the availability of accessible and effective remedies....”]

3.1.4 ECHR and ESC General Principles in the Context of AI

⁵⁸ Article 3 subparagraph 1 (b).

⁵⁹ Article 3.2

⁶⁰ Article 3 subparagraph (3).

⁶¹ Article 3.4

⁶² Chapter III (Articles 6-13)

⁶³ Chapter IV (Article 14).

⁶⁴ Chapter V (Article 16).

⁶⁵ Article 15.

⁶⁶ Article 16 (4).

⁶⁷ Chapter VII (Articles 23-26).

Effective Protection of Rights

14. The ECHR and the ESC are intended to guarantee rights that are not theoretical or illusory but practical and effective.⁶⁸ National authorities must ensure rights holders can effectively enjoy their rights, which involves not only adopting legislation but also ensuring its effective application, providing adequate resources, and establishing appropriate operational procedures. Thus, States should ensure the effective protection of human rights against harms related to activities within the lifecycle of AI systems not only by implementing laws but also by providing resources, and establishing, for example, oversight mechanisms.

Commented [FA32]: The effective enjoyment of human rights doesn't necessarily require legislation

Commented [FA33]: As above

Positive Obligations

24. Positive obligations impose a duty of conduct, not result. States must act diligently and reasonably, taking appropriate measures within their resources and capacities. Positive obligations may require the State to impose sanctions for individuals or entities violating the ECHR, enact specific legal rules, and/or take operational steps to protect individuals from foreseeable risks to their rights.⁶⁹

Commented [FA34]: The positive obligation is for a State to ensure that there are adequate and effective mechanisms under which sanctions may be imposed in particular cases (rather than specifically requiring the State to impose sanctions)

3.1.5 Core human rights issues across public governance sectors

ii. Risks to Non-Discrimination and Equality

32. AI systems may be prone to indirect discrimination, as seemingly neutral data points that indirectly correlate with protected characteristics can lead to discriminatory outcomes. For example, the use of proxies like postal codes or spending habits, which may seem neutral but indirectly reflect characteristics such as ethnicity or socio-economic status, may result in biased decisions. Another concern is AI systems capacity for intersectional discrimination where multiple grounds of discrimination intersect.⁷⁰ States should ensure that appropriate measures are in place to promote equality and prevent and combat discrimination in the context of AI systems.

Commented [FA35]: Rather than proxies resulting in biased decisions, it would be more accurate to refer to how they can disguise the fact that they are biased. It's becoming increasingly difficult to trace and detect an AI-based proxy discrimination.

The Right to Privacy and Personal Data Protection

i. The Right to Privacy and Data Protection in the ECHR and other relevant instruments

33. Article 8 (the right to respect for private and family life), through the protection of private life, applies to the collection and processing of personal data.⁷¹ Private life, among others, includes the one's image, identity, personal development, and relationships, and extends also to professional or business activities. Personal data covers information such as names, addresses, dynamic IP addresses, and sensitive data like health and racial information. The Court also addressed under this right the interception of communications, such as

Commented [FA36]: This risks insinuating that 'private life' extends to business activities in the sense of a business being an independent legal person having rights - which we would not agree with - rather than the business activities of individuals

Commented [FA37]: While GDPR considers IP addresses as personal data, not all legislation applicable to Member States does (e.g UK data protection act wouldn't consider IP addresses in isolation as personal data)

⁶⁸ *Airey v Ireland*, 9 October 1979, 6289/73, § 24; International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32; European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, §28.

⁶⁹ *Osman v. The United Kingdom* [GC], nos. 87/1997/871/1083, § 115

⁷⁰ See [Study on the impact of artificial intelligence systems, their potential for promoting equality, including gender equality, and the risks they may cause in relation to non-discrimination](#), pp. 57-58, "[b]ecause of the granularity of algorithmic profiling, AI systems are able to infer several protected social memberships and potentially cluster users according to different problematic classifications. For example, algorithmic profiles might contain information regarding gender, age, ethnic background, religious beliefs, sexual orientation or gender identity based on the analysis of online behaviours, consumer preferences, etc".

⁷¹ For the Court's caselaw on the protection of personal data see T-PD(2023)1 Case Law on Data Protection (December 2022) and Guide on Article 8 of the European Convention on Human Rights.

emails and phone calls. It held that such measures constitute an interference with privacy rights and must be lawful, pursue a legitimate aim, be necessary and proportional.

35. The Framework Convention obliges Parties to adopt [or maintain](#) measures ensuring the protection of privacy and personal data throughout the lifecycle of AI systems.⁷² This includes compliance with applicable domestic and international laws, such as the ECHR and Convention No. 108.⁷³

Commented [FA38]: This appears to assert that Art 11 of CAI obliges Parties to comply with measures like C108+, which we would not accept is the case.

ii. Privacy and Data Protection Risks

36. Data protection and the right to privacy are cross-cutting issues in the context of AI because these systems rely heavily on collecting, processing, and analysing vast amounts of data that may include personal data. The risks include unauthorised data use, inadequate safeguards, and decisions to process personal data made without individuals' knowledge or consent, threatening privacy and personal data protection. Furthermore, [AI systems may have the capability to](#) be used for mass surveillance (including biometric surveillance), or profiling.

Commented [FA39]: The phrase "may be used" could be read as a permissive phrase

37. Effective safeguards are necessary to address risks like unauthorised data collection, misuse, and harm to individuals' dignity.⁷⁴ There should be independent supervisory authorities and adherence to international best practices to ensure privacy protection in both public and private sector AI applications.⁷⁵ The [2019 Guidelines on Artificial Intelligence and Data Protection](#), developed by the Convention No. 108 Consultative Committee (T-PD), provide further guidance for policymakers and AI developers, emphasising privacy-by-design, transparency, and the prevention of discrimination to uphold democratic values and foster public trust. Key points include ensuring risk assessments, supporting supervisory authorities, fostering collaboration between regulatory bodies, preserving human decision-making autonomy, and promoting digital literacy.

Commented [FA40]: This reads as if implying there should be new (and dedicated) supervisory authorities

Effective remedies

iii. Risks to the Right to an Effective Remedy

40. Parties to the Framework Convention are required to provide mechanisms that ensure [existing remedies are also available to AI-related access to effective remedies for human rights violations arising from AI activities](#).⁷⁶ This includes documenting and making relevant information available to affected individuals, enabling them to understand and exercise their rights. The relevant content in the information-related measures should be context-appropriate, sufficiently clear and meaningful, and critically, provide a person concerned with an effective ability to use the information in question to exercise their rights in the proceedings in respect of the relevant decisions affecting their human rights.⁷⁷

Commented [FA41]: This reads as if it's about providing new mechanisms, but it's about ensuring existing remedies are also available to AI-related issues

The footnote references Art 9 of the Framework Convention, but this paragraph actually relates to Art 14

3.2 Business and Human Rights

41. This section explores the intersection of AI-related business activities and human rights obligations, focusing on States' positive obligations under the ECHR and ESC, [the balancing of human rights of](#)

⁷² Article 11.

⁷³ Explanatory Report, §§ 80-82.

⁷⁴ Recommendation CM/Rec(2021)8 on the protection of individuals with regard to automatic processing of personal data in the context of profiling highlight the right of individuals to object to profiling and require robust safeguards, especially where profiling significantly affects their rights.

⁷⁵ Explanatory Report, §§ 79-83.

⁷⁶ Framework Convention, Article 9.

⁷⁷ Explanatory Report, § 99

businesses and individuals, and the corporate responsibility to respect human rights within the broader framework of non-binding international standards.

Commented [FA42]: Not clear what this means - we wouldn't recognise a business having human rights (only individuals)

3.2.1 Positive obligations under the ECHR and the ESC

42. States can be held accountable for failing to regulate and control acts of businesses that violate human rights.⁷⁸ The concrete scope and content of State obligations to prevent and redress corporate-related human rights violations depends to some extent on the human right in question and the factual circumstances. For example, States may need to criminalise harmful actions by private actors, adopt laws or policies, or take operational measures to prevent third-party abuses. Positive obligations may arise in a wide range of situations, such as media businesses interfering with freedom of expression⁷⁹; abuses in private hospitals⁸⁰ and schools⁸¹; workplace dress restrictions affecting the right to manifest religion⁸²; providing workers with information to assess occupational health and safety risks⁸³; or environment-related human rights harms caused by business activities.⁸⁴

Commented [FA43]: Governments don't tend to "control" businesses unless state-owned enterprises. Suggest deletion, or make it explicit it's referring to state-owned enterprises

Commented [FA44]: This statement could be contentious and isn't justified by the footnote - the source refers to a case where the Court was discussing the circumstances in which it would have jurisdiction under Article 1

Commented [FA45]: Do we have examples/something in mind regarding State's needing to criminalise?

Obligations to regulate and control business operations⁸⁵

44. States should reasonably ensure that businesses involved in the AI lifecycle are subject to adequate oversight, and compliance mechanisms⁸⁶. The Court's focus on whether "the State could reasonably be expected to act so as to prevent or put an end to the alleged infringement of the applicant's rights" could apply to State failures to address, for example, "algorithmic biases" or opaque AI decision-making processes.

Commented [FA46]: Not entirely clear on the link to the referenced footnote - that case doesn't justify this statement. This whole section should link back to specific obligations under ECHR and ESC

Obligations to provide essential information and procedural obligations⁸⁷ to enable public participation and informed decision making

45. States should provide essential information to the public about risks involved in the business activity.⁸⁸ This obligation is prospective and precautionary, as the public's right to information should not be confined to risks that have already materialised but should count among the preventive measures to be taken.⁸⁹

Commented [FA47]: This footnote does not justify this assertion

State decisions in relation to business activities – such as granting a licence - may also impact on human rights. To afford due respect for the interest safeguarded by, for example, Article 8 ECHR, the decision-making process leading to measures of interference should "consider all the procedural aspects, including the type of policy or decision involved, the extent to which the views of individuals were taken into account throughout the decision-making process, and the procedural safeguards available".⁹⁰

Commented [FA48]: Numbering missing from this para

⁷⁸ *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, 8 July 2004, § 318. "The acquiescence or connivance of the authorities of a Contracting State in acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention".

⁷⁹ *Axel Springer AG v. Germany* [GC] 7 February 2012 and *Von Hannover v. Germany* [No. 2] [GC], 7 February 2012.

⁸⁰ *Storck v. Germany*, no. 61603/00, 16 June 2005.

⁸¹ *Costello-Roberts v. the United Kingdom*, no. 13134/87, 25 March 1993.

⁸² *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, 27 May 2013.

⁸³ *Vilnes and Others v. Norway*, nos. 52806/09 and 22703/10, 24 March 2014.

⁸⁴ *Lopez Ostra v. Spain*, no. 16798/90, 9 December 1994; *Guerra and Others v. Italy* [GC], No. 14967/89, 19 February 1998, § 58; *Taşkın and Others v. Turkey*, no. 46117/99, 30 March 2005; *Fadeyeva v. Russia*, no. 55723/00, 9 June 2005, § 89.

⁸⁵ Including for example the licensing, setting up and supervision of dangerous activities and the provision of information about such activities to the general public.

⁸⁶ *Fadeyeva v. Russia*, no. 55723/00, 9 June 2005, § 89.

⁸⁷ Procedural obligations call for domestic procedures to ensure better protection of rights holders.

⁸⁸ *Önerlydiz v. Turkey* [GC], no. 48939/99, § 90.

⁸⁹ *Vilnes and Others v. Norway*, nos. 52806/09 and 22703/10, 24 March 2014, § 235.

⁹⁰ *Taskin and Others v. Turkey*, § 118.

Obligations relating to the provision of effective remedies

47. States should also provide effectively remedies for business-related human rights violations. This may include amending laws if the legal framework is inadequate.⁹¹ Of relevance here is the right to an effective remedy (Article 13 ECHR).

Commented [FA49]: Businesses cannot violate international law

Margin of appreciation in the context of positive obligations

48. It is important to note that States generally enjoy a wide margin of appreciation in deciding how to regulate and control business activities potentially impacting human rights. The margin of appreciation shrinks, however, if State measures interfere with a “particularly intimate aspect of the individual’s private life”,⁹² as well as in cases of severe threats to human rights. Thus, while States have a margin of appreciation in regulating AI technologies in the context of business-related activities, their discretion could be significantly limited when AI systems pose severe threats to human rights.

Commented [FA50]: Strong assertion - should have its own footnote to back it up

3.2.3 Key Non-Binding Frameworks on Business, Human Rights and AI

Relevant non-binding instruments

51. The ECHR and ESC do not address human rights obligations to businesses directly (see however vertical and horizontal effect). While individuals cannot directly raise complaints against businesses before the Court or the ECSR, they may bring claims against states for failing to prevent or address violations-abuses resulting from business-related activities. Some international non-binding instruments in the field of business and human rights, however, provide further detail on states and businesses responsibilities.

Commented [FA51]: Would suggest moving this up, as it feels contradictory when read after setting out apparent obligations

Corporate Responsibility to Respect Human Rights

57. Experience has shown that companies in almost any industry can impact—positively or negatively—almost any human right. Businesses (usually) do not directly violate human rights but may breach labour or environmental regulations, which are tied to the state’s duty to protect human rights. For instance, States must regulate workplace safety to uphold the right to life, while businesses are obligated to comply with these rules and may be subject to criminal or administrative proceedings for failure to do so.

Commented [FA52]: This appears to suggest this is an exclusive list, but businesses can be responsible for breachers of human rights in a range of areas

59. To date, no AI-specific guidance on corporate responsibility for human rights has been developed, however, the OECD is currently drafting guidance on Responsible Business Conduct for AI. The UNGPs, however, provide a framework for addressing human rights impacts across the AI value chain. Businesses should assess and mitigate human rights risks throughout the AI lifecycle, from design to deployment, with transparency and accountability as central principles. Human rights due diligence should evaluate direct and indirect impacts, focusing on risks to individuals, and should be adapted dynamically to the evolving nature of AI technologies. Arguably, AI-specific human rights impact assessments to identify human rights risks, including those arising from third-party uses of AI systems, should be developed and applied.

Commented [FA53]: Don't think this paragraph reflects the meaning of the corporate responsibility to respect human rights. As set out above, businesses can't violate human rights (unless state owned), but they can contribute to adverse human rights impacts. The corporate responsibility to respect is more than just complying with rules, it is ensuring that they do not cause or contribute to adverse human rights impacts throughout their operations. Language should come directly from UNGPS for clarity.

Commented [FA54]: The OECD is currently doing so and we should acknowledge this, as it's almost complete

3.3 Public Governance Sectoral Analysis

⁹¹ *Fadeyeva v. Russia*, §§89 and 92; see also *Powell and Rayner v. the United Kingdom*, no. 93101/81, 21 February 1990.

⁹² *Hatton & Others v United Kingdom* [GC], 7 August 2003, § 102.

Relevant human rights and principles

66. The principles identified in the Framework Convention⁹³ and the non-binding European Ethical Charter on the Use of Artificial Intelligence⁹⁴ correspond to significant, real concerns vis-à-vis the use of AI in administration of justice and its possible negative impacts on of human rights as protected in the ECHR, as well as in Convention 108(+). These principles include respect for human rights; non-discrimination; quality and security of AI⁹⁵; transparency, impartiality and fairness; and the principle of “under user control”.⁹⁶

The right to a fair trial

70. Bias in AI systems may not be easily discernable by the judge due to the generalised perception of algorithmic/mathematic “neutrality” and judges’ own technology bias. This could lead to discriminatory outcomes and interfere with the impartiality of the judge. Extensive reliance on AI could lead to a “standardisation” of judicial decisions, with judges feeling compelled to follow AI recommendations due to the perceived “superiority”, particularly in systems where their terms of office are not permanent but subject to popular vote, or in which their personal liability (disciplinary, civil or even criminal) is likely to be incurred.⁹⁷

NB: the UK will have a comment on Paragraph 49 but requires additional time to consult internally on it.

Commented [FA55]: This isn't a principle specifically referred to in the Convention - we should use the language of the provision in tandem

Commented [FA56]: Assuming this means bias for/against use of technology?

Commented [FA57]: It could be argued the other way, however. Judges may be less likely to follow if for example they had to defend a decision before a popular vote

PARTICIPANTS

CONFERENCE OF INGOS OF THE COUNCIL OF EUROPE (CINGO) / CONFÉRENCE DES OING DU CONSEIL DE L'EUROPE

⁹³ Framework Convention (Articles 4 to 13).

⁹⁴ The [European Ethical Charter on the use of Artificial Intelligence](#) in judicial systems and their environment” (“the Ethical Charter”) adopted by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe is one of the first regulatory (albeit non-binding) documents on AI that provides a set of principles to be implemented by public and private stakeholders responsible for the design and development of AI tools and services in administration of justice

⁹⁵ With regard to the processing of judicial decisions and data, using certified sources and intangible data with models conceived in a multi-disciplinary manner, in a secure technological environment.

⁹⁶ Precluding a prescriptive approach and ensuring that users are informed actors and in control of their choices.

⁹⁷ CEPEJ, *Ethical Charter*, § 140.

CINGO is grateful for the opportunity to provide input and feedback on the above handbook prepared by the CDDH Drafting Group on Human Rights and Artificial Intelligence.

This short summary is intended to consolidate the responses from CINGO members in addition to the detailed comments included in the draft handbook. Responses to this consultation were provided directly by 5 CINGO members, as well as the CINGO appointed expert on human rights and artificial intelligence, Francesca Fanucci. Responses to this consultation were submitted by:

European Association for Palliative Care; European Parents' Association; University Women in Europe; Communion of Protestant Churches in Europe; and European Bars Federation.

Based on the views shared by CINGO members and expert, we distil the following points for Drafting Group's consideration:

1. The report is generally inconclusive. It is not clear how this handbook would tell Member States more than what they already know and guide their specific action on AI. The use and scope of the instruments referenced are not adequately explained and it is unclear what progressive interpretation of human rights and AI under the ECtHR and European Social Charter looks like for rights in practice. The handbook therefore raises question about how 'justiciable' rights are in this context and how they will be properly implemented in the future.
2. The handbook could benefit from stating precisely and explicitly what mechanisms exist for the protection of human rights in the context of AI and what gaps need to be addressed as soon as possible. This includes:
 - i. An analysis of the interplay between different legal frameworks; including conflicts and synergies between those frameworks;
 - ii. Guidance on the practical steps for implementation and actionable measures (AI risk assessments, governance frameworks, guidelines on corporate responsibility);
 - iii. Some brief analysis of global AI governance standards. This will help to emphasise the need for harmonised global standards to mitigate fragmented regulatory frameworks.
3. There are some thematic areas that are underdeveloped or conspicuously absent from the handbook:
 - i. The lack of crucial sectors such as national security and law enforcement is unacceptable: national security is excluded both by the Framework Convention and the AI Act, but not by the ECHR and its jurisprudence, so its inclusion would complement a significant line.
 - ii. There is no mention of AI in the context of education, and no mention of child rights as part of human rights in the context of AI at all.
 - iii. Migration and border control and predictive policing are addressed only briefly if at all. Such complex and relevant subjects require consideration and reflection from the Drafting Group.

4. INTRODUCTION

15. Artificial intelligence (AI) is increasingly influencing various aspects of society, unlocking new opportunities for innovation and progress. This includes the potential to advance human rights, for example, by expediting judicial proceedings, enhancing healthcare through predictive diagnostics, and personalising education to meet individual learning needs. Yet alongside these opportunities come significant risks that have been recognised by the international community.

Commented [CK58]: Feedback from CINGO member European Association of Palliative Care:

As an association dedicated to advancing palliative care across Europe and beyond, EAPC warmly welcome the publication of this handbook and believe its release is both timely and essential. Enhancing the quality of life for patients with incurable illnesses is a complex challenge that demands an individualised, person-centred approach to effectively address physical, psychological, social, and spiritual needs. While AI has the potential to contribute significantly to healthcare delivery, it also poses the risk of de-personalising care in palliative settings, leading to care plans that may fail to fully reflect the unique needs of each individual and causing barriers to those seeking support who are unable or unwilling to engage with digital health systems.

Commented [CK59]: Feedback from CINGO member University Women of Europe:

Il est très long au regard des rares éléments de réponses qu'il apporte à des préoccupations dont il est vrai qu'il souligne la gravité. Il renvoie en outre à un nombre d'instruments ou de documents tels que la méthodologie HUDERIA ou le règlement de l'IA de l'UE ou la recommandation de l'OCDE sur le même sujet dont il n'explique guère la portée utile. Il renvoie en outre à un nombre d'instruments ou de documents tels que la méthodologie HUDERIA ou le règlement de l'IA de l'UE ou la recommandation de l'OCDE sur le même sujet dont il n'explique guère la portée utile. Des instruments dont on connaît l'importance tels que la CEDH et la Charte Sociale Européenne, votre projet se borne à articuler qu'ils n'ont pas abordé jusqu'à présent la question dont on débat, qu'ils sont d'interprétation évolutive et comportent des principes d'une grande vertu, dignité humaine, autonomie personnelle, obligations positives (seulement de comportement pas de résultat), de proportionnalité. Cela ne conduit pas loin. Pas plus que les très essentiels principes de non-discrimination, de droit à la vie privée et de recours effectifs, devant qui, ce n'est pas clair, juridictions nationales ou internationale, jusqu'à quel point cela est-il concevable quand bien même les conditions institutionnelles en seraient réunies si les sujets sont trop complexes et hors de portée de la compréhension des personnes concernées. De la notion de marge d'appréciation dans les obligations positives, il est fait état de façon si floue que l'on ne voit pas...

Commented [CK60]: Feedback from CINGO member European Parents' Association:

The NGO would like to point out that there is no mention of AI in education throughout the report, despite other sectors such as health and social services etc being explicitly mentioned. EPA would like to bring to the committee's attention that AI is already used in education for: data collection; automated assessments; communication with parents and families (especially those from a migrant background for translation).

The handbook defines very specifically how privacy and data protection, anti-discrimination, and equality etc have to be guaranteed in other sectors, but education and the impact of AI on education is conspicuously absent.

Further, the handbook does not mention child rights as part of human rights at all. It is kindly requested that you take the above points in to consideration and include them in the final handbook.

16. AI's potential to threaten human rights has driven global efforts to regulate this set of technologies. The Council of Europe's Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law is the first international treaty on AI and human rights.⁹⁸ It establishes principles and obligations to ensure that AI systems are fully consistent with human rights, democracy, and the rule of law throughout their lifecycle while being conducive to technological progress and innovation.⁹⁹ Implementation of the Framework Convention could be facilitated by the [HUDERIA Methodology](#), a structured tool designed to assess and mitigate risks posed by AI systems to human rights, democracy, and the rule of law. The Council of Europe [has also developed] specific instruments on the implications of generative artificial intelligence for freedom of expression and AI's impact on equality and non-discrimination, including gender equality.¹⁰⁰ Another important development regionally is the ["AI Act"](#) of the European Union.¹⁰¹ As the first comprehensive horizontal legal framework for AI regulation in the EU, it aims to ensure that AI systems operating in the EU are safe and adhere to fundamental rights and EU values, incorporating measures for risk assessment, accountability, and oversight. The EU AI Act complements existing EU laws, such as the General Data Protection Regulation (GDPR), the Digital Services Act (DSA) and the Digital Market Act (DMA).

17. The OECD adopted the first ["Recommendation on Artificial Intelligence"](#) in 2019. [UNESCO's "Recommendation on the Ethics of Artificial Intelligence"](#), adopted in 2021 provides voluntary guidelines for ethical AI governance, encouraging stakeholder collaboration for implementation. The United Nations General Assembly has also adopted two resolutions on AI which emphasise international cooperation for safety and development.¹⁰²

18. Existing human rights instrument such as the European Convention on Human Rights and its Protocols (ECHR) and the European Social Charter (ESC), remain fully applicable in the context of AI. These instruments, interpreted by the European Court of Human Rights (ECtHR or the Court) and the European Committee on Social Rights (ECSR) respectively, establish basic standards for the protection of human rights for Council of Europe member States. While neither the Court nor the ECSR has yet addressed AI's impact on human rights, States must align their legal frameworks on AI with the requirements of the ECHR and ESC. This is especially crucial for those specific areas that are not covered by the Framework Convention on Artificial Intelligence, Democracy and the Rule of Law but are still subject to the provisions of the ECHR and ESC.

19. This Handbook on Human Rights and Artificial Intelligence (Handbook) has been designed as an accessible tool primarily to support government officials and policymakers in Council of Europe member States in applying ECHR and ESC standards to AI-related challenges. Given the diverse audience of policymakers and government officials working across various areas of public governance, this Handbook does not assume extensive prior knowledge of human rights law or AI-related issues. Nor does it aim to provide an exhaustive analysis of every topic addressed. As a practical resource, it provides insights into how these standards, along with instruments like the Framework Convention, apply to activities in AI systems' lifecycle. Focusing on key AI use cases in public governance, both current and reasonably foreseeable, it offers a framework to assess AI's

⁹⁸ Status signatures and ratifications as of 16/01/2025 - <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=225>

⁹⁹ Article 1 – Object and purpose, § 1.

¹⁰⁰ Appendix [x] of the Handbook provides further information on concluded, ongoing, or forthcoming initiatives [to be completed].

¹⁰¹ Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence.

¹⁰² Resolution A/RES/78/265 "Seizing the opportunities of safe, secure and trustworthy artificial intelligence systems for sustainable development" (21 March 2024) emphasises respect, protection, and promotion of human rights in the design, development, deployment, and use of AI, and calls on stakeholders to "refrain from or cease the use of artificial intelligence systems that are impossible to operate in compliance with international human rights law or that pose undue risks to the enjoyment of human rights" and reinforces the need for "regulatory and governance approaches and frameworks related to safe, secure and trustworthy use of AI"; and Resolution A/RES/78/311 on "Enhancing International Cooperation on Capacity-building of Artificial Intelligence" (1 July 2024).

Commented [FF61]: The HUDERIA Model and Methodology are non-legally binding documents and it is emphasised that the States may well decide to conduct the impact assessment via other means. Therefore, we recommend reviewing this formulation. See, e.g., suggestion here.

Commented [FF62]: All these key EU regulations are relevant and complement the EU AI Act (especially the DSA with regard to digital platforms based on GPAI/generative AI).

Commented [CK63]: Feedback from CINGO member **Communion of Protestant Churches in Europe:**

The Communion of Protestant Churches in Europe welcomes the ethical reflection on the use of artificial intelligence, especially with regard to its consequences for human rights, democracy and the rule of law. We are therefore grateful to the Council of Europe for setting up a committee to address these fundamental issues. The complex subjects of migration and border control, as well as predictive policing, are addressed only briefly, if at all, in the text, despite their significance. These are areas where human rights violations are a risk and so we believe that they should be given particular attention from a human rights perspective. You may have already planned this for the other chapters that we have not yet received. If not, we would advise you to include these important topics in the handbook.

Commented [CK64]: Feedback from CINGO member **Federation des Barreaux d'Europe:**

As the Representative for the FBE - Federation des Barreaux d'Europe, I am providing some comments for your consideration:

As practitioners in the field of Human Rights, lawyers found it extremely helpful to have access to guidance on practical steps that practitioners and, more widely organisations, could consider to support in the enforcement of the existing framework. We also find helpful to have clarification on the interplay between frameworks at European and Global Level and how to navigate across the various standards. Possibly - if we may - the handbook could include some additional indication on:

1. Practical Steps for Implementation: for example a kind of roadmap with actionable measures, such as AI risk

Commented [FF65]: We recommend adding an additional short para below adding the relevant CoE recommendations/non-binding instruments as well, such as: the CoM Recommendations on algorithmic impact on human rights; the Commissioner for HR Recommendation ""Unboxing artificial intelligence: 10 steps to protect human rights".

Commented [FF66]: As also clarified in this Working Group's Working Document, para 17, "The Handbook could provide additional analysis, addressing specific areas that the Framework Convention does not cover in detail and "going further than the Framework Convention had done". We strongly recommend pursuing this objective.

Commented [FF67]: Key AI use cases in public governance should include those whose high risk/impact on human rights is already acknowledged and documented. That is why, first and foremost, the sectors analysed below should include **AI use cases for law enforcement and national security**. Law enforcement is also already identified as high-risk by the AI Act. National security is exempted from the scope of both the EU AI Act and the

human rights impacts considering ECHR and ESC standards, without predicting specific outcomes of future cases.¹⁰³

20. Chapter 2 of the Handbook introduces key technical concepts linking AI's technological aspects to human rights implications. Chapter 3 outlines general human rights principles under the ECHR and ESC relevant to AI across public sectors. It addresses first cross-cutting issues relevant to all sectors. Then it provides a sectoral analysis of AI use cases in public governance, examining human rights impacts, relevant legal principles, and good practices from Council of Europe member States. The Handbook also considers the role of businesses in AI governance and explores how policymakers can address public-private intersections using the standards of the ECHR and the ESC, as well as other international norms. It concludes in Chapter IV with reflections on emerging challenges in AI governance, ensuring a dynamic and forward-looking approach.

3.1.3 The Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law

10. The Framework Convention complements existing international standards (such as the ECHR and the ESC). It adopts a technology-neutral approach, focusing on principles rather than regulating specific technologies. It applies to AI systems used by public authorities (including private actors acting on their behalf) but it does not automatically apply to private actors. Instead, State Parties may choose to extend its rules and principles to private entities or implement "other appropriate measures".¹⁰⁴ In addition, three areas are exempted from the scope of the treaty: (i) activities related to "national security"¹⁰⁵; with the understanding that such activities are conducted in a manner consistent with applicable international law, including international human rights law obligations, and with respect for its democratic institutions and processes. (ii) research and development activities, unless testing or similar activities are undertaken in such a way that they have the potential to interfere with human rights, democracy and the rule of law¹⁰⁶; and (iii) matters related to "national defence".¹⁰⁷

Effective Protection of Rights

14. The ECHR and the ESC are intended to guarantee rights that are not theoretical or illusory but practical and effective.¹⁰⁸ National authorities must ensure rights holders can effectively enjoy their rights, which involves not only adopting legislation but also ensuring its effective application, providing adequate resources, and establishing appropriate operational procedures. Thus, States should ensure the effective protection of human rights against harms related to activities within the lifecycle of AI systems not only by implementing laws but also by providing resources, and establishing, for example, oversight mechanisms.

17. The extent of the margin of appreciation enjoyed by national authorities depends on the nature of the right involved and the severity of the threat that the act or omission in question would pose to that right.

¹⁰³ Those will be based on their specific factual circumstances, in the light of the relevant domestic legislation and practice of the member State concerned, and within the scope of the relevant European standards that will exist at the time when the case is examined, see *Zavodnik v. Slovenia*, no. 53723/13, 21 May 2015, § 74.

¹⁰⁴ Article 3 subparagraph 1 (b).

¹⁰⁵ Article 3.2

¹⁰⁶ Article 3 subparagraph (3).

¹⁰⁷ Article 3.4

¹⁰⁸ *Airey v Ireland*, 9 October 1979, 6289/73, § 24; International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32; European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, §28.

Commented [FF68]: We cannot tackle the area of AI public governance without reviewing the cases of design, development and deployment of AI in the public sectors of law enforcement and national security.

These two sectors were originally included in CDDH-IA(2024)06 (Draft Handbook on human rights and artificial intelligence – general structure and possible elements). National security is exempted from the scope of the Framework Convention but still "with the understanding that such activities are conducted in a manner consistent with applicable international law, including international human rights law obligations, and with respect for its democratic institutions and processes." (Article 3 para 2). This Handbook offers the unmissable opportunity to clarify how this consistency can be ensured on the basis of the ECHR and ESC standards/case-law.

Law enforcement is not exempted from the scope of the Framework Convention but there are margins for extensive exceptions/carve-outs (and for EU States, in the AI Act as well).

This Handbook offers the unmissable opportunity to clarify how these caveats should be assessed in compliance with the ECHR and the ESC.

Commented [FF69]: Please add this caveat from the language of the article, as it is crucial to remind that the ECHR and ESC still apply, among others.

Commented [FF70]: Again, we believe it is important to highlight the caveats to these blanket exemptions.

Commented [FF71]: Please stick to the letter of the text (Article 3 para 4), because the interpretation of "matters" by the ECtHR is very specific and in some cases, it has still recognised its jurisdiction on national defence activities impacting on ECHR-protected rights.

Commented [FF72]: Here too, we recommend adding a reference to the safeguards imposed on potential interferences/restriction of human rights, i.e.

The three-part test (then further explained in para 26 below);

Limits to derogations in cases of emergency.

Commented [FF73]: We recommend expanding on this part, otherwise it does not really offer any concrete guidance to policymakers on when and how much or if at all they can use their margin of appreciation. You could provide examples of current case-law and specific rights.

Evolutionary Interpretation and the ‘Living Instrument’ Doctrine

18. The ECHR and the ESC are "living instruments," interpreted dynamically in the light of present-day conditions to address evolving societal and technological issues. The Court's past rulings on topics like data interception¹⁰⁹, biometric data¹¹⁰, the internet and digital tools¹¹¹ highlight its ability to adapt rights to modern challenges. Through application of this case-law, the Court is expected to apply the ECHR to AI-related cases in the future.

Commented [FF74]: Doctrine is the theory elaborated by jurists, which can be then used by the courts. The reference here is to the Court's past rulings, not to a specific way of interpretation used in those rulings. Therefore, we recommend replacing the term.

Human Dignity

21. The Framework Convention also features human dignity among the principles that must govern artificial intelligence.¹¹² Activities within the AI lifecycle must not dehumanise individuals, undermine their autonomy, or reduce them to data points, and AI should not be anthropomorphised in ways that infringe on human dignity.¹¹³ It is also worth noting that the Charter of Fundamental Rights of the EU, where applicable to the Council of Europe Member States that are also EU members, also specifically acknowledges the right to human dignity as inviolable.

Commented [FF75]: We believe this needs to be added as emphasis.

Positive Obligations

23. States have a duty under the ECHR and the ESC to refrain from unjustified interference with human rights (negative obligations) and to ensure their effective realisation and protection (positive obligations). This applies even in cases where threats originate from private individuals or entities beyond direct state control as these instruments address both vertical relationships—between national authorities and individuals—and horizontal relationships¹¹⁴, which involve interactions between individuals or entities. States must protect human rights in the sphere of the relations between individuals themselves (horizontal effect).

Commented [FF76]: It would be useful to expand on this with 1-2 sentences, as this is particularly the case with AI deployment and use, where public-private partnership or procurement from private entities is a predominant model for AI deployment in public sector. Therefore, the state duty to protect from private entities becomes even more prominent. See for language <https://pure.uva.nl/ws/files/136794389/paper4.pdf> (page 3) and UN GP for Business and Human Rights pp 3-12

Lawfulness, Legitimate Aim, Necessity, Proportionality, and Fair Balance

¹⁰⁹ *Big Brother Watch and Others v. United Kingdom* [GC], no. 58170/13, 2021.

¹¹⁰ *S. and Marper v. United Kingdom* [GC], Nos. 30562/04 and 30566/04, 2008

¹¹¹ *Ahmet Yıldırım v. Turkey*, no. 3111/10, 2012; *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 2016.

¹¹² Framework Convention, Article 7.

¹¹³ Explanatory Report, § 53.

¹¹⁴ The Court has recognised States' duty to protect human rights in these horizontal contexts, such as the right to respect for private and family life (Article 8 ECHR), see *X and Y v. Netherlands*, No. 8978/80, 26 March 1985, § 23; freedom of expression (Article 10 ECHR), see *Plattform "Ärzte für das Leben" v. Austria*, n No. 10126/82, 21 June 1986, § 23; and freedom of association (Article 11 ECHR), see *Khurshid Mustafa and Tarzibachi v. Sweden*, no. 23883/06, 16 December 2008, § 32; *Christian Democratic People's Party v. Moldova* (No. 2), No. 25196/04, 2 February 2010, § 25.

26. States Parties are allowed to restrict certain rights in the ECHR¹¹⁵ and the ESC¹¹⁶ but only if the interference can be justified. There are some general requirements which are relevant to almost all rights and freedoms. The interference must be (i) 'prescribed by law' or 'in accordance with the law' (requirement of lawfulness). This means that it must have a clear basis in domestic law, ensuring it is rooted in established legal frameworks. Additionally, the legal basis must be accessible to the public, meaning individuals can know and understand the laws that affect their rights. The interference must also be foreseeable, allowing people to anticipate how and when their rights might be restricted. Lastly, it must be free from arbitrariness and implemented with proper procedural safeguards to ensure fairness and due care. The interference with the right must (ii) pursue a legitimate aim and it must be (iii) necessary (in a democratic society) to achieve the legitimate aim pursued (requirement of 'necessity'; often framed as the requirement of 'proportionality' or the requirement of 'fair balance').

Commented [FF77]: There need to be specific references to the most relevant ECtHR case law that clarify these concepts (e.g., foreseeability, arbitrariness, necessity/proportionality, etc).

27. States will have to show that any restrictions on ECHR or ESC rights resulting from activities within the AI systems lifecycle that amount to interference are lawful, pursue legitimate aims, and are necessary in a democratic society. Restrictions must be proportionate, respond to pressing social needs, and use the least restrictive means.

Commented [FF78]: We recommend moving up here as a separate paragraph the text currently in Footnote 36. The topic of derogations is equally important and should not be relegated to the footnote.

Paragraph here from Footnote 36

Core human rights issues across public governance sectors

28. AI impacts a range of human rights, with certain issues consistently emerging across contexts. These include risks for (i) non-discrimination and equality; (ii) personal data protection and privacy; and (iii) the ability to effectively challenge AI-based decisions and effective remedies. Competing human rights obligations in the context of AI may also be an issue across sectors. These recurring challenges are cross-cutting human rights concerns in the lifecycle of AI systems and are therefore not limited to one or more public sectors.

Commented [FF79]: All these risks are particularly relevant in the sectors of law enforcement/national security.

Privacy and Data Protection Risks

37. Effective safeguards are necessary to address risks like unauthorised data collection, misuse, and harm to individuals' dignity.¹¹⁷ There should be independent supervisory authorities and adherence to international best practices to ensure privacy protection in both public and private sector AI applications.¹¹⁸ The [2019 Guidelines on Artificial Intelligence and Data Protection](#), developed by the Convention No. 108 Consultative Committee (T-PD), provide further guidance for policymakers and AI developers, emphasising privacy-by-design, transparency, and the prevention of discrimination to uphold democratic values and foster public trust. Key points include ensuring risk assessments, supporting supervisory authorities, fostering collaboration between regulatory bodies, preserving human decision-making autonomy, and promoting digital literacy.

Commented [FF80]: We recommend: Expanding on/outlining the key points of these Guidelines as applicable both across all AI governance and the specific sectors analysed below; Include a reference here as well to the CoE CoM Recommendation on algorithmic impact on human rights.

i. The right to an effective remedy

¹¹⁵ There are absolute rights which cannot be subject to derogations, exceptions, or permissible interference, e.g., the prohibition of torture (Article 3 of the ECHR). Some rights may be subject to specific exceptions provided by the relevant legal provision, e.g. the right not to be arbitrarily deprived of liberty (Article 5 of the ECHR). In such cases, the Court has clearly established that the list of exceptions in a given provision is exhaustive and that only a narrow interpretation of those exceptions is consistent with the aim of that provision. Measures affecting such rights should respect the limits of the exceptions set in the relevant provisions.

¹¹⁶ States Parties are allowed to restrict the rights enshrined in the ESC. The conditions for the restriction are laid down in Article 31 of the ESC and Article G of the RESC.

¹¹⁷ Recommendation CM/Rec(2021)8 on the protection of individuals with regard to automatic processing of personal data in the context of profiling highlight the right of individuals to object to profiling and require robust safeguards, especially where profiling significantly affects their rights.

¹¹⁸ Explanatory Report, §§ 79-83.

38. Article 13 of the ECHR guarantees everyone the right to an effective remedy when their rights and freedoms under the ECHR are violated. Remedies must be available and capable of addressing the substance of the alleged violation and providing appropriate redress.¹¹⁹ Effective remedies must be practical in both law and practice, accessible, affordable, and capable of providing appropriate redress.¹²⁰ They can include judicial mechanisms or a quasi-judicial body such as an ombudsman¹²¹, an administrative authority such as a government minister¹²², or a political authority such as a parliamentary commission.¹²³ These should be independent and procedural safeguards should be afforded to the applicant.¹²⁴ However, the Court may find a remedy before a judicial authority to be essential.¹²⁵ Additionally, States are required to ensure that individuals have access to judicial or non-judicial mechanisms to address human rights violations by private actors, such as businesses.¹²⁶

Commented [FF81]: Added reference in the Footnote to a more recent ECtHR judgment reaffirming this.

Obligations to regulate and control business operations¹²⁷

44. States should reasonably ensure that businesses involved in the AI lifecycle are subject to adequate oversight, and compliance mechanisms¹²⁸. The Court's focus on whether "the State could reasonably be expected to act so as to prevent or put an end to the alleged infringement of the applicant's rights" could apply to State failures to address, for example, "algorithmic biases" or opaque AI decision-making processes.

Commented [FF82]: We recommend expanding this part with examples in the text of situations analysed by the Court.

Obligations to provide essential information and procedural obligations¹²⁹ to enable public participation and informed decision making

State decisions in relation to business activities – such as granting a licence - may also impact on human rights. To afford due respect for the interest safeguarded by, for example, Article 8 ECHR, the decision-making process leading to measures of interference should "consider all the procedural aspects, including the type of policy or decision involved, the extent to which the views of individuals were taken into account throughout the decision-making process, and the procedural safeguards available".¹³⁰ A reference to the CM/Rec(2020)1 could also be usefully added here (see, e.g., Section B 1.3. "Democratic participation and awareness").

Commented [FF83]: We believe this part is a bit unclear and should be reformulated with explicit reference to the type of interference, the conflicting interests/rights to balance and concrete examples considered by the Court. In addition, it should be clarified how this relates to the public participation right as a part of the informed decision-making or as a stand-alone.

3.2.2 Balancing Competing Human Rights in the Context of AI Governance

49. Transparency and explainability requirements in relation to, for example, bias mitigation raise questions around the intersection of privacy and intellectual property and trade secret laws. A business' own AI system may be covered by intellectual property and trade secrets legislation. Businesses are entitled to the protection

Commented [FF84]: These requirements may also conflict with the protection of national security, public order, etc., that is, with State interests, not just with business interests. We strongly recommend adding a separate paragraph with reference (and examples) to this type balancing act as well.

¹¹⁹ *Boyle and Rice v. the United Kingdom*, 1988, § 52; *Powell and Rayner v. the United Kingdom*, 1990, § 31; *M.S.S. v. Belgium and Greece* [GC], 2011, § 288; *De Souza Ribeiro v. France* [GC], 2012, § 78; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, § 148.

¹²⁰ *Paulino Tomás v. Portugal*, (dec.), no. 58698/00.

¹²¹ *Leander v. Sweden*, 26 March 1987, no. 9248/81.

¹²² *Boyle and Rice v. the United Kingdom*, 27 April 1988, Nos. 9659/82 and 9658/82.

¹²³ *Klass and Others v. Germany*, 6 September 1978, No. 5029/71, § 67

¹²⁴ *Khan v. the United Kingdom*, 12 May 2000, No. 35394/97, §§ 44-47.

¹²⁵ *Ramirez Sanchez v. France* [GC], 2006, §§ 165-166; *Daniilczuk v Cyprus*, judgment of 3 April 2018, §§ 44

¹²⁶ *Z and Others v. the United Kingdom* [GC], No. 29392/95, 2001, § 109; *Keenan v. the United Kingdom*, No. 27229/95, 2001, § 129; *Paul and Audrey Edwards v. the United Kingdom*, No. 46477/99, 2002, § 97.

¹²⁷ Including for example the licensing, setting up and supervision of dangerous activities and the provision of information about such activities to the general public.

¹²⁸ *Fadeyeva v. Russia*, no. 55723/00, 9 June 2005, § 89.

¹²⁹ Procedural obligations call for domestic procedures to ensure better protection of rights holders.

¹³⁰ *Taskin and Others v. Turkey*, § 118.

of rights, such as property rights (e.g., intellectual property)¹³¹ or freedom of expression (Article 10 ECHR).¹³² Their rights must be balanced against, and can sometimes outweigh, the rights of individual applicants.

50. If rights holders claim that AI systems violate their rights, the State's response may need to balance these competing interests. For instance, the obligation to provide essential information for the public may conflict with a business's intellectual property rights (protected by the right to property under the ECHR). Domestic courts or regulators should carefully weigh these interests to ensure a fair and proportional outcome. In this context, the [Council of Europe Recommendation CM/Rec\(2020\)1 on the human rights impacts of algorithmic systems](#) provides that legislative frameworks for intellectual property or trade secrets should not preclude transparency or be exploited to obstruct accountability, nor should confidentiality or trade secrets inhibit effective human rights impact assessments.¹³³

Commented [FF85]: We recommend quoting also the reference to para 4.1 (Levels of Transparency).

59. To date, no AI-specific guidance on corporate responsibility for human rights has been developed. The UNGPs, however, provide a framework for addressing human rights impacts across the AI value chain. Businesses should assess and mitigate human rights risks throughout the AI lifecycle, from design to deployment, with transparency and accountability as central principles. Human rights due diligence should evaluate direct and indirect impacts, focusing on risks to individuals, and should be adapted dynamically to the evolving nature of AI technologies. Arguably, AI-specific human rights impact assessments to identify human rights risks, including those arising from third-party uses of AI systems, should be developed and applied.

Commented [FF86]: However, we recommend including a reference to OHCHR B-Tech Foundational Paper on Responsible Development of Generative AI, (<https://www.ohchr.org/en/documents/tools-and-resources/advancing-responsible-development-and-deployment-generative-ai>) at least in a footnote, to show that standards in some AI sectors are being developed and promoted by the relevant UN offices.

3.3 Public Governance Sectoral Analysis

61. This chapter examines the impact of AI systems in key areas of public governance, focusing on its implications for human rights. Drawing on the ECHR and the ESC, and other international instruments where appropriate, it explores sectors where AI system integration is advanced or is reasonably in prospect.

Commented [FF87]: We cannot tackle the area of AI public governance without reviewing the cases of design, development and deployment of AI in the public sectors of law enforcement and national security. These two sectors were originally included in CDDH-IA(2024)06 (Draft Handbook on human rights and artificial intelligence – general structure and possible elements). National security is exempted from the scope of the Framework Convention but still "with the understanding that such activities are conducted in a manner consistent with applicable international law, including international human rights law obligations, and with respect for its democratic institutions and processes." (Article 3 para 2). This Handbook offers the unmissable opportunity to clarify how this consistency can be ensured on the basis of the ECHR and ESC standards/case-law. Law enforcement is not exempted from the scope of the Framework Convention but there are margins for extensive exceptions/carve-outs (and for EU States, in the AI Act as well). This Handbook offers the opportunity to clarify how these exceptions should be assessed in compliance with the ECHR and the ECS.

OBSERVERS

ENNHRI

ECHR and ESC General Principles in the Context of AI

13. Neither the Court nor the ECSR has yet addressed AI's impact on rights under the ECHR and ESC. Established principles under the ECHR and the ESC provide guidance on how these treaties may apply to AI-related human rights challenges. While some principles are shared, others are unique to each treaty.¹³⁴

Commented [SH88]: We believe the Court has dealt with AI's impact on the ECHR before in the case *Gluhkin v Russia* - [GLUKHIN v. RUSSIA](#).

Effective Protection of Rights

¹³¹ *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, 11 January 2007, § 72.

¹³² *Axel Springer AG v. Germany* [GC], no. 39954/08, judgment of 7 February 2012.

¹³³ CM/Rec(2020)1, § 5.2

¹³⁴ The ECHR and ESC treaty systems are complementary and interdependent. The Court has clarified that there is no watertight division separating civil and political rights from economic, social and cultural rights. See *Airey v Ireland*, 9 October 1979, 6289/73, § 24; see also Digest of Case Law of the European Committee of Social Rights, December 2022, p. 33.

14. The ECHR and the ESC are intended to guarantee rights that are not theoretical or illusory but practical and effective.¹³⁵ National authorities must ensure rights holders can effectively enjoy their rights, which involves not only adopting legislation but also ensuring its effective application, providing adequate resources, and establishing appropriate operational procedures. Thus, States should ensure the effective protection of human rights against harms related to activities within the lifecycle of AI systems not only by implementing laws but also by providing resources, and establishing or designating existing national human rights structures, such as national human rights institutions (NHRIs), as independent oversight mechanisms, and ensuring effective cooperation between such mechanisms and other national human rights structures.

3.1.5 Core human rights issues across public governance sectors

28. The use of AI can impact a range of human rights, with certain issues consistently emerging across contexts. These include risks for (i) non-discrimination and equality; (ii) personal data protection and privacy; and (iii) the ability to effectively challenge AI-based decisions and effective remedies. Competing human rights obligations in the context of AI may also be an issue across sectors. These recurring challenges are cross-cutting human rights concerns in the lifecycle of AI systems and are therefore not limited to one or more public sectors.

The Right to Privacy and Personal Data Protection

i. The Right to Privacy and Data Protection in the ECHR and other relevant instruments

33. Article 8 (the right to respect for private and family life), through the protection of private life, applies to the collection and processing of personal data.¹³⁶ Private life, among others, includes the one's image, identity, personal development, and relationships, and extends also to professional or business activities. Personal data covers information such as names, addresses, dynamic IP addresses, and sensitive data like health and racial information. The Court also addressed under this right the interception of communications, such as emails and phone calls. It held that such measures constitute an interference with privacy rights and any such interference must be lawful, pursue a legitimate aim, be necessary and proportional.

3.2. Business and Human Rights

Obligations relating to the provision of effective remedies

47. States should also provide effective remedies for business-related human rights violations. This may include amending laws if the legal framework is inadequate.¹³⁷ Of relevance here is the right to an effective remedy (Article 13 ECHR).

Corporate Responsibility to Respect Human Rights

57. Experience has shown that companies in almost any industry can impact—positively or negatively—almost any human right. Businesses (usually) do not directly violate human rights but may, for example, breach labour

Commented [SH89]: ENNHRI recalls the important role of NHRIs in the supervision and enforcement of human rights, democracy and the rule of law, including in [the implementation of the European Convention of Human Rights, and in the execution of judgements of the European Court of Human Rights](#). NHRIs, with their broad mandate to protect and promote all human rights, their requirements for formal and functional independence under the UN Paris Principles, and their position as a bridge between national and regional levels, are ideally placed to oversee the protection of human rights from AI-related harms. The importance of involving national human rights structures, including NHRIs, in this oversight is supported by the 2023 [statement](#) of the Commissioner for Human Rights. Further, the important role NHRIs can play in AI oversight has been recognised at EU level as several NHRIs have been designated as Fundamental Rights bodies under Article 77(2) of the AI Act.

Commented [SH90]: ENNHRI underlines the importance of States providing resources and establishing or designating independent oversight mechanisms to ensure the protection of human rights against harms related to activities within the lifecycle of AI systems, in line with Article 26 of the AI Convention. These mechanisms should be fully independent, in line with existing standards on independent national human rights structures, such as those laid down in [Recommendation CM/Rec\(2021\)1 of the Committee of Ministers on NHRIs](#). Further, also in line with Article 26 of the AI Convention and the 2023 [statement](#) and [Recommendation](#) of the Commissioner for Human Rights, ENNHRI calls for States to ensure effective cooperation between these mechanisms and existing human rights structures, to avoid gaps in human rights protection.

Commented [SH91]: ENNHRI strongly supports the inclusion of the AI-related activities of businesses and human rights obligations. ENNHRI recalls that the private sector is a central actor in the field of artificial intelligence, which has key impacts on human rights, democracy, and the rule of law. Further, the responsibility of business to respect human rights is laid out in the UN Guiding Principles on Business and Human Rights and is [in line with European regulatory and policy initiatives](#).

¹³⁵ *Airey v Ireland*, 9 October 1979, 6289/73, § 24; International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32; European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, §28.

¹³⁶ For the Court's caselaw on the protection of personal data see T-PD(2023)1 Case Law on Data Protection (December 2022) and Guide on Article 8 of the European Convention on Human Rights.

¹³⁷ *Fadeyeva v. Russia*, §§89 and 92; see also *Powell and Rayner v. the United Kingdom*, no. 93101/81, 21 February 1990.

or environmental regulations, which are tied to the state's duty to protect human rights. For instance, States must regulate workplace safety to uphold the right to life, while businesses are obligated to comply with these rules and may be subject to criminal or administrative proceedings for failure to do so.