

# ARTIFICIAL INTELLIGENCE AND HUMAN RIGHTS

BY

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## INTRODUCTION

The encompassing and all-round nature of Artificial Intelligence (A.I) has made its applicability prevalent and vital in, if not all, almost every sphere of life. The progress of the intellectual capacities of Artificial Intelligence is changing the way human beings live and will revolutionize the world of employment, along with many sectors of human life.<sup>1</sup> The spontaneous growth of Artificial Intelligence by technology has overtime aided its indubitable usefulness, contribution, and influence in human lives. This ranges from food, to clothing, to shelter, to education, to reproduction, and even the in the inherent rights of humans; Human rights.

In democratic societies, concern about the consequences of our growing reliance upon Artificial Intelligence is rising.<sup>2</sup> In synergy with the nature of Artificial Intelligence, the mode of operation of same in diverse forms has arisen many questions, particularly on its correlation, impact and influence on human rights. In its ordinary distinctiveness, Artificial Intelligence is designed to perform certain functions human beings can, in a way better, faster and more efficient. The judgment and perception of this development primarily revolves around its propensity to interfere with human rights; ‘whether or not Artificial Intelligence is designed to jettison the essence and functions of humans’.

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<sup>1</sup> Cataleta, M.S. and Anna, C. 2020. Artificial Intelligence and Human Rights: An Unequal Struggle. *CIFILE Journal of International Law Journal* Vol. 1, No. 2, 40-63.

<sup>2</sup> Eileen, D. and Megan M.M. 2019. Artificial Intelligence and Human Rights. *Journal of Democracy*, Volume 30, Number 2, pp. 115-126.

While it is expedient to briefly conceptualize the ‘Artificial Intelligence’ as a definition, it is to be noted that there is yet to be an agreed-upon concept. Many definitions of A.I. have been offered, the first of which came in 1956 during the Dartmouth Summer Research Project on A.I. John McCarthy, one of the founding fathers of the discipline, defined "intelligent" any system capable of performing actions that would be qualified as intelligent if a human being accomplished them.<sup>3</sup> By this definition, artificial intelligence is simply a machine or a system that is capable of performing any task a human being can perform. A recent Stanford University report defines AI as “a science and a set of computational technologies that are inspired by—but typically operate quite differently from—the ways people use their nervous systems and bodies to sense, learn, reason, and take action.”<sup>4</sup> In another definition, Stuart Russell and Peter Norving suggest that AI can be broken down into the following categories: 1) systems that think like humans; 2) systems that act like humans; 3) systems that think rationally; and 4) systems that act rationally.<sup>5</sup> All these established definitions are channeled to the sole fact that Artificial Intelligent systems are designed to ease the workings of humans.

Essentially, the result of an operation performed by an intelligent system is not distinguishable from a process carried out by a human. Thus, the relation of an intelligent system, emanating from Artificial Intelligence, with humans cannot but include the rights of a human being when an intelligent system is in play. In other words, the manifestation of Artificial Intelligence will inevitably influence human rights – positively or adversely.

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<sup>3</sup> Cataleta, M.S. and Anna, C. 2020. op.cit.

<sup>4</sup> Stanford University Human-Centered Artificial Intelligence, ‘2020. HAI Annual Report for 2019-2020’, <<https://hai.stanford.edu/>> accessed 17 October 2021.

<sup>5</sup> Executive Office of the President of USA - National Science and Technology Council Committee on Technology (2015), ‘Preparing for the Future of Artificial Intelligence’, <[https://obamawhitehouse.archives.gov/sites/default/files/whitehouse\\_files/microsites/ostp/NSTC/preparing\\_for\\_the\\_future\\_of\\_ai.pdf](https://obamawhitehouse.archives.gov/sites/default/files/whitehouse_files/microsites/ostp/NSTC/preparing_for_the_future_of_ai.pdf)> accessed 17 October 2021.

## CONCEPTUALIZING HUMAN RIGHTS UNDER RELEVANT DOMESTIC AND INTERNATIONAL LAWS

The concept of human rights has been treated with intense attention and as a delicate issue as it covers the very existence of every person, irrespective of geographical and cultural differences. Human Rights are the basic entitlements of all human beings in any society. They pertain to humans by virtue of their humanity. They are the irreducible minimum requirement for a civilized human existence in any society. As a concept, human rights can broadly be defined as the basic rights of human beings that is centered on equality, fairness, freedom, and respect for all. Human rights was succinctly defined by Kayode Eso J.S.C (as he then was) in the case of *Ransome Kuti & ORS v. A.G Federation & ORS*<sup>6</sup> as thus:

*[Human rights] are rights that have always existed, even before orderliness prescribed rules for the manner they are to be sought. It is a primary condition to a civilized existence which stands above the ordinary laws of the land.*

Human rights are the freedoms, liberty, immunities or benefits which according to natural law, modern values and international law, all human beings are entitled to enjoy as a matter of right in the country or society in which they live.<sup>7</sup> Human rights are very fundamental to every human that persons cannot live without them, Human rights are what enables a person to continue his humanity.<sup>8</sup> Without human rights, life is meaningless, worthless and a mere shadow.<sup>9</sup> To wit, human rights are too precious to be infringed upon without sufficient and convincing justification.

In every country, there is a usual mandatory inclusion of human rights in the law of that land. For example, the 1999 Constitution of the Federal Republic of Nigeria (as amended),

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<sup>6</sup> (1985) 2 NWLR

<sup>7</sup> Ese Malemi. 2017. *The Nigerian Constitutional Law with Fundamental Rights (Enforcement Procedure) – Rules 2009*. Princeton Publishing Company, Lagos, 3<sup>rd</sup> Edition

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

which is the grundnorm of Nigeria, has the fundamental human rights of her citizens embedded in it.<sup>10</sup> These rights are recognized as fundamental human rights, and are expected to be treated with utmost regard and serve as a basis of every policy of the government. In the case of *Uzoukwu v. Ezeonu II*<sup>11</sup>, Nasir PCA posited on fundamental human rights:

*Fundamental rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country; that is, by the Constitution.*

In this sense, human rights under domestic laws are the rights spelt out and incorporated in the laws of the land, especially the Constitution or Acts. In Nigeria, the human rights incorporated are: right to life<sup>12</sup>; right to dignity of human person<sup>13</sup>; right to personal liberty<sup>14</sup>; right to fair hearing<sup>15</sup>; right to private and family life<sup>16</sup>; right to freedom of thought, conscience and religion<sup>17</sup>; right to freedom of expression and the press<sup>18</sup>; right to peaceful assembly and association<sup>19</sup>; right to freedom of movement<sup>20</sup>; right to freedom of discrimination<sup>21</sup>; and, the right to acquire and own immovable property anywhere in Nigeria<sup>22</sup>.

Although there is the provision of human rights in the laws of many countries, there is notably an international provision of same. In actual fact, the existence and recognition of

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<sup>10</sup> Section 33 – 45 (Chapter IV) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) (as amended).

<sup>11</sup> (1991) 6 NWLR pt. 200, p. 708 at 760-761.

<sup>12</sup> Section 33, 1999 CFRN (as amended)

<sup>13</sup> Section 34, 1999 CFRN (as amended)

<sup>14</sup> Section 35, 1999 CFRN (as amended)

<sup>15</sup> Section 36, 1999 CFRN (as amended)

<sup>16</sup> Section 37, 1999 CFRN (as amended)

<sup>17</sup> Section 38, 1999 CFRN (as amended)

<sup>18</sup> Section 39, 1999 CFRN (as amended)

<sup>19</sup> Section 40, 1999 CFRN (as amended)

<sup>20</sup> Section 41, 1999 CFRN (as amended)

<sup>21</sup> Section 42, 1999 CFRN (as amended)

<sup>22</sup> Section 43, 1999 CFRN (as amended)

human rights internationally is antecedent to many of the entrenchment of human rights in many countries. To this end, there are international laws made by international bodies that equally focus on human right as a subject matter; these laws are subject to the ratification and enactment of the member countries. As an example, in Nigeria, Section 12(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) expressly affirms it where it states:

*No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.*

One of the most important international laws that treat human right is the Universal Declaration of Human Rights, 1948. “Universal Declaration of Human Rights” (UDHR) is one of the important documents that declared fundamental rights for human and requested all of the states to protect these rights.<sup>23</sup> The UDHR law is very fundamental to the history for law; it is a response to the yearn for the inclusion of human rights as an internationally recognized law. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 as a common standard of achievements for all peoples and all nations.<sup>24</sup> It sets out, for the first time, fundamental human rights to be universally protected.

Another international law that spells out a category of human rights is the International Covenant on Civil & Political Rights. The International Covenant on Civil and Political Rights (ICCPR) has its foundation in the Universal Declaration of Human Rights. The

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<sup>23</sup> Ebad, R., Leila, R.D. & Mahmoud, J.K, ‘Protection of Prisoner’s Human Rights in Prisons through the Guidelines of Rule of Law’, *Journal of Politics and Law*, Vol. 10, No. 1 (2017), <[https://www.researchgate.net/publication/311972901\\_Protection\\_of\\_Prisoner%27s\\_Human\\_Rights\\_in\\_Prisons\\_through\\_the\\_Guidelines\\_of\\_Rule\\_of\\_Law](https://www.researchgate.net/publication/311972901_Protection_of_Prisoner%27s_Human_Rights_in_Prisons_through_the_Guidelines_of_Rule_of_Law)> accessed 17 October 2021.

<sup>24</sup> Ibid.

rights guaranteed by this covenant are the basic rights which are generally enforceable by instituting a judicial action in the legal system of democratic countries.

Worthy of mention is also the African Charter on Human & Peoples Rights. The African charter was adopted on the 27<sup>th</sup> June, 1981 and entered into force on the 21<sup>st</sup> October, 1986 and virtually all countries in Africa have ratified and domesticated the treaty into their own municipal laws.<sup>25</sup> The African Charter on Human and Peoples Rights also called the Banjul Charter was developed to promote the rights of individuals and peoples of Africa.<sup>26</sup> It provides that all individuals including prisoners and detainees are entitled to the following rights among others: (a) The right to freedom from discrimination (Article 2 and 18(3)); (b) The right to equality- all humans are entitled to be treated equally (Article 3); (c) The right to life and personal integrity (Article 4); (d) The right to dignity and freedom from cruel, inhuman and degrading treatment (Article 5); (e) The right to freedom of religion (Article 8); (f) The right to the provision and access to good health care (Article 16); and (g) The right to self-determination (Article 20).

Notably, the vital nature of human rights has been proven in the way of its regard by domestic laws and international laws in the world at large. Although these laws are in place, human rights on its own is not dependent on these laws as it exists even before the political formation of any country. This stated, the enforcement of these laws, however made, has become paramount to every person in the country, and even for the development of such country.

## **THE IMPACTS OF ARTIFICIAL INTELLIGENCE ON RELEVANT HUMAN RIGHTS**

Human rights, defined to be a necessity to the living of any human, has been questioned on its stance with the development of Artificial Intelligence. The developments have generated opinions on its necessity and its avoidance. One important thing must be noted

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<sup>25</sup> Yusuf, D. 2011. The African Charter on Human And Peoples Rights: An Exposition Of Its Peculiarities And Dynamism. *Human Rights Review: An International Human Rights Journal*, Vol. 2, No.2, July, 2011. p.457.

<sup>26</sup> Ibid.

which is that humans themselves create artificial intelligent systems. On this reason, humans have developed AI due to the activities of man and its help in making these activities easier and faster. AI is not being developed in a vacuum or deployed against a blank slate.<sup>27</sup> Rather, specific actors in society are deploying AI to automate decision-making in particular fields of endeavor.<sup>28</sup> They are doing so to achieve outcomes that they view as desirable, against the backdrop of social institutions that have their own, pre-existing human rights implications.<sup>29</sup> Elementally, the designed structure of Artificial Intelligence taking decisions for man has generated many positions as to its influence of human rights. These positions are either positive or negative.

Indubitably, aligning with the prospect of Artificial Intelligence, it evinces its contribution to the easement of every arm of life. In the creation of certain intelligent systems, the monitoring of human rights abuses have become easier; and consequently, the proof of human rights violation have become less rigorous in courtrooms. Digital technology in the twenty-first century has ushered in what some have called the “golden age of surveillance”—not only by states and corporations but also by non-state actors.<sup>30</sup> Human rights groups, news organizations, and open-source investigators such as Bellingcat and the Syrian Archive access massive amounts of open-source data generated by billions of sensor platforms in the hands and pockets of people around the globe.<sup>31</sup>

With the proliferation of multipurpose mobile phones and other imaging platforms, including hundreds of high-resolution imaging satellites, something approaching ubiquitous surveillance has emerged.<sup>32</sup> By this, it is almost impossible for any activity or

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<sup>27</sup> Vivek Krishnamurthy et. Al., ‘Artificial Intelligence & Human Rights: Opportunities & Risks’, *Berkman Klein Center for Internet & Society Research Publication* (2018) <<https://cyber.harvard.edu/publication/2018/artificial-intelligence-human-rights>> accessed 18 October 2021.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Steven, L. and Mathias, R. 2019. The Future Impact of Artificial Intelligence on Humans and Human Rights. *Ethics & International Affairs*, 33, no. 2 pp. 141 – 158.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

occurrence to not be recorded by a camera, either on the ground or in orbit. This wave can be denoted in two ways; positively and negatively. In the positive aspect, the security of a state can be improved via the use of artificial intelligence. This includes the fight against terrorism. In 2017, for instance, the International Criminal Court issued an indictment for the arrest of a Libyan warlord based on satellite imagery and videos taken of the executions he ordered (or conducted himself) and that were posted to social media by his followers.<sup>33</sup> This and many more is the advantageous side of Artificial Intelligence in human rights.

- **Artificial Intelligence and Right to Personal Liberty**

The right to personal liberty is one of the most fundamental human rights pertains to the physical movement of persons within a particular geographical location. Although this right can be extended to all geographical locations, certain prerequisites must be met as laid down by the said geographical location or country. The right to liberty requires that the arrest or detention of an individual must be in accordance to the law.<sup>34</sup> The right to personal liberty is essentially a personal freedom in which no government can abridge.<sup>35</sup> The provision of the right to personal liberty is indubitably an important and inherent right every person must have. The world has taken steps by rubber-stamping this rights in the laws of their respective political society; Nigeria not excluded. The Constitution of Nigeria provides thus:

*Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty ...<sup>36</sup>*

In the international community, the right to liberty has also been accorded its reverence in its inclusion in many laws or treaties being ratified by many nations. In the International Covenant on Civil & Political Rights; a law which has its foundation in the Universal

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<sup>33</sup> Ibid.

<sup>34</sup> Yinka, O., 'Right to Personal Liberty in Nigeria', <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3062580](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3062580)> accessed 20 October 2021.

<sup>35</sup> Ibid.

<sup>36</sup> Section 35, 1999 CFRN (as amended)

Declaration of Human Rights, has in its provisions the right to the personal liberty of persons:

*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*<sup>37</sup>

In the case of *America v. Iran*<sup>38</sup>, the International Court of Justice in recognizing the prominence of the right to personal liberty posited thus:

*Wrongfully to deprive human beings of their freedom and to subject them to physical and constraint in conditions of hardship is in itself incompatible with the principle of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights Article 3 of which guarantees the right to life, liberty and security of the human person*

The development of Artificial Intelligence has extended its arm in the criminal justice system of many nations by developing softwares that perform risk assessment and the likelihood of the occurrence of crime at a place or by a person. Predictive policing algorithms, including PredPol and HunchLab, inform police deployment with estimated of where crime is most likely to occur.<sup>39</sup>

Although this unprecedented growth has its definite advantages, it equally risks interfering with rights to be free; right to personal liberty. One class of algorithmic tools, called risk assessment instruments (RAIs), are designed to predict a defendant's future risk for

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<sup>37</sup> Article 9, International Covenant on Civil & Political Rights

<sup>38</sup> ICJ REP (1980) p. 42 para.91

<sup>39</sup> Chammah, M., and Hansen, M. 2016. Policing the Future. *The Verge*. Retrieved Oct. 20, 2021, from <https://www.theverge.com>.

misconduct.<sup>40</sup> These predictions inform high-stakes judicial decisions, such as whether to incarcerate an individual before their trial.<sup>41</sup> It will seem uncanny for a machine to be the sole decision maker in sending a suspect to prison. This development has been rejected by many person with concern in the legal profession. [Another] example is in recidivism risk-scoring software used across the U.S. criminal justice system to inform detainment decisions at nearly every stage, from assigning bail to criminal sentencing.<sup>42</sup> The software has led to more black defendants falsely labeled as high risk and given higher bail conditions, kept in pre-trial detention, and sentenced to longer prison terms.<sup>43</sup> This is a clear discrimination of black persons in the United States of America which has constituted a misuse of intelligent systems; not only in the U.S, but in the world at large. Additionally, because risk-scoring systems are not prescribed by law and use inputs that may be arbitrary, detention decisions informed by these systems may be unlawful or arbitrary.<sup>44</sup>

- **Artificial Intelligence and Right to a Fair Trial**

The right to fair trial must be accorded to every individual during the hearing of a case; this is irrespective of the fact that such person is not a citizen. The right to fair hearing is an inherent right that must be observed at all circumstances – civil or criminal cases. [It] is a trial that is conducted fairly, justly, and with procedural regularity by an impartial judge and in which the defendant is afforded his or her rights.<sup>45</sup> There are existing laws that

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<sup>40</sup> Alex, C., 'Understanding Risk Assessment Instruments in Criminal Justice', <<https://www.brookings.edu/research/understanding-risk-assessment-instruments-in-criminal-justice/#footnote-1>> accessed 20 October 2021.

<sup>41</sup> Ibid.

<sup>42</sup> Jeff, L. and Julia, A., 'Machine Bias' <<https://www.propublica.org/article/machine-bias-riskassessments-in-criminal-sentencing>> accessed 19 October 2021.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Merriam Webster Dictionary, 'Fair Trial' <<https://www.merriam-webster.com/legal/fair%20trial>> accessed 20 October 2021.

provide for the right to a fair trial of a person. For example, the Nigerian Constitution states thus:

*In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.*<sup>46</sup>

The International Covenant on Civil and Political Rights has equally replicated this same provision in Article 14(1).

Artificial Intelligence has created technologies which influences the criminal justice system and the court room system at large. This is played in two ways: AI assistants, and Robot judges. AI assistants are softwares designed to support and ease the rigours undergone by judges in their decision-making function by preparing judicial decisions and materials for its determination. On the other hand, robot judges are designed to totally perform the functions of a human judge in a court room; a total replacement of human judges and a conversion of the court room to a computerized setting. In the creation of these softwares, there are speculations that this development encroaches on the right of an individual to fair trial.

A 2016 study from ProPublica uncovered that the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) software allegedly assigned African Americans a recidivism high-risk rate twice that of other populations, while white defendants were mislabeled at low risk more often than people of colour.<sup>47</sup> Evidently, an Artificial Intelligent system can be designed to discriminate certain persons and deprive them of fundament human rights, especially in the court room. Bias can originate from the

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<sup>46</sup> Section 36, 1999 CFRN (as amended)

<sup>47</sup> Jeff, L. and Julia, A. 2016. op.cit.

bias embedded in the data that the AI system learnt from, but can also occur in the AI system's programming because an algorithm's design and functionality reflect the values of its designer.<sup>48</sup> In cases as such, it is often challenging to determine whether this grave error is as a result of the handiwork of the creator or an honest system error. Although Artificial Intelligence is not designed to be discriminatory, it can possibly lead to discrimination because of algorithms that perpetuate or amplify existing biases and stereotypes, even when specific information on the protected group is not included in the data set.<sup>49</sup>

A landmark case concerning risk assessment software is the case of *State v. Loomis*<sup>50</sup> decided by the Supreme Court of Wisconsin in July 2016. The State of Wisconsin had charged Mr. Loomis with five counts in relation to a drive-by shooting offence, but he only plead guilty to two of the charges and denied involvement in the shooting. Eric Loomis was sentenced to six years in prison after being identified by COMPAS as an individual who was "at high risk to the community" with a high-risk rate to re-offend. Although the Wisconsin Supreme Court upheld the use of risk assessment tools during sentencing, the case of *State v. Loomis* clearly shows some problematic concerns regarding the use of risk assessment tools which involves the risk of undermining human rights and the rule of law.

- **Artificial Intelligence and Right to Privacy**

The right to privacy is an element of various legal traditions that intends to restrain governmental and private actions that threaten the privacy of individuals.<sup>51</sup> [P]rivacy has been determined to be the right to be left alone; freedom from interruption, intrusion, embarrassment or accountability; control of the disclosure of personal information;

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<sup>48</sup> Mittelstadt, B. D. et al., 'The Ethics of Algorithms: Mapping the Debate', <<https://doi.org/10.1177/2053951716679679>> accessed 20 October 2021.

<sup>49</sup> Jasper, U, 'The Impact of Artificial Intelligence on the Right to a Fair Trial: Towards a Robot Judge?' <<https://ideas.repec.org/a/bpj/ajlecn/v11y2020i2p00n1.html>> accessed 20 October 2021.

<sup>50</sup> 2015AP157-CR 881NW.2d749 (Wis.2016), 2016WI68

<sup>51</sup> Wikipedia, 'Right to Privacy' <[https://en.wikipedia.org/wiki/Right\\_to\\_privacy](https://en.wikipedia.org/wiki/Right_to_privacy)> accessed 20 October 2021.

protection of the individual's independence, dignity and integrity; secrecy, anonymity and solitude; the right to protection from intrusion into your personal life.<sup>52</sup> The right to privacy involves rules governing the collection and handling of personal data, the protection of physical autonomy, the right to limit access to oneself and the right to control one's identity.

The International Covenant on Civil and Political Rights respects the right of privacy of an individual in its entrenchment:

- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.*<sup>53</sup>

The provisions of the Nigerian Constitution equally respects this inherent right of a man where it embeds same for citizens which states:

*The privacy of citizens, their homes, correspondence, right to telephone conversations and telegraphic communications is hereby private and guaranteed and protected.*<sup>54</sup>

Consequent to the advancement of Artificial Intelligence, the right to privacy has been a trending subject matter as of its infringement. The threat to the right to privacy of a person can manifest in modern day gadgets which include CCTV, phones and so on. Private companies that are technologically driven can also threaten the right to privacy of a person such as Amazon, Apple, Facebook, Google, and Yahoo that use and collect personal data. These concerns have been strengthened by scandals, including the Facebook–Cambridge

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<sup>52</sup> Law Teacher, 'The Right to Privacy' <<https://www.lawteacher.net/free-law-essays/human-rights/right-to-privacy.php>> accessed 20 October 2021.

<sup>53</sup> Article 17, the International Covenant on Civil and Political Rights

<sup>54</sup> Section 37, 1999 CFRN (as amended)

Analytica data scandal, which focused on psychographic company Cambridge Analytica which used personal data from Facebook to influence large groups of people.<sup>55</sup> Without prejudice to the usefulness of Artificial Intelligence, these happenings have glaringly treated with contempt the right to privacy of many persons around the globe.

- **Artificial Intelligence and Right against Discrimination**

Discrimination as a concept is usually treated as a delicate topic; this is because of the surrounding and accompanying issues, its emotional involvement and the societal norm and values. [In the context of law], Discrimination occurs when a person is unable to enjoy his or her human rights or other legal rights on an equal basis with others because of an unjustified distinction made in policy, law or treatment.<sup>56</sup> In a bid to prevent this unacceptable treatment of any human being, certain laws have been put in place.

The forefront provision of the International Covenant on Civil and Political Rights expressly provides for a law against discrimination of the law and of any form where it provides thus:

*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*<sup>57</sup>

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<sup>55</sup> Ibid.

<sup>56</sup> Amnesty International, 'Discrimination' <<https://www.amnesty.org/en/what-we-do/discrimination/>> accessed 20 October 2021.

<sup>57</sup> Article 2(1), the International Covenant on Civil and Political Rights

The Nigerian Constitution is equally not oblivious of the importance of the right against discrimination against a person. Thus, it has rightly entrenched this in its provisions:

*(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person - (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or*

*(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.<sup>58</sup>*

The provision of the Nigerian Constitution against discrimination is quite expository as it treats it from different angles. However, with the advent of Artificial Intelligence, the topic of discrimination has become more difficult to treat. Intelligent systems are developed by humans, and these humans are capable of inventing a system that its foundation is rooted in discrimination. In December 2018, a group of experts drew up the "Draft Ethics Guidelines for Trustworthy A.I."<sup>59</sup> With this document, the European Commission warned of the risks associated with A.I., despite its considerable advantages, and recognizes the

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<sup>58</sup> Section 42, 1999 CFRN (as amended)

<sup>59</sup> The European Commission's High-Level Expert Group on Artificial Intelligence, 'Draft Ethics Guidelines for Trustworthy AI' <<http://ec.europa.eu/digital-single-market/en/news/draftethics-guidelines-trustworthy-ai>> accessed 20 October 2021.

need for an anthropocentric approach to A.I.<sup>60</sup> This is the only approach capable of guaranteeing the dignity and autonomy of people, who must always be given the power to supervise machines.<sup>61</sup> It has become obvious that even the Council of Europe purviews and warns against the risk of social discrimination provoked by algorithms.

The adverse effect of Artificial Intelligence established in the right of a person to fair trial equally constitutes a mode of discrimination. This is particular to the allegations raised as a result of the study conducted by ProPublica. Some technological creations are restricted by its creator from being operational in certain parts of the world and to certain persons. This evenly constitutes a form of discrimination caused by Artificial Intelligence.

- **Artificial Intelligence and the Right to Prohibition of Arbitrary Arrest**

Although human beings have the right to personal liberty, there are certain exceptions to this right. One of the measures at which a state uses in punishing offenders is through an arrest; this arrest can also be done on suspects of crimes. An arrest is the act of apprehending and taking a person into custody, usually because the person has been suspected of or observed committing a crime.<sup>62</sup> After an arrest, a person can be questioned on a particular subject matter and can be further charged to court, if necessary. However, an arrest must not be made indiscriminately; arbitrary arrest. Arbitrary arrest [is] the arrest or detention of an individual in a case in which there is no likelihood or evidence that they committed a crime against legal statute, or in which there has been no proper due process of law or order.<sup>63</sup>

Primarily, an arbitrary arrest is that which is done on the basis of an ulterior motive which is flagrantly against the law and its process. This is equally a deprivation of the right to personal liberty of a person as it prevents such person from freely moving in a particular

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<sup>60</sup> Ibid, p. 13.

<sup>61</sup> Ibid.

<sup>62</sup> Wikipedia, 'Arrest' <<https://en.wikipedia.org/wiki/Arrest>> accessed 21 October 2021.

<sup>63</sup> Wikipedia, 'Arbitrary Arrest and Detention' <[https://en.wikipedia.org/wiki/Arbitrary\\_arrest\\_and\\_detention](https://en.wikipedia.org/wiki/Arbitrary_arrest_and_detention)> accessed 21 October 2021.

geographical location. Unfortunately, the initiation of Artificial Intelligence has contributed to the menace of arbitrary arrest. In a situation where a technology either intentionally structured by its creator in such manner or a fault on the intelligent system, falsely recognizes an individual to be the offender of a particular crime – this will inevitably lead to a false arrest, and correspondingly, an arbitrary arrest.

Recently, the world and international bodies have adverted attention to this proliferating menace. Some of these international bodies have equally made remarks on this topical issue, especially the United Nations. The remarks by U.N. High Commissioner for Human Rights Michelle Bachelet were in reference to a new report on the subject released in Geneva.<sup>64</sup> The report warned of AI's use as a forecasting and profiling tool, saying the technology could have an impact on “rights to privacy, to a fair trial, to freedom from arbitrary arrest and detention and the right to life.”<sup>65</sup> Clearly, the negative contributions of Artificial Intelligence spans across probable disrespect for the right of humans against arbitrary arrest.

- **Artificial Intelligence and the Right to Freedom of Expression**

One of the inalienable rights of a person is the freedom of expression. Freedom of expression refers to the ability of an individual or group of individuals to express their beliefs, thoughts, ideas, and emotions about different issues free from government censorship.<sup>66</sup> It essentially means a right to talk and express opinions or positions via any

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<sup>64</sup> Independent.NG, 'The U.N. Warns That AI Can Pose a Threat To Human Rights' <<https://independent.ng/the-u-n-warns-that-ai-can-pose-a-threat-to-human-rights/>> accessed 21 October 2021.

<sup>65</sup> Ibid.

<sup>66</sup> Freedom Forum Institute, 'What is Freedom of Expression?' <<https://www.freedomforuminstitute.org/about/faq/what-is-freedom-of-expression/>> accessed 21 October 2021.

means. This rights has been duly entrenched in the International Covenant on Civil and Political Right to state:

*(1) Everyone shall have the right to hold opinions without interference.*

*(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.<sup>67</sup>*

The Nigerian Constitution equally pays homage to this right:

*(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference<sup>68</sup>*

The use of Artificial Intelligence extends and enhances the tradition of content curation on the Internet, providing more sophisticated and efficient means of personalizing and curating content for the user at a scale beyond the reach of traditional media.<sup>69</sup> The dominance of particular modes of artificial intelligence assisted curation raises concern about its impact on the capacity of the individual to form and develop opinions.<sup>70</sup> Artificial Intelligence has created avenues for everyone in the world to express themselves better, even with the speed of information it provides. The creation of social media software

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<sup>67</sup> Article 19, the International Covenant on Civil and Political Rights

<sup>68</sup> Section 39(1), 1999 CFRN (as amended)

<sup>69</sup> United Nations General Assembly – Seventy Third Session, ‘Promotion and protection of the right to freedom of opinion and expression’ <<https://freedex.org/mapping-ais-impact-on-freedom-of-expression/>> accessed 21 October 2021.

<sup>70</sup> Ibid.

applications has assisted many individuals in the expression of their thoughts and opinions. However, this has been studied to have its deleterious effect.

The inception of social media has opened the ingress of many moral and criminal offences that have grown to be a major concern to the world of today. These crimes include cyber fraud, cyber bullying, increase in suicide rate due to negative peer pressure, and so on. [It] also raise[s] some concerns about the potential of algorithmic bias to exacerbate cultural and social prejudices and create filter bubbles or echo chambers.<sup>71</sup>

- **Artificial Intelligence and the Right to Assembly and Association**

[F]reedom of association, is the individual right or ability of people to come together and collectively express, promote, pursue, and defend their collective or shared ideas.<sup>72</sup> The right to freedom of association is recognized as a human right, a political right and a civil liberty.<sup>73</sup> They are essential to the establishment and functioning of a democracy and ensure that individuals and groups can peacefully come together to pursue their common goals. The International Covenant on Civil and Political Rights law has entrenched in it the right to assembly and association as thus:

*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the*

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<sup>71</sup> European Commission, 'Artificial Intelligence and Freedom of Expression: Implications for Democracy' <<https://ec.europa.eu/research-and-innovation/en/projects/success-stories/all/artificial-intelligence-and-freedom-expression-implications-democracy>> accessed 21 October 2021.

<sup>72</sup> Wikipedia, 'Freedom of Assembly' <[https://en.wikipedia.org/wiki/Freedom\\_of\\_assembly](https://en.wikipedia.org/wiki/Freedom_of_assembly)> accessed 21 October 2021.

<sup>73</sup> Ibid.

*protection of public health or morals or the protection of the rights and freedoms of others.*<sup>74</sup>

Through surveillance, the right of a person to freely assemble can be monitored and acted upon. Surveillance is the careful watching of someone, especially by an organization such as the police or the army.<sup>75</sup> Artificial intelligence plays a very vital role in the part of surveillance in authoritarian, hybrid and democratic regimes. The use of AI in surveillance is often framed as a positive – for instance, as of 2019, the bulk of AI’s impact on surveillance has been in ‘smart cities’ initiatives, facial recognition combined with closed-circuit television, and for crime analysis in service of smart policing.<sup>76</sup> On the other hand of this, any controller of an intelligent system can monitor and tend to restrict the movement of marked individuals.

- **The Impacts of Artificial Intelligence on Social and Economic Rights**

The fundamental human rights of humans, albeit essential, are not the sole essentials necessary to the proper living of a human being. An average human being is vested with the responsibility to, at a point in time, fend for himself. Following this unavoidable fact, there has arisen the need for the law to address the rights of humans in this regard; Social and economic rights. Economic, social and cultural rights (“social rights” for short) are those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, healthcare and education.<sup>77</sup> They include the right to fair wages and equal pay; the right to adequate protection in the event of

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<sup>74</sup> Article 21, the International Covenant on Civil and Political Rights

<sup>75</sup> Collins Dictionary, ‘Surveillance’ <<https://www.collinsdictionary.com/dictionary/english/surveillance>> 21 October 2021.

<sup>76</sup> Feldstein, S., ‘The Global Expansion of AI Surveillance’ *Carnegie Endowment for International Peace* (2019), <<https://scholar.google.com/scholar?hl=en&q=Feldstein%2C+Steven.+2019b.+%E2%80%9CThe+Global+Expansion+of+AI+Surveillance.%E2%80%9D+Carnegie+Endowment+for+International+Peace>> accessed 21 October 2021.

<sup>77</sup> Maytree, ‘Poverty and Human Rights’ <<https://maytree.com/what-we-focus-on/poverty-human-rights/background-er-economic-social-rights/>> accessed 21 October 2021.

unemployment, sickness or old age; or the right to an adequate standard of living.<sup>78</sup> These rights have equally been respected and entrenched in the laws of many nations, and even internationally.

To include civil and political rights in a constitution without including socioeconomic rights is to leave the job half done and to provide the framework only for a hollow, superficial ‘bourgeois’ freedom. Thus, the world has grown to the recognition of the importance of socio and economic rights. International recognition of socio-economic rights dates from the early-20th century, when the International Labour Organization, then an agency of the League of Nations, adopted a series of conventions intended to improve labour standards around the world.<sup>79</sup> After World War II, international treaties and conventions increasingly began to incorporate socio-economic rights, including, most importantly, the Universal Declaration of Human Rights (UDHR, 1948) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966).<sup>80</sup>

Artificial Intelligence spreading its wings in every sphere of life does not exclude the socio and economic rights of an individual. In this respect, Artificial Intelligence assists in the monitoring of the regard for these rights. Workers that operate their registry or workings over the Internet can refer to the same in producing evidence in claiming for their rights if the need arises. Notably, the social security of citizens in many countries operate over the Internet which produces an effective system. Further, in the claim of the housing right of a person, Artificial Intelligence ensure the ease in the process; this means that people can sit in their comfort zone while contacting an intelligent system in searching for a house. These, and many more, are the impacts of Artificial Intelligence on Socio and Economic rights.

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<sup>78</sup> Ibid.

<sup>79</sup> Dawood, A. and Elliot, B., ‘Socio and Economic Rights’, *International IDEA Constitution-Building Primer* (2017) <<https://www.idea.int/sites/default/files/publications/social-and-economic-rights-primer.pdf>> 21 October 2021.

<sup>80</sup> Ibid.

However, in some cases, this impact can be negative. Instances of this include when individuals naively fall into the prey of cyber fraud.

- **Artificial Intelligence and Work and Employment**

The concept of the right to work and employment, simply put, is the right of an individual to earn a living while being allowed to work. At its initial perusal, this right can mean the right to a job for every individual, but, this is by many standards, a very narrow definition. Rather, the phrase "right to work" has been used to denote a conglomerate of rights, including issues such as the right to dignified work, equal access to work, etc.<sup>81</sup> This is in line with the ultimate goal of the right – in ensuring that every person is able to support and provide for themselves a livelihood, and also for their families.

There are instances where aliens in a country have been denied this right, thus, this birthed the need for an international law to address and recognize this imminent right. The International Covenant on Economic, Social and Cultural Rights (ICESCR) has duly provided for this right with the below provision<sup>82</sup>:

*(1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

*(2) The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady*

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<sup>81</sup> Jeremy, S. and Mark, K., 'Developing the Right to Work: Intersecting and Dialoguing Human Rights and Economic Policy' *Human Rights Quarterly*, The Johns Hopkins University Press 33 1–42 (2017) <<https://www.corteidh.or.cr/tablas/r25915.pdf>> accessed 21 October 2021.

<sup>82</sup> Article 6, The International Covenant on Economic, Social and Cultural Rights.

*economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*

Over the years, Artificial Intelligence systems have been introducing significant developments in the business services and activities. These changes are taking place outside the traditional scheme of employee participation in the company and despite the fact that employees are not aware of artificial intelligence handling a large volume of data and information which is used to make decisions about them.<sup>83</sup> In essence, Artificial Intelligence has virtually taken over and radically caused a change in the narrative in the working nature and conditions of people. This is equated to influencing the right to work and employment of persons.

Artificial Intelligence has created a dependable regulatory framework that reduces the possibility of the violations of human rights. Logically, this is one of the functions of the state government; ensuring the rights of citizens are not infringed upon. With the inclusion of Intelligent systems, arguments have ensue that this responsibility should be shifted. Even if harmful automated systems operate in decentralize or privatized welfare schemes, states are still responsible for any infringements of rights.<sup>84</sup> There are also some detailed requirements on administration and access to benefits. For example eligibility criteria for welfare benefits should be transparent and clear for individuals that apply for them<sup>85</sup>. Economic Socio and Cultural (ESC) also ensures that ever person is a beneficiary of any social service from the government.

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<sup>83</sup> Ibid.

<sup>84</sup> Jedrzej, N, 'Conceptualising socio-economic rights in the discussion on Artificial Intelligence' <<https://ssrn.com/abstract=3569780>> accessed 22 October 2021.

<sup>85</sup> UN Committee on Economic, Social and Cultural Rights. 2008. *General Comment No. 19* The right to social security (art. 9).

In the observance of Economic, Social and Cultural rights, the principle of non-discrimination and equality must also be active simultaneously as it plays a crucial role in realization of ESC rights. [This] may lead to well-known discussion about biases and other forms of discrimination within A.I. and automated systems.<sup>86</sup> The existence of these rights do not only ensure A.I do not deprive any human from social services, it also looks more broadly of the reproduction of inequalities that are linked in the development and use of those digital tools in existing organizational environments.

- **The Impacts of Artificial Intelligence on Children's Right**

Overtime, in the recognition of human rights, many notions have directed its applicability to humans considered as adults. This has led the rights of children to generate attention, and consequently, its adoption of an international legal standards which has led many nations to recognize and entrench the rights of children into law. Children's rights are a subset of human rights with particular attention to the rights of special protection and care afforded to minors.<sup>87</sup> Children's rights are human rights. Children must be treated with equality, respect and dignity, not because they are "the future" or the "adults of tomorrow", but because they are human beings today.<sup>88</sup> All humans are born inherent with fundamental freedoms and rights. Children must enjoy the same human rights as everybody else - from the right to freedom of expression to the right to privacy.<sup>89</sup> In other words, every right applicable to an adult is equally applicable to a child.

The world, in recognizing the rights of children, has developed an international law that specially pays regard to the right of children – Convention on the Rights of the Child; which is enforceable anywhere in the world as long as it has been ratified by the same

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<sup>86</sup> Ibid.

<sup>87</sup> Wikipedia, 'Children's Rights' <[https://en.wikipedia.org/wiki/Children%27s\\_rights#cite\\_note-Children's\\_Rights-1](https://en.wikipedia.org/wiki/Children%27s_rights#cite_note-Children's_Rights-1)> accessed 22 October 2021.

<sup>88</sup> Child Rights International Network, 'What are Children's Rights?' <<https://archive.crin.org/en/guides/introduction/what-are-childrens-rights.html>> accessed 22 October 2021.

<sup>89</sup> Ibid.

country. It is a very important document because it makes it clear that children have human rights, individual identities, are in need of some protection and have voices that must be listened to and given due weight.<sup>90</sup> It established a direct relationship between a child and the State, and where the rights and obligations lie in this relationship on issues like children's right to health, freedom of expression, the right to be free from violence, the right to privacy and many more.<sup>91</sup> The importance of the rights of children is evident in the preamble of the Convention of the Rights of the Child, which states thus:

*Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,*

*Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,*

*Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,*

*Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity...*

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<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

In relation to the rights of children and Artificial Intelligence, social media platforms that rely on streaming technologies are revolutionizing how adults and children consume media content. In the 2017 study, 96% of children ages 6 to 12 were found to be “aware of YouTube,” and 94% of children ages 6 to 12 said they “either loved or liked” YouTube.<sup>92</sup> Although YouTube restricts paid advertising of food and beverages on YouTube Kids, for example, food companies may use their own branded channels to spotlight particular food and beverages that they produce, burying what are essentially ads within programs, and thereby target children with their products.<sup>93</sup> Thus, corporations are finding ways to target minors in ways that uphold the letter but not the spirit of the rules and in ways that may be opaque to parents and other concerned parties.

Children’s leisure activities have changed significantly over the last two decades, from engaging with toys with little interactive capacity to smart toys that are capable of responding back. Through the use of weak artificial intelligence, these toys incorporate a set of techniques that allow computers to mimic the logic and interactions of humans.<sup>94</sup> Such toys raise a host of human rights-related concerns. These include potential violations of a child’s right to privacy, and whether corporations have (or should have) a duty to report sensitive information that is shared with a toy and stored online — such as indications that a child might be being abused or otherwise harmed.<sup>95</sup>

In addition to the software and tools touched on above, AI-incorporating robots are increasingly transforming educational methods and practices. Robots are being brought to classrooms in a way that alters how students learn, calling attention to a wide variety of

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<sup>92</sup> Geraldine, V.B. 1995. The International Law on the Rights of the Child. *International Studies in Human Rights*, (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1995), p 10-15.

<sup>93</sup> Cecilia, K., ‘YouTube Kids App Faces New Complaints Over Ads for Junk Food’ *New York Times*. <<https://www.nytimes.com/2015/11/25/technology/youtube-kids-app-faces-newcomplaints.html>> accessed 22 October 2021.

<sup>94</sup> Chris, N., ‘How a Young Generation Accepts Technology’ <<http://www.atechnologysociety.co.uk/howyoung-generation-accepts-technology.html>> accessed 22 October 2021.

<sup>95</sup> Benjamin, Y., ‘Privacy Preservation Framework for Smart Connected Toys’ <[https://link.springer.com/content/pdf/10.1007%2F978-3-319-62072-5\\_6.pdf](https://link.springer.com/content/pdf/10.1007%2F978-3-319-62072-5_6.pdf)> accessed 22 October 2021.

applications. Even though educational robots promise great benefits to children—such as personalized learning, helping kids develop social skills, enabling distance education for children in remote regions, etc.—they also pose risks.<sup>96</sup> Human rights that may be positively or negatively affected by their use include the right to education, as well as the right to protection from exploitation and abuse, and the protection of children with disabilities.

## **THE IMPACTS OF ARTIFICIAL INTELLIGENCE ON THE RULE OF LAW**

For any intending developing or progressing country, the principle of the rule of law is very paramount to its actualization. The rule of law is fundamental to international peace and security and political stability; to achieve economic and social progress and development; and to protect people's rights and fundamental freedoms.<sup>97</sup> It is foundational to people's access to public services, curbing corruption, restraining the abuse of power, and to establishing the social contract between people and the state.<sup>98</sup>

The concept of rule of law was substantially propounded by A.V. Dicey. Dicey's perception of the rule of law was introduced in his book *Introduction to the Study of the Law of the Constitution*.<sup>99</sup> According to A.V. Dicey's position, the rule of law is divided into three: supremacy of the Constitution; equality before the law; and, respect for fundamental human rights. The concept of equality before the law connotes that no man is above the law. Regardless of what an individual's rank or condition is, he is subjected to the ordinary law of the realm and be bounded to the jurisdiction of the ordinary tribunals.<sup>100</sup> In other words, the manner at which the poor will be treated when in contravention with

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<sup>96</sup> Jon-Chao H., Kuang-Chao Y., and Mei-Yung C. 2011. Collaborative Learning in Technological Project Design. *International Journal of Technology and Design Education* 21, no. 3 p 335–47.

<sup>97</sup> United Nations and the Rule of Law, 'What is the Rule of Law' <<https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>> accessed 22 October 2021.

<sup>98</sup> Ibid.

<sup>99</sup> Law Teacher, 'Dicey and the Rule of Law' <<https://www.lawteacher.net/free-law-essays/constitutional-law/dicey-rule-of-law-8355.php>> accessed 22 October 2021.

<sup>100</sup> Ibid.

the law will be no different from the rich; regardless of any status, influence or position. [In the regard for the rule of law], supremacy of the Constitution is a doctrine where by the Constitution is the supreme law of the land and all the State organs including Parliament and State Legislatures are bound by it.<sup>101</sup> They must act within the limits laid down by the Constitution [as] [t]hey owe their existence and powers to the Constitution and, therefore, their every action must have its support in the Constitution.<sup>102</sup> Notably, while ensuring the aforementioned principles, the respect for the fundamental human rights of persons is equally imperative. These are inherent rights that must be respected whether or not entrenched in any written law; they are necessary for the living of any person.

The world at large is becoming digitalized and this is as a result of the emergence of Artificial Intelligence. These [artificial intelligence] tools are presently employed in the pre-adjudicative phase of enforcing of the laws, for example facilitating the selection of targets for tax and regulatory investigations.<sup>103</sup> They are also increasingly used during adjudication, for example, to facilitate and guide determinations of individual violence risk during pretrial bail determinations.<sup>104</sup> Predictions of a general displacement of human judgment by code-driven counterparts, but in near equal measure, that prospect is also loudly decried. Anticipated effects on the fairness, transparency, and equity of adjudicative systems are the main grounds for such resistance.<sup>105</sup> Even if these criticisms of Artificial Intelligence are not directed at the principle of the rule of law, they often intersect with it, or are very similar; especially in human rights and democracy.

The threat to the rule of law lies in the fact that most of these decision-making systems are ‘black boxes’ because they incorporate extremely complex technology that is essentially

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<sup>101</sup> GK Today, ‘What Do You Mean by the Rule of Law’ <<https://www.gktoday.in/topic/what-do-you-mean-by-supremacy-of-the-constitution/>> accessed 22 October 2021.

<sup>102</sup> Ibid.

<sup>103</sup> Coglianese, C., and Lehr, D. 2016. Regulating by robot: Administrative decision making in the machine-learning era. *Georgetown Law Journal* 105, 1147.

<sup>104</sup> Huq, A.Z. 2021. Constitutional Rights in the Machine Learning State. *Cornell Law Review* 105.

<sup>105</sup> Michaels, A. C. 2019. Artificial Intelligence, Legal Change, and Separation of Powers. *University of Cincinnati Law Review*.

beyond the cognitive capacities of humans and the law too inhibits transparency to a certain degree.<sup>106</sup> Sequel to the criticism of Artificial Intelligence in this regard, it will become almost impossible for the workings of the rule of law to be observed; such as transparency, fairness and explainability. This begs the question: how can the principle of the rule of law be observed diligently in the tremendous technological growth of the world.

## **ARTIFICIAL INTELLIGENCE AND THE LEGITIMACY OF DEMOCRATIC INSTITUTIONS**

Primarily, democratic institutions, also known as the institutions of democracy, are the means, mode, and mechanism that are used in driving home the goal of democracy in any government – ensuring that government is driven by the people, for the people, and a government of the people. These institutions of democracy are the arms of such government, and in most cases as well as a ripe democracy, they are the executive, legislative, and the judiciary. While existing as institutions, they are saddled with their respective functions: Legislature – make the law; Executive – implement the law; Judiciary – interpret the law. However, the existence of these institutions are not the sole requirement of a proper democracy; its legitimacy from the people is also expedient and must be observed.

A political institution is legitimate when it succeeds in persuading people of the normative necessity of its existence.<sup>107</sup> In a democratic system, this can be based both on various forms of popular consent (democratic legitimacy) and on other kinds of foundations (generic legitimacy).<sup>108</sup> Artificial Intelligence plays a key role in this regard. To improve legitimacy, political institutions must increasingly be committed to data-driven forms of governance. By integrating digital data into political processes, political institutions must

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<sup>106</sup> Stanley, G., 'Preserving the Rule of Law in the Era of Artificial Intelligence (AI)' <<https://link.springer.com/article/10.1007/s10506-021-09294-4>> accessed 22 October 2021.

<sup>107</sup> Paolo C., 'Democratic Legitimacy' <<https://resume.uni.lu/story/democratic-legitimacy>> accessed 22 October 2021.

<sup>108</sup> Ibid.

seek to base decision-making on sound empirical evidence that are technologically driven. In particular, algorithmic decision-making (ADM) systems are used to identify pressing societal issues, to forecast potential policy outcomes, to inform the policy process, and to evaluate policy effectiveness.<sup>109</sup> For instance, ADM systems have been shown to successfully support decision-making regarding the socially acceptable distribution of refugees.<sup>110</sup> Trials suggest that this approach increases refugee employment rates by 40 – 70% as compared to human-led distribution practices.<sup>111</sup>

## **ARTIFICIAL INTELLIGENCE IN THE JUDICIAL SYSTEM**

The judicial system, being an institution of democracy, is basically an embodiment of the judiciary of the government. The judiciary (also known as the judicial system, judicature, judicial branch, judicative branch, and court or judiciary system) is the system of courts that adjudicates legal disputes/disagreements and interprets, defends, and applies the law in legal cases.<sup>112</sup> The judicial branch is in charge of deciding the meaning of laws, how to apply them to real situations, and whether a law breaks the rules of the Constitution.

The judiciary is the system of courts that interprets, defends, and applies the law in the name of the state.<sup>113</sup> The judiciary can also be thought of as the mechanism for the resolution of disputes.<sup>114</sup> Under the doctrine of the separation of powers, the judiciary generally does not make statutory law (which is the responsibility of the legislature) or enforce law (which is the responsibility of the executive), but rather interprets, defends,

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<sup>109</sup> Poel, M, Meyer, E.T. and Schroeder, R., 'Big data for policymaking: great expectations, but with limited progress?' *Policy & Internet* 347-367 (2018) <<https://doi.org/10.1002/poi3.176>CrossRefGoogle Scholar> accessed 22 October 2021.

<sup>110</sup> Ibid.

<sup>111</sup>Bansak, K. et al., 'Improving refugee integration through data-driven algorithmic assignment' *Science Journal* 359 (2018), 325 – 329 <<https://doi.org/10.1126/science.aao4408>CrossRefGoogle ScholarPubMed> accessed 22 October 2021.

<sup>112</sup> Wikipedia 'Judiciary' <<https://en.wikipedia.org/wiki/Judiciary>> accessed 22 October 2021.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

and applies the law to the facts of each case.<sup>115</sup> In many countries, the judiciary in its power can change laws through the process of judicial review – when a case is brought to a court of law. The judiciary is also saddled with the power to repeal laws, especially when they are inconsistent with the grundnorm of a nation (the Constitution in some cases). These laws include primary legislations, the provisions of the constitution, treaties or international law. The judiciary is a necessary arm of government to any state; not only for the development of a state, but for the purpose of the citizens of such country – the court is the last hope of a common man.

The span of Artificial Intelligence equally revolves around the judicial system of a nation. The processing of judicial data by so-called artificial intelligence systems or methods derived from data sciences are likely to improve the transparency of the functioning of justice by improving in particular the predictability of the application of the law and the consistency of case law.<sup>116</sup> Artificial Intelligence has developed technologies like a robot-judge which is designed to perform the same function a human judge can. Similarly, SUVAS is an AI system that can assist in the translation of judgments into regional languages.<sup>117</sup> An additional impact of Artificial Intelligence is that it reduces the processes being filed in courts and even the process of filing same.

## **THE IMPACTS OF ARTIFICIAL INTELLIGENCE ON DEMOCRACY**

Democracy has become the bedrock for good governance for the government of any nation. This basically ensures that the existence of any government is founded on the welfare and decision of the people. Democracy can be defined as the form of government in which political control is exercised by all the people, either directly or through their elected

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<sup>115</sup> Ibid.

<sup>116</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Justice of the Future: Predictive Justice and Artificial Intelligence' <[<sup>117</sup> Kartik P., 'AI in the Courts' <<https://indianexpress.com/article/opinion/artificial-intelligence-in-the-courts-7399436/>> accessed 23 October 2021.](https://www.coe.int/en/web/cepej/justice-of-the-future-predictive-justice-and-artificial-intelligence#:~:text=The%20processing%20of%20judicial%20data,the%20consistency%20of%20case%20law.> accessed 23 October 2021.</a></p></div><div data-bbox=)

representatives.<sup>118</sup> The word itself means rule by the people. A democracy is a system where people can change their rulers in a peaceful manner and the government is given the right to rule because the people say it may.<sup>119</sup> Simply put, democracy is the government of the people, by the people, and for the people.

Artificial Intelligence in the relation to democracy affects it directly or indirectly due to the broad nature of nature. Democracy entails the principle of the rule of law. Artificial Intelligence in this regard are often used during adjudication, for example, to facilitate and guide determinations of individual violence risk during pretrial bail determinations.<sup>120</sup> A core tenet of the Artificial Intelligence is transparency, meaning each person has the right to know when an algorithm is making a decision that affects them, along with any factors being considered.<sup>121</sup> In all this, the tenet of democracy can still come into play in mitigating its adverse effect by creating laws that prohibit algorithmic bias in the society.

- **Artificial Intelligence and its Relevance in Electoral Processes**

The electoral process of a government refers to the electoral system that is practiced in ushering in a new government, and sometimes, in the removal of a government. An electoral system or voting system is a set of rules that determine how elections and referendums are conducted and how their results are determined.<sup>122</sup> Political electoral systems are organized by governments, while non-political elections may take place in business, non-profit organizations and informal organizations.<sup>123</sup> These rules govern all aspects of the voting process: when elections occur, who is allowed to vote, who can stand

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<sup>118</sup> ACE, 'Democracy' <[https://aceproject.org/ace-en/topics/ve/vea/vea01/mobile\\_browsing/onePag](https://aceproject.org/ace-en/topics/ve/vea/vea01/mobile_browsing/onePag)> accessed 23 October 2021.

<sup>119</sup> Ibid.

<sup>120</sup> Huq, A.Z. op.cit.

<sup>121</sup> Kharis, J., 'How AI can Empower Communities and Strengthen Democracy' <<https://venturebeat.com/2020/07/04/how-ai-can-empower-communities-and-strengthen-democracy/>> accessed 23 October 2021.

<sup>122</sup> Wikipedia, 'Electoral System' <[https://en.wikipedia.org/wiki/Electoral\\_system](https://en.wikipedia.org/wiki/Electoral_system)> accessed 23 October 2021.

<sup>123</sup> Ibid.

as a candidate, how ballots are marked and cast, how the ballots are counted, how votes translate into the election outcome, limits on campaign spending, and other factors that can affect the result.<sup>124</sup> Political electoral systems are defined by constitutions and electoral laws, are typically conducted by election commissions, and can use multiple types of elections for different offices.<sup>125</sup> The traditional way method of an electoral system in a country often time prove to be slow, and sometime ineffective. Artificial Intelligence in this field is capable of causing a positive significant change in ensuring the process serves as a better means of heeding to the decision of the people in the change if government.

Softwares and intelligent systems have been developed solely for the purpose of the elections of nations. These systems are designed to make it easy for election organizers and participants in carrying out the electoral stages while dishing related information to the public. The application of information technology and the use of the software have advanced the election systems of nations. [For example], Alice and Michihito is SAM, an AI from New Zealand. SAM, who is referred to as a she, is being created to run in the 2020 general elections and has been called the first virtual politician in the world.<sup>126</sup> Today, SAM is reaching out to voters through Facebook Messenger and is sharing her thoughts on climate change, healthcare and education, among other topics.<sup>127</sup>

In assisting the general elections, there has been a development of application for the Nomination Information System (Silon) which is built to provide information to registered voters; information necessary to voting candidates. Also, there is a Political Party Information System (Sipol) application for political parties participating in the election to complete all kinds of party nomination requirements for registration as participants in general elections.<sup>128</sup> In the calculation stage of the final results of the election, the General

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<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Tuhina C., 'AI & the 2020 Elections' <<https://mantra.ai/blogs/ai-in-2020-election/>> accessed 23 October 2021.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

Elections Commission has also involved Artificial Intelligence in helping the performance of the organizers in recapitulating the election results, by using the Counting Information System (Situng) application.<sup>129</sup> Artificial Intelligence evidently makes impact in the electoral process as long as they are adopted.

## **ARTIFICIAL INTELLIGENCE AND WARFARE**

Warfare is the military operations in a country. [It] is an activity undertaken by a political unit (such as a nation) to weaken or destroy another.<sup>130</sup> The art of warfare is very sacrosanct to the existence of a country. This is because there is the need for a country to defend her citizens from external, and even internal, attacks that pose threats. By this, weapons and tactics need to be deployed.

Artificial-intelligence models are improving daily and have shown their value in many applications, including warfare. The performance of these systems can make them very useful for tasks such as identifying a T-90 main battle tank in a satellite image, identifying high-value targets in a crowd using facial recognition, translating text for open-source intelligence, and text generation for use in information operations.<sup>131</sup>

Applications like data aggregation from nation-wide databases, practice tools for training troops, bioinformatics, and the security options that AI technology offers can be optimized with intelligent computers.<sup>132</sup> It is due to this competency the technology offers, that scientists have started applying AI in the defense sector to make up for the limitations that humans have.<sup>133</sup> They are increasingly using Unmanned Aerial Vehicles, Unmanned Ground Vehicles, Recovery and Maintenance Vehicles and Combat System which take

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<sup>129</sup> Ibid.

<sup>130</sup> Merriam Webster, 'Warfare' <<https://www.merriam-webster.com/dictionary/warfare>> accessed 23 October 2021.

<sup>131</sup> Paul M, 'Artificial Intelligence is the Future of Warfare (Just not in the Way You Think)' <<https://mwi.usma.edu/artificial-intelligence-future-warfare-just-not-way-think/>> accessed 23 October 2021.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

advantage of AI.<sup>134</sup> Some of the influence of Artificial Intelligence on warfare has led to the development of drones, helipads with shooting abilities, bombs and many others.

## **CHALLENGES TO ADDRESSING THE IMPACTS OF ARTIFICIAL INTELLIGENCE ON HUMAN RIGHTS, DEMOCRACY, AND THE RULE OF LAW**

Although the impact of Artificial Intelligence contributes an irrefutable positive development to the world of today, there however exist certain setbacks and challenges experience through the use of Artificial Intelligence; this particular to Human Rights, Democracy. The trio; Human rights, democracy, and the rule of law, are the fundamental bedrock for every political setting that operates legally. Democracy basically ensures that the existence of any government is founded on the welfare and decision of the people. The rule of law is fundamental to international peace and security and political stability; to achieve economic and social progress and development; and to protect people's rights and fundamental freedoms.<sup>135</sup> It is foundational to people's access to public services, curbing corruption, restraining the abuse of power, and to establishing the social contract between people and the state.<sup>136</sup> Human Rights are the basic entitlements of all human beings in any society. They pertain to humans by virtue of their humanity. They are the irreducible minimum requirement for a civilized human existence in any society. The impact of Artificial Intelligence on the established principles are majorly in two ways; the positive and the negative. For the purpose of this discourse, the focus shall be directed at its negative impact that have posed as challenges.

Democracy, which is a government in existence for the people, should be driven by these persons. In this course, when making decisions for themselves, there is the need for the citizens to be fed wit information so as to conclude their decision. Although Artificial Intelligence makes the transmission of information easier and faster, there are challenges

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<sup>134</sup> Ibid.

<sup>135</sup> United Nations and the Rule of Law, op.cit.

<sup>136</sup> Ibid.

embedded in this. If AI determines which information is shown and consumed, what issues are suppressed in the flood of online information and which are virally amplified, this also brings risks of bias and unequal representation of opinions and voices.<sup>137</sup> Further, AI can negatively influence a fair electoral process. Political campaigns or foreign actors can use (and have been using) personalized advertisements to send different messages to distinct voter groups without public accountability in the agora.<sup>138</sup> However, it should be noted that it remains uncertain exactly how influential micro-targeted advertisement is.<sup>139</sup> AI can also be used to create and spread misinformation and deep fakes, in the form of text, pictures, audio or video. Since these are hard to identify by citizens, journalists or public institutions, misleading and manipulating the public becomes easier and the level of truthfulness and credibility of media and democratic discourse may deteriorate.

While observing the rule of law, public institutions are held to a higher standard when it comes to their behaviour towards individuals and society, which is reflected in principles such as justification, proportionality and equality. AI can increase the efficiency of institutions, yet on the other it can also erode the procedural legitimacy of and trust in democratic institutions and the authority of the law. Similarly, whereas previously courts were the only ones to determine what counts as illegal hate speech, today mostly private AI systems determine whether speech is taken down by social media platforms.<sup>140</sup> These AI systems de facto compete for authority with judges and the law and in general, AI can contribute to developing judicial systems that operate outside the boundaries and protections of the rule of law.<sup>141</sup> Automated online dispute resolutions provided by private

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<sup>137</sup> Catelijne, M. 'The Impact of Artificial Intelligence on Human Rights, Democracy and the Rule of Law' <<https://allai.nl/wp-content/uploads/2020/06/The-Impact-of-AI-on-Human-Rights-Democracy-and-the-Rule-of-Law-draft.pdf>> accessed 23 October 2021.

<sup>138</sup> Bradshaw, S. and Howard, P. 2019. *Social Media and Democracy in Crisis*. Oxford University Press p 14.

<sup>139</sup> Ibid.

<sup>140</sup> Cohen, J. E., 'Between truth and power: The legal constructions of informational capitalism' <<https://oxford.universitypressscholarship.com/view/10.1093/oso/9780190246693.001.0001/oso-9780190246693>> accessed 23 October 2021.

<sup>141</sup> Ibid.

companies are governed by the terms of service rather than the law that do not award consumers the same rights and procedural protections in public courts.<sup>142</sup>

One of the most notable impacts of Artificial Intelligence on human rights is the impact on the prohibition of discrimination and the right to equal treatment. Artificial Intelligence has often times been reported to infringe on the right of a person against discrimination, rather, it is often bias. Moreover, these data-driven systems prove the existence of biases, marginalizing the social control mechanisms that govern human behaviour. As an example, Amazon's recruitment AI favoured men over women, because it was trained on profiles of successful Amazon employees, which happened to be men.<sup>143</sup> The AI-system did not simply filter out women, it looked at characteristics of successful employees such as typical wordings and phrasing and filtered out CV's that did not show these characteristics.<sup>144</sup> [In another angle], AI systems are however also increasingly being used to monitor and track workers, distribute work without human intervention and assess and predict worker potential and performance in hiring and firing situations.<sup>145</sup> These applications of AI could jeopardize the right to just conditions of work, safe and healthy working conditions, dignity at work as well as the right to organize.

## CONCLUSION

The impact of Artificial Intelligence in the rule of law, human rights, and democracy, although has brought about unprecedented remarks and development in most cases, is not without its challenges. These challenges most times pose a threat to the standard of living of an average person.

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<sup>142</sup> Susskind, J., 'Future politics: Living Together in a World Transformed by Tech' <<https://www.amazon.co.uk/Future-Politics-Living-Together-Transformed/dp/0198825617>> accessed 23 October 2021.

<sup>143</sup> Dastin, J., 'Amazon Scraps Secret AI Recruiting Tool that Showed Bias against Women' <<https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK08G>> accessed 23 October 2021.

<sup>144</sup> Ibid.

<sup>145</sup> Catelijne, M. 2020. op.cit.