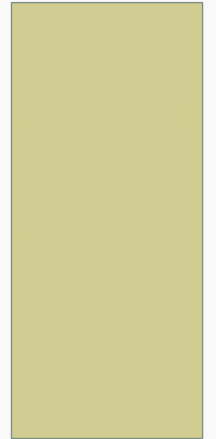


ETHICAL IMPLICATIONS OF AI: ASSESSING TRUSTWORTHY AI IN PRACTICE

2022-02 GSDS HEEJIN KIM



RECAP: SESSION #1

[1] Some Introductory Contexts – The Impact of AI-based Systems

[2] Assessing AI in terms of Ethics

- Ethics-based Guidelines – From States to Tech Companies
- Prospects and Limitations (Comparison w/ human rights framework)

[3] Human Rights as a Framework of Assessing AI

- Human Rights as Expressed in International Law (Some key instruments)
- Building Trustworthy AI: Ethical Principles, Human Rights & A Growing Trend in Law

[4] The Relevance and Importance of Human Rights Discourse for You

- Human Rights? (HR law provides rules of conduct for the actors involved)
- Why Human Rights?

FUNDAMENTAL HUMAN RIGHTS SESSION #2

[1] Human Rights as a Framework of Assessing AI Systems

[2] The Body of International Human Rights Law

- A brief introduction to the historical development of this field
- Key legal instruments adopted under the UN

[3] Rights and Obligations under the International Human Rights Law

- Whose rights, whose obligations?
- The nature and some features of rights and obligations
- The consequence of human rights obligations on domestic law

[4] Corporate responsibility, Human Rights Due Diligence and AI assessment

HUMAN RIGHTS AS AN ASSESSMENT FRAMEWORK

Human rights norm might exist in various forms...

defined in different contexts

- [1] A shared norm of human moralities – reflecting **morals & expectations** within the community
- [2] **Religious and cultural** understanding – practiced and supported among certain groups of people
- [3] Legal rights at the national level – referred to as “civil”/“constitutional” rights
- [4] Human rights in the form of a legal right within international law



The notion of human rights protection **remained unrecognized** in international law **for a long time**

A BRIEF INTRODUCTION TO THE HISTORICAL DEVELOPMENT



The dominant understanding for centuries:

- What state does within its border in relation to its citizens is a matter of domestic jurisdiction. International law only regulates the relations between two or more states.
 - **State's treatment of its own people** = not within the scope of discussion for int'l law
- No established concept of international protection of human rights

A BRIEF INTRODUCTION TO THE HISTORICAL DEVELOPMENT

- **UN (established in 1945) & the UN Charter** – Some human rights references in the Charter

e.g. “encouraging respect for human rights”; “promoting universal respect for, and observance of, human rights and fundamental freedoms for all without (...)” etc



UDHR (adopted in 1948) – the first legal instrument recognizing the universality of human rights (“all human beings are born free and equal in dignity and rights” UDHR Article 1)

THE BODY OF INTERNATIONAL HUMAN RIGHTS LAW

- **30 Articles** (laying out individual rights) as a common standard of achievement for all nations
- **The World's most translated document** (Guinness Book of World Records) – more than 500 languages
- **Some limits of the UDHR**
- **Inspired & reflected** in the subsequent generations of human rights treaties & national constitutions in different parts of the world



UDHR – the first legal instrument recognizing the universality of human rights (“all human beings are born free and equal in dignity and rights” UDHR Art. 1)



THE BODY OF INTERNATIONAL HUMAN RIGHTS LAW

[Our focus: **Human rights as expressed and guaranteed**
under the international human rights law]

The Three Key Human Rights Instruments

(called “International Bill of Rights”)

- [1] Universal Declaration of Human Rights (UDHR)
- [2] **ICCPR**
- [3] **ICESCR**

[2]/[3] = [more specific/concrete in terms of contents; legally binding treaties --- joined by more than 170 states as of today]

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

ICCPR

Adopted 1966; entry into force 1976

- **[Subject matter]** Civil and political rights
- **[Membership]** As of 2022, 173 states parties
- **[Structure]** Six parts consisting of 53 Articles and sub-provisions elaborating on these Articles
 - Part II & III (substantive rules on rights & obligations)
 - Part IV (institutions in charge of monitoring, implementing and enforcing rules) - Human Rights Committee (HRC)

ICCPR [Examples] Rights enumerated

- Right to non-discrimination and the right to an effective remedy (Article 2);
- equality before the law (Article 3);
- right to life (Article 6);
- right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7);
- right not to be subjected to slavery or forced labor (Article 8);
- right to fair and impartial trial (Article 14);
- right to private life (privacy)(Article 17);
- freedom of thought, conscience and religion (Article 18);
- freedom of expression (Article 19);
- right of children to special measures of protection (Article 24);
- right to vote (Article 25);
- right to equality before the law and equal protection of the law (Article 26);
- right of ethnic, religious or linguistic minorities (Article 27) etc.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

ICESCR

- Adopted 1966; entry into force 1976
- **[Subject matter]** ESC rights
- **[Membership]** As of 2022, 171 states parties
- **[Structure]** Five parts consisting of 31 Articles and sub-provisions elaborating on these provisions
 - Part II & III (substantive rules on Rights & Obligations)
 - Part IV (institutions in charge of monitoring, implementing and enforcing rules) – Committee on Economic, Social and Cultural Rights (CESCR)

ICESCR [Examples] Rights enumerated

- Equal rights for men and women (Article 3)
- Right to work (Article 6);
- Right to social security (Article 9);
- Right of workers to organize and bargain collectively (Article 8);
- Right to social security and social insurance (Article 9) and protection and assistance for the family (Article 10)
- Right to an adequate standard of living including adequate food and shelter (Articles 11);
- Right to the **highest attainable standard** of physical and mental health, including the right to health care (Right to health, Article 12);
- Right to education (such as free universal primary education)(Article 13)
- The right to participate in culture and to benefit from scientific progress (Article 15)



International Covenant on Civil and Political Rights (**ICCPR**)

International Covenant on Economic, Social and Cultural Rights (**ICESCR**)

- On top of the two covenants, **more specialized forms of HR treaties** have developed – addressing a specific group of individuals (e.g. migrant workers, persons w/ disabilities) or involving specific HR issues (e.g. racial discrimination)

The 1965 International Convention on the Elimination of All Forms of **Racial Discrimination** (“ICERD”); the 1979 Convention on the Elimination of All Forms of **Discrimination against Women** (“CEDAW”) and its Optional Protocol; the 1984 Convention against **Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (“CAT”) and its Optional Protocol of 2002; the 1989 Convention on the Rights of the **Child** (“CRC”); the 1990 International Convention on the Protection of the Rights of All **Migrant Workers** and Members of Their Families (“ICRMW”); the 2006 International Convention for the Protection of All Persons from **Enforced Disappearance** (“CPED”) and the 2006 Convention on the Rights of **Persons with Disabilities** (“CRPD”).

Rights to Privacy as enumerated in human rights law
[Some sources of authority & reference][e.g.]

- **UDHR**, Article 12
- **ICCPR**, Article 17
- Convention on the Rights of the **Child**, Article 16
- International Convention on the Protection of the Rights of **All Migrant Workers and Members of Their Families**, Article 14
- Convention on the Rights of **Persons with Disabilities**, Article 22
- Convention for the Protection of Human Rights and Fundamental Freedoms (the **European** Convention on Human Rights), Article 8
- **American** Convention on Human Rights, Article 11



Looking at the provisions alone is not enough – need some research into.. **(will come back next week)**

RECAP: THE BODY OF INTERNATIONAL HUMAN RIGHTS LAW

The Structure of UN Human Rights System

[UDHR] – foundational text (but w/ limits)

[ICCPR and ICESCR] – The two human rights covenants (**joined by +170 states**)

- **Substantive rules** – individual rights and obligations
- **Institutions** – implementing and enforcing treaty rules (i.e. treaty bodies)

On top of the covenants, **more specialized forms of HR treaties** have developed

Core Human Rights Treaties
(9 treaties identified by the UN)

International human rights law
(esp Core human rights treaties)

Rules of Conduct
(core human rights treaties
identified by the UN)

Rights & Obligations

Institutions
(UN HR system and beyond)

UN HR system

- **The Charter Bodies** directly created by the UN charter
- **(Human Rights) Treaty Bodies**
 - Human Rights Committee (HRC);
Committee on Economic, Social and Cultural Rights (CESCR)

Outside the UN Human Rights System

- [e.g.] **European** Court of Human Rights

International human rights law
(esp Core human rights treaties identified by the UN)
sets out **rules of conduct** for the actors involved

Rights

- **Q: Whose rights?**
- **Individuals** and certain **groups of people** (e.g. indigenous community) (according to some treaties)

Obligations

- **Q: Whose obligations?**
- **Primarily state actors** and (according to some treaties)
- **companies and other relevant private actors**

The **consequence** of human rights obligations on domestic law

- What are some consequence of human rights obligations on **the states who signed and joined the human rights treaties**?
 - If joined, member states are required to adopt, update, revise domestic law and policy to be compatible with the rules of human rights treaties (**i.e. domestic implementation**)
- **[e.g.]** State A has joined the human rights treaty (“Treaty X”). Treaty X has a provision that requires the member states to abolish death penalty. State A has a criminal law containing death penalty.



RIGHTS & OBLIGATIONS UNDER THE HUMAN RIGHTS LAW

The Nature of Rights

Q: Whose rights? A: **Individuals** and **certain groups of people**
(e.g. indigenous community)(according to some HR treaties)

Negative right

- Rights against government interference (often in the form of abuse and/or coercion) --- “hands-off”
- Civil and political?



Positive right

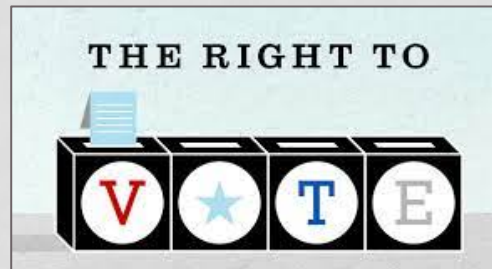
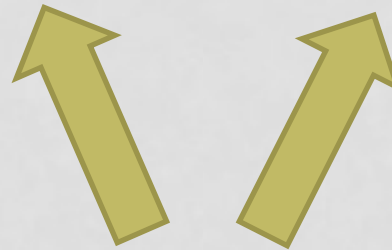
- Right to be provided with something through positive actions by...
- ESC rights?

RIGHTS & OBLIGATIONS UNDER THE HUMAN RIGHTS LAW

For instance

Negative right

Positive right



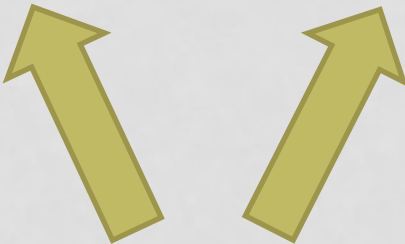
RIGHTS & OBLIGATIONS UNDER THE HUMAN RIGHTS LAW

For instance

Negative right



Positive right



RIGHTS & OBLIGATIONS UNDER THE HUMAN RIGHTS LAW

The Nature of Obligations

Q: Whose obligations?

A: Primarily state governments & companies and other relevant private actors (in some cases)



Different rights give rise to different types of obligations on the part of the duty-holders

- [1] Duty to avoid interfering with the rights and/or
- [2] Duty to take positive actions

RIGHTS & OBLIGATIONS UNDER THE HUMAN RIGHTS LAW

The Nature of Obligations

Human rights obligations of the States

- **[1] Obligation to respect** – [i.e.] States must refrain from interfering with or curtailing the enjoyment of human rights
- **[2] Obligation to protect** – [i.e.] states must prevent violations of rights **against** human rights **abuses**
 - (abuses by private actors like companies, other individuals etc.)
- **[3] Obligation to fulfill** - [i.e.] States must **take appropriate actions** to facilitate the enjoyment of human rights.
 - (Such actions include legislative, administrative, judicial & budgetary actions)

The Nature of Obligations

How they might be translated into action

[e.g.] Convention on the Rights of Persons with Disabilities

(CRPD)(As of 2022, 185 member states)

- **CRPD Article 21** [Freedom of Expression and opinion and access to information]
- (Note: ICCPR Art. 19)
 - **Respect**: the State must not withhold information or stop a person with a disability from freely expressing his/her views.
 - **Protect**: the State must prevent private entities from prohibiting a person with a disability from freely expressing his/her views
 - **Fulfill**: the State must facilitate the use of sign languages, plain language, Braille, and alternative communication in official interactions

The Nature of Obligations

How they might be translated into action

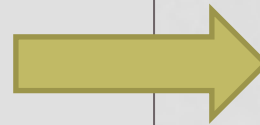
[e.g.] **Convention on the Rights of Persons with Disabilities**

(As of 2022, 185 member states)

- **CRPD Article 25 [Health]** – (Note: ICESCR Art. 12)
 - **Respect:** the authorities must not undertake medical experimentation on a person with a disability without his/her free and informed consent.
 - **Protect:** the Government must ensure that private health-service providers do not discriminate against or withhold health care from someone on the basis of disability
 - **Fulfill:** the Government must increase the availability of quality and affordable health care for persons with disabilities

DUTY-HOLDERS OTHER THAN STATE ACTORS


- State actors = primary duty-holders under the international human rights law
- **UN Guiding Principles on Business and Human Rights** (“UN Guiding Principles”) – Human Rights Council Resolution 17/4 (16 Jun 2011)
 - Also understood as part of the framework to assess & evaluate AI systems



CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

UN Guiding Principles on Business and Human Rights

- *[UN Guiding Principles 13]*: The responsibility to respect human rights requires that business enterprises: **(a) avoid causing or contributing to** adverse human rights impacts through their own activities, and address such impacts when they occur; **(b) seek to prevent or mitigate** adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, (...).

- 
- *[UN Guiding Principles 12]*: The responsibility of business enterprise to respect human rights **refers to internationally recognized human rights** – understood, at a minimum as those expressed in the **International Bill of Human Rights** and the principles concerning fundamental rights set out in the ILO's Declaration on Fundamental Principles and Rights at Work.

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

UN Guiding Principles on Business and Human Rights (as part of the framework to assess & evaluate AI systems)

- *[UN Guiding Principles 14]* The responsibility of business enterprise to respect human rights **applies to all companies** regardless of their size, sector, operational context, ownership and structure.

“Companies have responsibilities that should guide their construction, adoption and mobilization of AI technologies.”

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/38/35, para. 10 (2018)

UN Guiding Principles on Business and Human Rights

(as part of the framework to assess & evaluate AI systems)

- [UN Guiding Principles 15] In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: **a)** a policy commitment to meet their responsibility to respect human rights; **b) a human rights due diligence process** to identify, prevent, mitigate and account for how they address their impacts on human rights; **c)** process to enable the remediation of any adverse human rights impacts they cause or to which they contribute

Human rights impact assessment as a part of exercising **human rights due diligence**

- (not just applicable to corporate actors, but also states & government agencies) – *will come back to this next week*