

IT for Change's Comments on

**UNESCO's Consultation Paper on
AI Regulation**

IT for Change

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Regulatory Approaches*¹

Question 7. Are each of the nine regulatory approaches described clearly, or is clarification required for one or more cases?

- Yes, clarification is required.
- No, clarification is not required.

Question 8. If clarification is required, please specify the relevant approaches and provide reasons.

Clarification is needed on the following approaches:

Standards-based approaches: It is important to clarify whether there are examples of jurisdictions that rely totally on standards and standard-setting bodies to govern artificial intelligence (AI) or in any other area of governance. The example of the EU Act that is given relies on standard-setting bodies only as an aid to realize legislative intent and not as a substitution for legislative policy. Without such examples, sufficient ground to identify standards-based approaches as a separate regulatory approach may be lacking.

There is no denying that standard-setting bodies are crucial to fostering quality of service and quality of experience, as well as the safety and security of digital technologies. However, they should be accompanied by overarching policy guidance of the State that provides mechanisms for oversight and enforcement of these standards in the public interest.

Further, it is also important to elucidate examples of the different types of standard-setting bodies as set out in the paper – public, private, or hybrid organizations – for a respective assessment of their effectiveness.

To conclude, standards-based approaches alone may not be sufficient for AI governance without overarching state policy, as standard-setting bodies are typically meant to aid legislative intent, not replace it. This may need to be clarified in the absence of evidence to show standards-setting as a sole regulatory approach on any matter, which will then provide analogous instances for evaluation and lessons learnt.

Access to information and transparency mandates approach: It is important to distinguish between regulatory approaches and regulatory tools. Access to information and transparency mandates are important regulatory tools for AI governance, but they cannot be a standalone regulatory approach without a

¹ We submitted our comments via a survey form. Here, we have shared our response from the second section of the survey, which focused on our specific feedback. The first section, containing personal responses, has been omitted. More information on the consultation is available [here](#).

concomitant regulatory framework that provides for regulatory action based on the information made transparent.

Further, the examples of transparency mandates given in the consultation paper are largely limited to disclosing the use of AI systems in decision-making by public authorities and in user interactions with AI. This is only one aspect of transparency. There are other crucial dimensions of transparency in relation to AI that should be incorporated into AI regulations.

[Transparency](#) should enable people to understand how an AI system is developed, trained, how it operates, and is deployed in the relevant application domain, so that individuals can make more informed choices. Transparency also refers to the ability to provide meaningful information and clarity about what information is provided and why.

Another important element of transparency involves facilitating public debate and discourse through the establishment of dedicated entities, as necessary, to foster public interest and general awareness and understanding of AI systems, and increase acceptance and trust.

[Explainability of AI](#) is also important. It involves helping those impacted by an AI system's outcome understand how the decision was made. This requires offering clear, accessible information that enables those negatively affected to challenge the result, particularly regarding the factors and reasoning behind the decision, to the extent practicable.

In short, access to information and transparency mandates in relation to AI should be broadened to facilitate participatory and democratic governance of AI.

Risk-based approach: The description of the risk-based approach is silent on how the risks are mapped. AI-related harms are not experienced in isolation but are interconnected with structural issues. Therefore, they have to be assessed proactively. An understanding of risks and harms must therefore adequately reflect upon AI's potential for actual harm to people, society, and habitat. AI risk assessment should be done through the entire AI lifecycle from development to deployment to use, and there should be procedures instituted to undertake this assessment periodically. Continuous monitoring for emergence of risks, including data from users, relevant stakeholders, or incident databases is important.

A crucial factor that should guide AI risk mapping is the context for deployment, intended use, and sector. Risks from model malfunction, malicious use, and long-term systemic risks such as impact on democratic processes, public health, the social opportunity structure, fundamental rights, etc., should be identified separately. Use of AI in certain contexts and sectors, such as criminal justice, credit, and health, require specialized attention when assessing the risks and instituting the corresponding regulatory artifacts that are necessary to prevent and mitigate the risk. These areas involve sensitive and high-stakes decision-making processes, where the misuse or bias of AI could lead to serious ethical

and legal consequences, with impacts on individuals and societies as a whole. Thus, a strong case exists for tailoring governance frameworks to address the unique risks inherent in each domain of ethical and legal consequences.

Rights-based approach: A rights-based approach to AI governance should address historical and contextual injustices. This would involve a cross-cutting/cross-sectoral effort to redefine AI-related rights regimes in areas such as social communications, food sovereignty, health, environment, gender equality, welfare delivery, work/employment, etc. to ensure agency and well-being of individuals and communities.

Inadequacy of regulatory approaches: It is important to flag that no single regulatory approach can be the only way to regulate AI. Different approaches do have overlapping and complementary elements and need to be brought into a framework that is attentive to the context. This is because a holistic approach to AI governance that is rights-respecting, and which fosters a healthy democracy, economy, and ecological environment for all cannot be realized by adopting only one of the approaches mentioned in the consultation paper. AI regulation should protect and promote rights, impose proportionate obligations on AI providers/operators/users, call for accountability and transparency from them, institute a strong liability framework along the AI value chain, and at the same time, policies should be adopted to facilitate and enable an environment that encourages the development and use of responsible, ethical, and human rights-compliant AI systems by the private and public sectors.

Question 9. Are there any overlaps between the proposed regulatory approaches? Please specify where applicable and provide reasons.

Yes.

A distinction between a risk-based approach and a rights-based approach is not desirable. [Risk-based](#) is not an alternative to rights-based approach, but is rather a scalable and proportionate approach to compliance. An explicit rights-centric framework must form the basis of any proposed risk assessment framework. Within this, rights should be considered non-negotiable, i.e., they must be maintained regardless of the risk associated with external factors. Further, as mentioned in the response to the previous question, risk assessment should be contextual. Potential risks should be mapped out and clear thresholds set for rights protection according to the specific contexts in which AI is deployed.

Further, as the consultation paper itself notes, the rights-based approach as adopted in other jurisdictions includes the “right to information and understanding of the decisions made by artificial intelligence systems” and the right to “challenge decisions and request human intervention.” This makes access to information and transparency mandates a core aspect of a rights-based approach, and not a separate regulatory approach as the consultation paper currently sets it out.

Question 10. Do the nine AI regulation approaches capture all ways AI is regulated? Which ones may be missing?

- Yes, all ways are captured.
- No, there are some missing.

Question 11. If no, please provide details for other relevant approaches you wish to be included.

AI regulation needs to be contextualized for specific sectors. The sectoral approach to AI governance refers to regulating and managing AI technologies based on individual sectors' specific needs, risks, and contexts (ethical, legal, and socio-political), such as healthcare, finance, transportation, or education. Instead of applying a one-size-fits-all regulatory framework across all industries, this approach tailors generic norms and rules (as laid out in AI law) as well as standards and guidelines to the unique characteristics of AI in each sector. This means that the sectoral approach cannot be the sole regulatory approach, but implemented in tandem with a generic law that lays down the normative framework governing the rights, obligations, and liabilities in relation to AI.

Examples of Sectoral AI Governance Frameworks

Singapore: The [Monetary Authority of Singapore](#) (MAS) has developed specific guidelines for the financial services sector. In 2018, MAS introduced principles focusing on fairness, ethics, accountability, and transparency, collectively known as the FEAT principles. This initiative was further enhanced by the Veritas framework, which helps financial institutions verify their adherence to these principles in AI and data analytics applications. Additionally, the Info-communications Media Development Authority (IMDA) has launched the Model AI Governance Framework, guiding ethical AI deployment in the info-communications and media sectors.

United States: The [Food and Drug Administration in the US](#) has established guidelines for the approval and monitoring of AI-driven medical devices, ensuring that they meet safety and efficacy standards before being deployed in clinical settings. This sectoral focus helps address unique ethical and safety concerns relevant to healthcare applications of AI.

Question 12. Are there additional examples of AI bills and laws that could be included to illustrate one or more of the nine regulatory approaches?

- Yes
- No, all relevant examples are included.

Question 13. If yes, please provide the details for the relevant examples you wish to be included.**For rights-based approach:**

Philippines - Draft Bill on AI: The Philippines has proposed a law to regulate AI, [House Bill No. 7913](#), which provides that individuals must have the option to choose human alternatives over AI systems when suitable, and ensures access to prompt human intervention and remedies in the event of malfunction or error on the part of an AI system. Additionally, it protects the right to challenge the impacts of AI by guaranteeing that human assistance is always available, fair, effective, and reasonably accessible.

For rights-based approach as well as adapting existing laws approach:

Croatia - Addressing AI in the Workplace: In 2022, the Croatian government promulgated an amendment to the country's Labor Law to address algorithmic decision-making in the workplace. The '[Law on Amendments to the Labor Law: Work for Digital Platforms](#)' was introduced as a new chapter in the Labor Law. Within this new chapter, section 2 defines a set of data protection rights for employees and obligations for employers, as well as a set of rights arising from the binding principle of human-in-the-loop in automated decision-making.

Portugal - Labor Code: The [Portuguese Labor Code](#) was amended in April 2023 to include a set of provisions relating to AI and worker protection. The first of these provisions allows for the conclusion of collective labor agreements in relation to AI use. The Code also foresees a right to equal treatment and non-discrimination for workers with regard to decisions based on algorithms. Finally, the Code provides for a special right for union representatives to be informed and have access to all parameters and criteria used in algorithmic decision-making.

For Facilitating and Enabling Approach:

1. **Slovenia - Promoting Slovene national language in AI:** The Slovenian government has issued a [National Program to Promote the Development and Use of Artificial Intelligence in the Republic of Slovenia by 2025](#) (NpAI), which refers to promoting the development of AI in the national language. The national program identifies English-language dominated digitalization as undermining national language use, a key element of cultural identity. The policy also highlights the potential of AI for preserving cultural heritage and archive material.
2. **New Zealand - Māori Artificial Intelligence Advisory Panel:** The AI Forum of New Zealand has established the [Māori Artificial Intelligence Advisory Panel](#) to ensure that Te Ao Māori is integrated into the work of the forum and the impact of AI on Māori communities and heritage is addressed.

- 3. Singapore - Open-Source Responsible AI Testing Tools:** In June 2023, the Minister for Communications and Information of Singapore unveiled plans for the [AI Verify Foundation](#), aimed at leveraging the collaborative efforts of the worldwide open-source community to create AI testing resources promoting responsible AI usage. This initiative seeks to enhance AI testing capabilities and ensure compliance with business and regulatory requirements on a global scale and boasts over 60 participants.

For access to information and transparency mandates:

China's algorithm registry: China's recommendation algorithm regulation created an important new tool for regulators: the [algorithm registry](#). The registry is an online database of algorithms that have "public opinion properties or...social mobilization capabilities." Developers of these algorithms are required to submit information on how their algorithms are trained and deployed, including which datasets the algorithm is trained on. They are also required to complete an "algorithm security self-assessment report." Once an algorithm is successfully registered, a limited version of the filing is made public. Subsequent regulations of China on deep synthesis and generative AI also required developers to register their algorithms.

For risk-based classification of AI systems:

The OECD Framework for the Classification of AI Systems: As per this framework, AI systems can be classified into different risk categories based on four dimensions:

- 1. Context:** The context in which an AI system is developed and deployed, including stakeholders that deploy an AI system, the stakeholders impacted by its use, and the sector in which an AI system is deployed.
- 2. Data:** This includes data classifiers used, the source of the data, its structure, scale, and how it was collected.
- 3. Type of algorithm:** The degree of transparency and/or explainability, robustness, and implications for human rights, privacy, and fairness depend on the type of model as well as the model-building and inferencing processes.
- 4. Task:** The kind of task to be performed and the type of output expected vary across AI systems, from forecasting and content personalization to detection and recognition of voice or images.

Recommendations

Question 14. Key Considerations for Parliamentarians - 4.1 Why regulate? What are the most prominent examples of justifications for regulating within the three main reasons provided in the policy brief (addressing public problems, human rights or achieve desirable futures)?

Examples of public problems to be addressed:

1. Addressing the concentration of AI compute power, finances, resources, and talents in the hands of limited companies and countries. AI compute power concentration in a few hands has resulted in AI development trajectory being determined by only a few people and their specific incentives, single points of failure at various stages, and a few countries' actions determining the global future for decades to come.
2. Dramatic shifts in the labor market due to technological job displacement and devaluation of job skills.
3. Environmental impact from the unsustainable operation of the AI industry.
4. AI-fueled disinformation and loss of trust in the information ecosystem.
5. Extractivism and unjust enclosure of open datasets and community datasets by AI models and consequent loss of benefit from the data for the community.
6. Automated public sphere and loss of space for democratic deliberation.
7. Lack of representational diversity in AI models, invisibilization of historically marginalized groups, and imposition of hegemonic epistemologies that result in cultural erasures or violations.

Examples of human rights considerations

1. Protecting and promoting three core dimensions of substantive equality in AI systems and AI-based decision-making:
 - a. Remedying systemic disadvantage: the right to inclusion
 - b. Redressing democratic deficit: the right to participation
 - c. Reversing misrecognition: the right to dignity
2. Protecting workers' rights and safeguarding of labor standards in the platformized workplace.
3. Protection of traditional knowledge of Indigenous communities from unjust enclosure in AI systems.
4. Protecting collective rights over data and access to benefit from the use of data.

5. Protecting the rights of nature from the unsustainable practices of AI actors, hyper-consumptive models, and other downstream effects of AI.
6. Protecting the right to self-determination of people, i.e., people should be empowered to have a meaningful say in the design, deployment, and purpose of AI technologies, including to reject certain use cases.
7. Protecting the right to participate in and to enjoy the benefits of scientific progress and its applications for all. States should take positive measures to ensure that the progress, applications, and benefits of AI are distributed and are available, especially to vulnerable and marginalized groups.
8. Respect protection and promotion of diversity and inclusiveness, including right to preserve language and culture of distinct communities.

Examples of achieving desirable futures:

1. Steering public and private innovation to generate benefits for the most vulnerable (for e.g., dedicated budgets to support assistive AI innovations for accessibility and social security for racial minorities and migrants in gig work).
2. Establish public AI infrastructure through appropriate principles of subsidiarity and the separation of powers in core development sectors, including health and education.
3. Development of GenAI models in non-mainstream languages and cultures, from large-scale public initiatives to smaller community-driven initiatives.
4. Widen the [geographical and sectoral distribution of AI investment](#), activity, and benefits so that: a) sector- and region-specific knowledge and use cases can be converted into unique local and national breakthroughs; b) a broader range of perspectives can be incorporated to develop AI that is safe and aligned with the values and needs of more diverse populations and geographies; and c) bridge the stark opportunity gap between different geographies within and between countries.
5. Minimize the environmental impact of AI and adopt sustainable and less energy-intensive AI models as far as possible.

Question 15. Key Considerations for Parliamentarians - 4.1 Why regulate? Are there additional justifications for regulating that should be included?

- Yes
- No, everything is included.

Question 16. If yes, please provide details

Additional justifications -

1. To institute a framework to pin accountability and liability to appropriate actors in the AI value chain.
2. To ensure institutional readiness at all levels of governance to deal with present and future challenges posed by AI.

Question 17. Key Considerations for Parliamentarians - 4.2 When to regulate? Are there additional steps or activities to consider when deciding whether regulation is pertinent and feasible?

- Yes
- No, everything is included.

Question 18. If yes, please provide details.

An assessment of when to regulate AI should be grounded in the precautionary principle, which emanates from international environmental law. The precautionary principle will require the government to take preventive action in the face of uncertainty from AI developments, shifting the burden of proof to those who want to undertake an innovation to show that it does not cause harm. It holds that regulation is required whenever an activity creates a substantial possible risk to health, safety, or the environment, even if the supporting evidence is speculative.

Question 19. Key Considerations for Parliamentarians - 4.2 When to regulate? How to adopt participative and multi-stakeholder strategies for deciding when to regulate?

It is essential to have wide public dialogue and deliberations on the systemic and structural risks of AI, ensuring that potential negative effects on public interest and social relations of power are fully considered. In this dialogue, special attention should be paid to ensure meaningful participation of marginalized groups.

The following actions contribute to achieving this goal:

1. **Identify and engage in dialogue with representative organizations of marginalized groups,** including those already working on AI but also those working more largely on human rights and equality issues.
2. **Implement participatory awareness-raising sessions for organizations of marginalized groups** on topics including what is AI, opportunities and risks from different perspectives, and governance issues on AI at national and international levels. Such sessions should be organized

in a way that truly allows for dialogue, incorporate gender, diversity, and human rights approaches as cross-cutting issues, and take all appropriate accessibility measures.

3. **Support representative organizations of marginalized groups** to organize awareness-raising sessions and consultations on AI-related issues among their members. This will contribute to ensuring that more people are aware of the stakes, of how AI tools, policies, and legislations may affect them positively or negatively, and how to engage in those discussions.
4. **Budgets should include specific lines to cover costs related to the participation of representatives of marginalized groups, to cover, among others:** a) Compensation for their participation, time, and expertise. It should not be expected that they provide free work in the name of inclusion. Many human rights activists and representatives of marginalized groups lose income to join in different consultations due to high cost of traveling, lose of day's job, and other financial barriers. b) Ensuring all activities, materials, platforms, and communications are in accordance with accessibility standards; and that the costs of reasonable accommodations for individual participants will be covered (e.g., sign language interpreters, interpreters of indigenous/native languages, and compensations for representatives of marginalized groups.)
5. **Report back on how the contributions** of representatives of marginalized groups were considered and incorporated and how they can remain engaged in discussions.

While meaningful participation of marginalized groups in AI discourse is ensured, it is also important to be cognizant of the fact that infringement of fundamental rights in AI ecosystems may oftentimes not be easily discernible to the individuals and groups who are victimized by such discrimination.

Therefore, it is important to move away from an 'identifiable victims approach' in AI regulation. In this context, it becomes critical to empower equality bodies (national equality bodies, national human rights institutions, and other relevant public interest organizations) to take suo motu cognizance of victimization by "[submit\(ting\) complaints](#) to supervisory authorities in their own name and without any identifiable victims."

20. Key Considerations for Parliamentarians - 4.3 How to regulate? Are there additional recommendations that parliamentarians should consider?

- Yes
- No, everything is included.

21. If yes, please provide details.

Some other additional considerations for Parliamentarians on how to regulate are as follows:

1. **Protect collective rights in AI:** The right of all individuals and communities to benefit from scientific progress must be extended to AI ecosystems. This acquires special significance in

view of the marginalization of local cultures and knowledge systems in mainstream data and AI models. It also means that access and use regimes governing public datasets should further the goals of democracy, development, and human rights. Towards this goal, the need to update the intellectual property (IP) regime is necessary to account for the collective data and AI rights. IP reform is also vital for safeguarding the public and social value of data, and group privacy, and to create non-commercial AI ecosystems that contribute to social good.

2. **Call for interpretability of AI models in high-stakes decisions:** Interpretability of AI models should be legislatively encoded as a key principle particularly in high-risk cases impinging on fundamental human rights. Unlike black-box AI models, interpretable AI models are constrained to provide a better understanding of how predictions or decisions are made by the model. In some cases, it can be made very clear how variables are jointly related to form the final prediction. The belief that accuracy must be sacrificed for interpretability has been [shown to be inaccurate](#). Therefore, the use of black box machine learning models for high-stakes decisions should be prohibited unless no interpretable model can be constructed that achieve the same level of accuracy which needs to be satisfactorily proven before regulatory bodies.
3. **Checking the power of transnational digital corporations:** Given that the bulk of AI innovation is currently being spearheaded by transnational corporations, norms and rules at the national level are necessary to protect the interests of domestic businesses and enterprises (across a wide spectrum that includes not-for-profits and cooperatives). Policy measures to check the power of these transnational corporations can include: Foreign Direct Investment (FDI) controls in the digital start-up sector to prevent extractivist investments that cannibalize domestic enterprises; policies to incentivize the unbundling of compute software and compute hardware to promote competitive markets; regulation for algorithmic audit and scrutiny to protect the rights to privacy, equality and non-discrimination; and limits on the use of personally identifiable data for hyper-profiling.
4. **Develop and invest in open compute paradigms:** To address concentration of AI compute power in a few hands, governments should invest in open-source compute software, experiment in building digital public infrastructure for AI compute, and encourage the development of open protocols for cloud compute. Governments must also explore cooperative regional planning for AI compute such as through shared infrastructure and decentralized compute facilities as it is not feasible for every country to make large investments in AI compute.
5. **Provide for a strong accountability framework:** There is a need to expressly provide for a strong accountability framework legitimated by law and not left to enforcement through private contractual obligations. A nuanced approach should be adopted to determine which

duties lie with whom and at what point in time along the AI value chain, including the duty of deployers and providers of AI technology.

6. **Address the environmental impact of large AI models:** It is becoming clearer that the training and development of large-scale AI models requires large computational and storage clusters which have vast environmental costs. Therefore, governments should take measures such as evolving limits on energy and water availability for very large data centers, including through assessments of social costs and social benefits of such data centers; and explore the viability of smaller AI models for specific use cases.