

AI Regulation in Türkiye:

Bringing International Laws into the Discussion

*Incorporating International Human Rights
Laws in the Turkish AI Regulations*

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Incorporating International Human Rights Laws in the Turkish AI Regulations

AI has become so pervasive in our world that regulating its associated activities has become increasingly difficult. Its intersection with various legal fields further complicates the regulatory landscape. Even though existing laws such as criminal laws and data privacy laws regulate some aspects of AI, they often fall short due to their lack of specificity in addressing the unique challenges of AI technologies, such as difficulties related to algorithmic transparency, accountability, and the dynamic nature of AI systems.

For example, existing rules are inadequate when it comes to ensuring algorithmic transparency, which refers to the clear understanding and accessibility of how AI algorithms operate and make decisions. Current laws often do not require AI developers to disclose the inner workings of their algorithms, leading to a "black box" problem where the decision-making processes of AI systems are opaque. What is more, even if inner workings of algorithms are revealed, such are not always understandable by many making it difficult to detect defaulted and harmful aspects.

On the other hand, existing laws often lack a focus on integrating international laws into AI regulations, which is crucial for ensuring global ethical norms such as respect for human rights and creating more uniform compliance across jurisdictions. This gap leads to inconsistent protections, ethical misalignments, and legal uncertainties across different regions. That is why an AI focused regulation incorporating international laws is necessary.

Türkiye is currently in the process of enacting AI-specific legislation. As it develops this legislation, it is crucial that Türkiye does not overlook the significant role that international laws play in shaping effective AI governance. This discussion paper is part of a broader series that will explore specific areas of international law and their relevance to AI regulation in Türkiye, considering the complexity and wide-reaching implications of AI-related legal challenges.

Each paper in this series will address a distinct legal domain, starting with the integration of international human rights protections, including data protection

and privacy laws, followed by the alignment of AI regulations with international trade laws and intellectual property frameworks. Subsequent papers will explore the incorporation of international cybersecurity laws and the adherence to AI-specific international treaties. The final paper will focus on harmonising Türkiye's AI regulations with those of other legal systems, ensuring that the country's approach is both globally aligned and locally effective. By dividing the discussion into these focused areas, the series aim to provide a comprehensive, in-depth analysis of the international legal frameworks that should guide the development of AI legislation in Türkiye.

This discussion paper, the first in the aforementioned series, emphasises the urgent need for Türkiye to develop AI-specific legislation that robustly incorporates international human rights principles. Although existing human rights laws in Türkiye, such as those enshrined in the Constitution, provide a foundation, they are not fully equipped to address the complexities and unique challenges posed by AI technologies. To bridge this gap, it is imperative to craft new laws that are grounded in a thorough understanding of AI, relevant human rights obligations, and the specific actors responsible for upholding these rights. By taking this approach, Türkiye can establish a legal framework that not only aligns with global standards but also ensures the protection of individual rights in the face of rapidly evolving AI technologies.

Why Is Existing Human Rights Law Insufficient for Addressing AI-Related Legal Issues?

International human rights laws readily apply to AI-related legal matters, however due to AI's unique characteristics such as its dynamic nature as well as difficulty in ensuring algorithmic transparency, states should also enact AI-specific laws that incorporate international human rights laws. AI does not operate in a legal vacuum; existing frameworks already apply to AI-related matters. For instance, the rights of people while processing of personal data by AI systems are protected under the right to privacy.

Many international or regional human rights treaties such as European Convention on Human Rights (**ECHR**) protects right to privacy (i.e. right to respect for private and family life) also under the realm of processing of personal data and requires states to respect, protect, and fulfil that right (Council of Europe, 1950, Art. 8). The application of the ECHR framework undoubtedly extends to the use of personal data for AI systems for instance in training and governs how such data can be utilised. The International Covenant on Civil and Political Rights (**ICCPR**) serves as another example in upholding the right to freedom of expression, which includes recommending states to introduce protections against unjustified restrictions on this right, such as those potentially imposed by AI systems including AI-powered content moderation (UN General Assembly, 1966, Art. 19).

However, mere application of existing human rights laws is not sufficient. This is because AI's unique characteristics—such as its complexity, opacity, and the rapid pace at which it evolves—present challenges that existing frameworks were not designed to address. These characteristics make it difficult for states to fully grasp the inner workings and potential impacts of AI systems, leading to gaps in their ability to effectively uphold human rights. For example, consider the use of AI in predictive policing, which forecasts potential crime hotspots based on data inputs like the timing and location of past incidents (European Parliamentary Research Service, 2019), or other predictive systems assess who is likely to be involved in a crime, either as a victim or a perpetrator (person-focused analysis) (Castets-Renard, 2021). The complexity of these systems can obscure the rationale behind their outputs, making it difficult for the public and even law enforcement

officials to understand why certain areas are targeted or why specific individuals are flagged.

Moreover, existing human rights laws often lack the specificity needed to address the unique challenges posed by AI, such as algorithmic bias and automated decision-making. Due to the data sets and algorithmic systems employed in various stages of data processing, big data can lead to violations of individuals' fundamental rights. Additionally, it may result in unequal treatment and indirect discrimination against groups of people with similar traits, especially concerning fairness and equal opportunities in areas such as education and employment (European Parliament, 2017).

Human rights laws were not designed to handle AI systems' discrepancies, as perpetuating bias and discrimination are not always transparent or easily detectable. An example is an AI system used for screening job applications. This system might analyse resumes and cover letters to predict which candidates are the best fit for a position. However, if the AI is trained on historical hiring data that reflects past biases—such as preferential treatment towards certain demographic groups—the system can unintentionally perpetuate these biases. Detecting such bias is challenging because the AI's decision-making process is often opaque. The bias could manifest in subtle ways—such as weighting certain skills or experiences more heavily—making it hard to pinpoint the exact stage where discrimination occurs.

As human rights frameworks like the ECHR are designed to address clear, identifiable discrimination, they likely to struggle with such hidden biases of AI. Moreover, without access to the AI's decision-making process, it becomes significantly more difficult for individuals to provide evidence of discrimination. This challenge is compounded for those who lack detailed information about how the AI system operates and, even if they have some access, may not possess the technical expertise to identify at which stage discrimination occurred.

Only AI-specific laws that incorporate human rights focus can mandate regular due diligence, audits and assessments of AI algorithms to detect and mitigate

biases, require companies to disclose the methodologies, data sources, and decision-making processes of their AI systems. In this way, such laws can help to ensure that the operations of AI systems are understandable and open to scrutiny by regulatory bodies and the public, and can impose clear accountability structures, defining who is responsible for the outcomes produced by AI systems in line with international human rights obligations. That shows clearly why AI-specific laws under the guidance and support of international human rights laws are a must.

Similarly, in Türkiye, existing international and domestic human rights laws are inadequate for addressing AI-related legal issues, highlighting the need for AI legislation with a strong emphasis on human rights. For instance, the right to freedom of expression is protected under several domestic law provisions in Türkiye, including the Constitution of the Republic of Türkiye. Article 26 of the Constitution of the Republic of Türkiye guarantees the right to express and disseminate one's thoughts and opinions (Constitution of Turkey, 1982, Art. 26).

However, such protection falls short when it comes to AI-specific issues such as AI-driven content moderation systems mistakenly flagging or removing legitimate content. The general nature of this and similar laws fall short of grasping the specificities of AI, such as the means for AI algorithms to suppress or manipulate information, leading to indirect censorship or misinformation. For instance, from time to time, content moderation policies on social media platforms in Türkiye lead to the accidental removal of content shared by users with valid reasons, due to algorithmic errors. Existing regulations, such as the Turkish Penal Code (**TCK**) and the Press Law, generally protect freedom of expression and press freedom. However, these laws do not include specific provisions to address how AI systems process and potentially bias content, nor do they adequately handle the issue of wrongful content removal by algorithms.

Furthermore, existing laws do not provide the necessary framework for the transparency and accountability required in the development and deployment of AI technologies, nor do they ensure proper oversight to prevent biases and ensure fairness in AI-driven decision-making processes. For instance, effective regulation of AI would require Turkish laws specifically addressing algorithmic transparency, such as mandates for companies to disclose how their algorithms function and make decisions. This could involve detailed requirements for the documentation and explanation of AI models, including their training data, decision-making criteria,



UN Secretary-General Antonio Guterres speaks during a formal meeting on the global implications of AI for the first time chaired by UK Foreign Secretary James Cleverly at UN Headquarters in New York, United States on July 18, 2023. (Fatih Aktaş - Anadolu Agency)

and any potential biases. In contrast, current regulations like data protection laws primarily focus on data privacy and security rather than the transparency of AI algorithms. These laws fall short because they do not explicitly require disclosure of the operational aspects of AI systems, leaving a gap in accountability.

Türkiye is also a party to several international treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights that provide a framework for AI-related issues. These treaties, for example, emphasise the importance of protection against arbitrary interference with privacy, as well as ensuring equality and non-discrimination, and obligate Türkiye to uphold such rights.

However, this existing protection is not sufficient on its own because these treaties were not designed with the complexities and specific risks posed by AI technologies in mind. For instance, they do not explicitly account for the nuanced issues of algorithmic bias including subtle discriminatory patterns and data interaction effects, which can result in unfair treatment or discrimination, nor do they address the opacity of AI systems that makes it difficult to understand and challenge automated decisions. The broad and general nature of these protections often fails to address the nuanced challenges, such as algorithmic bias, lack of transparency, and automated decision-making processes, that are unique to AI systems. That's why, there is a crucial need for AI-specific legislation that incorporates human rights principles to effectively address these complex challenges.

How to Incorporate International Human Rights Laws into AI-Specific Legislation?

Incorporating human rights principles into AI-specific legislation requires a systematic approach. Above all, it is important to note that determining a description of AI is difficult so does framing AI-specific legislation. Furthermore, the definition of what constitutes artificial intelligence evolves over time (Raso et. al, 2018). However, considering Türkiye's alignment with EU legislation, the definition outlined in the AI Act will be a key reference when addressing the "how to" question and framing AI-specific laws. Once this definition is established, the next step is to thoroughly understand AI technology and identify the areas that require more focused attention, as existing human rights laws often fall short in these areas.

To effectively address the unique characteristics of AI, it is important to identify the human rights most impacted and which can directly address these specific concerns. Since AI-related issues intersect with multiple human rights and it is impractical to tackle each right individually, it is crucial to establish overarching principles to guide the legislative process. Afterward, it is necessary to identify the key actors, both private and public, involved in the AI ecosystem, their relevance, and their obligations. This approach ultimately facilitates the integration of the human rights framework into AI-specific legislation.

To create effective AI-specific legislation that incorporates human rights principles, it is imperative to first gain a comprehensive understanding of AI technology and its distinct features likely to cause human rights violations, as current human rights laws frequently fall short in addressing these specific features. AI systems, such as machine learning algorithms, neural networks, and autonomous decision-making tools, have unique characteristics like lack of algorithmic transparency, complexity, opacity, and vast data-processing capabilities. These attributes create new challenges for human rights protections.

For example, the lack of algorithmic transparency would prevent the society from understanding how and why people are denied a job, wielding computers with power in ways society prohibits or should disfavour, but which society would not be able to detect (Federal Trade

Commission, 2016). This lack of transparency not only makes it difficult for individuals to understand and detect potential discrimination but also complicates the work of human rights bodies in identifying and addressing these issues. Moreover, the black-box nature of many AI systems can obscure how decisions are made, making it difficult to identify and address potential biases and discrimination resulting in human rights violations.

For example, an AI system used in hiring might inadvertently favour certain demographics due to the biased data it was trained on. This bias can be subtle, such as consistently ranking certain qualifications higher than others based on historical patterns, making it difficult to detect and correct, thus leading to ongoing discrimination and difficulty in addressing discrimination, thereby human rights violations. Additionally, AI's ability to process and analyse massive amounts of personal data poses significant privacy concerns, as these systems often operate without obtaining explicit consent from individuals whose data is being collected and used. Even though the existing human rights frameworks do provide protections for privacy, the traditional consent-based models of data protection remain insufficient in an AI context, where data is often gathered passively or through opaque processes, leaving individuals with minimal ability to manage or monitor the use of their personal data (Mittelstadt et al., 2016).

Subsequently, it is essential to identify which human rights are specifically affected and might address the unique aspects of AI technology. The right to privacy is particularly relevant given AI's reliance on the collection, storage, and analysis of vast quantities of data. Much of this data is personally identifiable or can be re-identified through algorithms, even if initially anonymised, which raises significant privacy concerns (Raso et al., 2018). Additionally, the right to non-discrimination is significant, given AI's potential to reinforce existing biases. Furthermore, the right to a fair trial is impacted by AI's involvement in decision-making processes. AI systems are increasingly being used in predictive policing and sentencing, where algorithms help determine the likelihood of reoffending or recommend sentences based on historical data.

Moreover, the right to freedom from arbitrary interference is critical due to AI's potential for intrusive surveillance and misidentification, which is addressed in various international treaties that protect individuals from unjustified intrusions into their personal lives. While these rights are among the most prominently affected by AI, it is important to acknowledge that AI also intersects with a broader spectrum of human rights, including the right to freedom of expression, access to information, and economic and social rights. Addressing each right and sector separately may lead to fragmentation, preventing a more comprehensive coverage of AI-related issues across various sectors and rights.

That's why, instead of addressing these rights solely on an individual basis, they should be approached under the guidance of overarching principles. By doing so, the legislation can effectively address the potential implementation challenges, risks of ambiguity, and overgeneralisation that a purely principles-based approach might present, while also preventing fragmented oversight and enhancing the effectiveness of legal enforcement, ensuring that AI systems uphold fundamental rights comprehensively (Council of Europe Commissioner for Human Rights, 2021).

There are several principles or themes that may ensure better addressing of human rights issues related to AI; including privacy, accountability, transparency and fairness and non-discrimination (Fjeld et al., 2020). Fairness ensures that AI systems do not perpetuate or exacerbate biases; transparency mandates clear explanations of how AI systems make decisions; accountability establishes mechanisms to address grievances and hold actors responsible for misuse; and non-discrimination ensures that AI technologies do not unfairly target or disadvantage specific groups.

Once the specifics of AI technology, relevant human rights, and guiding principles are identified, it is essential to evaluate the actors involved—both private and public—their relevance to the AI ecosystem, their corresponding rights and obligations, as well as the question of accountability in the event of a violation: whether the developer, the company, or the state should be held accountable and to be held accountable of what.

Under international human rights laws, both states and corporations have significant responsibilities regarding human rights protection. International frameworks, such as the UN Guiding Principles on Business and Human Rights, establish that corporations must respect human

rights and address any adverse impacts their operations may cause. This responsibility includes ensuring that their AI systems do not infringe on individuals' rights or contribute to human rights abuses. For instance, social media companies that use AI for content moderation must ensure that their algorithms do not infringe on individuals' rights to freedom of expression or privacy. These systems can inadvertently suppress legitimate speech or unfairly target certain groups based on biased data, leading to discrimination or censorship.

States also bear a crucial role in this regard. They are obligated to regulate and oversee the development and deployment of AI technologies to ensure they do not violate human rights. Laws should carefully regulate the use of AI technologies, such as facial recognition, in public spaces to protect privacy and prevent mass surveillance. In the criminal justice system, AI applications should be subject to oversight to avoid reinforcing discrimination and undermining fundamental rights like the presumption of innocence.

In addition to these responsibilities, the concept of accountability in AI systems is paramount. As AI becomes increasingly integrated into decision-making processes, determining who is accountable for the actions and outcomes of these systems is critical. This includes not only the developers who create the algorithms but also the organisations that deploy them and the states that regulate their use. Clear accountability frameworks must be established to ensure that when AI systems cause harm—whether through biased decisions, privacy breaches, or other adverse impacts—there is a transparent process for identifying responsible parties and providing remedies. Finally, while considering corporate responsibilities and state obligations as well as accountability issues, AI legislation should address the harms experienced by certain groups, particularly women and minorities, who are disproportionately affected by bias in AI systems.

By thoroughly understanding AI technology, identifying relevant human rights laws and principles, and determining the obligations and accountability of various actors, legislation can be tailored to address the unique challenges posed by AI while incorporating human rights obligations. Only in that way, ensuring that the development and deployment of AI technologies uphold human rights standards become possible. In line with this, next section will explain how Turkish AI law can be legislated by adopting such systematic approach to incorporate human rights laws in Turkish AI specific legislation.

Integrating Human Rights Protections into AI Legislation: The Turkish Context

In Türkiye, crafting new AI-specific legislation requires a thorough approach to ensure that human rights are effectively safeguarded while addressing the unique challenges posed by AI technologies. This new legal framework must be both comprehensive and adaptable to keep pace with evolving AI advancements.

The first step in developing this legislation is to define artificial intelligence clearly and precisely while maintaining a flexible approach to grasp fast-paced dynamics of the industry. The definition should cover a broad spectrum of AI technologies, including machine learning algorithms, neural networks, and autonomous systems. In this regard, Türkiye can benefit from the EU's definition as outlined in the EU AI Act, which provides a comprehensive framework defining AI system as "a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments" (European Union, 2024). By adopting a definition of artificial intelligence that closely aligns with the EU's framework while also reflecting the dynamic nature of AI, Türkiye can establish a robust and contextually relevant framework for artificial intelligence that aligns with international standards.

In Türkiye, the integration of human rights protections into AI-specific legislation necessitates a careful examination of the existing legal framework, and where it falls short of addressing distinct features of AI. Privacy and data protection are central to AI legislation and one of the key legal instruments in this regard is The Law No. 6698 on the Protection of Personal Data (**KVKK**). The KVKK, which is Türkiye's implementation of the EU framework on data protection to some extent, is instrumental in safeguarding the right to privacy in the context of AI.

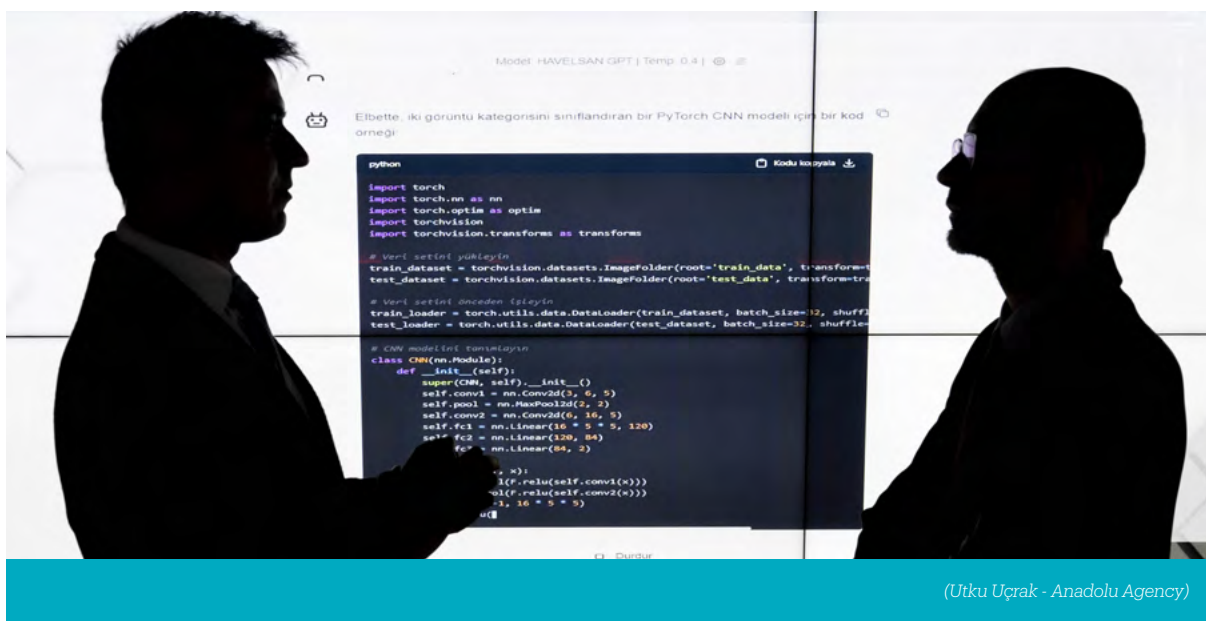
However, the law's general provisions on data processing and protection, while robust, may fall short in addressing the specific nuances of AI technologies, such as automated decision-making and algorithmic transparency. To

address such, AI-specific legislation should introduce mandatory transparency measures for AI algorithms, clear guidelines on automated decision-making processes, and enhance safeguards against AI-driven profiling. For example, legislation could require AI developers to disclose the criteria and data sources used in algorithmic decision-making, mandate regular audits to assess and mitigate biases in AI systems and enforce strict protocols for obtaining explicit consent from individuals before their data is used for AI training purposes. This type of legislation will not only uphold the right to privacy but also promote the overarching principles of transparency and fairness while addressing distinct features of AI.

Another critical area where AI-specific legislation is required involves Türkiye's current regulatory framework on non-discrimination. While the Constitution of the Republic of Türkiye, particularly in Article 10, guarantees equality before the law and prohibits discrimination on various grounds, these provisions do not specifically address the risk of algorithmic bias in AI systems (Constitution of the Republic of Turkey, 1982, Art. 26).

To address AI-related discriminatory issues, the legislation should include provisions that mandate regular audits of AI systems used by both public and private entities, enforce transparency in the data and methodologies used in AI development, and establish clear accountability mechanisms for addressing grievances related to AI-induced discrimination. For instance, the legislation could require that companies and institutions using AI systems submit periodic reports detailing their algorithms' performance and potential biases. Additionally, it should hold developers and organisations accountable for discriminatory outcomes by implementing measures, such as fines or corrective mandates, and ensure that affected individuals have accessible channels to report and seek redress for any discrimination experienced as a result of AI decision-making.

The use of AI in the criminal justice system also presents specific challenges that must be addressed by the legislation. To fully protect fundamental rights such as the presumption of innocence and the right to a fair trial



which broadly protected by the Articles 38 and 36 of the Constitution of the Republic of Türkiye, the legislation should require judicial oversight of AI applications in law enforcement and judicial decision-making. This includes regulating AI tools used in predictive policing and sentencing. Transparency requirements should mandate that AI systems involved in criminal justice provide clear explanations of their decision-making processes, including the criteria and data used.

Above all, establishing clear accountability mechanisms is essential to ensure responsible use of AI technologies. The legislation should define the responsibilities of AI developers, operators, and regulatory bodies, specifying who is accountable for harms caused by AI systems. This includes addressing issues such as biases, privacy breaches, and other adverse impacts. Furthermore, the legislation should provide accessible channels for individuals to report grievances and seek legal remedies if their rights are infringed by AI systems, including procedures for filing complaints and obtaining compensation.

Conclusion

As Türkiye moves forward in crafting AI-specific legislation, it must prioritise a robust and adaptable framework that not only aligns with international standards but also addresses the unique challenges posed by AI technologies. By clearly defining AI, incorporating international human rights protections, and establishing rigorous accountability mechanisms, Türkiye can create a legal environment that both fosters innovation and safeguards fundamental

To further enhance accountability, the legislation could mandate the creation of a centralised registry for AI systems where developers and operators are required to register their systems, including details about their functionality and potential risks. Additionally, regular third-party audits may be mandated to ensure compliance with these accountability measures, with findings publicly disclosed to maintain transparency. This approach may help establishing a clear and structured system for addressing grievances and ensuring that AI technologies are used responsibly.

By incorporating these elements into a new AI-specific legal framework, Türkiye can address the challenges posed by AI while protecting human rights. This legislation should be designed to be comprehensive and adaptable, aligning with international best practices and ensuring that AI development and deployment uphold fundamental rights. In doing so, Türkiye will establish a robust legal environment that supports innovation while safeguarding individual rights and freedoms in the age of AI.

rights. This new legislation should be comprehensive, incorporating mandatory transparency measures, regular audits, and accessible grievance procedures to ensure that AI systems operate in a manner that is fair, transparent, and respectful of human dignity. In doing so, Türkiye will set a precedent for responsible AI governance, ensuring that the benefits of AI are realised without compromising individual freedoms and societal values.

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