HUMAN RIGHTS DIMENSIONS OF ARTIFICIAL INTELLIGENCE (AI) AND GOVERNANCE
NIGERIAN REGULATORY REQUIREMENTS AND GAPS IN AFRICA'S REGULATORY REGIME

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Introduction

Digital access to information is a human right that allows people to access, create, and share information. It's also a fundamental part of freedom of expression and communication. Free, independent and diverse media are essential for democracy. Blogs, social networks, content aggregators and search engines enable individuals to access information and communicate with thousands of people in completely new ways. Together with traditional media, these new media actors are today essential sources of information.

Artificial intelligence (AI) significantly impacts the collection, use, storage, and disposal of information by enabling automated data gathering, advanced analysis capabilities, efficient storage solutions, and intelligent data deletion mechanisms, leading to more streamlined processes while raising concerns about key human rights issues including privacy and data security due to the vast amount of data collected and analyzed. It can also have an indirect impact as a result of human oversight or inaccurate data source such as unintended discrimination against a gender due to inadequate machine learning data[3].

This review developed for the UN Working Group on Business & Human Rights attempts a brief overview of Nigeria and Africa's artificial intelligence regulatory framework and the gaps in these frameworks.

Nigeria's Regulatory Framework

Nigeria's regulatory outlook on artificial intelligence (AI) and the governance of AI as a human rights concern is to be gleaned from a joint reading of various/subject-matter legislation and proposed policies, as Nigeria does not currently have a specific law that adequately addresses AI. These attempts at codifying a national position on AI include the following:

1. Right to privacy:
   The Nigeria Data Protection Act (2023) which mandates data processors and controllers regardless of whether they process or control data through automated means, to adhere to the principles of data privacy in alignment with the right to privacy, a fundamental human right enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria (as amended). The Cybercrimes (Prohibition, Prevention, etc.) Act (2015) also proscribes unauthorized access to computer networks and systems; and the unauthorized disclosure of information

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[3] The Council of Europe: Protecting freedom of expression and information, https://www.coe.int/ (accessed 11 February 2025)

2. Freedom of Expression:
   A fundamental human right guaranteed by Section 39 of the Constitution of the Federal Republic of Nigeria (as amended), the right to freedom of expression is protected by the Cybercrimes (Prohibition, Prevention, etc.) Act (2015).

3. Freedom from Discrimination
   The Cybercrimes (Prohibition, Prevention, etc.) Act (2015) in Section 26, sets out provisions prohibiting the distribution of discriminatory, racist and xenophobic content through a computer system or network.

In addition to the foregoing, Nigeria's National Information Technology Development Agency (NITDA) in conjunction with the National Center for Artificial Intelligence and Robotics, has developed a National Artificial Intelligence Strategy which is intended to serve as a guide to effectively address Nigeria's technology landscape whilst serving as a foundation for the establishment of relevant laws and regulations governing AI.

Africa's Regulatory Framework

Through the African Union, Africa endorsed a Continental Artificial Intelligence Strategy in July 2024. This Strategy which has been set out in phases is expected to commence with the creation of governance frameworks, national AI strategies, resource mobilization and capacity funding; and will culminate in the implementation of core projects. The Strategy's five (5) core areas are as follows: harnessing AI's benefits, building capabilities, minimizing risks, fostering cooperation and stimulating investment[4].

African countries that have established AI strategies include: Algeria (AI Research and Innovation Strategy, 2021), Benin (AI and Big Data Strategy, 2023), Egypt (National AI Strategy, 2021), Mauritius (AI Strategy, 2018), Rwanda (AI Policy, 2023) and Senegal (AI Strategy, 2023).

Gaps in the AI Regulatory Framework: Nigeria and Africa

A. Adequate Legislative Framework: Africa (and particularly Nigeria) lacks a concise law that adequately regulates AI. Such concise legislation serves as a regulatory guide and an educative material, empowering the populace with sufficient information on the restrictions surrounding the use of AI. Countries that have implemented a concise law on AI include Canada and China. Nigeria is however, not alone in her lack of a concise legal framework. The United States of America and the United Kingdom among other countries adopt a context-specific approach, creating or utilizing existing laws to address AI concerns in various industries. To implement this latter approach, Nigeria's existing laws will need to be fleshed out and updated to measure up to those of the country's international counterparts and to provide a more holistic regulatory coverage.

B. Limited Research and Expertise on the Intersection of AI and Human Rights: this hindrance feeds into the lack of adequate legislative framework. Nigeria and Africa as a whole, must take steps to drive or incentivize subject-matter research on the intersection of AI and human rights, particularly on emerging social and governance issues such as

[4] White & Case "AI Watch: Global regulatory tracker – African Union" 04 December 2024, https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-african-union

healthcare, privacy, bias[5], automated policing, data privacy and social media-advocacy among others.

C. Judicial Oversight on Executive Application of AI: Abuse of power is a recurring theme in Africa's political landscape. The continent, for the most part (inclusive of Nigeria), lacks a strong judicial system capable of reigning in the activities of the executive arm of government and this impairment extends to arbitral utilization of AI as a means of controlling public action. Recent examples of this include the End Sars Protest in Nigeria in which social media platforms were deactivated by the federal government[6]. Uganda also restricted social media access ahead of the country's presidential elections in 2021[7].

D. Limited Regional Harmonization: While the African Union has endorsed a Continental African Intelligence Strategy, it is imperative for the members of the Union to work together to achieve cohesion in their respective national AI policies and strategies to avoid inconsistencies in the continent's AI-governance approach.

E. Effective Partnerships and Participation: The respective governments in Africa must prioritize inclusion and partnerships in the drive for effective AI governance as the current disconnect between governmental agencies, key actors in the private sector and the populace has led to ineffective regulatory efforts and a gross failure to address societal needs.

Recommendations and Insights from the United Nations Guiding Principles on Business and Human Rights (UNGPs)

In conclusion, Nigeria and Africa as a whole, should consider the following as a guide in addressing the gaps made obvious by the intersections between AI and human rights:

- The need for a national AI policy focused on the respect for human rights and prevention of human rights abuses.
- The National Action Plan on Business and Human Rights should urgently receive legislative attention for implementation.
- Implementation of strong processes for remediation and accountability in AI governance as it relates to human rights.
- Development and deployment of adequate infrastructure to track and supervise AI usage.
- Public and private sector partnership to drive subject-matter research and expertise on AI governance.
- AI regulations must specifically provide for the protection of vulnerable groups such as children, young people and persons with disabilities. These regulations must also be robust enough to proactively cater for such categories of people as may be identified as vulnerable individuals by the evolution of technology.

[5] Olaide Awwal-Bolanta, "Artificial Intelligence Governance in Nigeria: Analysis of Gaps in Existing Legal Frameworks", EKSULJ Volume 8, 2024, www.researchgate.net/publication/386371071
[6] BBC: "Nigeria's Twitter Ban: Government orders prosecution of violators"; 5th June 2021; https://www.bbc.com/news/world-africa-57368535
[7] BBC: Africa internet: Where and how are governments blocking it?", 14th January 2021, Christopher Giles and Peter Mwai; https://www.bbc.com/news/world-africa-47734843