

ACCESS TO REMEDY AND REDRESS THEMATIC AREA NARRATIVE IN ENGLISH ARABIC FRENCH PORTUGUESE AND SPANISH

Rachel Adams , Kelly Stone

Rachel Adams , Kelly Stone

©2024, RACHEL ADAMS , KELLY STONE



This work is licensed under the Creative Commons Attribution License (<https://creativecommons.org/licenses/by/4.0/legalcode>), which permits unrestricted use, distribution, and reproduction, provided the original work is properly credited. Cette œuvre est mise à disposition selon les termes de la licence Creative Commons Attribution (<https://creativecommons.org/licenses/by/4.0/legalcode>), qui permet l'utilisation, la distribution et la reproduction sans restriction, pourvu que le mérite de la création originale soit adéquatement reconnu.

IDRC GRANT / SUBVENTION DU CRDI : - GLOBAL INDEX ON RESPONSIBLE ARTIFICIAL INTELLIGENCE

Global Index on Responsible AI

Dimension: Responsible AI Governance

Sub-dimension: Rule of Law

Thematic area: [Access to remedy and redress](#)

Definitions

Access to effective remedy and redress refers to legal mechanisms that allow for human rights violations to be thoroughly investigated and adequately resolved by rectifying the harm that was caused and holding those responsible to account. **Remedy**, in this case, refers to the removal of a harm; while **redress** refers to the compensation for, or reparation of, that [harm](#). Both components are required for effective enforcement of human rights.

In the context of AI-related injuries, this requires persons who have suffered harm as a result of the development or use of an AI system to be able to submit complaints, to pursue legal actions in court, or to report issues to a competent authority and to have those harms addressed with [due diligence](#).

Justification

AI has the potential to strengthen human development and economic growth in countries; however, its development, use and deployment can be detrimental and threatening to individuals and communities. For example, the application of AI in determining a person's credit score, employment eligibility, or likelihood to reoffend, has been found to perpetuate harmful stereotypes against certain groups of [people](#) and legitimise their exclusion from economic, political and social opportunities. The use of AI systems has also amplified various harms, including hate speech, disinformation, privacy violations, and mass surveillance, which have threatened human rights on an individual and collective level. Therefore, the potential of AI systems to violate the rights of persons and communities demands that access to effective remedy and redress be present at a national level to ensure that human rights are protected and upheld.

The United Nations Guiding Principles on Business and Human Rights (UNGP) provides states, technology companies, investors, and advocacy organisations with a robust and credible framework for promoting access to remedy and redress for human rights violations resulting from AI [technologies](#). It is worth noting that the UNGP is founded on the principle of access to remedy, which is provided under various international human rights instruments, such as Article 8 of the the Universal Declaration of Human Rights (UDHR), Article 2 of the International Covenant on Civil and Political Rights (ICCPR), the

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law, as well as Principle 25 of the Serious Violations of International Humanitarian Law.

Specifically, the UNGP calls upon states to provide citizens with access to remedy through judicial, legislative, administrative and other relevant means, and to enhance the effectiveness of the judiciary by removing all barriers to accessing remedy. In addition, the UNGP also requires states to consider state-based non-judicial mechanisms where complaints can be made, such as the Office of the Ombudsman, the Office of the Regulator, Tribunals, Consumer Bodies e.t.c. Other critical actors in the AI ecosystem, such as technology companies, are included in the framework and urged to provide complaints mechanisms for those adversely affected by AI systems.

This indicator is important because access to remedy and redress are key pillars in assessing responsible AI, which requires addressing human rights complaints and providing justice to affected persons.

Identification

This thematic area measures whether there are mechanisms that provide access to remedy and redress where rights violations occur as a result of the use or development of an AI system by a public or private entity. In particular, evidence must account for (1) **frameworks** concerning access to remedy and redress from harm caused by AI systems, (2) **government actions** to ensure access is provided to affected persons and communities, and (3) **non-state actors** who are working to advance access to effective remedy and redress mechanisms.

Frameworks may take the form of laws, regulations, policies (including by sector and/or department) and/or guidelines. *Government actions* may include draft laws and/or policies, the establishment of expert working groups, oversight bodies to monitor the fairness of complaints mechanisms, and other efforts to strengthen access to remedy and redress for those negatively impacted by AI. *Non-governmental actors* or non-state actors (NSAs) may include non-governmental organisations (NGOs), but also multinational corporations, private military organisations, media outlets, organised ethnic groups, academic institutions, lobby groups, labour unions or social movements working to advance access to fair mechanisms for remedy and redress in the context of AI.

Examples

Frameworks

In September 2022, the [European Commission](#) adopted a proposal for “a targeted harmonisation of national liability rules for AI” that would facilitate receipt of compensation by “victims of AI-related damage” in a way that ensures their specific “benefit from the same standards of protection” caused by harm from “AI products or services” as from “any other circumstances.”

Government Actions

In April 2022, the European Parliament released a joint [draft report](#) in response to the proposed EU Artificial Intelligence Act (AIA) which calls for the following amendments:

notification to individuals who are subjected to a high-risk AI decision-making system (Amendment 145); provision for an individual's right to "lodge a complaint against the providers...of AI systems and receive compensation against any direct damage or loss" inflicted concerning "health, safety, or fundamental rights"; inclusion of an individual's right to an "effective judicial remedy with regard to a legally binding decision" by a national authority or the appropriate Commission or, in the case of improper handling of the complaint itself, "with regard to the complaint" (Amendment 46).

Non-state Actors

In the non-governmental sector, the European advocacy group and network collective European Digital Rights (EDRI), in collaboration with 119 transnational civil society organisations, [launched](#) a statement in November 2021 calling for amendments to the AIA that would 'foreground' human rights and in the statement, call for "[m]eaningful rights and redress for people impacted by AI systems," including the right not to be subjected to non-compliant systems alongside "the right to an explanation" around AI-assisted decisions "and the right to a judicial remedy." Accordingly, the association published this proposed [amendment](#) in May 2022.

Research Guidance

This thematic area assesses measures countries have taken to ensure access to remedy and redress in the context of AI. Mechanisms that provide access to remedy and redress should exist at a national level and be enabled through legislation. In terms of government actions, there may be the establishment of a government office that is assigned responsibility for overseeing the effective functioning of mechanisms for remedy and redress, or the rollout of an awareness campaign to inform people of their right to remedy and redress in the event their rights are violated in the use of AI technologies. In terms of non-state actors (e.g., private sector, civil society, academia), activities may involve a private sector company establishing a complaints mechanism for users of AI technologies to better understand where harms arise and to take remedial measures to address them.

Some useful sources

- Existing literature on access to remedy and redress with respect to AI, including on recent developments/reforms in the country and recent academic research (e.g. reports, policy briefs, news/articles, white papers, academic papers)
- Case law related to the issue with respect to AI, including judiciary website for AI cases (assess court decisions)
- Websites of relevant supervisory authorities, including: Ombudsman website for AI cases (assess AI complaints and resolutions); and Regulators website (assess AI complaints and orders/resolutions)
- Websites of civil society organisations involved in work around remedy/redress with respect to digital technologies/AI
- [OECD.AI](#) (live repository of global AI policy initiatives)

Search

- Parliamentary or government records for recent mentions of 'redress and AI', 'remedy and AI', etc.

- General google searches for ‘redress and AI and [country]’, ‘remedy and AI and [country]’, etc. (can also include terms ‘policy’, ‘framework’, ‘law’, etc.)
- Academic search engines ([Google Scholar](#), [arXiv](#), [ResearchGate](#), etc.) for recent papers on ‘redress and AI and [country]’, ‘remedy and AI and [country]’, etc.
- Alternative search terms may include ‘algorithmic systems’, ‘automated systems’, ‘algorithmic decisions’, ‘automated decisions’, etc.

Consult

Discuss any complaints around AI issues to and redress provided/orders given by: ICT bodies/institutions; Ombudsman offices; Regulators office

- Civil society organisations in the country (discuss cases of harmful AI impact and redress sought/addressed)