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Reflections on the impact of IT and AI  
based tools in judicial systems

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The use of Information and Technology (IT) tools in European judicial systems is increasing, aiming to achieve paperless services. However, there is a lack of standardization of regulations, procedures and clarity in terminology,[1] which affects access to technology and digital justice. Both IT and AI technology lack proper regulation, leading to soft laws in the form of guidelines and recommendations. Both tools can hinder judicial independence and fairness of proceedings. For IT tools, CMS and remote hearings create room for procedural rights violations, while AI tools like judge profiling and predictive justice diminish judge autonomy and have potential for hidden bias based on criteria such as age, race, gender, etc., that affect the vulnerable minorities. Data tools have proven effective in reducing workload and improving resource allocation, but their integration into judicial designs exposes users to big data, raising privacy concerns.

One solution for ensuring judges and human autonomy from automated processes could be the creation of multidisciplinary teams, with participation of judges, users and other stakeholders in the entire IT or AI-based design lifecycle. Compliance mechanisms for auditing the monitoring the AI technical design in line with human rights values, particularly non-discrimination and equality of users has to be put into place. The objective of the policy paper is to present a thorough analysis of the impact of data tools on justice delivery, and factors influencing the process of “technological solutionism”, such as applicable principles, methods, criteria of use, impact, the human rights implications, in order to make concrete findings about potential risks and propose concrete recommendations on how to best address them.

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## The use of IT tools in judicial system

The modernization of courts using IT tools aims for efficient case processing, cost reduction, and public fund use, but may violate ECHR articles 6, 8, 10, 13, and 14, posing data protection and security risks. Transitioning to paperless services involves financial risks, such as unforeseen fees and long-term usage costs, as well as fairness implications, discriminatory design, judicial independence, and accessibility risks due to division based on IT literacy. To avoid these risks it's crucial to manage dispute resolution, address power imbalances, data management, and digital exclusion. This requires discussing (1) legislation changes, (2) preventing human rights implications, (3) inclusive organizational and technical planning, and defining (4) criteria for their use and prioritization.

1.The legal framework for IT tools in most member states is not viable for their use, including the lack of parties' rights to appeal. For this consideration, there are some guidelines put in place for digital reforming court services that aim to simplify procedures, improve user access, strengthen ECHR protections, and ensure realistic implementation of IT projects.[2] They encourage stakeholder inclusion for compliance mechanisms, data protection, training, and security. These guidelines cover also IT governance, organization, technical aspects, and ethical aspects, aiming to improve user access and ensure realistic implementation.

2. The increasing digitization of judicial tasks in countries aims to improve efficiency and justice quality, but it can sometimes hinder fair justice delivery and interfere with judges' independence. Remote hearings raise ethical concerns and can undermine legal proceedings quality and equality of arms.[3] Lack of digital literacy can also hinder justice access for vulnerable groups, affecting public perception of traditional trial methods.

3. Electronic tools pose risks to data protection and security due to human error. Digital solutions require resource management, assessment of technology efficiency, and risk monitoring. The digitization of justice requires a focus on humane dispute resolution. Stakeholders need consensus, multidisciplinary teams, and fair user representation. Judges should be involved in IT projects for agile teamwork and assessing digital technologies' impact on court cooperation. Compliance, verification, and monitoring mechanisms are crucial for data safety and security. Ongoing training and financial resources are essential.

4. The use of IT tools should be prioritized based on efficiency and quality, despite no correlation between equipment level and efficiency indicators. Prioritizing IT use should also consider factors such as the impact on law and justice reform, the image and trust of the justice system, case resolution, time management efficiency, support services, infrastructure, acceptance from internal court staff, and usage rate. [4] Studies show that the impact of IT tools in criminal matters is higher than in civil and commercial litigious matters. [5]

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- **Categories of IT tools: strengths and risks**

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The CoE member states use electronic court proceedings, legal aid, communication, and data protection tools, but these are limited to countries like Latvia, Sweden, Finland, Russia, UK-Scotland, and Ukraine.[6] Common IT tools include case management systems, decision support systems, and communication between courts, professionals, and users. CCJE and CEPEJ categorize data tools based on service categories or user types, such as access to justice tools, communication between courts, legal professionals, judges, and court administration staff.[7] Each of them has their strengths and risks, therefore careful consideration and caution are needed to ensure the benefits outweigh the potential risks.

- IT tools for administration services: these tools in courts improve decision-making, case management and trial efficiency by reducing redundant work, operational costs, and providing better statistical data on judicial activities. This category includes court websites, AI predictive tools, Electronic Case Management Systems, Budgetary and Financial Monitoring, Statistical Tools, and audio and video recordings of hearings. They increase efficient case administration, effective trial of cases, and promote principles such as non-discrimination and access to justice.

- Settlement promotion tools: e-mediation and e-negotiation offer guidance to parties on potential dispute resolution methods by analyzing the specific characteristics of the case. They improve access to justice in compliance with Article 6 of the ECHR and save cost and time for both courts and users. Decision-making tools improve faster and cost-effective legal research, decisions, and orders by identifying relevant evidence, providing template court documents, aiding judges' decision-making, and offering merit assessments and predicted outcomes for judges. These systems offer benefits like improved decision quality, access to large legal databases, time savings, remote working, and fairer distribution of cases among judges.
- Decision making assistance tools: this category of IT tools have risks, such as reducing judges' personal skills on research, decision making, creating dependence on technology, affecting areas like predicative coding, individual independence, and judicial autonomy, and might produce false results or create fictitious case law.
- E-filing tools: enable efficient enforcement, reduce administrative costs, and provide access to e-files at any location, especially for vulnerable groups. They promote electronic processing of judicial papers, ensuring authenticity, integrity, and confidentiality. Qualified e-signatures for legal actions must be practical on any device without additional hardware or software installation.
- Case management systems: ensure judicial data, facilitate assessments, provide public access to cases, improve procedural timetabling, save resources, and provide key performance indicators for justice systems. They inform resource allocation, budget, and workflow planning, enhancing efficiency.
- Remote hearings: can reduce costs, time, and improve scheduling efficiency in judicial proceedings. However, the legal framework must ensure the viability and suitability of remote hearings, including parties' rights to appeal, consultation with court instructions, and the option for in-person hearings. The court must monitor audio and visual quality, suspend hearings if technical issues arise, and maintain public order, public health, and witness protection.
- Open justice tools: provide numerous benefits, such as easier access to court information, reduced waiting times, and online dispute settlement. However, there are potential risks, such as online court referrals, which may not be as straightforward as traditional court interactions and may affect the perception of parties to proceedings and the potential character of proceedings.

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- **The legal frameworks for the use of IT tools**

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The use of IT tools in European judicial systems has been a topic of interest since the Consultative Council of European Judges (CCJE) Opinion no.14 (2011) emphasized the need for careful consideration when using these technologies for different purposes. There is no binding international instrument regulating the use of IT tools in courts, its prioritization, design methodology, and rights for those affected.[8] National regulations have been inconsistent with their application in courts, but countries are increasingly focusing on digitizing judicial tasks to improve efficiency and quality of justice. International instruments such as the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), European Convention of Human Rights (ECHR), General Data Protection Regulation (GDPR), Council of Europe's Convention No.108 on Data Protection, Council of Europe's Convention on Cybercrime, United Nations Office on Drugs and Crime (UNODC), Mutual Legal Assistance Treaties (MLATs), and international cooperation frameworks like INTERPOL have guided domestic legislation and inter-national cooperation so that the use of IT tools in the justice system does not undermine the fundamental principle of fair trials, legal representation, protection against arbitrary decision-making, data protection and security, and the right to challenge and examine evidence. The increasing reliance on digital information and communication has led to the establishment of ethical guidelines and principles for the use of IT tools in judiciary,

mainly developed by the CCJE and the CEPEJ. These guidelines emphasize the benefits of IT, such as improved efficiency, staff redeployment, reduced costs, and improved judicial activity statistics. Other CEPEJ' guidelines emphasize the need for digitalization of IT tools while protecting the rule of law, transparency, legal rights, non-discriminatory digital proceedings, data protection, and e-governance strategy principles.

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### **The Impact of AI based tools [9]**

AI is increasingly being used in judicial systems, particularly in civil, commercial, and administrative justice. European studies[10] emphasize the need for institutions to clarify complex concepts and establish cyber ethics when incorporating AI into decision-making to ensure ethical development and uphold fundamental rights. The state indirectly carries responsibility for these consequences as per the ECHR, and judicial actors must understand AI risks ensuring accountability.

At present there are 30 member states and 4 observer states implementing strategies and policies.[11] Some states have launched voluntary AI certification programs, endorsed non-binding AI ethics frameworks, adopted legal frameworks for autonomous machine learning testing, and are developing them for recruitment and automated decision-making by public authorities. AI is used in various legal functions, including case-law search engines, dispute resolution, document writing assistance, predictive analysis, and chatbots. The basic algorithmic methods used by AI deployed in the judicial system, are as below. [12]



► **PERSONAL DATA** refers to information that can be used to identify an individual, including first and surname, address, location data, and identification forms like passports or national IDs.

► **ALGORITHM** is a computational process or set of rules used to solve problems, that can be deployed by computers, but humans can also follow algorithmic processes, such as using mathematical formulas.

► **MACHINE LEARNING (ML)** is a computing technique that uses repetition to identify patterns in data and predict outcomes. It trains the data by tuning its parameters to identify similarities and differences. It allows the computer to detect patterns by applying mathematical formulas to large amounts of input data, producing corresponding outcomes.

► **AI SYSTEMS** are algorithmic models that perform cognitive or perceptual functions previously reserved for human thinking, judgment, and reasoning. They carry out cognitive or perceptual functions, enhancing the human experience and enhancing our ability to think, judge, and reason.

► **BIG DATA** refers to datasets containing vast amounts of quantitative data, such as numbers, words, and images that can reveal patterns or trends, that can be structured (specific to a purpose) or unstructured (general and varied).

► **DATA SCIENCE** is a multidisciplinary field that combines elements from computer science, mathematics, statistics, and social

sciences to extract insights and patterns from datasets to solve specific questions or problems.

► **INTERPRETABILITY** refers to a system's ability to be understood by humans, allowing them to identify its decision-making process and explain its behavior, and may also involve transparency in its development processes.

The AI based tools have had a great impact on the judicial services' efficiency. Predictive police techniques aim to prevent crime but have limitations in less frequent crimes. Online remote hearings improve accessibility, and judge assisting tools analyze legal judgments, anticipate future rulings, examine case-law, build patterns based on judge behavior, and foster rapid progress in judicial services. Machine learning is used in civil, commercial, and administrative justice to resolve online disputes before adjudication. Concerns about accuracy, incompleteness, and irrelevant outcomes remain. There are no international laws specifically focusing on AI, and existing guidelines may not adequately address its impacts and risks. The AI charter[13] emphasizes respecting principles and values for AI use and categorizes tools based on risk levels.

Access to algorithms varies between Europe and the US, with Europe having a more protective framework due to GDPR. Soft law approaches, which rely on voluntary compliance, can lead to varied practices and outcomes. Public oversight and responsible AI design are needed, and regulatory gaps create uncertainty. Discussions are ongoing on adopting a new international instrument or protocol to existing conventions. [14]

AI methods, like machine learning, have limitations such as inability to predict judicial trial results, lack of human control, and inadequate risk management. Concerns include soft-ware reasoning biases, data-snooping, and privacy issues. Big Data processing raises concerns about case-law changes and personal data protection. Therefore, AI's predictive ability can affect human rights like fair trials, privacy, and equal treatment. Although AI system uses statistical techniques, it cannot replicate legal reasoning entirely. Predictive learning lacks accurate data, weakening AI's decision-making, and data protection issues arise from tracking individual behavior at a granular level.

Consequently, complimentary in-depth reviews of relevant data and legal principles are essential for accurate court rulings. Concluding as such, the AI tools pose ethical and legal threats to human rights, including human dignity, freedom, autonomy, transparency, democracy, rule of law, non-discrimination, and data protection. Therefore, it is suggested to include potential human rights violations in an ethical code for tool design and usage.

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### Human rights' implications of data tools [15]

Article 2: Human dignity is inherent and inviolable, and humans should be treated as moral subjects. Prevention of harm involves protecting human physical and mental integrity, preserving the biosphere's sustainability, and implementing safety measures for judges and users. AI systems should not impact negatively human wellbeing or planetary health. Safety measures should be implemented in the judicial system.

Article 6: Article 6 of the ECHR addresses the complexity and opacity of AI systems, which can reduce discriminatory actions and provide automated decisions. However, these systems can also affect criminal justice, affecting equality of arms, judicial independence, and the right to be represented. The CCJE has adopted two documents to improve the judicial process using modern information and communication technology. These documents emphasize the importance of the Magna Carta of Judges[16] and the need for judicial independence, impartiality, and resources. However, the shift from in-person to remote proceedings could potentially undermine public trust in the judiciary and interfere with fair justice delivery in criminal, civil, and administrative areas. High-quality technology is crucial for improving access to justice, adjudicative justice, and consensual settlement. All the same they need to be used with great caution as some of them, particularly decision assisting tools and remote hearings, could weaken society's perception of civic obligations and limit the judiciary's ability to conduct fair trials. Some aspects of IT use that affect the rights to a fair trial under art 6 are:

- ▶ The right to efficient and transparent access to a judicial body,
- ▶ Impartiality and fairness of the legal proceedings,
- ▶ The adversarial nature of the process,
- ▶ The equitable balance of power between the parties involved,
- ▶ The appropriate handling of evidence,
- ▶ The need for sufficient time for preparation and access to relevant documents,
- ▶ The timely issuance of the court's judgment,
- ▶ The safeguarding of data and management of any risks,
- ▶ The right of a party to receive competent legal assistance in all legal procedures.

Article 8: Article 8 of the ECHR addresses privacy concerns in AI technologies, which can access vast data and make predictions about behavior and identity of judges or parties in trials. AI systems must secure individuals' privacy rights and control their data, with informed consent. Regulation and adequate data protection mechanisms are needed, ensuring quality and security while maintaining openness and privacy without compromising the judiciary's publicity principle in compliance with the obligations based on Convention 108 + (Art, 6, 7, 8).[17]

Article 10: In framework of Article 10 protection, discussions could be raised about the potential bias of AI profiling towards certain content types, affecting individual freedom of expression. It emphasizes the need for transparency and explanation of AI systems, as well as the importance of AI systems enhancing human capabilities rather than controlling them. It also advocates for user participation in IT development projects that affect human rights, such as privacy, safety, and fair trials.

Article 13: Accountability and responsibility are essential rights, including the right to an effective remedy for violations of rights and freedoms. This includes the possibility of receiving insight into and challenging AI-informed decisions in law enforcement or justice. Article 13 addresses the lack of effective remedies for the harm due to AI use, which calls for provision of effective remedies for users in case of AI interference especially during remote hearings. Article 13 applies also to the obligation of states to create the effective mechanisms that offer the due guarantees for the protection of human rights. In this

connection, it is necessary for the creation of practical mechanisms that are designed to support and ensure compliance[18], including human rights due diligence, impact assessments[19], certification and standards, auditing[20] and monitoring[21], and even regulatory sandboxes[22]. In particular, it is of high importance to establish: (1) independent legal bodies within the judiciary to audit data security and support legal professionals in creating, executing, and evaluating digital solutions; (2) impact assessment mechanisms that involve users and stakeholders in the design process to oversight democratic decision-making processes, pluralism, access to information, autonomy, and economic and social rights. Also as such complies with principles of independent supervision, stakeholder inclusivity, accountability, democracy, and transparency in AI system design and use.

Article 14: Article 14 addresses the use of non-neutral IT tools potentially harming parties based on race, ethnicity, sex, gender etc., such as the inherent biases in machine learning models. Therefore, solutions are needed to ensure that AI systems are fair, equitable, and inclusive, ensuring fundamental rights like non-discrimination and privacy. One solution could be to adopt the existing legal frameworks to incorporate these rights into AI system design.

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## IT governance strategy guidelines [23]

The transition to paperless justice necessitates maintaining workflow systems, enhancing access, and ensuring transparency in the legal system. IT governance of judicial procedures involves legal professionals, prosecutors, bailiff agents, and specialists. Pre-assessment of national IT conditions is crucial for generating a justice system vision and devising strategies. Organizational aspects include sustainable resource allocation, standardized electronic communication patterns, and complex constructions. Sound IT infrastructure is essential for stability and benefits, while interoperability ensures data interchange and information sharing across policy, legal, and social aspects. Ethical considerations include maintaining management workflow systems, promoting adjudicative justice, and ensuring transparency and user-friendliness in technological design, especially when AI is used for case management and judicial decision-making. IT staff training is essential for online communication protection and security, while judicial administration staff qualifications are crucial for data security in functioning judicial bodies.

The increasing use of IT and AI-based tools in the judiciary presents both benefits and challenges. These include ethical considerations regarding human dignity[24], freedom and autonomy[25], prevention of harm[26], non-discrimination, transparency, data protection, accountability, responsibility, democracy, rule of law, and good governance. This situation emphasizes the importance of implementing measures to minimize the negative effects of using these tools, some of them rendered below:

- ▶ Interactions with AI systems could adversely impact user's human dignity,
- ▶ There is potential threat of AI-enabled manipulation, individualized profiling, Emotion/personality recognition and location tracking
- ▶ Lack of information about AI tools hinders justice access due to data security concerns and system malfunctions,
- ▶ AI systems are complex to be understood by all users, who might lack IT literacy and cannot understand the AI functions, optimization logic, data usage, and interest effects,
- ▶ Lack of effective remedies for users to claim any harm that can be caused by the use of AI based tools
- ▶ Lack of independent bodies that can reassure value matching of algorithmic method tools
- ▶ Potential bias inherent in the AI design methods based on race, ethnicity, sex, gender etc.

- Legislation

States can consider providing changes in the legislation applicable for the use of data tools, and regulate every possible human right implication that affect users, such as the following:

- ▶ The right to refuse to interact with an AI machine that interferes with their human dignity
- ▶ The right to effective remedies for claiming potential harm by the use of data tools
- ▶ The right to get informed when they are interacting with an AI machine that affects their human dignity and freedoms
- ▶ Adopt an AI ethical code that informs citizens about difficult concepts related to AI systems.

Other than that, changes might be required for the use of remote hearings with the view to avoid ethical concerns about its effects on the quality and accessibility of judicial proceedings.

- Structural measures

- ▶ States need to adopt strategies for IT governance that maintain workflow systems, promote adjudicative justice, and ensure transparency by involving multidisciplinary teams, that include users, stakeholders and judges, pre assessment of design, sustainable resource allocation, standardized communication, sound infrastructure, and training.

- ▶ Inform users about AI tools about any warnings related to the data security concerns and system malfunctions

- ▶ The creation of compliance mechanisms for the impact assessment, auditing, and monitoring of AI design tools in compliance with Convention 108+

- ▶ Build multidisciplinary teams for the IT digitization projects in judicial system to address potential confidentiality issues and negative effects on judges.

- Fairness of judicial proceedings

- ▶ Judges should be involved in IT projects throughout development to ensure human oversight and prevent interference in judicial independence caused by technological design.

- IT Design measures

- ▶ Ensure Data processing methods that are transparent, accessible, impartial, and fair, with external audits available by imposing to private companies who act as AI developers an obligation to ensure (1) traceability and (2) information about design processing methods.

- ▶ Ensure the participation of users in the IT development projects in order to have responsible AI tool design.

- [1]The choice of terminology for IT and AI tools varies in the available literature where uses apply to similar meanings, for the following categories:  
-“Information and technology tools”, “IT tools”, “data tools”[1], “AI tools”, “court technology”, “digital tools”;  
-“IT projects”, “judicial services’ modernization”, “technical solutionism”, “digital solutions”, “technological changes”, “technological advancements”, “AI innovation”,  
-“Non- discriminatory design”, “non-neutral IT technologies”;  
-“Remote hearings”, “hybrid hearings”;  
-“Digital by default”, “user friendly technology”
- [2]CCJE Opinion No. 26 (2023) Final.Pdf. (N.D.); Guidelines on how to drive change towards Cyberjustice Stock-taking of tools deployed and summary of good practices. (2016, December 7). <https://www.coe.int/en/web/cepej/cepej-working-group-cyber-just.;Cepej> Toolkit Cyberjustice\_En\_Cepej(2019)7.Docx.Pdf. (N.D.).
- [3]151221gbr\_Guidelines Videoconferencing.Pdf. (N.D.)
- [4]CEPEJ Toolkit Cyberjustice\_EN\_Cepej(2019)7.docx.pdf. (n.d.)
- [5]CEPEJ-Study-24-IT-report-web\_ENG.pdf. (n.d.)
- [6]Idem
- [7]CCJE opinion no.26
- [8] Cahai(2020)23-Final\_Eng( Feasibility Study).Docx.Pdf. (N.D.). ;David Leslie, Christopher Burr, Mhairi Aitken, Josh Cowls, Mike Katell, & Morgan Briggs With A Foreword By Lord Tim Clement-Jones. (N.D.). (Issue Brief). Artificial Intelligence, Human Rights, Democracy, And The Rule Of Law A Primer.
- [9] European ethical charter on the use of AI
- [10] Responsibility And Ai En Dgi(2019)05 Web A4.Pdf. (N.D.)
- [11]Cahai(2020)23-Final\_Eng( Feasibility Study).Docx.Pdf. (N.D.).
- [12] CEPEJ European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment - European Commission for the Efficiency of Justice (CEPEJ) - [www.coe.int](http://www.coe.int). (n.d.). European Commission for the Efficiency of Justice (CEPEJ).
- [13]Idem
- [14] See footnote 8
- [15]Cahai(2020)23-Final\_Eng( Feasibility Study).Docx.Pdf. (N.D.). ;David Leslie, Christopher Burr, Mhairi Aitken, Josh Cowls, Mike Katell, & Morgan Briggs With A Foreword By Lord Tim Clement-Jones. (N.D.). (Issue Brief). Artificial Intelligence, Human Rights, Democracy, And The Rule Of Law A Primer
- [16]CCJE Magna Carta Of Judges (Fundamentalprinciples) (Ccje (2010)3)
- [17]Convention For The Protection Of Individuals With Regard To Automatic Processing Of Personal Data Strasbourg, 28.I.1981. (1981, January 28). Council Of Europe; Guidelines On Artificial Intelligence And Data Protection From The Convention 108 Consultative Committee (T-Pd AI Act: Eu Parliament Fine-Tunes Text Ahead Of Key Committee Vote – Euractiv.Com. (2023, June 11). Ethical Charter En For Publication 4 December 2018.Docx.Pdf. (N.D.)
- [18] Guidelines “On Artificial Intelligence And Data Protection” from the Convention 108 Consultative Committee (T-Pd AI Act: Eu Parliament Fine-Tunes Text Ahead Of Key Committee Vote – Euractiv.Com. (2023, June 11). Ethical Charter En For Publication 4 December 2018.Docx.Pdf. (N.D.)
- [19]The use of impact assessments is one practical means for identifying, preventing, mitigating, and accounting for adverse human rights impacts that may arise from the use of AI enabled systems.

[20]Regular audits by independent, expert bodies with responsibilities for overseeing the AI technical design to ensure more transparent and accountable use of AI-enabled systems.

[21]Mechanisms for the continuous monitoring of the behavior of AI systems to ensure that the functionality of the system continues as expected, avoiding as much as possible the use of automated monitoring which carries risk due to the potential loss of human oversight.

[22]The use of regulatory sandboxes enables authorized firms the opportunity to test AI enabled products or systems, which are not protected by current regulation, in a safe and controlled manner (i.e. within a sandbox).

[23] Guidelines on how to drive change towards Cyberjustice Stock-taking of tools deployed and summary of good practices. (2016, December 7)

[24] Human dignity is the right to life, physical and mental integrity, and the right to be informed

[25] Human freedom and autonomy are the right to liberty and security, human autonomy, self-determination

[26]Prevention of harm involves the right to life, physical and mental integrity, environmental protection, and sustainability of the community and biosphere