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Access Now's Submission on Sri Lanka's draft National Strategy on AI

Dear Members of the Committee on Formulating a Strategy for AI in Sri Lanka,

We thank you for the opportunity to submit comments on the draft National Strategy on AI, July 2024 ("the draft Strategy").

About Access Now

Access Now is an international non-profit organisation which works to defend and extend the digital rights of users at risk globally. Through presence and expertise based in over 20 countries across six continents, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet's continued openness and the protection of fundamental rights.

Access Now engages with a global community of individuals from over 162 countries, through our digital rights summit RightsCon and a 24/7 digital security helpline that provides real-time, direct technical assistance to users around the world. We have special consultative status at the United Nations.¹

In Asia and globally, Access Now has consistently engaged with stakeholders including governments and regulatory authorities on matters pertaining to digital rights,² including data protection,³ content governance,⁴ cybersecurity, internet shutdowns,⁵ surveillance and digital security.

Introduction and key recommendations

We welcome the Sri Lankan government's initiative to create a strong principle-based foundation for AI development and deployment, and to invite written comments on the draft. With increasing private and public development of artificial intelligence applications, it is crucial for Sri Lanka to develop and enforce a strong foundational guide for the use of emerging technology which lays down rules to protect people's human rights and democratic values. We believe that Sri Lanka can create a landmark Strategy document, demonstrating responsible approaches to AI for the region and globally.

¹ Access Now, *About us*, <https://www.accessnow.org/about-us/>.

² Access Now, *No liberty, no safety: Sri Lanka must withdraw the Online Safety Bill*, <https://www.accessnow.org/press-release/sri-lanka-must-withdraw-the-online-safety-bill/>.

³ Access Now, *Joint submission on the Bangladesh Draft Data Protection Act 2023*, <https://www.accessnow.org/wp-content/uploads/2023/10/Submission-on-the-Bangladesh-Data-Protection-Act-2023-Access-Now-and-Tech-Global-Institute.pdf>.

⁴ Access Now, *Submission on the draft Broadcasting Services (Regulation) Bill, 2023*, https://www.accessnow.org/wp-content/uploads/2024/01/Access-Now-Submission_Broadcasting-Services-Bill_January-2024.pdf.

⁵ Access Now, *Shrinking democracy, growing violence: Internet shutdowns in 2023*, <https://www.accessnow.org/wp-content/uploads/2024/05/2023-KIO-Report.pdf>.

Access Now has engaged extensively with international, national, and regional efforts to govern AI and this submission draws on the recommendations from some of the following. We submitted comments on the recent AI Basic Law proposal in Taiwan,⁶ participated in the negotiation and drafting of the European Union's AI Act,⁷ and have engaged with the United Nations (UN) General Assembly resolution "Seizing the opportunities of safe, secure and trustworthy artificial intelligence systems for sustainable development."⁸

We welcome and support the principle-based approach proposed in the draft Strategy. The principles of *inclusivity and responsibility, trustworthiness and transparency, and human-centricity* are particularly essential for responsible AI. We also welcome the intention to work towards the goals of social good, inclusion, and sustainable growth and the serious consideration given to ethics and safety in the draft Strategy. Below, we propose some ways in which these values can be enforced.

Key recommendations for Sri Lanka's National Strategy:

[Recommendation 1: Prioritisation of human rights should be included as a separate core principle in the national strategy. High impact areas require stricter safeguards.](#)

[Recommendation 2: Ban applications of artificial intelligence & automated decision-making which are incompatible with fundamental human rights.](#)

[Recommendation 3: Mandate transparency for all public sector use cases of artificial intelligence & automated decision-making \(AI & ADM\) systems, including through public registers.](#)

[Recommendation 4: Protect privacy & people's ownership of their data against use by AI & ADM systems.](#)

[Recommendation 5: Prohibit the use of automated processes in decision-making which has a legal or significant effect on any person or group, permitting people to oppose automated decision-making in such cases, and seek redress.](#)

[Recommendation 6: Expand the right to request an explanation to decisions involving significant automation and limited human intervention.](#)

[Recommendation 7: Mandate regular public consultation on application of AI to sectors where people's rights are impacted and establish mechanisms for continuous feedback on applications.](#)

[Recommendation 8: Create a meaningful framework for corporate and platform accountability.](#)

⁶ Access Now, *Submission of initial inputs on preview of the draft of the "Artificial Intelligence Basic Law"*, https://www.accessnow.org/wp-content/uploads/2024/09/Submission-to-Taiwan-AI-Basic-Law-consultation_September-2024.pdf.

⁷ Access Now, *The EU AI Act: a failure for human rights, a victory for industry and law enforcement*, <https://www.accessnow.org/press-release/ai-act-failure-for-human-rights-victory-for-industry-and-law-enforcement/>.

⁸ Access Now, *Joint statement: Finding the good in the first UN General Assembly resolution on artificial intelligence*, <https://www.accessnow.org/press-release/un-resolution-on-artificial-intelligence/>.

Recommendation 1: Prioritisation of human rights should be included as a separate core principle in the national strategy. High impact areas require stricter safeguards.

To implement the core principles of inclusivity and responsibility, the approach to AI must be guided by Sri Lanka’s constitutional values, including its commitment to fundamental human rights, and a rights- and need-based analysis. Adopting a human rights-based approach to AI⁹ implementation and upholding the core principles in the draft Strategy, particularly responsibility and human-centricity is not compatible with some of the statements in the draft Strategy, such as the goal of “rapid acceleration”. Rapidness will necessarily obscure responsibility because it prioritises the output over the other core goals of social good, inclusion, and sustainable growth. It is important to centre human rights explicitly to avoid a potential trade-off for the sake of rapidity.

Regarding the mandate for the national AI strategy, the draft Strategy names “Capturing Immediate Societal Benefits” as a mandate or responsibility and aims to identify and prioritise “high-impact AI use cases in sectors such as healthcare, education, agriculture, public service delivery, public administration, transport, and environmental sustainability, we aim to quickly demonstrate the value of AI technologies.” There are two concerns which arise from this position.

- **Prioritising speed over safety:** The draft Strategy reflects a concern that there is a “risk of being left behind in the global AI race and the resultant loss in global competitiveness” which must be avoided. Rapid and premature adoption of AI can also result in risks to the people of Sri Lanka. The development and deployment of AI systems must not be sped up for the sake of catching up to other nations without the valuable input of necessary and affected stakeholders in the design itself, and an understanding of the impact of the proposed AI application.
- **Pushing AI in high-impact areas requires higher safeguards:** The areas highlighted in this part of the draft Strategy are areas where government action has far-reaching effects on people’s daily lives, rights and freedoms, and access to essential services. In the case of healthcare, education, and public service delivery in particular, there are higher risks and greater amounts of sensitive personal data including of children, requiring greater deliberation, research, focused consultation and safeguards for any technical intervention which by its very nature relies on data and is capable of errors and biases.

For example, the EU’s AI Act categorises education, essential public services and benefits including healthcare, and critical infrastructure like road traffic as areas where any AI system would be “high risk” because of the serious implications for people’s rights and subject to more stringent obligations under the law.¹⁰ Given the sensitivity of data involved in these systems, a strong and

⁹ Access Now, *Why human rights must be at the core of AI governance*, <https://www.accessnow.org/human-rights-and-ai-governance/>

¹⁰ EU AI Act, Annex III: High-Risk AI Systems Referred to in Article 6(2) <https://artificialintelligenceact.eu/annex/3/>; Article 16: Obligations of Providers of High-Risk AI Systems, <https://artificialintelligenceact.eu/article/16/>.

enforceable data protection framework must be in place before development to ensure safe and responsible AI.

Experiences from other jurisdictions shows that there are serious risks to the rapid adoption of AI systems in high-impact areas without prioritising responsibility and human rights. For example, in the UK, an algorithm used at the national level to determine which patients would receive a liver transplant was found to be seriously biased against younger patients, producing “implausible predictions.”¹¹ These examples of implementation of AI and automated decision-making in the public sector illustrate why these tools cannot be presumed effective or rushed through.

Netherlands’ use of automated decision-making in childcare benefits system

The government of the Netherlands (the Dutch government) used an algorithm to create risk profiles of individuals applying for child care benefits. The algorithms used “[foreign sounding names](#)” and “[dual nationality](#)” as indicators of potential fraud. Relying on these algorithms, thousands of families in low and middle-income groups were wrongly accused of fraud and ordered to pay back benefits received by them. The consequences were devastating, as some victims were driven to suicide; thousands of families were [pushed into poverty](#); and [children were taken into state care](#). After the errors were discovered, the [government resigned](#) in 2021 but the economic, physical, and psychological damage caused was irrevocable.

The Sri Lankan government has the opportunity to learn from the mistakes of other regions and correct the trend, becoming a regional hub for trusted AI and serve as a model for other regions. By explicitly and concretely centering human rights, Sri Lanka will ensure adoption of a strategy which builds rights-respecting design into the technology, and rights-respecting practices into the operation right from the development stage, to prevent and avoid human rights harms rather than relying heavily on a post-facto correction or mitigation approach.

Prioritising human rights includes consideration of the following questions:

- **When do we need AI:** Artificial intelligence applications are a tool and not a solution in itself. Sri Lanka must exercise caution against forcing AI “solutions” onto difficult socio-economic problems, especially when these “solutions” are being claimed as such by private corporations.
- **What is the real benefit of AI:** AI applications must be considered on a case-by-case basis to evaluate their real benefit in a given solution weighed against their impact on people’s rights and other costs — including costs to the economy, the environment, and to transparency and accountability.
- **How to apply AI:** AI applications must not be deployed for general purposes in the public sector. The use-cases must be clearly defined and based on evidence of their efficiency and evaluation of rights and costs.

¹¹ Attia, Antony et al., *Implausible algorithm output in UK liver transplantation allocation scheme: importance of transparency*, The Lancet, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)00114-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)00114-9/fulltext); [https://www.thelancet.com/journals/lanhl/article/PIIS2666-7568\(24\)00044-8/fulltext](https://www.thelancet.com/journals/lanhl/article/PIIS2666-7568(24)00044-8/fulltext).

- **How to evaluate AI:** The evaluations must be conducted through regular, continuous scrutiny – including by external stakeholders and experts – mechanisms for feedback, and structured audits integrated into every stage of the supply chain from development to deployment.
- **Who should evaluate AI:** The strategy should mandate multi-stakeholder consultations at every stage. Inputs must be taken from academic researchers and subject matter experts, civil society, industry, and the general public. People’s experiences are crucial in understanding how technology and AI in particular is actually impacting human life, rather than relying solely on academic or financial perspectives.
- **How to make consultations and development cross-disciplinary:** The strategy should recognise that the impact of AI spans across fields and cross-disciplinary considerations are necessary. Experts from subjects which study governance, people’s development, and the impact of technology on society, must be included. The fields in which AI is proposed to be deployed — for example, healthcare or agriculture — must be represented in the consultations from the formative stages onward.

The present consultation is an example of one step in a good open participatory process, and Sri Lanka has the opportunity to continue and build on this process, keeping people engaged and authorities accountable, by creating easy, accessible mechanisms for feedback.

Recommendation 2: Ban applications of artificial intelligence & automated decision-making which are incompatible with fundamental human rights.

Where a particular application of AI or ADM causes a harm or risk to human rights which is irreversible and not capable of being mitigated, and there is no adequate, meaningful remedy or other mechanism to safeguard against such violation, such application should be banned. This includes violations of the right to life, to equality, and to privacy, and freedoms of speech, expression, assembly, and association. Access Now has previously endorsed this position in our submission to the European Commission on the consultation on a white paper on AI.¹²

A major use of AI & ADM is to enable **mass surveillance** despite the serious implications for privacy and other human rights.¹³ Attempts to use AI systems for “**predictive policing**” — to estimate

¹² Access Now, *Access Now’s submission to the Consultation on the “White Paper on Artificial Intelligence - a European approach to excellence and trust”*,

https://www.accessnow.org/wp-content/uploads/2020/06/EU-white-paper-consultation_Access_Now_June_2020.pdf.

¹³ Bloomberg Law, *Olympics’ AI Security Stokes Backlash Over Mass Surveillance*,

<https://news.bloomberglaw.com/privacy-and-data-security/olympics-ai-security-stokes-backlash-over-mass-surveillance>; Wired, *Face Recognition Software Led to His Arrest. It Was Dead Wrong*, <https://www.wired.com/story/face-recognition-software-led-to-his-arrest-it-was-dead-wrong/>.

where crimes might take place or who may commit them — have been found to be riddled with bias.¹⁴ They have caused discrimination and harassment, besides being incorrect.¹⁵

Applications of AI or ADM which are incompatible with fundamental human rights include:

- Use of AI or ADM in the military in any decision which may affect human life;
- Use of AI or ADM to operate autonomous lethal weapons and other uses which identify targets for force, including by law enforcement;
- Indiscriminate biometric surveillance, capture of people’s biometric data in public places or from wearable devices;
- Use of AI or ADM solely to determine an individual’s ability to access essential services;
- Use of AI to identify any sensitive identity traits like ethnicity, gender, or disability, including for determining access to essential services; and
- Use of AI or ADM at national borders to determine entry and movement or to gather biometric data as a condition for entry and movement.

Researchers have been warning about the risks of incorporating AI, ADM, and machine learning into weapons designs. These risks include making violent conflicts more likely to start because of the perceived lower human cost in conflicts where autonomous weapons are used; censorship or co-opting of other AI research to support the development of these weapons; and the reduction or deflection of human responsibility in decision-making.¹⁶ This risk is well-illustrated by the use of AI and ADM in the current war on Gaza.

Israel’s use of AI-driven killings in Gaza

An investigation from April 2024 revealed Israel’s use of an AI application called “Lavender” which automates the process of identifying people as “potential bombing targets”, creating a kill list for deployment of lethal force, often on their residences or in civilian areas where the collateral damage is high. The system made errors in approximately 10% of cases but was still relied upon widely by the military. By using this AI application, Israeli military officers bypassed the process of manually cross-checking evidence to confirm whether an individual was a member of Hamas’s military unit. Lavender has, as of April 2024, “marked some 37,000 Palestinians as suspected “Hamas militants,” most of them junior, for assassination” with limited

¹⁴ MIT Technology Review, *Predictive policing algorithms are racist. They need to be dismantled*; <https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/>.

¹⁵ LSE Human Rights Blog, *Predictive policing in India: Deterring crime or discriminating minorities?* <https://blogs.lse.ac.uk/humanrights/2021/04/16/predictive-policing-in-india-deterring-crime-or-discriminating-minorities/>; NBC News, *Predictive policing strategies for children face pushback*, <https://www.nbcnews.com/tech/tech-news/predictive-policing-strategies-children-face-pushback-n1269674>; The Markup, *Predictive Policing Software Terrible At Predicting Crimes*, <https://themarkup.org/prediction-bias/2023/10/02/predictive-policing-software-terrible-at-predicting-crimes>.

¹⁶ Riley Simmons-Edler, Ryan Paul Badman, Shayne Longpre, Kanaka Rajan, *Position: AI-Powered Autonomous Weapons Risk Geopolitical Instability and Threaten AI Research*, <https://proceedings.mlr.press/v235/simmons-edler24a.html>; Catherine Caruso, *The Risks of Artificial Intelligence in Weapons Design*, <https://hms.harvard.edu/news/risks-artificial-intelligence-weapons-design>.

verification by a human, resulting in mass killings of Palestinians.¹⁷

Recommendation 3: Mandate transparency for all public sector use cases of artificial intelligence & automated decision-making (AI & ADM) systems, including through public registers.

We welcome the focus on trustworthiness and transparency and the recognition in the draft Strategy that transparency and explainability are necessary “to foster trust and enable informed decision-making.”¹⁸ Trust is considered key to “unlocking AI’s true potential.”¹⁹ Trust has to be earned through demonstrated and consistent public openness and frameworks which empower people not just to use technology but to understand, question, measure, and shape it.

When deployed in the public sector and particularly with respect to essential services, use of AI or ADM can have serious consequences for people’s lives, as illustrated by the examples in previous sections. Transparency is essential for achieving the goal of public awareness and AI literacy.²⁰ Awareness and education must not simply encourage adoption or seek to make AI use accepted but must enable all people to understand how AI is being used. Awareness must not be limited to students or groups who are being trained to use AI, but must include the general public to allow them to understand how and what AI is being used to affect their lives and environments. This also promotes the principle of inclusivity.

Transparency which promotes awareness and empowers people will enable trustworthiness. Skepticism and resistance against the imposition of AI applications must not be seen as a lack of understanding or a “threat”. Efforts must be made to understand how AI will affect communities, including in their own perception and understanding, and whether there is a real need for the AI application.

Transparency in procurement is a key tool for promoting rights-respecting AI. A public AI register is a publicly-available database which contains information about the use of AI or machine learning or automated decision making by public authorities. For example, the cities of Helsinki and Amsterdam have created AI registers.²¹ Each level of government should disclose their use of AI and ADM as a starting point for people to make informed decisions. The national strategy must require a mandatory proactive disclosure scheme for all public sector entities deploying AI & ADM systems.

The public AI register should disclose information about the use of the AI system, including:

- All the AI and ADM systems being used by the government, at staged including development, testing, and deployment;

¹⁷ For more on the extreme human rights violations facilitated by the use of AI, please see “[Artificial Genocidal Intelligence: how Israel is automating human rights abuses and war crimes](#)”.

¹⁸ Ethical and Governance Considerations, page 45 of the draft Strategy.

¹⁹ <https://www.weforum.org/stories/2020/08/consumer-trust-ai-potential/>.

²⁰ Table 2: Sri Lanka’s Roadmap for AI Excellence, page 19 of the draft Strategy.

²¹ Natalia Modjeska, *AI registers: finally, a tool to increase transparency in AI/ML*, <https://towardsdatascience.com/ai-registers-finally-a-tool-to-increase-transparency-in-ai-ml-f5694b1e317d>.

- The specific purpose of using the system;
- Who is affected by the system and in what way;
- Whether the AI or ADM system is used to make any decisions about people, and if so, the extent of human control and accountability for the final decision, and contact information for redressal in case of errors; and
- Whether the AI or ADM system uses people’s personal data, and if so, the legal basis for such usage, the options to opt-out of having their personal data processed, and contact information for redressal in case of lack of consent or legal basis.

The public AI register should also disclose information about the AI system itself, including:

- An explanation of the AI or ADM model, including the data and algorithm used;
- Who has developed the AI or ADM model; and
- Human rights and other impact assessments conducted before deployment of the model, and the results of those assessments.

The Sri Lankan Parliament should enact a law or amend existing laws to require public sector entities at all levels to mandatorily and proactively disclose when they are developing or deploying an AI or ADM system. The obligation must fall on the person or official responsible for the AI or ADM system to provide information about the system and to answer questions about its development or deployment.

Recommendation 4: Protect privacy & people’s ownership of their own data against use by AI & ADM systems.

We strongly support the short-term goal of developing a data governance framework for a strong foundation for AI.²² We also welcome the acknowledgement in the draft Strategy that “AI systems should be appropriately transparent and explainable to foster trust and enable informed decision making” and the commitment that Sri Lanka “shall establish robust ethical standards, privacy measures, and security protocols in line with international frameworks to create a trustworthy AI environment” and “will ensure transparency in decision-making processes, respect individuals’ privacy rights, and uphold principles of fairness and nondiscrimination.”

However, the **draft Strategy’s goal of “leveraging data as a strategic asset” will infringe people’s right to privacy unless privacy is made a fundamental consideration in the development of AI.** Artificial intelligence applications usually depend on large amounts of high-quality data in order to run. This entails inevitable clashes with the fundamental human right to privacy and the values of data protection. With the **Personal Data Protection Act, 2022 (SLPDPA)**, Sri Lanka has a strong foundation on which to build privacy-protecting AI systems.

Under Section 33(p) of the SLPDPA, the Data Protection Authority is empowered to make rules to govern the “use of personal data for automated decision making”. We welcome the acknowledgement in the draft Strategy that the Data Protection Authority must be involved in AI

²² Table 2: Sri Lanka’s Roadmap for AI Excellence, p.19 of the draft Strategy

regulation, and that any authority set up to oversee AI development and regulation must also coordinate with the Data Protection Authority on AI rules such as the ones under Section 33(p). Such strategies for seamless administration are crucial to ensure effective enforcement. The national strategy must ensure that AI deployment does not become a barrier to the exercise of fundamental rights, and that people's personal data is protected against any unreasonable, non-consensual, and unauthorised use for development of artificial intelligence systems and automated decision-making.

Another limitation in the SLPDPA is the absence of an assured right to explanation, which undermines the draft Strategy's assurance of explainable AI systems. Under Section 18 of the SLPDPA, a person has the right to request a review of an automated decision, subject to conditions and multiple exceptions. This is insufficient for transparency and explainability in AI and ADM systems.

Recommendation 5: Prohibit the use of automated processes in decision-making which has a legal or significant effect on any person or group, permitting people to oppose automated decision-making in such cases.

The PDPA only provides a right to request a review, which may be rejected by the entity making the decision and the authority under the Act. There is no right to require human decision making or review, and for such decisions to be based on written, understandable reasoning. In the public sector, where decisions directly affect people's rights and living conditions, automated decision-making or any other decision-making which involves the application of artificial intelligence to personal data, particularly biometric data, cannot be a complete substitute for human consideration, reasoning, and verification. In comparable data protection legislations, for example in the UK's Data Protection Act, 2018 and the EU's General Data Protection Regulation, people have a statutory right not to be subject to a decision based solely on automated processing when such decision has a legal or significant effect on that person.²³

Recommendation 6: Expand the right to request an explanation to decisions involving significant automation and limited human intervention.

The right to request a review is only applicable when a decision is (1) "based solely on automated processing," and (2) has or is likely to create an "irreversible and continuous impact" on statutory rights of the person to whom the data belongs. This excludes decisions which are based in part on automated processing, which may still be affected by the biases and inaccuracies of these systems. The law must cover cases where a decision is made largely and not just solely on the basis of automated processing and involves limited human intervention. For example, recently it was revealed that the algorithm being used to detect welfare fraud in the UK was biased according to people's age, disability, marital status and nationality. Although "the final decision on whether a person gets a welfare payment is still made by a human," a proper assessment of how the algorithm affected the final decision has not been made.

²³ <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>; <https://gdpr-info.eu/art-22-gdpr/>.

Recommendation 7: Mandate regular public consultation on application of AI to sectors where people’s rights are impacted and establish mechanisms for continuous feedback on applications.

To truly involve citizens in shaping Sri Lanka’s AI journey, it is essential for there to be dialogue between the people and the authorities, based on transparency and awareness of the implications of AI and ADM systems on people’s lives and environment. There should be a dedicated office for public engagement within any AI centre or central body which is set up, which is responsible for dialogue regardless of which department or agency of the government may be involved in the development or deployment of any AI or ADM application.

The mechanism for engagement must:

- Allow for continuous feedback rather than only one-time or time-limited windows for feedback;
- Have a concrete follow-up protocol and assurance of consideration and response from the government; and
- Permit people to give feedback in multiple languages and formats (for e.g. video, text, audio) to make it accessible.

Recommendation 8: Create a meaningful framework for corporate and platform accountability.

The private sector has been at the helm of much of the innovation and deployment surrounding AI models. As governments grapple with the application of existing frameworks to new AI systems, and the demands for new regulatory mandates, there is a significant lack of accountability from the private sector which already has several AI-driven products in the market.

The private sector is and will remain a major player in the AI domain, and as such, it is imperative that a clear and effective legal framework be established to ensure corporate accountability in respect of the development and implementation of AI models. An accountability framework for this purpose should require public consultation, impact assessment studies, periodic reporting for transparency, public scrutiny, and period review.

Conclusion

We thank you for the opportunity to participate in this consultation. We hope that the Committee will undertake further public consultation after review of comments from all stakeholders, including through public meetings. We remain available for any clarification or queries in relation to this feedback, and any other further assistance.

Yours sincerely,

Shruti Narayan
Asia Pacific Policy Counsel
shruti@accessnow.org

Namrata Maheshwari
Senior Policy Counsel
namrata@accessnow.org

Raman Jit Singh Chima
Senior International Counsel and Asia Pacific Policy Director
raman@accessnow.org

Access Now | <https://www.accessnow.org>