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Artificial intelligence and automated decision- making in welfare policies

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Introduction

Artificial intelligence and automated decision-making in welfare policies

The use of artificial intelligence and big data for automated decision-making in welfare policies is on the rise. On the one hand, there are arguments in favor of the application of artificial intelligence as a way to improve the effectiveness and efficiency of governmental action in contexts such as fraud detection, provision of welfare benefits, and other core services such as medical services. On the other hand, the implementation of these technologies (the so-called digital welfare states) raises concerns about various key areas, such as the infringement of citizens' privacy rights, and potential problems of bias and discrimination towards specific individuals and groups. There are also accountability problems associated with the use of individual data when systems are developed without consultation, operated secretly, and without adequate oversight. Against this backdrop, research and practice points to algorithms being biased against vulnerable groups, such as low-income people, migrants, and certain ethnic profiles.

Country Y has a population of 17 million people. The country has a Gini Inequality index score of 0.285 (0 equals complete equality, 1 equals complete inequality) and is considered a country with a high Development Index. Twenty percent of the country's population is from a migrant background, meaning that they were either born abroad or have at least one foreign-born parent. Around 55 percent of the population from a migrant background are from countries in the Global South. The majority of people with Global South backgrounds live in the four major cities in the country. In those cities, almost one in three people has a Global South background. Nevertheless, despite the legislation in place in Country Y, European Union Human Rights monitoring bodies examining racism and intolerance have raised concerns about the discrimination faced by migrants in a number of areas. Here it is interesting to note reports stating that in Country Y, the mainstream political discourse and media treatment has been strongly influenced by a xenophobic rhetoric.

Politically, Country Y is ruled by a coalition of four liberal, right-wing political parties. This coalition is led by the Prime Minister, who is the leader of a

political party with a liberal-conservative ideology. The Prime Minister has been ruling the country, with different coalitions, for three terms. The opposition in Parliament is very fragmented. Importantly, the leading opposition party is the right-wing populist party, that upholds anti-integration views (i.e. assimilationist stances towards immigration). Indeed, over the last 20 years, anti-immigration populism has become commonplace in Country Y's political discourse, as more political parties have adopted these views, and the criticism against integration policies has grown.

In Country Y, welfare fraud is estimated at 150 million euros per year. Municipalities and social security and tax bodies have detected over 744 million euros of welfare fraud over the past five-year period. This contrasts with an estimated 22,000 million euros lost to tax fraud each year. Over the last 20 years, politicians in Country Y have focused considerably on fighting welfare fraud.

In order to tackle welfare fraud, since 2003, some public bodies in Country Y have started exchanging data through a program called "system risk indication" (SyRI). SyRI is based on an algorithm designed to detect social welfare fraud. The system can currently cross-reference sensitive personal data about employment, fines, penalties, taxes, properties, housing, education, retirement, debts, benefits, allowances, subsidies, permits and exemptions, among other issues. All this data helps predict the likelihood of an individual committing benefit or tax fraud or violating labor laws. When the system profiles an individual as a fraud risk, it notifies the relevant government unit, which has up to two years to open an investigation.

Administrative reforms carried out in 2013 meant that more administrative bodies were allowed to implement SyRI. Governmental bodies with competences for data protection and the elaborating bills advised the government against this reform, as the new proposal allowed almost unlimited personal data to be collected. Nevertheless, the central government did not heed this advice and Parliament adopted the SyRI legislation without debate. As a consequence, during the previous coalition government formed of the current Prime Minister's political party and a left-wing party, SyRI was implemented by the country's central government as well as some local governments. Indeed, four local governments have supported the implementation of SyRI by providing access to data related to individuals and households living in certain neighborhoods. As a result, over 20,000 families in the

low-income and immigrant neighborhoods selected have been accused by the tax authorities of social welfare fraud. These families have been ordered to return the welfare grants they have received for childcare.

The policy entrepreneur in this case is a female migrant background lawyer who lives in one of the affected neighborhoods. She has begun to look into testimonies from families whose benefit to support their childcare costs was discontinued. She sees that, when she asks them, the families were not told why the authorities removed their childcare benefit. Together with some affected families, she wants to change this policy. Two potential strategies are being considered:

- To build up an alliance with Members of Parliament (MPs) to promote an ambitious policy reform aiming at enhancing the accountability and transparency of artificial intelligence-based policies. [\[Strategy 1\]](#)
- To make a legal complaint against the central government for violating basic human rights standards regarding individual privacy and data protection laws. [\[Strategy 2\]](#)

Which of the two strategies could best support the policy entrepreneur's goals?

[\[Once you have read the description of actors involved in the case \(see below\), select the strategy that best supports the policy entrepreneur.\]](#)

[If you choose strategy 1, go to page 8]

[If you choose strategy 2, go to page 10]

Actors

Central government

The Prime Minister (a liberal conservative) leads the central government with the support of the cabinet (Prime Minister and ministers). Forming the cabinet required almost a year, as the negotiations to form the government coalition after the last general elections took a record time (at least four parties were needed to form a majority). Currently, there are

16 cabinet ministers, all of them belonging to four different political parties with ideologies ranging from liberal conservatism to center-right.

The Ministry of Social Affairs and Employment is especially relevant in this case. During the previous government, the left-wing party that was in coalition with the current Prime Minister's political party was in charge of it. Currently, a right-wing political party representative is in charge of it. The risk calculation system (SyRI) began to be developed during the previous government, under the umbrella of this ministry. This ministry, the local governments that have asked to access the system, the tax agency and the National Welfare Bank can all access SyRI.

Local governments

These are four local government systems that are supporting the implementation of SyRI by providing datasets of information related to certain neighborhoods. The local governments represent large and medium-sized cities in Country Y. Their councils are elected every four years and, overall, they represent the many political ideologies present in the Parliament (liberal conservatives, left-green party and left-wing parties hold most of the seats in the elected councils).

These four local governments are users of SyRI. They asked the Ministry of Social Affairs and Employment to access the system and use it to inspect low-income neighborhoods. According to them, one goal of using SyRI for specific neighborhoods is to improve the living standards and social cohesion there.

Right-wing parties

These are Christian Democrat and regionalist political parties that have one third of the seats in the Parliament. Out of the 16 political parties in Parliament, this set of actors brings together those in favor of the fight against welfare fraud. Some of them support the current government. In parallel, there are some Members of Parliament (MPs) that belong to this group that are concerned about the threats posed by SyRI to individual civic and political rights.

Conservative liberal parties

This actor brings together two liberal parties that have one third of the seats in Parliament. They are currently both in government, and the Prime Minister

is the leader of one of them. While they are both in favor of implementing SyRI, they each had different roles while it was being developed: one political party was already governing the country; the other had yet to enter the government coalition that is currently running Country Y.

Right-wing populist party

This political party is the second one in Parliament by number of seats. Its ideological position can be characterized as far right, notably regarding its xenophobic views against immigration. It has given support to the current Prime Minister in forming governments in the past (but has never been part of the government itself).

Its far right stance has kept it isolated from other parties for forming government coalitions, and it currently does not have the power to lead any legislative initiatives: However, this political party has had considerable capacity to impact public discourse and is perceived as a challenger for the position of most voted-for party in Country Y.

Left-wing party

Currently, the left-wing party (social democracy, labor) does not have a strong position in Parliament. However, it used to be a strong political party at the time SyRI was developed, and was the party with the second largest number of seats after the Prime Minister's political party. These two political parties had formed a government coalition during the previous legislative period.

Green and other minority left-wing parties

This actor represents political parties with green and left-wing ideological positions. It is the opposition to the government from the left, even though it does not have enough power to pass new laws. The parties involved have always been in the opposition. Their overall approach to SyRI is one that criticizes the use of opaque decision-making mechanisms based on artificial intelligence.

Policy entrepreneur: female lawyer from a migrant background

The policy entrepreneur is a female lawyer from a migrant background who lives in one of the affected neighborhoods. Four years ago, she started representing families and asking the tax authorities about their motivations behind the letters demanding the families return the childcare subsidies they had been given.

Accused of tax fraud, these families, mostly from Moroccan and Turkish backgrounds, stopped receiving the welfare support and were asked to justify the expenses and their financial situations with receipts, proof of payments to nannies and employment contracts. After it proved impossible to obtain information from the tax authorities justifying the accusations of fraud, the lawyer started mobilizing together with other actors.

Local and community-based civic associations

This set of actors is made up of eight local civic and ethnic community groups. The local civic and ethnic community groups are connected to the most affected neighborhoods and policy beneficiaries (families).

Civil rights associations

These are two national NGOs, focusing on civil rights. One of them aims to preserve and promote the right to privacy and confidentiality. The other one is an NGO that focuses on the protection of traditional civil rights. They feel concerned by the case and interested in it since it is related to their specialization areas.

National trade union

Majority national trade union in Country Y. It has a strong social-democrat orientation and historical links with the left-wing party. Its most important function is to carry out collective bargaining negotiations on wages and secondary working conditions with employers' federations.

It advises the central government through the Council of Social Economic Affairs, on which other trade unions, employers' organizations and government-appointed experts also have seats. Importantly for this case, the trade union also helps members individually when legal action is required.

That is, trade union lawyers help members with questions about employment law, pensions, health and safety, personal injury, debt collection processes and social security. Consequently, the trade union is representing some of its members who are affected by the policy.

National lawyers association

This is a lawyers' organization that works to promote and protect human rights in Country Y. It has over a thousand volunteers. Its members discuss legislative proposals and government policy, and write shadow reports for international human rights committees. They have dealings with politicians, policymakers, journalists and human rights organizations at both the national and international level.

The organization is Country Y's chapter of an international legal NGO of that defends the rule of law and respect for human rights worldwide by using its legal expertise to develop and strengthen national and international justice systems.

UN Special Rapporteur on extreme poverty and human rights

Their mandate is based on the fact that many human rights are denied to those living in extreme poverty. The Human Rights Council requests the Special Rapporteur to examine and report back to member states on initiatives taken to promote and protect the rights of those living in extreme poverty, with a view to helping eradicate it. The UN Special Rapporteur expresses their concerns about SyRI.

Media group

Two private media instruments especially help increase the public debate about the case: a large TV station and a long-standing newspaper based on the protestant tradition.

Ombudsperson body

In Country Y, this national body has over one hundred employees. Its representative has the responsibility to help individual citizens who are experiencing problems with the public administration and to advise the public administration on how to improve its workings. When appropriate, the national

ombudsperson responds to problems or complaints by launching an investigation. By law, all parties concerned have to cooperate with research carried out by the national ombudsperson.

National courts

Judicial system in Country Y: the judicial system is divided into 11 districts, each with its own court. In this case, we are referring to a first instance court that is located in one of these 11 districts. In addition, Country Y has a Supreme Court, but it only has the power to annul decisions made by the courts of appeal (first instance courts) when they have applied the law incorrectly or if the decision is insufficiently argued.

Select the strategy that best supports the policy entrepreneur' goals:

- Demanding an administrative reform to achieve greater accountability [\[Strategy 1\]](#) [\[Go to page 8\]](#)
- Making a legal complaint against the state for implementing the algorithmic benefit fraud risk system [\[Strategy 2\]](#) [\[Go to page 10\]](#)

Strategy 1 – Demanding an administrative reform to achieve greater accountability

The lawyer, together with other actors, starts to look for political support in order to promote an ambitious reform to achieve greater accountability regarding the use of data and procedures behind SyRI. One of the main objectives is to end the unfair treatment that many families are receiving. They are being given no information about the evidence behind the suspension of their childcare subsidies and the tax authorities' demands for them to pay back any benefits already received. In addition, this measure aims to prevent similar biases in the use of artificial intelligence in other policies. As well as gathering information about the impact SyRI is having on families in certain low-income neighborhoods, community actors and lawyers have started asking for meetings with local politicians, Members of Parliament, and journalists. Despite the range of political parties within the Parliament and the difficulties encountered caused by the current parliamentary situation in passing initiatives, they hope they can build up alliances with a significant number of political parties.

Will Parliament be able to make the central government disclose adequate information about the application of SyRI in the four cities and take on accountability for it?

A. Who will **oppose demanding greater accountability from the central government** regarding the application of the SyRI system?

B. Who will **support demanding greater accountability from the central government** regarding the application of the SyRI system?

[Select those actors that you think will oppose the initiative and those who will support it.]

[Go to Appendix A on page 15 to see the list of actors that support and that oppose the demand, as well as the distribution of resources between supporters and opponents.]

[Once you have correctly selected the actors as opponents or supporters of this strategy, go to page 9.]

The balance of political resources is negative (-230). The strategy –which is based on obtaining general public and political support, and not only legal-based support– is not able to stop the SyRI policy that is being implemented. Likewise, the central government does not yet feel sufficiently pressured to provide information in order to defend their position regarding the lawyer’s clients.

In particular, the main problem behind this strategy is the difficulty of building majorities in Parliament. This is partly due to the fact that some of the political parties currently not in government gave support to the program in the past. Some of them were in charge of ministries and local governments while SyRI was being designed and implemented in the low-income neighborhoods.

Despite not being successful in their demands for greater accountability and to stop the policy being

implemented, when the lawyers and civic groups start contacting the media and politicians, to some extent they are able to have the problem discussed at the political level. In addition, they expand and create new networks of support among key actors (e.g., lawyers’ associations and trade unions). Some of the successes of this campaign include raising awareness and provoking public discussion about the case in the media (as well as on popular TV talk shows). Questions are also posed to the central government by some MPs that are especially concerned by the issue of SyRI potentially violating rights to privacy. Moreover, another outcome of this strategy is that the lawyer obtains crucial data from a public servant, showing that there was no evidence that the families she was defending had committed welfare fraud. This meant that the automated decision-making process had made mistakes and was not a fail-safe system at all.

Strategy 2 – Making a legal complaint against the state for implementing the algorithmic benefit fraud risk system

An action group formed by the lawyer, local and community-based associations, a national trade union, civil rights associations and the national lawyers' association presents a formal complaint to a (first instance) district court. They ask the court to rule that parts of the SyRI legislation are incompatible with the right to privacy (as protected in Article 8 of the European Convention on Human Rights and in other human rights treaties). The basic purpose of Article 8 is to protect individuals against a public authority's arbitrary interference regarding their private and family lives, home, and correspondence. Here, while all the litigants (that is, including Country Y's administration) agree upon the idea that SyRI interferes with the right to privacy, the question is whether the interference is justified or not.

Will the legal complaint stop the policy from being implemented?

- A. Who will **oppose the legal complaint against Country Y for implementing the System Risk Indication?**
- B. Who will **support the legal complaint against Country Y for implementing the System Risk Indication?**

[Select those actors that you think will oppose the initiative and those who will support it.]

[Go to Appendix B on page 15 to see the list of actors that support and that oppose the demand, as well as the distribution of resources between supporters and opponents.]

[Once you have correctly selected the actors as opponents or supporters of this strategy, go to page 11.]

The balance of legal resources is positive (+330) and the strategy succeeds. The national court rules that SyRI is unlawful because it does not comply with the right to privacy enshrined under the European Convention of Human Rights. The court agrees with the central government that the fight against fraud is crucial, and that new technologies such as SyRI should be used, and generally serve a legitimate purpose. However, the court points out that the development of new technologies means that the right to have one's private life respected, which includes the right to have one's personal data protected, is increasingly important, and that the absence of sufficient and transparent protection might have a terrible impact among the population. The court reiterates that Country Y has an obligation under Article 8 of the European Convention of Human Rights to find a fair balance between interfering with the right for an individual's private life to be respected, and the benefits of the using new technologies to prevent and combat fraud. The court finds that SyRI legislation is insufficiently transparent and verifiable, that it breaches the principle that personal data must only be collected for specified, explicit and legitimate purposes, not further processed in a manner that is incompatible with those purposes, and that it should not cause any risks of discrimination. Therefore, it is not a valid system to be used for welfare fraud detection. The ruling halts SyRI being used.

Learning objectives

In terms of policy entrepreneurship, the complaint shows how strategic litigation, cooperation between digital rights and welfare rights groups, the involvement of a UN mechanism, and the interaction between (local and international) activists and the media can produce changes in policy implementation.

The various impacts caused by the court's ruling are important, at different levels. For instance, nationally, the cabinet resigns. Internationally, it is seen as an important case, since it might challenge governments around the world that use artificial intelligence and risk modelling in administering welfare benefits and other core services, and raises awareness of the need to oversee and regulate this practice.

Appendix

A) Distribution of actors – Strategy 1

Actors who oppose demanding greater accountability (resources in parenthesis):

- Central government (political: 200; economic: 200; knowledge: 0; legal: 200)
- Conservative liberal parties (political: 150; economic: 0; knowledge: 0; legal: 50)
- Left-wing party (political: 20; economic: 0; knowledge: 0; legal: 0)
- Local governments (political: 100; economic: 100; knowledge: 0; legal: 0)

Actors who support demanding greater accountability (resources in parenthesis):

- Policy entrepreneur (political: 0; economic: 0; knowledge: 5; legal: 5)
- Right-wing parties (political: 70; economic: 0; knowledge: 0; legal: 50)
- Green parties (political: 20; economic: 0; knowledge: 0; legal: 0)
- Local civic associations (political: 0; economic: 0; knowledge: 0; legal: 5)
- National trade union (political: 0; economic: 0; knowledge: 10; legal: 10)
- Civic rights associations (political: 0; economic: 0; knowledge: 0; legal: 5)
- National lawyers association (political: 0; economic: 0; knowledge: 100; legal: 100)
- Ombudsperson body (political: 0; economic: 0; knowledge: 100; legal: 150)
- UN Special Rapporteur (political: 50; economic: 0; knowledge: 50; legal: 50)
- Media group (political: 100; economic: 0; knowledge: 0; legal: 0)

Inactive actors:

- Right-wing populist party
- National courts

Note about resources.

Political resources refer to the amount of consensus an actor is able to achieve. Economic resources refer to the ability to mobilise money or any form of wealth in order to modify other actors' behaviour. Knowledge is the availability of important information for the decisional process. Finally, legal resources refer to the advantages or disadvantages attributed to particular actors by legal norms and legislative and administrative authority's decisions. In Strategy 1, political resources are the most crucial for the public figure to promote her initiative.

B) Distribution of actors – Strategy 2

Actors who oppose the legal complaint (resources in parenthesis):

- Central government (political: 200; economic: 200; knowledge: 0; legal: 200)
- Conservative liberal parties (political: 150; economic: 0; knowledge: 0; legal: 50)
- Left-wing party (political: 20; economic: 0; knowledge: 0; legal: 0)
- Local governments (political: 100; economic: 100; knowledge: 0; legal: 0)

Actors who support the legal complaint (resources in parenthesis):

- Policy entrepreneur (political: 0; economic: 0; knowledge: 10; legal: 10)
- Right-wing parties (political: 100; economic: 0; knowledge: 0; legal: 50)
- Green parties (political: 20; economic: 0; knowledge: 0; legal: 0)
- National courts (political: 0; economic: 0; knowledge: 200; legal: 200)
- National lawyer association (political: 0; economic: 0; knowledge: 100; legal: 100)
- Civil rights associations (political: 0; economic: 0; knowledge: 0; legal: 5)
- Local civic associations (political: 0; economic: 0; knowledge: 0; legal: 5)
- National trade union (political: 0; economic: 0; knowledge: 10; legal: 10)
- Ombudsperson body (political: 0; economic: 0; knowledge: 100; legal: 150)
- UN Special Rapporteur (political: 50; economic: 0; knowledge: 50; legal: 50)
- Media groups (political: 10; economic: 0; knowledge: 0; legal: 0)

Inactive actors:

- Right-wing populist party

Note about resources.

Political resources refer to the amount of consensus an actor is able to achieve. Economic resources refer to the ability to mobilise money or any form of wealth in order to modify other actors' behaviour. Knowledge is the availability of important information for the decisional process. Finally, legal resources refer to the advantages or disadvantages attributed to particular actors by legal norms and legislative and administrative authority's decisions. In Strategy 2, legal resources are the most crucial for the public figure to promote her initiative.

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Case studies available

- El cas Pirelli-Mar. (Ref. CL-2022-01)
- Instituto Mental de Santa Cruz. (Ref. PA-2022-01)
- School meals for vulnerable children. (Ref. PCUBE-2022-01)
- Artificial Intelligence and automated decision making in welfare policies. (Ref. PCUBE-2022-02)

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