

## / CIVIL SOCIETY STATEMENT

# Negotiations of Council of Europe [Framework] Convention on AI, Rule of Law, Human Rights and Democracy<sup>1</sup>

4th July 2023

Recalling the previous Civil Society Statement released before the start of the negotiations,<sup>2</sup> the undersigned civil society organizations:

- **Reiterate** their support for the development of a Convention on Artificial Intelligence (AI) by the Council of Europe that effectively safeguards human rights, protects democratic institutions, and upholds the rule of law.
- **Underscore** the urgency of this Convention as the challenges arising from the design, development and deployment of AI systems increase.<sup>3</sup> In the last several months, there have been dramatic changes in country positions that underscore the need to move quickly to enact a global Convention for the governance of AI. There is now a global demand from society as well as from the public and private sector for new rules to govern AI.
- **Deeply regret** that the negotiating States have chosen to exclude both civil society observers and Council of Europe member participants from the formal and informal meetings of the drafting group of the Convention. This undermines the transparency and accountability of the Council of Europe and is contrary to the established Council of Europe practice and the Committee on AI (CAI) own Terms of Reference,<sup>4</sup> which instructs the CAI to “contribute [...] to strengthening the role and meaningful participation of civil society in its work”.

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<sup>1</sup>A consolidated working draft of the Framework Convention is expected to be made available to the general public on the website of the Council of Europe Committee on AI by 7th July 2023.

<sup>2</sup> Civil Society Statement on the Council of Europe Convention on AI (Jan 28, 2023)

<https://algorithmwatch.org/de/wp-content/uploads/2023/01/CSO-COE-CAI-Statement-28012023-2.pdf>

<sup>3</sup> CAI, List of decisions in 6th Plenary: <https://rm.coe.int/cai-2023-14-list-of-decisions/1680ab71a5>

<sup>4</sup> CAI Terms of Reference : <https://rm.coe.int/terms-of-reference-of-the-committee-on-artificial-intelligence-for-202/1680a74d2f>

- **Call on** the CAI drafting group to prioritize the following objectives:
  1. **Establish a transversal, binding legal instrument without blanket exemptions:**

The Committee of Ministers Terms of Reference<sup>5</sup> and the adopted final recommendations by the Ad Hoc Committee on AI (CAHAI) clearly establish the scope of the future Convention,<sup>6</sup> yet the CAI is currently considering limitations contrary to this mandate. The Convention should be based on a broad definition of AI, including all algorithmic systems used to support, affect, or make decisions about human beings and cover AI systems designed, developed and deployed by both public and private entities. The Convention should not exempt AI systems for national defence or national security.
  2. **Reflect the internationally established “Rights” as Rights and not as “Principles”:**

While including general common principles for AI regulation as indicated in the CAI Terms of Reference, the Convention should respect the rights established by other Conventions and not reformulate them as mere principles. This would allow the State Parties to interpret them as mere guidelines for action on the basis of their domestic law, without the corresponding obligations that the international legally binding human rights framework entails.
  3. **Unequivocally assert the primacy of international human rights law over national domestic law:** The Convention should not limit itself to setting principles and requirements for each State Party that they will have to implement in accordance with its domestic law. This undermines one of the essential purposes of an international Convention, that is, to establish a common position, which will be undermined if countries follow their own national laws.
  4. **Ensure mandatory impact assessments on human rights, democracy and rule of law for AI systems deployed by public entities or otherwise presenting a high level of risk:** Mandatory impact assessments focusing on the impact on human rights, democracy and the rule of law are key in ensuring the possibility of democratic oversight and public scrutiny.
  5. **Provide that impact assessments on human rights, democracy and rule of law for AI systems are publicly accessible:** The Convention should include a clear obligation for a registry of AI systems used by public authorities or otherwise presenting a high level of risk. This mandatory registry should contain essential information about the system such as its purpose, the actors involved in its development and deployment, basic information about the model, the performance metrics and the result of the impact assessment(s).

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<sup>5</sup> CAI Terms of Reference : <https://rm.coe.int/terms-of-reference-of-the-committee-on-artificial-intelligence-for-2022/1680a74d2f>

<sup>6</sup> CAHAI, Possible elements of a legal framework on artificial intelligence, based on the Council of Europe's standards on human rights, democracy and the rule of law (Dec 3, 2021) <https://rm.coe.int/cahai-2021-09rev-elements/1680a6d90d>

6. **Establish clear guidelines and criteria for prohibitions of unacceptable AI systems:** Each Party to the Convention should provide for a moratorium or ban on certain applications of AI systems where such measure is considered appropriate and necessary. Parties should develop guardrails to govern the deployment of AI systems based on democratic values and the protection of human rights and fundamental freedoms.
  
7. **Ensure that effective redress mechanisms and procedural rights are not restricted:** The right of access to an effective remedy is required by the European Convention on Human Rights (Article 13), the EU Charter of Fundamental Rights (Article 47) and the International Convention on Civil and Political Rights (Articles 2 and 14). It is also a core component of the UN Guiding Principles on the Business and Human Rights (Guiding Principles 1, 22 and 25).
  
8. **Ensure effective implementation of the Convention:** The Convention should ensure independent oversight and enforcement mechanisms at the national and Council of Europe level, with a broad mandate and powers as well as sufficient financial and staffing resources. The Convention Committee and Parties to the Convention should institutionalize cooperation with national human rights structures and include civil society participation.

Signed by:

