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9 December 2022

Volker Türk, UN High Commissioner for Human Rights
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland

Dear High Commissioner for Human Rights:

At the eve of Human Rights Day, the Center for AI and Digital Policy (CAIDP) submits this statement to you, (with a copy to the UN Tech Envoy) to recommend that the United Nations encourage countries to report on the impact of Artificial Intelligence on the fundamental rights set out in the International Covenant on Civil and Political Rights (ICCPR). This recommendation follows from the earlier work of the former High Commissioner and responds to growing concerns around the world that AI will adversely impact a wide array of fundamental rights

About CAIDP

CAIDP is a non-profit, educational organization, incorporated in Washington, DC. The mission of the Center is “to promote a better society, more fair, more just — a world where technology promotes broad social inclusion based on fundamental rights, democratic institutions, and the rule of law.”¹-CAIDP strongly supports AI policies that advance democratic values and promote broad social inclusion based on fundamental rights, democratic institutions, and the rule of law. We have also recently published the report *Artificial Intelligence and Democratic Values* which surveys the AI policies and practices of 50 countries around the world.² CAIDP currently serves as an advisor on AI policy to the OECD, the Global Partnership on AI, European Union, the Council of the European Union, UNESCO and other national and international organizations.

In our report *AI and Democratic Values*, the endorsement and implementation of the Universal Declaration of Human Rights (UDHR) constitute key metrics in assessing States’

¹ CAIDP, <https://www.caidp.org>.

² Center for AI and Digital Policy, *Artificial Intelligence and Democratic Values* (2022), <https://www.caidp.org/reports/aidv-2021/>.

public policies in the field of AI.³ The Universal Declaration of Human Rights provides the most well-known (and widely translated) statement of fundamental rights.⁴ We share your assessment that: “even where the challenges seem intractable, if the leaders in politics and society would only centre their responses on human rights, the solutions will be always within sight.”⁵

UDHR at 75 ought to tackle the challenges posed by AI if it is to remain a living instrument. As you recalled today in your Statement at the organisational session of the Human Rights Council: “Rapidly evolving technologies ... reveal new and complex challenges that we aren’t necessarily prepared for, even though some could have been predicted to some extent.”⁶ It is of the utmost importance to hold countries accountable and monitor their commitment to human rights in the digital era.

The OHCHR and AI

As AI develops, alongside opportunities, it poses global risks. As the former High Commissioner Michelle Bachelet stated, “Artificial intelligence can be a force for good, helping societies overcome some of the great challenges of our times. But AI technologies can have negative, even catastrophic, effects if they are used without sufficient regard to how they affect people’s human rights.”⁷

There is an urgent need for more human rights reporting as AI poses ever greater risks. *The Right to Privacy in the Digital Age* report⁸ detailed how AI systems rely on large data sets,

³ Ibid, at 499 (Methodology).

⁴ M. Rotenberg, *Time to Assess National AI Policies*, *Communications of the ACM*, 24 November 2020, <https://cacm.acm.org/blogs/blog-cacm/248921-time-to-assess-national-ai-policies/fulltext>

⁵ OHCHR, *Human Rights Day - Opening statement by HC Volker Türk*, 9 December 2022, <https://www.ohchr.org/en/statements/2022/12/human-rights-day-opening-statement-hc-volker-turk>.

⁶ OHCHR, *Statement of the United Nations High Commissioner for Human Rights Volker Türk at the organisational session of the Human Rights Council*, 9 December 2022, <https://www.ohchr.org/en/statements/2022/12/statement-united-nations-high-commissioner-human-rights-volker-turk>.

⁷ OHCHR Press Release, *AI Risks to Privacy Demand Urgent Action – Bachelet*, 15 September 2022, <https://www.ohchr.org/en/2021/09/artificial-intelligence-risks-privacy-demand-urgent-action-bachelet>.

⁸ OHCHR, *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General*, Human Rights Council, Forty-eighth session, 13 September–1 October 2021,

with information about individuals collected, merged, and analyzed in often opaque ways that impact on travel, housing, employment, and even criminal sentencing. The Report found that data used to guide AI systems is often faulty, discriminatory, out of date, or irrelevant. Long-term storage of data also poses particular risks, as data could in the future be exploited in, as yet, unknown ways.

In September 2021, High Commissioner Michelle Bachelet called for a moratorium on the sale and use of AI that poses a serious risk to human rights until adequate safeguards are put in place.⁹ She also called for a ban¹⁰ on AI applications that do not comply with international human rights law. Special Rapporteur Gerard Quinn made a similar recommendation about AI in the context of the UN Convention on the Rights of Persons with Disabilities¹¹ With the rapid development of technology, such as artificial intelligence, the stakes of ensuring respect for human rights have heightened.

The ICCPR

Building upon the UDHR, the International Covenant on Civil and Political Rights (ICCPR)¹² is the core international human rights treaty stipulating civil and political rights. The States parties to the ICCPR are expected to submit reports on the “measures that they have adopted in order to give effect to the rights recognized by the Covenant and on the progress made in the enjoyment of those rights.”¹³ The States parties should submit their initial reports within one year of the entry into force of the Covenant and periodic reports on each covenant rights whenever the “Human Rights Committee”¹⁴ so requests. According to the current practice of the Committee, “the periodic reports should be submitted, in general, every three to six years, depending on the urgency of the situation in the State party, the time frame in which changes in

https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session48/Documents/A_HRC_48_31_AdvanceEditedVersion.docx.

⁹ OHCHR, *AI Risks to Privacy Demand Urgent Action – Bachelet*, 15 September 2022.

¹⁰ Ibid.

¹¹ United Nations General Assembly, Report A/HRC/49/52: Report of the Special Rapporteur on the rights of persons with disabilities.

¹² The International Covenant on Civil and Political Rights, United Nations General Assembly resolution 2200A (XXI), December 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

¹³ OHCHR, *Reporting Under the ICCPR, Training Guide, Part I: Manual, Professional Training Series No. 23*, 2021.

<https://www.ohchr.org/sites/default/files/Documents/Publications/Reporting-ICCPR-Training-Guide.pdf>

¹⁴ Ibid, page 8.

practice are expected and the availability of other monitoring procedures for the State in question.”¹⁵

As of October 2009, under the simplified reporting procedure, the Committee sends the States parties a list of issues prior to reporting and considers their written replies as an initial or periodic report. A State party’s replies constitute a report for the purposes of article 40 of the Covenant.¹⁶

There is a clear interconnectedness between AI – systems, media, and the quality of democracy. How minorities, and vulnerable groups, e.g., children, people on the move, people with disabilities, are treated in policy and in practice can be a strong indicator of how human rights are respected by the government in a country. Neither should a government use AI as a manipulative and coercive-instrument nor should it accept the inequality caused by AI technology.¹⁷

AI technologies may adversely impact human rights. “The operation of AI systems can facilitate and deepen privacy intrusions”¹⁸ and “expand, intensify or incentivize interference with the right to privacy, most notably through increased collection and use of personal data.”¹⁹

¹⁵ OHCHR, *International Covenant for Civil and Political Rights*, Article 40(1).

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights#article-28>.

¹⁶ OHCHR, *Reporting Under the ICCPR, Training Guide, Part I: Manual, Professional Training Series No. 23*, 2021.

<https://www.ohchr.org/sites/default/files/Documents/Publications/Reporting-ICCPR-Training-Guide.pdf>

¹⁷ Council of Europe Commissioner for Human Rights, *Artificial Intelligence – Intelligent Politics. Challenges and opportunities for media and democracy*, (2021),

<https://rm.coe.int/council-of-europe-conference-of-ministersresponsible-for-media-and-in/1680a2c9ea>.

¹⁸ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Human Rights Council, Forty-eighth session, 13 September–1 October 2021,

https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session48/Documents/A_HRC_48_31_AdvanceEditedVersion.docx.

¹⁹ Ibid.

We have reviewed the rights set out in the ICCPR and believe that States parties should be encouraged to report on the impact of AI on **Articles 1, 9, 10, 12, 14, 17, 18, 20, 21, 22, and 26.**²⁰

Article 1 – Self-determination

AI systems can undermine or constrain human autonomy. AI technologies are used to dynamically personalize an individual's choice environments, to nudge and manipulate behavior in unprecedented manners.²¹ According to **Article 1** “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development[...]”.

States parties should assess the impact of AI on the right of self-determination.

Article 9 – Liberty and Security

AI systems can trigger interventions by the State, such as searches, questioning, arrest and prosecution, even though AI assessments by themselves should not be seen as a basis for reasonable suspicion due to the probabilistic nature of the predictions.²² Therefore, rights to privacy, to a fair trial, to freedom from arbitrary arrest and detention and the right to life can be affected. **Article 9** states that “everyone has the right to liberty and security of a person. No one shall be subjected to arbitrary arrest or detention. [...]”.

States parties should assess the impact of AI on the right to liberty and security.

Article 10 – Inherent Dignity

²⁰ International Covenant on Civil and Political Rights, United Nations General Assembly resolution 2200A (XXI), December 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

²¹ Susser, D., Roessler, B., and Nissenbaum, H. (2019). Online Manipulation: Hidden Influences in a Digital World. *Georgetown L. Techn. Rev.* 4 (1), 1–45.

²² OHCHR, *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Human Rights Council, Forty-eighth session, 13 September–1 October 2021*, https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session48/Documents/A_HRC_48_31_AdvanceEditedVersion.docx.

The Secretary-General emphasized that advances in new technologies must not be used to erode human rights, deepen inequality or exacerbate existing discrimination. He stressed that the governance of AI needs to ensure fairness, accountability, explainability and transparency.²³ According to **Article 10**, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

States parties should assess the impact of AI on the right to inherent dignity.

Article 12 – Freedom of Movement

Remote biometric recognition dramatically increases the ability of State authorities to systematically identify and track individuals in public spaces, undermining the ability of people to go about their lives unobserved and resulting in a direct negative effect on the exercise of the rights to freedom of expression, of peaceful assembly and of association, as well as freedom of movement.²⁴ Thus, the right to liberty of movement will be adversely impacted. **Article 12** states that “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence [...]”

States parties should assess the impact of AI on the right to freedom of movement.

Article 14 – Fair Trial

AI systems use algorithms to analyze large massive data sets, often biased and filled with inaccuracies, such as criminal records, arrest records, crime statistics, records of police interventions in specific neighborhoods, social media posts, communications data and travel records. “The technologies may be used to create profiles of people, identify places as likely to be sites of increased criminal or terrorist activity, and even flag individuals as likely suspects and future reoffenders.”²⁵ According to **Article 14** “all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

States parties should assess the impact of AI on the right to a fair trial.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

Article 17 – Privacy

Privacy is a fundamental human right, essential to live in dignity and security. “The operation of AI systems can facilitate and deepen privacy intrusions”²⁶ and “expand, intensify or incentivize interference with the right to privacy, most notably through increased collection and use of personal data.”²⁷ **Article 17** states “ No one shall be subjected to arbitrary or unlawful interference with his privacy [...]” recognizes the right to privacy as a fundamental human right and is a foundational right for a democratic society. AI systems have a broad range of impact on people’s lives. The right to privacy is affected when AI systems are used to flag individuals as potentially infected or infectious, requiring them to isolate or to quarantine or used for the predictive allocation of grades resulted in outcomes that discriminated against students from public schools and poorer neighborhoods.²⁸

States parties should assess the impact of AI on the right to privacy.

Article 18 – Freedom of Thought

“AI-assisted content curation done by companies with enormous market power raises concerns about the impact on the capacity of the individual to form and develop opinions, as two successive holders of the mandate of Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression have pointed out.”²⁹ As evidenced under **Article 18** that states “Everyone shall have the right to freedom of thought, conscience and religion [...]”.

States parties should assess the impact of AI on the right to freedom of thought.

Article 20 – Disinformation and Incitement to Violence

People can use AI-powered technology to facilitate the spread of disinformation or influence public debate, they can use it to create and propagate content designed to incite war, discrimination, hostility, or violence. According to **Article 20**, “any propaganda for war shall be prohibited by law [...]”.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

States parties should assess the impact of AI on disinformation and incitement to violence.

Article 21 – Peaceful Assembly

AI-assisted content curation and AI recommender systems impact the capacity of individuals to form and develop opinions. These systems “focus on maximizing user engagement while relying on insights into people’s preferences, demographic and behavioral patterns, which has been shown to often promote sensationalist content, potentially reinforcing trends towards polarization”.³⁰ This can influence provision of the right of peaceful assembly in **Article 21** that states [...] “No restrictions may be placed on the exercise of this right) to peaceful assembly) other than those imposed in conformity with the law [...]”.

States parties should assess the impact of AI on the right to peaceful assembly.

Article 22 – Freedom of Association

“Remote biometric recognition dramatically increases the ability of State authorities to systematically identify and track individuals in public spaces, undermining the ability of people to go about their lives unobserved and resulting in a direct negative effect on the exercise of the rights to freedom of expression, of peaceful assembly and of association, as well as freedom of movement.”³¹ **Article 22** states that “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests [...]”.

States parties should assess the impact of AI on the right to freedom of association.

Article 26 – Equal Protection

AI models are designed to sort and filter, profiling and categorizing people based on personal characteristics. This discrimination can interfere with human rights violating “entitlement without any discrimination to the equal protection of the law” under **Article 26**.

States parties should assess the impact of AI on the right to equal protection of the law.

³⁰ Ibid.

³¹ Ibid.

To assist States parties with the assessment and monitoring, national human rights institutions should be utilized as independent bodies. Additionally, to uphold equality and non-discrimination obligations, States should ensure transparency and accountability for public sector use of algorithmic technologies, and require independent analysis, oversight, and systems that are auditable. UN Special Rapporteur Tendayi Achiume previously made this recommendation in her human rights analysis of racial discrimination and emerging technologies.³²

We note also that the recent Country Reports on Human Rights Practices, prepared by the U.S. Department of State, include greater information about the use of technology to arbitrarily or unlawfully surveil or interfere with the privacy of individual.³³ Consistent with this and other similar efforts to recognize the growing impact of technology on the infringement of fundamental rights, and recognizing the recent work of the former High Commissioner on the specific threats posed by artificial intelligence, we urge you to update the reporting requirements under the ICCPR accordingly.

Thank you for your consideration of our views. The CAIDP offers assistance to governments for AI and digital policies to promote a better, fairer, and more just and accountable society in which technology promotes broad social inclusion based on fundamental rights, democratic institutions, and the rule of law. In this regard, we would be pleased to offer you our advice and expertise. We welcome the opportunity to discuss further and answer any inquiries you may have.

Sincerely,



Marc Rotenberg
CAIDP President



Merve Hickok
Research Director



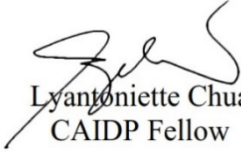
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Global Program Director

³² United Nations General Assembly. Report A/HRC/44/57, [report](#) of the Special Rapporteur on racial discrimination and emerging digital technologies: a human rights analysis

³³ U.S. Department of State, 2021 Country Reports on Human Rights Practices, April 2022, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/>.



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