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To:

Division of Foresight and Applied Science and Technology,
National Science and Technology Council
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Submission of initial inputs on preview of the draft of the "Artificial Intelligence Basic Law"

We thank the National Science and Technology Council and the Executive Yuan for the opportunity to submit comments on the preview of the draft of the "Artificial Intelligence Basic Law".

About Access Now

Access Now is an international non-profit organization 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 in our annual RightsCon summit series, in addition to operating a 24/7 digital security helpline that provides real-time, direct technical assistance to users around the world. We coordinate as part of CiviCERT (Computer Incident Response Center for Civil Society) - a Trusted Introducer accredited CERT - and are a member of the global Forum of Incident Response and Security Teams (FIRST). We have special consultative status at the United Nations.¹ The next iteration of our RightsCon summit series will take place in Taipei in February 2025.²

In the Asia Pacific region and globally, Access Now has consistently engaged with stakeholders including governments and regulatory authorities on matters pertaining to digital rights, including content governance, cybersecurity, data protection, surveillance technologies, and the interface between artificial intelligence and human rights.

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

² Ministry of Digital Affairs, *The Ministry of Digital Affairs Welcomes RightsCon to Taiwan*, 20 August 2024, <https://moda.gov.tw/en/press/press-releases/13560>.

Summary of key submissions to National Science and Technology Council in current consultation:

We welcome the proactive approach taken by the Executive Yuan of the Republic of China on the issue of the governance and regulation of artificial intelligence. We are glad to see that as part of this, the government has chosen to take a consultative approach on its lawmaking by seeking views on this preview of the draft basic law via the National Science and Technology Council.

Given the importance of Taiwan's proactive discussions around AI, governance, and human rights, as well as the global relationships between Taiwan's hardware sector, tech developers, civic tech community and others with their counterparts across the world, at the outset we recommend that future updates and consultations on this crucial issues include an English summary if possible. We also recommend that the Council and the Executive Yuan hold further consultations as this document evolves, including possible global stakeholder briefings.

This submission contains our initial inputs to the draft document made available for the consultation. We will supplement this with further analysis and recommendations, as part of our commitment to aid the National Science and Technology Council and its colleagues across government in this progressive initiative to advance regulation of AI in a manner that prioritizes human rights and the interests of stakeholders engaged in democracy.

At the outset, we wanted to summarize the approach that Access Now adopts with respect to human rights and AI, which we hope is also considered and adopted by the National Science and Technology Council and its colleagues across government. **We strongly encourage a human rights based governance approach to AI, with 'risk' interpreted to primarily mean "risk to human rights"**.

In addition to explicitly including human rights within the risk governance principle in any proposed AI governance law, Access Now also urges that policymakers focus on such frameworks **ensuring a clear, enforceable pillar around public transparency and accountability**. One form of that could be **putting in place a requirement of 'public registers' of AI systems**, at a minimum **covering those used by public authorities**.

We also strongly believe that any **AI governance legal framework must not allow uses of AI that are incompatible with human rights**, i.e. it should clearly prohibit AI development and usage contrary to human rights. Such a prohibition could be legally specified in an initial way to require that AI risks are "holistically assessed, appropriate mitigation measures are implemented, and where sufficient mitigation is not possible, that such a system is not deployed".

The following Section A provides an expanded version of our general policy and lawmaking guidance around human rights-centric regulation of AI. Section B of this submission contains an initial, working version of our feedback on certain specific sections of the preview draft law text.

Section A: Considerations for human rights-centered regulation of AI

Any attempt to regulate a technology must focus on the protection of human rights as the main and indisputable objective, with consideration for the current social reality in the country where the regulation will have an impact. Equally importantly, consider the mechanisms required to promote innovation and the development of technical competencies in the country. The quest to regulate AI often contains a premise that does not correspond to reality, namely the idea that AI technologies are not regulated in our societies because, as a relatively new discipline, public policy makers have not yet been able to address them. On the contrary, there are multiple regulations available to guide all AI system development processes (no matter what function is assigned to them) and regulations applicable in the event of harmful outcomes produced by a product or service. Personal data protection laws are an example of this, and they must be reviewed and updated to offer a safeguarding approach in line with the highest international standards, a task that is undergoing evolution and implementation in Taiwan, and that should be a priority when considering a specific regulation on AI.

Fundamental rights are placed on top in the hierarchy of norms, rights which are systematized in international instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. They introduce aspects of particular importance for considering the impact of any technological solution based on AI systems, for example, the principle of non-discrimination.

Faced with the challenge of regulating AI using a human rights-based approach, Access Now suggests considering five aspects. It should be noted that the mere enunciation of these aspects does not guarantee the quality of a legislative development, since they are minimum standards and their mere inclusion in the text of a bill may not be sufficient to guarantee respect for fundamental rights.

- I. **Regulation focused on human rights:** As Access Now advocates³, a regulatory approach focusing on the protection of human rights, as this leads to the enhancement of basic rights for potentially affected parties. In contrast, the risk-based approach involves determining the

³ Daniel Leufer and Fanny Hidvegi (17 February 2021). *The EU should regulate AI on the basis of rights, not risks*. Access Now. Available at <https://www.accessnow.org/eu-regulation-ai-risk-based-approach/>

scale or scope of potential risks in relation to the operation of AI systems under specific conditions. This is an erroneous approach that runs counter to the system of human rights, which are non-negotiable and must be respected regardless of the level of risk associated with given external factors.

Certain AI tools should not be deployed. For example, AI applications that carry out remote biometric identification, automated gender “detection” and behavioral prediction are fundamentally incompatible with the exercise and protection of fundamental rights. Framing the problem in terms of risks encourages the idea that we could mitigate them by introducing safeguards or ethical guidelines, which is simply not possible since these systems inherently undermine our rights and dignity.

- II. **Transparency:** A regulation on high-risk AI systems should incorporate requirements for their transparency before they are made available. The elements of transparency should include, among others, information regarding the quality of the data sets used, the technical documentation of the system, the communication of information to users, who should be able to interpret the system’s output information, regardless of whether it affects them adversely, as well as information regarding the context in which such systems are deployed or used. These systems must also be designed in such a way that their operation can be monitored by natural persons, operate consistently throughout their life cycle, and exhibit levels of accuracy, robustness, and cybersecurity in accordance with the generally recognised state of the art. To ensure such transparency, an appropriate mechanism involves creating a public registry that contains all this information, in addition to information on the relevant supplier, which must be managed and updated throughout the entire life cycle.

- III. **Efficient monitoring processes, in particular impact studies on fundamental rights:** It is important for any future law to provide tools to develop effective governance mechanisms for the protection of fundamental rights, in particular impact studies on fundamental rights, which should be carried out before and during the implementation of any AI system, i.e. throughout its life cycle. In turn, periodic reviews of these studies will be required as the setup and scope of the system evolves. To generate optimal mechanisms for these reviews, there should be broad and inclusive social participation so that the identification and mitigation of risks considers the different perspectives of the people who will be affected by the systems, including those whose voices are not normally heard. Typical risks include the presence of biases in the data sets used to train an AI system, as well as the fairness and explicability of the

model. The identification of impacts may include aspects related to justice, and the economic interests, health and welfare of the populations potentially affected by a proposed system.

Still, Access Now cautions against adopting a simplistic high-risk-low-risk binary approach and encourages the development of clear and consistent criteria for determining when an AI system has a significant effect on individuals, specific groups or society as a whole. Further guidance on strategies and standards for conducting these impact assessments can be found in the Access Now document entitled “Human Rights Impact Assessment for AI: Analysis and Recommendations”⁴.

- IV. **Enforcement and capacity to apply sanctions:** There is no point in defining rights and duties if there is no structure to ensure that the regulation “has teeth”, i.e. that the necessary mechanisms are in place to oversee the development and deployment of the systems in an effective manner. Therefore, in a regulation on AI technologies, adequate control mechanisms should be provided with the participation of civil society organizations, the private sector and academia with proven technical knowledge and experience, as well as people from different disciplines, such as computer science, administrative law, and philosophy.

- V. **Localized analysis:** An AI system that does not have a detrimental impact in one territory could have a negative impact in another, depending on its particular structure of social life, economic conditions and the challenges presented by each scenario. In our region this is particularly relevant, especially in view of the history of structural inequalities or deeply rooted discriminatory practices in many countries. Therefore, any analysis of an AI application must consider the particular context in which it will be deployed. This is why Access Now reiterates the need to include people from different backgrounds, including local civil society and from different specializations, including the social sciences.

⁴ Brandie Nonnecke and Philip Dawson (2022). *Human Rights Impact Assessments for AI: Analysis and Recommendations*. Access Now. Available at https://www.accessnow.org/wp-content/uploads/2022/11/Access-Now-Version-Human-Rights-Implications-of-Algorithmic-Impact-Assessments_-_Priority-Recommendations-to-Guide-Effective-Development-and-Use.pdf

Section B: Initial inputs on specific parts of current preview draft text of artificial intelligence basic law

In the current preview draft text, Access Now supports the approach taken in codifying seven principles that will be applied by the government in the research, development, and application of AI in the form of **Article 3**. It would be helpful if the Council can further explain how these principles will be applied with respect to stakeholders beside government agencies directly, including the regulatory function of the government on private sector and other non governmental actors.

We take note of the AI risk classification mandate provided to the Ministry of Digital Affairs (MODA) in **Article 10 of the Draft**, including the guidance that it should refer to international standards and practices on AI risk classification. We believe that this should be further developed; this text provides a clear opportunity for Taiwan policymakers to (1) define risk to include risk to human rights, and (2) require a legal obligation to mitigate such risks and mandate that if such risks cannot be mitigated, such systems be prohibited from deployment.

We also support the explicit linkage made in **Article 14** of the draft text around the importance of coordination between personal data protection regulation and the governance of AI research, development, and application. By explicitly clarifying that the government agency tasked with data protection regulatory oversight - the National Development Council - is required to assist other government actors in unnecessary collection, processing, or use of personal data in an AI context, the legal framework will help provide regulatory certainty and ensure immediate enforceability. We recommend that the Executive Yuan clarify the timeline for the practical rollout of this AI related data protection regulatory obligation on the National Development Council, as well as how individuals and impacted vulnerable communities would be able to bring complaints and otherwise access forms of remedy and regulatory action.

We welcome the approach being taken that the government must hold itself accountable to such AI standards, as proposed by Article 16. We again emphasize that in such assessments, government agencies should not be allowed to consider uses of AI for government business or government services that are incompatible with human rights

Conclusion:

We welcome the progressive approach taken in this current preview draft text of the AI Basic Law, including the importance laid on protecting human rights and the concerns of individuals and vulnerable communities. We look forward to further development and open discussion with civil society and other stakeholders on this critical issue.

Thanking you,

Sincerely,

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[This submission was prepared with the benefit of analysis and inputs from Daniel Leufer, Global AI Policy Lead at Access Now, and adapts previous work from our colleagues Franco Giandana Gigena and Gaspar Pisanu]