Summary Report Expert Roundtable on Costa Rica's Draft Al Bill (No. 23.919):

Insights and Recommendations for Policy Makers in Latin America and the Caribbean

Inclusive AI Governance Initiative



### **Inclusive AI Governance Initiative**

## Insights and Recommendations for Policy Makers in Latin America and the Caribbean

Summary Report Expert Roundtable on Costa Rica's Draft AI Bill (No. 23.919): We extend our gratitude to the experts from the following institutions for their invaluable contributions and insights:

- The Berkman Klein Center (BKC) at Harvard University
- The Center for Information Technology, Society, and Law (ITSL) at the University of Zurich
- The Department of Communications and Media Research (IKMZ) at the University of Zurich
- The Institute for Technology & Society (ITS)
- The International University of Catalonia
- The Massachusetts Institute of Technology (MIT)
- The Nordic Centre for Internet and Society at BI Norwegian Business School
- Rice University
- The TUM Think Tank at the Technical University of Munich (TUM) and members of the TUM Generative AI Task Force
- The University of Chile

### Authors:

Armando Guio and Kirsten Müller-Daubermann July 2024

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### I. INTRODUCTION

Various countries are currently grappling with the challenge of crafting regulatory policy for artificial intelligence (AI). The definitive approval of the European AI Act in 2024 has sparked even more interest in this area, and increased the sense of urgency to act. Many regulatory proposals for AI are now emerging globally, particularly notably in low and middle-income countries. For example, in the Latin American and Caribbean region, more than 50 proposals for AI draft bills have been identified.

This surge in regulatory interest is driven by the fears and risks associated with the rise of generative AI. Over the past few years, there has been growing concern about the vast amount of AI-generated information and content. Additionally, there is widespread apprehension among students and workers about the future of their professions and careers. These concerns have prompted many legislators to actively pursue legal frameworks that ensure coexistence, reduce misinformation, and protect the labor force in countries with unemployment rates that, in some cases, exceed 10%<sup>1</sup>.

While these motivations justify the concerns of legislators, they also raise questions about the type of regulations needed in these countries, particularly in three fundamental areas:

**1. Implementation Capacities:** Enacting laws does not guarantee that authorities and governments will have the capacity to enforce these regulations efficiently and achieve the desired objectives. There is a risk of producing an excessive amount of legislation that imposes demands that are not aligned with each country's context or cannot be implemented.

2. Balancing Risks and Benefits: One of the main concerns surrounding AI regulations is the uncertainty about whether AI will bring more benefits or pose significant risks to citizens in low and middle-income countries. The lack of evidence and research in many cases makes it challenging to determine if AI will benefit the population or if unregulated use of this technology will create substantial risks. **3. Impact of Information Asymmetries:** The rapid pace of innovation has forced legislators in many countries, including those with high economic development, to make decisions about technology use. This challenge is even more pronounced in low and middleincome countries, as they are not close to the technology centers and laboratories where these innovations are developed. This lack of access risks creating regulations based on significant information asymmetries and partial or inaccurate data. These asymmetries affect the control and assessment of data set training mechanisms, leading to, on the one hand, dependency structures on countries with more industrial leverage to develop data sets and technology for GenAI, and on the other hand, the lack of mechanisms to create and control GenAI systems in these countries.

Therefore, AI governance is a complex task, accelerated by current developments, and presents significant risks for low and middle-income countries.

For the Global Network of Internet and Society Research Centers (NoC), it is crucial to work with these countries to mitigate these risks, foster an inclusive conversation about AI governance addressing these specific challenges. Global AI governance initiatives will be ineffective unless there is more collaboration and support for decision-makers in low and middle-income countries working on this topic. At this watershed moment, it is therefore essential to support countries with fewer resources and also to understand the diversity of the impact of AI around the world. Only in this way can global governance of AI effectively respond to multiple needs and contexts.

In this context, and as will be elaborated later, the NoC Secretariat has decided to focus on the work being done in the Republic of Costa Rica. This country, a middle-income economy, has already developed various technological initiatives that have been influential in Latin America and the Caribbean. Like many others, Costa Rica is drafting its national AI policy and currently has three tentative draft bills underway. NoC's collaboration with Costa Rica came about due to the Congress's request for our support, and the unique elements in Draft Bill No. 23.919. This bill, introduced by Congressman Óscar Izquierdo is significant, not only for the Republic of Costa Rica, but also for the region, as similar bills are being crafted in at least 15 other countries in Latin America alone, as well as across the globe.

For this purpose, the NoC Secretariat hosted an expert roundtable offering feedback on the Republic of Costa Rica's draft bill, "Law for the Responsible Promotion of Artificial Intelligence in Costa Rica." The roundtable discussion, which took place virtually in April 2024, focused mainly on three aspects in regard to the proposed legislation: establishing an ethical framework, emphasizing human rights protection, and inclusive development and oversight.

The aim of the gathering was to collect a series of recommendations, considering the knowledge and expertise of NoC colleagues, which will support the country in crafting the final version of the legislation. The feedback offered in this summary considers and can be applied to the Costa Rican context, but also aims to serve as a foundation for other countries crafting AI legislation to build upon.

The invitation-only, expert roundtable was conducted in accordance with Chatham House Rules in order to facilitate an open dialogue. Experts from several academic institutions around the world participated with various backgrounds, from the fields of AI governance, ethics, digital skills, digital transformation, data science and tech economics, among others. In advance of the event, roundtable participants were provided with both English and Spanish drafts of the bill, as well as the NoC's outline of objectives for contributions and recommendations for the Costa Rica legislation.

Participants were welcomed by the NoC Secretariat, Armando Guio Espanol, who provided a level-setting presentation on the background of AI legislative development in Costa Rica andthe region, set out the objectives of the roundtable discussion, and recognized the significant accomplishment already achieved by lawmakers in setting an ambitious course for AI regulation. These remarks were followed by a welcome from Professor Urs Gasser, Dean of the TUM School of Social Sciences and Technology and Rector of the Munich School of Politics and Public Policy, who further highlighted the strengths of the bill as it stands, and the areas in which the NoC could offer constructive feedback that could be instrumental to the final draft.

Participants were then greeted by Congressman Izquierdo and his legislative staff. He thanked the experts assembled for their contributions, and reiterated the desire for Costa Rica to lead in developing a human-centric framework for AI legislation. He recognized the immense scope of the work, given the complexities of understanding and situating AI regulation amidst rapid technological and social change. The Congressman concluded by saying how he and the legislative assembly looked forward to constructing policy in a collaborative way, honoring the local context while also including existing international legal and ethical frameworks.

Participants were divided into breakout rooms organized by thematic relevance to their areas of expertise, focusing on ethical frameworks, human rights protection and inclusive development and oversight. Feedback was relayed, challenges and opportunities discussed, and the event concluded with a plenary session where expert recommendations were offered related to content and implementation, which will be summarized later in this report.



### **II. BACKGROUND:** AI GOVERNANCE IN COSTA RICA

The Costa Rican legislative proposal and accompanying roundtable come at a critical moment, as developments in AI technologies and their applications rapidly increase and shape realities. Governments and organizations globally are racing to keep up with the speed of innovation, so that regulatory policy can help safeguard human-centric values alongside the impact AI is already having on societies.

Growing awareness of the need for regulation is motivating countries to act: proposals are underway in many regions, including Latin America, where Costa Rica is the ninth nation to enter into a deliberative process regarding AI legislation. However, the complexity of the topic, as well as the challenge of crafting a bill that both answers current questions while also laying a firm legal groundwork for the future - regardless of how the technology further develops - has created its own issues.

Lawmakers in Costa Rica's first attempt at an AI bill involved AI itself: a draft of legislation was written by ChatGPT. The largelanguage model (LLM) was prompted by Congressmen to "think like a lawyer" and create a bill regulating AI, according to the existing Constitution. This attempt attracted international media attention, and while the original draft received both positive and negative feedback from colleagues, the bill offered little substance or credible legal text, and according to one Congresswoman, even made up (hallucinated) facts and provisions from the Costa Rican Constitution<sup>2</sup>. These events show that it has become abundantly clear: even with the impressive functionality that AI provides, it still is not able, and should not be trusted, to regulate itself.

Congressman Izquierdo decided to step away from this proposal and draft a new version, which is the one that currently analyzed by this initiative. It is clear that this proposal led by Congressman Izquierdo is inspired by the EU AI Act, among other legislative proposals, and seeks to establish a human-centric piece of legislation, adhering to international frameworks and conventions on human rights, ethical development frameworks, sustainability, and diversity and inclusivity. It is in this spirit, and with this background, that the roundtable was convened.



### **III. SUMMARY OF DRAFT BILL 23.919**

According to Draft Bill No. 23.919's introduction, its main purpose is to harness opportunities, and create structures and a legal framework to guide the effective implementation of AI development and innovation in the country. It seeks to "ensure that the process is not dehumanized or the end is not instrumentalized in an ignoble way, for the benefit of groups or corporations with unethical principles, (...) above all it is used at the service of human beings and the common good" (pg. 3).

The aim is to foster innovation and economic development while protecting human rights and ethical principles. Below is a brief summary of the Bill.

### Key points of the proposed law:

- **Definition of AI:** The law defines AI as technology that emulates human capabilities to solve problems, learn, and make decisions based on data.
- **Benefits of AI:** The law recognizes the potential of AI to automate processes, enhance creativity, improve decision-making, and boost productivity in various sectors, including agriculture, finance, logistics, education, environment, and healthcare.
- **Risks of AI:** The law acknowledges potential risks such as algorithmic discrimination, privacy breaches, and job displacement.
- Legal Framework: The law emphasizes the need to align AI development with existing human rights instruments and national laws, particularly those concerning data protection and non-discrimination.
- **Governance:** The law proposes establishing an inter-institutional commission and an ethical, technical, and scientific committee to oversee AI development and implementation, ensuring transparency and accountability.
- **Guiding Principles:** The law highlights the principles of human-centricity, fairness, transparency, robustness, and accountability as the foundation for AI development and use in Costa Rica.

#### Main objectives of the law:

- Ensure the safety and legality of AI systems in the e Costa Rican context.
- Promote investment and innovation in AI.
- Improve governance and decision-making processes related to AI.
- Develop a secure and accessible market for AI applications.
- Establish a legal framework for AI use in public and private services.
- Guarantee transparency and ethical use of AI.
- Protect human rights and fundamental freedoms in the context of AI.

In the following sections, we outline the feedback that our expert panel sought to provide in regard to three aspects:

**Ethical Framework:** Establish a comprehensive ethical framework for AI in Costa Rica, ensuring its development and use respect human dignity, equality, and transparency.

**Human Rights Protection:** Emphasize the protection of individual rights in the face of AI advancements, aiming to safeguard personal freedoms and privacy.

**Inclusive Development and Oversight:** Advocate for an inclusive approach to AI governance, which includes balanced human oversight and public participation in AI policymaking and implementation processes.



### IV. RECOMMENDATIONS PROVIDED BY NOC COLLEAGUES

Below are the main recommendations provided by experts during each of the breakout sessions:

#### Aspect **Recommendations provided by NoC Colleagues Trust Building** • The bill could place a greater emphasis on trust generation and data quality. Trust issues could be considered carefully, because trust is subjective; what builds trust in one context may not necessarily in another. • The implementation capabilities of these principles could be prioritized, and the establishment of ethics review committees for AI projects could be considered. • Consideration may be given to the extent to which general principles can be established and the ease of developing more Liability/ • In a sense, it seems that the law proposes a regime of strict Accountability liability, which must be reviewed carefully, as this would hinder the use of AI in the country and does not seem justified. • Points of contact regarding the implementation of such initiatives could be made clearer. • It is important to define roles and responsibilities when it comes to adhering to the outlined principles. For example, the principle of accountability suggests not every actor may be held responsible for the impacts or effects of an AI system. Training a system and deciding to use it are distinct actions and roles. • Law follows a risk-based approach which has to be carefully analyzed due to the challenges it can have for implementation. **Data Protection** • Privacy and data protection could be considered and clarified as necessary and essential for innovative development and AI implementation. • There could be more reference to the evaluation of bias and exclusion in algorithms. • Data quality is fundamental and necessary to achieve alignment among various AI systems. Interplay • Efforts could be made to ensure the interoperability of these between principles with other international standards in order to avoid International duplication and/or an excessive number of principles that Ethical complicate implementation. Frameworks and • It is suggested to establish mechanisms to materialize all ethical Local Context principles proposed and ensure they do not lose their value

### 1. Comments on Ethical Framework and Principles

As observed, experts find it noteworthy that the bill promotes ethical principles for the use of AI, which is a common element in AI regulatory proposals worldwide. However, the following elements could be more strongly considered:

I) Interplay Between Regulation and Ethics: While ethical principles can be embedded within regulations, it is crucial not to conflate AI ethics with AI regulation. Ethics foster reflection among those who develop and implement technology, whereas laws guide behavior by delineating what is permissible. The significant risk of confusing these areas lies in assuming that regulation alone addresses the ethical challenges of AI. AI ethics exist for reasons beyond regulation, and this distinction must be maintained. The law may reference principles without conflating them with ethical principles.

**II) Trust Building:** Generating trust is fundamental and could be more instrumental in inspiring the project's content. Building trust involves transparency in information sharing and participation. This participation could extend beyond inviting stakeholders to provide input on the project; it could also include making them part of the implementation process and creating mechanisms for monitoring. Providing tools for various actors to give feedback on the process and the implementation of the regulation is crucial. Improving data quality also seems to be a fundamental point to increase trust on AI systems deployed in the country.

**III) Principle of Accountability:** This is one of the principles that requires technical expertise and can have the greatest impact. It is recommended that more evidence be available when determining decisions about who is responsible for any harm caused by AI. This evidence can be generated through testbeds, regulatory sandboxes, or policy labs that allow for careful determination of responsibility while testing specific AI models being implemented in Costa Rica. In this regard, the identification of AI-related incidents in the country can be fundamental. Incident identification can help improve a risk-based approach to AI governance by clearly defining the risks of AI deployment in Costa Rica.

### 2. Comments on Human Rights Protection

Aspect	Recommendations provided by NoC Colleagues
Human Rights Impact Assessments	<ul> <li>Critical for ensuring responsible AI use in Costa Rica. It is essential to specify the methodology, impact on AI project development, and safeguards that may serve to mitigate human rights impacts.</li> <li>It is proposed that the law promotes piloting this in the public sector to gain valuable lessons before extending it to the private sector.</li> </ul>
Labor	<ul> <li>Requires special attention due to the potential disruptive impact of AI on the labor market of low and middle income countries.</li> <li>There could be greater transparency regarding how policy will increase workers' understanding of AI and its use in their workplaces.</li> <li>The law could promote worker training or upskilling and reskilling, rather than creating protections like enhanced job security, which currently lack sufficient evidence and could negatively affect overall productivity in the country.</li> </ul>
Children and AI	<ul> <li>The bill could place more significant emphasis on the welfare and well-being of children and education, as well as their involvement in these discussions.</li> <li>Children are not only major users of this technology but education is increasingly mediated by it.</li> <li>Beyond protection, it is crucial to understand their expectations, fears, and challenges regarding AI use. Participatory approaches may help identify what Costa Rica's children need to adjust AI legislation to their needs.</li> </ul>
Government Certifications	<ul> <li>The government can promote AI and human rights certification measures.</li> <li>These certificates would serve more as incentives than obligations, attracting greater interest in products that have the certification without making it a mandatory requirement for operating an AI system in the country.</li> <li>Public procurement tools could also serve as incentives to promote AI systems with greater responsibility, in line with the principles of Costa Rican law.</li> </ul>

As can be observed, the emphasis on human rights can be a differentiating element in the regulation of AI in Costa Rica. This analysis must take into account the following considerations:

I) Implementation of Human Rights Impact Assessments: In addition to referencing human rights, mechanisms may be established to ensure the fulfillment of these rights in the development and deployment of these systems in Costa Rica. One way to achieve this is through human rights impact assessments, which could be specifically designed for this purpose.

**II) Protections and Empowerment for the Vulnerable:** The formulation of human rights in such regulations may consider mechanisms for protecting vulnerable populations such as children, women, the disabled and others. It is recommended that human rights protections also sit alongside government supported efforts to empower individuals to adapt and utilize new AI developments to the benefit of themselves and their communities.

**III) Labor Force Initiatives:** It is recommended that the legislation delve more fully into the protection of workers, especially those that are low-skilled and/or most at risk of losing employment due to the implementation of AI technologies, while considering available evidence and avoiding undocumented risks. At this point, it is advisable to avoid hasty decisions without sufficient support, and instead, prioritizing evidence-gathering initiatives.

### 3. Comments on Inclusive Development and Oversight

Aspect	Recommendations provided by NoC Colleagues
Vision and Impact Clarity	<ul> <li>The bill could communicate a clearer vision of what successful AI policies look like.</li> <li>Incorporation of a framework or proof of concept that demonstrates the impact of AI policies, with clear goals and success metrics could be considered.</li> </ul>
Institutional Framework	<ul> <li>There is an existing institutional void in Latin America: who will enforce the law? How will non-compliance be sanctioned?</li> <li>It is recommended to designate or establish a specific constitutional organ with clear responsibilities and authority to oversee and enforce the bill effectively.</li> </ul>
Implementation Resources & Training	<ul> <li>Ensure the government is equipped with necessary resources and training to accomplish enforcement and the goals of the policy and committees established.</li> <li>Leverage existing legal and civil rights frameworks to integrate Al laws.</li> </ul>
Human Rights & Empowerment- Centric Approach	<ul> <li>Focus on enabling rights and capacities, especially for youth, rather than just safeguarding.</li> <li>Enlist existing departments that handle human rights to ensure AI policies also promote human rights practices.</li> </ul>

At this point, expert opinion focused on two main areas:

**I) Regulatory Best Practices:** For experts, the bill could articulate a clearer vision on the practical impact of AI regulations, establish a robust institutional framework for enforcement, ensure sufficient government resources for effective implementation, and promote an empowerment-centric approach in its provisions.

**II) Existing Institutional Arrangement:** It is recommended that the law more clearly reference existing institutional arrangements in Costa Rica and the coordination mechanisms that will be involved in implementation. Additionally, the law could more explicitly define functions, roles and responsibilities for each of the entities involved in this task.

### V. Conclusion and Final Recommendations

Based on the discussions in the above break-out sessions, the broad conclusions and recommendations can be summarized by the following points, which offer themes to be considered and suggestions for next steps in Costa Rica:

### 1. Gather More Evidence and Promote Incident Identification and Research

It is essential to identify more specific evidence regarding the existing risks posed by the use of AI in Costa Rica, which justify the measures established. Without this type of evidence, it becomes more difficult to understand if the content of the law addresses the most prevalent risks in the country. Therefore, it is recommended to start monitoring AI-related incidents in Costa Rica and identify the AI systems that are most frequently used. Some international entities, such as the OECD, are already working on this process and can provide technical guidance to facilitate it<sup>3</sup>. The AI law introduced in Costa Rica can even support this type of incident identification and classification.

### 2. Enhance Monitoring Capacities

Improve monitoring capacities to ensure ongoing assessment and evaluation of AI systems and their impact. It is essential to be able to easily identify the AI systems being implemented in Costa Rica and their main features. Monitoring capacities can be increased through algorithm registries, AI observatories or regulatory delivery units in charge of AI implementation. Prioritize the development of mechanisms that support the identification and monitoring of AI systems, AI incidents, and their impact on society. Access to more information can facilitate decision-making processes related to AI regulation in Costa Rica, and this is something the law can promote.



#### 3. Generate Coordination and Policy Integration Capacities

Enhance coordination capacities to ensure effective implementation and enforcement of AI regulations. The AI bill can be an enormous opportunity to improve the country's overall coordination and policy integration<sup>4</sup>. With this regulation Costa Rica can also promote institutional collaboration among different agencies and stakeholders. This could become one of the most relevant points of this proposal, considering the broad impact of a technology like AI.

#### 4. Adopt a Strategic Learning Approach

Embrace the opportunity to learn from the experiences of other countries in adopting AI regulations. By observing and adapting best practices, Costa Rica can strategically position itself to implement effective and proven AI policies and governance models. This approach allows Costa Rica to benefit from the insights and advancements made by others in this complex area, unnecessary inefficiencies in avoiding its technological development process due to regulatory measures. Costa Rica can be strategic in the development of its AI regulation, much like some companies and start-ups in tech markets where building on existing knowledge becomes a crucial factor for success. This strategy enables those latecomers to establish a robust base of knowledge and skills, which can be essential for sustaining a long-term competitive edge<sup>5</sup>.

### 5. Empower Citizens

Empower citizens by providing them with the necessary information and tools to understand and engage with AI systems. This includes underrepresented and vulnerable groups and communities.

This is a mechanism that will allow citizens to understand the impact of this law and the way it intends to protect them. Al literacy and improving digital skills more broadly could be considered in this process and can become a critical factor for successful implementation of this law. For example, some cities in California are making efforts to educate their residents about their digital rights. Long Beach introduced an upgraded versión of its Digital Rights Platform, which educates residents on their data privacy and digital rights, and explains how the city employs technology while protecting these rights<sup>6</sup>.

#### 6. Design Bold Incentive Structures

Focus on incentivizing compliance with AI regulations rather than imposing punitive measures. Encourage positive behavior through rewards and recognition. In such a way, entities that obtain certifications, for example, can gain specific advantages in procurement processes, tax incentives or specific rewards. For instance, the public procurement process enables agencies to establish standards and requirements for potential vendors. During procurement, governments can specify criteria that encourage responsible AI practices, such as standards for human oversight, algorithmic bias, and AI system auditability. Additionally, vendors with stronger ethical AI measures can be awarded extra points in the selection process<sup>7</sup>. Responsible regulation could be used both to hold those that do not make a responsible use of AI accountable, but also reward those that do.

### 7. Promote AI Decision-Making Committees

Promote the establishment of AI decision-making committees, as already outlined in the bill, to ensure diverse perspectives and inclusive decision-making processes. Encourage the formation of these AI decision-making bodies to ensure a comprehensive and inclusive approach that decides on the use and deployment of AI systems in Costa Rica. More than focusing on the features of an AI system, Costa Rica can center its work on creating governance mechanisms that decide on how the technology is used, the sectors in which it is implemented, and the functionalities that are widely accepted<sup>8</sup>.

### 8. Adopt a Balanced Approach to AI Risks

Exercise caution with a risk-based AI regulation design: its definition and measurement can be complex and contextdependent<sup>9</sup>. Instead, focus on the specific impact an AI system may have in each case. Regulators can advocate for an impactbased approach and an impact measurement process to understand AI's social impact in Costa Rica. Relying solely on risks can be limiting, as it addresses preconceived and identified risks, while AI presents new challenges and scenarios that may not yet be understood. Additionally, the risk-based approach is not the only one; impact assessment can also be considered, which has profound implications for how regulation materializes. It is important to evaluate these different options and understand why one might be chosen over the other in each specific case<sup>10</sup>.

Draft Bill No. 23919 provides Costa Rica's Congress with a solid foundation for developing a groundbreaking regulatory AI policy which aims to benefit its citizens and serve as a model for other countries in the region. The NoC Secretariat is honored to contribute to this effort, offering recommendations based on our areas of expertise and current research. The responsibility for crafting the final legislation, inclusive of these recommendations, lies with the Costa Rican government's deliberative body.

With a clear focus on ethical frameworks, human rights protections, and an inclusive approach to development and oversight, the bill is poised to become an effective and influential piece of legislation. By incorporating the elements provided in this session into the draft bill, Costa Rica can ensure its AI regulation is comprehensive, dynamic, and above all, human-centric. This approach prioritizes the well-being and rights of its citizens while maintaining relevance in the digital market in the years ahead.

In this regard, it is important to remember that AI governance can have various functions that increase according to its institutional nature, as noted by the UN Advisory Board in its Interim Report of December 2023<sup>11</sup>:



### Figure 2: AI governance functions distributed by institutional 'hardness'

This document highlights several recommendations whose inclusion would help Costa Rica's proposal effectively address functions such as interoperability, incident identification, and monitoring. By achieving comprehensiveness and aligning with international AI governance standards, Costa Rica's AI law has the potential to become highly influential, not just in Latin America but globally.

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