



SUPPLEMENTARY HUMAN DIMENSION MEETING

on Digital Technologies and Human Rights - Opportunities and Challenges

12-13 July 2021

(online)

ANNOTATED AGENDA

BACKGROUND

The recent decade has seen massive technological innovation and an explosion of digital tools and solutions that permeate day-to-day life and revolutionise processes. They are also increasingly used to counter transnational security threats.

While technologies themselves are generally neutral in terms of human rights and fundamental freedoms, the ways in which they are designed or used may enhance or undermine them. Understanding the implications of digital technologies is key to the protection and promotion of human rights in the 21st century.

Changes in the technological landscape have been fuelled by the ability to generate, collect and process large amounts of data, often termed 'Big Data'. Most human activity has become datafied or datafiable. This is coupled with the development of new tools to process large amounts of information, analyse them and identify patterns which may be evident in the data but not to the human eye. Recent developments in machine learning have added an additional level of automation into data processes, and applications increasingly incorporate data analysis autonomously without human supervision, known as 'Artificial Intelligence' (AI).

As the UN Human Rights Council has affirmed, the same rights that people have offline must also be protected online. (e. g. A/HRD/20/L.13, 29 June 2012; A_HRC_38_L10_rev1, 4 July 2018) As new technologies increasingly affect our lives, the effective delivery of OSCE human dimension commitments requires consideration of both the opportunities and challenges for human rights posed by those technologies and their use. The protections for human rights and fundamental freedoms they entail need to be adhered to independent of the technologies applied.

Digital technologies have strengthened the enjoyment of human rights and provided a new platform for democratic engagement, among other things by facilitating sharing and access to relevant information, enhancing human rights education opportunities, and allowing to identify and document human rights violations.” At the same time, they can affect a wide range of human rights and fundamental freedoms, including inter alia the rights to freedom of opinion and expression; freedom of assembly; freedom of thought, conscience, religion or belief; the prevention of torture and other ill-treatment; the right to a fair trial; as well as equality and non-discrimination. Moreover, since 1991 the right to protection of personal data has been recognised in international human rights law and jurisprudence as a crucial element of the right to private life. New technologies may considerably impact the right to privacy, including in its function as a ‘gateway right’ to many other rights that are the subject of OSCE human dimension commitments.

The right to private life is also reflected in OSCE human dimension commitments, which state that, “The participating States reconfirm the right to the protection of private and family life, domicile, correspondence and electronic communications. In order to avoid any improper or arbitrary intrusion by the State in the realm of the individual, which would be harmful to any democratic society, the exercise of this right will be subject only to such restrictions as are prescribed by law and are consistent with internationally recognized human rights standards.” (Moscow 1991)

The SHDM will provide a platform for an exchange of views on human rights and fundamental freedoms in the digital age among OSCE participating States, OSCE institutions and executive structures, international organizations, civil society and other stakeholders. Discussions will focus on the use of digital technologies by States, drawing on illustrative examples and good practice. It will provide an overview of challenges and opportunities, as well as overarching issues relating to transparency, independent oversight, accountability and redress. It will seek to collect recommendations relating to the use of digital technologies for the benefit of human rights protection and in line with human dimension commitments.

Day 1

15:00 – 16:00

OPENING SESSION

Opening remarks

Introductory addresses

Technical Information

16:00 – 18:00

SESSION I: Human Rights and Fundamental Freedoms in the Digital Age

Digital technologies have contributed to human development, and to human rights progress in many ways. They have been used to galvanize and coordinate human rights platforms and improved communication, created online fora for civil society and human rights defenders and enabled them to exercise their rights to freedom of expression, peaceful assembly and association. Law enforcement has also been able to harness the potential of tech tools, for example, by using AI to identify and track financial transactions linked to trafficking in human beings. However, human rights can also be weakened or jeopardized through the misuse of technological tools.

The ability to gather and process large amounts of data which can be used for analysis has created the ability of data processes to incorporate results of its own data analysis autonomously and continuously into its operation. This has led to an increase in automated decision-making where an action, recommendation or decision is selected not by a human being, but a computational process. Applications of digital technologies include decisions to award – or reject - a loan, aptitude tests used for recruitment as well as decisions in custodial sentencing, airport security, immigration decisions or so-called ‘predictive policing’.

While the controversy about the benefits and challenges of facial recognition and Artificial Intelligence is far from resolved, the human body has already become the new frontier of data capturing. The use of physical traits (so-called biometrics) has not stopped with facial traits and fingerprints, but include other identifiers such as gait and body movement, patterns in a human eye’s iris, voice and venous blood vessels. Development is moving even further towards the analysis of facial expressions to reveal information on one’s emotional state. The increasing collection and use of biometric data raise pressing human rights issues.

It is important to recognize that digital technologies impact women and men, and different groups in society differently, both in relation to their access to new technologies, as well as in terms of how technologies are developed and applied. The development and use of algorithms may capture and reproduce discrimination that occurs in real-life including reinforcing pre-existing values, discrimination, bias, prejudices and power relations based on aspects like gender, ethnicity, income, religion, appearance, age, or behaviour. The boundaries between human and automated decision-making are often blurred, resulting in the notion of ‘quasi- or semi-automated decision-making’. Therefore, it is key to develop, use and apply algorithms in full compliance with human rights obligations.

In light of the considerable impact on people’s lives, and of the impact of the enjoyment of human rights for individuals, it is key that the human rights implications of algorithmic decision-making are assessed and that accountability and oversight of data-driven technologies, as it is of paramount importance, is assured. However, effective and independent governmental oversight mechanisms for data-driven processes is currently lacking.

A number of initiatives recognise the need to establish guidelines and international legal frameworks for AI and human rights, for example the Council of Europe's Ad Hoc Committee on Artificial Intelligence (CAHAI). Other good practice initiatives include Privacy Enhancing Technologies (PETS), the concept of Privacy by Design (PbD) and data protection impact assessments (DPIAs) which are aimed at mitigating negative impacts and implications of data-driven technologies.

This session will set the scene, briefly introduce the most relevant digital technologies and provide an overview of the many ways in which digital technologies impact on all our human rights and fundamental freedoms. It will explain privacy as a 'gateway right' and raise the issue of responsibilities of states relating to transparency, oversight, risk mitigation, accountability and redress to negative impacts of digital technologies used by States.

Questions for discussion:

- What are the human rights opportunities and challenges related to the development and use of new digital technologies?
- What good practice models have been developed in order to ensure transparency and independent oversight of artificial intelligence and automated-decision making?
- In which ways do digital technologies affect the human rights of women and men differently? What are the human rights impacts on marginalized groups?

Day 2

10:30 – 12:30 SESSION II: Collection and Use of Personal Data

Digital technologies have provided new opportunities for people all over the world to enjoy the benefits of a democratic society, build associations and networks, share opinions and ideas without limitations, learn and act upon their rights.

The rapid increase in data driven technologies in the 21st century provides new avenues for the prevention and investigation of crimes that undermine human rights, and can enhance effective state action to combat threats to human rights such as by detecting human trafficking and terrorist networks. At the same time, new digital technologies are misused to violate human rights.

Digital technologies have also been harnessed to promote and protect human rights and to support the work of National Human Rights Institutions and human rights defenders. They provide opportunities to connect and to share information about human rights protection and promotion. They also open new channels to document human rights violations, using open source data including satellite imagery, social media and big data analysis. Access to human rights education

is also enhanced by new technologies and Massive Open Online Courses (MOOC's) make human rights education accessible to more people than ever before. Applications have also been developed to support victims of domestic violence by alerting and sharing geo-location with pre-selected individuals or the police when the user utilizes a pre-established word or shakes the phone, without the need to make a phone call.

At the same time, the datafication of human activity today allows for the tracking of individuals, materials and information by accessing digital footprints and linking databases. Street cameras, credit card information, cell-phone data and satellite imagery can retrace actions that were not witnessed but recorded, facilitating surveillance and tracking and making it more invasive.

Digital technologies have also been used as a tool to crack down on human rights defenders and have exposed human rights defenders to unlawful arrests, online and offline harassment, threats to life and health, harassment of their family members and in some cases enforced disappearances.

Using illustrative examples, this session will discuss the opportunities provided by data-driven technologies in the investigation of crimes and human rights violations. It will also highlight both, the beneficial use of digital technologies by civil society as well as the risks posed by potential discriminatory profiling and surveillance technologies.

Questions for discussion:

- How can law enforcement capitalize on digital technologies to investigate and prosecute crimes in line with human rights and fundamental freedoms?
- Which technologies can be used to protect victims of crime and of human rights violations?
- How can the international community prevent the misuse of digital technologies for human rights violations, such as for surveillance of human rights defenders?

15:00 – 17:00 **SESSION III: The Opportunities and Challenges of Artificial Intelligence**

As contemporary AI systems can access and process enormous amounts of information about individuals with incredible speed, the use of new technologies creates opportunities that can enhance public safety and ensure an efficient use of police resources.

The rapid increase in data driven technologies provides new opportunities for human progress in many fields. Due to their ability to generate analytical and predictive insights that outdo human capabilities, Artificial Intelligence has been widely acknowledged as a tool to implement the Sustainable Development Goals, for example. In healthcare, this technology can be used to detect specks of cancer before they have the chance to spread; in the fight against climate change, they have helped to enhance agricultural productivity; in humanitarian crises, the efficient distribution of aid has been facilitated with the help of Artificial Intelligence. In education, digital technologies make accessible personalized education on a scale never seen before, for example by helping craft individual learning programs.

However, applications using biometrics, facial recognition and Artificial Intelligence have serious implications for the enjoyment of a whole range of human rights, and can have a chilling effect on the right to freedom of thought conscience and religion (ICCPR, Art. 18), freedom of expression and opinion (ICCPR, Art. 19), and affect the right to freedom from discrimination (ICCPR, Art. 26), and the right not to be subjected to torture or to cruel, inhuman and degrading treatment or punishment (ICCPR, Art. 7). Algorithmic decisions in criminal justice or counter-terrorism contexts can affect, among others, the right to liberty and the right to fair trial, including the right to equality of arms as it may impede the defendant subject to an algorithmic decision from examining and contesting their reasoning. Such systems should therefore be assessed for their human rights impacts to prevent violations.

Moreover, as Artificial Intelligence technologies reflect the values and choices of the people who build and use them, they have shown to be prone to bias and discrimination based on ethnicity, gender, income, appearance, age, religion, behaviour or other attributes. This risk is exacerbated when the application goes beyond the identification of individuals and uses emotion analysis and personality risk assessment, for example in the context of criminal justice, counter-terrorism and border controls.

Good practices to mitigate discriminatory effects produced by the use of Artificial Intelligence include government plans to ensure algorithmic transparency, compliance with human rights law to better protect individuals that may be impacted including persons belonging to marginalized communities. Another interesting initiative are the “Ethics Guidelines for Trustworthy AI” developed by the Independent High-Level Expert Group on Artificial Intelligence set up by the European Commission, the OECD Principles on Artificial Intelligence, the G20 AI Principles

adopted by G20 Leaders in 2019, and the European Commission's proposed regulation on Artificial Intelligence.

This session will explore opportunities and challenges associated with the use of biometric data and artificial intelligence, in particular by law enforcement and in the context of criminal justice systems. It will also look at the implications of bias and discrimination in artificial intelligence and good practices in order to mitigate discriminatory effects produced by the use of Artificial Intelligence in line with international human rights law.

Questions for discussion:

- Which opportunities and challenges are linked to the use of biometric data and artificial intelligence?
- Which are emerging guiding principles for the use of Artificial Intelligence to be lawful, ethical and human-rights based?
- How can bias in algorithmic decision-making processes be prevented and remedied?

17:00 – 18:00 **CLOSING SESSION**
Rapports from the working sessions
Comments from the floor
Closing remarks

18:00 Closing of the meeting

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