

The Human Rights, Big Data and Technology Project



**SUBMISSION TO THE UN SECRETARY GENERAL'S HIGH LEVEL
PANEL ON DIGITAL COOPERATION**

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This submission is made by the ESRC Human Rights, Big Data and Technology Project. The Human Rights, Big Data and Technology Project, funded by the Economic and Social Research Council and based at the University of Essex's Human Rights Centre, analyses the challenges and opportunities presented by the use of big data and associated technologies from a human rights perspective. Drawing on the wide range of expertise of its interdisciplinary researchers and partner organisations, the Project considers whether fundamental human rights concepts and approaches need to be adapted to meet the rapidly evolving technological landscape. The work also brings together practitioners, State, industry and United Nations' officials, and academics in the fields of human rights, big data and associated technologies to assess existing regulatory responses and whether reforms are needed in order to maximise effective human rights protection.

a) What are the key values that individuals, organizations, and countries should support, protect, foster, or prioritize when working together to address digital issues?

In the last year, many states and businesses have recognised the need for an ethical approach to big data and artificial intelligence (AI). While ethics constitute an important element of addressing digital issues, this should not be to the exclusion of human rights. The centrality of human rights in identifying the rights and duties of researchers, innovators and regulators has long been asserted, beginning with the Tehran Proclamation of 1968 through the 1975 UN 'Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind' to the 2003 'Declaration of Principles on World Summit for Information Society'. Debates within the UN context that led to the 1975 Declaration and subsequent standard setting exercises, identified a range of human rights that were already or potentially affected by emerging technologies. At the heart of these debates were the right to development and the rights covered in Article 19 of the UDHR, both in terms of intellectual freedom and the right 'to receive and impart information', with the latter being particularly important to facilitating access to remedy. These debates were also grounded in Article 27 of the UDHR which stresses that 'everyone has the right... to share in scientific advancement and its benefits' and Article 29 which provides that 'everyone has duties to the community'.



This long-standing commitment to values drawn from the human rights framework has been reiterated in the context of the World Summit on Information Society. While acknowledging the importance of ethics for the Information Society, the Geneva Declaration of Principles (2003) defines its goal to be ‘to promote justice and the dignity and worth of the human person’. The associated Tunis agenda (2005) re-affirms the commitment to ‘a people-centred, inclusive, development-oriented and non-discriminatory Information Society’. These declarations clearly identify the values that should underpin the efforts of various stakeholders, in order to secure their rights and discharge their obligations to ensure that digital cooperation enables human flourishing.

While there is much that is common to ethics and human rights, a human rights-based approach provides internationally agreed-upon definitions of harms, sets out clear obligations of states and responsibilities of businesses and provides a framework for the prevention of harm as well as accountability and remedies. The key values that derive from a human rights-based approach to digital issues are:

- i. **Respect for human dignity:** Respect for human dignity should be the central basis for a values-based approach to research, development and application of digital technologies, and cooperation and collaboration in this context. References to the right to and protection of dignity can be found in national constitutions, international charters and conventions, including the UDHR. Infringements upon human dignity include coercion, discrimination, humiliation, torture, and arbitrary deprivation of liberty. It emphasises the rationality and ability of humans to act as moral agents, the importance of equality and the need to treat people with respect, as well as the avoidance of harm to those human interests that dignity implies.
- ii. **Enhancing human agency:** Closely related to dignity is self-determination or human agency. Given the tremendous impacts of new technologies, cooperation amongst stakeholders must focus on advancing human capabilities and the capacity of individuals to act as moral agents to attain a quality of life they have reason to value. This requires leveraging opportunities provided by new technologies for social progress and better standards of life. Digital technologies and AI



have great potential to enhance the capacity of human beings to live flourishing lives. A number of AI applications can also raise serious threats to human agency. For example, the media revelations of how Cambridge Analytica allegedly manipulated Facebook user data to influence political campaigning on a popular social media platform for accessing information and communication shows that new technologies can be used to distort information and undermine individual agency. Empowering individuals and communities – and protecting individuals against concentrations of power-- must therefore be a key value that guides cooperation.

- iii. **Fostering equality:** Equality and non-discrimination are foundational elements of the international human rights normative framework. Human rights law obliges states to eliminate direct and indirect discrimination in law and practice and, as a matter of priority, to take special measures to protect the most vulnerable segments of the population, or those individuals and groups who traditionally face difficulties in enjoying their fundamental rights. Equality, therefore, has to be understood in relation to outcomes as well as opportunities, and may demand different treatment rather than uniform measures to ensure that policies and practices do not perpetuate but rather alleviate, the disadvantage faced by certain groups. The agenda for digital cooperation must therefore prioritise measures to rectify the effects of historical and current forms of discrimination, social norms and power dynamics that contribute to both formal and substantive inequality.
- iv. **Building trust:** Accountability is an important part of the human rights based approach as there cannot be a meaningful right without remedy. Accountability requires transparency, which is important to identify harm and to hold violators to account. Digital cooperation provides an important opportunity to ensure that the safeguards contained within the human rights framework are universally implemented – a robust system to prevent violations, monitor and assess impact, identify and respond to interferences to rights, and ensure access to justice and remedy. These mechanisms in the human rights framework ensure meaningful scrutiny of new



technologies, with iterative and dynamic approaches to respond to live issues, all of which can foster greater trust in responsible innovation.

(b) What principles should guide stakeholders as they cooperate with each other to address issues brought about by digital technology?

The principles that should guide stakeholders as they cooperate with each other to address challenges in the digital age can be developed from the values set out above, as drawn from the human rights framework. Although states are the primary duty bearers in upholding human rights, through the tripartite obligation of respect, protect and fulfil, non-state actors, particularly corporate entities, also have responsibilities related to human rights. These principles provide valuable guidance to all stakeholders:

- i. **Universality, indivisibility and interdependence of human rights:** The commitment to upholding human dignity relates to the importance of protecting the privacy, identity, integrity, security and liberty of the person, and ensuring non-discrimination. Stakeholders must focus on the impacts of digital technology on these human interests; including the risks of reinforcement of prejudices and vulnerabilities of marginalised communities. For example, law enforcement agencies in different states have begun to use new technologies to map crime hotspots for predictive policing and automated facial recognition for policing large events. Not only do these surveillance practices present concerns for the right to privacy, they also raise concerns for the enjoyment of other rights such as security of person. Such data-driven technology might rely on data that embed historical biases against minority groups, and risk discrimination if they proxy for characteristics such as gender, age or race. The principles of universality, indivisibility, interrelatedness and interdependence of rights, grounded in equality and non-discrimination can offer guidance to address such risks and protect the rights of individuals, to ensure sustainable, rights-compliant and socially beneficial technological



progress. This holistic conception of human rights also stresses the important principle of protecting all rights rather than trading one right off against another.

- ii. **Promoting human capabilities:** A core aim of the human rights framework is to facilitate liberal community-building through promoting individual self-determination. Therefore, a fundamental principle underlying digital cooperation should be ensuring that digital technologies in their design and application uphold human agency and autonomy. This can be done by increasing the capabilities of individuals to claim their rights, such as through education, health, and access to justice. New technologies can promote agency and capacity such as enhancing the independence and accessibility to particular rights. For example, personal assistive technology and adaptive learning software can be used to support the independence of older persons, persons with disabilities, and those with specific learning needs. On the one hand, these elements are beneficial for agency and capacity. On the other, there are concurrent risks of isolation and social exclusion. The human rights principles of participation and inclusion also keep in view these risks, and do not allow a binary view of the opportunities and risks. Centering the use of new technologies on human rights principles ensures a fuller consideration of the principles at stake. Furthermore, human rights law focuses on the effective protection of rights, including access to justice and remedies. Assessing the effects of new technologies using the human rights framework places affected individuals and groups at the centre of the response. The vindication of rights rests on the ability and capacity of individuals to claim their rights. The right to adequate and effective remedy thus places the empowerment of the individual at the core of effective protection of rights.
- iii. **Closing the Digital Divide:** Addressing the digital divide has been and remains a key challenge, both within and across communities. The development and deployment of AI is concentrated in societies that have the resources and capacity to invest in and integrate such technology into existing infrastructure. This could worsen the existing digital divide between and within



societies. Digital cooperation should thus take into account such disparities and actively counter them in further innovation of new technologies.

- iv. **The rule of law:** Building trust requires accountability, which is a sine qua non of the human rights framework. Digital technologies present fundamental challenges to establishing accountability. Transparency is an important element to ensure that the outputs of data and AI systems can be reviewed, scrutinised, monitored and reviewed. As such, transparency should not only be narrowly focused on the system in question, but should also include the policies and practices of the entity developing and deploying it. Transparency is valuable not only in and of itself, but contributes to accountability. Questions of transparency and accountability need to be considered at each stage of the data lifecycle and of the AI system, from design through to deployment of these systems, and in the process as a whole. This is to ensure adequate and appropriate safeguards for the safe, responsible and human rights-compliant use of data and AI. Stakeholders should have a transparent and consultative approach, and foster knowledge exchange such as through the facilitation of meetings and workshops. This would enable a key role in sharing best practice and knowledge management. Furthermore, the High-Level Panel should identify any gaps in current responses to the opportunities and risks posed by new technologies. For example, concerns have been raised about where individuals with complaints about the impact of technology can seek redress. The High-Level Panel should have the capacity to receive such feedback from members of the public and organisations and be able to propose solutions for remedying gaps.

(c) How can these values and principles be better embedded into existing private and/or public activities in the digital space?

A human rights based approach to activities in the digital space provides a useful pathway to embed these values and principles through contextualising, operationalising and institutionalising them. Grounded in principles including human agency, capability and flourishing, it can anchor the



international approach to digital cooperation and clearly articulate the underlying conditions that help facilitate the development and deployment of technology for societal good. A human rights based approach asserts that human rights standards are not only goals in themselves but also vehicles that are necessary to pursue those goals. Measures to prevent and respond to harm, including monitoring and oversight processes are required measures. A human rights based approach is not simply a compliance exercise; it provides a more substantive mechanism by which to identify, prevent and mitigate risk. As such, human rights standards provide a legal and moral touchstone to assess the legitimacy and validity of policies, activities, organisations and institutions. Such an approach not only focuses on specific rights but also identifies gaps in a silo-ed approach to human interests, and furthermore draws out intersecting interests and attributes that can close those gaps.

First, a detailed and embedded understanding of how such technologies and applications operate is necessary to effective implementation of principles and values into existing private and public activities in the digital space. The scope and content of human rights offers rich and deep interrogation of the challenges in the digital age, and the High-Level Panel should use the human rights framework to explore the breadth and depth of the implications as a starting point. Since all human rights are universal, indivisible, interdependent and interrelated, a human rights based approach offers both breadth and depth for understanding and responding to the opportunities and risks of new technologies and can positively strengthen ethical approaches. This would be critical for understanding the potential harm of technology and beneficial for informing the context of cooperation in this regard. The High-Level Panel can play an important role in reframing understandings thereof in policy debates and public discourse, and expertise could be extended by drawing from detailed research of how such technologies function in practice.

Second, to fulfil its mandate on identifying good examples and modalities for digital cooperation, the High Level Panel can look to the human rights framework for the development of solutions. Human rights encompass a diverse set of globally agreed norms, underpinned by ethical considerations. In addressing the current implementation gap, a detailed articulation of international human rights law



requirements would be instructive in order to provide guidance to states regarding the establishment of oversight bodies or the international human rights law compliance of existing oversight practices. The human rights framework thus has both the normative content to achieve a fuller understanding of the impact of new technologies, as well as a set of necessary safeguards required to prevent, monitor and redress harm.

Third, as the High-Level Panel mandated to advise on modalities for working cooperatively across sectors, disciplines and borders, a holistic approach is important. The human rights framework not only defines what is lawful, but is a systematic and integrated approach to prevent harm, to protect rights and to provide access to an effective remedy. Importantly, it is capable of adapting to the risks and benefits that the use of new technologies presents. Human rights, as referred here, is not simply litigation or technocratic legal intervention, nor compliance as a check-box exercise. Instead, we refer to a much fuller, richer, and more nuanced understanding of human rights, which can add value.

Fourth, progress in digital cooperation internationally requires common baselines and aspirations. The normative content and mechanisms within the human rights framework are not only useful for evaluating and responding to the impact of new technologies, crucially, international human rights law is based on established and universally agreed standards and norms that will give greater purchase for international negotiations and facilitate cooperation. In the context of developing modalities for working cooperatively to address challenges in the digital age, this shared understanding will be critical for convergence. This not only offers greater certainty, it also prevents fragmentation and divergent approaches. Placing human rights at the centre of developing ethical principles and guidance will thus strengthen accountability, universality and sustainability.

Strategically, the High-Level Panel needs to capture breadth and depth of input relating to the development and use of new technologies to engage effectively with stakeholders, experts, and the public. This requires it to consider a range of stakeholders. Many of the issues around new technologies transcend national boundaries, given the interconnectedness of the digital age and the global presence



of technology companies. As such, it is critical for the High-Level Panel to engage with international organisations, and through multi-stakeholder forums.

The High-Level Panel has a unique position to anticipate issues and facilitate the sharing of best practice in responding to new technologies. It can thus play an important advisory role in guiding stakeholders on the ethical and human rights standards that should be adopted from the outset and the necessary measures. This requires consideration of the diverse range of technology being developed and utilised, their increasing sophistication and complexity, as well as a holistic and long-term perspective for a sustainable response. The human rights framework should be mainstreamed into the areas, themes and activities of the High-Level Panel, to embed principles and values most effectively for progress in digital cooperation. This will have significant impact on how organisations make decisions about the development and deployment of new technologies.



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