Submission in response to the Australian Human Rights Commission Discussion Paper on Human Rights and Technology

10 March 2020

Introduction

Thank you for the opportunity to provide input into public consultation on the Australian Human Rights Commission *Discussion Paper on Human Rights and Technology* (referred to as the 'Paper' in this submission).

Australian Red Cross (Red Cross) has been a critical part of Australian life since its establishment in 1914. As Australia's largest humanitarian organisation and a member of the world's largest humanitarian movement, we work towards the vision of human dignity, peace, safety and wellbeing for all.

The humanitarian challenges of the 21st century are complex and interconnected. Fast-moving shifts in technology, climate and demography are shaping the world we live in, with significant impact for people across the world and in Australia, bringing new opportunities but also creating new vulnerabilities.

We have established [Humanitech](), a 'think+do' tank which seeks to shape the future for all humanity by harnessing the power of technology for good. Humanitech is an innovative and entrepreneurial environment in which to collaborate across sectors in order to develop unique *insights* into the social implications of 'frontier' technologies, create or amplify *solutions* with the greatest potential for social impact, and *influence* so that technology serves humanity by putting the needs of people at the centre.

As part of our Humanitech work, we are proud to be the humanitarian industry partner in the new Australian Research Council Centre of Excellence for Automated Decision-making and Society (ADM+S Centre). Through the ADM+S Centre we will work with leading researchers and institutions to develop evidence on the opportunities and the potential harms ADM tools and systems may present, with a special focus on those most vulnerable in our society. We will also help bring research and humanitarian practice together by including our staff, volunteers and communities we work with in the co-production of strategies, tools, and protocols for the humanitarian sector and the broader community.

We are supported in these efforts by our Humanitech Founding Partner, Telstra Foundation, and a number of cross-sector collaborators[1].

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Chief Executive Officer
Australian Red Cross

Responsible, inclusive and ethical innovation

New and emerging technological tools, from artificial intelligence (AI) to blockchain, are enabling better humanitarian approaches and solutions and enhancing our ability to deploy the right kind of response at the right time to where it is needed most. However, these tools and systems are also introducing a host of potential harms by exposing people and communities to new forms of intrusion, insecurity and inequality.

Technologies such as facial recognition and automated decision-making systems carry a particularly high risk for people's ability to participate fully in society, as algorithms become gatekeepers to jobs, welfare and even public spaces. If the serious risks of mistake, misuse or malfunction are not addressed, these tools will deepen existing inequalities and harm people.

We therefore support the Commission's *Proposal 1* that the Australian Government should develop a *National Strategy on New and Emerging Technologies* with the focus on responsible innovation, leadership on AI, effective regulation, and education and training for government, industry and civil society.

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[1] RedR Australia, Oxfam Australia, Engineers Without Borders, Bridge of Hope, Typehuman, RMIT University, Swinburne Social Innovation Institute, Deloitte, King & Wood Mallesons, Gradient Institute, Social Ventures Australia, Today, ID2020, uPort.

We recommend however, that digital inclusion – defined by the Australian Digital Inclusion Index[2] as access, affordability and ability – is included in the scope of the proposed National Strategy recognising that those who are not digitally included are likely to become further marginalised as a result technological development. In the Paper, the Commission focuses on artificial intelligence and AI-informed decision making, while noting other areas, including digital exclusion due to poor connectivity, socio-economic status and location, would benefit from further research and consultation. However, as the Internet Society notes in its 2017 report," The digital divide of the future will no longer be only about access to connectivity but will be linked to security and the ability to leverage the internet for a broad range of economic opportunities." And the Australian Digital Inclusion Index states that "Access and affordability can present barriers to digital inclusion, however an individual's digital engagement is also largely affected by Digital Ability (attitudes, skills and activities), whether a person can see potential benefits of engagement, and motivation and attitude, including concerns about safety and security."[3] This notion of digital ability – people's capacity to understand and engage with issues – is essential to ensuring safe and ethical automated decision-making. As data and machines pose new questions about how we ensure existing rights are protected and mediated, digital exclusion will act as a vulnerability multiplier and this will require joined-up approaches across government to ensure people don't fall through the gaps.

Growing concerns about the implications of new and emerging technologies on society have been matched with the rise of ethical guidelines across private, pubic and for-purpose sectors. Ethical frameworks, when supported with proper guidance and training, can provide a valuable addition to the regulatory ecosystem. We support the Commission's **Proposal 2** that the Australian Government should commission an independent body to *review and identify opportunities to improve existing ethical frameworks for new and emerging technologies* and look forward to contributing lessons learnt and approaches from own work.

Driven by its mission to support people and communities in times of vulnerability, the International Red Cross and Red Crescent Movement (the Movement) has long championed the development of standards to guide responsible, inclusive and ethical humanitarian operations – including in the digital domain. From the code of conduct on data protection in our Restoring Family Links (RFL) services which reunite loved ones separated by war, conflict or migration[4] to ensuring responsible use of biometric data in humanitarian programs[5], the Movement has sought to understand the consequences that the use of data and technology could have on communities we work with and is taking measures, such as policies, design guidelines and accountability mechanisms to avoid putting people at risk. With regards to data processing, this means explaining why we collect personal data, including any data-sharing arrangements, and ensuring people we support have the opportunity to ask questions, and accept or reject data processing without inhibiting their access to help.

Case study: Promoting good practice in humanitarian data protection

In December 2019, the 33rd International Conference (IC) of the Red Cross and Red Crescent adopted **Resolution 4 on Restoring Family Links while respecting privacy, including as it relates to personal data protection**[6]. The IC is the supreme deliberative body of the Movement, where the States Parties to the Geneva Conventions come together with the components of the Movement[7] to discuss key matters of humanitarian concern and to make joint commitments. Recognising that processing of personal data is an integral part of RFL services and necessary for the performance of the Movement mandate, the Resolution provides clear guarantees related to data security, including intention not to misuse for other purposes the data retained, and urges States to respect the humanitarian purpose of the

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[2] https://digitalinclusionindex.org.au/the-index-report/about-the-index/

[3] Ibid.

[4] https://www.icrc.org/en/document/rfl-code-conduct

[5] https://blogs.icrc.org/law-and-policy/2019/10/18/innovation-protection-icrc-biometrics-policy/

[6] https://rcrcconference.org/app/uploads/2019/12/33IC-R4-RFL-_CLEAN_ADOPTED_en.pdf

[7] Movement components are the National Red Cross and Red Crescent Societies (currently 191), the International Federation of Red Cross and Red Crescent Societies, and the International Committee of the Red Cross.

personal data processing. While IC resolutions are not legally binding, there is a strong understanding that States will be guided by their provisions. Civil Society and other humanitarian actors can leverage the resolutions in their work.

Resolution 4 is underpinned by a Code of Conduct on Data Protection in RFL, which involves training for RFL staff in our region and has been made available across the global RFL network to increase awareness of data protection requirements and standards. In Australia, Red Cross ensures our RFL program processes are compliant with the standards of the Code of Conduct and that staff are aware of their obligations. Particular attention is paid to using secure platforms for exchanging data globally in our day-to-day work.

Automation of decision-making

In the past automation was about machines doing work instead of people, now it is increasingly about machines making decisions for people.[8] Examples abound where this type of automation has intensified disadvantage, from incorrectly predicting the likelihood of re-offending, wrongly identifying the over-payment of social benefits, to preventing people from accessing social and economic opportunities.

Given the questions of transparency and accountability that automation of decision-making raises, it is paramount to focus on minimising harm and ensuring that affected people have the ability to understand and influence decisions.

Case study: Getting the balance right in humanitarian innovation

Trace the Face[9] was developed by the International Committee of the Red Cross (ICRC) as an online tracing tool to help people locate their missing family members. The design of the tool emerged to meet the needs of the Movement to be able to offer people an additional method to search for their families. The design incorporates methods to manage and protect sensitive data, with selective information being made public online, and other data remaining confidential for verification and data-matching purposes. The tool requires detailed discussion with users to ensure informed consent, and personal contact with Red Cross Red Crescent personnel for human verification of a match via interview, and to support the family to re-establish contact between its members. Additional working protocols prevent the publication of data regarding minors, but still allow for the potential benefit of 'back office' data-matching to occur.

The use of facial recognition technology continues to be tested with this tool, but the tool is not dependent on this method alone. Should this approach prove reliable and not pose further risks, facial recognition may increase the speed of processing.

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[8] From Prof Julian Thomas' presentation on ADM+S to the Australian Research Council, May 2019.
[9] https://familylinks.icrc.org/europe/en/Pages/Home.aspx

In response to **Question A** on the definition of AI-informed decision-making, we note that the focus on AI may not be the most useful approach given the evolution of technological tools and their uses. As we have seen, automation of decision-making can occur without AI – for example, in the execution of smart contracts on blockchain or in the so-called 'Robodebt' online income compliance program where data matching was used to automate debt recovery.[10] For this reason, the ADM+S Centre is deliberately not confined to any specific technology and focuses instead on the socio-technological interactions between people, data, machines and institutions that constitute automated decision-making systems.

People at the centre and in control

> *"When diverse groups are involved in programme design, humanitarian responses are more comprehensive, inclusive and can have more sustainable results. Inclusion of, and participation by, the affected population is fundamental to life with dignity."*[11] Sphere Handbook

Advanced technological tools and systems can be seen as too complex, too overwhelming, the territory of experts. Yet they shape everyone's lives in ways we couldn't have imagined a mere decade ago. We need to enable society to engage with and shape these issues, bring in diverse voices and perspectives to define the problems and co-create solutions, or we risk excluding some people and communities from being able to participate at all – socially and economically – in the long run.

Reflecting on the Commission's **Proposal 6**, we strongly agree that there is a need to engage in public consultation focusing on those most likely to be affected in cases where the Australian Government proposes to deploy automated decision-making systems. We also support **Proposal 19** that the Australian Government establish an **AI Safety Commissioner** as an independent statutory office focussed on preventing individual and community harm, and a body responsible to progress cross-sectoral engagement and collaboration.

Civil society has a crucial role to play in leveraging trust and bringing the voice of communities into the research, design, and regulation of technology. In Australia, Red Cross volunteers, members and staff work from nearly 400 sites around the country. Building on our deep grassroots networks, our role is increasingly that of a connector and enabler for communities to create solutions informed by their lived experience.

Through Humanitech, we are driving a move towards a collaborative culture and feedback loops at the intersection of humanitarianism and technology. This requires a multi-stakeholder approach, and one that puts civil society at the core, in particular the most vulnerable and those most likely to be affected, in evidence-based decision-making about impacts, and part of the new 'business as usual'. A collaborative humanity-first approach has transformative potential to address vulnerability by giving people the ability to identify and meet their own needs.

Case study: Putting people at the centre and in control

Red Cross is a Movement based on voluntary action, people helping people when times are tough. In 2018-19, we deployed 16,000 volunteers in support of humanitarian outcomes across Australia. In mid-2018, driven by changes in the volunteering landscape, we initiated the **Identity Project**, a decentralised digital credentialing platform which aims to enable civic, social and economic participation by giving people ownership over their own identity. Implemented in collaboration with a number of Australian for-purpose and for-profit organisations, the technology solution and the supporting governance are designed to increase the individual's control over their own personally identifiable information, while enabling organisational efficiencies. Using blockchain technology, participating organisations can issue staff and volunteers with unalterable digital representations of any

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10 http://mediahub.humanservices.gov.au/media/online-income-compliance-programme-update/
11 https://spherestandards.org/handbook-2018/

type of document, ranging from police and working with children checks to first aid and training certificates. These digital credentials are cryptographically stored in people's digital wallets and can be shared upon request with organisations in the network. The decentralised system is based on a user-in-control approach to managing personal data, whereby the individual acts as the focal point for their information and chooses what to share and with whom. When combined with a governance system that includes multiple organisations, the ease with which people can move within and between organisations can be significantly increased and the cost reduced. We are planning to launch the product in 2020.

Consideration of international humanitarian law

Beyond the focus of Humanitech but reflecting the mandate of Red Cross more broadly to promote awareness of and respect for international humanitarian law (IHL), this section of the submission draws attention to this body of law. Applied during times of armed conflict, IHL seeks to limit human suffering on the battlefield by prohibiting or placing restrictions on the use of various means and methods of warfare. Aiming to balance military necessity with the dictates of humanity, IHL shares goals with human rights law, but is distinct from the human rights framework and therefore warrants specific attention.

Technological developments have given rise to new means and methods of warfare, such as autonomous weapons systems and cyber-attacks, raising novel humanitarian and legal challenges. When developing or acquiring any new weapon, means or method of warfare, States have an obligation to assess whether it complies with IHL prior to its deployment.

To the extent that the Commission's proposals are relevant to the study, development, acquisition or adoption of technologies in situations of armed conflict, we recommend that compliance with IHL be considered and included in any relevant decision-making. For example, in response to **Proposal 27**, where professional accreditation bodies for engineering, science and technology have members involved in the study and development of technology related to armed conflict, they should consider introducing mandatory training on 'human rights by design' **as well as** 'international humanitarian law by design' as part of continuing professional development.

Conclusion

Australian Red Cross has an aspirational vision for technology, where it's potential to help us solve social and humanitarian challenges will be achieved by putting humanity first.

To borrow from Christiana Figueres speaking about climate change, *"This is the decade and we are the generation"*[12] to shape new and emerging technologies so they benefit all of humanity, with specific efforts needed so that the most vulnerable members of our communities are not further disadvantaged.

Working together across sectors will allow us to develop deep understanding of the social implications and create new ways of designing and assessing technology so that its social, civic and economic benefits can be fulfilled. By engaging a broad range of voices in development and regulation of AI and automation, we will build community trust in these transformative tools and systems.

Australian Red Cross welcomes the opportunity to help shape this future.

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Research and Development Manager - Humanitech
Australian Red Cross

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[12] https://www.theguardian.com/environment/2020/feb/15/christiana-figueres-climate-emergency-this-is-the-decade-the-future-we-choose