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Expert seminar with the purpose of identifying how artificial intelligence, including profiling, automated decision-making and machine-learning technologies may, without proper safeguards, affect the enjoyment of the right to privacy

OHCHR, 27-28 May 2020

Statement by Switzerland

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Switzerland thanks the Office of the High Commissioner for Human Rights for organizing this expert seminar. Identifying how artificial intelligence affects the right to privacy is of crucial importance. With the current COVID-19 pandemic, digital communication took on unprecedented significance. It reminded us of the challenges States, international organizations and business enterprises are facing in the respect of human rights online.

Switzerland would like to emphasize the importance of a human rights based and user centered approach to artificial intelligence (AI). The design, development, deployment and evaluation of AI technologies must be in accordance with States' obligations under international human rights law and the responsibilities of business enterprises, in accordance with the UN Guiding Principles on Business and Human Rights. In order to tackle arising challenges linked to AI with the necessary technical know-how and ensure an effective human rights protection offline and online the private sector must take up its responsibility.

The right to privacy is paramount for the personal identity, the well-being and the autonomous development of each person. The process of building opinions, goals and values needs this protected space online and offline. The mere feeling of being watched and monitored can consciously or unconsciously affect human behavior. It is therefore our view, that limitations on the right to privacy can have significant effects on the exercise of other human rights. For example, AI technologies used for social media surveillance, facial recognition and profiling also bear the risk of self-censorship. Hence, due to the fear of reprisals and serious consequences, including discrimination, people can limit the legitimate exercise of their human rights. Violations or abuses of the right to privacy can thus interfere with the right to freedom of expression and the right to freedom of peaceful assembly and association. Therefore, appropriate safeguards are needed to prevent these misuses and violations.

At the heart of the regulatory response lies the requirement of a *free, explicit and informed consent* to the collection, processing and storage of personal data. Data processing must be strictly limited to the

specific purpose consent was given for and respect the principles of legality, necessity and proportionality. Besides incorporating the relevant legal principles in the *design of AI*, human rights due diligence and *human rights impact assessments* should be performed on a regular basis in order to identify protection gaps. Mechanisms to ensure effective access to remedy should be included in the design of AI technologies and tools.

Switzerland supports a decentralized, inclusive and secure data order based on the self-determination of the user. While using the enormous innovative and transformative potential of AI, States, organizations and business enterprises must put the right to privacy at the center of their actions.