## Response to the call for submissions by the OHCHR

## Day of General Discussion

## On Article 11 of the Convention on the Rights of Persons with Disabilities of the Committee on the Rights of Persons with Disabilities

By Mariana Díaz Figueroa (Mexico) – Anderson Henao Orozco (Colombia) – Jesús Martínez (El Salvador) – Wanda Muñoz Jaime (Mexico)

**The risks of increasing autonomy in weapons systems for persons with disabilities in the context of situations of conflict**

Persons with disabilities around the world still face enormous and disproportionate barriers in all sectors, even more so persons with multiple disabilities and those with other marginalised identities and characteristics related, among other factors, to age, gender, race, ethnic origin, religion, and others. These barriers pose even greater threats in situations of risk and humanitarian emergency, including conflict.

This submission presents the concerns related to increasing autonomy in weapons systems, which would have a specific and disproportionate impact amongst persons with disabilities in situations of conflict for reasons explained in this paper. Such risks have been recognised by the Special Rapporteur on the Rights of Persons with Disabilities in his report on Situations of Conflict (2021) and in his report on Artificial Intelligence (2021).[[1]](#footnote-2) In this latter, Mr. Gerard Quinn specifically noted that

"the deployment and use of fully autonomous weapons systems, like other artificial intelligence systems, raises concerns as to the ability of weaponry directed by artificial intelligence to discriminate between combatants and non-combatants, and make the nuanced determination as to whether an assistive device qualifies a person with disabilities as a threat".

This submission presents four key reasons why autonomy in weapon systems represent a specific risk to persons with disabilities:

1. Bias in artificial intelligence.
2. Violence against persons with disabilities at the hands of military and police forces.
3. The humanitarian impact of remote warfare.
4. Barriers that persons with disabilities face to access to justice and reparations.
5. The lack of participation of persons with disabilities in diplomatic debates on autonomous weapons.

**We encourage the Committee on the Rights of Persons with Disabilities to include in its debates this important issue on to call on State Parties to take all necessary measures, including through new international legislation, to address the risks posed by autonomous weapons systems which would have disproportionate consequences among persons with disabilities and other marginalized groups. We also encourage the Committee to call on States Parties to include representative organizations of persons with disabilities in national deliberations related the uses of artificial intelligence and emerging technologies in all sectors.**

This submission is a summary of our article *The risks of autonomous weapons systems: an analysis centred on the rights of persons with disabilities,* published in 2022 by the International Committee of the Red Cross and Oxford University Press.[[2]](#footnote-3) Additional information and examples as well as specific references of each section can be found in this article.

**Background**

Article 11 of the Convention on the Rights of Persons with Disabilities includes the commitment of States Parties to adopt “*all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict* (International Convention on the Rights of Persons with Disabilities, 2006).

Nevertheless, several organisations have documented the obstacles still faced by persons with disabilities in accessing protection in situations of conflict. These include physical and other barriers to escape from violence and including sexual violence; and limited access to public services in general in the areas of nutrition, health, social services, and psychosocial support, since these services are still generally developed without taking into account directives on physical, attitudinal and communicative accessibility. Furthermore, rehabilitation services in situations of conflict are as yet insufficient, geographically or economically inaccessible, or in some cases, non-existent.

1. **Bias in AI and emerging technologies**

Current bias in the application of artificial intelligence have a much greater impact on historically marginalised populations than on the rest of the population. Autonomous weapons would have the same impact as other weapons: increased poverty, larger refugee and displaced populations, and food insecurity, among other effects. But owing to the biases and challenges of the technology and taking as a basis existing evidence from different civilian sectors, autonomous weapons could have additional disproportionate impact on persons with disabilities and on other groups in vulnerable situations.

Indeed, although artificial intelligence has supported specific advances in certain sectors, it has also created significant problems with respect to the enjoyment of human rights, disproportionately affecting historically marginalised groups, including persons with disabilities, as exemplified by the use of AI in job interviews, eligibility analysis for certain social welfare programs, access to educational options, humanitarian situations, and the right to privacy. [[3]](#footnote-4)

There are several reasons for this, including the fact that artificial intelligence is created, designed, and implemented largely by people who have been brought up in societies that consistently reproduce various oppressive systems such as patriarchy, colonialism, racism, heteronormativity, cisnormativity, and ableism. Artificial intelligence applications reproduce and amplify these systems, since people from historically marginalised groups are rarely involved in the processes of creation and design of artificial intelligence, and they are not consulted as to the acceptability of the applications.

There is no reason to think that such bias, well document in the civilian sector, would not be reproduced and even amplified in military applications such as in autonomous weapons systems; on the contrary, such bias could be amplified by existing bias against persons with disabilities and other marginalised groups in military and police forces.

1. **Bias against persons with disabilities in military and police forces**

Several examples show how the armed forces and the police have conducted operations that have had specific and disproportionate effects on persons with disabilities and have led both to deaths and to serious injuries. This is illustrated, for instances, by case studies from:[[4]](#footnote-5)

* **Colombia** —where the army executed persons with disabilities to count them as “rebels”.
* **State of Palestine**—where lack of accessibility in warnings contributed to the death of 23 persons with disabilities in the Gaza Strip, since they were given by telephone or via pamphlets dropped from airplanes or other aerial vehicles before bombings, and thus did not reach persons with disabilities as easily as they did persons without disabilities.
* **Cameroon** —where a 43-year-old man with intellectual and hearing impairments died after being shot by soldiers from the Rapid Response Battalion when he did not respond rapidly enough to their questions—; for rom Phoenix, Arizona —where approximately one in every ten police shoot-outs involves people with "mental illness"—;
* **Israel** —where the Israeli police killed a young autistic Palestinian man in Jerusalem when they did not get the answer they expected nor as quickly as expected when questioning him.

Among others. This shows a pattern where military and police forces disregard the rights of persons with disabilities or even target them directly. Autonomous weapons, with its bias related to the technology they would be use, would be even riskier since they would be used by military and possibly police forces, which already attack persons with disabilities based on their own biases.

1. **The current impact of remote warfare**

Certain methods of remote warfare are already being used have a specific impact on the mental health of affected populations, which could accentuate or create situations of disability. These methods have been used in situations of conflict where the general population already lacks sufficient access to humanitarian aid, a situation that is exacerbated for persons with disabilities by various additional barriers. As illustrated by the experiences of survivors of remote warfare attacks in Yemen, documented by SaferWorld[[5]](#footnote-6), for example, the human cost of remote warfare has been high. The unpredictable and frequent appearance of drones has affected the population's mental health. They live with the constant fear of attacks at any time, children cannot go to school due to fear of being attacked at any time, and the persistent frustration and apathy have even led to suicide and caused other mental health issues.

1. **The barriers that persons with disabilities face to access justice and reparations in situations of conflict**

According to the Geneva Academy,[[6]](#footnote-7) persons with disabilities are systematically denied access to justice when they have been victims of violations of international humanitarian law, and little or no attention is paid to ensuring that victims of conflict with disabilities are able to access and participate in judicial processes. Autonomous weapons would be developed and used in a context in which it is already the exception, rather than the norm, that victims – particularly those with disabilities- access justice.

The characteristics of autonomous weapons, including those related to predictability and understandability,[[7]](#footnote-8) would render accountability, remedy, reparations and more generally access to justice even more difficult for people with disabilities, who are already the group hardest hit by conflict and the group that encounters the greatest difficulties in obtaining justice.

As Boulanin, Bruun and Goussac affirm, “autonomy opens up the possibility for IHL provisions to be exercised by a complex web of human and artificial agents, based on automated process and in expanded and more complex geographical and temporal circumstances”, raising concerns that IHL violations cannot be “satisfactorily attributed, discerned, or scrutinised and, as a result, an individual or state responsible for an IHL violation is not held to account or punished for it”.[[8]](#footnote-9) This concern would apply to any victim, but systemic discrimination would make it even worse for persons with disabilities given the obstacles that already exist for them to access justice and reparations generally, and as related to humanitarian contexts.

1. **Lack of participation and inclusion of representative organisations of persons with disabilities in national and international debates on autonomy in weapons systems**

The failure to include and consult representative organisations of persons with disabilities and conflict survivors during discussions on autonomous weapons means excluding their perspectives and experience, as is their right. This *de facto* discrimination, coupled with the exclusion of persons with disabilities from the development of artificial intelligence,[[9]](#footnote-10) is an example of the extent to which persons with disabilities are being denied an opportunity to contribute their perspectives on all issues and in all areas, as is their right. In forums where decisions are taken on the rules of war and the legality of weapons, which disproportionately affect persons with disabilities, they remain excluded; as well as in those related to the ethics, legislation, and acceptability of uses of artificial intelligence.

**Examples of possible effects of autonomous weapons in persons with disabilities**

As mentioned earlier, the question as to how these weapons would affect people with disabilities was raised in 2021 by the Special Rapporteur on the rights of persons with disabilities, who specifically questions the ability of weaponry directed by artificial intelligence to make the nuanced determination, for instance, as to whether an assistive device qualifies a person with disabilities as a threat.”[[10]](#footnote-11) It is highly probable that this ableism, which is still rampant in society, would be reflected in autonomous weapons, which would certainly not take into account the following cases: [[11]](#footnote-12)

* A person may move around in a wheelchair, with a walking stick, walker or crutches, making their speed, height and ability to react and move different from the rest of the population.
* Not everyone communicates orally. It is impossible for a person who is deaf or hard of hearing to comply with an audible command or warning or simply to look for refuge when the sounds of an attack can be the first sign of danger for others.
* Blind persons and those with visual impairments cannot make use of visual cues. They face barriers to mobility, concealment, and even life-saving measures in the event of an attack, and would possibly need someone to explain the presence of autonomous weapons and/or what could be required

of him/her to be safe in their presence.

* Not everyone perceives or understands the world in the same way. For a person with an intellectual disability, certain orders will be difficult to understand or obey, and this condition may even lead to more stress with regard to an attack with such weapons, and lead to greater trauma than for the rest of the population.
* People with psychosocial impairments might exhibit “unexpected” behaviour that autonomous weapons are unable to process (such as lack of response, shouting, or unexpected movements), or that such weapons might interpret as a risk, causing them to identify the person as a target.
* Facial, iris or fingerprint recognition may not identify persons with characteristics such as eye deviation, inability to hold the head straight, or different skin conditions.
* Other persons with disabilities, including persons with multiple impairments, may not exhibit the same expressions or have the same sensations and emotions as the rest of the population, and may behave differently.

**Recommendations for the Committee**

1. Include in its regular work on Art. 11 an analysis of the risks of artificial intelligence and emerging technologies centred on the rights of persons with disabilities.
2. Call on UNCRPD State Parties to analyse and approach the issue of autonomy in weapons systems, taking into consideration the specifics risks that they would pose for persons with disabilities and other marginalised groups.
3. Call on UNCRPD State Parties, particularly those heavily militarised States, to report on how their developments in the area of autonomy in weapons systems consider the rights and concerns of persons with disabilities in this area.
4. Call for a legally binding instrument on autonomous weapons systems, with negative and positive obligations, to regulate autonomy in weapons systems, taking into consideration the different impact for marginalised populations. (The UN Secretary General has already called for a prohibition).[[12]](#footnote-13)
5. Raise awareness on this issue amongst organisations of persons with disabilities.
6. Promote the inclusion and effective participation of representative organisations of persons with disabilities in the Convention on Certain Conventional Weapons and other national, regional and international forums in which autonomy in weapons systems is discussed, where they continue to be excluded.
1. *Report of the Special Rapporteur on the rights of persons with disabilities*, Gerard Quinn, UN Doc. A/HRC/49/52, 28 December 2021, available at: https://www.ohchr.org/en/documents/thematic-reports/ahrc4952-artificial-intelligence-and-rights-persons-disabilities-report

*Report of the Special Rapporteur on the rights of persons with disabilities*, Gerard Quinn, UN Doc. A/76/146, 19 July 2021, p. 9/23, available at: https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/76/146&Lang=E. [↑](#footnote-ref-2)
2. For specific examples, see: Díaz Figueroa, Henao Orozco, Martínez, Muñoz Jaime, 2022. The risks of autonomous weapons systems: an analysis centred on the rights of persons with disabilities. In International Review of the Red Cross No. 922, Persons with Disabilities in Conflict, Oxford University Press. https://international-review.icrc.org/articles/the-risks-of-autonomous-weapons-analysis-centred-on-rights-of-persons-with-disabilities-922 [↑](#footnote-ref-3)
3. See for instance: Meredith Whittaker et al., “Disability, Bias, and AI”, AI Now Institute, November 2019, p. 8, available at: <https://ainowinstitute.org/disabilitybiasai-2019.pdf>. [↑](#footnote-ref-4)
4. See sources and more details of each examples in Diaz et al, cited in footnote 2. [↑](#footnote-ref-5)
5. Jolle Demmers, speaking on “Saferworld's Warpod, Episode 8: Remote Warfare: Interdisciplinary Perspectives”, Saferworld, available at: [Saferworld’s Warpod episode 8: Remote Warfare: Interdisciplinary Perspectives - Saferworld](https://www.saferworld.org.uk/multimedia/saferworldas-warpod-episode-8-remote-warfare-interdisciplinary-perspectives) [↑](#footnote-ref-6)
6. Alice Priddy, Disability and Armed Conflict, Academy Briefing No. 14, Geneva Academy, Geneva, April 2019, available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/Academy%20Briefing%2014-interactif.pdf> [↑](#footnote-ref-7)
7. For more the technical characteristics of autonomous weapons systems, see for instance: Arthur Holland Michel, *The Black Box, Unlocked: Predictability and Understandability in Military AI*, United Nations Institute for Disarmament Research, 2020, available at: https://unidir.org/sites/default/files/2020-09/BlackBoxUnlocked.pdf

Anna Turek and Richard Moyes, *Autonomy in Weapons: ‘Explicability’ as a Way to Secure Accountability*, Article36, December 2020, available at: https://article36.org/wp-content/uploads/2020/12/Explicability-and-accountability.pdf [↑](#footnote-ref-8)
8. Vincent Boulanin, Laura Bruun and Netta Goussac*, Autonomous Weapon Systems and International Humanitarian Law: Identifying Limits and the Required Type and Degree of Human–Machine Interaction*, Stockholm International Peace Research Institute, June 2021, p. 40, available at: https://www.sipri.org/sites/default/files/2021-06/2106\_aws\_and\_ihl\_0.pdf [↑](#footnote-ref-9)
9. Whittaker, cited above. [↑](#footnote-ref-10)
10. Special Rapporteur on the rights of persons with disabilities, above note 11, p. 13. [↑](#footnote-ref-11)
11. Díaz, Henao, Martínez, Muñoz, above cited. [↑](#footnote-ref-12)
12. Bugge A. 2018. *U.N.'s Guterres urges ban on autonomous weapons.*

https://www.reuters.com/article/us-portugal-websummit-un-idUSKCN1NA2HG [↑](#footnote-ref-13)