**Title of input: The implications of the right to freedom from torture, inhumane and degrading treatment to The Autonomous weapon systems**

**In response to: Call for input by the UN Special Rapporteur on torture, on her study on the nature, scope and regulation of the production and trade of law enforcement equipment and weapons and the relationship with torture, and other cruel, inhuman, or degrading treatment.**

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1. **Introduction**

This input considers the implications of provisions of the Convention Against Torture (CAT) to autonomous weapon systems (AWS). It is critical to consider emerging artificial intelligence (AI) technologies when considering the nature, scope and regulation of the production and trade of law enforcement equipment and weapons and how they relate to the right to freedom from torture and other inhuman or degrading treatment or punishment.

AWS are “robotic weapon systems that, once activated, can select and engage targets without further intervention by a human operator.”[[1]](#footnote-1) AWS raise several legal challenges, and it is important to briefly state them: In the area of *jus ad bellum*, the development and use of AWS risks lowering the threshold on the use of force and hence jeopardise peace and security.[[2]](#footnote-2) In the area of *jus in bello*, because AWS lack human judgment, AWS cannot comply with rules of IHL.[[3]](#footnote-3) Where there is no compliance with IHL rules such as distinction and proportionality, the lives and well-being of protected persons such as civilians—who ought to be protected at all times—are placed at risk.[[4]](#footnote-4) In the area of international human rights law (IHRL), AWS pose significant risks to human rights such as the right to life and the right to human dignity which is the subject of this input.[[5]](#footnote-5)

1. **The potential use of AWS by law enforcement officials**

Christof Heyns, the then United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions noted that while AWS may be considered conventional weapons, they are likely to be used in law enforcement situations by law enforcement officials.[[6]](#footnote-6) Indeed, the UN Special Rapporteur noted that “the experience with UCAVs [armed drones] has shown that this type of military technology finds its way with ease into situations outside recognized battlefields.”[[7]](#footnote-7) The point that AWS may be used in law enforcement situations has been reiterated by scholars.[[8]](#footnote-8) Therefore, it is important to consider the implications of CAT to AWS in the context of considering the nature, scope and regulation of the production and trade of law enforcement equipment and weapons the relationship with torture and other cruel, inhuman or degrading treatment or punishment.

1. **Applying the CAT standards to AWS**

The position in this written input is that AWS are inconsistent with provisions of CAT as explained below:

* 1. **AWS and the right to freedom from inhumane or degrading treatment**

Article 16(1) of CAT provides that “*each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment*”.[[9]](#footnote-9) As noted below, the UN Secretary General, UN Special Procedures, regional inter-governmental organisations, international organisations, and scholars have all pointed out that the use of certain AWS will violate the right to human dignity, thereby inconsistent with the right to freedom from inhuman or degrading treatment as provided for in CAT.

 In his 2013 Report on AWS, Christof Heyns, the then UN Special Rapporteur on extrajudicial, summary, or arbitrary executions noted the inconsistency of AWS with the right to human dignity, emphasising that “*deploying [AWS] has been depicted as treating people like “vermin”, who are “exterminated.*” *These descriptions conjure up the image of [AWS] as some kind of mechanized pesticide*.”[[10]](#footnote-10) In his later publication, Heyns criticised AWS as “*mechanical slaughter*” and emphasised that AWS may not be compatible with the right to human dignity.[[11]](#footnote-11)

Equally, in consideration of the relationship between human dignity and AWS, the United Nations Secretary General, Antonio Guterres, has noted that AWS are “*politically unacceptable, morally repugnant, and should be banned by international law*.”[[12]](#footnote-12)

In its Resolution 473 on Artificial Intelligence, the African Commission on Human and Peoples’ Rights recalled “the 2018 statement to the United Nations Group of Governmental Experts on Lethal Autonomous Weapon Systems by the African Group of States on Disarmament that “*notions of dignity and humanity are the parents of all human rights and should govern human conduct including human inventions*” and that it is “*inhumane, abhorrent, repugnant, and against public conscience for humans to give up control to machines*.”[[13]](#footnote-13)

Equally, in its 2018 Resolution on AWS, the European Parliament called for the prohibition of certain AWS noting that the “use of lethal autonomous weapon systems raises fundamental ethical and legal questions” and that “EU policies and actions are guided by *the principles of human rights and respect for human dignity*”.[[14]](#footnote-14)

Notable international organisations like the International Committee of the Red Cross (ICRC) have also noted the incompatibility of AWS with human dignity.[[15]](#footnote-15) The ICRC particularly noted that AWS raise questions beyond whether they can comply with the law to questions whether there are compatible with our values.[[16]](#footnote-16) Equally, several scholars have argued that allowing machines the power over life and death is inconsistent with the right to dignity and as such, to use AWS is to subject humans to inhuman and degrading treatment.[[17]](#footnote-17)

* 1. **AWS and the right to freedom from mental torture**

Article 2(1) of CAT provides that each “State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Prohibition of torture is a norm of customary international law and “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”[[18]](#footnote-18) Even so, “an order from a superior officer or a public authority may not be invoked as a justification of torture.”[[19]](#footnote-19)

It is important to note that in Article 1 of CAT, torture is defined as “any act by which severe pain or suffering, whether physical or ***mental***, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”[[20]](#footnote-20)

This input notes the potential of AWS to cause mental torture. There is a real potential of AWS being deployed in the same manner that armed drones were deployed. The systems will loiter and conduct surveillance, waiting to identify potential targets and deploy force. There is already detailed literature on the mental torture, harm and suffering caused by armed drones.[[21]](#footnote-21) It should be noted, however, that because armed drones are not *illegal per se*, the mental suffering they cause may not always violate the provisions of CAT as per the definition of torture in Article 1. However, the case is different with AWS where it is argued that AWS are illegal weapons per se, and hence, resultant mental torture or suffering is illegal under CAT.

1. **Conclusion**

It is critical to consider emerging AI technologies when considering the nature, scope and regulation of the production and trade of law enforcement equipment and weapons and how they relate to the right to freedom from torture and other inhuman or degrading treatment or punishment. AI tech such AWS are likely to be used in law enforcement and such technologies are incompatible with Articles 2 and 16 of CAT.

1. A/HRC/23/47, 2013*,* para. 37. [↑](#footnote-ref-1)
2. A/HRC/23/47, 2013*,* para. 58; CCW/GGE.1/2019/3, supra, para. 24 (a). [↑](#footnote-ref-2)
3. A/HRC/23/47, 2013*,* paras. 31, 55; Thompson Chengeta, *Measuring Autonomous Weapon Systems against International Humanitarian Law Rules*, 5 J. of L. & Cyber Warfare 1, 103 (Summer 2016). [↑](#footnote-ref-3)
4. Human Rights Watch, “Losing humanity: The case against Killer Robots,” p. 30; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 UNTS 3 [Hereinafter AP I], art. 51. [↑](#footnote-ref-4)
5. A/HRC/23/47, 2013, paras. 30, 8; A/HRC/26/36, 2014, para. 72. [↑](#footnote-ref-5)
6. A/HRC/23/47, 2013, para. 85. [↑](#footnote-ref-6)
7. A/HRC/23/47, 2013, para. 82. [↑](#footnote-ref-7)
8. Chengeta Thompson, “Is the Convention on Conventional Weapons the appropriate framework to produce a new law on autonomous weapon systems” (2022) pages 384-391, in F Viljoen et al (eds), *A life interrupted: The lives and legacies of Christof Heyns* (Pretoria university Law Press), available at

https://www.pulp.up.ac.za/edocman/edited\_collections/a\_life\_interrupted/Chengeta.pdf [↑](#footnote-ref-8)
9. Article 16(1) of CAT. [↑](#footnote-ref-9)
10. A/HRC/23/47, 2013, para. 95. [↑](#footnote-ref-10)
11. Christof Heyns, “Autonomous weapons in armed conflict and the right to a dignified life: An African perspective” pages 12-21, available at https://repository.up.ac.za/bitstream/handle/2263/61750/Heyns\_Autonomous\_2017a.pdf?sequence=4 [↑](#footnote-ref-11)
12. UN Secretary General, Antonio Guteress, <https://press.un.org/en/2019/sgsm19512.doc.htm> [↑](#footnote-ref-12)
13. Resolution on the need to undertake a Study on human and peoples’ rights and artificial intelligence (AI), robotics and other new and emerging technologies in Africa - ACHPR/Res. 473 (EXT.OS/ XXXI) 2021. [↑](#footnote-ref-13)
14. European Parliament resolution of 12 September 2018 on autonomous weapon systems (2018/2752(RSP), available at <https://www.europarl.europa.eu/doceo/document/TA-8-2018-0341_EN.html> [↑](#footnote-ref-14)
15. *See generally* ICRC, “Ethics and Autonomous Weapon Systems: An Ethical Basis for Human Control?’ *Geneva,* Apr. 3, 2018*.*  [↑](#footnote-ref-15)
16. *Id.* [↑](#footnote-ref-16)
17. *See* Thompson Chengeta, *Dignity, Ubuntu, Humanity and Autonomous Weapon Systems (AWS) Debate: An African Perspective*, 13 Brazilian J. of Int’l L. 460–502 (2016); Christof Heyns, *Autonomous weapons in armed conflict and the right to a dignified life: an African perspective*, South African J. on Hum. Rts*,* p.57-66 (2017); Armin Krishnan, Killer Robots: Legality and Ethicality of Autonomous Weapons 150 (Ashgate, 2009); Peter Asaro, *On Banning Autonomous Weapon Systems: Human Rights, Automation, and the Dehumanization of Lethal Decision-making*, 94 Int’l Rev. of the Red Cross 687-709 (2012). [↑](#footnote-ref-17)
18. Article 2(2) of CAT. [↑](#footnote-ref-18)
19. Article 2(3) of CAT. [↑](#footnote-ref-19)
20. Article 1 of CAT. [↑](#footnote-ref-20)
21. McSorley, K. (2019). Predatory War, Drones and Torture: Remapping the Body in Pain. Body & Society, 25(3), 73–99; Edney-Browne, Alex. “The Psychosocial Effects of Drone Violence: Social Isolation, Self-Objectification, and Depoliticization.” Political Psychology, vol. 40, no. 6, 2019, pp. 1341–56; Alaa Hijazi et al, Psychological Dimensions of Drone Warfare (2017) Springer. [↑](#footnote-ref-21)