AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

SUBMISSION COMMISSIONER SOLOMON AYELE DERSSO FOCAL POINT ON THE ACHPR STUDY ON AI AND OTHER TECHNOLOGIES ON LETHAL AUTONOMOUS WEAPON SYSTEMS TO THE UNITED NATIONS SECRETARY-GENERAL IN TERMS OF UN GENERAL ASSEMBLY RESOLUTION 78/241

May 2024
In this submission to the United Nations (UN) Secretary General regarding lethal autonomous weapons (LAWS), the African Commission on Human and Peoples’ Rights (ACHPR) emphasizes three crucial points drawn from its ongoing study\(^1\) on the human and peoples’ rights implications of AI on the African continent:

a) **The need for a new legally binding treaty on LAWS**

Various states – including the African Group on Disarmament and ECOWAS in their Communique following the 2024 Regional Conference on the Peace and Security Aspects of LAWS – have underscored the necessity for a new treaty on LAWS. The ACHPR aligns with this stance, as articulated in its Resolution 473, adopted in 2021, which calls for comprehensive governance of these weapons. Such a treaty would provide a robust legal framework to address the ethical, legal, and security concerns posed by LAWS including having regard to the needs of states and peoples of the African continent.

b) **Meaningful human control (MHC) over LAWS**

As articulated in paragraph 35 of the ACHPR’s 2015 General Comment 3 on the Right to Life (Article 4 of the African Charter on Human and Peoples’ Rights), the ACHPR asserts that any machine autonomy in the selection of human targets or the use of force must be under MHC. This principle is crucial for ensuring compliance with established international law, in particular, international human rights law (IHRL). The ACHPR insists that human control over LAWS should be a foundational norm in the proposed new treaty on LAWS, ensuring that human judgment and accountability remain permanent conditions in the use of such technologies.

c) **The role of IHRL in the regulation of LAWS**

The ACHPR stresses the importance of international human rights law (IHRL) in the governance of LAWS. These weapons have profound implications for fundamental rights, including the right to life, the right to dignity, the right to non-discrimination, and the right to peace. The UN’s discussions on LAWS, initiated in 2013 by South African Professor Christof Heyns (then UN Special Rapporteur on extrajudicial, arbitrary, or summary executions), had particular focus on the human rights implications of LAWS. However, over the past decade, after the discussion were moved to the UN Convention on Conventional Weapons (UNCCW) in 2014, the focus of the UN Group of Governmental Experts on LAWS has shifted away from these critical IHRL considerations. The ACHPR calls for a renewed emphasis on the human rights dimensions in ongoing and future discussions on LAWS.

In summary, the ACHPR’s submission underscores the urgent need for a new treaty to govern LAWS, underscores the necessity of MHC over LAWS, and advocates for a stronger focus on IHRL in the regulation of LAWS.

**INTRODUCTION**

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The African Commission on Human and Peoples’ Rights (ACHPR) welcomes the opportunity to submit its views for consideration by the United Nations (UN) Secretary-General, in accordance with Resolution 78/241 on Lethal autonomous weapon systems [LAWS]. Resolution 78/241 requested the UN Secretary-General to seek views of states – and other stakeholders including regional organizations – on ways to address the humanitarian, legal, security, technological and ethical implications of LAWS.

The ACHPR was established in terms of the African Charter on Human and Peoples’ Rights (African Charter) and is officially charged with three major functions, namely: the protection of human and peoples’ rights; the promotion of human and peoples’ rights and the interpretation of the African Charter. The ACHPR’s mandate to promote human rights can be done through collection of documents, undertaking “studies and research on African problems in the field of human and peoples’ rights” and “should the case arise, give its views or make recommendations to Governments.” Further, the ACHPR can also “formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples’ rights” and in this regard, the ACHPR “shall draw inspiration from international law on human and peoples’ rights, particularly from the provisions of various African instruments on human and peoples’ rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples’ rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.”

In line with the above-mentioned mandate, the ACHPR has previously addressed the human rights implications of LAWS and now submits this response to the UN Secretary General’s call for views on the matter. This submission concentrates on two primary areas: 1) the ACHPR’s past pronouncements on LAWS, and 2) the human rights implications of LAWS from the perspective of the ACHPR. On the second area of focus, this submission examines the right to life, the right to dignity, non-discrimination, and the right to peace and security implications of LAWS. Further, it highlights how all these issues connect to the African continent’s emphasis on the right to development.

1. ACHPR’S PREVIOUS PRONOUNCEMENTS ON LAWS

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3 UN Resolution 78/241, paras 2-3.
4 See the ACHPR, https://achpr.au.int/en (accessed 22 May, 2024).
5 Article 45, African Charter on Human and Peoples’ Rights (hereinafter, the African Charter).
6 Article 45, African Charter.
7 Article 45, African Charter.
8 Article 60, African Charter.
9 Article 61, African Charter.
In 2015 and 2021, the ACHPR noted its views that relate to the human rights implications of LAWS through adoption of General Comment No. 3 on the African Charter on Human and Peoples’ Rights (hereinafter, General Comment 3)\(^{10}\) and Resolution 473 on “the need to undertake a study on human and peoples’ rights and artificial intelligence (AI), robotics and other new emerging technologies in Africa (hereinafter, Resolution 473).\(^{11}\)

### 1.1 ACHPR General Comment Number 3 on meaningful human control (MHC)

General Comment 3 notes that “any machine autonomy in the selection of human targets or the use of force should be subject to meaningful human control. The use of such new technologies should follow the established rules of international law.”\(^{12}\) This ACHPR position on MHC over LAWS has been adopted and referenced by African states. For example, in their April 2018 statement to the UN Group of Governmental Experts (UNGGE) on LAWS, the African Group of States on Disarmament noted that “there is a general consensus among States on the need to maintain human control over use of weapon systems. For that reason, in adopting General Comment Number 3 on Article 4 of the African Charter on Human and People’s Rights concerning the right to life, African states agreed in paragraph 35 that “any machine autonomy in the selection of human targets or the use of force should be subject to meaningful human control. The use of such new technologies should follow the established rules of international law.”\(^{13}\) In the same year, in August 2018, the African Group of States further noted that it “firmly believes that where LAWS without meaningful human control are used, human agency is fundamentally undermined to the extent that it does not only offend ethical considerations but violates applicable international law rules.”\(^{14}\) Finally, in their 2023 statement to the UNGGE on LAWS, the African Group of States on Disarmament noted as follows: “We are of the view that Lethal Autonomous Weapons Systems must remain under the direct, meaningful control and supervision of humans at all times. These key principles must, therefore, form the essential elements of any normative and operational framework to address ethical considerations as well as moral responsibility and accountability of these weapons systems.”\(^{15}\)

Similarly, in their communique on LAWS following the first African region states conference on LAWS in April 2024, member states of the Economic Community of West African States (ECOWAS) noted that “meaningful human control is critical for upholding ethical, legal and humanitarian obligations.”\(^{16}\) ECOWAS further recalled “Resolution 473 (2021) of the African Commission on

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12 General Comment 3, para 35.
Human and Peoples’ Rights which drew attention to the need for meaningful human control over autonomy in weapons systems and to uphold and protect human dignity in the use of AI technologies, robotics and other new and emerging technologies”17 and “also the 2021 statement to the United Nations Group of Governmental Experts on Lethal Autonomous Weapon Systems by the African Group of States on Disarmament that called for a new legally binding instrument with prohibitions and regulations to ensure meaningful human control.”18 Likewise, the African Union’s Director of conflict management directorate in the political affairs, peace, and security department, Dr. Alhaji Sarjoh Bah, noted that “the principle of direct and meaningful human control is of particular importance to the African Union, ensuring that the final decision-making authority and responsibility remain in human hands. Furthermore, we firmly believe mechanisms must be established to hold individuals and entities accountable for developing, deploying, and misusing Lethal Autonomous Weapons Systems.”19 In noting the ACHPR’s emphasis on MHC, the African Group of states on disarmament highlighted that, while there is not a universally accepted definition of MHC, and other terms like "sufficient human control" or "appropriate levels of human judgment" are also used, the terminology itself is less important than the substance and standards of the control being described.20 The key point is that human control must adhere to legal principles, particularly those enshrined in international law treaties – including human rights law – and customary international law which bind all states. Human control over weapon systems must be a legal obligation, not just a matter of state goodwill.21 If proposed definitions or elements of human control do not meet the established legal standards governing the use of force, they are insufficient. The concepts of dignity and humanity – as will be more fully discussed below – which underpin all human rights, should guide the development of the notion of human control. The African Group of states also indicated that it is inhumane, abhorrent, repugnant, and against public conscience for humans to relinquish control to machines, allowing them to decide who lives or dies, and to determine acceptable collateral damage when force is used.22 Equally, various scholars – including African Scholars – have emphasised the importance of maintaining human control over LAWS for the protection of human rights.23

1.2 ACHPR Resolution 473 and LAWS

In line with its above-mentioned mandate, in 2021, the ACHPR adopted Resolution 473 calling for a study on human right implications of AI in Africa.24 Resolution 473 addressed issues of LAWS, appealing “to State Parties to ensure that all AI technologies, robotics and other new and emerging technologies which have far reaching consequences for humans must remain under meaningful human control in order to ensure that the threat that they pose to fundamental human rights is averted. The emerging norm of maintaining meaningful human control over AI technologies,

17 Id.
18 Id.
20 Id.
21 Id.
22 Id.
24 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 (hereinafter, Resolution 473).
robotics and other new and emerging technologies should be codified as a human rights principle.”

In light of General Comment 3, Resolution 473, the statements made by the African Group of states on disarmament to the UNGGGE on LAWS, the perspectives of African scholars, and the provisions of the African Charter, the ACHPR reafﬁrms its stance that human control over LAWS must be grounded in human rights norms and should form the foundation of new binding international law on LAWS.

2. LAWS AND HUMAN RIGHTS LAW

The role of international human rights law (IHRL) in formulation of policy on LAWS is not emphasised in enough in the UNGGGE discussions on LAWS. The ACHPR reiterates the importance and relevance of human rights law in the governance of LAWS. The ACHPR urges states to recall that the discussion on LAWS was introduced in the UN fora through UN Human Rights Council’s special procedures, where the focus was the human rights implications of LAWS. Indeed, among other branches of international law, Resolution 78/241, conﬁrms that human rights law applies to AWS. The General Assembly equally noted that “the adoption by consensus of Human Rights Council resolution 51/22 of 7 October 2022 on human rights implications of new and emerging technologies in the military domain.” Equally, the African Group of States on Disarmament, ECOWAS, African leaders and the African Union have all emphasised the importance of human rights law in the governance of LAWS.

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25 Resolution 473, para 6.
27 Preamble, first para, UN Resolution 78/241.
2.1 LAWS and the right to life

The ACHPR notes that LAWS pose far reaching consequences for the right to life. The African Charter unequivocally asserts the sanctity of human life, stating that "human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right." This foundational principle underscores the gravity and universality of the right to life, emphasizing its centrality to human rights discourse. The ACHPR “has described the right to life as the fulcrum of all other rights.” LAWS has profound implications for the right to life, spanning across civilian contexts, law enforcement and armed conflict. The right not to be arbitrarily deprived of life is enshrined in customary international law and recognized as a *jus cogens* norm, binding universally and at all times.

In examining the implications of LAWS on the right to life, it is paramount to note the responsibilities of states in upholding this fundamental right. The ACHPR notes that states are duty-bound to respect, protect, promote, and fulfill the right to life. The intersection of LAWS and state obligations to uphold the right to life raises critical ethical, legal, and practical considerations. States must grapple with the responsibility to ensure that LAWS do not compromise the right to life through errors, biases, and other risks. The ACHPR notes that state duty to respect, protect, promote and fulfill the right to life entails not only preventing arbitrary deprivations of life perpetrated by state actors but also holding non-state actors accountable for such violations. These state obligations and responsibilities are particularly pertinent given the role of non-state actors in the development, use and potential misuse of LAWS.

When considering the right to life implications of LAWS, it is also critical to understand the notion of arbitrary deprivation of the right to life. The ACHPR notes that “a deprivation of life is arbitrary if it is impermissible under international law, or under more protective domestic law provisions. Arbitrariness should be interpreted with reference to considerations such as appropriateness, justice, predictability, reasonableness, necessity, and proportionality.” This definition of arbitrariness is particularly important in relation to use of force through LAWS. Scholars have noted that in several circumstances, the use of LAWS may result in arbitrary deprivation of the right to life.

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33 Article 4, African Charter.
34 Para 1, African Commission General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4) (hereinafter, General Comment 3).
36 Para 5, General Comment 3.
37 Para 7, General Comment 3.
39 Paras 9 and 38 General Comment 3.
41 Para 12, General Comment 3.
42 T Chengeta, AWS and racial oppression (above) 60, 64; JR Emery “Probabilities towards death: bugsplat, algorithmic assassinations, and ethical due care” (2020) Critical Military Studies 9-10.
appropriateness of entrusting machines with the power over life and death, the unpredictability of LAWS, their adherence to human rights and international humanitarian law (IHL) principles of distinction, necessity, and proportionality of lethal force, and the crucial matters of accountability and justice.

2.2 Use of LAWS in armed conflict and the right to life

The ACHPR is of the view that the impact of LAWS on the right to life should be first considered in the context of armed conflict where these systems are likely to be deployed. It is a settled point of law that the right to life—and many other human rights—apply during times of armed conflict. The ACHPR has noted that “during the conduct of hostilities, the right to life needs to be interpreted with reference to the rules of international humanitarian law.” Indeed, the International Court of Justice held that international humanitarian law is the lex specialis of armed conflict. The ACHPR notes that “in armed conflict, what constitutes an ‘arbitrary’ deprivation of life during the conduct of hostilities is to be determined by reference to international humanitarian law.” It further notes that “any violation of international humanitarian law (IHL) resulting in death, including war crimes, will be an arbitrary deprivation of life.” Just like the shortcomings in law enforcement situations discussed below, use of LAWS in armed conflict poses profound challenges to IHL principles such as distinction, proportionality, precaution, and military necessity. Unlike human operators who can exercise judgment, discretion, and empathy, LAWS lack the capacity for nuanced decision-making and situational awareness in armed conflict. This deficiency undermines the principle of distinction, which requires combatants to distinguish between civilian and military targets, as LAWS may struggle to accurately discern between the two. Additionally, the principle of proportionality demands that

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47 Para 13, General Comment.

48 Nuclear Weapons Case.

49 Id.

50 Id.

51 Id.


53 Asaro, on banning AWS (above); E Whittaker, "Machine judgement and the law of armed conflict: Can autonomous weapons systems comply with the principle of distinction?" (2021) NEL Rev. 52; A Sharkey, "Autonomous weapons systems, killer robots and human dignity" (2019) Ethics and Information Technology
the anticipated military advantage must outweigh the expected civilian harm. However, LAWS may struggle to make such assessments accurately in complex and dynamic battlefield environments, potentially leading to disproportionate use of force and violation of the right to life. Moreover, the principle of precaution mandates that parties to a conflict take all feasible precautions to minimize harm to civilians and civilian objects. Yet, LAWS may not possess the requisite foresight and adaptability to anticipate and mitigate risks effectively. Finally, the concept of military necessity requires that the use of force be necessary to achieve a legitimate military objective. However, LAWS may lack the capacity to contextualize situations and determine the necessity of specific actions, potentially leading to indiscriminate or unnecessary use of force. In essence, the deployment of LAWS raises serious concerns about their ability to comply with the foundational principles of IHL, thereby jeopardizing the protection of the right to life.

In this regard, the ACHPR has noted that "any machine autonomy in the selection of human targets or the use of force should be subject to meaningful human control. The use of such new technologies should follow the established rules of international law." ACHPR notes that LAWS are also likely to be used in law enforcement or situations outside armed conflict. Indeed, the first UN report on LAWS noted that “the possibility of [LAWS] usage in a domestic law enforcement situation creates particular risks of arbitrary deprivation of life, because of the difficulty [LAWS] are bound to have in meeting the stricter requirements posed by IHRL." The primary function of state agents in law enforcement is to protect the safety of the public. The ACHPR has noted that building blocks of a proper state system for the protection of the right to life in law enforcement includes “a law enforcement system with the necessary equipment and training.” Thus, to prevent unlawful use of force, states must provide law enforcement officials with “appropriate equipment and training.” While some AI tools undoubtedly play a crucial role in safeguarding the right to life within law enforcement contexts, such as aiding in hostage rescue operations, bomb defusal, and timely delivery of medical assistance to crime victims, as well as in early detection and prevention of criminal activities like terrorist financing, the utilization of...
LAWS raises significant concerns. The use of emerging technologies in law enforcement must comply with international standards “including the principles of necessity and proportionality” where “force may be used in law enforcement only in order to stop an imminent threat.” The potential deployment of LAWS raises profound concerns regarding compliance with the principles of necessity and proportionality.

Within the realm of law enforcement, the foundational principles of necessity and proportionality dictate that the application of lethal force must be a measure of last resort, utilized solely when essential to safeguard another life. This fundamental tenet, often termed the “protect life principle,” underscores the gravity and restraint with which lethal force should be employed. As noted by the ACHPR, these principles of necessity and proportionality indicate that “the intentional lethal use of force by law enforcement officials and others is prohibited unless it is strictly unavoidable in order to protect life (making it proportionate) and all other means are insufficient to achieve that objective (making it necessary).” Indeed, the ACHPR has noted that “intentional deprivation of life is prohibited unless strictly unavoidable to protect another life or other lives.” Evaluating the necessity and proportionality of such force is inherently context-specific, demanding nuanced human judgment, situational awareness, and intuition. These are human qualities that machines and algorithms lack. Consequently, reliance on autonomy or algorithmic decision-making in matters of lethal force risks yielding outcomes that arbitrarily deprive individuals of their right to life. Thus, while autonomy may seem attractive in the use of force, the ACHPR has emphasised the importance of control by noting that “where advanced technology is employed, law enforcement officials must remain personally in control of the actual delivery or release of force, in a manner capable of ensuring respect for the rights of any particular individual, as well as the general public.”

As already indicated above, this notion of meaningful human control over use of force has been equally emphasised by several stakeholders. The inaugural UN report on LAWS highlights legal apprehensions regarding the potential use of AI technologies like LAWS in law enforcement, suggesting that they may run afoul of human rights law principles such as necessity and proportionality which are key to the protection of the right to life.

2.4 LAWS and extraterritorial application of the right to life

441-452; K McKendrick, Artificial intelligence prediction and counterterrorism (The Royal Institute of International Affairs-Chatham House, 2019).

65 Para 27, General Comment 3.
66 See McCann and Others v the United Kingdom, [1995] ECHR Application No.18984/91.
68 Para 27, General Comment 3.
69 Para 13, General Comment 3.
71 Para 31, General Comment 3.
73 A/HRC/23/47.
The ACHPR also recognizes that LAWS are not neutral technologies; they are being developed by a select few powerful nations, and their deployment across borders has already been witnessed.\(^74\) Given this context, the ACHPR underscores the critical importance of the norm of extraterritorial application of human rights. In this regards, the ACHPR notes that international law standards on protection from arbitrary deprivation of the right to life apply extraterritorially.\(^75\) It is emphasised that states must respect the right to life of individuals outside their territories as customary international law prohibits, without territorial limitation, arbitrary deprivation of life.\(^76\) Like drones, LAWS may be utilized in conflicts spanning multiple countries, raising significant concerns regarding violations not only of *jus ad bellum* principles but the right to life and other fundamental human rights. Already, there are reports of deployment of military AI in the Israel-Gaza conflict.\(^77\) Consequently, stakeholders must underscore the extraterritorial application of human rights, including the fundamental right to life, when shaping policy on LAWS. By recognizing and advocating for the extension of human rights protections beyond national borders, efforts can be made to prevent the arbitrary deprivation of life and uphold the principles of justice and dignity for individuals affected by LAWS. Furthermore, embracing the extraterritorial application of human rights underscores the interconnectedness of global security and the imperative of collective action to safeguard human rights in an increasingly complex and technologically driven world.

### 2.5 LAWS and the right to dignity

The African Charter uniquely provides for a stand-alone right to dignity and LAWS present far-reaching consequences for this right.\(^78\) The ACHPR has emphasised the importance of the right to dignity in several cases.\(^79\) It considers that “the rights protected by the Charter have a supreme and dependent relationship with the right to dignity.”\(^80\) Given the history of African peoples being dehumanised through the violence of slavery and colonialism, the ACHPR has emphasised the importance of the right to human dignity noting that “dignity is one of the essential objectives for the achievement of the legitimate aspirations of the African peoples. Dignity is, therefore, the soul of the African human rights system and which it shares with both the other systems and all civilized human societies. Dignity is consubstantial, intrinsic, and inherent to the human person. In other words, when the individual loses his dignity, it is his human nature itself which is called into

\(^74\) D Garcia, *The AI military race: Common good governance in the age of artificial intelligence* (Oxford University Press, 2024).

\(^75\) Para 14, General Comment 3.

\(^76\) Id.


\(^78\) Article 5, African Charter.


\(^80\) *Open Society Justice Initiative v Côte d’Ivoire*, para 140.
question, to the extent that it is likely to interrogate the validity of continuing to belong to human society... When dignity is lost, everything is lost. In short, when dignity is violated, it is not worth the while to guarantee most of the other rights.”

The ACHPR notes that the African Charter “envisages the protection not only of life in a narrow sense, but of dignified life.” As such, when considering the right to life implications of AI LAWS, it is critical to assess the impact on the right to a dignified life. Some scholars have indicated that to allow LAWS “the power to kill seems a bit too much like setting a mousetrap for human beings; to do so would be to treat our enemies like vermin.” Johnson vividly illustrates the mouse analogy, emphasizing the fundamental right to dignity by objecting to the notion of entrusting the decision to kill to AI technologies, which would infringe upon the right to life: “A mouse can be caught in a mouse-trap, but a human must be treated with more dignity. A mouse-trap kills targets with certain characteristics based on certain behaviour, i.e., anything of sufficient mass eating or, at least, touching the bait. The trigger is designed to attack based on the mouse-trap’s perception of the target and its actions. The complexity of the trigger is not what we are concerned with – a mouse can be killed by a machine, as it has no inherent dignity. A robot is in a way like a high tech mouse-trap, it is not a soldier with concerns about human dignity or military honour. Therefore, a human should not be killed by a machine as it would be a violation of our inherent dignity.”

Heyns argued that the overriding consideration is whether it is acceptable to let machines decide whom to kill. If it is unacceptable, then “no other consideration can justify deployment of AWS no matter the level of technical competence at which they operate.”

Further, Heyns succinctly summarised the impact and undesirability of taking humans out of the loop in the use of lethal force: now that AWS “lack morality and mortality”, “taking humans out of
the loop risks taking humanity out of the loop.”

Given that humans not only have the capacity to adhere to the minimum set standard “but they also hold the potential to adhere to higher values” unlike AWS “which lack the capacity to rise above minimum standards”, giving robots the power to make decisions on who to kill leads to “a vacuum of moral responsibility” which is tantamount to “giving up on hope for a better world.” To that end, Heyns argued that allowing a machine to make a decision to take life may be “inherently arbitrary and all resulting deaths [constituting] arbitrary deprivations of life”, that is in violation of the African Charter that prohibits arbitrary deprivation of life. Along the same lines, Chengeta has noted that the development and deployment of LAWS is inconsistent with the African philosophy of ubuntu – I am because we are, we are because I am.  

### 2.6 LAWS and the right to non-discrimination

The ACHPR also notes that LAWS raises serious concerns for the right to non-discrimination. There can be discrimination in the life cycle of LAWS – development, deployment, post-use, and policy formulation stages. States have noted that certain AI technologies in the military domain that have implications for the right to life equally “raise acute concerns around the prohibition of discrimination under IHRL.” This discrimination manifests in various forms, including gender, racial, and religious bias present in the datasets utilized for military AI development. When examining LAWS, it is crucial to recognize that these technologies are not inherently neutral developments accessible to all. Instead, they are predominantly crafted by powerful nations and deployed selectively, akin to armed drones, targeting specific regions and populations. Moreover, upon deployment, these systems often perpetuate biases, leading to a lack of accountability that disproportionately affects certain communities, particularly those historically oppressed and marginalized, such as people of color and individuals in the Muslim world. The ACHPR notes that “as part of their broader duty to secure the conditions for dignified life, States have a particular responsibility to protect the human rights, including the right to life, of individuals or groups who are frequently targeted or particularly at risk, including on the grounds listed in Article 2 of the Charter and those highlighted in resolutions of the Commission.” Further, the ACHPR notes that “any deprivation of life resulting from a violation of

91 A/HRC/23/47, p 16 para 89.
93 A/HRC/23/47, p 18 para 97.
96 T Chengeta, “The right to non-discrimination, and freedom from racial oppression should be part of the guidelines and principles in the discussion on AWS” (2023) Written Evidence Number AIW0020, UK Parliamentary Committee on AI, https://committees.parliament.uk/writtenevidence/120290/pdf/ (accessed 22 May 2024).
97 CCW/GGE.1/2024/WP.5, Addressing bias in autonomous weapons, submitted to the UNGGE LAWS by Canada, Costa Rica, Germany, Ireland, Mexico and Panama, para 2.
98 Id.
99 Id.
101 Para 11, General Comment 3.
102 Article 2, African Charter.
the procedural or substantive safeguards in the African Charter, including on the basis of discriminatory grounds or practices, is arbitrary and as a result unlawful.” When evaluating the ramifications of LAWS on the right to life, stakeholders must thoroughly examine how these intersect with fundamental rights such as non-discrimination, non-exploitation, and non-domination, as enshrined in human rights instruments. As already has been pointed out, the vast of military AI technologies are not neutral, but rather, as indicated by Yarden Katz, they “are racialised and gendered, and classed models of the self, delivered with imperialist rhetorics of colonisation and conquest”.  

2.7 LAWS, accountability and the right to remedy

The ACHPR notes that another key issue raised by LAWS is its impact on accountability, and by extension, on the right to a remedy. The ACHPR has already indicated that “states must take steps both to prevent arbitrary deprivations of life and to conduct prompt, impartial, thorough and transparent investigations into any such deprivations that may have occurred, holding those responsible to account and providing for an effective remedy and reparation for the victim or victims, including, where appropriate, their immediate family and dependents.” Indeed, it is the duty of states to hold account non-state actors including corporations and businesses that contribute to arbitrary deprivation of the right to life. The ACHPR has equally emphasised the importance of transparency as part of accountability and that there must be “transparency about laws, policies, practices, and the circumstances of any limitations of the right to life as well as about the process and outcomes of investigations is a necessary element in fulfilling the right to life.” What is key to note is that the ACHPR has emphasised that the failure of a state to “hold accountable individuals or groups responsible for violations of the right to life constitutes in itself a violation by the State of that right.” It is important for stakeholders to note that LAWS pose a significant accountability gap challenge, exacerbating concerns regarding the violation of the right to remedy. This gap arises due to the intricate nature of these systems, where decision-making processes lack transparency and are often shielded from human oversight. Consequently, when these systems cause harm or violate human rights, identifying responsible parties becomes exceedingly difficult, if not impossible. This lack of accountability directly contravenes the right to remedy, denying victims the opportunity for justice and redress. Moreover, in cases where the right to life is violated by LAWS without accountability mechanisms in place, such violations inherently amount to an arbitrary deprivation of the right to life. Without clear avenues for holding accountable those responsible for deploying or

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103 Para 12, General Comment 3.
105 Para 7, General Comment 3.
106 Para 18, General Comment 3.
107 Para 21, General Comment 3.
108 Para 15, General Comment 3.
110 Id.
111 Id.
developing these systems, the foundational principles of justice and human rights are compromised, leaving victims vulnerable and their rights unprotected.

2.8 LAWS and the right to peace and security

The ACHPR also notes that LAWS raise far-reaching implications for the right to peace as provided for in the African Charter. The African Charter – like no other regional human rights instrument – uniquely provides for the right to national and international peace. It provides that “all peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.” Moreover, the African Charter stipulates measures to bolster peace, solidarity, and friendly relations among states parties. It mandates that individuals granted asylum under the Charter refrain from engaging in subversive activities against their country of origin or any other state party to the Charter. Additionally, states must ensure that their territories are not utilized as platforms for subversive or terrorist activities targeting the people of any other state party to the Charter. This unique right within the African Charter holds historical resonance with the continent’s tumultuous past, marred by colonialism, violence, and enduring conflicts. The right to national and international peace and security becomes a crucial component in the African context, given its enduring commitment to peace and stability. The historical legacy of colonialism has left lasting scars on the continent, contributing to persistent tensions and conflicts. The provision reflects a commitment to break free from this cycle of violence, making it imperative for African states to prioritize peace as a fundamental human right.

In the context of LAWS, the significance of Article 23 of the African Charter gains prominence. The potential proliferation of LAWS brings with it potential risks and challenges that could have far-reaching implications for national and international peace and security. The ACHPR notes the African Union’s resolution in 2020 on “silencing the guns in Africa” which underscores the continent’s commitment to peace, emphasizing the need to address the root causes of conflicts. In the context of global governance of LAWS, it is essential for states and the international community to prioritize and address the national and international peace and security implications of LAWS. This requires an inclusive approach that respects and upholds the unique historical and human rights perspectives embedded in Article 23 of the African Charter. Many scholars have indicated that the availability of LAWS may make it all too easy to go to war or to resort to violence. Moreover, the increasing reliance on AI in critical infrastructure and decision-making processes introduces vulnerabilities that can be exploited by malicious actors to disrupt peace and security. Cyberattacks targeting AI systems, such as data manipulation or algorithmic bias, can undermine the integrity and effectiveness of security measures, leading to widespread chaos and instability.

2.9 LAWS and the link between the right to peace and other rights

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112 Article 23, African Charter.
113 Article 23(1), African Charter.
114 Article 23(2), African Charter.
115 Christof Heyns 2013 LAWS Report.
Various reports from regional and international organisations have indicated that AI has the potential to contribute to development and socio-economic rights.\textsuperscript{117} The ACHPR notes the link between the right to peace and economic development, particularly, for Global South countries.\textsuperscript{118} Indeed, the ECOWAS Treaty provides that “peaceful environment is a prerequisite for economic development.”\textsuperscript{119} War not only results in loss of life and displacement but also disrupts essential services – including the infrastructure. The fundamental right to peace is not merely the absence of armed conflict but encompasses conditions conducive to human flourishing, including social justice, equality, and respect for human rights. Further, the impact of LAWS on the right to peace is significant and interconnected with other civil and political rights. The right to peace serves as the foundation upon which other fundamental rights, such as the right to life and the right to vote, are safeguarded.\textsuperscript{120} In times of peace, individuals are better protected from arbitrary deprivation of life and are able to exercise their democratic rights, including the right to participate in elections.\textsuperscript{121} Conversely, in armed conflict, there is widespread violence and human rights violations, including extrajudicial killings, displacement, and the denial of basic freedoms. Civilians caught in the midst of armed conflicts are particularly vulnerable to torture and other forms of inhumane treatment, depriving them of their right to freedom from torture. Scholars have underscored the importance of \textit{jus ad bellum}, the body of international law governing the use of force, in maintaining peace and protecting human rights.\textsuperscript{122} \textit{Jus ad bellum} acts as an outer layer of defense for fundamental rights by regulating state conduct and preventing the escalation of conflicts.\textsuperscript{123}

3. Conclusion

As noted in its resolution 473, the ACHPR reiterate the urgent need for a comprehensive and legally binding instrument on LAWS. Such an instrument must be informed by IHRL, MHC and paying particular attention to rights such as the right to life, right to human dignity, right to non-discrimination and the right to peace. The ACHPR is grateful for the opportunity to share its views on this critical issue of LAWS.

\textsuperscript{117} AUDA-NEPAD Whitepaper on AI, para 18; UN General Assembly Resolution on AI, paras 2, 3, 4, 6 and 7; UN Body on AI Interim Report, para 4; UNESCO Recommendation on AI (\textit{supra}) para 9.
\textsuperscript{118} AUDA-NEPAD Whitepaper on AI (\textit{supra}) 19, 130; A Sharifi \textit{et al}, ”The sustainability–peace nexus: Why is it important?” (2021) 16.4 \textit{Sustainability science} 1073-1077.
\textsuperscript{119} Article 4(f), ECOWAS Treaty.
\textsuperscript{121} Hayden (\textit{supra}); C Heyns \textit{et al}, “The international law framework regulating the use of armed drones” (2016) 65(4) \textit{International and Comparative Law Quarterly} 791-827.
\textsuperscript{122} C Heyns \textit{et al}, “The international law framework regulating the use of armed drones” (2016) 65(4) \textit{International and Comparative Law Quarterly} 791-827.
\textsuperscript{123} Id.