

## Stop Rubber Bullets. The use of kinetic energy projectiles and torture in the Spanish State

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### Key points of interest:

- Lessons learned from the human rights and affected people's movements when it comes to systematising data, promoting strategic litigation on the issue, documenting impacts and promoting advocacy actions.
- The role of survivor's organisations is essential in providing mutual support and litigation and promoting guarantees of non-repetition.

### Abstract

*Introduction:* Rubber bullets are projectiles whose use is potentially lethal. Between 1976 and 2017, they have caused at least 23 deaths and dozens of injuries in Spain, many of them serious, with loss of sight being the main type. In the period 2000 - 2020 alone, more than 40 people have been affected. *Methods:* We review the legal framework, human impacts that go far beyond statistics and medical and psychosocial approaches. *Results:* The paper focuses on key learnings in survivors' organisation, the process towards the prohibition of these weapons and strategic litigation, forensic documentation and political advocacy.

### Introduction

The use of kinetic energy projectiles in Spain, specifically the use of rubber bullets, became widespread during the 1970s, within the framework of the Franco dictatorship (1939-1975) and the subsequent Transition period. It is, therefore, a pre-constitutional anti-riot weapon, which has remained in use to the present day, and for which there are no official records of the total number of people killed or injured by these projectiles (nor of any other type of weapon or police practice). The only databases have been compiled by civil society, through newspaper articles and reports by victims' and human rights organisations themselves. In this sense, it is important to note that the data available does not reflect, in quantitative terms, the reality of the problem which, far from the figures for other contexts, shows qualitative impacts, both individual and collective.

Since the beginning of the Transition, in 1976, and until the last known case of serious injuries in 2017, rubber bullets have caused at least 23 deaths and dozens of injuries, many of them serious, with loss of sight being the main cause. In the period 2000 - 2020 alone, more than 40 people have been affected by the use of these projectiles (Iridia and Novact, 2021). To these numbers, at least 5 people affected by *foam* bullets must be added. A foam bullet, is a viscoelastic projectile that, in some territorial contexts of the state, replaced rubber bullets a decade ago.

Spain is a decentralised State, with common institutions and 17 administrative territories - known as Autonomous Communities - with varied executive and legislative powers. This means that some of these regions have their own police systems, regulated by the respective territorial governments and parliaments. This is important insofar as there are dispar-

ities within the same State as to what weapons can be used by which police forces. In the case of kinetic energy projectiles, the use of rubber bullets has been suspended by the parliaments of Catalonia (Mossos d'Esquadra), the Basque Autonomous Community (Ertzaintza) and Navarre (Policía Foral), which since 2014, 2015 and 2017, respectively, have only used *foam* projectiles.<sup>1</sup> However, the bodies with powers throughout the State territory - National Police and Civil Guard, under the command of the central government - can continue to use them, wherever the bodies are employed, including the aforementioned territories (Irdia and Novact, 2021).

For its part, there is no public access to specialised technical information on the use of different weapons, even if it is requested through official channels of transparency and access to information. Under the umbrella of national security, the government prevents access to the protocols for the use of these weapons, as well as the manufacturer's recommendations or other types of technical information, which can often only be accessed through judicial procedures.

If there is one thing that all victims agree on, it is the need to know the truth: who, how, why. Even more so when what is observed is an institutional denial of any action that questions the police forces, where the official account exonerates and sometimes even justifies, by means of the legitimate fulfilment of duty, the police decision that tore the victims' life project in two. In this sense, although the judicial process can be a key mechanism by which the victim can secure reparation, partaking in this process to access truth and justice, on many occasions it results in double victimisation, due to institutions trying to deny, hide or discredit the story of the affected person (including arguments that the victims put themselves in a danger zone by going to a demonstration).

Although several of the most serious cases have been brought to trial, (with the economic and emotional cost that this entails for the person affected) to date there has been no known conviction of any perpetrator for shooting rubber or foam bullets. In only one case, that of Iñigo Cabacas, who died after being shot in the head in 2012, an Ertzaintza commander convicted of the crime of manslaughter committed through gross negligence, having failed to stop the police charge in which the young man died. This is the only known conviction for a kinetic energy projectile case (Irdia and Novact, 2021).

In this context, it is important to remember that the Spanish state has accumulated 13 judgments by the European Court of Human Rights for failing to properly investigate allegations of torture and ill-treatment. Among the elements that stand out in the judicial proceedings of these cases are: 1) the impossibility of identifying the officer who fired the shot and, consequently, of conviction; 2) the corporatism and lack of accountability of police commanders, together with the absence of truly effective internal investigation mechanisms; and 3) the lack of specialised training and technical knowledge of police forces and their weaponry on the part of the judiciary (Irdia and Novact, 2021).

Despite the progress achieved in the parliaments of Catalonia, the Basque Autonomous Community and Navarre, and the various attempts and campaigns to promote the banning of these weapons in the whole of Spain, the Ministry of the Interior has repeatedly refused to meet this demand, which in November 2022 managed to attract more than 200 signatures from state and international organisations (Vargas Martín, 2022). For their part, the proposed ban has been highly criticised by police unions, who have exerted strong pressure on the state government through mobilisations and public statements (Caballero, 2021).

In 2010, the first association of victims of eye trauma in Spain was born. It did so in Catalonia, under the name of Stop Bales de Goma, which would later become a national platform. Two years later, new initiatives were also born, such as Ojo con tu Ojo or the Iñigo Cabacas Platform (Iñigo Go-goan). The work of the networks of those affected has been essential in the fight against police impunity. The testimonies of those who dared to speak out have played a key role in promoting public debate and promoting legislative changes, under the auspices of organised civil society.

#### **Data collection and systematisation as a mechanism to denounce impunity.**

One of the lessons learned during the years of struggle against rubber bullets in particular, and against police violence in general, is the importance of collecting and systematising as much information as possible about the weapons and their components, as well as the impacts they have on people. In the face of an institutional discourse that denies those affected the truth of what happened, the documentation and systematisation of data becomes a key tool in the struggle for their story.

In relation to the first question, since the creation of Stop Rubber Bullets, we have been deeply struck by the little or no public information that existed about these projectiles, as well as about their regulation, both in Spain and in the rest of the

<sup>1</sup> It is important to note that in the case of Catalonia, *foam* bullets were introduced in 2010 and coexisted with rubber bullets until 2014, when the parliamentary ban became effective. Therefore, unlike in the Basque Autonomous Community and Navarre, *foam bullets* did not replace rubber bullets.

world. In fact, during all the years prior to the creation of Stop Rubber Bullets, the general idea was that if you had been shot at a demonstration it was because you were doing “something”. Therefore, a key objective as an organisation was to change this preconceived idea and make visible the problem of the use of kinetic energy projectiles, within the framework of the right to protest and the use of public space.

Thus, the collective began the task of compiling press articles and studies published on the internet, with the means available and little technical knowledge on the subject. After months of work, in 2013 the report *The use of rubber bullets by the Mobile Brigade of the Mossos d'Esquadra (Mossos d'Esquadra police)* (Stop Balas de Goma, 2013) was published to begin to shed light on an opaque area. The purposes of this report were several. On the one hand, it aimed to inform about who the collective was and what it was asking for: the prohibition of the use of rubber bullets by the Catalan regional police, the Mossos d'Esquadra. On the other hand, it aimed to have communications material that would allow the public to be aware of the danger of this weaponry, as well as to make a public record of an initial unofficial count of the number of people affected in the state, both those killed and those seriously injured.

In the same report, the campaign “Municipalities Free of Rubber Bullets” was announced, which consisted of asking local councils to take a stand against the use of kinetic energy projectiles in their territories. The document also warned about other common police practices of the Mossos d'Esquadra. Responsibility was no longer limited to the police officer who fired the shots, but denounced the complicity of an entire system: **i)** the use of disproportionate violence by the different police forces; **ii)** the lack of visibility of police identification numbers, which made it impossible to know who was responsible for each action; and **iii)** the lack of control and accountability mechanisms for police actions. In short, the impunity enjoyed by the agents, both because of police corporatism (nobody sees anything or knows anything) and because of the complicity of the rest of the State, i.e. the judiciary and the political parties. The report ended with an analysis of their effect in some countries where the use of this type of weapon is known to exist (Stop Balas de Goma, 2013).

The document was sent to anti-repression groups and human rights associations in order to join forces and generate a public debate that would put pressure on the Catalan government and the regional parliament to ban this riot control equipment. One of the most striking features of this phase was the lack of information on the matter available to the parliamentary groups. The report (incomplete, taken from news-

paper archives and web research) was the most extensive and detailed they had ever seen on rubber bullets. At this point it also became clear what enormous power the police unions wielded (and still wield) in influencing what weapons they use and what the protocols should be.

Despite everything, the report was useful. Many people began to become aware of the danger of this weaponry and it was another element that prompted the banning of rubber bullets in Catalonia in 2014, as described in the following sections. However, the Parliament's ban on the use of rubber bullets only applied to the Catalan regional police, not the state police, which allowed the National Police to use rubber bullets again in October 2017, in the context of the referendum for the independence of Catalonia (Maldita.es, 2019).

Faced with the impotence of seeing that after all the work and struggle carried out, the use of rubber bullets led to a new victim in Catalonia, Roger Español (Solé Altimira, 2017), it was necessary to resume the campaign, this time with a state-wide scope. With this aim, Stop Balas de Goma, Ojo con tu Ojo, Iridia - Centre for the Defence of Human Rights and Novact - International Institute for Nonviolent Action joined forces to carry out a triple-task: research, strategic litigation and political advocacy.

The lessons learned showed that it was essential to have data both on the weapons used by the different state police forces and on the victims that their use had caused. But even more so, it was essential to qualitatively assess the physical and psychological impact on people, both from the individual perspective of those affected and the collective perspective of society as a whole, within the framework of the exercise of fundamental rights. To achieve this, the report Stop Balas de Goma (Iridia, Novact, 2021), an analysis of the impact of the use of these projectiles in Spain between 2000 and 2020, was carried out.

The document lists a total of 40 people affected by rubber bullet impact in the period in question, 37 men and 3 women, whose average age was around 30 years old. The investigation highlighted particularly serious cases, such as the death of Iñigo Cabacas and the 14 people who drowned while trying to swim to the shores of Tarajal beach (Ceuta) in 2014, while the Guardia Civil fired rubber bullets and other anti-riot equipment.

The report highlighted that several of the rubber bullet injuries, in addition to border and protest contexts (strikes and demonstrations), also occurred in the context of football celebrations. It also revealed that, despite the fact that UN regulations (OHCHR, 2020) prohibit shooting at the head, neck, chest and groin, more than half of the victims documented in

Spain who received a direct hit to the body (18 people) were shot in the head area. Five others were hit in the trunk. In these cases, the eye perimeter was the most affected area, occurring in 11 of the 18 cases. Of these, 7 ended up with mutilation of the eyeball and 4 with loss of vision.

After the publication of this investigation in 2021, despite its presentation in the Congress of Deputies, with the support of more than 200 organisations calling for its prohibition (Martín, 2022), the use of rubber bullets continues in Spain. The images, testimonies, journalistic reports and investigations surrounding the Melilla Massacre of 24 June 2022 continue to highlight their improper use. On that day, at least 23 people were killed, according to the official version; a figure that rises to 40 according to the human rights organisation Caminando Fronteras. The lack of response and investigation by the state has made it impossible to know the impact of the use of these projectiles on what happened (Amnesty International, 2022)..

#### **Strategic litigation as a tool for social transformation.**

Strategic litigation is multidimensional, multidisciplinary, multi-stakeholder, and composed of several stages (Open Society Justice Initiative, 2018). On the one hand, there is the legal dimension, with fairly narrow margins, although not without imaginative options. On the other hand, there is everything that happens outside the procedure, although related to it.

A fundamental aspect in this type of case is to acquire technical knowledge about how police forces work, what their structure is and everything that can be known about the regulations on the use of force and the type of weapons and ammunition used. Without this, it is very difficult for cases to succeed, for many reasons. This requires studying police public order operations, ascertaining their patterns of action, how they are positioned on the ground and how they move. Images provide very valuable information that you have to learn to observe. For example, whoever is in command normally has a privileged position to be able to have a peripheral view and give the appropriate orders, which means that they are most likely to be behind the police cordon, often with their visor raised to have a better field of vision, etc. Identifying who is in command is important because they are responsible for what the officers in their charge do, not only technically, but also criminally.

In this sense, the case of Roger Español, who suffered an eyeball burst by a rubber bullet in Barcelona in 2017 at the hands of a National Police officer, may be illustrative in this regard. The moment of the shooting was recorded on video by several journalists, so it was possible to distinguish the officer from the cordon that had caused the injury. However, as

National Police officers do not have an identification number on their front torso, it was impossible at first glance to identify which of the officers was the perpetrator. Nonetheless, resources were put into analysing the images carefully and specialist advice was received about police clothing. These efforts paid off in the end. In fact, the officers *looked* the same, but they were not: some of them<sup>2</sup> wore one glove, others wore two; some officers wore a cap hanging on the left side, others on the right side; some wore a knee pad, others two or none... Thus, knowing how many officers were in that operative group<sup>3</sup>, watching the images of the scene over and over again, separating them by moments, individualising each officer, it was possible to identify the identification number of the police officer who shot Roger Español and his commanders. The trial has not yet taken place, and the outcome is uncertain, but the proceedings are directed against a single officer as the perpetrator of the shooting and his superiors (Europa Press Nacional, 2023). This is much more than has been achieved so far in a rubber bullet procedure in the Spanish State. Never before has a cap, a glove and knee pads been so decisive.

The case of Roger Español also serves to illustrate that a lawsuit can have several objectives, to be achieved at different stages. He was injured by the National Police, a force that had not acted in the context of public order in Catalonia for years because currently the Mossos d'Esquadra, the autonomous police force, has the power to do so in this territory. On 1 October 2017, they acted as judicial police in an operation that, together with the Guardia Civil, caused more than a thousand people to be injured<sup>4</sup>, with images of police violence that were shared around the world (BBC, 2017), raised concerns and criticism from numerous human rights organisations<sup>5</sup> and much social rejection. Despite being a different police force,

2 The officer who fires the rubber shotgun is called a "bocachero" because "bocacha" is one of the components of the weapon.

3 In all police forces in the state, officers operate in small units or teams - between 6 and 8 officers per unit. It is essential to have a list of the officers in action, with their identification numbers, hierarchical superiors, the "bocacheros", the "escuderos", etc., is an essential issue.

4 Data on the repression of 1 October. Department of Equality and Feminisms of the Government of the Generalitat de Catalunya. Retrieved 15 February 2024, from <https://igualtat.gencat.cat/ca/ambits-dactuacio/drets-humans-i-igualtat-de-tracte/dades-1octubre/>

5 Among others, the Council of Europe's Commissioner for Human Rights called for an investigation into the police charges. Efe. (2017, October 9). The Council of Europe asks the Interior to investigate the police action on 1-O. Público. <https://www.publico.es/politica/comisario-derechos-humanos-pide-interior-investigacion-policial-del-1-o.html>

his case contributed greatly to getting Mossos d'Esquadra to change its identification system in the context of public order. For two years, in every public intervention on the issue, the organisation representing him pointed out that the Mossos d'Esquadra also did not have identification number on the front. This meant that there would also be impunity if it had been them who had fired a projectile. The aim of human rights organizations was to create a public perception that a basic control mechanism had failed and that this was unacceptable.

In November 2019, after some highly controversial joint actions by the Mossos d'Esquadra and the National Police, in which the difficulty of identifying the agents of both bodies became evident, a window of opportunity was taken advantage of by human rights organisations and social movements to exert pressure. Evidently, it was also essential that there were parliamentary representatives sensitive to the issue who wanted to take up these demands, which is not always the case.<sup>6</sup> On 12 November 2019, Motion 128/XII of the Parliament of Catalonia was approved, on the actions of the police,<sup>7</sup> which urged the Catalan government to, among other things, “establish a new type of identification visible from the front and from behind, also on the helmet, from a safe distance and with a short, easy-to-remember code” (Colomer, 2020).

Indeed, one of the biggest obstacles when dealing with institutional violence is the extensive opacity of police forces, not only about who has done what or what orders have been given, but also about the type of weapons and ammunition they use and the very regulations that govern them, if they exist. Spain is far from achieving international standards,<sup>8</sup> al-

though there are notable distinctions depending on the police force in question.

To counteract this opacity, networking is essential, sharing information and experiences with people and groups from other parts of the world, especially when dealing with such a specialised subject as police weapons. In another of Iridia's cases of projectile eye injury, from the year 2021, the technical knowledge of Omega Research Foundation marked a turning point. Following its indications, the court was asked to request from the police force, the Mossos d'Esquadra, the indications of the manufacturer of the weapons and projectiles, the risk analyses carried out by the police force or department itself before acquiring the equipment and the information and training that the agents receive about it.

Once the manufacturer's instructions for the SIR-X projectile, the most damaging of those used by the Mossos d'Esquadra, had been obtained, it became clear that the police instructions did not even respect such an important point as the distance at which the projectile could be fired. The manufacturer clearly states that the kinetic energy is greater than 120J when the distance is less than 30m, which entails a risk of “serious damage such as lacerations, cranioencephalic trauma, rupture of the spleen, liver or heart, closed thoracic trauma, internal haemorrhages.”<sup>9</sup> However, despite the strictness of the indications, the Mossos d'Esquadra protocol allowed the projectile to be fired from a distance of 20 metres. The person in question had been shot at 22 metres, which resulted in the bursting of his right eyeball. Making it public that the police force was not even respecting the manufacturer's instructions had a high communicative and therefore political impact. It happened, moreover, while a new parliamentary commission, the Study Commission on the Police Model (Europa Press Catalunya, 2021), was taking place. As a result of the advocacy work, among the conclusions of the Study Commission on the Police Model, approved on 2 December 2022, the Department of the Interior was urged to withdraw the SIR-X from the police force, among many other asks. Likewise, in the revision of the October 2023 protocol for foam launchers, the Department of the Interior has modified many aspects, including the firing distance. According to the protocol itself, “in order to establish this safety margin, the recommendations reflected in the Expert Opinion of the Omega Research Foundation on the Protocol of the Mossos d'Esquadra in the use of the SIR-X projectile have been taken into account.”<sup>10</sup>

6 Parliamentary advocacy can be very effective when a parliamentary group takes up the demands of civil society and acts as a counterweight to the Executive. In this sense, the more a certain narrative or framework is established in public opinion, the more plausible it is that parliamentary groups will take it on board.

7 It can be consulted at the following link: [https://www.parlament.cat/web/activitat-parlamentaria/mocions/index.html?p\\_pagina=21](https://www.parlament.cat/web/activitat-parlamentaria/mocions/index.html?p_pagina=21)

8 According to the UN Less Lethal Weapons Guidance, “States and law enforcement agencies should be transparent about their regulation of the use of less lethal weapons and related equipment, as well as the policies and criteria for their lawful use. This transparency should include information on the risks associated with the use of such weapons and other equipment. Guidance provided by manufacturers on the risks associated with the use of their less lethal weapons should also be subject to such transparency requirements. Wherever possible, States should consider consulting the public before acquiring new types of less lethal weapons, and law enforcement agencies should be transparent about the types of weapons available to them”. (OHCHR, 2020).

9 SIR-X qualification test report provided by the manufacturer of the SIR-X projectile, B&T AG, Table 6.1, p. 22.

10 Op.cit, p. 7.

In conclusion, strategic litigation can be a very effective tool for combating impunity and generating positive change, especially if it is the result of joint, coordinated work from different disciplines. It also has obvious risks, such as the re-victimisation of the affected person, establishing harmful judicial precedents, or even generating public rejection of the specific issue. The intended outcomes must be carefully considered, learning from the organisation's own and other's mistakes, in order to minimise potential negative outcomes and amplify its positive ones.

**Measuring impact: Some thoughts on how medical/psychological documentation has been done.**

Litigation work in general, and strategic litigation in particular, requires a process of psycho-legal accompaniment and, in some cases, a process of forensic documentation based on the Istanbul Protocol (see, for further information, an in-depth analysis and practical guidance in the Editorial in this same issue).

We speak of psycho-legal work as a team effort of all the parties involved in the case. The complainant victim, the legal organisation that represents them and the psychosocial team that accompanies them at all stages of the process must work in a coordinated manner, seeking to maintain a consistent line that respects the wishes of the person affected, provides information that allows them to make decisions and supports them at critical moments and times of particular difficulty. If, in addition, it is strategic litigation, advocacy and social communication organisations and victims' organisations themselves should be involved.

Expert evidence is a fundamental element of this strategy. They are not a substitute for the body of evidence (ballistics, photographic, image analysis etc.), but they are an important element in the documentation of the case. The assessment of an eye mutilation by less lethal weapons has some particularly complex elements, but we would like to emphasise that the assessment must be multidisciplinary, including, depending on the case, the assessment of a traumatologist or maxillofacial surgeon, an ophthalmologist, a general practitioner and, of course, a psychologist or psychiatrist. In addition, the person's situation changes a lot over time. An assessment carried out prematurely will fail to capture the permanent sequelae or damage to the life plan, which are essential elements. But an assessment carried out a long time later may make invisible the acute suffering of the victim, the painful process of adaptation, the different surgeries and post-operations that may have taken place and the post-traumatic and bereavement symptoms. For this reason, it is important to plan work in which there is an initial interview within a relatively short period of time

after the event, to ensure that all information is collected as it occurs, and to update and reassess the report periodically, for example, every six months.

The interview must take into account the inherent difficulties in remembering, derived from the generally confusing context of the situation, the head injury itself and the dazed state and loss of vision, as well as the psychologically traumatising nature of the events. In addition, as a result of the vision problems, the person may have problems performing tests or filling in questionnaires. It is important to plan several appointments and to plan them in good time to ensure a trauma-sensitive expertise.

Unlike in other assessments of ill-treatment and torture in psychological and psychosocial assessment, elements of non-clinical harm can be much more relevant than elements of clinical harm. By non-clinical harm we refer to those things that do not correspond to a diagnosis, but are more profound or existential elements: aesthetic harm, deterioration of emotional life and relationships, loss of work, economic and study opportunities, difficulties during the first months in maintaining autonomous activities (shopping, cooking, moving around, driving, cycling or other means of transport, practising sport, etc). There is a profound change in identity and people generally see their lives disrupted in many ways. There is damage to the life project. These are elements that the Istanbul Protocol contemplates that can be included in an expert assessment and that should be explored with tact and sensitivity.

In some cases, as part of the expert assessment itself, the team itself provides psychological support to the victim. In other cases, the support is provided by the legal organisation. In any case, it is important that this process is empowering for the victim and that the political agendas of human rights organisations, or even victims' organisations, do not override the will of the victims themselves and respect for their medical and psychological time, as well as their willingness to be more or less involved in the legal process. Only then is it possible to ensure that forensic assessment processes have a therapeutic, restorative value in themselves, regardless of the final outcome of the process.

Finally, it should be noted that it is possible to pursue administrative complaints independently of criminal proceedings. In this case, the perpetrators are not convicted, but financial reparation is obtained from the State. In Spain, some resolutions have been achieved in this sense, with very variable amounts from one case to another. In this case, the forensic report has very different characteristics to the criminal report, as it is a question of accrediting the moral damage, the aesthetic damage and the level of disability caused by the mutilation.

These will be subsequently quantified by the legal team, adding other criteria (loss of earnings, loss of property, health expenses, etc.) which vary from country to country.

The importance of this type of process is twofold: on the one hand, although the officials involved are not convicted, the measure of financial reparation is a direct recognition of the responsibility of the state as perpetrator. In addition, it constitutes much-needed financial support for people who, for the most part, have not only lost their jobs, but also have significant difficulties in finding another, who sometimes have to face very high healthcare costs, especially in countries where healthcare is private, and who may require investment in adapted living environments.

**Victims with their own voice, social movements and human rights organisations: articulation, solidarity and mutual support.**

One of the key elements in the fight against impunity is the creation of support networks and meeting places for those affected. These are born out of the need to help each other in the face of common difficulties and the lack of a comprehensive response and reparation from the institutions that have caused them such serious harm. This is how, in Spain, the voices of social movements and organisations of those affected were born, such as Stop Balas de Goma, Ojo con tu Ojo or the Iñigo Cabacas platform, among others.

Specifically, in Catalonia, following an increase in the number of victims mutilated by rubber bullets since the 2000s, the Stop Bales de Goma Association was created in 2010, a platform to support and demand support for people attacked by the police and with serious eye trauma. Pursuant to a shared need to create a network and join forces in the face of police impunity, and after the difficulties they encountered in obtaining justice and reparation, they forged a community with other like-minded organisations, expanding their collective experience with the different cases and changing the repressive experience for friendship, resilience and positive activism.

Nicola Tanno, Jordi Naval, Óscar Alpuente and Jordi Salent, all of whom were mutilated in 2009 during football celebrations, together with Carles Guillot, who lost an eye in 2001 during the attempted eviction of an occupied social centre in Barcelona, founded the association with the aim of raising awareness of police violence and impunity and trying to eradicate it, as well as to ban rubber bullets and all other kinetic energy projectiles. In response to this premise, Stop Balas de Goma began to organise initiatives and activities to inform the population and took their voice to the Catalan Parliament to have the use of kinetic energy projectiles banned.

Subsequently, in 2012, as a result of different police interventions and the use of rubber bullets, there were again victims, one of whom died, Iñigo Cabacas (Gómez, 2022), as well as several people who sustained eye trauma injuries and serious and irreversible lifelong consequences: Àngelo Cilia, Xuban Nafarrete, Consolación Baudín, Aingeru Zudaire and Ester Quintana. Remembering each of the victims and mentioning them is important to guarantee the rights of those affected by police aggression, which are the basic rights of all of them to obtain truth, justice, reparation and guarantees of non-repetition.

*The case of Ester Quintana and the ban on rubber bullets in Catalonia*

Ester Quintana became the first known woman to be maimed by a rubber bullet in Spain. On 14 November 2012, she went out to demonstrate in Barcelona, as part of a general strike against social cuts, when a kinetic energy projectile fired by agents of the Mobile Brigade of the Mossos d'Esquadra caused her ocular and facial trauma, as well as significant physical and psychological sequelae resulting from the aggression and the subsequent process.

Her case had great social and media repercussions in the networks and on television, as a result of the various images that circulated about what had happened. The response of the administration, however, was contrary to the expectations of the victim and her family, denying the facts and taking no interest at any time in her state of health, as well as evading responsibility with multiple versions of the facts, based on the police report drawn up by the same officers involved. The official versions were contradicted one after the other by the videos broadcast by the media, which showed images of the officers shooting from positions which they denied.

The case was brought to court in criminal proceedings against two officers who were acquitted, as no superior officer or internal investigation revealed who fired the shot, and even the type of projectile fired: rubber bullet or *foam*. It is important to note that before the trial, Ester was compensated by the Catalan government's insurance company, thus acknowledging that her injury was the result of a police operation. However, her aesthetic after-effects and her emotional impact were assessed as if it were a traffic accident.

The trial of the well-known "Quintana Case" was subject to strong social pressure, which led to the dismissal of the chief commissioner of the Mobile Brigade and of the head of the Catalan Government's Interior Ministry. The then Director General of the Police resigned. This social pressure came largely from Ester's own entourage, who were very dismayed



by what had happened and on the very night of the events made a public call to collect all possible recordings and witnesses. A few days later they were already organised through the Ojo con tu Ojo Platform, which channelled an immediate response of support, highlighted the dangerous nature of the projectiles, denounced police impunity and institutional violence, as well as the lack of willingness to investigate and clarify what had happened.

If everything had been entrusted to the legal process, the result would have been highly revictimising and very ineffective in terms of change. However, from minute zero it was borne in mind that the battle was being fought, above all, outside the courts: in the media, in the work with social and human rights movements, in mobilisation in the streets, in meetings with parliamentarians, in campaigns on social networks, in the systematisation of information and data collection, and in giving the people affected a voice of their own.

From this perspective, from Ojo con tu Ojo, and with Ester at the centre, many campaigns were promoted to raise public awareness and denounce the facts. It began with an

audiovisual statement called “Losing an eye”,<sup>11</sup> which called on the Catalan government to carry out a real investigation and admit its responsibility. At the same time, a logo with visual impact was created as the hallmark of all campaigns and activities. One of the most prominent was a call for citizens to have their photo taken with an eye patch as a symbol of solidarity and denunciation. Thousands of people disseminated their photos on the networks, including prominent professionals from culture, the arts and the media (Sust, 2012), managing to increase social pressure.<sup>12</sup>

This mobilisation was key in raising awareness and promoting public debate, as well as increasing awareness of the policy changes needed to improve police accountability and non-repetition.

In 2013, a parliamentary commission was created to study and analyse the model of security, public order and the use of riot control equipment. This committee played a key role in

11 The campaign can be consulted at the following link: <https://www.youtube.com/watch?v=ksm7f3ey1bc>

12 Detailed information and videos of the organised initiatives can be found on the website <https://www.ojocontuoyo.org/>.



promoting social debate on what happened, as well as listening to the voices of experts in the field, who appeared before parliamentary representatives. Undoubtedly, one of the most outstanding interventions was that of the ophthalmologist Estrella Fernández, who compared the eye mutilations caused by rubber bullets to war wounds. The appearance of the people affected, among them Nicola Tanno and Ester Quintana herself, were also essential in order to convey to political decision-makers the need to prohibit this police weaponry.

Finally, in November 2013, the Catalan Parliament approved, among other measures, the prohibition of rubber bullets, which came into force in April 2014, and the elaboration of a reparation protocol for victims. A year after the events, the Catalan government announced that it would introduce important changes, such as the incorporation of the Police Operational Number (NOP), an alphanumeric code, which all riot police officers had to wear visible at all times on the back of their anti-trauma waistcoats, in order to facilitate their identification. Undoubtedly, Ester's case catapulted the work that had been initiated at the beginning of the millennium by the collectives of those affected and different social movements denouncing repressive police practices and their impunity. In a way, her case established a social consensus on the need for no one to suffer in a similar situation ever again.

Despite this, rubber bullets continue to be used by other state police forces, such as the National Police and the Civil Guard, so that the number of people affected has continued to grow (the cases of El Tarajal in 2015 and Roger Español in 2017). In turn, *foam* projectiles have already caused, in territories such as Catalonia or the Basque Autonomous Community, injuries and sequelae just as serious as rubber bullets (Irdia, 2023).

#### *What are the demands of the victims' collective?*

Stop Balas de Goma works to denounce a system that does not work and to promote change, bringing social cohesion to the population, raising public awareness, promoting participation, creativity, a sense of justice and solidarity. From this point of view, there is consensus as an organisation to demand the realisation of the right to truth, justice, reparation and guarantees of non-repetition for those affected by police violence. This implies an individual dimension, but also a collective one, related to the exercise of fundamental rights of all citizens.

Under this premise, a fundamental pillar is the demand to ban rubber bullets and other kinetic energy projectiles -such as foam- used by the Security Forces and Corps, given their potential for injury, even death. In the specific case of rubber bullets, moreover, we are talking about a projectile whose tra-

jectory is uncontrollable and indiscriminate, which does not comply with international human rights recommendations and standards and which puts the physical integrity of citizens at risk, as well as the exercise of fundamental rights. In this regard, it is important to remember that the use of kinetic energy projectiles for the purpose of punishment, retaliation or discrimination can be considered torture or cruel, inhuman or degrading treatment, according to the definition of the *Convention*.

In short, we are talking about an obsolete weapon that cannot meet the minimum standards of accountability required by international norms in this area. The traceability mechanisms are not sufficiently effective, nor do they make it possible to clearly establish which agent used them and under what circumstances. Likewise, the lack of clear identification on the uniforms of the agents makes it difficult to establish responsibility in cases of malpractice, and it is often not possible to identify the agent of the authority responsible for a disproportionate use of force, especially in the context of protests. It is therefore essential to promote the correct identification of all anti-riot police officers on the front and back of their visible parts, as well as on the sides of their helmets, in order to be able to read their identification number from 360 degrees.

Another of the collective's objectives is the fight against impunity and repression. Against this backdrop, the need for an independent and external mechanism for investigation and analysis of police actions is particularly emphasised as a tool to combat excessive use of force, torture, ill-treatment or deaths in custody, due to the failure to adequately investigate, prosecute, convict and punish the police officers responsible. The obligation to investigate effectively and thoroughly to ensure this accountability is clearly recognised in international and regional treaties binding police forces<sup>13</sup>. As is the need for effective remedies for reporting rights violations.

An independent mechanism presupposes a specialised body with a mandate to monitor the functioning of police institutions and the actions of its members. This means studying violations of rights, recommending good practices, identifying patterns of behaviour or recurrent practices that are not in accordance with the police code of ethics or existing rules and regulations, and proposing corrective or preventive measures.

Likewise, the group questions the existing police model as repressive and outdated, with significant shortcomings. Changes are needed to adapt the security forces and their methods to the current needs of citizens.

<sup>13</sup> Including the Convention against Torture, the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

Finally, from a logic articulated with human rights organisations, the need for the administration to offer comprehensive and specialised attention to victims of human rights violations in the context of the use of force is also promoted. The objective is for the administration to assume responsibility for what happened and to link itself to the process of integral reparation for the affected person, independently of the criminal responsibility that may arise from these events. In this process, in addition to the principle of the centrality of the victim, the principle of effective participation is required, so that the design and implementation of this public policy takes into account the needs of the people affected and the experience of human rights organisations.

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